

Account Screening Consumer Reporting Agencies

A BANKING ACCESS PERSPECTIVE



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The CFE Fund supports municipal efforts to improve the financial stability of households by leveraging opportunities unique to local government. By translating cutting edge experience with large scale programs, research, and policy in cities of all sizes, the CFE Fund assists mayors and other local leaders to identify, develop, fund, implement, and research pilots and programs that help families build assets and make the most of their financial resources.

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Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. **www.nclc.org**

ABOUT BANK ON

Bank On coalitions are locally-led partnerships between local public officials; city, state and federal government agencies; financial institutions; and community organizations that work together to help improve the financial stability of unbanked and underbanked individuals and families in their communities. The Bank On national initiative builds on a grassroots movement of dozens of coalitions in cities across the country, offering national account standards, capacity grant support, pilot funding, and a learning community. These first-generation banking access programs have already connected hundreds of thousands of people to safe and affordable accounts. In addition to connecting unbanked individuals to accounts, Bank On programs raise public awareness, target outreach to the unbanked, and expand access to financial education.

ACCOUNT SCREENING CONSUMER REPORTING AGENCIES

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A JOINT REPORT BETWEEN THE NATIONAL CONSUMER LAW CENTER
AND THE CITIES FOR FINANCIAL EMPOWERMENT FUND

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EXECUTIVE SUMMARY

Access to safe and affordable financial products and services is a cornerstone of financial empowerment: this access allows consumers to secure their income and build and grow their assets. However, there are almost 17 million unbanked Americans who do not have bank accounts. These consumers incur higher costs — estimated at up to \$40,000 over a lifetime — by using alternative financial services, sometimes predatory, to handle their routine transactions, and often are not able to take advantage of savings and asset building opportunities. Worse, unbanked consumers, who can least afford those additional costs, often are shut out of accessing these products because of controversial and loosely-regulated bank account screening consumer reporting agencies (“account screening CRAs”). This report explains how bank account screening reports are created and used, identifies their key challenges, and explores potential strategies for improvement and reform.

Account screening CRAs, relied upon by the vast majority of United States-based banks and some credit unions, were originally intended as a means for financial institutions to warn and be warned by industry colleagues about fraudulent bank clients, but have evolved into a substantial barrier to mainstream banking access. Over 80% of banks use reports produced by an account screening CRA to decide whether to allow a consumer to open a checking or savings account. The two most prominent account screening CRAs are ChexSystems and Early Warning Services. These companies own and operate databases that receive and report information, mostly negative, about a consumer’s banking history. While there are no national statistics on the number of consumers blocked from account access by account screening CRAs – which is a concern in and of itself - estimates show that the population affected is substantial. In theory, these agencies provide important information for financial institutions about bad actors who knowingly commit fraud; but, in reality, the vast majority of negative reports refer to customer behavior not rising to the level of fraud, such as overdrafts or so-called “account mismanagement.” This is especially troubling given the role that bank policies can play in creating or exacerbating overdraft fees.

As negative screening reports pose an often-insurmountable barrier for millions of consumers who want to open bank accounts, they are increasingly the subject of regulatory and enforcement attention. Account screening CRAs are subject to the Fair Credit Reporting Act (FCRA) and its requirements for accuracy, dispute investigation, and providing consumers with access to their reports, among other legal obligations. Banks that use account screening reports and provide information to account screening CRAs also have legal obligations under the FCRA, including: accuracy in reporting, dispute investigation; consumer notice, and CRA dispute notification. The Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC) both have responsibility for enforcing FCRA requirements. The CFPB has signaled its intention to examine this issue more closely, with the potential for regulatory action. Additionally, state enforcement agencies like the New York Attorney General have achieved settlements with financial institutions regarding their usage of these CRAs.

And financial institutions, themselves -- who either use ChexSystems as a client or who are one of the cooperative owners of EWS -- publicly have indicated their dissatisfaction with the bank screening CRAs as they currently operate.

There are five primary areas of concern about these CRAs and their use by financial institutions.

First and foremost, **accuracy**. While “accuracy” is required in general terms by the FCRA, financial institutions who use account screening CRAs and the consumers whose reports are contained in them, cannot fully trust the information they include. Victims of identity theft, scams, or other forms of fraud on prior accounts are often mistakenly identified as the perpetrator of the fraud.

Second, **consistency**. Account screening CRAs lack standardized definitions of what constitutes “fraud,” “account abuse,” or other negative events, and when to report them. This leads to inconsistency of information across financial institutions, and even among branches within them, as banks both report events differently and are unsure how to interpret the reports they receive.

Third, **proportionality**. For some financial institutions, a negative account screening report results in an automatic denial of any account, instead of a more proportionate response based on the size or frequency of overdrafts or whether they were repaid. These consumers are not offered alternatives that might be more appropriate for their history, such as bank accounts that do not permit overdrafts.

Fourth, **transparency**. How banks both report and use information from account screening CRAs remains largely mysterious outside of the institutions themselves. Also unclear is the extent to which such reports are made, and used. Consumers and consumer advocates have also raised concerns about difficulty obtaining copies of their reports.

Finally, **error resolution**. Although the FCRA requires both account screening CRAs and financial institutions to conduct a “reasonable investigation” in response to consumer complaints, this often appears to be lacking. Based on consumer complaints, it seems that financial institutions and account screening CRAs often fail to conduct meaningful or substantive investigations when a consumer lodges a dispute.

There are a number of opportunities for account screening CRAs and financial institutions to improve how consumer banking information is reported and used, as well as a host of reforms that might come from government regulators.

Self-reforms by account screening CRAs could include establishing consistent definitions and reporting standards; fully conducting reasonable investigations; and correcting or blocking inaccurate information. Self-reforms on the part of financial institutions include limiting account denials to only consumers with a history of actual and narrowly-defined fraud or permitting consumers with negative histories to open bank accounts with certain conditions that are an appropriate, proportionate response to their banking history.

Regulatory reforms could include establishing consistent, narrow definitions and reporting standards, reflected in an industry-adopted “data dictionary”; giving consumers clear, transparent standards on how banks will respond to negative events; and regulatory guidance on accuracy and error resolution issues.

While the current approach to account screening CRAs has long presented significant challenges for those working to expand banking access, it is encouraging to see these issues surface and begin to be addressed in both the banking and regulatory sectors. There is momentum behind both self-reform and regulatory enforcement strategies that will help safely expand access for millions of people in need.

REPORT

THE IMPORTANCE OF BANKING ACCESS

Concerns about account screening CRAs stem from the significant barrier they represent for consumers, especially those with low incomes, to access mainstream bank accounts. This affects a wide swath of the population: there are almost 17 million Americans who do not have bank accounts, and over 50 million who have a bank account but also rely on alternative financial services, such as money orders, check cashers, and prepaid cards to meet their needs.¹

What is preventing these consumers from opening a bank account? Some do not want to open an account, because they are concerned about meeting minimum balance requirements, or feel that the fees are too expensive. Other consumers have a mistrust of banks. However, a significant number of consumers are prevented from opening a bank account because they have a negative report from an account screening CRA.

For many people, life without a bank account is unimaginable. We write checks to pay the rent or mortgage, we use debit cards every day to make purchases, and receive our paychecks by direct deposit. But for consumers without a bank account, these everyday tasks are complicated and costly. Unbanked consumers who rely on alternative financial services must pay to access their own money, are charged for every transaction—at costs estimated at up to \$40,000 over a lifetime for check cashing fees alone²—and have limited opportunities to save. Those with mainstream bank accounts, as compared to those without, tend to keep more of their earnings, fare better against financial shocks, and save more.³ A mainstream bank account also helps to formalize savings and asset building opportunities, an important foundation towards long-term financial stability, and can help consumers access safe credit vehicles.

Many of the consumers who are shut out of bank accounts because of account screening CRAs end up using other, costlier forms of payment. A Pew study found that 26% of prepaid card users without checking accounts indicated that they use prepaid products because, among other reasons, they would not be approved for a checking account.⁴ In addition, a third of this population reported that they had a bank account that was closed due to overdraft fees.⁵

DEFINING ACCOUNT SCREENING CRAs

A bank account screening consumer reporting agency (CRA) owns, and provides reports from a database that contains information about a consumer's history in dealing with bank accounts. An account screening report mostly includes information about negative events, such as suspected fraud or account closures due to overdrafts or nonsufficient funds (NSF) transactions. They generally do not include items of positive information, such as how long a consumer has held a bank account without incident. Account screening CRAs 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 (EWS). ChexSystems is a subsidiary of Fidelity National Information Services (FIS), a large multinational conglomerate.⁶ Early Warning Services is a company that is jointly owned by Bank of America, BB&T, Capital One, JPMorgan Chase and Wells Fargo.⁷ There may be additional bank account screening CRAs; the fact that this is unknown underscores the opacity of these systems.⁸

BANK USAGE OF ACCOUNT SCREENING REPORTS

Financial institutions are both users and providers (known as “furnishers” under the FCRA) of information in account screening CRAs. Institutions use account screening CRAs to provide information, almost exclusively negative, on their existing accountholders for use by other financial institutions that are customers of account screening CRAs.

