

SERVICING LITIGATION TRACK: Navigating Borrower Engagement – FCRA, FDCPA, and TCPA

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Navigating Borrower Engagement: FCRA, FDCPA, and TCPA

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Telephone Consumer Protection Act (TCPA)

TCPA Overview

- 47 U.S.C. § 227 - Enacted in 1991.
- Enacted in 1991 principally to curb telemarketing abuses.
 - Not limited to telemarketing communications.
- Penalties for failure to comply:
 - \$500 per call for negligent violations
 - \$1,500 per call for willful violations
 - No cap on liability
- Federal Communications Commission (FCC) has interpretive, rulemaking, and enforcement authority.
- Significant provisions found outside of the statute and within the implementing regulation, FCC orders, and case law.

TCPA Today

- **Has the *Loper Bright* decision impacted the TCPA?**

- Supreme Court decision eliminated judicial deference to federal agency interpretations of law under 1984 ruling in *Chevron*.
- *Loper Bright* only affects rules or agency action based on a statutory ambiguity or silence.
- *Skidmore* deference applies (based on power to persuade).
- Clear grants of power by Congress to an agency do not rely on *Chevron* deference and are not impacted.
- Does not impact traditional judicial deference to agency factfinding subject to the Administrative Procedures Act (APA).
- Does not permit courts to reject discretionary determinations made when Congress has conferred upon the agency the power to make that determination.
- Past precedent subject to *stare decisis*.

TCPA Today

- **What about the Hobbs Act?**

- Administrative Orders Review Act (more commonly referred to as the Hobbs Act), 28 U.S.C. § 2342.
- Specifies that any party aggrieved by a final order of the FCC may file a petition to review the order in the court of appeals with appropriate venue within 60 days after its entry.
- Provides exclusive jurisdiction to the federal court of appeals to enjoin, set aside, suspend (in whole or in part), or to determine the validity of all final orders of the FCC.

TCPA Today

- *McLaughlin Chiropractic Associates, Inc. v. Mckesson Corp.*, 145 S. Ct. 2006, 222 L. Ed. 2d 405 (2025)
 - **Issue:** Whether the Hobbs Act required the District Court to follow the FCC's legal interpretation of the TCPA?
 - **Held:** The Hobbs Act does not bind district courts in civil enforcement proceedings to an agency's interpretation of a statute. District courts must independently determine the law's meaning under ordinary principles of statutory interpretation while affording appropriate respect to the agency's interpretation.
 - Distinguishes pre-enforcement proceedings from civil enforcement proceedings.

TCPA Overview

- **What are the key provisions of the TCPA?**
 - Consent requirements for certain calls
 - Technical and procedural rules
 - National Do-Not-Call Registry requirements
 - Internal Do-Not-Call requirements
 - Caller ID requirements
 - Call Blocking requirements
 - Reassigned Number Database

TCPA Overview

- **When does the TCPA require consent?**
 - Number called (cell phone / residential landline)
 - Equipment used to make the call (manual / ATDS)
 - Type of call (live agent / artificial or prerecorded voice message / fax)
 - Purpose of the call (telemarketing / advertisement / non-telemarketing)
 - Is there an available exemption?

TCPA Consent Overview

Type of Call	Technology Trigger	Advertisement or Telemarketing	No Advertisement or Telemarketing
CELL PHONE CALL* or TEXT *includes ringless voicemail	Use of ATDS <u>or</u> Artificial or Prerecorded Message	Prior Express Written Consent	Prior Express Consent <i>Unless Exempt</i>
RESIDENTIAL LANDLINE CALL* *includes ringless voicemail	Use of Artificial or Prerecorded Message	Prior Express Written Consent	Prior Express Consent <i>Unless Exempt</i>

TCPA - ATDS

- **What is an ATDS?**
 - ATDS definition relates to prior express consent requirements for calls and texts to cell phone numbers.
 - **April 1, 2021** – US Supreme Court issues decision in *Facebook v. Duguid*, narrowly interpreting definition of ATDS.
 - **Holding:** To qualify as an ATDS, a device must have the capacity either to store a telephone number using a random or sequential number generator, or to produce a telephone number using a random or sequential number generator.
 - *Facebook* decision did not impact consent requirements for calls using an artificial or prerecorded voice message.

