

UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES (UDAAP)

EXAMINATION PROCEDURES

Examination Objectives

- To assess the quality of the credit union's compliance risk management systems, including internal controls and policies and procedures, for avoiding unfair, deceptive, or abusive acts or practices (UDAAP).
- To identify acts or practices that materially increase the risk of consumers being treated in an unfair, deceptive, or abusive manner.
- To gather facts that help determine whether the credit union engages in acts or practices when offering or providing consumer financial products or services that are likely to be unfair, deceptive, or abusive.
- To determine, in consultation with EIC or Field Examiner Supervisor, whether an unfair, deceptive or abusive act or practice has occurred and whether further supervisory or enforcement actions are appropriate.

General Guidance

Based on the results of the risk assessment of the credit union, examiners should review for potential unfair, deceptive, or abusive acts or practices, taking into account a credit union's marketing programs, product and service mix, customer base, and other factors, as appropriate. Even if the risk assessment has not identified potential unfair, deceptive, or abusive acts or practices, examiners should be alert throughout an examination for situations that warrant review.

Document Review

- a. To initially identify potential areas of UDAAP concerns, obtain and review copies of the following to the extent relevant to the examination:
 - Training materials.
 - Lists of products and services, including descriptions, fee structure, disclosures, notices, agreements, and periodic and account statements.
 - Procedure manuals and written policies, including those for servicing and collections.
 - Minutes of the meetings of the Board of Directors and of management committees, including those related to compliance.

- Internal control monitoring and auditing materials.
- Compensation arrangements, including incentive programs for employees and third parties.
- Documentation related to new product development, including relevant meeting minutes of Board of Directors, and of compliance and new product committees.
- Marketing programs, advertisements, and other promotional material in all forms of media (including print, radio, television, telephone, Internet, or social media advertising).
- Scripts and recorded calls for telemarketing and collections.
- Organizational charts, including those related to affiliate relationships and work processes.
- Agreements with affiliates and third parties that interact with consumers on behalf of the credit union.
- Consumer complaint files.
- Documentation related to software development and testing, as applicable.

Management and Policy-Related Examination Procedures

1. Identify potential UDAAP concerns by reviewing all relevant written policies and procedures, customer complaints received by the credit union or by the Division of Credit Unions (DCU), internal and external audit reports, statistical and management reports, and examination reports. Determine whether:

- a. The scope of the credit union's compliance audit includes a review of potential unfair, deceptive, or abusive acts or practices.
- b. The compliance audit work is performed consistent with the audit plan and scope.
- c. The frequency and depth of audit review is appropriate to the nature of the activities and size of the credit union.
- d. Management and the Board of Directors are made aware of and review significant deficiencies and their causes.
- e. Management has taken corrective actions to follow up on any identified deficiencies.

f. The credit union's compliance programs ensure that policies are being followed through its sampling of relevant product types and decision centers, including sales, processing, and underwriting.

g. The credit union has a process to respond to consumer complaints in a timely manner and determine whether consumer complaints raise potential UDAAP concerns.

h. The credit union has been subject to any enforcement actions or has been investigated by a regulatory or law enforcement agency for violations of consumer protection laws or regulations that may indicate potential UDAAP concerns.

2. Through discussions with management and a review of available information, determine whether the credit union's internal controls are adequate to prevent unfair, deceptive or abusive acts or practices. Consider whether:

a. The compliance management program includes measures aimed at avoiding unfair, deceptive, or abusive practices, including:

o Organization charts and process flowcharts;

o Policies and procedures; and

o Monitoring and audit procedures.

b. The credit union conducts prior UDAAP reviews of advertising and promotional materials, including promotional materials and marketing scripts for new products.

c. The credit union evaluates initial and subsequent disclosures, including customer agreements and changes in terms, for potential UDAAP concerns.

d. The credit union reviews new products and changes in the terms and conditions of existing products for potential UDAAP concerns.

e. The credit union has a thorough process for receiving and responding to consumer complaints and has a process to receive complaints made to third parties, such as the Better Business Bureau, the CFPB, or the DCU.

f. The credit union evaluates servicing and collections for UDAAP concerns.

g. The credit union has established policies and controls relating to employee and third-party conduct, including:

o Initial and ongoing training;

o Performance reviews or audits;

- o Discipline policies and records of disciplinary actions;
 - o Third-party agreements and contractual performance standards;
 - o Compensation programs; and o Monitoring.
- h. The credit union's internal control processes are documented.
- i. Computer programs are tested and documented to ensure accurate and timely disclosures to consumers.

3. Potential Areas for Transaction Testing

Through a high-level assessment of the credit union's products, services, and customer base, identify areas for potential transaction testing. This process should determine whether:

- a. The credit union does not underwrite a given credit product on the basis of ability to repay.
- b. A product's profitability depends significantly on penalty fees or "back-end" rather than upfront fees.
- c. A product has high rates of repricing or other changes in terms.
- d. A product combines features and terms in a manner that can increase the difficulty of consumer understanding of the overall costs or risks of the product and the potential harm.
- e. Penalties are imposed on a customer when he terminates his relationship with the credit union.
- f. Fees or other costs are imposed on a consumer to obtain information about his account.
- g. A product is targeted to particular populations, without appropriate tailoring of marketing, disclosures, and other materials designed to ensure understanding by the consumers.