Banks also use account screening CRAs to make account opening decisions. According to an FDIC survey, over 80% of banks use a bank account screening CRA to decide whether to allow a consumer to open a checking or savings account.⁹ If a consumer has a negative report from an account screening CRA, about 25% of banks will automatically reject them for a bank account. Another 50% of banks will require the decision of a branch manager to permit a consumer with a negative report to open a bank account.¹⁰

A bank might simply use the consumer’s report from a bank account screening CRA to assess whether or not to open a new account, or it might obtain a scoring product, such as ChexSystems’ QualiFile score. The QualiFile score is a credit score-like product that tries to predict consumer behavior and the likelihood that an applicant’s account will “go bad” within the year.¹¹ FIS advertises the QualiFile score as a way to automate the bank account opening decision process through providing a score to quantify risk. Scores used in products such as QualiFile will sometimes be calculated based on factors such as credit history or public records information in addition to checking account history.¹²

These screening service agencies, relied upon by the vast majority of U.S.-based banks and some credit unions, were originally intended as a means for financial institutions to warn and be warned by industry colleagues about fraudulent bank clients but have evolved into a broader, substantial barrier to mainstream banking access.

THE GROWTH OF ACCOUNT SCREENING CRAs AND THEIR IMPACT ON CONSUMER BANKING ACCESS

While there are no national statistics on the number of consumers blocked from account access by account screening CRAs – an opacity which itself is of concern – estimates show that the population affected is substantial. An FDIC study found that, of those unbanked consumers who previously had a bank account, 10% reported that the reason they were unbanked was due to a history of previously closed accounts. An additional 5.5% reported they were unable to open an account due to “credit” or identification issues.¹³ ChexSystems’ parent company, FIS, has estimated that 5% of applicants cannot qualify for an account at all.¹⁴ The Consumer Financial Protection Bureau (CFPB) estimated that 6% of bank accounts that were open during a one-year period were involuntarily closed, and that these consumers were likely to be rejected for new accounts at many financial institutions.¹⁵ This has significant results for millions of consumers: one company that helps process online account applications has estimated that 2.3 million online applicants were denied accounts in 2012 alone, based on their account screening CRA report.¹⁶

Given the significant consequences of being shut out of the financial mainstream, there has been an increased focus on bank account screening CRAs and the practices of banks that use them. While account screening is certainly a tool to catch bad actors who commit fraud—such as knowingly writing bad checks that cannot be cashed, or depositing fraudulent checks—in practice, account screening has come to embody negative reports on customer histories that do not rise to the level of fraud. These reports mainly reflect account overdrafts or non-sufficient funds transactions (termed “NSF”), which make up the vast majority of account closures reported to account screening CRAs. In fact, according to a study by Harvard Business School, researchers estimated that only 2.5% of account closures are due to fraudulent activities; the remaining 97.5% are caused by overdrafts.¹⁷ Similarly, an FDIC survey of banks found that about two-thirds of banks cited “negative screening hit due to

prior account closure or mismanagement” as the most common reason for denying an application for a checking account, while only 3% cited fraud as the most common reason.¹⁸

Overwhelmingly, then, consumers are prevented from opening bank accounts due to a prior history of overdrafts, not fraud. This is even more troubling given that bank policies and practices, themselves, often trigger or exacerbate these overdrafts.

OVERDRAFTS, PAYDAY LOANS ... AND FAIRNESS

There has been significant controversy and ensuing regulations regarding financial institutions' overdraft policies and practices, which represent costs to consumers of billions of dollars in fees every year.¹⁹ The issues with overdrafts are so significant that federal regulations now require banks to obtain the consumer's opt-in consent to some of them; opt-in consent is required for one-time debit and ATM transactions, but still not required for check and ACH (electronic payments debited directly from a consumer's checking or savings account for bill payment) overdrafts.²⁰ Bank policies and practices that have been cited as exacerbating overdrafts or result in overdraft fees include:²¹

- promoting overdrafts to consumers, and encouraging them to use overdrafts as a source of credit;
- eliminating or downplaying safer forms of overdraft protection, such as overdraft lines of credit and links to savings accounts;
- unduly or even deceptively pressuring consumers to opt in to debit card and ATM overdrafts;
- extending overdrafts to debit and ATM card transactions, where previously transactions had been declined without a fee;
- re-ordering checks and other debits from high-to-low amount when internally processing in order to maximize the number of overdraft fees that are charged (the FDIC has prohibited this practice for the banks it regulates) *see table below*;
- imposing overdraft fees that far exceed the costs of overdrafts to the bank, and represent a substantial profit; and
- imposing “sustained” overdraft fees if the overdraft is outstanding for a certain period of time.

SCENARIO A: CHRONOLOGICAL ORDERING OF CHARGES

Transaction	Charge	Account Balance	Average Overdraft Fee
		\$750	
Credit card payment - ACH	\$90	\$660	
Water bill - check	\$30	\$630	
Groceries purchase - debit card	\$65	\$565	
Gas purchase - debit card	\$25	\$540	
Lunch purchase - debit card	\$10	\$530	
Drugstore purchase - debit card	\$15	\$515	
Family gym fees - check	\$40	\$475	
Coffee purchase - debit card	\$8	\$467	
Bookstore purchase - debit card	\$10	\$457	
Rent - check	\$600	\$(143)	\$34
TOTAL OVERDRAFT LOANS		\$(143)	
TOTAL OVERDRAFT FEES			\$34
Balance with fees deducted		\$(177)	

SCENARIO B: HIGH-DOLLAR ORDERING OF CHARGES

Transaction	Charge	Account Balance	Average Overdraft Fee
		\$750	
Rent - check	\$600	\$150	
Credit card payment - ACH	\$90	\$60	
Groceries purchase - debit card	\$65	\$(5)	\$34
Family gym fees - check	\$40	\$(45)	\$34
Water bill - check	\$30	\$(75)	\$34
Gas purchase - debit card	\$25	\$(100)	\$34
Drugstore purchase - debit card	\$15	\$(115)	\$34
Lunch purchase - debit card	\$10	\$(125)	\$34
Bookstore purchase - debit card	\$10	\$(135)	\$34
Coffee purchase - debit card	\$8	\$(143)	\$34
TOTAL OVERDRAFT LOANS		\$(143)	
TOTAL OVERDRAFT FEES			\$272
Balance with fees deducted		\$(415)	

Eric Halperin and Peter Smith, Center for Responsible Lending, Out of Balance (July 2007)

These policies have a real effect on consumers, raising serious issues of fairness and the effectiveness of account screening CRAs that flow from them. As noted, many consumers would not have ended up overdrawing their accounts, or overdrawing their accounts by as much, if not for institutional practices that promote and maximize overdrafts. The fees themselves can be prohibitive for purposes of repaying or settling the overdraft, piling up and overwhelming consumers' ability to pay. In addition, overdraft fee-based negative account screening reports

inappropriately suggest a risk of loss to a financial institution. In fact, the vast majority of overdraft fees do not simply help banks fund losses, but represents profit streams. A CFPB study found that overdraft fees over-compensate banks for risk, with only 14.4% of the fees actually needed to cover losses sustained by the bank due to the overdraft.²²

The practice of labeling consumers as having committed “account abuse” when overdrafts are involved has given even some industry representatives pause. The CEO of a prepaid card issuer made a distinction between overdraft and real account abuse, noting that:

This notion of abuse... (has) the connotation that it is the consumer abusing the financial product. I think we've seen the consumer's reaction to a lot of these financial products, it often feels the other way around, that consumers are set up whereby with cascading overdrafts and waterfalls, and a five dollar cup of coffee can end up costing you a hundred bucks.²³

Payday loans, particularly when paired with bank overdraft practices, are an especially dangerous combination that can rapidly result in or compound negative reports in account screening CRAs. About 23% of borrowers of storefront payday loans, and 46% of borrowers of online payday loans, have reported that the loans caused them to overdraw their accounts.²⁴ Some of these consumers will end up with their accounts closed due to overdrafts, resulting in negative histories at account screening CRAs.

An attorney from the nonprofit advocacy group New Economy Project describes one example of a payday borrower whose account was closed due to overdrafts, and who ended up with a negative report in account screening CRA ChexSystems:

One consumer was a plaintiff in a case brought by the New Economy Project against a financial institution over their failure to stop payment of preauthorized electronic transfers when requested by customers, in violation of the Electronic Funds Transfer Act (EFTA). The consumer is a low-wage retail worker from Brooklyn who took out several online payday loans to help her pay her bills. The Annual Percentage Rates on some of these loans were 78.2%, and thus these loans were illegal under New York State law. For two months, these online payday lenders debited the consumer's bank account on a biweekly or even weekly basis. After these debits resulted in several overdrafts, she brought her account to a zero balance and instructed the financial institution to close her bank account.

