



CONSUMER PROTECTION TOPICS





AGENDA

- ***Introduction***
- ***Consumer Harm***
 - ◆ *Making compliance examinations more effective and efficient*
- ***Unfair or Deceptive Acts or Practices (UDAP)***
 - ◆ *Federal Trade Commission Act – Section 5*
- ***Compliance Emerging Issues***
 - ◆ *Servicemembers Civil Relief Act (SCRA)*
 - ◆ *Fresh Start Repayment Loans*
- ***Dallas DCP Quarterly Newsletter***
 - ◆ *Summary of Articles*
- ***Questions***

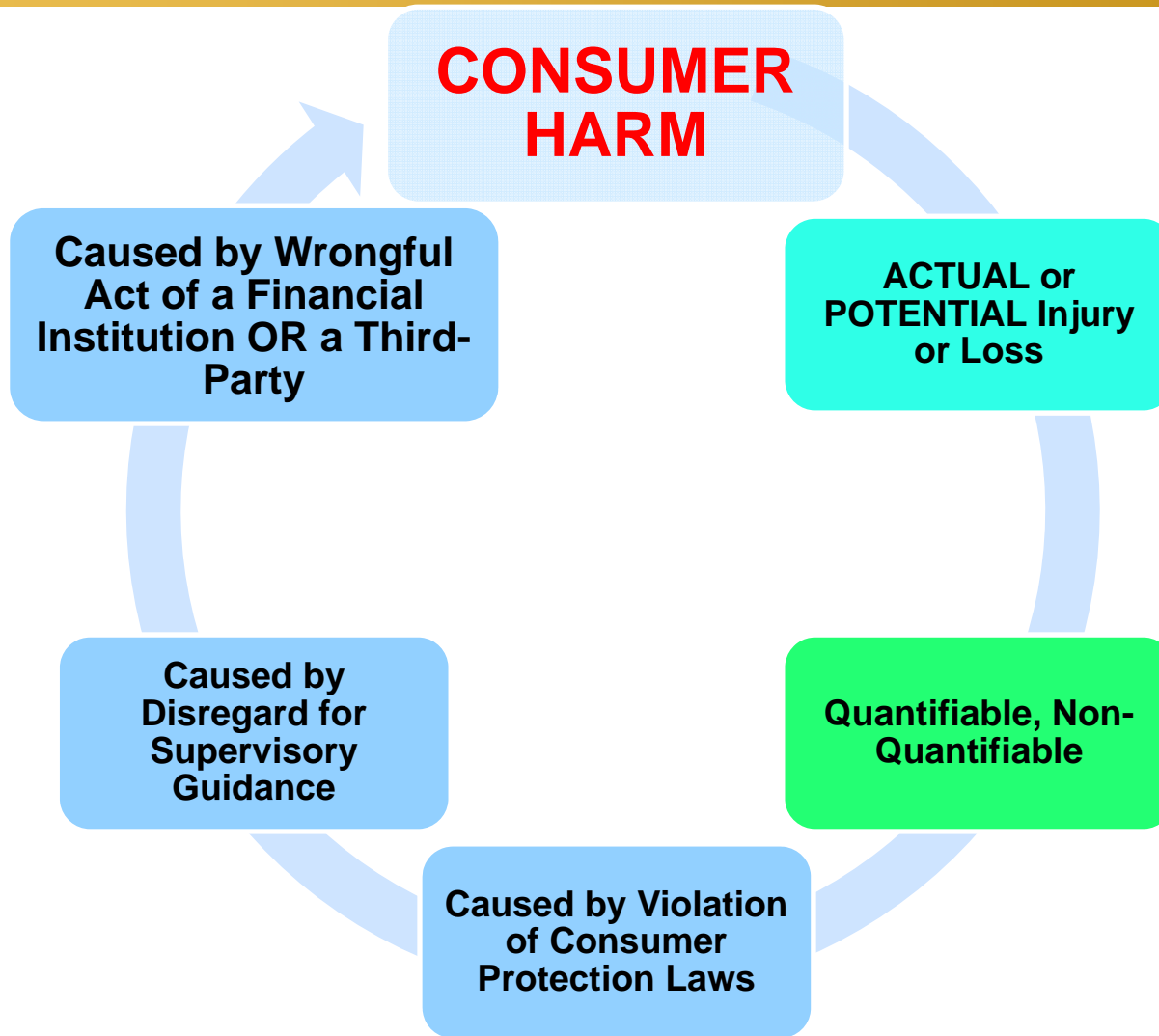


Consumer Protection Topics

Consumer Harm



What is Consumer Harm?