Transaction-Related Examination Procedures

If upon conclusion of the management and policy-related examination procedures, procedural weaknesses, or other UDAAP risks require further investigation, conduct transaction testing, as necessary, using the following examination procedures. Use judgment in deciding to what extent to sample individual products, services, or marketing programs. Increase the sample size to achieve confidence that all aspects of the credit union's products and services are reviewed sufficiently. Consult with EIC or Field Examiner Supervisor to obtain assistance with the sampling process.

1. Marketing and Disclosures

Through a review of marketing materials, customer agreements, and other disclosures, determine whether, before the consumer chooses to obtain the product or service:

- a. All representations are factually based.
- b. All materials describe clearly, prominently, and accurately:
 - o costs, benefits, and other material terms of the products or services being offered;
 - o related products or services being offered either as an option or required to obtain certain terms; and
 - o material limitations or conditions on the terms or availability of products and services, such as time limitations for favorable rates, promotional features, expiration dates, prerequisites for obtaining particular products or services, or conditions for canceling services.
- c. The customer's attention is drawn to key terms, including limitations and conditions, that are important to enable the consumer to make an informed decision.
- d. All materials clearly and prominently disclose the fees, penalties, and other charges that may be imposed and the reason for the imposition.
- e. Contracts clearly inform customers of contract provisions that permit changes in terms and conditions of the product or service.
- f. All materials clearly communicate the costs, benefits, availability, and other terms in language that can be understood when products are targeted to particular populations, such as reverse mortgage loans for the elderly.
- g. Materials do not misrepresent costs, conditions, limitations, or other terms either affirmatively or by omission.
- h. The credit union avoids advertising terms that are generally not available to the typical targeted consumer

2. Availability of Terms or Services as Advertised

Evaluate whether product(s) and service(s) that consumers are receiving are consistent with the disclosures and policies. For each product and service being reviewed, select a sample that:

- a. Is sufficient in size to reach a supportable conclusion about such consistency;

b. Includes, as appropriate, transactions from different origination and underwriting channels — for example, different geographical areas or different sectors of the credit union’s organization structure; and

c. Includes approved and/or denied accounts.

Determine whether:

a. Consumers are reasonably able to obtain the products and services, including interest rates or rewards, as represented by the credit union.

b. Consumers receive the specific product or service that they request.

c. Counter-offers clearly, prominently, and accurately explain the difference between the original product or services requested and the one being offered.

d. Actual practices are consistent with stated policies, procedures, or account disclosures.

3. Availability of Actual Credit to the Consumer

Evaluate whether the credit union represents the amount of useable credit that the consumer will receive in a truthful way. Consider whether:

a. The available credit is sufficient to allow the consumer to use the product as advertised and disclosed to the consumer.

b. The fees and charges, typically imposed on the average targeted customer, both initially and throughout the term of the loan, remain in a range that does not prevent the availability of credit.

c. The credit union honors convenience checks when used by the customer in a manner consistent with introductory or promotional materials and disclosures.

4. Employees and Third Parties Interacting with Consumers

Evaluate how the credit union monitors the activities of employees and third-party contractors, marketing sales personnel, vendors, and service providers to ensure they do not engage in unfair, deceptive, or abusive acts or practices with respect to consumer interactions. Interview employees and third parties, as appropriate. Specifically, consider whether:

a. The credit union ensures that employees and third parties who market or promote products or services are adequately trained so that they do not engage in unfair, deceptive, or abusive acts or practices.

- b. The credit union conducts periodic evaluations or audits to check whether employees or third parties follow the credit union's training and procedures and has a disciplinary policy in place to deal with any deficiencies.
- c. The credit union reviews compensation arrangements for employees, third-party contractors, and service providers to ensure that they do not create unintended incentives to engage in unfair, deceptive, or abusive acts or practices, particularly with respect to product sales, loan originations, and collections.
- d. Performance evaluation criteria do not create unintended incentives to engage in unfair, deceptive, or abusive acts or practices, including criteria for sales personnel based on sales volume, size, terms of sale, or account performance.
- e. The credit union implements and maintains effective risk and supervisory controls to select and manage third-party contractors and service providers.

5. Servicing and Collections

Evaluate whether servicing and collections practices raise potential UDAAP concerns, by considering whether:

- a. The credit union has policies detailing servicing and collections practices and has monitoring systems to prevent unfair, deceptive or abusive acts or practices.
- b. Call centers, either operated by the credit union itself or by third parties, effectively respond to consumers' calls.
- c. The credit union ensures that employees and third party contractors:
 - o represent fees or charges on periodic statements in a manner that is not misleading;
 - o post and credit consumer payments in a timely manner;
 - o apply payments in a manner that does not unnecessarily increase customer payments, without clear justification;
 - o only charge customers for products and services, such as insurance or credit protection programs, that are specifically agreed to;
 - o mail periodic statements in time to provide the consumer ample opportunity to avoid late payments; and
 - o do not represent to consumers that they may pay less than the minimum amount without clearly and prominently disclosing any fees for paying the reduced amount.
- d. The credit union has policies to ensure compliance with the standards under the Fair Debt Collections Practices Act to prevent abusive, deceptive, or unfair debt collection practices.

e. Employees and third party contractors clearly indicate to consumers that they are calling about the collection of a debt.

f. Employees and third party contractors do not disclose the existence of a consumer's debt to the public without the consent of the consumer, except as permitted by law.

g. The credit union avoids repeated telephone calls to consumers that annoy, abuse, or harass any person at the number called.

6. Interviews with Consumers

If potential UDAAP issues are identified that would necessitate interviews with consumers, consult with the EIC or DCU Field Examiner Supervisor.

REFERENCE: 2012 CFPB Examination Manual