Despite agreeing to close the account, the financial institution continued to permit payday lenders to debit her account. The lenders attempted to debit her account 55 times in a two-month period, and the financial institution charged her more than \$1,500 in overdraft fees for these debits. When she could not afford to pay these fees, it was at that time that the financial institution closed her account ... and reported her to ChexSystems, preventing her from opening up an account elsewhere. The consumer sued the financial institution successfully for violation of the EFTA.²⁵

THE REGULATORY ENVIRONMENT FOR ACCOUNT SCREENING REPORTS

Bank account screening CRAs are covered as “consumer reporting agencies” under the Fair Credit Reporting Act (FCRA). As such, they are subject to the FCRA requirements to:

- follow reasonable procedures to ensure maximum possible accuracy;
- conduct a reasonable investigation when a consumer disputes information as inaccurate or incomplete;
- provide consumers with a copy of their reports, for a fee or without charge in certain circumstances;
- remove negative information, in general, from consumer reports older than seven years old;
- restrict access to reports to entities with certain “permissible” purposes; and
- block information that is the result of identity theft.

Both the CFPB and the Federal Trade Commission (FTC) enforce the FCRA; the CFPB has primary enforcement authority related to credit reporting and account screening, while the FTC has primary enforcement authority over background check reports, tenant screenings, and government benefits screening.

Account screening CRAs that maintain records on a nationwide basis fall under a specific category of CRAs called “nationwide specialty consumer reporting agencies.” Nationwide specialty CRAs must provide a free annual report to the consumer, when requested. Both ChexSystems and Early Warning Services are nationwide specialty CRAs.

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. The CFPB has not publicly identified which of the specialty CRAs meet this threshold, but ChexSystems is almost certainly a “larger participant”; Early Warning Services likely is as well.

Banks that use account screening CRA reports are considered “users” of consumer reports. Under the FCRA, they must provide an “adverse action” notice when they use an account screening report to deny a consumer a bank account. If the bank uses a credit score, which might include the score from an account screening CRA such as the QualiFile score, the bank must provide that score in the adverse action notice.

Banks that provide information to account screening CRAs are considered “furnishers” of information. They are subject to a number of duties under the FCRA, including duties to:

- conduct a reasonable investigation when a consumer disputes information, either directly to the bank or via a CRA;
- refrain from providing information that the bank knows or has reasonable cause to believe is inaccurate;
- provide notices to CRAs that information is disputed; and
- follow guidelines on accuracy and integrity of information, as established by the CFPB.

The CFPB’s guidelines on accuracy and integrity of information (Appendix A) however, do not clearly define the standards for “accurate” information for the purpose of bank account screening, and this vagueness can be problematic for consumers. The CFPB has signaled its intention to examine this issue more closely, with the potential for regulatory action, including by hosting a Forum on Access to Checking Accounts in Fall 2014. The Forum brought together leaders from banks, credit unions, nonprofits and government to discuss financial institution screening practices and improving access for consumers.²⁶

INADEQUACIES IN ACCOUNT SCREENING CRAs—WHY AREN'T CRAs WORKING?

As discussed previously, the importance of banking access, the significant number of Americans who are unbanked, and the impact of, and issues surrounding, account screening CRA usage has meant that they are increasingly the subject of regulatory and enforcement attention. Federal regulators, state enforcement agencies, and financial institutions themselves have indicated their dissatisfaction with account screening CRAs as they currently operate.

There are five main concerns regarding the fairness and efficacy of the way account screening CRAs are used: accuracy, consistency, proportionality, transparency, and error resolution.

ACCURACY

The FCRA requires consumer reporting agencies to follow “reasonable procedures to ensure maximum possible accuracy.” However, there are serious concerns that account screening reports fail to meet this standard. Accuracy is a particular problem in the account screening CRA context in regard to designations of fraud.

First, there have been examples of banks reporting and CRAs recording instances of “suspected” fraud that might reflect suspicious activity, even when no incidence of fraud was ultimately determined to have taken place. Despite the lack of a fraud determination, the consequence for the consumer can nevertheless be denial of access to opening an account. Even when the suspected fraud is dismissed internally by the reporting bank, the CRA report may remain negatively flagged. The following example from a consumer attorney in Chicago illustrates this problem:

We have an interesting dilemma with one of the ChexSystems type agencies. Client's bank “suspected” fraud based on something going wrong with a check he deposited from his mother-in-law. It was later determined that nothing fraudulent happened, but the agency is still reporting the “suspected” fraudulent activity. The dilemma is that there was actually “suspected” fraud so it is arguably accurate, but with disastrous consequences for the consumer, as other banks are now blacklisting him based on the report.²⁷

Another accuracy problem can arise due to identity theft, scams, or outright theft in which the customer is the victim of fraud, not the perpetrator.²⁸ These instances of theft or scams not only harm the consumer monetarily, but may result in negative reports at account screening CRAs as “suspected fraud.” This sometimes happens because financial institutions don't fully investigate instances of scams or theft to differentiate between accountholders who perpetrate fraud versus those who are victims of fraud.

One example of a scam resulting in a negative account screening report was recounted by an attorney in Portland, Oregon:

[A client] falls for internet scam involving sham [electronic funds transfers or “EFTs”] into her bank account. She then withdraws cash and wires it to a recipient in Texas. The EFT is then reversed by the con artist. [Her financial institution] closes the account, seizes all of deposits from [client]'s other legitimate accounts, and reports [client] to ChexSystems as a charge off with fraud flags. ... [T]he fraud was clearly perpetrated by the scammer, not by the client.²⁹

When a consumer's checks, debit card, or account information is stolen, the thief can use these stolen items to make withdrawals, causing the bank to flag the account as "fraud," again without indicating that the consumer was the victim.³⁰ An example of this is provided by an attorney at the New Economy Project:

The client, a New York City resident, experienced fraud on his bank account at a time when his sole source of income was [Social Security Disability (SSD)] benefits, which he received by direct deposit.... In December 2011, he discovered that his debit card was missing, and immediately reported the missing card to his bank. He then received a letter from the bank informing him that a fraudulent check had been deposited into his account and that the bank had charged him \$1,500 as a result. He went to a branch and learned that several fraudulent checks had been deposited, followed by several unauthorized withdrawals. He filled out a the bank fraud affidavit swearing that he had no knowledge of the transactions and also filed a police report, which he provided to the bank. The bank then had him close his old account and open a new one, to which he redirected his SSD benefits. Then the bank, apparently having denied his fraud claim, offset \$733 in SSD benefits from his new account. He then tried to open a new account with another bank but was denied based on the negative information that the first bank had reported about him to ChexSystems. He then had to receive his disability benefits on a Direct Express Social Security card, which caused him to incur ongoing ATM fees. We helped him file a CFPB complaint, after which the bank agreed to waive the remaining overdraft and remove the ChexSystems reporting.³¹

This identify theft accuracy issue is not rare. For example, a summer youth employment program in Los Angeles reported that they encountered a surprising number of children and young adults who were found to have negative records in ChexSystems. Out of the 180 youth for whom the program assisted in applying for bank accounts, 40 (or almost 25%) were denied bank accounts due to negative histories. Some of these youth reported that they had opened bank accounts in the past that were closed due to unpaid overdrafts, but many others reported that they had never tried to open an account, and thus couldn't understand their negative histories. The staff at the summer employment program suspected that these youth may have been victims of identity theft committed by an older adult.³² A financial counseling organization in San Francisco reported similar instances of youth with negative histories, who had no recollection of ever opening a bank account and thus appear to have been victims of identity theft.³³

OFAC ALERTS

A lack of accuracy in screening guidelines can also be found in other types of screenings that banks use, such as the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) list of suspected terrorists, narcotics traffickers, and other "specially designated nationals."³⁶ Banks often use a product from the "big three" credit reporting agencies (Equifax, Experian and TransUnion) to conduct an OFAC screen. However, there have been problems with these CRAs being over-inclusive in flagging consumers with common Latino or Muslim names.³⁷ In some cases, this can be attributed to banks matching consumers to the OFAC list based on names, and not using a second criteria such as date of birth.

Domestic violence survivors are particularly vulnerable to negative account screening reports where they are not the responsible party. According to an advocate for survivors, "[i]n an effort to maintain control, abusers often ruin their victim's credit by racking up credit card debt or overdrawing their bank accounts," and "[m]aking matters worse is that banks and credit card companies typically have few procedures in place to help victims repair their credit histories."³⁴ An example of this problem comes from Bay Area Legal Aid, a legal advocacy group:

A female client's husband was addicted to methamphetamine and physically and emotionally abused her during their six-year marriage. The client came to Bay Legal and a domestic violence attorney helped her secure a restraining order and a divorce with sole legal custody of her daughters. She began to rebuild her life, free from violence.

