

Introduction to bank account screening consumer reporting agencies (CRAs)

What is a bank account screening consumer reporting agency (CRA)? It is a database that contains information about a consumer's history dealing with bank accounts. Bank account screening CRAs mostly include information on negative events, such as having an account closed due to too many overdrafts or nonsufficient funds (NSF) transactions, or, in rare cases, fraud. These databases might also include personal identifying information, driver's license numbers, history of check orders, and checks to retailers that were returned for insufficient funds.

The two most prominent bank account screening CRAs are: ChexSystems and Early Warning Services. ChexSystems is a subsidiary of Fidelity National Information Services (FNIS), a large multinational conglomerate. Early Warning Services is a company that is jointly owned by Bank of America, BB&T, Capital One, JPMorgan Chase, and Wells Fargo.

How banks use account screening CRAs

Over 80 percent of banks use a bank account screening CRA to decide whether to allow a consumer to open a checking or savings account. A bank employee will obtain information about the consumer at the time the consumer applies to open an account. The bank might simply use the consumer's history from a bank account screening CRA, or it might obtain a score that is calculated based on that history, such as ChexSystems Qualifile score. These scores will sometimes be based on more than information from the account screening CRA, such as credit or public records information. Negative histories from account screening CRAs pose a barrier, sometimes insurmountable, for millions of consumers to open a bank account.

Regulation of account screening CRAs

Bank account screening CRAs are regulated as "consumer reporting agencies" under the Fair Credit Reporting (FCRA). As such, they are subject to the FCRA requirements for accuracy, investigating disputes, providing consumers with access to their reports, and several other legal obligations. Banks that use account screening reports are considered "users" of consumer reports and must provide notices under the FCRA when they rely on the information in those reports to deny consumers a bank account. When banks provide information to account screening CRAs, they are considered "furnishers" of information and subject to duties under the FCRA, such as requirements for accuracy, investigating disputes, and notifying CRAs when information is disputed.

The CFPB has supervisory and enforcement authority over any account screening CRAs that is a "larger participant" in the consumer reporting industry, defined as CRAs that earn over \$7 million annually by selling consumer reports. ChexSystems is almost certainly a "larger participant" and Early Warning Services may be as well.

¹ The Consumer Financial Protection Bureau has estimated that 6% of bank accounts that were open during a one-year period were involuntarily closed, and that these consumers are likely to be rejected for new accounts at many financial institutions. CFPB Study of Overdraft Programs: A white paper of initial data findings (June 2013), p.24, available at http://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf. A company that helps process online account applications has estimated that 2.3 million consumers were denied accounts in 2012. Blake Ellis. "Bank Customers - You're Being Tracked." CNN, Aug. 16, 2012, at <http://money.cnn.com/2012/08/16/pf/bank-account-history> (citing Andera, a software provider for banks and noting "The estimate is based on Andera's rejection rate and nationwide online application data. And it doesn't include applications rejected in bank branches -- where most people apply for accounts.")

The role of overdraft in account screening

The vast majority of account closures reported to account screening CRAs are due to overdrafts or NSF transactions. Many consumers are shut out of opening bank accounts because they are labeled as having committed “account abuse” due to overdrafts. However, there has been significant controversy over bank overdraft practices, which cost consumers billions in fees every year, and thus it is questionable whether these consumers can really be considered to have “abused” their accounts.

In many cases involving debit card overdrafts, the amount of the overdraft fee exceeds the amount overdrawn, and thus any outstanding unpaid debt to the bank consists mostly of fees. The issues with debit card overdrafts were so significant that federal regulations were amended to require banks to obtain the consumer’s opt-in consent to them. Fees also may have been generated on the basis of practices that triggered or increased overdrafts, such as the practice of re-ordering transactions from largest to smallest in amount, which the FDIC has prohibited for the banks it regulates.

Lack of transparency and uniformity from both CRAs and furnishers

One of the concerns with account screening CRAs is the lack of transparency around standards. There appear to be no standardized definitions as to what constitutes “fraud” or “account abuse” versus other categories of negative events, and there is certainly no public information about such standards if they do exist. A lack of uniformity of terms means the system is inherently inaccurate as a cross-institution information system. CRAs, financial institutions that supply information, and those that use it must speak in the same language for the information to be accurate, useful, and fair, especially with respect to fraud designations.

