



New “Cop on the Beat” and the Fairness Standard

By Paige M. Boshell

As part of its mandate under the Dodd-Frank Wall Street Reform Consumer Protection Act (“Dodd-Frank”), the Consumer Financial Protection Bureau (“CFPB”) is charged with examination and enforcement of federal prohibitions against unfair, deceptive and abusive trade practices (“UDAAP”) in connection with consumer financial products and services.

On their website (www.cfpb.gov), the CFPB describes their role: “Like a neighborhood cop on the beat, the CFPB supervises banks, credit unions, and other financial companies, and we will enforce Federal consumer financial laws.”

Under the CFPB, the focus shifts from the prudential banking regulators’ examination of risk to the bank to the new cop’s examination of risk to the consumer. UDAAP is an important part of that function.

The CFPB intends to extend the scope of examination under its UDAAP authority to focus on the “fairness” of specific practices. This means that even if a practice is technically compliant with federal consumer deposit or lending regulations, it may still be considered unfair (or even “abusive”) to the consumer.

Call it “compliance plus”. A more consumer-centric approach to examination and enforcement requires a shift in the compliance paradigm from technical legal compliance to an active ongoing function with increasing authority with respect to consumer services. Centralization of customer complaints across the institution coupled with a general and practice-specific review of the volume and type of consumer complaints will be key to implementing this shift. Monitoring of resolution of complaints should be ongoing, and practices should be changed accordingly. Training of all consumer-facing personnel should be both meaningful and mandatory, and include personnel testing and monitoring of training activities. Sales incentives should be scrutinized and adjusted as appropriate.

The CFPB concedes that standards of “fairness” are currently evolving. Here’s an example of the way the CFPB will likely focus on the fairness of the amounts and types of fees charged to consumers:

- Does a fee stand out from the crowd?
- Is the fee a new or different fee applicable to existing products and services?
- Is the fee not reasonably related to cost of the service?
- Is the fee buried in reams of paper?
- Is the fee a back-end fee (or penalty)?
- Does the institution have high consumer fee income overall?

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Keep in mind: you cannot disclose your way out of an unfair fee. Although transparency is relevant to the analysis, it will not be determinative.

Unacceptable “unfair” practices may pose regulatory and reputational risk to the institution. Evaluation of current practices and complaint data, as well as development of new compliance review and monitoring processes, consumer complaint data collection, and more rigorous training will all be critical to the institution’s efforts in that regard.

If you have any questions regarding the new challenges posed by Dodd-Frank or the CFPB’s mandate, please contact [Paige Boshell](#) or [Lesley DeRamus](#). You may also contact [Larry Vinson](#), [Elena Lovoy](#), or any of the other attorneys in the [Banking and Financial Services Practice Group](#) at Bradley Arant Boult Cummings LLP.

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