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Consumer Financial Services UDAAP Round-Up

FALL UPDATE



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Letter to Readers

Welcome to the latest edition of the UDAAP Round-Up. This newsletter is designed to provide you with a periodic resource to stay abreast of federal activities regarding the prohibition on unfair, deceptive, or abusive acts or practices (“UDAAPs”) in the consumer financial services space. In this edition, we cover notable policy, enforcement, and supervisory developments from April through September 2023.

During this period, we saw 18 UDAAP/UDAP complaints and consent orders from the Consumer Financial Protection Bureau (“CFPB” or the “Bureau”), the Federal Trade Commission (“FTC” or “Commission”), and the Office of the Comptroller of the Currency (“OCC”),¹ numerous UDAAP supervisory findings from the CFPB, and UDAP/UDAAP-related guidance from the CFPB, FTC, and OCC.

Background on UDAAP/UDAP Authority and Elements

For those who are new to the UDAAP space, welcome. Below, we provide a high-level overview of the CFPB's and FTC's authority and basic definitions, which provide context for the information that follows.

Section 5 of the FTC Act prohibits unfair and deceptive acts and practices ("UDAPs") in or affecting commerce.² The FTC has enforcement authority with respect to nonbank financial services companies under the FTC Act. Penalties for violation of the FTC Act include cease-and-desist orders (the violation of which is subject to civil penalties) and injunctive relief.³

Title X of the Dodd-Frank Act provides the CFPB's UDAAP supervisory and enforcement authority, and prohibits any covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice 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.⁴ The Dodd-Frank Act also prohibits any person knowingly or recklessly providing substantial assistance to a covered person in the commission of a UDAAP.⁵ A "covered person" is defined as "any person that engages in offering or providing a consumer financial product or service" or service provider affiliate thereof.⁶ The Dodd-Frank Act provides the CFPB various remedies for violations of federal consumer financial laws, including: (1) rescission or reformation of contract; (2) refunds of money or return of real property; (3) restitution; (4) disgorgement or compensation for unjust enrichment; (5) payment of damages or other monetary relief; (6) public notification regarding the violation, including the costs of notification; (7) limits on activities or functions of the person; and (8) civil money penalties.⁷

An act or practice is **unfair** if (1) it causes or is likely to cause substantial injury to consumers; (2) the injury is not reasonably avoidable by consumers; and (3) the injury is not outweighed by countervailing benefits to consumers or to competition.⁸ In determining whether an act or practice is unfair, the FTC and the CFPB may consider established public policies as evidence to be considered with all other evidence, but such public policy considerations may not serve as a primary basis for such determination.⁹

A representation, omission, or practice is **deceptive** if (1) it is likely to mislead the consumer; (2) the consumer's interpretation of the representation is reasonable under the circumstances; and (3) the misleading representation is material.¹⁰

An act or practice is **abusive** if it (1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or (2) takes unreasonable advantage of: (a) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service; (b) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or (c) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.¹¹ While the CFPB has abusiveness authority, the FTC does not.

Top Developments

Since the last edition of the UDAAP Round-Up, we have seen several significant developments in the UDAP/UDAAP landscape, including a court decision that stuck down a CFPB interpretation of unfairness, a new CFPB policy statement on abusiveness, and a focus by the CFPB and the OCC on deposit accounts.

Federal Court Strikes Down CFPB’s Interpretation of Unfairness as Encompassing Discrimination

In September 2023, the US District Court for the Eastern District of Texas ruled that the CFPB acted outside its authority when it updated its interpretation of “unfairness” in the Bureau’s Supervision and Examination Manual.¹² If upheld on appeal, the ruling would be a significant blow to the CFPB’s efforts to enforce antidiscrimination principles using the unfairness prohibition.

As we discussed in our [Spring 2022 edition of the UDAAP Round-Up](#),¹³ the CFPB revised the UDAAP section of its Supervision and Examination manual in May 2022 to include a review for discriminatory conduct in its UDAAP examinations. The Supervision and Examination Manual sets forth the guidelines CFPB examiners utilize when assessing compliance with federal consumer financial laws. In its update to the manual, the CFPB alleged that discriminatory conduct could constitute an unfair practice in violation of the Dodd-Frank Act. This interpretation of unfairness is novel. Previously, the CFPB’s review of discriminatory conduct was limited to illegal conduct under the Equal Credit Opportunity Act (“ECOA”), which prohibits a creditor from discriminating against an applicant for credit based on certain identified protected classes. The CFPB’s new interpretation of unfairness to prohibit discrimination, by contrast, applied to all aspects of offering or providing consumer financial products or services, not just offering credit.

