

Unfair or Deceptive Acts or Practices – FTC Act Questionnaire

Use this questionnaire to review internal controls, audit work papers, evaluate the institution’s policies and procedures, perform transaction testing, and for training purposes as appropriate. Complete only those aspects of the questionnaire that specifically relate to the issue being reviewed, evaluated, or tested; and retain the completed sections in the work papers.

When you review internal controls, audit, evaluate institution policies or procedures, or perform transaction testing, use a “No” answer to indicate a possible exception/deficiency/violation and add an explanation in the comments column. If a line item is not applicable within the area you are reviewing, indicate “NA.”

	Yes	No	Comments
Compliance Function			
1. Does the institution’s compliance function have sufficient resources and authority to detect unfair or deceptive practices and to address them?	<input type="checkbox"/>	<input type="checkbox"/>	
2. Has the institution explicitly or implicitly identified risks for unfair or deceptive acts or practices in its product lines, interactions with customers and potential customers and outsourcing practices?	<input type="checkbox"/>	<input type="checkbox"/>	
3. Is the compliance function effective in identifying and mitigating overall compliance risks?	<input type="checkbox"/>	<input type="checkbox"/>	
4. Does the institution’s complaint resolution process not only resolve complaints but evaluate them to detect potentially unfair or deceptive practices that should be changed to avoid harm?	<input type="checkbox"/>	<input type="checkbox"/>	

Policies and Procedures to Prevent Unfair or Deceptive Acts or Practices (UDAPs)

5. Do the institution’s policies and procedures for avoiding unfair or deceptive activities in its operations include:			
• development of product structure and terms?	<input type="checkbox"/>	<input type="checkbox"/>	
• advertising and solicitation?	<input type="checkbox"/>	<input type="checkbox"/>	
• repricing and changes in terms?	<input type="checkbox"/>	<input type="checkbox"/>	
• underwriting and quality control?	<input type="checkbox"/>	<input type="checkbox"/>	
• servicing and collections?	<input type="checkbox"/>	<input type="checkbox"/>	

Exam Date: _____
Prepared By: _____
Reviewed By: _____
Docket #: _____

Unfair or Deceptive Acts or Practices – FTC Act Questionnaire

	Yes	No	Comments
• protecting consumer information?	<input type="checkbox"/>	<input type="checkbox"/>	
• employee training?	<input type="checkbox"/>	<input type="checkbox"/>	
• managing and monitoring of employees and third parties?	<input type="checkbox"/>	<input type="checkbox"/>	
6. Does the institution periodically test its policies to ensure that they are being followed?			
• Does the institution track and monitor exceptions to policies and procedures? Are high levels of exceptions made?	<input type="checkbox"/>	<input type="checkbox"/>	
• When control systems or operating practices are found deficient, are business-line managers and third-party originators held accountable for correcting deficiencies in a timely manner?	<input type="checkbox"/>	<input type="checkbox"/>	

Further Evaluation

7. Based on your review of the risks and the compliance function is transaction testing required?	<input type="checkbox"/>	<input type="checkbox"/>	
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Products and Services Particularly Susceptible to Unfairness and Deception

8. Does the institution avoid products and services that are particularly susceptible to violations of the FTC Act, such as:			
• fee based overdraft protection?	<input type="checkbox"/>	<input type="checkbox"/>	
• subprime credit card lending?	<input type="checkbox"/>	<input type="checkbox"/>	
• secured credit card lending?	<input type="checkbox"/>	<input type="checkbox"/>	
• subprime or nontraditional mortgages?	<input type="checkbox"/>	<input type="checkbox"/>	
• high cost mortgages covered by the Home Ownership and Equity Protection Act?	<input type="checkbox"/>	<input type="checkbox"/>	
• reverse mortgages?	<input type="checkbox"/>	<input type="checkbox"/>	
• “optional” insurance or related products?	<input type="checkbox"/>	<input type="checkbox"/>	

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<ul style="list-style-type: none"> • products structured to trigger multiple charges or fees for late payment or exceeding the credit limit? 	<input type="checkbox"/>	<input type="checkbox"/>	
<ul style="list-style-type: none"> • credit repair? 	<input type="checkbox"/>	<input type="checkbox"/>	
<ul style="list-style-type: none"> • short-term, high cost lending? 	<input type="checkbox"/>	<input type="checkbox"/>	
<ul style="list-style-type: none"> • tax refund anticipation loans? 	<input type="checkbox"/>	<input type="checkbox"/>	
<ul style="list-style-type: none"> • motor vehicle title loans? 	<input type="checkbox"/>	<input type="checkbox"/>	
<ul style="list-style-type: none"> • rewards programs? 	<input type="checkbox"/>	<input type="checkbox"/>	
9. Does the institution pay specific attention to bank functions that are particularly susceptible to violations of the FTC Act, such as:			
<ul style="list-style-type: none"> • marketing especially to the elderly, non-English speaking, financially vulnerable or unsophisticated? 	<input type="checkbox"/>	<input type="checkbox"/>	
<ul style="list-style-type: none"> • marketing and collection where practices may result in increased fees? 	<input type="checkbox"/>	<input type="checkbox"/>	
<ul style="list-style-type: none"> • collection where practices may harass consumers? 	<input type="checkbox"/>	<input type="checkbox"/>	
<ul style="list-style-type: none"> • billing practices where practices may increase fees? 	<input type="checkbox"/>	<input type="checkbox"/>	
<ul style="list-style-type: none"> • handling and protection of consumers' personal information? 	<input type="checkbox"/>	<input type="checkbox"/>	