Preventing Consumer Harm

Consumer Harm

Communication and technical assistance to supervised institutions is an important component of the FDIC's supervisory approach in preventing consumer harm by supporting institutions' efforts to maintain an effective Compliance Management System (CMS).



Types of Consumer Harm

Quantifiable Harm

- **Economic harm to a consumer where the injury or loss can be measured.**
- **Examples:**
 - ◆ Deceptive Marketing Practices
 - ◆ Fee-based add-on product not received
 - ◆ Difference in credit report fees based on marital status



Types of Consumer Harm

Non-Quantifiable Harm

- Injury or loss to the consumer that cannot be measured, or is very difficult to measure, yet the consumer still suffers some form of economic or other harm.
- Examples:
 - ◆ Economic injury from wrongful denial or discouragement
 - ◆ Unnecessary requirements for errors or disputes



Types of Consumer Harm

Potential Harm

- **Action or inaction on the part of the financial institution that creates the possibility that a consumer may be harmed.**
- **Example:**
 - ◆ Flood Insurance Violations



Supervisory Impact of Consumer Harm

- **Examination Activities**
 - ◆ Examination strategy and scope
 - ◆ Assessment of the bank's Compliance Management System (CMS)
 - ◆ Presentation in the Report of Examination
 - ◆ Potential enforcement actions
 - ◆ General Communication



Consumer Protection Topics

Unfair or Deceptive Acts or Practices (UDAP)



UDAP vs. UDAAP

Unfair or Deceptive Acts or
Practices
(UDAP)

vs.

Unfair, Deceptive, or
Abusive Acts or Practices
(UDAAP)



UDAP vs. UDAAP

◆ UDAP

- FDIC enforces prohibitions via authority of Section 8 of the FDI Act

◆ UDAAP

- CFPB enforces prohibitions under the provisions of Section 1036 of the Dodd-Frank Act (DFA)



UDAP vs. UDAAP

- ◆ **UDAP**
 - Applies to consumer *and business* customers

- ◆ **UDAAP**
 - Applies to *consumer customers ONLY*



Unfair or Deceptive Acts or Practices (UDAP)

Section 5 of the
Federal Trade
Commission Act

Section 5(a) of the FTC Act prohibits "unfair OR deceptive acts or practices in or affecting commerce," and applies to all persons engaged in commerce, including banks.



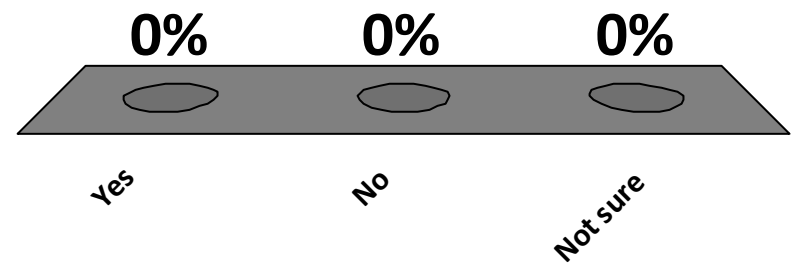
Audience Polling Question

Does your institution
consider UDAP
implications when
rolling out new products
or services?



Does your bank consider UDAP implications?

- Yes
- No
- Not sure





Unfair or Deceptive Acts or Practices (UDAP)

An act or practice is “unfair” where it:

- 1. Causes or is likely to cause substantial injury to consumers;*
- 2. Cannot be reasonably avoided by consumers, and*
- 3. Is not outweighed by countervailing benefits to consumers or to competition.*



"Must cause or be likely to cause substantial injury to consumers"

Substantial Injury – Usually involves monetary harm. Small injury to many persons may be deemed substantial.

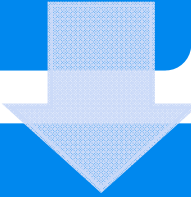
An injury may be substantial if it raises a significant risk of concrete harm.

Trivial or merely speculative harms are typically insufficient for a finding of substantial injury. Emotional impact and other more subjective types of harm will not ordinarily make a practice unfair.

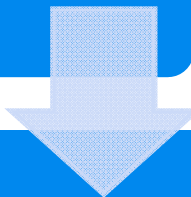


"Cannot be reasonably avoided by consumers"

Consumers cannot reasonably avoid injury from an act or practice if it interferes with their ability to effectively make decisions.



Withholding material price information until after the consumer has committed to purchase the product or service would be an example of preventing a consumer from making an informed decision.