In response to the CFPB’s update, several trade associations sued the CFPB, alleging the update exceeded the CFPB’s statutory authority. In its ruling, the court held that the “major questions” doctrine applies because the question of whether unfairness encompasses discrimination “is a question of major economic and political significance” given the impact it would have on the financial services industry. The court went on: “Given that context, the CFPB faces a high burden in arguing that Congress conferred a sweeping antidiscrimination authority without defining protected classes or defenses, without using the words ‘discrimination’ or ‘disparate impact,’ and

while separately giving the agency authority to police ‘discrimination’ only in specific areas.” Although noting that the CFPB’s interpretation “has a certain appeal given the facial breadth of [the statutory] language” defining unfairness, the court ultimately determined that that the “text and structure of the Act ... make its definition of ‘unfairness’ at least vague as to the topic of discrimination” and thus “is not the sort of ‘exceedingly clear language’ that the major-questions doctrine demands.”

The District Court vacated the CFPB’s update to its Supervision and Examination Manual and also enjoined the CFPB from enforcing the updated interpretation against any member of the plaintiff trade associations. To date, the CFPB has not appealed the decision and it is not clear if it intends to do so.

For more information on the decision, see our [Blog Post](#).

CFPB Issues Policy Statement on Abusive Acts or Practices

In another major update, in April 2023, the CFPB issued a Policy Statement on Abusive Acts or Practices (the “Policy Statement”).¹⁴ The Policy Statement “explain[s] how the CFPB analyzes the elements of abusiveness” under the Dodd-Frank Act “with the goal of providing an analytic framework” for identifying abusive conduct.

The Policy Statement explains that the first prong of the definition of abusiveness, “materially interfere[ing] with the ability of a consumer to understand a term or condition,” can be shown when an act or omission (1) intends to impede consumer understanding, (2) has the natural consequence of impeding consumer understanding, or (3) actually impedes consumer understanding. This interpretation is arguably broader than the statutory language which only speaks to conduct that “materially interferes.” The CFPB identifies several acts or practices that may constitute material interference: buried disclosures; interference that impairs a consumer’s ability to

see, hear, or understand terms or conditions; and overshadowing – defined as the “prominent placement of certain content that interferes with the comprehension of other content”. Importantly, the CFPB also implied that certain products and services may be inherently abusive, stating a product or service may be abusive if it is so complicated that material information about it cannot be sufficiently explained.

The Policy Statement also expands on the CFPB’s interpretation of the remaining prongs of the definition of abusiveness, which all involve taking unreasonable advantage of a consumer. The Policy Statement sets forth an analytic framework for what constitutes “taking unreasonable advantage” in the Bureau’s view. For one, according to the CFPB, typicality in the industry cannot be used to defend conduct that takes unreasonable advantage. In other words, “everyone does this” is no defense to a claim of taking unreasonable advantage. In addition, the CFPB states that taking even a relatively small advantage may be abusive if it is unreasonable. Next, the Policy Statement notes that loans “set up to fail” (i.e., loans made with an “indifferen[ce] to negative consumer outcomes”) may constitute abusive conduct. Finally, conduct may take unreasonable advantage of a consumer if entities “get a windfall” because of a gap in a consumer’s understanding, unequal bargaining power, or consumer reliance—the three statutory factors of which entities cannot take unreasonable advantage. The Policy Statement then discusses each of these statutory factors in turn.

With respect to a lack of understanding, the Policy Statement notes that untruthful statements or omissions are not required to find that an entity took advantage of a consumer’s lack of understanding. Further, the lack of understanding does not need to be reasonable or widespread to constitute an abusive act or practice. The Policy Statement also makes clear that entering into a transaction that involves material risks or costs, but from which the consumer can derive only minimal or no benefit, can demonstrate the consumer lacks sufficient understanding of the transaction.

With respect to unequal bargaining power and a consumer’s inability to protect their interests, the Policy Statement states that a consumer’s inability to protect their own interests does not need to be an impossibility, but rather an impracticality. For those of limited means, the CFPB notes that the payment of money may be impractical, for example. The Policy Statement also explains that if consumers lack market choice, they may be unable to protect their interests by choosing an alternative provider. While the Policy Statement makes clear such relationships are not per se abusive, such relationships may present a higher risk that certain conduct may be abusive. The Policy Statement also identifies other circumstances where consumers lack bargaining power, and which may be ripe for abusiveness claims: using form contracts, having a high market share, and imposing high transaction costs to exit the relationship.

