Adverse actions on deposit accounts, can we and what do we do?

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Opening Accounts

- Can we deny a deposit account?
- YES!
What Laws Apply to Opening a Deposit Account?

- There are no anti-discrimination law for accounts as there is for credit
- However, the Americans with Disabilities Act does apply.

What do we do?

- It depends
- Do you pull credit reports or use scoring mechanisms?
No reports or scoring

- You may turn down accounts for other reasons

- You do not have to give an adverse action notice in those instances that do not involve a third-party report.

FCRA

- The Fair Credit Reporting Act (“FCRA”) requires creditors to give adverse action notices (“AAN”) to each consumer whose application has been denied in part due to the evaluation of their credit report. There are two essential prerequisites to this obligation:

  1. The creditor acquired the consumer’s credit report; and
  2. The creditor took adverse action based on information contained within the consumer’s credit report.
Regulation B

- The Equal Credit Opportunity Act (“ECOA”), implemented through Regulation B, also requires creditors to provide consumers with AAN when denying a consumer credit based in whole or in part on information contained within a consumer’s credit report.

- Both acts require an AAN, but the acts differ on what triggers the notice

Scoring on Deposit Accounts

- ChexSystems is a check verification service and consumer credit reporting agency owned by the eFunds subsidiary of Fidelity National Information Services.

- It provides information about the use of deposit accounts by consumers.
Chexsystems

- Chexsystems gives you a Qualifile score, that is from 100 to 899 that is based off of a risk predictive model.

- The higher the score the less likely the account will be a problem.

615(a)(2) of the FCRA

Duties of users taking adverse actions on the basis of information contained in consumer reports.

If any person takes any adverse action with respect to any consumer that is based in whole or in part on any information contained in a consumer report, the person shall

1. provide oral, written, or electronic notice of the adverse action to the consumer;

2. provide to the consumer written or electronic disclosure (A) of a numerical credit score as defined in section 609(f)(2) (A) used by such person in taking any adverse action based in whole or in part on any information in a consumer report.
What does this mean for deposit services?

- Procedures need to be in place for denying deposit accounts

Sample Language - Requirements

- We regret we cannot open your account today. In evaluating your application the following consumer reporting agency/agencies provided us with information in whole or in part influenced our decision. These agencies did not make the decision to disapprove your account application and are unable to provide you with specific reasons why the decision was made.

- You have rights under state and federal laws. Included in these rights are:
  - The right to obtain a free copy of your consumer report if you make such a request to the consumer reporting agency within 60 days of your receipt of this notice; and
  - The right to dispute the completeness or accuracy of any information contained in such report by notifying the consumer reporting agency directly of your dispute
Notice Requirements

- You may contact ChexSystems by visiting their website at www.chexhelp.com, by telephone using their Voice Response Unit at 800-428-9623, by mail at ChexSystems, Attention Consumer Relations, 7805 Hudson Road, Suite 100, Woodbury, MN 55125, or by fax at 602-659-2197.

How long do we keep the notices?

- There are no required record retention requirements found in the FCRA.
Consumer Access

- Similar to credit reports, the consumer is allowed to get a free copy of the report.


Question

- We just turned down an applicant for a checking account. This person had an account with us before, and our experience was not good. Do we have to explain our reasons for the turndown?
Answer

- No.
- You are relying on your own experience, so there is no notice required.

Question

- A consumer opens a checking account with an ATM card. The consumer also requests a debit card, but his credit report does not warrant this feature.
- What do we do?
Question

- The consumer needs a notice, because this is not a request for credit, but adverse action was taken on an account based on the consumer’s credit report.

Questions