

Client Alert

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Bureau Tells Banks to Offer Overdraft-Free Accounts, Sends Warning on Reporting

By Oliver I. Ireland, Rick Fischer and Amanda J. Mollo

On February 3, 2016, the Consumer Financial Protection Bureau (CFPB or “Bureau”) announced a series of steps designed to improve consumer access to checking accounts by (a) encouraging banks and credit unions to make available and widely market “lower-risk accounts that help consumers avoid overdrafts”; (b) warning banks and credit unions that failure to meet accuracy obligations when reporting negative checking account histories to consumer reporting agencies (CRAs) could result in Bureau actions; and (c) providing consumers with several consumer guides to help them navigate the deposit account system. The announcements included a [press release](#), prepared [remarks](#) of CFPB Director Richard Cordray at a field hearing on checking account access, a [letter](#) to the CEOs of the top 25 retail banks in the United States, a compliance [bulletin](#), and three consumer guides. Additionally, the CFPB published a [blog post](#) to distribute its consumer guides, as well as sample letters consumers may use to contact banks, credit unions, or deposit account reporting companies with disputes regarding allegedly inaccurate information.

LOWER-RISK DEPOSIT ACCOUNTS

In a letter to each of the top 25 retail banking companies, Director Cordray urged these companies to offer an account that would present lower risk to the banking organization because it did not allow overdrafts. Director Cordray believes that such an account would require less screening for risk and therefore would be more widely available to the estimated 10 million “unbanked” Americans. Director Cordray recognized in his [remarks](#) that “a majority of customers seem to be well served by the deposit accounts now offered at virtually all financial institutions,” and the press release acknowledged that “[a]lmost nine out of 10 American households have at least one checking account, and many also maintain a savings account.” Nevertheless, Director Cordray stated in the letter that he was urging all financial institutions to make lower-risk accounts broadly available.

In addition to stating that many smaller institutions offer such no-overdraft accounts, Director Cordray noted that, among the top 25 retail banks the CFPB surveyed, 15 offered no-overdraft accounts and 10 appeared not to offer such a product.

CONSUMER REPORTING

The CFPB’s announcements included a [compliance bulletin](#) on furnisher compliance with reporting obligations under the Fair Credit Reporting Act (FCRA) and its implementing Regulation V when reporting information to deposit account CRAs. The compliance bulletin summarizes existing obligations under the FCRA and Regulation V, and provides nonbinding guidance on factors that the CFPB considers in the exercise of its supervisory and enforcement authority in assessing compliance with these obligations. The compliance bulletin also emphasizes that, under Regulation V, furnishers must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of information provided to CRAs.

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Specifically, the compliance bulletin states that policies and procedures regarding the accuracy of information furnished to CRAs must be “appropriate to the nature, size, complexity, and scope of each furnisher’s activities,” and must be subject to periodic review and update. The policies and procedures also must consider the appropriate approach to furnishing information to both nationwide CRAs and nationwide specialty CRAs, since the “type, frequency, and nature” of the information furnished may vary. The CFPB also warned that some financial institutions are not in compliance with their obligations under Regulation V regarding the furnishing of information to specialty CRAs, and said that the CFPB will monitor furnishers’ compliance and take appropriate actions to address violations as necessary.

CONSUMER RESOURCES

The CFPB also published three consumer guides and a [blog post](#) that includes sample letters consumers may use to contact banks, credit unions or deposit account reporting companies with disputes regarding allegedly inaccurate information furnished to CRAs.

- The first consumer guide, on [selecting](#) a lower-risk account, warns consumers about potential fees associated with checking accounts and prepaid accounts, such as overdraft fees and fees for a negative balance. The consumer guide recommends that consumers shop around for lower-risk products, such as those that do not authorize spending beyond the amount in the account.
- The second consumer guide, on [managing](#) a checking account, emphasizes the importance of good checking account management. The consumer guide offers tips for reducing fees on checking accounts and prepaid accounts, such as qualifying for monthly service fee waivers, keeping track of account balances and outstanding payments, and avoiding overdraft fees.
- The final consumer guide, on what to do when [denied](#) a checking account, explains that consumers may have a rating from a deposit account rating agency that may be used by a bank or credit union in evaluating whether to open a new account for the consumer. The consumer guide also explains that consumers have rights under the FCRA to dispute information on a consumer report and cause the rating agency to investigate their dispute, and suggests that consumers with accurate negative account histories might consider prepaid accounts to manage their finances.

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