



COMPLIANCE SOLUTIONS, LLC



DARE TO BE FAIR
Unfair Deceptive Act and Abusive Practices

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March 20, 2013



Agenda

- Introduction to UDAAP
- The Risks of being unfair
- Stop trying to define fairness
- Frame compliance as “unfair” prevention
- Design a system of fairness
- The benefits beyond compliance



The extra A is for Aggravating

- Unfair Deceptive Acts and Practices
 - UDAP
 - Generally accepted guideline of capitalism
- Unfair Deceptive Acts and **ABUSIVE** Practices
 - UDAAP
 - Generally dreaded guideline of financial services compliance





Unfair

- The Dodd-Frank standard of unfair is an act or practice that:
 - Causes or is likely to cause substantial injury to customers.
 - Customers cannot reasonably avoid the injury.
 - The injury cannot be offset by a countervailing benefit.
- Unfair
 - Fees
 - Products



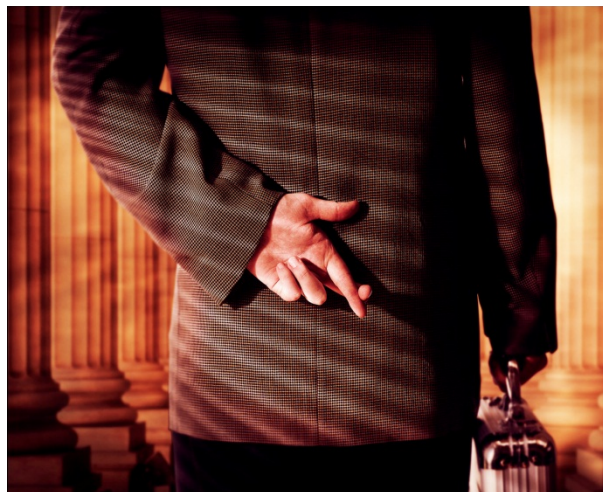


Deceptive

- A representation, omission, act or practice is deceptive when:
 - It misleads or is likely to mislead a consumer.
 - Pay no attention to the mouse print
 - The consumer's interpretation of the deception is reasonable under the circumstances.
 - A reasonable person would see it the same way.
 - The deception is material.
 - Material = Money

- Deception

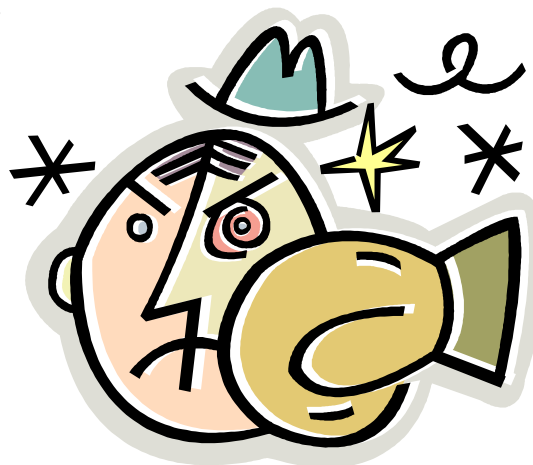
- Marketing
- Disclosures
- Products





Abusive

- The standard set forth in Dodd-Frank determines an Abusive act or practice to be one that:
 - Materially interferes with the ability of a consumer to understand a term or condition of a financial product or service.
 - Takes unreasonable advantage of:
 - A consumers lack of understanding of material risks, costs, or conditions of a product or service.
 - The inability of a consumer to protect their interests in selecting or using a financial product or service.
 - The consumer's reliance on a Financial Institution to act in the interests of the consumer.
- Abusive
 - Fees
 - Disclosures
 - Marketing
 - Products





Simple Addition

- According to examiners, an act or practice can be Singularly
 - Unfair
 - Deceptive
 - Abusive
- Jointly
 - Unfair and Deceptive
 - Unfair and Abusive
 - Abusive and Deceptive
- Three's Company
 - Unfair, Deceptive, and Abusive



Risks of UDAAP

- Financial peril
 - Penalties
 - Discover, American Express, Capital One
 - Revenue at risk
 - Fee income paralysis
- Consumer revolution
 - The customer is always right is now largely regulated under UDAAP.
 - Being overly consumer friendly is a risk unto itself.
- Reputation at risk
 - There is such a thing as bad publicity.



