

Marketing Compliance and Enforcement Actions Quarterly Review

Q1 2024

This report offers a focused look at the latest data and trends that impacted consumer finance companies in Q1 of 2024. Powered by our in-depth compliance monitoring and industry analysis, this review provides essential insights to help businesses effectively navigate the evolving regulatory landscape.

Enforcement Actions at a Glance

17

Enforcements Actions*

\$59.6M

In Monetary Fines

\$19M

Highest Single Enforcement Action Fine

53%

Enforcements Taken by State Regulators

*Note: These numbers only include enforcement actions that have been finalized. There are still several complaints, consent orders, and other actions that are pending.

In Q1 of 2024, federal and state regulators finalized 17 enforcement actions against consumer finance companies, totaling over \$59.6 million in monetary fines.

The highest monetary fine from a single enforcement action was \$19 million, which was taken against a mortgage relief company in a joint effort by the Federal Trade Commission (FTC) and the California Department of Financial Protection and Innovation (DFPI) for violating the FTC Act, the Mortgage Assistance Relief Services Rule, the Telemarketing Sales Rule, the COVID-19 Consumer Protection Act, and the California Consumer Financial Protection Law.

Notably, 53% of all finalized enforcement actions came from state regulatory agencies, specifically Virginia, Florida, Massachusetts, Pennsylvania, Washington, Colorado, and North Carolina.

Notable Enforcement Actions, Consent and Settlement Orders, and Complaints

Note: These notable actions include some that are still awaiting final orders.

Key Themes

- **UDAAP and dark patterns**
The FTC is a force to be reckoned with as a key enforcer of UDAAP & dark patterns.
- **"Free" and "instant"**
Regulators are cracking down on misleading "free" and "instant" offers.
- **Discriminatory practices**
Combating discriminatory practices in lending is a continued regulatory focus.
- **Subscription cancellations**
Clear and straightforward processes for subscription cancellations and service adjustments are mandatory.

Fintech made empty promises, used dark patterns, and discriminated against consumers who use public assistance

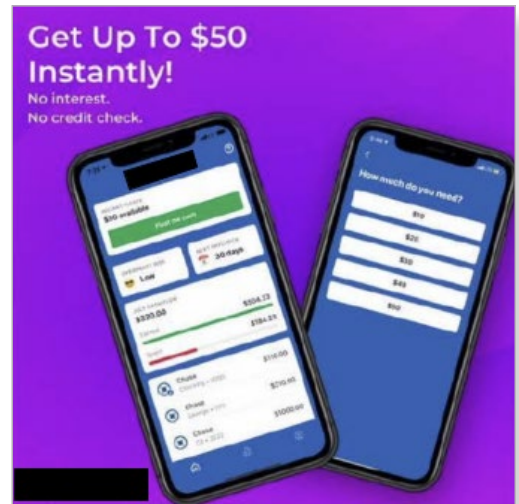
Regulatory Agency:	Federal Trade Commission (FTC)
Total Penalty Amount:	\$3M
Regulatory Issue(s):	UDAAP, Dark Patterns, Fair Lending

Summary: The FTC took action against a fintech company for using empty promises of “quick” and “free” cash advances to entice consumers to join its service, only to fail to deliver the promised advance amounts, make it difficult to cancel, and discriminate against consumers who receive public assistance.

Specifically, the fintech charged consumers \$1.99 per month for a service that promised up to \$50 in “instant” cash advances, only to limit access to \$20 with a \$4 fee for immediate disbursement, contrary to their advertisement of free, quick funds.

The fintech also deceived customers regarding the process to increase their advance limit, citing a non-existent algorithm, and made subscription cancellation extremely difficult through the use of dark patterns.

The fintech also discriminated against consumers receiving public assistance by excluding their income in eligibility assessments for advances while still charging them the monthly subscription fee, effectively barring them from accessing the advertised services.