However, she soon discovered that her husband had written bad checks out of their joint checking account. As a result, both their checking account and her savings account were frozen. The Chex Security System [ChexSystems] entered a notation that she was suspected of fraudulent activity. Although she paid off the insufficient funds charges incurred by her abusive husband, she was unable to open a new checking account due to the information in ChexSystems. In addition, despite two years of requests, she was unable to get the bank to release the \$500 that remained in her savings account.³⁵

In all of these examples, labeling the consumer with the term “suspected fraud” too often inaccurately represents who they are as a potential customer and thus unfairly blocks them from the mainstream banking sector. Labeling the victim of a scam or theft as committing “suspected fraud” is misleading, and thus both inaccurate and incomplete under the FCRA. Tagging a consumer for the fraud committed by a joint accountholder is incomplete information, especially when the consumer is also a survivor of abuse by the joint accountholder.

Furthermore, even though the FCRA requires that consumer reporting agencies must block any negative information that a consumer documents as the result of identity theft, account screening CRAs appear to be inconsistent in doing so.³⁸

CONSISTENCY

Account screening CRAs represent a means by which one financial institution can both warn and learn from another financial institution's experiences with a customer. Unfortunately, they are sometimes not speaking the same language, and CRAs are not adequately providing or enforcing the consistency necessary for the system to function or be fair. For example, account screening CRAs appear to have categories for account closures due to “suspected fraud” versus “account abuse” as well as other categories for insufficient funds or other activity. However, it is unclear what is considered “fraud” or “account abuse.” There do not appear to be standardized definitions or instructions as to what conduct should be characterized as “fraud” or “account abuse,” or any of the other categories. In practice, it is left to the individual financial institution, and sometimes each of its individual branches, to determine how to characterize an incident, leading to both interbank and intrabank consistency errors.

During the CFPB Forum on Access to Checking Accounts, several representatives of financial institutions expressed frustrations over the lack of consistent standards and definitions. Financial institutions have different investigative processes for making fraud determinations, as well as different standards for what is counted as fraud versus account mismanagement. At the Forum, a number of financial institution representatives themselves called for clearer regulatory standards to guide them in making these determinations, so the information in account screening CRAs consistently followed the same definitions, allowing them to make better-informed decisions about consumer risk.

There is also a lack of consistent standards as to what conduct is serious enough to warrant negative reporting. Some institutions will make reports to account screening CRAs for even small unpaid overdrafts, such as the case documented by the *New York Times* of a consumer unable to open a bank account due to a \$40 overdraft that she had already repaid.³⁹ Other financial institutions have higher thresholds for both reporting overdrafts and considering them significant enough to deny account access.

At the CFPB Forum on Access to Checking Accounts, CFPB Director Richard Cordray emphasized the problem with this lack of standards, pointing out:

The definitions used to report an involuntary account closure varies across the industry on some central points. For example, different institutions have different standards on how long a negative balance may go unpaid before it is charged off and the account is closed and reported to the consumer reporting agency. Some institutions may close accounts after money is owed for 30 days; others may not close the accounts for 120 days. Institutions also vary in how they report account closures to the consumer reporting agencies. Some may report all charge-offs, some may set a threshold of \$50 or \$100. Differences can occur with other issues as well. Some banks or credit unions separate out the principal and fees when they report overdue debts; others do not. Some update their reports daily and others monthly. Sometimes charged-off balances are sold as debts or assigned to collectors. And, depending on the financial institution's accuracy in reporting, its policies and procedures can profoundly affect the accuracy of screening decisions for consumers.⁴⁰

A representative of a large national bank noted:

Different companies have different investigative processes, different lines that they draw for what they decide is eventually gonna be termed fraud and what is not. And so one of the things that I would love to see both the reporting agencies and the CFPB help us with is really putting some standards around who do we call a fraudulent account and what are the set of practices you need to go through to be able to deem that a particular account or transaction was fraud. I think that would actually help all of us to be better able to use that data to make more nuanced decisions.⁴¹

A representative of a small community bank agreed with the national bank representative, and also noted that “there is a fine line between mismanagement of an account and trying to determine fraud.”⁴² The representative of another community bank highlighted the need for consistency of information, so that banks could “compare apples to apples.”⁴³

This lack of standardization doesn't have to be the norm. For example, entities that provide information to the three major credit reporting agencies (Experian, Equifax, and TransUnion) are required to use a certain standard reporting format. However, there is no similar format with clear, firm standards for account screening CRAs—which means a “fraud” notation, for example, doesn't mean the same thing from Bank A to Bank B. As one federal Court of Appeals has noted:

[I]f (information furnishers) in that industry are to communicate meaningfully among themselves within the framework of the FCRA, it proves essential that they speak the same language, and that important data be reported in categories about which there is genuine common understanding and agreement. Likewise, if [the CRA] is to “insure maximum possible accuracy” in the transmittal of that data through its reports, it may be required to make sure that the criteria defining categories are made explicit and are communicated to all who participate.⁴⁴

PROPORTIONALITY

As described above, overdraft policies have had a significant effect on consumers' access to banking. The majority of account closures and denials are due to account overdrafts or non-sufficient funds transactions, not fraud. Further, overdraft fees more than compensate for financial institution losses; the CFPB study mentioned above found that only 14.4% of the fees are actually needed to cover losses sustained by the bank due to the overdraft.⁴⁵

However, some financial institutions will automatically deny a bank account to a consumer with a negative account screening report, instead of providing a more proportionate and nuanced response. When a consumer has had an account closed due to overdrafts in the past, they may still be able to appropriately manage an account, especially one with no ability to overdraft. Categorically denying such a consumer an account would seem disproportionate, especially if the overdraft is small, has been repaid or is over a year old. The increasing availability of non-overdraft-capable transaction accounts from national banks underscores this point; financial institutions are already providing these products and can leverage them for appropriate consumers.

TRANSPARENCY

It is difficult to discern exactly how banks use information from account screening CRAs. The FDIC found that about half of banks allow branch managers to decide whether to allow a consumer with a negative report to open an account; decisions are also made by the new account representative or a centralized back office, and 25% of applications from consumers with negative reports are automatically denied.⁴⁶

BANK POLICIES ON OPENING/OVERRIDES

Bank Policy on Opening/Overrides	% of Banks
Account opening decision is made at the discretion of the branch manager	48.6%
Application is automatically rejected	25.2%
Other	18.2%
Account opening decision is made at the discretion of the new account representative	13.3%
Application is submitted to a centralized back office for review	6.5%

Source: The 2011 FDIC "Survey of Banks' Efforts to Serve the Unbanked and Underbanked"

Without knowing what criteria or guidelines these branch managers consider, it is difficult for consumers to understand financial institution decisions. Providing clear guidelines on how they assess information from account screening CRAs, and making these guidelines transparent and public, would help consumers better understand bank processes, and would also better support banking access partnership programs. In addition, guidelines should incorporate the ability for branch staff to consider, as discussed above, proportionality of response and participation in banking access partnership programs.

Another important element of transparency is compliance with all consumer disclosure requirements under the FCRA. As with credit reports, consumers should be able to easily obtain their free annual account screening reports. The FCRA provides that a CRA cannot prohibit a user of a consumer report (i.e. a financial institution) from disclosing the contents of the report to the consumer, if adverse action has been taken based in whole or in part on the report.⁴⁷ However, in practice this seems to happen rarely, if at all. Thus, consumers are forced to request a report after the fact, instead of receiving their report at the time that the account application is denied and the report would be most salient.

Banks are also required to provide an adverse action notice when they deny consumers a bank account based on an account screening report. In addition, banks that use “scores” such as the QualiFile Score should be providing these scores to consumers in adverse action notices, as required by the Dodd-Frank Act.⁴⁸

ERROR RESOLUTION

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. Account screening CRAs are required to conduct a reasonable investigation when consumers dispute errors.⁴⁹ 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. For example, the court in one case involving a dispute with Early Warning Services noted:

The messages [the consumer] received from Early Warning explaining its reinvestigation process would have been extraordinarily frustrating to him as an innocent victim of identity theft. Early Warning’s messages suggest it relied entirely on the bank’s reinvestigation of the old account at another institution or perhaps conducted only a very minimal reinvestigation of its own. The messages do not show Early Warning made any effort to verify that the consumer himself—as opposed to an identity thief—opened and used the old account. The allegations that Early Warning sent the consumer the same canned response at least three times, even as he provided additional information suggesting the account was not his, indicate that Early Warning was not taking his complaints seriously.⁵⁰

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 this may not always be the case. For example, a consumer attorney in New York describes a case where a financial institution erroneously refused to honor a consumer’s check, despite the fact that the consumer had sufficient funds in his account to cover the check. The consumer had recently deposited several large checks, which had cleared, then wrote a check for \$22,000 to purchase an automobile. The financial institution then began to report instances of “account abuse” account to ChexSystems—due to its own internal errors. The consumer disputed the “account abuse” flag three times. Each time, the financial institution failed to correct the error, as did ChexSystems. Furthermore, when the consumer invoked his right under the FCRA to request a description of the procedure ChexSystems used in its investigation, the CRA’s response was that “we are unsure of what information is being disputed,” despite receiving three disputes about the matter.⁵¹

