



CFPB Advises Consumer Lenders to Comply with Fair Lending Laws when Making Credit Exceptions

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On May 22, 2014, the Consumer Financial Protection Bureau (CFPB) issued an edition of its *Supervisory Highlights* that includes eight suggested steps to take to avoid fair lending violations when granting credit exceptions. These suggestions fall short of being clear guidelines. Rather, the CFPB indicates the type of compliance program that it finds acceptable. In sum, the CFPB expects (1) written credit exception policies; (2) a policy on the documentation of the reasons for the credit exception that is "at a minimum, sufficient to effectively monitor compliance with the exceptions policies;" (3) a record retention policy that "should, at a minimum, correspond with the record retention obligations of Regulation B;" (4) the monitoring of compliance with the policies; (5) compliance audits; (6) corrective action; (7) training and (8) management and/or board oversight. Importantly, the mere existence of such policies and procedures may not avoid an enforcement action by the CFPB as the CFPB determines whether a policy meets its interpretation of the law and if there has been adequate compliance with the policies and procedures. Certainly, the absence of any of the enumerated policies and procedures will be a significant problem as will be the adoption of policies that are not followed. Finally, this pronouncement by the CFPB recognizes that many lenders do not have optimal policies or procedures in place and is a forewarning of enforcement activity in the future related to fair lending.

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