
UDAAP, the Risk That Keeps on Giving:

**Avoid Unexpected Surprises
Throughout the Loan Lifecycle**

March 16, 2023
2 p.m. – 3 p.m. EST

Nasser Ansari- WK, Lien Solutions
Seth Reimer: WK- Advisory Services
Jason Keller: WK- Advisory Services

 Wolters Kluwer



Speakers



Nasser Ansari
Director, Product Management, Lien Solutions
Wolters Kluwer Compliance Solutions



Seth Reimer
Manager, Specialized Consulting- Advisory Services
Wolters Kluwer Compliance Solutions



Jason Keller
Associated Director, Advisory Services
Wolters Kluwer Compliance Solutions

Notice

- ➔ This presentation is intended only to act as an information overview and not as a substitute for the law, regulations or official commentary
- ➔ There are continuing, ongoing developments in this area and subject to each institutions individual circumstance. Therefore, always consult official sources of information, including the regulation text and official commentary, for a complete understanding of the law, including the regulations.

©2023 Wolters Kluwer Financial Services, Inc. All rights reserved.

Agenda

1	Overview	6	Interplay of Governing Statutes: UDAAP-ECOA-CRA
2	Lending Lifecycle	7	Lien Management
3	UDAAP Overview	8	Wolters Kluwer Solutions
4	Fair Lending/ECOA Overview	9	Key Take-A-Ways
5	CRA Overview	10	Q & A

Overview

From the origination of loans to the release of related liens, Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) risks exist throughout the lending lifecycle. With a heightened regulatory focus and recent high-profile enforcement actions, institutions should proactively look for potential violations, especially in places they may not have previously considered.

This session will provide a timely and forward-looking perspective on UDAAP standards, encouraging institutions to examine all facets of the loan cycle, for any and all opportunities where consumers may be adversely impacted by a lack of controls. In addition, Wolters Kluwer will discuss inherent risks and compliance strategies associated with these standards, including UDAAP interconnectivity with Fair Lending and Community Reinvestment Act examinations.

Note: UDAAP compliance concerns exist outside of the lending process, and it is important to make sure to address those concerns. However, this session is limited to a discussion related to lending related matters.

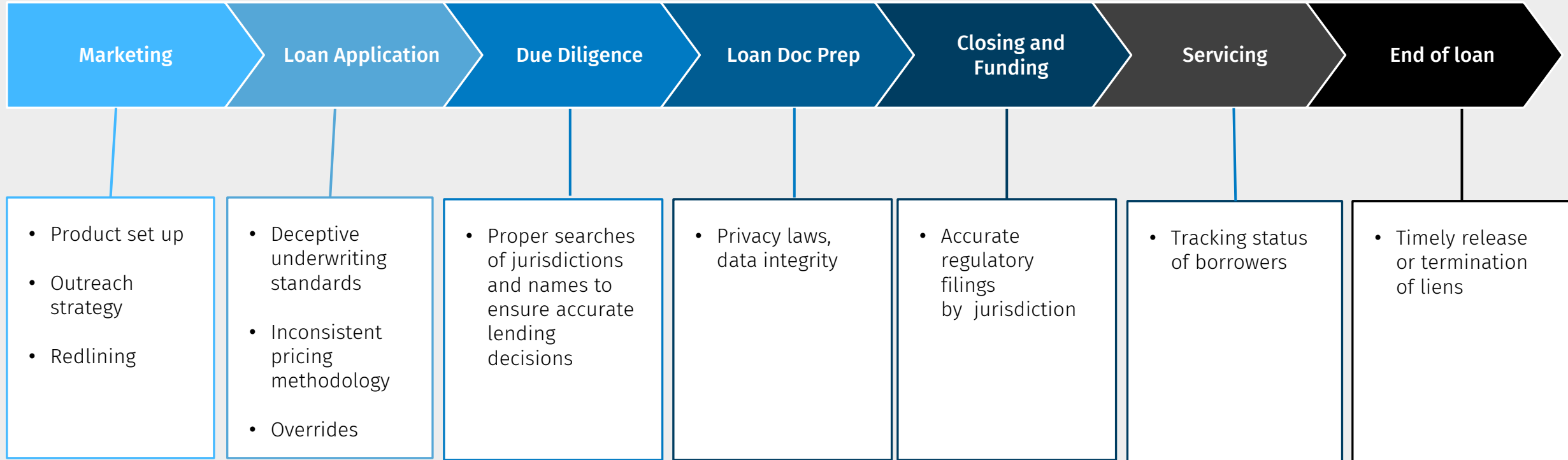
Topics:

- Lending Life Cycle
- Unfair, Deceptive, or Abusive Acts or Practices
- Fair Lending
- Community Reinvestment Act
- Case Studies / Regulatory Guidance / Best Practices / Consultative Solutions



Lending Lifecycle

UDAAP Risk is present throughout the various phases



Governing Regulations

- UDAAP
- ECOA
- CRA



Guiding Tenants of UDAAP:

- ➔ The representation, omission, act or practice misleads or is likely to mislead the consumer.
- ➔ The consumer's interpretation of the representation, omission, act or practice is reasonable under the circumstance.
- ➔ The misleading representation, omission, act, or practice is material.