These inadequate dispute processes are reflected in consumer complaints: as of August 7, 2015, there were 720 complaints involving ChexSystems’ parent company, FIS, in the CFPB complaint database.⁵²

A common type of dispute is described by the Seventh Circuit Court of Appeals in *Lang v TCF National Bank*.⁵³ In *Lang*, the consumer complained that his account screening report showed having accounts closed for overdrafts, without noting he had since paid the overdrafts (after the accounts were closed).⁵⁴ The failure to report the later payments could violate the FCRA’s requirement that furnishers correct and update information to ensure that the information is complete and accurate.⁵⁵

Under the FCRA, there is a separate requirement for banks and CRAs to mark information as disputed, if it is the subject of a bona fide dispute. If a consumer disputes a negative entry, such as by arguing that they were the victim, not the perpetrator, of fraud, that dispute must be marked. As an additional measure, consumers also have the right to submit a 100-word written statement of dispute on their consumer reports after an investigation if they disagree with the results of the investigation, a FCRA requirement that ChexSystems has been sued for failing to comply with.⁵⁶

POTENTIAL OPPORTUNITIES FOR ACCOUNT SCREENING CRAs REFORM

As this report has detailed, there are many areas ripe for account screening CRA reform. Below are opportunities for reform—self-reforms that could originate from financial institutions and account screening CRAs as well as regulatory reforms and guidance.

OPPORTUNITIES FOR SELF-REFORMS

There are a number of opportunities for account screening CRAs and financial institutions to improve how consumer information is reported and used under the current regulatory framework.

Account Screening CRAs Reforms

Account screening CRAs have a number of obligations to consumers. By working to ensure full compliance to these obligations, account screening CRAs will provide consumers with a more accurate, transparent process, and improve banking access.

First, to ensure consistency, account screening CRAs could work with financial institutions to create clear definitions and standards for reporting, along with a common reporting format. This could include transparent information on the various categories used to define negative events and the definitions for those categories. Given that financial institutions themselves are frustrated with the inability to compare information across branches and institutions, clear definitions and standardized reporting represent an important measure towards ensuring consistency.

Like credit reporting agencies, account screening CRAs could establish systems and policies to fully conduct reasonable investigations when consumers allege that information is inaccurate and incomplete. They could assign employees to conduct an independent review of the dispute, instead of generally deferring to the bank's response. These employees could be trained as investigators and have meaningful discretion to make decisions as to whether the consumer or the bank is correct.

In addition, when information is found to be inaccurate, account screening CRAs should ensure that they take action to correct or block these items. For example, if a consumer is the victim of identity theft, then any negative entries for fraud or account abuse that occurred because of the theft should be blocked from the consumer's report. This is required by FCRA, and account screening CRAs must have policies and procedures in place to comply with this rule. In addition, if consumers continue to dispute the accuracy of information, even after the account screening CRA has carried out an investigation, then the CRA should ensure they mark the information as disputed.

In addition, online access to request reports should be provided—ChexSystems allows consumers to request their report online, but EWS does not. And neither provide consumers with the report, itself, online—consumers can only request a copy that is then mailed to them. While the FCRA does not mandate online access, it would greatly improve consumer access to account screening reports.

Account screening CRAs (and banks) that use “scores” such as the QualiFile Score could also ensure that they provide these scores to consumers in adverse action notices.

Financial Institution Reforms

It is clear that many financial institutions are frustrated by the limitations of account screening CRAs. While these systems can be useful to prevent loss and manage risk, the issues identified in this paper mean that account screening CRAs cast too wide a net, excluding consumers who shouldn't be shut out of bank accounts, or who could manage bank accounts under certain conditions. With this in mind, financial institutions have options to consider in their usage of these systems.

Financial institutions could limit their denials of bank accounts to only those consumers who have a history of actual fraud, narrowly defined, as opposed to those who have histories of occasional overdraft. A number of financial institutions have already made these changes: in June 2014, Capitol One Bank reached an agreement with the New York Attorney General, in which the bank agreed to only screen applicants for fraud, and not reject applicants on the basis of unpaid overdrafts. Santander Bank also reached a settlement with the New York AG; Santander will continue screening customers for past fraud, but will largely eliminate “account abuse” screening. Finally, Citibank agreed to change its screening process so that applicants will only be denied for “account abuse” if they have two or more reported incidents of abuse in recent years which exceed \$500 and remain unpaid; applicants will still be denied if they have a history of “fraud.” (See Appendix B for copies of these agreements).

Alternatively, banks could permit consumers with negative account screening histories short of fraud to open bank accounts with certain conditions that are an appropriate, proportionate response to their past problems. For example, a consumer who has overdrawn his or her account could be offered “safe” or “second chance” accounts. These “second chance” accounts are specifically designed to help consumers with negative account screening histories access a bank account, beginning a mainstream banking relationship to rebuild their credit and financial histories, and manage risk through limiting access to features like overdraft. If the financial institution does not offer an overdraft-free account, they could deny accounts only to consumers with unpaid overdrafts over a certain amount, and consider the frequency of such overdrafts. Financial institutions should also consider participation in these banking access partnership programs (such as Bank On programs, financial counseling partnerships, or others) when making decisions on account access.

REGULATORY REFORMS

Beyond the reforms that account screening CRAs and financial institutions can make under the current law, there are concurrent and additional reforms that could come from government regulators. These reforms would be aimed at ensuring consumers are protected and provided fair access to bank accounts. In addition to the reforms themselves, regulators could gather and analyze data on why financial institutions deny bank accounts so that the reforms can be appropriately targeted; this is a field ripe for analysis.

First, regulations could require that account screening CRAs and the banks that submit information to them have clear, bright line definitions and standards for reporting, along with transparent information on the various categories used to define negative events and the definitions for those categories. A “data dictionary” of this kind, with standardized, specific and narrowly drawn definitions that all financial institutions and account screening CRAs are required to use, would ensure the information in account screening reports are useful and meaningful industry-wide. Specific and narrowly drawn definitions for “fraud” and “account abuse” would promote fairness and access for consumers, as well as utility for financial institutions. Regulations could also provide that consumers whose only negative incident is that they overdraw their accounts should not be labeled as having committed “fraud” or even “abuse.”

In addition, consumers could be given access to clear, transparent standards on how banks will respond to negative events, and how they will affect consumers’ account screening CRA report. Banks should be required to provide consumers with their CRA report anytime they deny account access based on that report.

Finally, regulators could develop guidance on certain accuracy issues involving account screening CRAs, such as ensuring that identity theft victims are not reported as committing “fraud” or suspected fraud, perhaps by making “identity theft” a formal category distinct from “fraud” or “suspected fraud.” It should also require that both furnishers and providers of information adhere to given definitions of negative events, to ensure compliance.

CONCLUSION

Banking access is a key part of long-term financial stability: mainstream financial products and services can help consumers save money compared to the increased costs of alternative financial services, avoid often predatory fees, access safe credit vehicles, and build assets to guard against financial shocks and setbacks. While account screening CRAs were originally intended as a means for financial institutions to screen out fraudulent actors, they have evolved into a substantial barrier to mainstream banking access for millions of Americans. The lack of accuracy, consistency, transparency, and clear processes for error resolution in account screening CRAs are complicated issues that will require serious attention and meaningful reforms.

However, while these issues represent significant challenges for the consumer advocates, regulators, government policymakers, nonprofit leaders, and financial institutions working to expand banking access, they have finally surfaced as issues worth addressing. There is a groundswell of momentum behind self-reform and regulatory enforcement strategies that will help financial institutions more accurately assess consumer risk and safely expand access.

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APPENDIX A

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Appendix E to Part 1022—Interagency Guidelines Concerning the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies

The Bureau encourages voluntary furnishing of information to consumer reporting agencies. Section 1022.42 of this part requires each furnisher to establish and implement reasonable written policies and procedures concerning the accuracy and integrity of the information it furnishes to consumer reporting agencies. Under § 1022.42(b) of this part, a furnisher must consider the guidelines set forth below in developing its policies and procedures. In establishing these policies and procedures, a furnisher may include any of its existing policies and procedures that are relevant and appropriate. Section 1022.42(c) requires each furnisher to review its policies and procedures periodically and update them as necessary to ensure their continued effectiveness.

I. Nature, Scope, and Objectives of Policies and Procedures

(a) *Nature and Scope.* Section 1022.42(a) of this part requires that a furnisher's policies and procedures be appropriate to the nature, size, complexity, and scope of the furnisher's activities. In developing its policies and procedures, a furnisher should consider, for example:

- (1) The types of business activities in which the furnisher engages;
- (2) The nature and frequency of the information the furnisher provides to consumer reporting agencies; and
- (3) The technology used by the furnisher to furnish information to consumer reporting agencies.

