

**FTC Act's UDAP
FRB's Regulation AA
Dodd Frank Act's UDAAP**

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UDAP or UDAAP?

- **Unfair or Deceptive Acts or Practices (UDAP)**
- **Covers unfair or deceptive practices against consumers or commercial entities**
 - The Federal Trade Commission Act of 1914 was originally about protecting against commercial monopolies
 - Section 5(a) of the FTC Act [15 USC 45(a)]
 - FTC has no enforcement authority over banks
 - Federal Deposit Insurance Act (FDIA) authorized regulators to enforce UDAP on banks
 - Congress originally gave FTC power to enforce and discretion to seek corrective action rather than monetary damages
 - FTC appointed federal banking regulators to enforce UDAP against banks

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Bank Regulatory Unfairness

- Unfairness is already incorporated in some regs
 - Reg Z requires statement of “only those terms that actually are or will be arranged or offered”
 - Reg DD prohibits “misleading or inaccurate advertisements,” requiring that ads “shall not misrepresent a depository institution’s contract”
 - Reg B, FHA, and fair lending are based on unfairness
 - If a practice unfairly targets or has a disparate impact on members of a protected class, the practice may be considered unfair

Unfair, Deceptive or Abusive Acts or Practices (UDAAP)

- Introduced by Dodd-Frank Act § 1031, effective July 10, 2010, gave the CFPB broad authority to prevent UDAAP against **consumers**
- Introduced the concept of “abusive” inferring the bank did not have the consumer’s best interest as its priority as the consumer believed and relied on
- Builds on the FTC’s definitions and adds “abusive”
- Applies to all banking activities and services from a perspective of “consumer protection” rather than “check the box compliance”
- Gave the CFPB authority to take any action appropriate to prevent UDAAP under Federal law related to a consumer financial product or service

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State UDAP Laws (Mini FTC Acts)

- Every state has laws prohibiting unfair and deceptive trade practices
- States began enacting these laws in the early 1960's, and more actively after
 - 1964 issuance of the Uniform **Deceptive** Trade Practices Act
 - 1967 Model **Unfair** Trade Practices & Consumer Protection Law
- State UDAP laws include consumer private right of action
- State courts can sometimes use different standards for interpreting unfairness or deception
- Lots of activity by the states beginning in September and October 2010 regarding foreclosure practices

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FRB's Regulation AA, 12 CFR 227.1

- **Unfair or Deceptive Acts or Practices**
- Prohibits specific acts or practices that are considered unfair or deceptive. FRB **proposed** Reg AA's repeal in 2014.
- Reg AA was issued by Federal Reserve Board in 1985
 - Applies to banks since banks were excluded from FTC Act in 1938, with enforcement assigned to bank regulators in 1975
 - Based on standard imposed by FTC for non-banks
- Coverage
 - **Consumer** credit obligations – credit extended to a natural person for the acquisition of goods, services or money for personal, family or household use
 - Does not apply to real estate loans
 - UDAAP rules for mortgages are in Regulation Z

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FRB's Regulation AA, 12 CFR 227.2

- Consumer complaint provisions:
 - Consumer complaints should be submitted in writing to regulator about alleged bank actions
 - Unfair or deceptive action
 - Violation of a Federal regulation
 - Violation of any other applicable act or regulation
 - Regulator must respond within 15 business days
 - **Acknowledge** – Regulator must provide a substantive response or an acknowledgment setting a reasonable time for a substantive response.
 - **Resolve the complaint** – Regulator communicates with the bank to resolve the complaint

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FRB's Regulation AA, 12 CFR 227.12 & .13

Prohibits credit contracts from containing provisions considered to be **unfair**:

- Confession of judgment or waiver of exemptions
- Assignment of wages
- Nonpossessory security interest in household goods
 - Allowed only if loan proceeds used to purchase the goods
 - Can take physical possession if you want (e.g., pawn shops)
 - Household goods of the consumer and consumer's dependents do **not** include art, electronics (other than 1 TV and 1 radio), antiques (over 100 years), and jewelry (other than wedding rings)
 - Excluded goods are NOT allowed to be taken by the creditor
- Includes credit card account practices that are now incorporated into Reg Z's CARD Act regs

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FRB's Regulation AA, 12 CFR 227.14