With respect to a consumer’s reasonable reliance, the Policy Statement notes two examples of circumstances in which it may be reasonable for a consumer to rely on a company to act in the consumer’s interest: (1) if an entity represents that it will act in the consumer’s best interest, it is usually reasonable for a consumer to rely on such representations; and (2) if an entity acts as a person’s agent or representative, or acts as an intermediary in navigating marketplaces for consumer financial products or services, it may be reasonable for consumers to rely on the entity to act in the consumer’s best interest.

For a more detailed discussion on the Policy Statement, as well as its implications and how it compares with CFPB precedent, please see our [Legal Update](#).

Focus on Deposit Accounts

Deposit accounts have been a focus of the CFPB and the OCC since the last edition of the UDAAP Round-Up. In May 2023, the CFPB released Circular 2023-02 on the topic of reopening previously closed deposit accounts.¹⁵ In the circular, the CFPB

states that unilaterally reopening a deposit account previously closed by a consumer in order to process a debit or deposit can constitute an unfair practice. The Bureau notes that doing so may cause the account to become overdrawn and, accordingly, the consumer may incur overdraft and non-sufficient funds (NSF) fees. The consumer may also be charged account maintenance fees when their account is reopened. The CFPB concludes that when a financial institution reopens an account without the consumer's prior authorization and without providing notice, it can result in substantial injury to consumers that is not reasonably avoidable or outweighed by a countervailing benefit to the consumer or to competition.

Next, in April 2023, the OCC issued a bulletin addressing the risks associated with overdraft protection programs.¹⁶ Among other things, the bulletin warned that it may be a UDAP to assess overdraft fees on debit card transactions that are authorized when a consumer's available account balance is positive but later post to the account when the available balance is negative, commonly referred to as "authorize positive, settle negative" transactions. The bulletin also states that failing to have a limit or having a high limit on the number of representment fees an entity charges may constitute a UDAP.

Finally, the CFPB and the OCC settled actions against a large financial institution for, among other things, charging NSF fees on represented transactions. According to the agencies, charging the fees provided little to no benefit to consumers and did not serve any deterrent purposes because consumers could not reasonably anticipate or avoid the fees. The institution was required to pay a \$60 million penalty to each agency and provide consumers with \$80.4 million in redress. The OCC also settled an action against another financial institution for deceptively representing that it would waive deposit account fees under certain conditions but charging the fees even if the consumer met the requirements for a waiver.

APRIL – SEPTEMBER 2023

NUMBERS AT A GLANCE

7

Litigation complaints filed
with no settlement
(4 CFPB | 3 FTC)

11

Consent orders and settlements
(CFPB: 5 | FTC: 4 | OCC: 2)

\$200M+

Total civil money penalties

\$120M+

Total consumer redress

Enforcement Trends

In recent months, we have seen an uptick in UDAAP/UDAP enforcement in the consumer financial services space.

Unfairness

Since the last edition of the UDAAP Round-Up, a number of CFPB and FTC enforcement actions have alleged unfairness. In June 2023, the CFPB settled an action against a mortgage payments processing company for unlawfully handling mortgage customers' personal information. According to the Bureau, the company improperly used consumer financial information for internal compliance testing purposes and then mistakenly treated the test accounts it created as valid and chargeable, initiating actual payments against the consumers whose data was used for the test accounts. The CFPB found that the company's lack of proper information security protocols and erroneous charges constituted unfair conduct. Under the settlement, the company is required to pay a \$25 million civil money penalty and implement reasonable information security practices.

In addition, in August 2023, the CFPB filed a complaint against an auto-loan servicing company for engaging in a variety of allegedly unfair conduct. Among other things, the CFPB alleged that the company wrongfully repossessed vehicles, failed to properly refund Guaranteed Asset Protection premiums when consumers paid off their loans early or when the company repossessed their vehicles, erroneously double-billed customers for collateral-protection insurance, and misapplied payments first to late fees or to collateral-protection insurance instead of to accrued interest. The lawsuit is pending.