(b) *Objectives.* A furnisher's policies and procedures should be reasonably designed to promote the following objectives:

(1) To furnish information about accounts or other relationships with a consumer that is accurate, such that the furnished information:

- (i) Identifies the appropriate consumer;
- (ii) Reflects the terms of and liability for those accounts or other relationships; and
- (iii) Reflects the consumer's performance and other conduct with respect to the account or other relationship;

(2) To furnish information about accounts or other relationships with a consumer that has integrity, such that the furnished information:

- (i) Is substantiated by the furnisher's records at the time it is furnished;
- (ii) Is furnished in a form and manner that is designed to minimize the likelihood that the information may be incorrectly reflected in a consumer report; thus, the furnished information should:

(A) Include appropriate identifying information about the consumer to whom it pertains; and

(B) Be furnished in a standardized and clearly understandable form and manner and with a date specifying the time period to which the information pertains; and

(iii) Includes the credit limit, if applicable and in the furnisher's possession;

(3) To conduct reasonable investigations of consumer disputes and take appropriate actions based on the outcome of such investigations; and

(4) To update the information it furnishes as necessary to reflect the current status of the consumer's account or other relationship, including, for example:

(i) Any transfer of an account (e.g., by sale or assignment for collection) to a third party; and

(ii) Any cure of the consumer's failure to abide by the terms of the account or other relationship.

II. Establishing and Implementing Policies and Procedures

In establishing and implementing its policies and procedures, a furnisher should:

(a) Identify practices or activities of the furnisher that can compromise the accuracy or integrity of information furnished to consumer reporting agencies, such as by:

(1) Reviewing its existing practices and activities, including the technological means and other methods it uses to furnish information to consumer reporting agencies and the frequency and timing of its furnishing of information;

(2) Reviewing its historical records relating to accuracy or integrity or to disputes; reviewing other information relating to the accuracy or integrity of information provided by the furnisher to consumer reporting agencies; and considering the types of errors, omissions, or other problems that may have affected the accuracy or integrity of information it has furnished about consumers to consumer reporting agencies;

(3) Considering any feedback received from consumer reporting agencies, consumers, or other appropriate parties;

(4) Obtaining feedback from the furnisher's staff; and

(5) Considering the potential impact of the furnisher's policies and procedures on consumers.

(b) Evaluate the effectiveness of existing policies and procedures of the furnisher regarding the accuracy and integrity of information furnished to consumer reporting agencies; consider whether new, additional, or different policies and procedures are necessary; and consider whether implementation of existing policies and procedures should be modified to enhance the accuracy and integrity of information about consumers furnished to consumer reporting agencies.

(c) Evaluate the effectiveness of specific methods (including technological means) the furnisher uses to provide information to consumer reporting agencies; how those methods may affect the accuracy and integrity of the information it provides to consumer reporting agencies; and whether new, additional, or different methods (including technological means) should be used to provide information to consumer reporting agencies to enhance the accuracy and integrity of that information.

III. Specific Components of Policies and Procedures

In developing its policies and procedures, a furnisher should address the following, as appropriate:

(a) Establishing and implementing a system for furnishing information about consumers to consumer reporting agencies that is appropriate to the nature, size, complexity, and scope of the furnisher's business operations.

(b) Using standard data reporting formats and standard procedures for compiling and furnishing data, where feasible, such as the electronic transmission of information about consumers to consumer reporting agencies.

(c) Maintaining records for a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information about consumers it furnishes that is subject to a direct dispute.

(d) Establishing and implementing appropriate internal controls regarding the accuracy and integrity of information about consumers furnished to consumer reporting agencies, such as by implementing standard procedures and verifying random samples of information provided to consumer reporting agencies.

(e) Training staff that participates in activities related to the furnishing of information about consumers to consumer reporting agencies to implement the policies and procedures.

(f) Providing for appropriate and effective oversight of relevant service providers whose activities may affect the accuracy or integrity of information about consumers furnished to consumer reporting agencies to ensure compliance with the policies and procedures.

(g) Furnishing information about consumers to consumer reporting agencies following mergers, portfolio acquisitions or sales, or other acquisitions or transfers of accounts or other obligations in a manner that prevents re-aging of information, duplicative reporting, or other problems that may similarly affect the accuracy or integrity of the information furnished.

(h) Deleting, updating, and correcting information in the furnisher's records, as appropriate, to avoid furnishing inaccurate information.

(i) Conducting reasonable investigations of disputes.

(j) Designing technological and other means of communication with consumer reporting agencies to prevent duplicative reporting of accounts, erroneous association of information with the wrong consumer(s), and other occurrences that may compromise the accuracy or integrity of information provided to consumer reporting agencies.

(k) Providing consumer reporting agencies with sufficient identifying information in the furnisher's possession about each consumer about whom information is furnished to enable the consumer reporting agency properly to identify the consumer.

(l) Conducting a periodic evaluation of its own practices, consumer reporting agency practices of which the furnisher is aware, investigations of disputed information, corrections of inaccurate information, means of communication, and other factors that may affect the accuracy or integrity of information furnished to consumer reporting agencies.

(m) Complying with applicable requirements under the FCRA and its implementing regulations.

APPENDIX B

EXECUTION COPY

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF NEW YORK

In the matter of:

CAPITAL ONE FINANCIAL CORP.

MEMORANDUM OF
AGREEMENT

WHEREAS, more than two million households in New York State lack access to mainstream bank accounts and are forced to rely on high-cost alternative financial services, including non-bank money orders, check-cashing outlets, and pawnshops;

WHEREAS, unbanked households are those that do not have a checking, savings or money-market account; underbanked households are those that have a bank account, but also rely on alternative financial services providers; and fully banked households are those that have a bank account and do not rely on alternative financial services;

WHEREAS, alternative financial services place consumers at an economic disadvantage by forcing them to pay higher fees and interest rates, while mainstream banks, including federally insured banks and thrifts, make it easier for consumers to save money, avoid theft, pay bills, qualify for loans, and build and protect wealth;

WHEREAS, African-American and Hispanic consumers are disproportionately represented among the population of consumers who lack access to mainstream financial services;

WHEREAS, many banks have been and are using certain credit-scoring products from credit bureaus like ChexSystems, Inc. in order to screen consumers who apply for bank accounts ("credit-scoring products");

WHEREAS, credit-scoring products use algorithms and other factors in an attempt to assess the risk that a consumer will commit fraud or charge off on their checking account;

WHEREAS, the use of such credit-scoring products prevents many consumers from opening bank accounts even when they have never engaged in any type of fraudulent activity;

WHEREAS, credit bureaus like ChexSystems, Inc. have other services that screen consumers by looking only at whether they have previously committed fraud with respect to a bank;

WHEREAS, Capital One Financial Corporation ("Capital One") currently uses a credit-scoring product that screens for both credit risk and fraud risk for its basic

APPENDIX B**EXECUTION COPY**

checking account applicants from New York State in New York branches ("Applicants");

WHEREAS, Capital One recognizes the importance of providing consumers with access to mainstream financial services;

WHEREAS, the Office of the New York State Attorney General ("OAG") is committed to ensuring that all New Yorkers have access to safe, secure, and affordable banking services, and ensuring that banks effectively serve the needs of all residents; and

WHEREAS, Capital One has fully cooperated with the OAG in committing to restructuring its account-opening policies to enable more consumers to open bank accounts; and

WHEREAS, Capital One has expressed an intent to roll out the new policies throughout its branch footprint nationwide, which is expected to improve and enhance access for unbanked and underbanked households in New York State and across the country;

NOW, THEREFORE, Capital One agrees as follows:

CHANGES TO APPLICANT SCREENING CRITERIA

1. Capital One will change the criteria used to screen Applicants ("New Screening Criteria") in all Capital One branches in New York. Specifically, by December 31, 2014, Capital One will screen basic checking applicants only for fraud and will adopt the procedures described in paragraphs 2 through 5 of this agreement. Capital One understands that the New Screening Criteria will not identify victims of identity theft or account takeover, account holders who have disputed the accuracy of the data source, account holders who have filed for bankruptcy, or account holders who have failed to pay back a negative balance, unless those applicants have a separate basis for triggering a fraud flag.
2. Capital One will review its account-opening approval rates on a monthly basis.
3. Capital One will refer Applicants from New York City who are declined on the basis of a ChexSystems report to the New York City Office of Financial Empowerment ("OFE") for financial counseling and assistance.
4. Capital One will provide each referred Applicant with bilingual (English and Spanish) information about OFE and the process for scheduling appointments.
5. Capital One will track the number of Applicants referred to OFE.

TRAINING

6. Capital One will take reasonable steps to ensure that its employees are trained in the use of the New Screening Criteria. The training will include a review of Capital

APPENDIX B**EXECUTION COPY**

One's New Screening Criteria and the process for referring rejected applicants to the OFE.