TCPA - Consent

- **Changes to Consent Requirements - Effective July 20, 2023.**
 - Impacted calls to residential landlines using an artificial or prerecorded voice message.
 - Prior rule exempted calls to residential landlines using an artificial or prerecorded message that do not include an advertisement or constitute telemarketing.

TCPA - Consent

- **Changes to Consent Requirements - Effective July 20, 2023.**
 - Impacted calls to residential landlines using an artificial or prerecorded voice message.
 - Amended rule limits exemption to **no more than 3 calls within any consecutive 30-day period** to the residential line and requires the caller to include an **opt-out mechanism** in the message, honor the called party's request to opt out of future calls as required in paragraphs (b) and (d) of 47 CFR 64.1200.

TCPA - Consent

- **Proposed Telemarketing Consent Amendments**
- Focused on closing the “lead generator loophole” by requiring lead generators to get consent from consumers to receive robocalls and robotexts from one seller at a time.
 - **One-to-one consent:** The new rule requires separate written consent for each company that wants to use a consumer's consent.
 - **Clear and conspicuous disclosure:** The disclosure seeking consent must be clear and obvious to a reasonable consumer.
 - **Topical relationship:** The consent must be logically and topically related to the website where it was given.
 - **Prohibited practices:** Certain practices are prohibited, such as asking for consent to share a consumer's information with “partner companies” or “marketing partners.”

TCPA - Consent

- **Proposed Telemarketing Consent Amendments**
 - Originally scheduled to become effective 1/27/2025.
 - FCC **delayed** to 1/27/2026.
 - Eleventh Circuit **vacated** as arbitrary and capricious.
 - *Insurance Marketing Coalition Ltd. v. FCC*, 2025 WL 289152 (11th Cir. Jan. 24, 2025).
 - On July 14, 2025, FCC **repealed** the proposed amendment as part of the *Delete, Delete, Delete* proceeding to identify and eliminate FCC rules that are unnecessary regulatory burdens.

TCPA – DNC Changes

- **Other Telemarketing Amendments**
- **Do Not Call (DNC) protections:** DNC protections expressly extended to text messages.
 - Became effective **March 2024**.
 - 47 CFR 64.1200(e)
 - The rules set forth in paragraph (c) and (d) of this section are applicable to any person or entity making telephone solicitations or telemarketing calls **or text messages** to wireless telephone numbers to the extent described in the Commission's Report and Order, CG Docket No. 02-278, FCC 03-153, "Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991."

TCPA – DNC Changes

- **Other Telemarketing Amendments**
- **Do Not Call (DNC) protections:** FCC expressly extended DNC protections to text messages.
 - *Jones v. Blackstone Med. Servs., LLC*, 2025 WL 2042764, 2025 U.S. Dist. LEXIS 138371 (C.D. Ill. July 21, 2025).
 - “Pursuant to *McLaughlin* and *Loper Bright*, the Court agrees with the Defendant that based on a plain reading of the TCPA and its implementing regulations, Section 227(c)(5) does not apply to text messages.”
 - Appeal filed August 12, 2025.

TCPA – Revocation of Consent

- **Amendments to Revocation of Consent Rules**

- **History**

- TCPA did not speak to the ability to revoke consent.
- FCC’s 2015 Omnibus Order confirmed that the called party may revoke prior express consent at any time through any reasonable means; the caller may not designate an exclusive means to revoke consent.
- Order was challenged and in 2018 DC Circuit affirmed this provision of the Order.
 - “[Ca]llers will have every incentive to avoid TCPA liability by making available clearly-defined and easy-to-use opt-out methods. If recipients are afforded such options, any effort to sidestep the available methods in favor of idiosyncratic or imaginative revocation requests might well be seen as unreasonable.”
 - The Order “‘did not address whether contracting parties can select a particular revocation procedure by mutual agreement.’ FCC Br. 64 n.16. The ruling precludes unilateral imposition of revocation rules by callers; it does not address revocation rules mutually adopted by contracting parties.”