Consumer should not have to hire independent experts to test products prior to transacting

https://files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual_2022-09.pdf

Examination Objectives:



Assess compliance risk management systems and controls for avoiding UDAAP



Identify acts or practices that materially increase consumer harm due to UDAAP, **including discriminatory acts or practices**



Gather facts to determine whether the entity engages in UDAAP when offering or providing **consumer financial products**

CFPB UDAAP Examination Procedures V.3- March 2022

Practical Considerations:



Risk Assessment - Expand fairness considerations to all consumer financial products and services



Customer Demographics – Retain information regarding customer demographics; breakdown by product, fees, revenue sources and costs



Impact Analysis – Analyze and document the impact of products and fees on different demographic groups



Monitoring and Testing – Test and monitor decision-making processes for unfair

CFPB UDAAP Examination Procedures V.3- March 2022

Avoidance of Injury; Emphasis on Controls



Expected control measures:

- Evaluate policies, procedures and processes for discrimination prior to implementation or changes
- Periodic analysis and monitoring of all decision-making processes used in connection with consumer financial products or services
 - ✓ Identify decision points for all products and services, not just credit-related products or services
 - ✓ Track outcomes and supporting data

Substantial injury

- 1 Standard for unfairness under Dodd-Frank, is that an act or practice is unfair when:**
 - It causes or is likely to cause substantial injury to consumers;
 - The injury is not reasonably avoidable by consumers; and
 - The injury is not outweighed by countervailing benefits to consumer or to competition

- 2 Substantial Injury generally involves monetary harm**
 - Monetary harm includes costs or fees paid by consumers as a result of an unfair practice
 - Potentially disparate effects of activities whether intended, or not, will factor into the analysis
 - However, **“Emotional impacts or dignitary harms”** [emphasis added] may amount to or contribute to substantial injury

Recent UDAAP Actions

Since 2020 there have been in excess of \$5.5 billion in settlement agreements, with multiple agreements pending resolution in 2023.

Recent Institutions Penalized: National Banks, Mortgage Lender Brokers, Indirect Auto Lenders

Types of UDAAP Violations:

- Unlawful Repossession
- Improper Loan Modifications
- Unfair/Deceptive Fees
- Unfair/Deceptive Freezing of Accounts
- Misrepresentation of Costs
- Misrepresentation of Rates
- Violation of usury limits and other consumer and investor protection laws
- UDAAP violations regarding direct mail advertisements
- Misleading and deceptive statements and inadequate disclosures to service members, veterans, and other consumers
- Mortgage Loans secured by the U.S. Department of Veteran Affairs
- Bank neglect in presenting documentation that their mortgages had been fully satisfied (lien release) to the recording officer in the State

Fair Lending/ECOA Examination Focus

Examination Objectives Assess:

- 1** **Discrimination of credit applicants the basis of:**
 - Race
 - Color
 - Religion
 - National Origin
 - Sex
 - Marital Status
 - Age
 - Public Assistance
 - Good Faith Exercise of Rights
 - ✓ Under the Consumer Credit Protection Act-Truth in Lending, Fair Credit Reporting, Fair Debt Collection Practices
- 2** The Department of Justice may file a lawsuit under ECOA where there is a pattern or practice of discrimination
- 3** Other federal agencies have general regulatory authority over certain types of lenders, and they monitor creditors for their compliance with ECOA. ECOA requires these agencies to refer matters to the Justice Department when there is reason to believe that a creditor is engaged in a pattern or practice of discrimination

Examination Factors:

1

Overt evidence of disparate treatment

- ✓ Illegal disparate treatment may be established either by statements revealing that a lender explicitly considered prohibited factors (overt evidence) or by differences in treatment that are not fully explained by legitimate nondiscriminatory factors (comparative evidence)
- ✓ Redlining: Illegal disparate treatment in which a lender provides unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristic(s) of the residents of the area in which the credit seeker resides or will reside or in which the residential property to be mortgaged is located