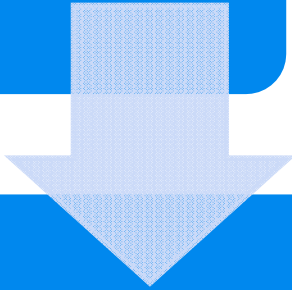


A practice may also be unfair where consumers are subject to undue influence or are coerced into purchasing unwanted products or services.



"Injury must not be outweighed by countervailing benefits to consumers or to competition."

The injury must not be outweighed by any offsetting consumer or competitive benefits that are also produced by the act or practice.

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Offsetting benefits may include lower prices or a wider availability of products and services.



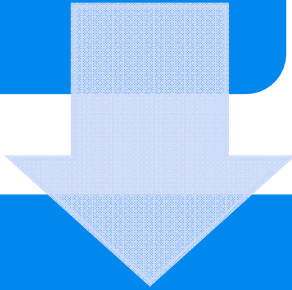
A representation, omission or practice is “deceptive” where it:

- 1. Misleads or is likely to mislead the consumer;*
- 2. The consumer’s interpretation of the representation, omission, or practice must be reasonable under the circumstances, and*
- 3. The misleading representation, omission, or practice must be material.*



" The representation, omission, or practice misleads or is likely to mislead the consumer. "

Deception is not limited to situations in which a consumer has already been misled. Instead, an act or practice may be found to be deceptive if it is *likely* to mislead consumers.

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Omission of information may be deceptive if disclosure of the omitted information is necessary to prevent a consumer from being misled.



" The act or practice must be considered from the perspective of the reasonable consumer. "

The consumer's interpretation of, or reaction to, the representation, omission, or practice must be reasonable under the circumstances.

If a representation conveys two or more meanings to reasonable consumers and one meaning is misleading, the representation may be deceptive.

A deceptive act or practice cannot be cured by subsequent truthful disclosures.



" The representation, omission, or practice must be material. "

A practice is material if it is likely to affect a consumer's decision regarding a product or service.

When express claims are made with respect to a financial product or service, the claims will be presumed to be material.

Intent to deceive is *not* a required element of proving that an act or practice is deceptive.



Examples of Potentially Deceptive Acts or Practices

- Making misleading cost or price claims;
- Using bait-and-switch techniques;
- Offering to provide a product or service that is not in fact available;
- Omitting material limitations or conditions from an offer;
- Selling a product unfit for the purposes for which it is sold; and
- Failing to provide promised services.



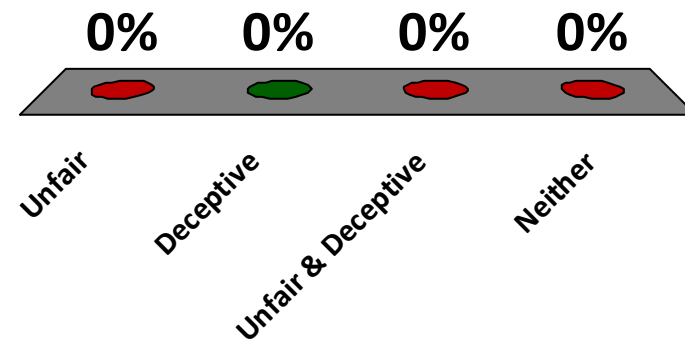
Quiz #1

A bank regularly ran advertisements in local newspapers, on the radio, and through a direct mail campaign that claimed that customers would receive free credit reports. Typically, the language in these advertisements stated: "Call for a **FREE CREDIT REPORT**" or simply "**FREE Credit Report.**" The representation of a free credit report was neither qualified nor conditioned in the advertisements. If a consumer asked for a copy of the report, it was provided free to the consumer. However, if that consumer ultimately applied for and was granted credit, the cost of the credit report would be charged to the consumer at closing. Nothing in the bank's records or promotions suggest that consumers are told they would be charged a fee for the "free credit report" if they accepted a loan.



Which of the following answers is the best choice?