TCPA – Revocation of Consent

- **Amendments to Revocation of Consent Rule**
- **March 2024 – Final rule amending TCPA regulation to address revocation.**
 - Called party may revoke prior express consent “in any reasonable manner” that clearly expresses a desire to not receive further calls/texts.
 - Callers are prohibited from designating an exclusive means to revoke consent that precludes use of any other reasonable method.
 - Examples of a reasonable means to revoke consent:
 - Automated, interactive voice or key press-activated opt-out mechanism on a robocall
 - “Stop,” “quit,” “end,” “revoke,” “opt out,” “cancel,” or “unsubscribe” reply to a text message
 - Website or telephone number provided by the caller to process opt-out requests

TCPA – Revocation of Consent

- **Amendments to Revocation of Consent Rule**
- **March 2024 – Final rule amending TCPA regulation to address revocation.**
 - If a called party uses any method designated by the caller to revoke consent, that consent is considered to be definitively revoked by a reasonable means, and future robocalls and robotexts from that caller must be stopped.
 - When the caller offers such a means to revoke consent, that caller cannot allege that the use of such a mechanism by the called party is unreasonable.
 - Created a rebuttable presumption of revocation when a consumer uses other methods to revoke consent, such as those made by voicemail or email to any telephone number or address at which the consumer can reasonably expect to reach the caller but which has not been designated by the caller as a method to revoke consent.

TCPA – Revocation of Consent

- **Amendments to Revocation of Consent Rule**
- **March 2024 – Final rule amending TCPA regulation to address revocation.**
- **Timeframe for Honoring a DNC or Revocation Request:** Requires callers/texters to honor DNC or consent revocation request within a reasonable time not to exceed 10 business days of receipt.
 - FCC may adjust this timeframe.
- **Scope of Consent Revocation:** Confirms that any revocation of consent request applies only to those robocalls and robotexts for which consent is required under the TCPA.
 - Requirement that callers honor a revocation of consent request made by any reasonable means applies only to robocalls and robotexts that the called party has consented to receive and is separate from the ability of callers to make such informational communications pursuant to an exemption, which do not require consent.

TCPA – Revocation of Consent

- **Amendments to Revocation of Consent Rule**
- **March 2024 – Final rule amending TCPA regulation to address revocation.**
- **Revocation Confirmation Text Message:** Authorizes a single, one-time text message confirming a consumer's request that no further text messages be sent as long as it merely confirms the opt-out request, does not include any marketing or promotional information. If sent within 5 minutes of receipt of the opt-out request, then the text is deemed within the original consent.
- **Revocation Clarification and Non-Response:** Codifies that certain senders can include a request for clarification in this one-time confirmation text, provided the sender ceases further robocalls and robotexts absent an affirmative response from the consumer. Limited to instances where the text recipient has consented to several categories of text messages from the text sender. Lack of any response to confirmation text must be treated by sender as a revocation of consent for all robocalls and robotexts from the sender.

TCPA – Revocation of Consent

- **Amendments to Revocation of Consent Rule**
- Originally scheduled to become effective **April 11, 2025**.
 - **FCC delayed certain provisions** until April 11, 2026.
 - Delay limited to the extent the rule requires callers to treat a request to revoke consent made by a called party in response to one type of message as applicable to all future robocalls and robotexts from that caller on unrelated matters.
 - January 6, 2026 – **FCC extended waiver until January 31, 2027**.
 - Extension applies to the extent the rule requires callers to treat a request to revoke consent made by a called party in response to one type of informational message as applicable to all future robocalls and robotexts from that caller on unrelated matters.