2

Comparative evidence of disparate treatment

- ✓ Disparate treatment occurs when a lender treats a credit applicant differently based on one of the prohibited bases. It does not require any showing that the treatment was motivated by prejudice or a conscious intention to discriminate against a person beyond the difference in treatment itself

3

Evidence of disparate impact

- ✓ When a lender applies a racially or otherwise neutral policy or practice equally to all credit applicants, but the policy or practice disproportionately excludes or burdens certain persons on a prohibited basis, the policy or practice is described as having a “disparate impact”

CRA Examination Focus

Examination Objectives Assess:

- 1 Ensure adequate lending to LMI borrowers and within LMI census tracts:**
 - Community Development Lending
 - Community Development Investments (including philanthropic investments)
 - Small Business/Small Farm Lending
 - HMDA Qualified Lending
 - Services (including product and branch distribution)
 - Innovated & Flexible Activities

- 2** CRA examinations are conducted by the Office of the Comptroller of the Currency (OCC), Federal Reserve Bank (FRB), or Federal Deposit Insurance Corporation (FDIC) based on the size and charter of the institution

- 3** CRA exam procedures are developed by the Federal Financial Institutions Examinations Council (the Council), a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions

Examination Factors:



Community Development Lending

Qualified commercial loans addressing the needs of LMI individuals (affordable housing, entities supporting the needs of LMI individuals, or the revitalization of LMI communities)



Community Development Investments

Qualified investments addressing the needs of LMI individuals or LMI communities (LIHTC, SBIC, NMTC, HTC, Strategic Philanthropy)



Small Business Lending

Loans at or below \$1M to businesses located within LMI census tracts, or to businesses with gross revenue at or below \$1M



HMDA Qualified Lending

HMDA reportable lending within LMI census tracts or to LMI borrowers



Services

Channel delivery (i.e.- branch distribution) in LMI census tracts, alternative delivery channels (i.e.- digital and mobile) meeting the credit needs of LMI communities, volunteerism and board participation



Innovative and Flexible Activities

Activities that Revitalize or Stabilize including specialized loan programs, products demonstrating a-typical underwriting standards, complex and innovative capital structures, services for designated disaster areas, services for distressed or underserved non-metro middle-income geographies based on poverty, unemployment and population size, density, and dispersion

Interplay of Governing Statutes



Connections & Interconnectivity in Examinations

UDAAP

Examiners review products or services **to identify the risks of harm to consumers** that are particular to those activities. Examiners also review products that combine features to **assess risks and the potential harm to the consumer** associated with the product.



Fair Lending

Fair lending evaluations analyze a financial institution's **lending to protected classes**, including lending to minorities and in majority-minority areas — areas with populations of at least 50 percent minority.



CRA

CRA evaluations analyze a financial institution's lending performance, including the volume and type of lending provided **to all income levels** and businesses and farms of all sizes.

Connections & Interconnectivity in Examinations

Consequences

UDAAP

Potential consequences include **customer reimbursements, significant operational expenditures** to remediate UDAP or UDAAP issues, financial losses, reputational damage, legal actions, and enforcement actions (including CMPs)



Fair Lending

Evidence of discrimination against protected classes can lead to **referrals to the U.S. Department of Justice and/ or the U.S. Department of Housing and Urban Development.** Although resulting enforcement actions may be publicly available, fair lending evaluation ratings are not



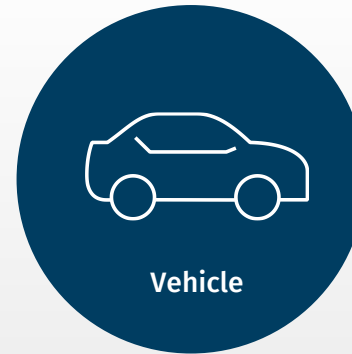
CRA

Less than satisfactory CRA ratings may affect **ability to participate in mergers, operational oversight, and ability to acquire/close/open branches.** CRA ratings are publicly available, which can **impact a financial institution's reputation**