Enforcement Action

The court order requires the company to:

- ❗ Pay \$3 million to the FTC to refund consumers
- ❗ Get consumers’ express, informed consent for charges
- ❗ Provide an easy method for cancellation
- ❗ Enact a fair lending program
- ❗ Create and maintain records of consumer testing

Tax preparation software company deceptively advertised products as "free"

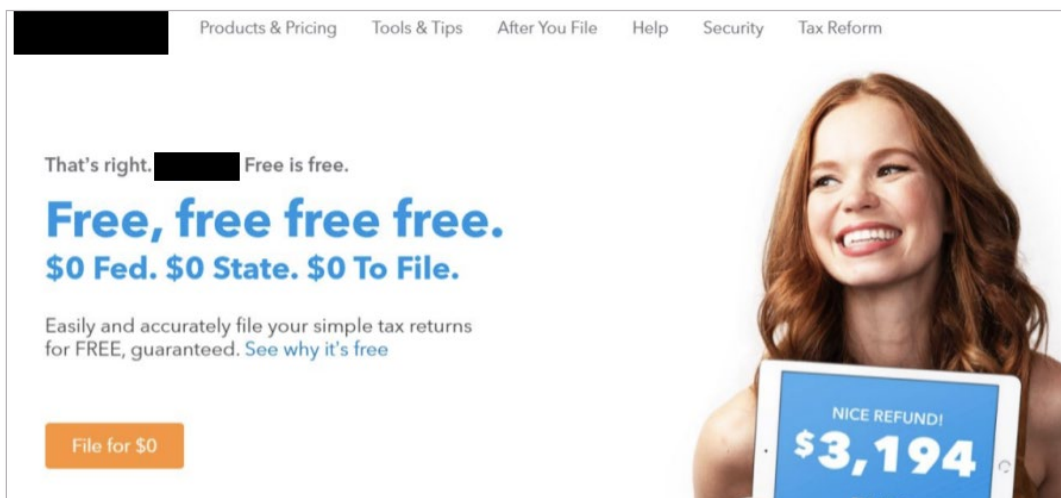
Regulatory Agency: Federal Trade Commission (FTC)

Total Penalty Amount: n/a

Regulatory Issue(s): FTC Act, UDAAP

Summary: The FTC issued a final order that a tax preparation company violated UDAAP by deceiving consumers when it ran ads for "free" tax products and services for which many consumers were ineligible.

The company ran widespread advertisements promoting supposedly "free" products, which often repeatedly use the word "free" to mislead consumers into thinking they could file their taxes for free. However, the "free" service is not accessible to most taxpayers, including individuals receiving a 1099 form for gig economy work or earning farm income.



Enforcement Action

The final order:

- ❗ Prohibits falsely advertising services as "free" without disclosing which consumers qualify
- ❗ Mandates clear disclosure of all conditions for "free" services
- ❗ Allows limited exceptions for space-constrained ads, requiring a link to full terms
- ❗ Forbids misrepresenting facts about products or services, including price and necessity

Another tax preparation company deceptively marketed products as “free” and unfairly deleted consumer data

Regulatory Agency: Federal Trade Commission (FTC)

Total Penalty Amount: n/a

Regulatory Issue(s): FTC Act, UDAAP, Dark Patterns

Summary: The FTC took action against another tax preparation company for unfairly deleting consumers’ tax data and requiring them to contact customer service when they downgrade to more affordable online products, and deceptively marketing their products as “free” when they were not free for many consumers.

The products offered by the company pushed consumers towards more expensive products designed for complex tax filings and did not provide clear explanations regarding which products cover which forms, schedules, or tax situations, which caused many consumers to begin their tax returns in unnecessarily expensive products. When these consumers later realized they didn't need or want those expensive products, the company made it difficult for them to downgrade by imposing a series of time-consuming challenges. Its system would delete all the tax data consumers have entered, requiring them to start their tax return from scratch, creating a significant disincentive to downgrading. This stands in contrast to the upgrade process, where consumers’ data seamlessly moves to the more expensive product instantly.

The company also ran a number of advertisements on TV and online promoting that consumers can file for “free” with the company. The ads contain language saying—sometimes only in fine print—that the “free” offer applies only to “simple returns.” The ads, however, do not explain what a “simple return” is, and the company changed its definition of a “simple return” multiple times in recent years.



Another tax preparation company deceptively marketed products as “free” and unfairly deleted consumer data (continued...)