TCPA – Revocation of Consent

- **Amendments to Revocation of Consent Rule**
- October 2025 – FCC requested comments on proposed revisions to the revocation rule.
 - FCC sought comments on ways we can modify the requirement that a caller must treat an opt-out request made in response to one type of call to be an opt-out request for all types of calls or to modify it to give consumers greater control over their right to stop unwanted calls.
 - Commenters asked FCC to permit callers to designate the exclusive means by which consumers may revoke prior express consent rather than requiring callers to honor all revocation requests made using “reasonable means.”
 - FCC sought comments on this proposal and whether there are less restrictive ways for consumers to revoke consent that nevertheless avoid the potential ambiguity of the current reasonable-means standard.

TCPA – Revocation of Consent

- **Amendments to Revocation of Consent Rule**
- **So what became effective on April 11, 2025?**
 - New Section 64.1200(a)(10)
 - Called party may revoke prior express consent “in any reasonable manner” that clearly expresses a desire to not receive further calls/texts.
 - Callers are prohibited from designating an exclusive means to revoke consent that precludes use of any other reasonable method.
 - Examples of a reasonable means to revoke consent:
 - Automated, interactive voice or key press-activated opt-out mechanism on a robocall
 - “Stop,” “quit,” “end,” “revoke,” “opt out,” “cancel,” or “unsubscribe” reply to a text message (or other words if a reasonable person would understand them to convey a revocation request)
 - Website or telephone number provided by the caller to process opt-out requests

TCPA – Revocation of Consent

- **Amendments to Revocation of Consent Rule**
- **So what became effective on April 11, 2025?**
 - New Section 64.1200(a)(11)
 - The use of any other means to revoke consent not listed in paragraph (a)(10) of this section, such as a voicemail or email to any telephone number or email address intended to reach the caller, creates a **rebuttable presumption** that the consumer has revoked consent when the called party satisfies their obligation to produce evidence that such a request has been made, absent evidence to the contrary. In those circumstances, a totality of circumstances analysis will determine whether the caller can demonstrate that a request to revoke consent has not been conveyed in a reasonable manner.
 - Amendment to Section 64.1200(d)(3) and New Section 64.1200(a)(10)
 - **Timeframe for Honoring a DNC or Revocation Request:** Requires callers/texters to honor DNC or consent revocation request within a reasonable time not to exceed 10 business days of receipt.

TCPA – Revocation of Consent

- So what should we expect from the FCC regarding revocation rules?
 - October 2025
 - The use of any other means to revoke consent not listed in paragraph (a)(10) of this section, such as a voicemail or email to any telephone number or email address intended to reach the caller, creates a **rebuttable presumption** that the consumer has revoked consent when the called party satisfies their obligation to produce evidence that such a request has been made, absent evidence to the contrary. In those circumstances, a totality of circumstances analysis will determine whether the caller can demonstrate that a request to revoke consent has not been conveyed in a reasonable manner.
 - Amendment to Section 64.1200(d)(3) and New Section 64.1200(a)(10)
 - **Timeframe for Honoring a DNC or Revocation Request:** Requires callers/texters to honor DNC or consent revocation request within a reasonable time not to exceed 10 business days of receipt.

TCPA – Revocation of Consent

- **Amendments to Revocation of Consent Rule**
- Important to consider interplay of other legal and industry requirements.
 - FDCPA/Regulation F/UDAAP
 - Cease communications demands
 - Opt-out requirements for electronic communications (including texts)
 - State Law
 - CTIA Guidelines
 - Carrier Requirements

TCPA – Other Potential Changes

- **What else should we expect from the FCC?**
 - October 2025 – FCC sought comments on multiple potential amendments to the TCPA rule.
 - Whether to eliminate rules prohibiting callers from disconnecting an unanswered telemarketing call prior to at least 15 seconds or four rings, and from abandoning more than three percent of all telemarketing calls.
 - Proposed to modernize the rule requiring a caller making artificial or pre-recorded voice calls to include a telephone number other than a 900 number or any other number for which charges exceed local or long distance transmission charges to require only that such callers identify themselves with their telephone number to enable called consumers to know who is calling.