- A. Unfair**
- B. Deceptive**
- C. Unfair & Deceptive**
- D. Neither**





Quiz #2

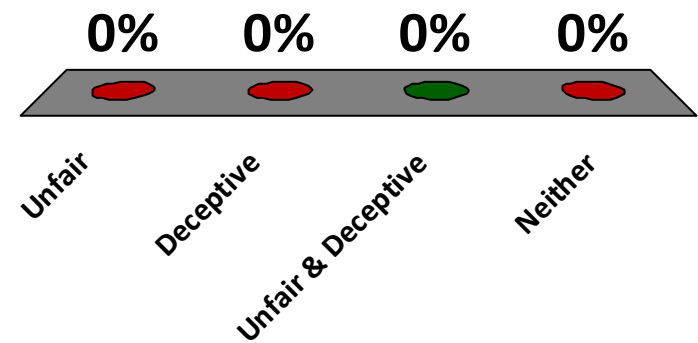
A Bank's policy and practice is to assess a one percent uncollected funds fee on its business customers' checking accounts when there was a **negative average uncollected balance** at the end of the statement cycle (typically the last day of the calendar month).

A review of the Schedule of Fees and other disclosures, including the Account Agreement, that are provided to business customers did not disclose this particular fee. The only reference to the fee was on the Bank's website, which stated: "There will be an additional service charge on accounts whose average collected balance is negative." However, the specific amount of the fee was not mentioned.



Which of the following represents the best choice?

- A. Unfair**
- B. Deceptive**
- C. Unfair & Deceptive**
- D. Neither**





Consumer Protection Topics

Compliance Emerging Issues



Emerging Issues

- **Servicemembers Civil Relief Act (SCRA)**
 - ◆ Provides protections for certain members of the military services

 - ◆ Postpones or suspends certain civil obligations



SCRA – Common Issues

- ◆ Misunderstanding of the definition of “military service”
- ◆ Misunderstanding of the types of loans covered by this provision of SCRA
- ◆ Charging “interest” in excess of the 6 percent maximum on eligible loans
- ◆ Not reducing periodic payments



SCRA – Common Issues (Continued)

- ◆ Not applying rate reductions retroactively or applying reductions as of the incorrect date
- ◆ Not forgiving interest in excess of 6 percent
- ◆ Imposing additional requirements to obtain or maintain interest rate reduction
- ◆ Not providing benefits in a timely manner



Emerging Issues

Issuance of Final Rule Implementing the Military Lending Act

- ◆ Issued by the Department of Defense in consultation with financial regulators.
- ◆ Originally passed in 2006 to protect service members in consumer credit transactions.
 - Caps the Military APR on covered transactions at 36%
 - Requires disclosures to alert servicemembers of their rights.
 - Prohibits creditors from requiring arbitration in event of a dispute
- ◆ Final rule expands financial protections and addresses a wider range of products that now include installment loans, credit cards, and unsecured lines of credit.
- ◆ Effective October 1, 2015. Applies to transactions consummated after October 3, 2016. For credit cards, applies after October 3, 2017.



Fresh Start Repayment Loans

- ◆ Used to repay deposit account overdraft balance(s)
- ◆ Typical Features: 0% interest rate, repaid in installments
- ◆ Banks typically terminate/revoke/suspend customers' access to the automated overdraft privilege service

Concern: The Regulation E opt-in is not also turned off when the automated overdraft feature is revoked.



Consumer Protection Topics

Dallas DCP Quarterly Newsletter



DCP Newsletter Articles

2014 Q1: *UDAP Activities Tied to Overdrafts and Fees*

2014 Q2: *Rule Changes For Flood Insurance & Building Community Partnerships for CRA and Community Development*

2014 Q3: *Servicemembers Civil Relief Act – Examination Trends*

2014 Q4: *UDAP – A Brief Retrospective*

2015 Q1: *HELOC Programs*

2015 Q2: *Written Policies and Procedures – A Compliance Perspective*



CONSUMER PROTECTION TOPICS

- **Questions?**





References

- **UDAP Reference:**
FIL-26-2004: Unfair or Deceptive Acts or Practices by State-Chartered Banks
<https://www.fdic.gov/news/news/financial/2004/fil2604.html>
- **Consumer Harm Reference:**
FDIC Compliance Examination Manual: Evaluating Impact of Consumer Harm
<https://www.fdic.gov/regulations/compliance/manual/2/II-2.1.pdf>
- **SCRA Reference:**
SCRA 50 U.S.C. http://www.justice.gov/crt/spec_topics/military/sratext.pdf
- **Military Lending Act Reference:**
<https://www.fdic.gov/news/news/financial/2015/fil15037.html>
- **Directors' Resource Center Technical Assistance Video Program:**
<https://www.fdic.gov/regulations/resources/director/video.html>
- **Community Banking Initiatives (includes Regulatory Calendar):**
<https://www.fdic.gov/regulations/resources/cbi/>
- **Supervisory Insights:**
<https://www.fdic.gov/regulations/examinations/supervisory/insights/>