Lien Management



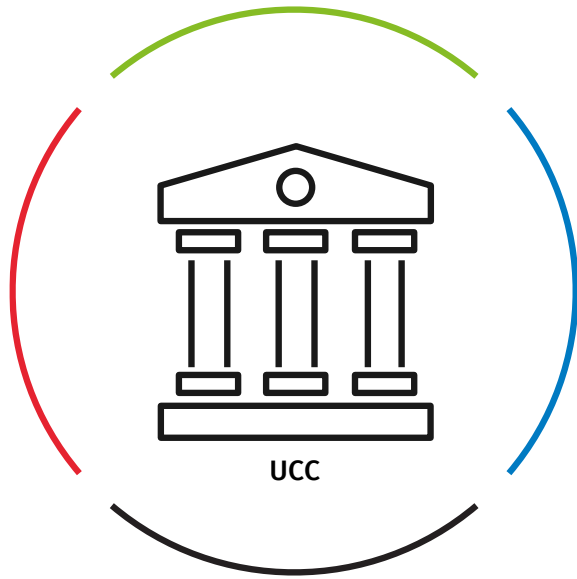
Types of Liens



**Secured loans,
voluntary liens**



Involuntary liens

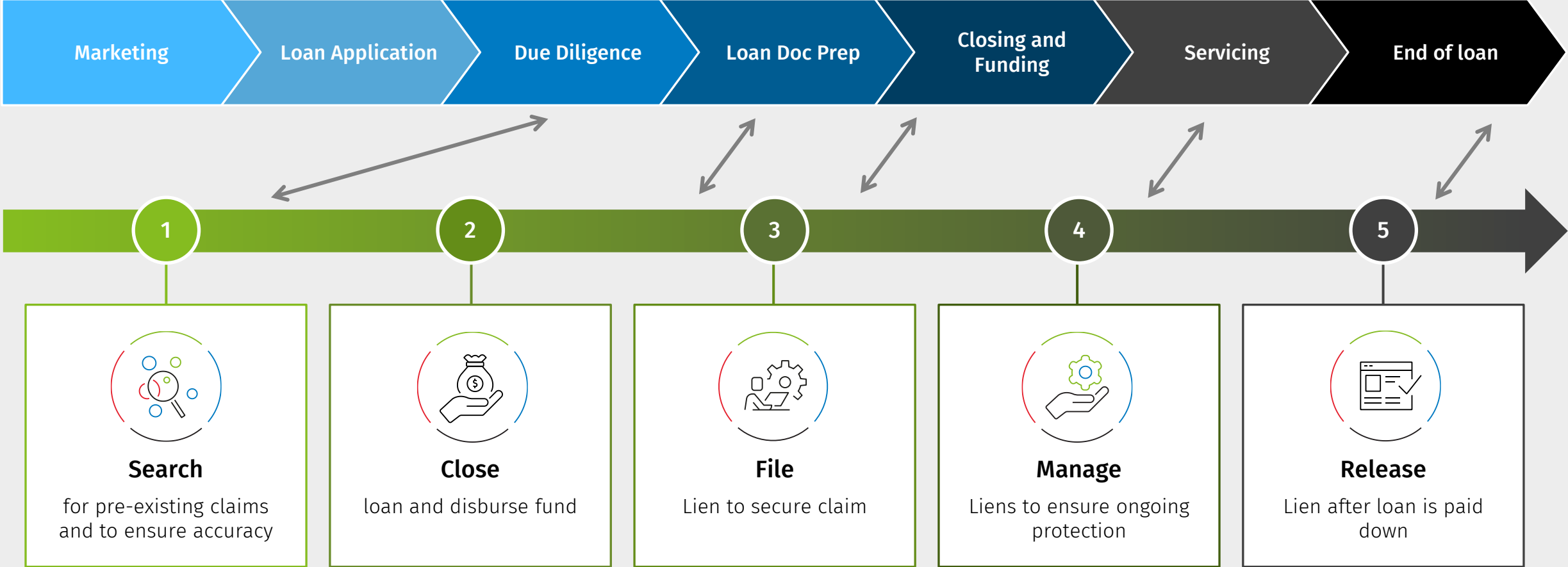


UCC Lien

A Uniform Commercial Code filing, also known as a UCC filing, is a document that lenders use to establish their legal right to assets that a borrower uses to secure a loan.

This notice allows the lender to seize the borrower's collateral in the case of default.