There is also a lack of transparency in how banks use information from account screening CRAs. An FDIC study found that, for approximately half of all banks, the decision on whether to allow a consumer with a negative history to open account is left to the branch manager. However, there is no information on what criteria or guidelines that these branch managers consider, if any, in making this decision, again raising concerns about accuracy, utility, and fairness.

Identity theft, accuracy, and disputes

The underlying accuracy of information reported is also of concern, as is how it can be disputed. Consumers will often disagree with reported information. In addition, “suspected fraud” reports are often based upon identity theft, scams, or other theft. In such cases, banks that report the accounts of victims as “suspected fraud” sometimes fail to make clear that the consumer was the victim, not the perpetrator of the fraud.

Under the FCRA, consumers have the right to dispute errors in their consumer reports, either by contacting the CRA or the furnisher of the information (or, more advisably, both). Account screening CRAs are required to conduct a reasonable investigation when consumers dispute errors. Yet it appears from consumer complaints and lawsuits that account screening CRAs fail to conduct meaningful or substantive inquiries. In practice, the account screening CRAs appear to defer entirely to the reporting bank’s response to the consumer’s dispute. Banks are also required by the FCRA to conduct a reasonable investigation when responding to a consumer dispute, though, again, consumer complaints and lawsuits suggest a general failure to do so.

Furthermore, under the FCRA, a CRA must block any information that a consumer alleges and provides proper documentation is the result of identity theft. It is unclear whether account screening CRAs are properly blocking identity theft-related information from requesting banks.

² Rebecca Borné & Peter Smith, Center for Responsible Lending, *The State of Lending in America and Its Impact on U.S. Households: High-Cost Overdraft Practices* (July 2013), available at <http://www.responsiblelending.org/state-of-lending/reports/8-Overdrafts.pdf>

³ FDIC Survey of Banks’ Efforts to Serve the Unbanked and Underbanked, December 2008, at 11. See also 2011 FDIC Survey of Banks’ Efforts to Serve the Unbanked and Underbanked, December 2012, at p 18 and Appendix A, p 51-53.

Impact for consumers unable to open accounts due to account screening CRA negative reports

Consumers who cannot open mainstream bank accounts due to negative histories at account screening CRAs are generally shut out of the mainstream banking system, though there are limited options, such as “second chance” checking accounts. Some of these accounts offer educational programs that the consumer must complete in order to open an account, such as:

- **Get Checking accounts** offered by the University of Wisconsin Cooperative Extension.
- **Fresh Start accounts** offered in partnership with the University of Florida IFAS Duval Extension, Real Sense Prosperity Campaign, and Bank On Jacksonville.

Such options are helpful for CRA-impacted consumers, but limited in availability. In 2011, only one in four banks reported they offered “second chance” accounts. However, a number of banks and other institutions have recently announced new offerings that may be more widely available, including:

- **Union Bank** offers a checkless bank account, and will open accounts for consumers with negative histories on account screening CRAs, as long as the negative history is not categorized as fraud.
- **GoBank** offered by GreenDot and available at WalMart stores. These accounts do offer checks, and they use mobile banking tools to prevent overdrafts. GoBank does not use account screening CRAs to deny applicants based on overdraft or NSF history.
- **Capitol One Bank** has committed, under the terms of an agreement with the New York Attorney General, to use account screening CRAs to only screen applicants for fraud, and not reject applicants on the basis of “account abuse.”
- **“Checkless” bank accounts.** A number of other banks have begun offering accounts that do not have paper checks or permit debit card overdrafts. However, it is unclear whether they use account screening CRAs to deny applicants based on overdraft or NSF history.

Conclusion

Given increasing attention from regulators, consumer advocates, prominent media outlets, and banking access programs, account screening CRAs and banks will likely need to address the concerns detailed in this Issue Brief, through voluntary reform, government regulation, or both.

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October 2014