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Bank ‘mystery shoppers’ can help ensure adherence to abusive practice rules, expert says

By Guest Contributor

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By Ted Knutson

WASHINGTON/NEW YORK, April 17 (Thomson Reuters Accelus) - The use of “mystery shoppers” and focus groups to test the compliance of bank employees has broadened beyond the traditional topic of lending discrimination to now include uncovering and avoiding violations of unfair, deceptive and abusive practice, an industry consultant said.

Paul Lubin said such testing can raise bank revenue as well as help to insure employees are adhering to rules. “Testing helps the product people sell products that are appropriate, which can increase customer loyalty and result in referrals. At the same time regulators are very interested in knowing institutions have programs in place that can detect any instances of abusive and deceptive sales practices,” said Lubin who has been active in compliance testing at financial companies for over 30 years.

In that time, he said testing has broadened from testing and preventing Equal Credit Opportunity Act and Fair Housing Act discrimination to uncovering and avoiding unfair, deceptive and abusive practices (UDAP) violations.

The new U.S. Consumer Financial Protection Bureau has pledged that it would crackdown on unfair, deceptive and abusive practices by lenders under its jurisdiction, and covered the topic extensively in its [Supervision and Examination Manual](#). The Dodd-Frank regulatory reform act added the concept of abusive practices to those of unfair and deceptive practices covered by earlier consumer protection legislation.

For UDAP testing, Lubin said best practices include both focus groups and mystery shoppers.

He recommended conducting focus groups for a new and current products to find out whether the customers understand them and whether the disclosures in the materials were clear and if the products are meeting their needs.

“If the needs are not being met, it is a chance to discover where the gaps are,” Lubin said.

Mystery shoppers first started being used by bank compliance departments in the early 1990s to spot home-lending discrimination and this type of testing is still being used today, Lubin said.

This testing typically involves “matched pairs” of shoppers with similar economic profiles but of differing race, gender or other characteristic who go to the same loan officer or same branch in search of a mortgage.

After the mystery shopping is conducted, Lubin said a debriefing session is held on the results with compliance officials, attorneys and senior bank personnel.

The information obtained from mystery shoppers by a compliance department in Equal Credit Opportunity Act testing cannot be used in a lawsuit against a bank if corrective action is taken.

Corrective action, said Lubin, can include enhanced training, review of consumer protection laws and requiring loan officers to use checklists to insure consistent treatment of potential customers.

When using mystery shoppers to identify unfair, abusive and deceptive practices, the testers aim to see whether a individual failed to receive a full disclosure on charges, was misled about the terms, was steered to an unsuitable product or subjected to other abusive and misleading sales practices, Lubin said.

Matched pairs can be used in UDAP testing since there may be an overlap between UDAP and housing discrimination.

For example, the expert noted minorities might be subjected to higher fees and interest rates though not informed about them, while similarly situated non-minorities are told about the exact charges and given less expensive rates and other more favorable terms.

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