UDAAP Compliance Challenges

- Not really a well defined regulation
- Deals with principles rather than requirements
 - Truth-in-Savings
 - Consumer Credit Protection Act
 - Civil Rights Act
- Subjective interpretations and observed best practices are considered “rule”
 - Blind leading the blind and deaf



The Problem with Compliance

- Subjectivity in interpreting Fair
- How do we define fair? (Source: www.meriam-webster.com)
 - pleasing to the eye or mind especially because of fresh, charming, or flawless quality
 - superficially pleasing: specious <she trusted his *fair* promises>
 - clear, legible
 - marked by impartiality and honesty: free from self-interest, prejudice, or favoritism <a very *fair* person to do business with>
 - conforming with the established rules: allowed (2): consonant with merit or importance: due <a *fair* share>
 - open to legitimate pursuit, attack, or ridicule <*fair* game>
 - **sufficient but not ample: adequate** <a *fair* understanding of the work>
 - **moderately numerous, large, or significant** <takes a *fair* amount of time>



More Consensus About Unfair

- The solution to the fairness problem is to turn the argument around.
- Easier to define unfair: (Source: www.meriam-webster.com)
 - marked by injustice, partiality, or deception:
unjust
 - not equitable in business dealings





Preventing Unfair

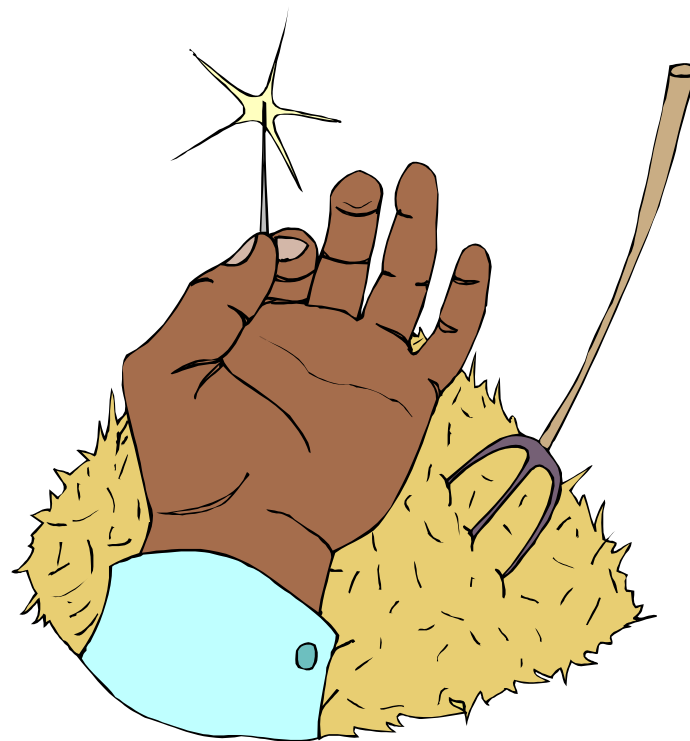
- Conceptually, if something is designed to prevent the unfair from occurring, the only outcomes that could occur would be fair.
- “Fair by design”





Fair by Design

- Identify the processes which can lead to unfair outcomes:
 - Disclosures
 - Marketing/Business Strategy
 - Price (Fees)
 - Product
 - Placement
 - Promotion
 - Post implementation analysis





Fair by Design

- Disclosures

- The range of the median length of bank disclosures is 21 to 153 pages and for credit unions is 9 to 53 pages. The disclosure of checking account terms and conditions is scattered across account agreements, fee schedules, account rules, supplements, addenda, and websites.

- http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/SafeChecking_PolicyRecommendation_Factsheet1.pdf

- Despite “regulatory requirements,” agreements can be simplified.
 - Clarity brings less confusion for the consumer.
 - Less confusion brings reduced risk of “unfair” outcomes.