Enforcement Action

This case is still pending, but under the order, the company:

- ❗ Must stop making the process of downgrading more complex than upgrading
- ❗ Must provide clear instructions for downgrading products
- ❗ Cannot claim a product or service is “free” if it isn't
- ❗ Is forbidden from misrepresenting any important facts about products or services, including costs and any material restrictions or policies
- ❗ Is required to submit regular compliance reports to the FTC
- ❗ Must maintain specific records, including financial details, personnel involved in compliance, consumer complaints, research related to the enforcement action, and marketing materials related to the enforcement action's scope

PERFORMLINE PERSPECTIVE

Phrases like:

**“free,”
“instant,” and
“guarantee”**

are among the top terms most commonly flagged and remediated within the PerformLine platform.

As demonstrated by the above enforcement actions, these terms—especially when used in marketing materials across social media, the web, or other collateral—signal a potential UDAAP compliance issue because they often lead to false expectations for the consumer.


It's crucial for companies to not only “fix” their marketing materials in response to regulatory feedback, but to also to implement robust monitoring processes to ensure that no other compliance issues slip through the cracks.

Five companies hit with cease and desist orders for misleading representations about deposit insurance

Regulatory Agency:	Federal Deposit Insurance Corporation (FDIC)
Total Penalty Amount:	n/a
Regulatory Issue(s):	The Federal Deposit Insurance Act

Summary: The FDIC took action against five entities for false and misleading statements and advertising related to FDIC insurance, including suggesting they are FDIC-insured, misusing the FDIC's name or logo, misrepresenting the nature or extent of deposit insurance, and/or failing to clarify their relationship with insured depository institutions for customer deposits.


The Federal Deposit Insurance Act says that FDIC-associated terms or images may not be used in marketing and advertising materials to inaccurately imply or represent that any uninsured financial product or non-bank entity is insured or guaranteed by the FDIC.


Enforcement Action

The cease and desist orders require the companies to:

- ! Take immediate corrective action to address false or misleading statements

PERFORMLINE PERSPECTIVE



Especially for banks partnering with fintechs, it's important to have oversight into their marketing materials to ensure that they're in compliance with not only the The Federal Deposit Insurance Act, but all other applicable regulatory requirements and brand guidelines.

The use of automated marketing compliance technology—like PerformLine—can help banks identify compliance issues across partners at scale and significantly increase overall efficiency

National bank engaged in mortgage redlining

Regulatory Agency: DOJ and North Carolina Attorney General

Total Penalty Amount: \$13.5M

Regulatory Issue(s): Redlining, Fair Lending

Summary: The DOJ and North Carolina Attorney General took action against a national bank for engaging in lending discrimination by mortgage redlining predominantly Black and Hispanic neighborhoods in North Carolina.

The bank failed to provide mortgage lending services to predominantly Black and Hispanic neighborhoods and discouraged people seeking credit in those communities from obtaining home loans. The bank relied on mortgage loan officers working out of predominantly white areas to generate loan applications and the bank did not track how its mortgage loan officers developed loan referrals or how they distributed the bank’s mortgage marketing materials.



Enforcement Action

The consent order requires the bank to:

- ❗ Invest \$13.5 million to boost credit opportunities in communities of color
- ❗ Invest over \$11.75 million in a loan subsidy fund for home mortgage, improvement, and refinance loans
- ❗ Allocate \$1 million for community partnerships to offer services around credit, financial education, homeownership, and foreclosure prevention
- ❗ Open three new branches in predominantly Black and Hispanic areas, with a mortgage banker in each
- ❗ Appoint a director of community lending to oversee lending development in communities of color
- ❗ Engage independent consultants to improve the fair lending program and assess community credit needs
- ❗ Evaluate fair lending compliance systems and conduct staff training

Expert Insights

Notable quotes and takeaways from seasoned industry professionals.



Compliance monitoring is key for successful bank-fintech partnerships.

“Real-time monitoring is a tangible way that regulators expect fintech, banks, and third parties to add value to their relationships.”

– Ed Greene, Esq., CRCM, Middlesex Federal Savings



Compliance is everyone’s responsibility.

“Every party in this bank-fintech ecosystem now needs to play a role in protecting the consumer and establishing a strong foundation of compliance from the start.”

– Alex Morris, PerformLine



Start investing in compliance early.