Commercial Lending Lifecycle and Lien activity



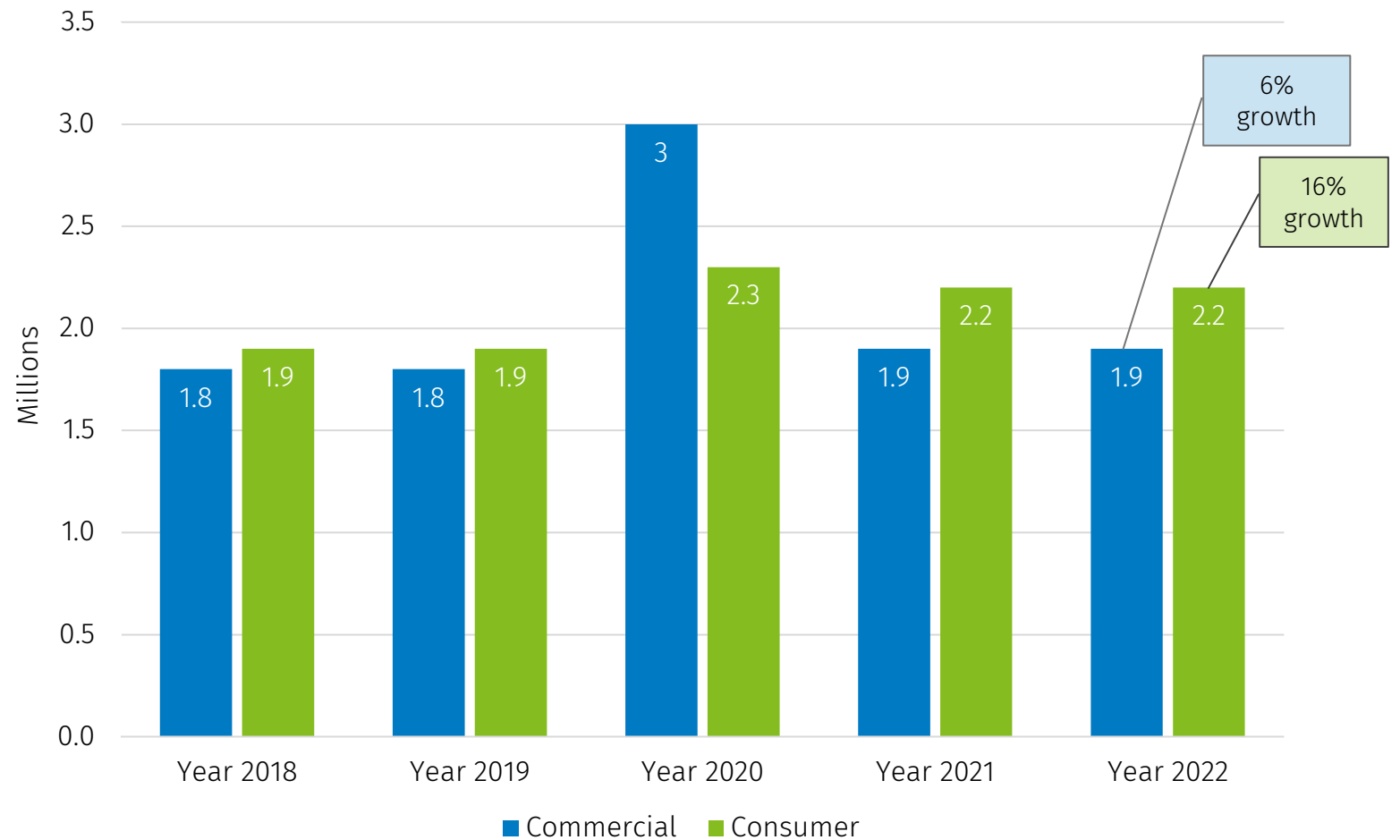
Lenders must accurately manage liens over the entire loan lifecycle