Next, in September 2023, the CFPB entered into a consent order with an alternative finance company to settle claims that the company engaged in unfair conduct related to its leases of personal goods to consumers. The company offered consumers the option to purchase or return the item at the end of their agreed-upon lease term. However, according

to the Bureau, the company obfuscated the terms of the leasing deal, making it difficult for consumers to understand that they did not actually own the goods. The CFPB also alleged the company made it unnecessarily difficult for consumers to return the leased goods and drastically overcharged consumers who opted to purchase the leased item. The order requires the company to pay a \$2 million civil money penalty, and to release all consumers from their lease agreements and payment obligations.

Finally, the FTC, in conjunction with the Florida Attorney General's Office, filed suit against a "chargeback mitigation" company in April 2023. The complaint alleged that the company engaged in unfair conduct in its attempts to prevent consumers from successfully filing chargeback disputes with their credit card providers. According to the FTC, the company was hired by businesses to reduce the number of credit card chargebacks that were successfully processed against them. To this end, the company allegedly used multiple unfair techniques, such as providing businesses with misleading computer screenshots that showed consumers had agreed to the disputed charges and using a system that allowed the company's clients to charge consumers numerous microtransactions that artificially lowered each client's overall chargeback rate. The parties currently are in court-ordered mediation.

Advertising and Sales

In the last several months, the CFPB and FTC have continued targeting UDAAPs/UDAPs in the marketing and sales space across a wide range of industries.

The CFPB initiated actions against two different installment lenders for UDAAP violations related to the marketing and sale of their loan products. One lender allegedly encouraged its employees to upsell add-on products on every loan, including by promising "full refunds" of the add-on purchases. The CFPB alleged that, in practice, the company unfairly failed to refund interest to 25,000 customers who cancelled their purchases within the

refund period. The company also allegedly deceived borrowers by representing that they needed to purchase add-on products in order to receive a loan. The other lender allegedly engaged in illegal loan-churning practices by employing an array of unfair and abusive underwriting, sales, and servicing practices, including identifying borrowers who were struggling to repay their existing loans, and then aggressively pushing them to refinance.

In addition, in July 2023, CFPB, in conjunction with several state partners, filed a complaint against a company offering a vocational training program for software sales representatives that allegedly encouraged consumers to enter into deceptive income share agreements to pay for the program, resulting in consumers paying double the advertised price of the program. The complaint also alleged that the company advertised that consumers would pay nothing until they had a job making at least \$60,000 a year, and deceptively buried terms that required consumers to pay even if they never got a job.

Next, also in July 2023, the CFPB sued a lease-to-own finance company for various deceptive and abusive practices. Among other things, the CFPB alleged that the company engaged in abusive acts or practices in connection with its application and contracting process. According to the Bureau, the process was typically completed entirely on the merchant's device, and in many cases, merchants signed and submitted the agreement on behalf of consumers without consumers' prior review. In addition, according to the Bureau, consumers were required to pay a processing fee before seeing or signing their final agreement. The CFPB alleged that this process materially interfered with consumers' ability to understand the terms and conditions of the agreement. The lawsuit is pending.

In July 2023, CFPB ordered a large financial institution to pay a \$30 million penalty for conduct that included deceptively advertising a sign-up

bonus for a rewards card. The CFPB alleged the institution advertised the bonus as available to all applicants, but later denied the bonus to consumers who applied over the phone or in person, rather than online. In addition, the institution allegedly offered a sign-up bonus to certain consumers but failed to provide the bonus due to employee error.

The FTC also initiated and settled several actions involving UDAP violations related to advertising and marketing practices. Among other actions, in July 2023, the FTC settled allegations that a bankrupt cryptocurrency platform unfairly and deceptively tricked consumers into transferring cryptocurrency onto the platform by falsely marketing that deposits would be safe and always available.

FTC Debt Relief Enforcement

Since the last edition of the UDAAP Round-Up, the FTC took action against a number of companies alleging UDAPs in the debt relief space. Several of these actions related to student loan debt relief. For example, in August 2023, the FTC filed a complaint alleging that a company engaged in deceptive acts or practices by pretending to be affiliated with the Department of Education, using deceptive loan forgiveness promises, and falsely claiming they were offering relief under the "Biden Loan Forgiveness" plan to collect millions in illegal upfront fees.

As another example, in October 2023, the FTC settled claims against a series of companies and their owners for allegedly making deceptive claims about repayment and student loan forgiveness programs that did not exist, falsely claiming to be affiliated with the Department of Education, and falsely representing to students that the payments the companies collected would count towards their loans. The defendants agreed to a permanent ban from the debt relief industry and were ordered to relinquish assets amounting to over \$800,000.

