

**UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR
PRACTICES UNDER THE
DODD-FRANK WALL STREET REFORM AND
CONSUMER PROTECTION ACT**

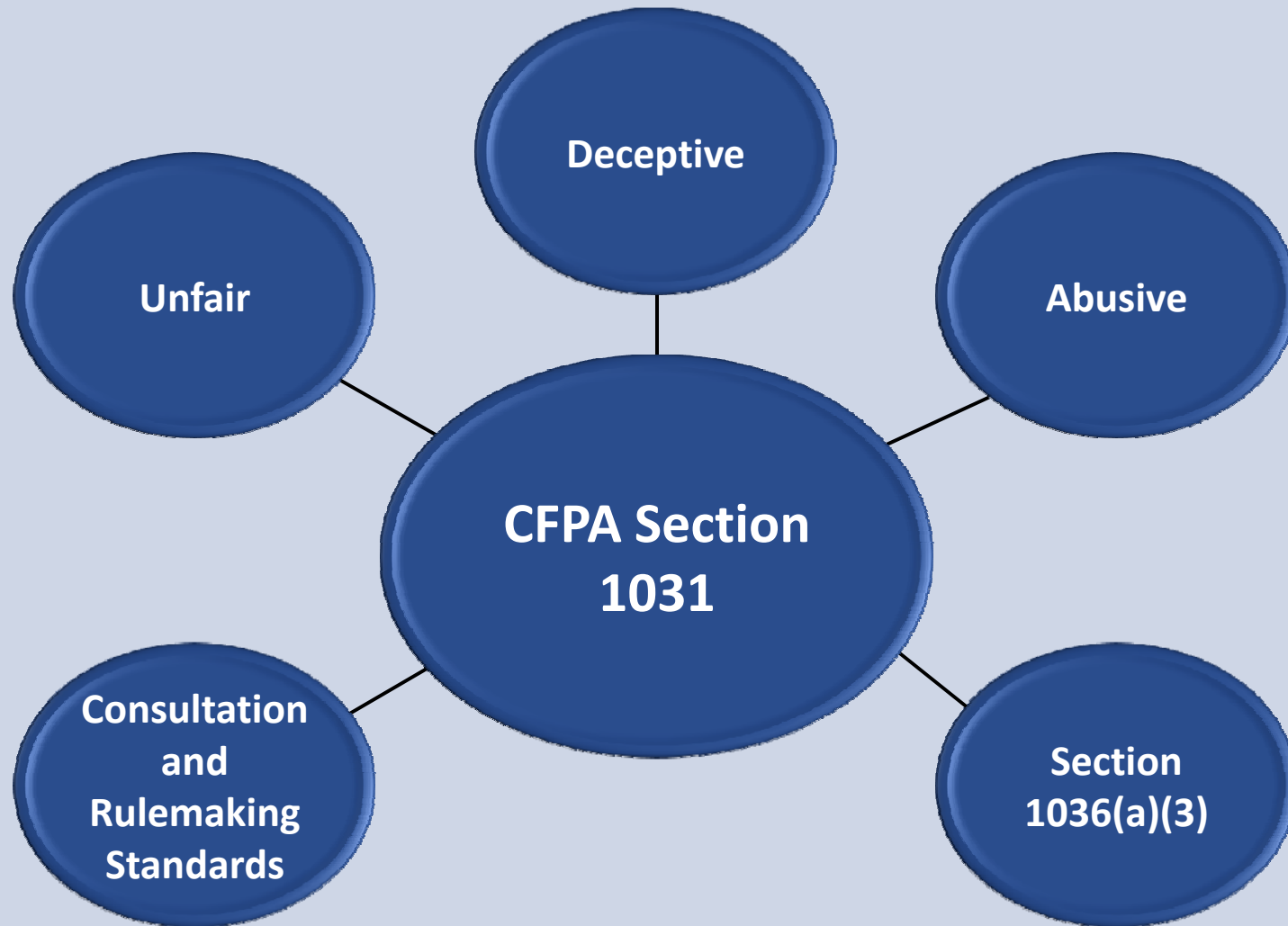
April 12, 2011

Section 1031 OF THE CFPA

The Bureau has authority to prevent acts or practices which are:

- **Unfair**
- **Deceptive**
- **Abusive**

SCOPE OF SECTION 1031



“UNFAIRNESS” UNDER SECTION 1031(c)

The Bureau may declare an act or practice unfair if:

- it causes or is likely to cause substantial injury to consumers,**
- it cannot be reasonably avoided, and**
- the injury is not outweighed by countervailing benefits to consumers or to competition.**

PUBLIC POLICY CONSIDERATIONS

§ 1031(c)(2)

- Bureau may consider established public policies in determining whether a practice is unfair.
- But public policy considerations may not be the primary basis for finding a practice unfair.

Mirrors § 45(n) of the FTC Act

- Limits the FTC from making an unfairness finding based solely on public policy.

“DECEPTIVE” UNDER SECTION 1031

“Deceptive” is not defined in the CFPA or the FTC ACT.

The FTC Policy Statement on Deception describes deceptive acts or practices.

- Misrepresentation, omission, or practice that is likely to mislead consumers.**
- The representation, omission, or practice must be material.**
- Viewed from the perspective of a consumer acting reasonably in the circumstances.**

“ABUSIVE” UNDER SECTION 1031(d)

The Bureau can declare an act or practice abusive under § 1031(d) if it:

- 1. materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service.**

- 2. takes unreasonable advantage of consumers’:**
 - lack of understanding of the material risks, costs or conditions of a product or service;**

 - inability to protect their interests in selecting or using a financial product or service; or**

 - reasonable reliance on a covered person to act in the interests of the consumer.**

“ABUSIVE” UNDER SECTION 1031(d)(1)

An act or practice may be declared abusive under § 1031(d)(1) if it:

- **materially interferes with the consumer’s ability to understand a term or condition of a consumer financial product or service.**

“ABUSIVE” UNDER SECTION 1031(d)(2)

An act or practice may be declared abusive under § 1031(d)(2) if it takes unreasonable advantage of consumers’:

- **lack of understanding of the material risks, costs or conditions of a product or service;**
- **inability to protect their interests in selecting or using a financial product or service; or**
- **reasonable reliance on a covered person to act in the interests of the consumer.**

CONSULTATION WITH OTHER AGENCIES

Prior to proposing a rule and during the comment period, § 1031(e) and § 1022(b)(2)(B) and (C) require the Bureau to consult:

- **with other Federal banking agencies, or other Federal agencies, as appropriate**
- **concerning the consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies.**

STANDARDS FOR RULEMAKING UNDER § 1022(b)(2)

In prescribing rules the Bureau must consider:

- **The potential benefits and costs to consumers and covered persons.**
- **The potential reduction of access to consumer financial products or services.**
- **The potential impacts on covered persons.**

“SUBSTANTIAL ASSISTANCE” UNDER § 1036(a)(3)

A person will be deemed to violate § 1031 if they:

- **knowingly or recklessly provide substantial assistance to another person in violating § 1031 or any rule prescribed under § 1031.**

Q & A