The Growing Trend to Apply UCC Liens on Personal Loans

Consumer lending has grown more than commercial lending in the past 5 years,

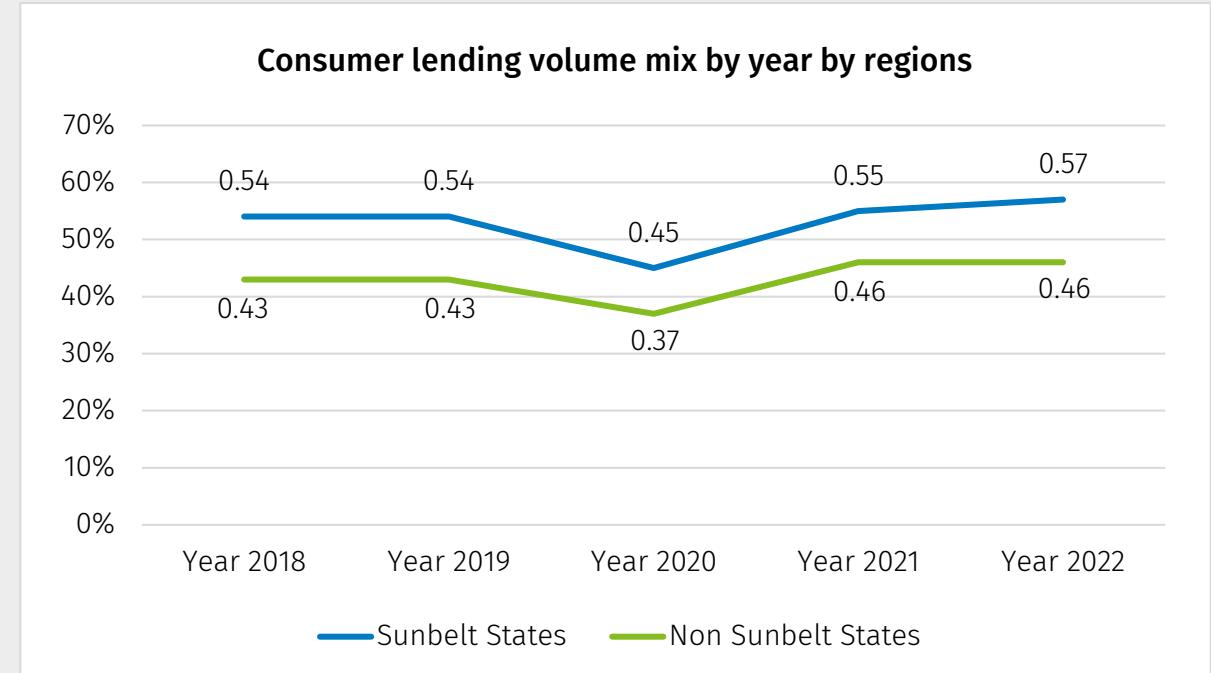
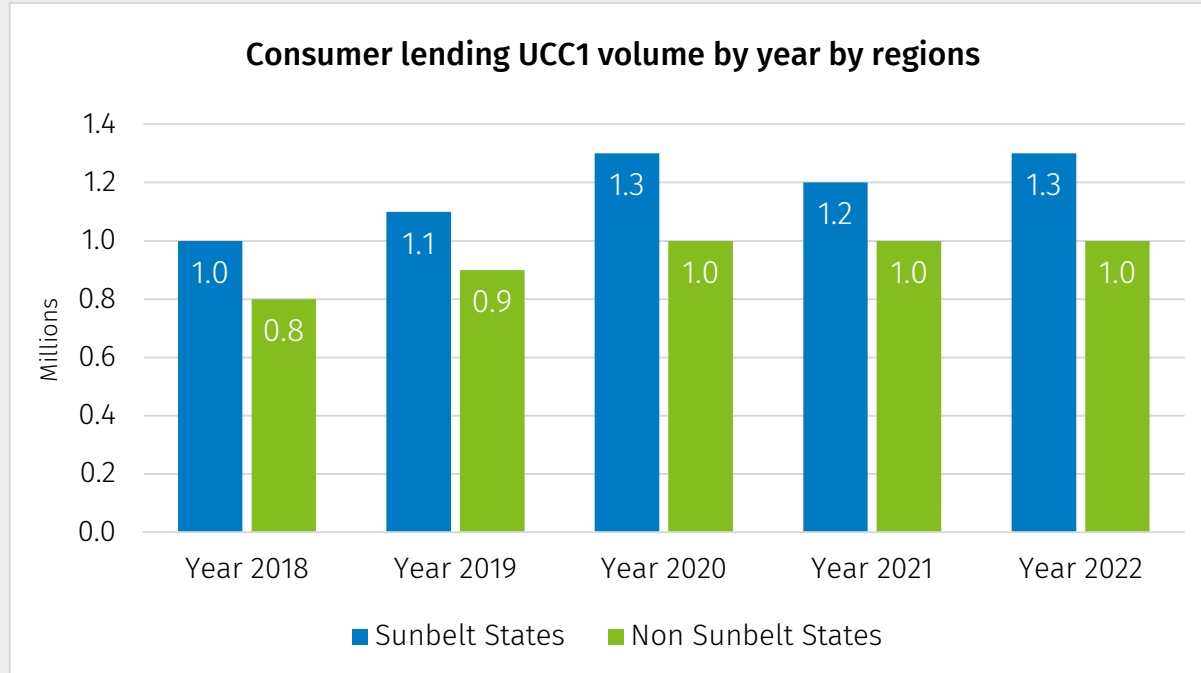
- +300k for consumer lending vs. +100k for commercial lending.
- 16% growth for consumer lending vs. 6% growth for commercial lending

UCC1 volume trend (Consumer vs. Commercial Lending)



