
CFPB Issues Broad Policy Statements Regarding Consumer Checking Accounts and Overdrafts

By Joann Needleman / Feb 04, 2016

On Wednesday, February 3, 2016, the Consumer Financial Protection Bureau (CFPB or Bureau) issued a press release that outlined significant policy initiatives surrounding consumer checking accounts. These initiatives included a letter sent from Director Richard Cordray to the 25 largest retail banks encouraging them to market and make available "lower-risk" deposit accounts in order to assist consumers in avoiding overdrafts. The CFPB also issued a bulletin warning banks and credit unions that the failure to accurately report negative account histories to credit reporting companies could result in Bureau action. Finally, the CFPB released several written consumer guides to assist consumers in choosing a "lower-risk" account, in managing their existing checking account, and in providing information when they are denied access to a checking account by a financial institution.

Checking Account Products and Overdrafts

The primary theme articulated in the CFPB's statements and materials make very clear that banks and credit unions must do more to divert consumers away from deposit accounts that permit them to spend more than their balance permits. The Bureau indicates that it wants banks to achieve this directive in two ways:

- **Offer Lower Risk Products:** Offer accounts that do not provide for overdrafts and/or do not charge overdraft fees; and
- **Market & Advertise:** If the bank offers these products, to do a better job in letting consumers know about them.

The Bureau also provided consumers with information and resources, including sample questions to ask financial institutions when shopping for lower-risk deposit accounts including pre-paid accounts that do not extend beyond their account balance.

Account Reporting

The secondary theme relates to the reporting of negative account histories to credit reporting agencies. The Bureau issued a clear warning today that both bank and credit unions "must have systems in place regarding accuracy when they pass on information, such as negative account histories" to the reporting agencies. The Bureau also issued consumer guides to assist consumers when they have been denied a deposit account, have an account involuntary closed, or how to dispute negative account information. These guides include sample letters to financial institutions as well as information on obtaining a copy of their checking account history.

While the mandates above are not found in any statute, rule or consent order, bear in mind it begs the question of whether there will be consequences for a financial institution that fails to institute the "CFPB's suggestions." Banks and credit unions, that do not offer these low-risk products, will need to seriously consider and analyze how and in what manner they will be required to do so. Will the failure to offer these products or market them in a way as recommended by the CFPB constitute an unfair, deceptive or abusive act or practice (UDAAP)? Does the offering of these products create a safety and soundness risk? These and other questions suggest that financial institutions will need to do an immediate risk assessment of their policies and procedures regarding account reporting to ensure compliance not only with the Fair Credit Reporting Act but with UDAAP as well.

Finally, it appears that the CFPB has not considered the implications for those who may be on the receiving end of a check drawn on an overdrawn account or that some states have criminal penalties for the passing of "bad checks." Overdraft protection was put in place to avoid these situations. Now it appears all but the consumer bear the burden.

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