- Unfair or deceptive practices involving cosigners:
 - Protects cosigners who are natural persons.
 - Cosigners are not co-borrowers!
 - Cosigners assume liability to repay but do not benefit from the proceeds
 - Sign to enable applicant to obtain credit
- A **deceptive** act or practice for a bank to misrepresent the nature or extent of cosigner liability to any person; and
- An **unfair** act or practice for a bank to obligate a cosigner unless the cosigner is informed **BEFORE** obligated of the nature of the cosigner's liability

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FRB's Regulation AA, 12 CFR 227.14

- Disclosure required
 - Cosigner must be provided a written notice of risk **BEFORE** signing
Doesn't have to be signed, but is recommended
 - May be prominently included as part of another document!

NOTICE TO COSIGNER

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The bank can collect this debt from you without first trying to collect from the borrower.

The bank can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of *your* credit record.

This notice is not the contract that makes you liable for the debt.

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FRB's Regulation AA, 12 CFR 227.15

- Unfair late charges
- Pyramiding Late Charges
 - Prohibits charging a late charge when the delinquency is attributable only to the nonpayment of prior late charges or delinquency charges and the payment is otherwise a full payment made by due date or within the applicable grace period

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UDAP

- FTC's broad standard – covers any unfair or deceptive practice, toward consumers or businesses
 - FTC and courts have developed interpretations of what constitutes an unfair or deceptive act
 - No formal regulation implementing UDAP, based more on FTC policy interpretation letters and specific bank guidance by bank regulators
 - Practice does not have to be both unfair and deceptive – judged independently

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FTC’s UDAP Comparison Chart	
Unfair	Deceptive
Act or practice is likely to cause substantial injury	Representation, omission or practice misleads or is likely to mislead
Injury cannot be reasonably avoided by the consumer or commercial entity	Act is deceptive to a person acting reasonably; Considers the target audience
Injury is not outweighed by benefits to consumers or to competition	Representation, omission or practice is material and impacts person’s conduct or decision

Violation does NOT have to be both!

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FTC’s UDAP - Unfair
<ul style="list-style-type: none"> • “Substantial injury” can mean monetary harm or loss, but does not have to be individually significant. <ul style="list-style-type: none"> – Injury could be a very small amount but impacting a large number of persons. • Injury is unavoidable when a practice interferes with the ability to make an informed decision <ul style="list-style-type: none"> – Standard judges whether a practice interfered with reasonable decision-making process, not actual decision! – Includes omission of key information impairing decision • Net impact of the practice is to harm the person <ul style="list-style-type: none"> – Any perceived benefit will not outweigh the harm caused

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FTC's UDAP - Deceptive

- Intent to deceive is not necessary for deception to exist!
- Misleading by what is not said as well as by what is said, even if all relevant information is included and accurate
 - The manner the message is communicated may be misleading in and of itself, like a “bait and switch scenario”
- “Reasonable” member of the target audience would be misled and will differ depending on the audience’s sophistication
 - Consumer’s interpretation is what matters, not the institution’s intention with its message or practice
 - Can’t fix misleading statements by “disclosing them away” through more mouse print!
- Representation, practice or omission is likely to impact choice
 - Info about the central characteristics of a product or service – such as costs, benefits, or restrictions – are presumed to be material

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The 4 P's of Deception

- **PROMINENCE**: Is it big enough for people to notice and read?
- **PRESENTATION**: Is the wording and format easy for customers to understand?
- **PLACEMENT**: Is it where people will look?
- **PROXIMITY**: Is it near the statement that it qualifies?

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DFA’s UDAAP Comparison Chart

FTC & DFA’s Unfair	FTC’s Deceptive	DFA’s Abusive
Act or practice is likely to cause substantial injury	Representation, omission or practice misleads or is likely to mislead the consumer	Materially interferes with consumer’s ability to understand the product or service
Injury cannot be reasonably avoided by the consumer or commercial entity	Act is deceptive to a person acting reasonably Considers the target audience	Advantage taken of consumer’s lack of understanding of costs, risks or conditions
Injury is not outweighed by benefits to consumers or to competition	Representation, omission or practice is material and impacts person’s conduct or decision Materiality is frequently presumed!	Taking advantage of the consumer’s inability to protect consumer’s own interests; Considers the targeted audience’s characteristics
		Taking advantage of consumer’s reliance on the premise the bank would be acting in consumer’s best interest

Violation can be any one or a combination!