Source: Aggregated public records lien data from Wolters Kluwer

Consumer lending (UCC1 volume) trend by region



- Consumer lending in the Sunbelt states grew faster than the rest of the countries
- Non-Sunbelt States has a lower consumer lending mix in their portfolio
 - Sunbelt states: 57% of UCC1s were consumer lending
 - Other states: 46% of the UCC1s were consumer lending

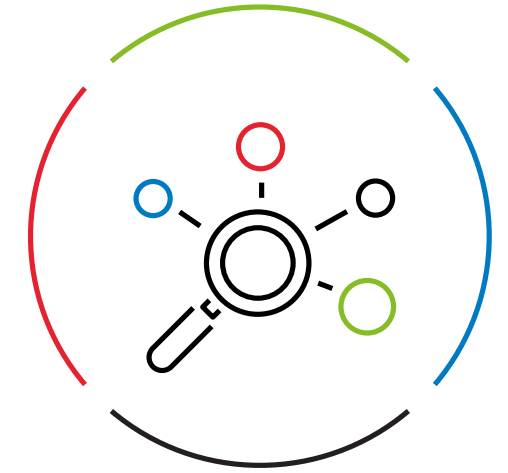
Sunbelt states include Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee and Texas.

Lender Perspective: Due Diligence

Accuracy is important

- Search in the appropriate jurisdictions
- Name and address validation
- Don't overlook previous addresses
- Tax Lien and Judgement have priority
- Keep the fee transparency

Prevent any harm for consumers due to inaccurate searches



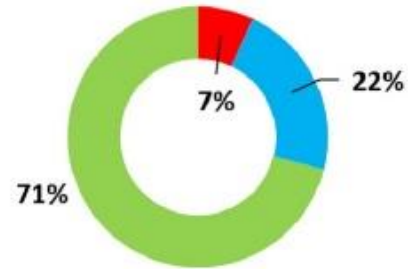
- UCC search
- Business entity
- Tax lien and judgments
- Bankruptcy searches
- Litigation
- And much more

Lender Perspective: UCC filing

- Accuracy of names in the filings
- Filing in the right jurisdictions
- Some situations like solar panels may need state as well as county filings
- If the name change occurs, the filings need to be updated

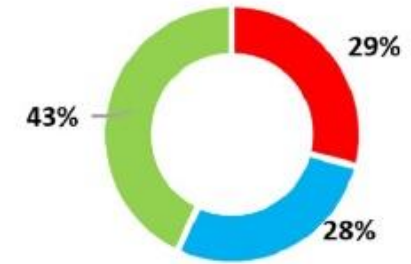
PERFECTION RISK

Jurisdiction Mismatched



■ Potential Risk ■ To be Reviewed ■ OK

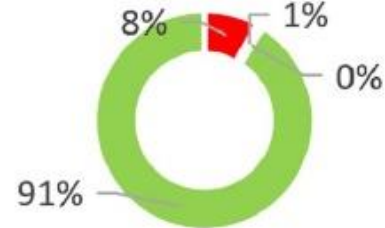
Debtor Name Mismatched



■ Potential Risk ■ To be Reviewed ■ OK

Debtor Insights

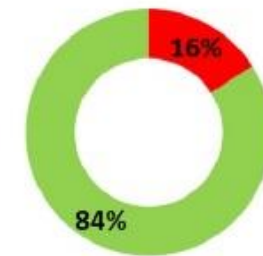
Business Entity Status



■ Inactive ■ Dissolved
■ To be Reviewed ■ Active

Collectibility Risk

Lien Insight (UCC FileDate Order)



■ Not in 1st Position ■ In 1st Position

Lender Perspective: Automation of Processes



Visibility of your UCC filings



Monitoring of borrower's lien activity



Automated actions like continuations



Timely terminations and releases

Lien Termination: The Impact on the Consumer



“ An example of an unfair practice could include a lender’s **refusal or unreasonable delay** in releasing a lien after the consumer has made a final payment on a mortgage, preventing the consumer from obtaining credit, obtaining credit on the most favorable terms or clearing the credit record of the lien. ”

*Independent Banker “Let’s define ‘unfair, deceptive or abusive’,
2019 by a former Federal Reserve examiner*