Marketing and Disclosures

10. Does the institution ensure that:		
<ul style="list-style-type: none"> • it has a reasonable factual basis for all representations? 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> • its materials do not use fine print, separate statements or inconspicuous disclosures to correct potentially misleading headlines? 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> • its materials avoid the use of any government or official-looking symbols, references or numbers (e.g. IRS codes)? 	<input type="checkbox"/>	<input type="checkbox"/>

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• its materials avoid any references to, or the appearance of any affiliations or relationships with, entities that are not accurate?	<input type="checkbox"/>	<input type="checkbox"/>	
• its materials clearly disclose limitations, conditions or restrictions on the offer when it uses terms such as “preapproved” or “guaranteed”?	<input type="checkbox"/>	<input type="checkbox"/>	
• its materials take account of the sophistication of the target audience so that its claims about cost, value, availability, savings, benefits or terms are not misleading?	<input type="checkbox"/>	<input type="checkbox"/>	
• costs and benefits of optional or related products (such as overdraft protection) are not misrepresented or incomplete?	<input type="checkbox"/>	<input type="checkbox"/>	
• it avoids advertising terms that are unavailable to most customers or using unrepresentative examples?	<input type="checkbox"/>	<input type="checkbox"/>	
• its materials include contact information for consumer complaints for the institution or its third party service providers?	<input type="checkbox"/>	<input type="checkbox"/>	
11. Do the promotional materials and marketing scripts:			
• fairly and accurately describe the terms, benefits and material limitations of the products or services being offered?	<input type="checkbox"/>	<input type="checkbox"/>	
• clearly disclose when apparently optional products and services offered simultaneously with credit – such as insurance, travel services, credit protection, and consumer report update services that are – are optional, rather than required to obtain credit?	<input type="checkbox"/>	<input type="checkbox"/>	
• not misrepresent the terms either affirmatively or by omission?	<input type="checkbox"/>	<input type="checkbox"/>	
• draw the consumer’s attention to key terms, including limitations or conditions important to making an informed decision?	<input type="checkbox"/>	<input type="checkbox"/>	

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<ul style="list-style-type: none"> • clearly disclose material limitations or conditions, such as limits on interest rates, expiration dates, prerequisites and cancellation requirements? 	<input type="checkbox"/>	<input type="checkbox"/>	
<ul style="list-style-type: none"> • clearly disclose all material limitations or conditions on the terms or availability of products or services, such as <ul style="list-style-type: none"> — special interest rates only for balance transfers; — the date that introductory terms expire; — prerequisites for particular products, services or benefits (e.g., discounts, refunds or rebates); — conditions for canceling a trial basis service without charge? 	<input type="checkbox"/>	<input type="checkbox"/>	
<ul style="list-style-type: none"> • alert consumers in a clear and timely manner about penalties and other charges and the reasons for them? 	<input type="checkbox"/>	<input type="checkbox"/>	
<ul style="list-style-type: none"> • clearly inform consumers if contract provisions permit changes in terms of the agreement? 	<input type="checkbox"/>	<input type="checkbox"/>	
12. Does the institution refrain from advertising services or benefits that it does not intend or is not able to provide?	<input type="checkbox"/>	<input type="checkbox"/>	
<ul style="list-style-type: none"> • Does the institution avoid promoting products and services, such as teaser rates or “best case” scenarios, that are unlikely to occur? 	<input type="checkbox"/>	<input type="checkbox"/>	
<ul style="list-style-type: none"> • Are the conditions imposed to receive such services or benefits so burdensome or difficult to meet that the advertised service or benefit is illusory? 	<input type="checkbox"/>	<input type="checkbox"/>	
13. Are disclosures clear and accurate with respect to:			
<ul style="list-style-type: none"> • points and other charges that will be financed as part of home-secured loans? 	<input type="checkbox"/>	<input type="checkbox"/>	
<ul style="list-style-type: none"> • terms and conditions related to insurance offered in connection with loans? 	<input type="checkbox"/>	<input type="checkbox"/>	
<ul style="list-style-type: none"> • prepayment penalties, temporary introductory terms, or terms that are not available as advertised to all consumers? 	<input type="checkbox"/>	<input type="checkbox"/>	

