

# PUBLICATION

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## CFPB Continues Focus on UDAAP

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**There is a continued focus by the Consumer Financial Protection Bureau (CFPB) on acts or practices deemed unfair, deceptive, or abusive – commonly called "UDAAP." This article provides a summary overview of UDAAP and then an analysis of a recent argument made by the CFPB in this area.**

**Unfair acts or practices are divided into three prongs. An act or practice is unfair when:**

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.

**Deceptive acts or practices are also divided into three prongs. An act or practice is deceptive when:**

4. The representation, omission, act, or practice misleads or is likely to mislead the consumer;
5. The consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and
6. The misleading representation, omission, act, or practice is material.

Using these standards as an overlay, the CFPB has specifically focused on acts or practices related to a consumer's ability to make informed decisions. This approach was evident recently in arguments made by the CFPB in the case *Consumer Fin. Prot. Bureau v. Navient Corp.* (M.D.Pa. Aug. 4, 2017, No. 3:17-CV-101) 2017 U.S. Dist. LEXIS 123825. In the *Navient* case, the Bureau asserted that not enough information had been provided to consumers about various repayment options and that lack of information prevented consumers from making informed decisions about repayment. *Id.* at \*58.

Specifically, the CFPB in *Navient* looked at representations made on the company's webpage, which included statements that borrowers could call Navient for repayment options. The CFPB claimed, however, that when borrowers called they did not receive information about all options. *Id.* \*58. Unfortunately, the record is void of any information regarding a link between callers to Navient seeking repayment options and visitors to Navient's website pages with the information. The argument also does not provide any type of road map for other businesses about what information is sufficient to allow a consumer to make an informed decision. Instead, the CFPB's focus continues to be on what is lacking in consumer interactions as a basis for a UDAAP claim. The case does, however, confirm that the CFPB will continue reviewing business practices to determine if consumers are being provided with all the information necessary to make informed decisions. As a result, as a part of regular regulatory compliance procedures, companies should include a review of the information being provided to consumers at various touchpoints and confirm if the information is sufficient to allow the consumer to make an informed decision.