State Level actions for Incorrect Lien Filing



States looking into preventing fraudulent filings

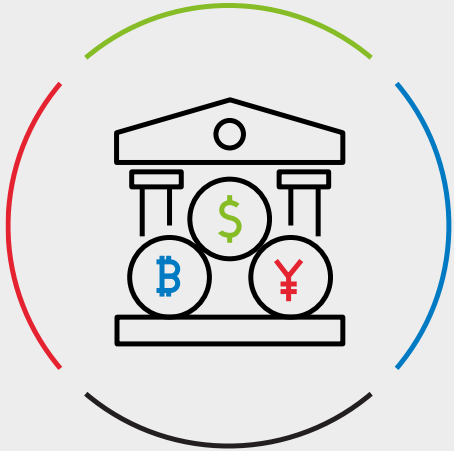
- Accuracy
- Penalties
- Release timings

Example:

Arizona - A.R.S. § 33-420. This statute has the added benefit of allowing the aggrieved party to seek damages. Persons who file liens that are forged, groundless, contain material misstatements or false claims, or are otherwise invalid, can face a liability of \$5,000 or “treble the actual damages caused by the recording, whichever is greater, and reasonable attorney fees and costs of the action.”

The statute provides another sanction for those who fail to comply with a demand letter requesting that a wrongful lien be released. The defendant will be liable for \$1,000 or treble actual damages, plus attorney fees and costs, if he or she fails to comply with the demand letter within twenty days.

Example from a Top 5 Bank



Two lawsuits filed against the bank alleged that the bank neglected to present documentation that their mortgages had been fully satisfied (lien release) to the recording officer in New York State.

This action allegedly violates the New York Real Property Actions and Proceedings Law § 1921 and New York Real Property Law § 275. The number of individuals affected by this issue estimated to be in the thousands.

Settled for \$6.2M (2016)

Resources from Wolters Kluwer and Q & A

About Wolters Kluwer Compliance Solutions: End-to-end compliance certainty made simple

Compliance lifecycle management

Multi-jurisdictional regulatory certainty



Multi-asset class platform



Regulatory change management

Regulatory library	Regulatory change management	State law obligation management	Exam management

We've got you covered: every reg, every update

Ensure your organization is in compliance

51 jurisdictions; expert augmented intelligence

Effectively manage the regulatory review process

Meet regulatory requirements. Prove compliance certainty.

Loan compliance certainty

Document preparation	Compliant eClosing	Compliance analytics	Lien perfection

The right doc, for the right LOB, in the right channel

Create, manage, sell, securitize digital loans

HMDA, CRA & fair lending intelligence

Comprehensive title services purchase, transfer, default & repo

Lending efficiency. Proven legal enforceability & compliance.

Wolters Kluwer Resources



- UCC filing and public records search
- Vehicle titling/vehicle repossessions
- Fair lending compliance
- Community Reinvestment Act (CRA) compliance
- Regulatory change management
- Compliance program management
- Small business lending data collection requirements under Section 1071 of the Dodd-Frank Act
- Consulting services include: UDAAP risk review, Compliance Management System (CMS) review, fair lending risk assessment or CRA performance evaluation

Upcoming Events



Wolters Kluwer Hosted Webinars:

- Section 1071 Small Business Lending
- CRA Modernization

Industry Association Tradeshows:

- CBA Live, Sun, Mar 26 – Wed, Mar 29, Las Vegas, NV
- ABA Risk and Compliance, Mon, Jun 12 – Thu, Jun 15, San Antonio, TX
- CRA & Fair Lending Colloquium, Nov. 12 – 15, Austin, TX

CRA & FAIR LENDING COLLOQUIUM

JW Marriott Austin
November 12-15, 2023
Austin, Texas

Registration: www.cracolloquium.com

Live! In Person

**Sponsored by the ABA, CBA &
ICBA**

CRCM Credits available

**Pre & Post Conference Wiz
Sessions**

**100+ regulators attending from
the FDIC, CFPB, OCC, FRB &
more**

800+ compliance professionals

30+ insightful sessions

70+ expert speakers

2 industry awards

∞ Networking opportunities

Key Take-a-ways

UDAAP

ECOA

CRA

Lien Management

- Understand the regulations and procedures
- Know your performance and ensure your analysis is consistent with technical compliance requirements
- Ensure you have adequate and contemporary controls and expertise in places to monitor and escalate issues
- Know your decision points that will impact outcomes
- Establish clear and enforceable expectations across your lines of business
- Ensure regular and adequate technical compliance training is occurring across your enterprise
- Adopt a culture of compliance at the highest levels of your enterprise
- Have clear processes for accurate due diligence searches for outstanding liens
- **Use accurate names and other borrower details in the public filings**
- Streamline processes for timely releases and other necessary actions on outstanding liens

Questions



- 1 Practical ways to guide business lines
- 2 Leading practices in monitoring UDAAP
- 3 Training - How to better engage staff

Thank you