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• loans covered by the Home Ownership and Equity Protection Act?	<input type="checkbox"/>	<input type="checkbox"/>	
• reverse mortgages?	<input type="checkbox"/>	<input type="checkbox"/>	
• credit cards?	<input type="checkbox"/>	<input type="checkbox"/>	
• secured and other credit cards designed to rehabilitate the credit of a borrower?	<input type="checkbox"/>	<input type="checkbox"/>	
• overdraft protection programs?	<input type="checkbox"/>	<input type="checkbox"/>	
• all terms, whether or not they are prepared by the institution or its third party servicer?	<input type="checkbox"/>	<input type="checkbox"/>	

Availability of Credit

- | | | | | |
|-----|---|--------------------------|--------------------------|--|
| 14. | Does the institution accurately and completely represent the amount of useable credit that the consumer will receive? | <input type="checkbox"/> | <input type="checkbox"/> | |
| | • Is the available credit high enough to prevent a significant reduction or elimination of the consumer's ability to use the product? | <input type="checkbox"/> | <input type="checkbox"/> | |
| | • Do fees and charges, imposed both initially and throughout the term of the loan, remain low enough so that the utility of the loan is not impaired? | <input type="checkbox"/> | <input type="checkbox"/> | |
| | • Does the institution notify the consumer before dishonoring convenience checks? | <input type="checkbox"/> | <input type="checkbox"/> | |

Repricing and Other Changes in Terms

- | | | | | |
|-----|--|--------------------------|--------------------------|--|
| 15. | Are credit and deposit disclosures of possible changes meaningful and easy to understand? | <input type="checkbox"/> | <input type="checkbox"/> | |
| | • Does the institution have policies and procedures to ensure the reasonable and clear disclosure of post-origination changes? | <input type="checkbox"/> | <input type="checkbox"/> | |
| | • Do agreements clearly disclose how and when the institution unilaterally changes the rate or other terms and conditions and the circumstances when such changes may be made? | <input type="checkbox"/> | <input type="checkbox"/> | |

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Servicing			
16. Does the institution handle consumer payments in a manner to prevent unfairness and deception as demonstrated by the fact that:			
• the institution mails periodic statements in a manner that is not calculated to increase late payments?	<input type="checkbox"/>	<input type="checkbox"/>	
• the institution does not charge customers for products or services they did not bargain for, such as various credit protection programs or insurance?	<input type="checkbox"/>	<input type="checkbox"/>	
• the amounts due and associated fees or charges on the periodic statements are accurate and clearly disclosed?	<input type="checkbox"/>	<input type="checkbox"/>	
• the “please pay by” date stated on the periodic statement is consistent with the product’s grace period?	<input type="checkbox"/>	<input type="checkbox"/>	
• the institution ensures that it and its third party servicers have and follow procedures to credit consumer payments in a timely manner?	<input type="checkbox"/>	<input type="checkbox"/>	
• the institution promptly posts payments upon receipt?	<input type="checkbox"/>	<input type="checkbox"/>	
• the institution does not employ a payment “lockbox” or other receipt method that does not recognize timely receipt?	<input type="checkbox"/>	<input type="checkbox"/>	
• consumers are clearly told when and if monthly payments are applied to fees, penalties, or other charges before being applied to regular principal and interest?	<input type="checkbox"/>	<input type="checkbox"/>	
• the institution applies payments first to balances with the highest interest rates?	<input type="checkbox"/>	<input type="checkbox"/>	
• the institution does not represent to consumers that they may pay less than the minimum amount due without adequately disclosing the fees for paying the reduced amount?	<input type="checkbox"/>	<input type="checkbox"/>	

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Collections			
17. Do the institution's collection practices prevent unfairness and deception?	<input type="checkbox"/>	<input type="checkbox"/>	
• Does the institution's automated call answering service for billing questions, have a mechanism to obtain a human representative for questions that are unanswered or have not been resolved?	<input type="checkbox"/>	<input type="checkbox"/>	
• Does the institution stop contacting consumers at work after being advised not to do so?	<input type="checkbox"/>	<input type="checkbox"/>	
• Does the institution prevent disclosure of consumers' debt to third-parties without the consumer's consent?	<input type="checkbox"/>	<input type="checkbox"/>	
• Does the institution discontinue calls to third-parties once they have notified it that they do not have any location information about the consumer?	<input type="checkbox"/>	<input type="checkbox"/>	
• Does the institution prohibit repeated telephone calls to consumers and/or third parties with the intent to annoy, abuse, or harass any person at the number called?	<input type="checkbox"/>	<input type="checkbox"/>	
Monitoring the Conduct of Employees and Third-Parties			
18. Does the institution ensure that employees and third parties who market or promote its products or service loans, are adequately trained to avoid making statements or taking actions that might be unfair or deceptive?	<input type="checkbox"/>	<input type="checkbox"/>	
19. Does the institution review compensation arrangements for its 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?	<input type="checkbox"/>	<input type="checkbox"/>	
20. Has the institution implemented and maintained effective risk and supervisory controls to select and manage third-party contractors or service providers?	<input type="checkbox"/>	<input type="checkbox"/>	

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	Yes	No	Comments
COMMENTS			