“Successful [companies] are the ones that spend time and investment in their compliance team and in the relationship building with their partners.”

– Elizabeth Gorz, American Fintech Council



Most Common Compliance Issues

How are these compliance issues identified?

PerformLine reviews, monitors, and flags hundreds of thousands of marketing assets each day for potential compliance violations.

PerformLine’s rulebooks are carefully curated collections of terms and phrases that are associated with specific compliance categories, regulations, laws, and guidelines that organizations use to monitor marketing content against to identify potential compliance violations at scale. These rulebooks cover everything from broad compliance concerns (like UDAAP) to industry or product-specific requirements.

The below compliance issues were the most commonly flagged and remediated within the PerformLine platform in Q1 of 2024

1. Disclosures

Disclosures include any information that lenders are required to include on their websites, social media profiles and posts, or other marketing materials regarding their products. Assets are flagged if any of the required disclosures are missing. This is most commonly identified in the mortgage industry but is applicable to other industries as well.

Common terms include:

Corporate ID, NMLS #s, Company URL

2. Offer Inflation

Offer inflation—also referred to as exaggerated claims—refers to statements that are not entirely truthful or accurate and are designed to make the product or service appear more attractive or valuable than it actually is

Common terms include:

Free, the best, discount, no fees

3. Instant Approval

“Instant approval” language includes any phrases that would imply that all consumers would be approved for a specific product immediately and without any barriers to approval. The compliance issue with “instant approval” is promising that not all consumers can be guaranteed to be approved for said product.

Common terms include:

Instant approval, immediate funding, approval in seconds

4. Brand Misrepresentation

Brand misrepresentation involves using deceptive or false language and terminology that misrepresents a brand’s attributes or product qualities. This is most commonly identified in the insurance industry but is applicable to other industries as well

Common terms include:

Safe, secure

5. Incentivization

Incentivization refers to the practice of offering rewards, discounts, or benefits to encourage consumers to apply for a financial product. This type of language could lead consumers to believe they are receiving greater financial benefits, such as savings or returns, than what is actually achievable or may obscure critical information about fees, risks, or eligibility criteria.

Common terms include:

Money, referral, survey

Compliance Benchmark Stats



1 in 5

assets monitored were flagged for potential compliance issues

In Q1 of 2024, PerformLine monitored 5.7M assets and flagged 1.1M of those for a potential compliance issue.

Assets refer to a specific marketing item or communication, such as a document, web page, social media post, email, call, or message.

When an asset is flagged, it means that the PerformLine platform has identified a potential compliance issue that needs to be reviewed and, if needed, remediated.

Some notable marketing channel-specific stats...

DOCUMENTS

97%

of documents reviewed by PerformLine were approved in less than 24 hours

[Learn more about Document Review](#)

ACROSS THE WEB

2 in 3

web pages monitored were previously unknown and discovered with PerformLine's Kraken Crawler

[Learn more about Web Monitoring](#)

SOCIAL MEDIA

84%

of social media posts flagged for compliance issues were on X, Facebook, or Instagram

[Learn more about Social Media Monitoring](#)

EMAILS

1 in 5

emails sent were flagged for a potential compliance issue

[Learn more about Email Monitoring](#)

CALLS

25%

calls monitored were flagged for a potential compliance or performance issue

[Learn more about Call Monitoring](#)

MESSAGES

24%

of messages, on average, were flagged for a compliance or performance observation

[Learn more about Message Monitoring](#)

Navigating Compliance Challenges with PerformLine

At PerformLine, our mission is to empower marketing and compliance leaders with the technology and knowledge to ensure that their organization and partners provide accurate and compliant information to consumers across any channel.

Here's how we're helping leading organizations mitigate marketing compliance risk while increasing efficiency:



TIME SAVINGS

on hours spent manually searching and reviewing marketing materials for compliance.



COST SAVINGS

by identifying compliance issues and allowing for quick remediation before they turn into investigations enforcement actions



AUTOMATED DISCOVERY

of unknown brand mentions, product promotions, across marketing channels to find potential compliance issues



COMPREHENSIVE COVERAGE

and oversight across marketing channels, products, and partners at scale through automated technology

Get ahead of emerging compliance risks and challenges with PerformLine.

Get a Personalized Demo