Guidance, Supervision, and Rulemaking Trends

Since the last edition of the UDAAP Round-Up, the CFPB has released an edition of its Supervisory Highlights that discusses UDAAPs identified in examinations of supervised entities. The FTC also issued updated advertising guidance and a policy statement on the use of biometric data, both addressing UDAPs. We discuss each of these developments in more detail below.

Supervisory Highlights

In July 2023, the CFPB issued its Summer 2023 edition of Supervisory Highlights, covering examinations of supervised entities from July 2022 through March 2023.¹⁷ A non-exhaustive list of the issue's UDAAP findings is below.

Automobile Financing. In the auto finance originations space, the CFPB cited entities for deceptive marketing of auto loans, where they used advertisements that pictured cars that were significantly more expensive and newer than their advertised loan offers were good for. According to the CFPB, these advertisements created the "net impression" that the advertisements applied to a subset of cars to which they did not actually apply.

Deposits. The CFPB continued to scrutinize fees in this edition of Supervisory Highlights. In particular, the Bureau identified as unfair financial institutions' assessment of both NSF fees and line of credit transfer fees on the same transaction. According to the Bureau, the institutions at issue did not intend to charge both fees in connection with the same transaction and had programmed their systems so that the systems would not assess both fees on the same day. The Bureau stated that this safeguard was not adequate because fees were allowed as long as they posted on two different days.

Information Technology. Examiners found that supervised institutions engaged in unfair acts or practices by failing to implement adequate information technology controls that could have prevented or mitigated cyberattacks.

Mortgage Servicing. According to this edition of Supervisory Highlights, servicers engaged in unfair acts or practices when they delayed processing borrower requests to enroll in loss mitigation options, including COVID-19 pandemic-related forbearance extensions.

In addition, the CFPB issued a special edition of Supervisory Highlights covering fees in October 2023.¹⁸ So called "junk fees" recently have been a point of focus of the Bureau, and this edition of Supervisory Highlights addresses UDAAP findings related to fees in the areas of deposits, auto servicing, and remittances. We will discuss this edition of Supervisory Highlights in more detail in a future issue of the UDAAP Round-Up.

Updated Advertising Guidelines

In July 2023, the FTC issued an updated version of its Endorsement Guides, which advise marketers on practices the FTC considers to be unfair or deceptive.¹⁹ Among other things, the revisions addressed procuring, suppressing, boosting, upvoting, downvoting, or editing consumer reviews so as to distort a consumer's opinion of a product.

Policy Statement on Use of Biometric Information

In May 2023, the FTC issued a policy statement cautioning that the use of consumers' biometric information may raise concerns with respect to consumer privacy, data security, and bias and discrimination.²⁰ For example, some technologies may lead to unlawful discrimination if they perform differently across different demographic groups. According to the policy statement, many facial recognition algorithms produce significantly more false positive matches for images of faces from certain races than others.

In light of the risks, the FTC identified a non-exhaustive list of practices that may constitute UDAPs, including failure to assess foreseeable harms to consumers before collecting biometric information, failure to identify and implement tools for reducing known or foreseeable risks, failure to evaluate the practices and capabilities of third-party vendors who will be provided access to consumers' biometric information, and failure to conduct ongoing monitoring of technologies that the business uses in connection with biometric information to ensure that the technologies are functioning as anticipated.

Looking Ahead

Since the last edition of the UDAAP Round-Up, we have seen an increase in UDAAP/UDAP enforcement. We expect that enforcement actions from the CFPB may continue to increase in the coming months, as we understand that the Bureau is currently seeking to significantly expand its enforcement staff.

Also in the coming months, the Supreme Court will rule on the constitutionality of the CFPB's funding mechanism under the Dodd-Frank Act. Last year, a panel of the US Court of Appeals for the Fifth Circuit held that the CFPB is unconstitutionally funded (Read [our analysis](#) of this development). Given this decision, the Bureau has been unable to exercise any of its authority—including its UDAAP authority—in states covered by the Fifth Circuit. In October 2023, the Supreme Court heard arguments in the case. Although the Supreme Court likely will

not issue its ruling until next year, the questions and comments from the Justices during oral argument suggest that the Court is unlikely to declare the Bureau's funding unconstitutional.