Fair by Design

- Marketing
 - Price/Fee
 - Changing or setting the price of a product should not be done without discussion of the consumer impact.
 - Caveat Emptor does not exist in a Bank.
 - “Marked to market” approach
 - Fee comparisons
 - Price analysis hierarchy
 - Analysis on consumer impact
 - Analysis on business outcome without change
 - Analysis on business outcome with change





Fair by Design

- Marketing
 - Products
 - Development and implementation of a new product or service should not be done without discussion of consumer impact
 - Is this a product our consumers are demanding?
 - Is this a product our consumers can understand?
 - Is this product designed to clearly benefit our customers?
 - How does this product or service add value to our customers?
 - Forces us to think strategically about the products we provide our consumers
 - Remote Deposit Capture
 - ACH Origination
 - Mobile Banking





Fair by Design

- Marketing
 - Placement
 - Getting the right product in the right market is crucial.
 - McDonalds
 - Costco
 - The wrong product in the wrong market is a critical failure.
 - Swim suits in Antarctica
 - Snow shoes in the desert
 - Requires us to know our customers better.
 - Demographics
 - Customer needs
 - Analytics





Fair by Design

- Marketing
 - Promotion
 - Advertising should be concerned with more than compliance with Regulation Z, Regulation DD, and FDIC/Equal Housing requirements.
 - Process to conduct reviews of all advertisements by a “reasonable” person
 - Clear and concise language
 - Easy to understand the product or service
 - Few “*” needed to explain terms and conditions
 - No efforts to intentionally mislead a consumer





Misleading Ads



Bait and switch...





Misleading Ads



Not really a sale is it?





Misleading Ads



How exactly does the customer benefit?





Misleading Ads



Variation on the bait and switch...
Advertise it, just don't have it.



Fair by Design

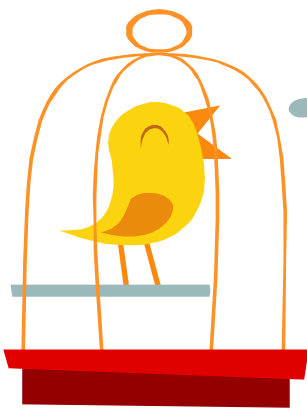
- Post Implementation Analysis
 - Monitoring outcomes
 - Were revenue forecasts accurate?
 - Better?
 - Worse?
 - What is the reason for the deviation?
 - Should we continue to offer this product?
 - Were customer adoption/usage estimates correct?
 - Better among certain demographics?
 - » Why?
 - What can we do to improve the product?





Fair by Design

- Post implementation analysis
 - Customer complaints
 - Complaints come from confusion about a product or service
 - Are customers complaining about the fees? product? Ads?
 - How do you know?
 - How do you track this?
 - » Should have a customer complaint log
 - Not just for “Regulator complaints”
 - » Should be reviewed routinely for trends





Fair by Design

- Post Implementation Analysis
 - Vendor management
 - Your financial institution is responsible for the treatment of its customers, especially by your service providers.
 - UDAAP compliance cannot be outsourced.
 - Need a plan to track the business practices of your vendors
 - Measures and metrics
 - Monitoring consumer complaints about the vendor
 - » Google “reviews”
 - » Better Business





Fair by Design

- Benefits beyond UDAAP compliance
 - Keeps us focused on the customer
 - Providing a value to our customers
 - Forces us to be more strategic about the business of our banks
 - Reduces inefficiency and redundancy
 - Establishes better action plans for our product implementations
 - Creates a process for end to end planning
 - Improves the metrics we use to track the success of our products and services
 - Analytics is not just a “buzz word”
 - Numbers don’t lie





UDAAP Compliance

- Don't focus on "justifying" the fairness of your actions.
- Design your processes and controls to prevent unfair outcomes.
- Focus on the consumer and the benefits your bank provides them by listening to your customers.
- You are your vendors' keeper.
- Prepare to analyze your data .



Questions?



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