

**Bankers Service Corporation  
Known UDAAP Issues  
As of 06/01/2014**

**Loans:**

1. Charging fees for force-placement of flood or hazard insurance when the language in the note and/or mortgage doesn't disclose this possibility. <sup>1</sup>
2. Hidden terms, such as balloon payments, in home loans. <sup>1</sup>
3. Posting late fees for on-time payments.<sup>1</sup>
4. Collecting unauthorized fees (e.g., for insurance that is already in place).<sup>1</sup>
5. Not quoting payoff amounts or otherwise misrepresenting the amount owed.<sup>1</sup>
6. Fees that are too high for the service received.<sup>1</sup>
7. Including cross-collateralization clauses in unsecured notes (Fed—Cleveland).
  - a. Remedy: Remove language from documents and contact all affected customers to tell them the clause will not be enforced.
8. Claims that consolidation loans may save money and improve credit scores when fees may increase the cost of the credit and credit history is not reported to the credit reporting agencies (Fed—Cleveland).
9. Failing to provide homeowners with Permanent Change of Station orders who notify their servicers of such orders with accurate, clear, and readily understandable information about available assistance options for which the homeowner may qualify based on the information known to the mortgage servicer (FIL-28-2012).
10. Asking homeowners with PCS orders to waive their legal rights under the SCRA (FIL-28-2012).
11. Advising homeowners with PCS orders who are current on their loans and able to make the monthly payment to intentionally skip making payments in order to create the appearance that they are have financial difficulties in order to obtain assistance for which they would not otherwise qualify (FIL-28-2012).
12. Failing to provide a reasonable means for homeowners with PCS orders to obtain information on the status of their request for assistance (FIL-28-2012).
13. Failing to timely communicate the servicer's decision regarding requests for assistance from homeowners with PCS orders and failing to include an explanation of the reason for the denial, where required, so the homeowner has no opportunity to address any deficiencies, if applicable (FIL-28-2012).
14. Refusing to release lien after consumer makes final payment on a mortgage (FTC).

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<sup>1</sup> (Thomas Pareigat, 2011) (*ABA Bank Compliance* May-June 2011)

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15. Charging borrowers for discount points that are “unearned”. Unearned discount points are points paid by borrowers that did not result in a reduction in the loan’s par interest rate (Consumer Compliance Outlook).

**Credit Cards:**

1. Engaging in deceptive marketing tactics to pressure or mislead consumers into paying for “add-on products” such as payment protection and/or credit monitoring when they activate their credit cards (CFPB).
2. Dishonoring credit card convenience checks without notice (OTS; FDIC).
3. Security deposits/fees for credit cards that consume most of the available credit, especially subprime cards.<sup>1</sup>

**Deposits:**

1. Regulation E (Error Resolution): Having customers work things out with the merchant before the Bank will begin their own procedures (BSC).
2. Regulation E (Error Resolution): Requiring customers to file a police report before beginning investigation procedures (BSC).
3. Regulation E/Overdraft: Soliciting customers to “opt-in” to overdrafts for POS and ATM transactions when the Bank only has an ad-hoc overdraft program (BSC).
  - Remedy: Refund customers for any charges derived from these opt-ins and opt all customers out on the system.
4. Regulation E: Gift cards without pre-sale disclosures, especially where fees could be imposed on the balance.<sup>1</sup>
5. Overdraft: ATM Balances that include overdraft protection amounts.<sup>1</sup>
6. Regulation DD: Not disclosing that debit card transactions and automatic deposits must “post” during the account cycle to meet the qualification requirements for Reward Checking (BSC).
7. Deposit Advertisements that only disclose the highest interest payable on tier rated accounts or that failed to disclose the minimum balance to obtain the advertised rates (Fed—Cleveland).
8. Method of posting deposit account transactions results in multiple overdraft fees for a single debit card transaction (Fed—Cleveland).
9. Overdraft fee disclosures should clearly describe how extended overdraft fees (aka daily or negative balance fees) will be charged. A UDAAP situation may result if an extended overdraft fee is assessed based on calendar days even though the customer can only cure the negative balance on business days. (FDIC – March 31, 2014 Quarterly Newsletter)

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- Remedy: Ensure that disclosures clearly and accurately reflect the way the bank's system assesses daily overdraft fees. If discrepancies are found between the bank disclosures and the fees that are assessed, bank management should consider issuing new disclosures and making voluntary restitution to consumers.

10. Adding a customer's overdrawn deposit account balance to the balance of one of the customer's other active loans (e.g. the customer's car or house loan) may result in a UDAAP violation. Standard deposit agreements and/or loan contracts do not typically contain the language to support this practice. For example, consumer harm may result when the bank unilaterally turns a non-interest-bearing debt (the overdraft) into an interest-bearing one without contractual authority. (FDIC – March 31, 2014 Quarterly Newsletter)

- Remedy: Review customer contracts and agreements to ensure they are consistent with the bank's actual practices regarding overdraft balances. As a best practice, charge off all overdraft balances according to the timeframes described in the Interagency Guidance on Overdraft Programs.

**Other:**

1. Marketing practices that do not convey the whole truth or explain requirements to obtain a benefit, or that contain claims that cannot be substantiated. <sup>1</sup>
2. Promises that do not materialize. <sup>1</sup>
3. Rates "as low as" or "as high as" that are not available to the majority of customers. <sup>1</sup>
4. Teaser rates that do not explain the duration. <sup>1</sup>
5. Claims that cannot be substantiated. <sup>1</sup>
6. Asterisks that are buried. <sup>1</sup>
7. Using the term "free" when fees could result. <sup>1</sup>
8. When offering "add-on products", marketing materials should be clear and understandable and reflect actual terms and conditions of the products, whether offering the products directly or through the use of a third party. Examples of "add-on products" include identity theft protection, payment protection, wallet protection and other similar products. Following are some scenarios that may give rise to UDAAP violations: (FDIC – March 31, 2014 Quarterly Newsletter)
  - Billing for services not performed or activated;
  - Charging for ID theft protection on multiple accounts with the benefit received once;
  - Enrolling consumers in products for which they are ineligible or receive no benefit (e.g. job loss payment protection for an unemployed individual);
  - Advertising "free trial periods" when the charges begin right away unless the consumer affirmatively cancels, and that fact is not made clear; and

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- Requiring the purchase of add-on products or services as a condition for obtaining credit.

Remedy: Understand how each add-on product functions and take responsibility for the disclosures and administration of the products, even when a third-party vendor is involved. Put policies and procedures in place to handle issues or complaints regarding the add-on products.

**Discussed as Potential UDAAP During an Examination:**

1. Giving the customer an unsecured loan rate when collateral has been taken as an abundance of caution (BSC).
2. Automatically enrolling commercial customers into a third-party service such as Re\$ubmitt (service which represents returned checks via ACH) and/or not ensuring that commercial customers post fee notices at their POS or on their invoices (BSC).
3. Asking customers to opt-in at account opening before they qualify for the automatic ODP program, or allowing the "opt-in" status to remain after customers become disqualified for the automatic ODP. Viewed as unfair because customers are charged an NSF fee for overdrafts caused by ATM and one-time debit card transactions without the benefit of the ODP, while other customers that have not opted-in are not charged NSF fees. Remedy: Refund any NSF fees to customers affected by the situation, do not allow opt-in to occur at account opening, and remove the "opt-in" status after customers are disqualified for the automatic ODP (BSC).
4. Failing to re-disclose a previously disclosed garnishment fee to customers at the time of garnishment and failing to separate the garnishment debit from the garnishment fee debit on the customer's account statement.