PUBLICITY AND NOTICE

7. Within ninety days of the date of this Memorandum of Agreement ("MOA"), Capital One will prepare a plan to inform the public of its commitment to the goals of this MOA. The publicity campaign, which will be launched concurrently with the implementation of the New Screening Criteria, will prioritize racially diverse communities, limited English proficient communities, and low- to moderate-income areas. The campaign will be subject to review and comment from the OAG prior to launch.

SUPPORT FOR THE OFFICE OF FINANCIAL EMPOWERMENT

8. To further assist New Yorkers who lack access to mainstream financial services, Capital One has agreed to continue its ongoing collaboration with OFE to enhance the services that it provides to New York City residents, including those individuals referred to OFE by Capital One. To assist OFE in providing these services, Capital One has voluntarily agreed to increase its pre-existing donation to OFE for 2014 by \$50,000.

REPORTING

9. Within one month after the implementation of the New Screening Criteria, and no later than February 1, 2015, Capital One shall submit a report to the OAG summarizing the approval and rejection rates under the New Screening Criteria. Thereafter, Capital One shall make a report to the OAG every six months for two years following the implementation of the New Screening Criteria (the "Reporting Period").
10. During the Reporting Period, Capital One may adjust the screening criteria *used* to evaluate Applicants, but it must consult with the OAG if any adjustments made during the Reporting Period materially increase the decline rates. For the avoidance of doubt, unless otherwise specified, Capital One's obligations under this Agreement will terminate at the end of the Reporting Period.
11. If, at the time of the reports specified above, the OAG has made a good-faith determination that Capital One has not complied with the terms of the MOA, the OAG will discuss such non-compliance and provide Capital One with the opportunity to cure any non-compliance before further action is taken by the OAG.

IT IS FURTHER UNDERSTOOD AND AGREED THAT the acceptance of this MOA does not constitute an admission of wrongdoing on the part of Capital One, or any violation of any laws, regulations, or administrative pronouncements applicable to Capital One, and the assertions contained within the Whereas clauses are those of the OAG unless otherwise noted.

APPENDIX B

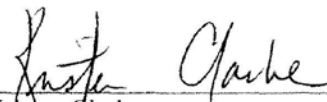
EXECUTION COPY

AND IT IS FUTHER UNDERSTOOD AND AGREED THAT no person or entity is intended to be a third-party beneficiary of the provisions of this MOA for purposes of any civil, criminal or administrative action. Nor shall any person or entity be permitted to assert any claim or right as a beneficiary or protected class under this MOA. Nothing contained in this MOA shall be construed to deprive any person, corporation, association, agency or other entity of any right provided by law, regulation or administrative pronouncement.

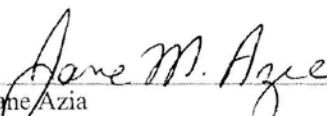
AND IT IS FURTHER UNDERSTOOD AND AGREED THAT this MOA sets forth the entire agreement of the parties and may be modified only by the subsequent execution of a written agreement by the parties.

WHEREFORE, the following signatures are affixed hereto:

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway
New York, NY 10271

By: 
Kristen Clarke
Civil Rights Bureau Chief
Jessica Attie
Special Counsel for Civil Rights

Date: 6/6/14

By: 
Jane Azia
Consumer Frauds & Protection Bureau Chief
Melvin Goldberg
Assistant Attorney General

Date: 6/6/14

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EXECUTION COPY

CAPITAL ONE FINANCIAL CORPORATION

By:



Kleber Santos
Senior Vice President, Retail and
Direct Bank Marketing & Analysis

Date:

6/5/11

APPENDIX B

**OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF NEW YORK**

In the matter of:

SANTANDER BANK, N.A.

**MEMORANDUM OF
AGREEMENT**

WHEREAS, more than two million households in New York State lack access to mainstream bank accounts and are forced to rely on high-cost alternative financial services, including non-bank money orders, check-cashing outlets, and pawnshops;

WHEREAS, unbanked households are those that do not have a checking, savings or money-market account; underbanked households are those that have a bank account, but also rely on alternative financial services providers; and fully banked households are those that have a bank account and do not rely on alternative financial services;

WHEREAS, alternative financial services place consumers at an economic disadvantage by forcing them to pay higher fees and interest rates, while mainstream banks, including federally insured banks and thrifts, make it easier for consumers to save money, avoid theft, pay bills, qualify for loans, and build and protect wealth;

WHEREAS, African-American and Hispanic consumers are disproportionately represented among the population of consumers who lack access to mainstream financial services;

WHEREAS, many banks have been and are using certain scoring products from consumer-reporting agencies like ChexSystems, Inc. in order to screen consumers who apply for bank accounts (“credit-scoring products”);

WHEREAS, credit-scoring products use algorithms and other factors in an attempt to assess the risk that a consumer will commit fraud or charge off on their checking account;

WHEREAS, the use of such credit-scoring products prevents many consumers from opening bank accounts even when they have never engaged in any type of fraudulent activity;

WHEREAS, consumer-reporting agencies like ChexSystems, Inc. have other services that screen consumers by looking only at whether they have previously committed fraud with respect to a bank;

WHEREAS, Santander Bank, N.A. (“Santander”) currently uses a scoring product that screens for both risk of loss and fraud risk for its basic checking account

APPENDIX B

applicants from New York State in New York branches (“Applicants”);

WHEREAS, Santander recognizes the importance of providing consumers with access to mainstream financial services;

WHEREAS, the Office of the New York State Attorney General (“OAG”) is committed to ensuring that all New Yorkers have access to safe, secure, and affordable banking services, and ensuring that banks effectively serve the needs of all residents; and

WHEREAS, Santander has fully cooperated with the OAG in committing to restructuring its account-opening policies to enable more consumers to open bank accounts;

WHEREAS, Santander asserts that the changes to its account-opening policies will require significant enhancements to the bank’s information technology systems; and

WHEREAS, Santander has expressed an intent to implement these new account-opening policies throughout its branch footprint, which is expected to improve and enhance access for unbanked and underbanked households in New York State and across the country;

NOW, THEREFORE, Santander agrees as follows:

CHANGES TO APPLICANT SCREENING CRITERIA

1. Santander will change the criteria used to screen Applicants (“New Screening Criteria”) in all Santander branches in New York. Specifically, by September 30, 2015, Santander will only screen applicants for (a) fraudulent closures as reported to any consumer-reporting agency or (b) unpaid Santander Bank closures. If the applicant has resolved the unpaid Santander Bank closure, he or she will be approved for an account, unless there is a separate basis for rejection.
2. Santander will review its account-opening approval rates for New York State applicants on a monthly basis.
3. Santander will refer Applicants from New York City who are declined on the basis of a consumer-reporting agency report to the New York City Office of Financial Empowerment (“OFE”) for financial counseling and assistance.
4. Santander will provide each referred Applicant with bilingual (English and Spanish) information about OFE and the process for scheduling appointments.
5. Santander will track the number of Applicants referred to OFE and provide the OAG with such data on a quarterly basis.

APPENDIX B**TRAINING**

6. Santander will take reasonable steps to ensure that its employees in New York are trained in the use of the New Screening Criteria. The training will include a review of Santander's New Screening Criteria and, for employees in New York City branches, the process for referring rejected applicants to the OFE.

PUBLICITY AND NOTICE

7. Within 120 days of the date of this Memorandum of Agreement ("MOA"), Santander will prepare a plan to inform the public of its commitment to the goals of this MOA. The publicity campaign, to which Santander will devote a minimum of \$500,000, will be launched concurrently with the implementation of the New Screening Criteria, and will be targeted and directed to racially diverse communities, limited English proficient communities, and low- to moderate-income areas. At its discretion, Santander may also conduct the publicity campaign in two parts, each running no longer than ninety days, with the first part taking place concurrently with the implementation of the New Screening Criteria, and the second part taking place no later than one year thereafter.

REPORTING

8. By November 30, 2015, Santander will submit a report to the OAG summarizing the approval and rejection rates for New York State applicants under the New Screening Criteria for the one-month period from September 30, 2015 to October 31, 2015. Thereafter, Santander shall make a report to the OAG every six months for two years following the implementation of the New Screening Criteria (the "Reporting Period").
9. Subject to OAG approval during the Reporting Period, Santander may adjust the screening criteria used to evaluate Applicants, but must consult with the OAG during the Reporting Period if the adjustments materially increase the decline rates, unless such adjustments are the result of directives provided to Santander by its prudential regulator.
10. If, at the time of the reports specified above, the OAG has made a good-faith determination that Santander has not complied with the terms of the MOA, the OAG will discuss such non-compliance and provide Santander with the opportunity to cure any non-compliance before further action is taken by the OAG.

TERM OF AGREEMENT

11. This Memorandum of Agreement shall remain in effect for two years from the date of implementation of the New Screening Criteria.

IT IS FURTHER UNDERSTOOD AND AGREED THAT the acceptance of this MOA does not constitute an admission of wrongdoing on the part of Santander, or any violation of any laws, regulations, or administrative pronouncements applicable to

APPENDIX B

Feb. 13. 2015 4:56PM

No. 0186 P. 5

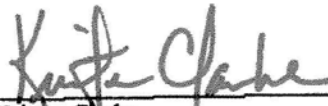
Santander, and the assertions contained within the Whereas clauses are those of the OAG unless otherwise noted.

