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UDAAP: The CFPB's Emerging and Evolving Doctrine

October 5, 2016

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About Venable LLP



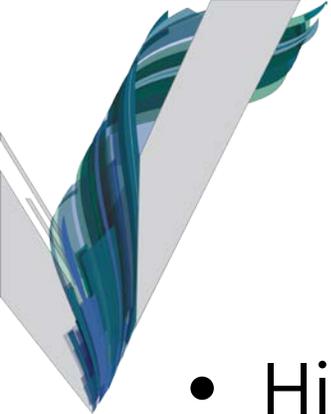
Venable is an *American Lawyer* 100 law firm. Our Consumer Financial Protection Bureau Practice Group combines first-hand knowledge of the structure, culture, and personalities that drive the Bureau with a diverse team of nationally recognized attorneys practicing in the areas of financial services, marketing and consumer protection, litigation, privacy and data protection, and legislative advocacy.

About Cornerstone Research

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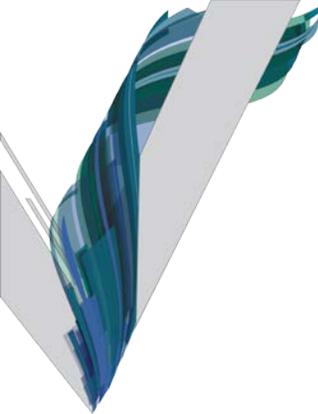


Cornerstone Research is a leading financial and economic consulting firm. We bring a multidisciplinary focus and rigorous economic and data analysis skills to consumer finance class actions and regulatory investigations. We consult to a variety of consumer finance firms and their attorneys in matters involving mortgages, credit cards, loans, and credit reporting and collection practices.



Agenda

- History of the Dodd-Frank Act and UDAAP provisions
- Types of acts the CFPB has considered to be UDAAP violations
- How law enforcement agencies like the CFPB think
- UDAAP and CFPB interpretation of doctrine from other agencies
- Damages from UDAAP violations
- Tips for identifying and remediating potential UDAAP violations



UDAAP

Unfair, Deceptive, or Abusive Acts or Practices

Unfair: an act or practice that causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers

Deceptive: an act or admission is deceptive when (1) The representation, omission, act, or practice misleads or is likely to mislead the consumer; (2) The consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and (3) The misleading representation, omission, act, or practice is material.

Abusive: an act or practice that materially interferes with the ability of a consumer to understand a term or condition of a financial product or service, or takes unreasonable advantage of (a) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service; (b) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or (c) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

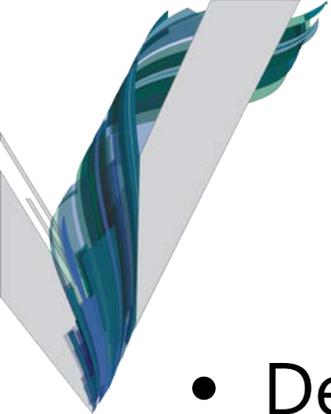
See 12 U.S.C. §§ 5531, 5536; deception is modeled on the FTC's deception doctrine.



What is the Bureau looking for?

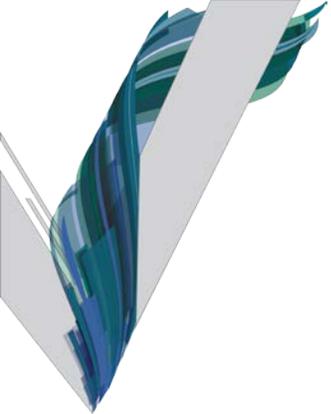
How the CFPB thinks and why it may target your company

- Interested in investigating the little things, in case they lead to something bigger
- Conscious about not repeating the pre-Great Recession mistakes of other regulators
- Increased focus on student lending, loan servicing, debt collection, auto lending, small-dollar lending



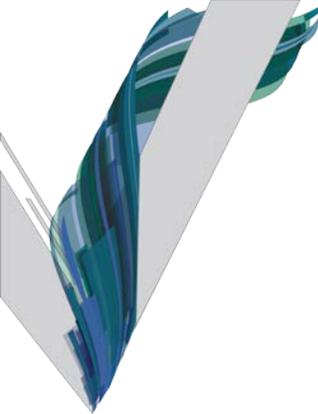
The Bureau's Use (or Non-use) of Established Doctrines

- Deception and Unfairness are borrowed from and similar to the FTC's doctrines
- NORA (Notice and Opportunity to Respond and Advise) similar to an SEC Wells Notice
- Extensions of previously unused doctrine
 - e.g., enforcing dormant provision in the Telemarketing Sales Rule
- Abusive is a new concept and can apply as a gap-filler



CLE CODE

Consumer



The Bottom Line: UDAAP Damages Considerations

- Identification of affected consumers is key
- Range of options for considering “harm” to consumers
 - Incremental fees and interest
 - Debt forgiveness and payment refunds
 - Less tangible costs
- Interplay between Redress and Civil Money Penalties



Questions?

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