

Examiners should use servicing and collection policies, telephone scripts, training and compliance manuals, as well as periodic statements and payment histories, in addition to discussions with appropriate bank personnel, to determine:

1. Does the bank charge customers for products or services they did not bargain for, like various credit protection programs or insurance?
2. Are the amounts due stated and any associated fees or charges on the periodic billing statements accurately and clearly disclosed?
3. Does the bank ensure that the institution and its third party servicers have and follow procedures to credit consumer payments in a timely manner? Consumers should be clearly told when and if monthly payments are applied to fees, penalties, or other charges before being applied to regular principal and interest.
4. Does the bank promptly post payments upon receipt?
5. Does the bank mail periodic statements in a manner calculated to increase late payments?
6. Does the bank structure the product to trigger multiple charges or fees for late payment or exceeding the credit limit?
7. If the bank uses an automated call answering service for billing questions, is there a mechanism to obtain a human representative for questions that are unanswered or have not been resolved?
8. Does the bank continue to contact consumers at work after being advised not to do so?
9. Does the bank disclose the consumers' debt to third-parties without the consumer's consent? Does the bank discontinue calls to third-parties once they have notified the institution that they do not have any location information about the consumer?
10. Does the bank make repeated telephone calls to consumers and/or third parties with the intent to annoy, abuse, or harass any person at the number called?

Monitoring the Conduct of Employees and Third-Parties

Banks should have procedures in place to assure that their employees and third-party contractors, as well as other individuals and entities with whom they do business, avoid engaging in unfair or deceptive acts or practices. Examiners should evaluate how the bank monitors the activities of third-party contractors, vendors and service providers to ensure that they comply with the FTC's prohibition on unfair or deceptive acts.

Examiners should use training and policy manuals, scripts, oversight and compliance policies, and discussions with appropriate bank personnel, to respond to the following questions:

1. Does the bank ensure that employees and third parties who market or promote bank products, or service loans, are adequately trained to avoid making statements or taking actions that might be unfair or deceptive?
2. Does the bank review compensation arrangements for bank employees as well as third-party contractors and service providers to ensure that they do not create unintended incentives to engage in unfair or deceptive practices, particularly with respect to loan originations and collections?
3. Has the bank implemented and maintained effective risk and supervisory controls to select and manage third-party contractors or service providers?

References

DSC Memorandum 6428, Procedures for Determining Compliance with the Prohibition on Unfair or Deceptive Acts or Practices found in Section 5 of the Federal Trade Commission Act, June 17, 2005

FDIC Consultation Policy

DSC RD Memo 04-17: Consultation Policy and Procedures for Compliance Examination and Community Reinvestment Act Issues

<http://fdic01/division/dsc/memos/memos/direct/04-017.pdf>

Policy Statements and Enforcement Actions Involving Unfair or Deceptive Acts or Practices

FTC Policy Statement on Unfairness,
<http://www.ftc.gov/bcp/policystmt/ad-unfair.htm>

FTC Policy Statement on Deception,
<http://www.ftc.gov/bcp/policystmt/ad-decept.htm>

FIL 57-2002: Guidance on Unfair or Deceptive Acts or Practices
<http://www.fdic.gov/news/news/financial/2002/fil0257.html>

FIL 26-2004: Unfair or Deceptive Acts or Practices by State-Chartered Banks
<http://www.fdic.gov/news/news/financial/2004/fil2604.html>

OCC Advisory Letter 2002-3: Guidance on Unfair or Deceptive Acts or Practices,
<http://www.occ.treas.gov/ftp/advisory/2002-3.txt>

OCC Unfair and Deceptive Enforcement Actions
<http://www.occ.treas.gov/Consumer/Unfair.htm>

FTC's Subprime Lending Cases
<http://www.ftc.gov/opa/2002/07/subprimelendingcases.htm>

VII. Abusive Practices – Federal Trade Commission Act

FTC Unfair or Deceptive Acts or Practices Enforcement

Actions: Mortgage Servicing

<http://www.ftc.gov/bcp/online/edcams/fairbanks/index.htm>

FTC Unfair or Deceptive Acts or Practices Enforcement

Actions: Collection Practices

<http://www.ftc.gov/opa/2004/08/appliedcard.htm>

OCC Policy Statements and Enforcement Actions Relating to Credit Cards

<http://www.occ.treas.gov/Consumer/creditcard.htm>

Other Regulations with Provisions that Relate to Accurate Advertising

12 CFR Part 226: Regulation Z, Truth in Lending

12 CFR Section 226.16: Open-end advertising

<http://www.fdic.gov/regulations/laws/rules/6500-1650.html#6500226.16>

12 CFR Section 226.24: Closed-end advertising

<http://www.fdic.gov/regulations/laws/rules/6500-1700.html#6500226.24>

12 CFR Part 230: Regulation DD, Truth in Savings

Advertising: 12 CFR Section 230.8

<http://www.fdic.gov/regulations/laws/rules/6500-3250.html#6500230.8>

12 CFR Section 230.11: Additional disclosure requirements for institutions advertising the payment of overdrafts

<http://www.fdic.gov/regulations/laws/rules/6500-3250.html#6500230.11>

12 CFR Part 343: Consumer Protection in Sales of Insurance

12 CFR Section 343.40(d): Advertising

<http://www.fdic.gov/regulations/laws/rules/2000-6300.html>