We look forward to analyzing these and other developments impacting UDAAP/UDAP trends in future issues of the Round-Up.

Mayer Brown's UDAAP Capabilities

Mayer Brown offers a full array of representation to the financial services industry, including:

- Providing day-to-day strategic regulatory advice
- Assessing legal risks in product development
- Developing compliance management programs
- Performing compliance reviews and risk assessments
- Handling state and federal supervisory examinations and associated findings
- Responding to 15-day and Potential Action and Request for Response (PARR) letters
- Representing clients in state and federal enforcement matters, including responding to civil investigative demands (CIDs) and subpoenas
- Designing consumer redress plans
- Handling consumer and government litigation

About

Our attorneys have experience providing UDAAP advice to a diverse range of clients, including large global financial institutions, national and regional banks, credit unions, fintech companies, mortgage lenders and servicers, consumer and small business lenders, secondary market investors, payment processing companies, insurance companies, and online advertising platforms, among others.

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Endnotes

- ¹ This review generally covers those actions first filed during this period. Actions that were initiated prior to April 1, 2023 and resolved during this period are counted in the enforcement trend statistics (e.g., total civil money penalties), but they are not discussed in the narrative.
- ² 15 U.S.C. § 45(a)(1). Many states have adopted similar laws.
- ³ *Id.* § 53(b). Historically, injunctive relief under Section 13(b) of the FTC Act included potential orders for restitution or disgorgement. However, a recent U.S. Supreme Court decision eliminated the FTC’s ability to seek equitable monetary relief under Section 13(b). *AMG Capital Mgmt v. FTC*, 141 S. Ct. 1341 (2021).
- ⁴ 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).
- ⁵ *Id.* § 5536(a)(3).
- ⁶ *Id.* § 5481(6). The Dodd-Frank Act also includes a “related person” concept that is intended to reach certain persons related to covered persons, if they manage, control or materially participate in the conduct of the covered person’s affairs. *Id.* § 5481(25).
- ⁷ 15 U.S.C. § 5565(a)(2).
- ⁸ 15 U.S.C. § 45(n); 12 U.S.C. § 5531(c)(1). The statutory language is modeled on the FTC’s December 17, 1980, Policy Statement on Unfairness, *appended to Int’l Harvester Co.*, 104 F.T.C. 949, 1070 (1984).
- ⁹ 15 U.S.C. § 45(n); 12 U.S.C. § 5531(c)(1).
- ¹⁰ FTC Policy Statement on Deception (Oct. 14, 1983), *appended to Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 174 (1984); CFPB, Examination Manual v.3, UDAAP-5 (March 2022) (citing FTC Policy Statement on Deception). The CFPB has indicated that it will look to authorities under the FTC Act for guidance in defining the scope of deception under Title X of the Dodd-Frank Act. *See id.* at 5 n.10.
- ¹¹ 12 U.S.C. § 5531(d). The CFPB recently released [a Policy Statement](#) setting forth its approach to enforcing the abusiveness prohibition. CFPB, Policy Statement on Abusive Acts or Practices (Apr. 3, 2023).
- ¹² *Chamber of Commerce v. CFPB*, No. 6:22-cv-00381, 2023 WL 5835951 (E.D. Tex. Sept. 8, 2023).
- ¹³ Also see [our March 17, 2022 Legal Update](#).
- ¹⁴ CFPB, [Policy Statement on Abusive Acts or Practices](#) (Apr. 3, 2023).
- ¹⁵ CFPB, [Consumer Financial Protection Circular 2023-02](#) (May 10, 2023).
- ¹⁶ [OCC Bulletin 2023-12](#) (Apr. 26, 2023).
- ¹⁷ CFPB, [Supervisory Highlights, Issue 30](#) (Summer 2023).
- ¹⁸ CFPB, [Supervisory Highlights Junk Fees Update Special Edition, Issue 31](#) (Fall 2023).
- ¹⁹ “[Guides Concerning the Use of Endorsements and Testimonials in Advertising](#),” 88 Fed. Reg. 48092 (July 26, 2023).
- ²⁰ FTC, [Policy Statement of the Federal Trade Commission on Biometric Information and Section 5 of the Federal Trade Commission Act](#) (May 18, 2023). “Biometric information” refers to data describing physical, biological, or behavioral traits relating to an identifiable person, and may include depictions, recordings of an individual’s facial features, fingerprints, voice, genetics, or characteristic movements.

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