

“Thank You for Your Complaint!”

How to Use Consumer Feedback to Prepare for or Avoid Regulatory Intervention

Michael A. Thurman, Loeb & Loeb



LOEB & LOEB Adds Value



©2012 LOEB & LOEB LLP

Not Legal Advice!

This presentation is for informational and educational purposes only. It is not intended to provide legal analysis or advice on any specific issues.



Contents

What is UDAAP?	4
The CFPB's UDAAP Examination Manual	6
How Should You View Complaints?	9
What Should You Do With Complaints?	10
Who is Already Tracking Your Complaints?	11
Coming Soon: The "CFPB Company Portal"	13
Track Your External Complaints!	14
Create Your Own "Feedback Loop"	15
Analyze That Feedback!	16
Chargebacks and Refunds	17
Don't Forget Your Affiliates!	18
Respond to Complaints!	19
Document and Preserve Your Responses!	20
What Else Is Going On At The CFBB?	21
Questions?	22



What is UDAAP?

Consumer Financial Protection Bureau (CFPB)

- Created by Congress (Dodd-Frank Act of 2010)
- CFPB's Prime Directive:
 - Prevent “**Unfair, Deceptive, or Abusive Acts or Practices**”



What is UDAAP? *continued*

■ “Unfair”

- Likely to cause substantial injury to consumers
- Not reasonably avoidable by consumers
- Not outweighed by benefits to consumers or competition

■ “Deceptive” - false or misleading

■ “Abusive”

- Interferes with consumer’s ability to understand a term or condition
- Takes unreasonable advantage of:
 - Consumer lack of understanding of risks, costs or conditions
 - Inability of consumer to protect their own interests
 - Reasonable reliance of consumer on the seller to act in their interest.



The CFPB's UDAAP Examination Manual

“The Role of *Consumer Complaints* in Identifying Unfair, Deceptive, or Abusive Acts”

□ “Play a Key Role in the Detection of UDAAPs”

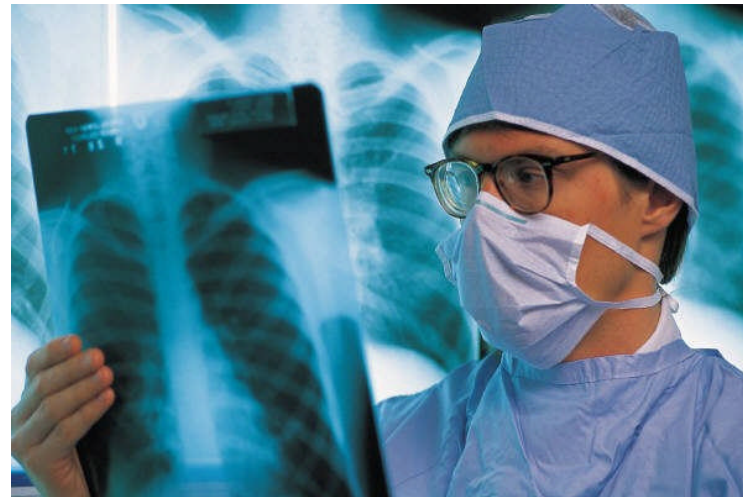


The CFPB's UDAAP Examination Manual

□ Customer complaints are symptoms



=



The CFPB's UDAAP Examination Manual

CFPB's view:

Complaints = “weaknesses in the company’s Compliance Management System”

- Training
- Internal controls
- Monitoring



How Should You View Complaints?



=



What Should You Do With Complaints?

- Find them!
- Gather them!
- Analyze them!
- Respond to them!
- Document your responses!
- Preserve records showing all of the above!



Who is Already Tracking Your Complaints?

- FTC – Sentinel Network
 - Shared with the CFPB and the States
 - Not shared with companies
- Internet Crime Complaint Center (www.ic3.com)
 - Not shared with companies
- States (generally not shared with companies)
- Better Business Bureau (www.bbb.org)
- CFPB Company Portal (future)



Who is Already Tracking Your Complaints?

■ Online websites:

- The Ripoff Report (www.ripoff.com)
- Steve Rhoades (www.getoutofdebt.com)
- www.complaints.com
- www.pissedconsumer.com
- www.scam.com
- www.consumeraffairs.com
- www.scambusters.com



Coming Soon: The CFPB Company Portal



- CFPB has created a “Company Portal”
 - Secure forum for resolving consumer complaints
 - Consumers can submit complaints
 - Approved complaints forwarded by CFPB to company
 - Companies can respond through the system.
- Currently ***only for credit card complaints***
 - Planned expansion to other consumer financial industries
 - Will require company registration



Track Your External Complaints!

- Regularly monitor every available source
 - Google© daily “email alerts” on your company
 - All of the websites mentioned above
 - Create your own “feedback loop”



Create Your Own “Feedback Loop”

- Ask your customers for feedback!
 - Make it easy for consumers to provide it.
 - Solicit both **Positive** and **Negative** input.
 - Use multiple modes to seek feedback:
 - Surveys
 - Store brochures
 - Customer service reps
 - Emails
 - Create your own tracking website
 - Reward consumers for providing input.
 - Incentivize employees for gathering feedback.



Analyze That Feedback!

1. Look for patterns

- Multiple complaints about the same product
- Multiple complaints about the same practice
- Multiple complaints about the same issue

2. Look for “hot” complaints

- “A single substantive complaint may raise serious concerns”
 - “Complaints about false or misleading statements”
 - “Complaints about failures to disclose”



Chargebacks and Refunds

High rates of chargebacks or refunds

- “Could indicate UDAAPs”

Determine what reasonable rates are

- Respond immediately to any spikes
- Document your investigation and response



Don't Forget Your Affiliates!

Pay attention to complaints about affiliates!

- Gather, monitor and respond!
- Includes subsidiaries, affiliates and third party service providers



Respond to Complaints!

1. Investigate the complaint!
 - Understand what happened
 - Understand why the consumer is unhappy
2. Determine the validity of the complaint!
 - Evaluate the context and reliability of the complaint
3. Resolve the complaint!
4. Respond to the consumer!
5. Document the resolution!

Follow up is critical!
Don't let complaints go unresolved!



Document and Preserve Your Responses!

■ Responses without documentation

- Might as well have never happened!

■ Preserve Your Responses

- Value of written documentation: it's Evidence
- Value of immediate access to your Complaint Data
 - Demonstrates your company's compliant mindset to regulators and plaintiff's attorneys
 - Deters unfounded civil and class action claims
 - Saves you money in defense costs

■ “Help me help you!”



What Else Is Going On At The CFPB?

- Completed Initial Ramp-Up Phase (as of 12/11)
 - Hired more than 750 employees
 - Attorneys, investigators and support staff
 - More than half for investigation and enforcement
- Future of Arbitration Agreements?
 - CFPB required to study agreements requiring arbitration
 - No action yet or mandatory timetable



Questions?



Thank You!

Michael A. Thurman
mthurman@loeb.com
(310) 282-2122



Please email me if you would like to be added to our list for periodic alerts on CFPB and FTC developments and other issues relevant to consumer financial companies.

Los Angeles New York Chicago Nashville Washington, DC Beijing www.loeb.com