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DFA’s UDAAP: Abusive

- Defined in DFA’s 1031(d) as an act or practice that:
 - Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
 - Takes unreasonable advantage of—
 - A lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service
 - The inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service, or
 - Consumer’s reasonable reliance on a covered person to act in the consumer’s best interests.

DFA's UDAAP: Abusive

- **Material interference** means the lack of clear info about a term or condition did not allow consumer to make informed decision
 - Complex products with many features of varying benefit to consumers (e.g., Rewards checking with identity theft protection services) or frequent changes
- **Unreasonable advantage** of a targeted market's financial comprehension or experience
 - Offering complex product or service to students, older Americans, first-time homebuyers or other vulnerable markets
 - Takes the perspective the bank should not “set up a consumer to fail”
- Consumer's reliance on premise bank would act in the consumer's best interest
 - Puts the bank in a fiduciary position of protecting the consumer against harm, such as regulatory guidance to limit bank's daily NSF or ODP charges despite the fact consumer willfully generated volumes of NSF or ODP items

UDAAP: “KISS” Method

- CFPB Design Principles:
 - Simplicity – “Keep it Simple”
 - Transparency – “Make it Clear”
 - Honesty – “No Tricks or Traps”
 - Research – “Test for the Best”
 - Helpfulness – “Help People Help Themselves”



QUESTIONS?



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Additional Reference Materials

<p>CFPB Consumer Laws and Regulations</p>	<p>UDAAP</p>
<p>Unfair, Deceptive, or Abusive Acts or Practices</p>	
<p>Unfair, deceptive, or abusive acts and practices (UDAAPs) can cause significant financial injury to consumers, erode consumer confidence, and undermine the financial marketplace. Under the Dodd-Frank Act, it is unlawful for any provider of consumer financial products or services or a service provider to engage in any unfair, deceptive or abusive act or practice.¹ The Act also provides CFPB with rule-making authority and, with respect to entities within its jurisdiction, enforcement authority to prevent unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.² In addition, CFPB has supervisory authority for detecting and assessing risks to consumers and to markets for consumer financial products and services.³</p> <p>As examiners review products or services, such as deposit products or lending activities, they generally should identify the risks of harm to consumers that are particular to those activities. Examiners also should review products that combine 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 to the consumer associated with the product.</p>	
<p>CFPB Examination Manual</p>	<p>23</p>

<p>Reg AA Subpart C—Consumer Credit Card Account Practices Rule</p>	
<p>Section</p>	<p>Regulations</p>
<p>227.21</p>	<p>Definitions</p>
<p>227.22</p>	<p>Unfair acts or practices regarding time to make payment</p>
<p>227.23</p>	<p>Unfair acts or practices regarding allocation of payments</p>
<p>227.24</p>	<p>Unfair acts or practices regarding increases in annual percentage rates</p>
<p>227.25</p>	<p>Unfair balance computation method</p>
<p>227.26</p>	<p>Unfair charging of security deposits and fees for the issuance or availability of credit to consumer credit card accounts</p>
<p>24</p>	

FRB's Regulation AA, 12 CFR 227.21

- Consumer Credit Card Account Practices Rule

- Covers

- Consumer account holders and co-obligors or guarantors, and
- Accounts used for personal, family or household use.

- Does **not** cover:

- HELOCs
- Overdraft lines of credit
- Lines of credit accessed by access cards that can only be used at ATMs or accessed solely by account numbers.

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FRB's Regulation AA, 12 CFR 227

- Unfair Acts

- Time to make payments (12 CFR 227.22)

- Consumers must be given a reasonable period of time to pay, e.g. 21 days.