AND IT IS FUTHER UNDERSTOOD AND AGREED THAT no person or entity is intended to be a third-party beneficiary of the provisions of this MOA for purposes of any civil, criminal or administrative action. Nor shall any person or entity be permitted to assert any claim or right as a beneficiary or protected class under this MOA. Nothing contained in this MOA shall be construed to deprive any person, corporation, association, agency or other entity of any right provided by law, regulation or administrative pronouncement.

AND IT IS FURTHER UNDERSTOOD AND AGREED THAT this MOA sets forth the entire agreement of the parties and may be modified only by the subsequent execution of a written agreement by the parties.

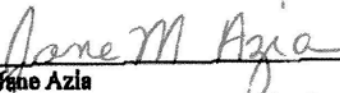
WHEREFORE, the following signatures are affixed hereto:

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway
New York, NY 10271

By: 
Kristen Clarke
Civil Rights Bureau Chief

Jessica Attie
Special Counsel

Date: 2/12/15

By: 
Jane Azia
Consumer Frauds & Protection Bureau

Melvin Goldberg
Assistant Attorney General

Date: 2/18/15

APPENDIX B

Feb. 13. 2015 4:57PM

No. 0186 P. 6

By: *Luigi Tedesco*

Santander Bank, N.A.

Date: ~~February~~ February 13, 2015

APPENDIX B

MEMORANDUM OF AGREEMENT

This 1st day of January, 2015 (the "Execution Date"), the New York State Attorney General's Office ("OAG"), on behalf of itself and the State of New York, and Citibank, National Association ("Citibank", or the "Bank"), a national bank, hereby enter into this Memorandum of Agreement ("MOA"), and agree as follows:

WHEREAS, credit bureaus like ChexSystems, Inc. provide certain products that identify consumers by examining whether the applicant has potentially committed "fraud" with respect to a bank account, or are identified as a person who has "abused" an account relationship; and

WHEREAS, Citibank is a National Banking Association, and has made use of certain products from ChexSystems, Inc. in order to identify consumers who apply for certain bank accounts at Citibank and who may pose a higher risk of loss or fraud; and

WHEREAS, Citibank recognizes the importance of providing qualified consumers with access to mainstream financial services; and

WHEREAS, the New York State Attorney General's Office is committed to ensuring that New Yorkers have access to safe, secure, and affordable banking services, and ensuring that banks effectively serve the needs of New Yorkers; and

WHEREAS, Citibank has committed to restructuring its use of ChexSystems to enable more consumers to open bank accounts; and

WHEREAS, the new policy changes to be undertaken by Citibank are expected to improve and enhance access for unbanked and underbanked households in New York State.

NOW, THEREFORE, Citibank and the OAG agree as follows:

CHANGES TO APPLICANT SCREENING CRITERIA

1. To reduce the number of applicants who are denied certain accounts, Citibank will change the ChexSystems, Inc. criteria used to screen applicants ("New Screening Criteria") in all Citibank branches in New York State. Beginning on March 15, 2015, for a period of no less than twelve (12) months, Citibank will decline applicants for account "abuse", as defined by ChexSystems, Inc., only where: (1) the applicant has two or more reported incidents of account abuse occurring in the past five (5) years; (2) the total combined loss from those incidents of account abuse exceeds \$500; and (3) the losses remain unpaid.

2. During the twelve (12) month period identified above, Citibank will review its account-opening approval rates on a monthly basis to confirm that the

APPENDIX B

New Screening Criteria have reduced the number of applicants who are rejected on the basis of a ChexSystems report. In the event Citibank changes the New Screening Criteria during the twelve month period following the commitment period set forth in Paragraph 1 of this MOA, it shall notify the OAG via first class mail, postage pre-paid, mailed to:

Kristen Clarke, Esquire
Civil Rights Bureau Chief
New York Attorney General's Office
120 Broadway
New York, NY 10271

And via e-mail by message sent to Jessica Attie, Esquire (Jessica.Attie@ag.ny.gov).

TRAINING

3. Citibank will take reasonable steps to notify appropriate New York employees regarding the New Screening Criteria. The notice will include a review of Citibank's New Screening Criteria.

REPORTING

4. Within two months after the implementation of the New Screening Criteria, and no later than May 30, 2015, Citibank will submit a report to the OAG summarizing the New York approval and rejection rates under the New Screening Criteria for the first forty-five (45) days after March 15, 2015. Thereafter, Citibank will make a final report to the OAG one-year following the implementation of the New Screening Criteria with the same information.

5. If, at the time of the reports specified above, the OAG has made a good-faith determination that Citibank has not complied with the terms of the MOA, the OAG will discuss such non-compliance and provide Citibank with the opportunity to cure any non-compliance before further action is taken by the OAG.

RELEASE

6. This MOA: (a) constitutes a complete settlement and release by the OAG of all claims and causes of action that relate to or are based upon Citibank's use of ChexSystems, Inc. criteria in connection with the opening of any accounts prior to the Execution Date, which claims or causes of action were or could have been or (but for this Paragraph 6) could be asserted by the State of New York, under any federal statutes or regulations, any statutes or regulations of the State of New York or any instrumentality or jurisdiction thereof, or New York common law, against Citibank, or any current or former parent, affiliate, subsidiary,

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predecessor, successor or assign or any of their respective employees, officers, agents, or directors (collectively "Covered Persons"); and (b) resolves completely and finally the Attorney General's investigation as to the Bank and all other Covered Persons into the matters released in clause (a) above.

7. Any agreement or forbearance on the part of the OAG, described herein, is conditioned upon Citibank's compliance with the conditions set forth herein.

8. In the event that a federal or state law, rule, regulation, or judicial or administrative interpretation, including a regulation, interpretation, directive or instruction by the Office of the Comptroller of the Currency or the Consumer Finance Protection Bureau (collectively, "Law"), is or has been promulgated that poses a conflict with the parties entering into, or having entered into, this MOA or the Bank's obligations hereunder, then the Bank's compliance with such Law shall not be deemed to be a violation of this MOA. In any event, if a Law is or has been promulgated which the Bank has a good faith belief is inconsistent with the Agreed Blocking (or any other provision of this Assurance) such that the Bank cannot comply with the new Applicant Screening Criteria without violating the Law, then compliance with the Law in lieu of the new Applicant Screening Criteria shall not be deemed a violation of this MOU. To the extent that compliance with the Law will cause the Bank to discontinue the new Applicant Screening Criteria (or other provisions) with respect to the opening of new accounts with New York billing addresses, the Bank shall inform the OAG as soon as practicable, but no later than fifteen (15) days prior to the date of compliance with the Law. In the event that the Attorney General does not agree with the Bank's position, then the AOG shall so notify the Bank, in writing, and allow the Bank fifteen days (15) days to cure the alleged defect before taking further action.

OTHER

9. The acceptance of this MOA does not constitute an admission of wrongdoing on the part of Citibank, or any violation of any laws, regulations, or administrative pronouncements applicable to Citibank.

10. The acceptance of this Agreement by the OAG shall not be deemed or construed as an approval by the Attorney General of any of Citibank's activities or practices, past or present, and the Bank will not make any representations to the contrary.

11. The acceptance of this MOA does not constitute an admission by Citibank that the OAG has visitorial rights, jurisdiction, or other powers to regulate Citibank's banking practices.

12. No person or entity is intended to be a third-party beneficiary of the provisions of this MOA for purposes of any civil, criminal or administrative action.

APPENDIX B

Nor will any person or entity be permitted to assert any claim or right as a beneficiary or protected class under this MOA. Nothing contained in this MOA will be construed to deprive any person, corporation, association, agency or other entity of any right provided by law, regulation or administrative pronouncement, except as set expressly forth herein.


13. This MOA sets forth the entire agreement of the parties and may be modified only by the subsequent execution of a written agreement by the parties.

14. This MOA may be executed in counterparts. This MOA shall take effect on the "Execution Date".

WHEREFORE, the following signatures are affixed hereto:


**ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL
OF THE STATE OF NEW YORK:**

By:



Kristen Clarke, Esquire
Civil Rights Bureau Chief
Jessica Attie, Esquire
Special Counsel
120 Broadway
New York, NY 10271

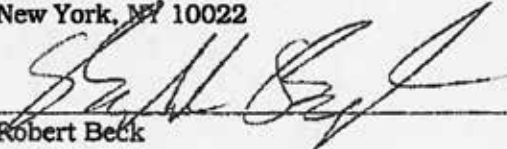
By:



Jane Azia, Esquire
Consumer Frauds & Protection Bureau
Melvin Goldberg, Esquire
Assistant Attorney General
120 Broadway
New York, NY 10271

CITIBANK, N.A.:
399 Park Avenue
New York, NY 10022

By:



Robert Beck