- Allocation of payments (12 CFR 227.23)

- **High to low method** – allocate excess over minimum payment must be allocated first to balance with highest APR
- **Pro rata method** - allocate excess over minimum payment must be allocated among the balances relative to the percentage each balance bears to the total balance

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FRB's Regulation AA, 12 CFR 227

- Unfair Acts
 - Increases in APR (12 CFR 227.24)
 - Initial disclosure of all APRs that will apply
 - Limitations on increases in APR
 - Treatment of Protected balances
 - Amount owed for group of transactions to which increased APR cannot be applied after advance notice rate has been increased
 - Fair repayment schedule must be offered
 - Amortization period of ≥ 5 years
 - Minimum payment based on % of protected balance > 2X payment required before the increased rate was effective
 - May not impose charges or fees based solely on protected balance

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FRB's Regulation AA, 12 CFR 227

- Unfair Acts
 - Unfair balance computation methods (12 CFR 227.25)
 - Two-cycle billing method, basing finance charge on balance for days in advance of billing cycle.
 - Unfair charging of security fees and deposits for the issuance of credit (12 CFR 227.26)
 - Prohibited if constitutes majority of available credit.
 - Other fees must be spread over at least five cycles.
 - May not evade by increasing available credit.

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Federal Trade Commission Act Guides

FTC issued “Guides” and “Policy Statements” for specific industries and advertising practices.

Some key Guides include:

- Guides Against Deceptive Pricing
- Guides Against Bait Advertising
- Guides Concerning the Use of the Word “FREE”
- Guides Concerning the Use of Endorsements and Testimonials in Advertising
- Guides Concerning Advertising on the Internet

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www.PlainLanguage.gov

The screenshot shows the homepage of Plain Language.gov. The header features the logo 'Plain Language.gov' with the tagline 'Improving Communication from the Federal Government to the Public'. Below the logo, there are several navigation and content sections:

- Popular Topics:** Regulations, Health Literacy, Financial, Before-and-After.
- Search:** A search bar with a 'Search' button and the text 'Powered by Google'.
- Meetings:** Monthly PLAIN Meeting (second Wednesday of every month), Join PLAIN.
- News:** OMB Final PL Guidance, Plain Language: It's the law, Executive Order 13563 - PL and reg.
- Events:** International Clarity Conference - DC (May 21-23, 2012), ClearMark/WonderMark Awards Ceremony (May 22, 2012).
- Main Content Grid:**
 - Federal Plain Language Guidelines:** March 2011 - Rev. 1, May 2011.
 - Plain Language - It's the Law:** Agency Requirements, Agency PL Webpage, PL in Federal Agencies.
 - Plain-Language Training:** Training Resources.
 - Tips & Tools:** Starting a Plain-Language Program, Planning a Plain-Language Website.
 - Examples Database (beta):** Examples.
- Site Highlights:** Designated Senior Officials and Agency Webpages, U.S. Citizenship and Immigration Services videos.
- Footer:** What is Plain Language? | Why Plain Language? | Where do we use Plain Language?

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Plain Writing Act of 2010

Requires executive agencies to use plain language in documents by October 13, 2011

- In all communications with general public – except regulations.



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Main Elements of Plain Language?

- Logical organization
- The active voice
- Common, everyday words
- Short sentences
- “You” and other pronouns
- Lists and tables
- Easy-to-read design features

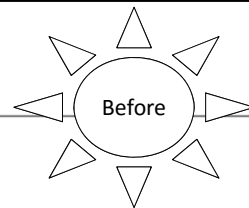
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Why Use Plain Language?

- Shows customer focus
- Communicates effectively
- Eliminates barriers
- Reduces time spent explaining
 - Fewer calls, letters and emails
- Improves compliance
- **To make your message stand out**

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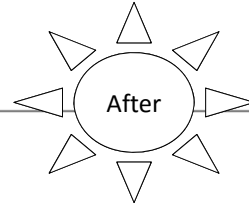
Coast Guard Boating Information



- **CO Detector Update:**
- The Coast Guard has conducted an investigation to determine what carbon monoxide (CO) detection devices are available to recreational boaters, such that, when installed and activated could reduce the risk of being exposed to high levels of CO -THAT SILENT KILLER. A variety of technologies is available for detecting the presence of CO on boats and should be considered by recreational boaters to reduce their risk of injury or death while boating.
- (72 words)

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Coast Guard Boating Information



- Carbon monoxide is a silent killer. The Coast Guard recommends that you use a carbon monoxide detection device on your boat to reduce the risk of being exposed to high levels of CO. You may choose from a variety of devices. (39 words)

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Financial Solutions

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Thank you for your time and participation!

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