TCPA – Other Potential Changes

- **What else should we expect from the FCC?**
 - October 2025 – FCC sought comments on multiple potential amendments to the TCPA rule.
 - FCC sought comment on whether to eliminate the rule limiting financial institutions to calling only the number provided by the consumer when making a fraud alert or similar call pursuant to a TCPA exception to the general consent requirement.

TCPA - AI

- **February 2024** – the FCC adopted a Declaratory Ruling confirming that an AI-generated voice message is “an artificial or pre-recorded voice message” under the TCPA.
- **July 2024** – the FCC issued a Notice of Proposed Rulemaking (NPRM) requesting comments on whether additional consumer protections should apply to AI used in calls and texts.
 - The NPRM defines the term “AI generated call” and proposes specific consent and disclosure requirements.

Regulatory Change: FDCPA and FCRA

Regulatory Landscape

- CFPB, a primary enforcer of the FDCPA and FCRA, has seen significant changes in the last year
- Scott Bessent installed as Acting Director January 31, 2025
- Russell Vought replaced Bessent as Acting Director February 7, 2025
 - Immediate pause on most Bureau activity
 - CFPB homepage replaced with “404:Page not found” notice
- National Treasury Employees Union filed lawsuit challenging efforts to “dismantle the CFPB”
 - Litigation ongoing and has stalled leadership’s plans to fire majority of CFPB staff
- Substantial rollback of CFPB actions
 - Withdrew guidance and rescinded rules
 - Dismissed ongoing litigation with prejudice
 - Terminated existing consent orders

Regulatory Landscape Cont.

- One Big Beautiful Bill Act – reduces the amount of funding that the CFPB can request from the Federal Reserve from 12% to 6.5% of the Federal Reserve annual operating budget
- Remains to be seen whether recent populist tone from White House will impact CFPB
- Reports that CFPB matters will be transferred to DOJ
 - No public confirmation from CFPB

CFPB Priorities Memo

- April 16, 2025 memo detailing 2025 supervision and enforcement priorities
- Focus on threats to service members, their families, and veterans
- Priorities include
 - Mortgages (top priority)
 - FCRA/Reg V
 - FDCPA/Reg F
- Memo indicates CFPB will prioritize instances where there are “identifiable victims with material and measurable consumer damages”
- Possible that few staff will remain to enforce / supervise
- CFPB has continued to submit annual FDCPA report to Congress
 - Dodd-Frank requires the CFPB, as the primary regulator of the debt collection industry, to submit an annual report re: FDCPA to Congress

CFPB Withdrawn Guidance

- In May 2025, the CFPB withdrew numerous guidance documents, including many implicating FCRA and the FDCPA. Examples include:
 - Fair Credit Reporting; Permissible Purposes for Furnishing, Using, and Obtaining Consumer Reports, 87 FR 41243 (2022)
 - Consumer Financial Protection Circular 2022-07: Reasonable Investigation of Consumer Reporting Disputes
 - Bulletin 2014-01 re: FCRA Requirement that Furnishers Conduct Investigations
 - Bulletin 2013-09 re: the FCRA's Requirement to Investigate Disputes and Review "All Relevant" Information
 - Fair Debt Collection Practices Act (Regulation F); Time-Barred Debt, 88 FR 26475 (2023)
 - Debt Collection Practices (Regulation F); Pay-to-Pay Fees, 87 FR 39733 (2022)
 - Bulletin 2015-07 re: In-Person Collection of Consumer Debt

Enforcement

- The Bureau has dismissed a number of enforcement actions with prejudice, for example:
 - Acima Holdings, LLC
 - Complaint filed June 2024
 - Dismissed with prejudice March 2025
 - Among other allegations, alleged that defendant failed to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnished CRAs.
 - Pennsylvania Higher Education Assistance Agency
 - Complaint filed May 2024
 - Dismissed with prejudice February 2025
 - Among other allegations, alleged that defendant failed to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of information that it furnishes regarding borrowers whose non-qualified education loans had been discharged in bankruptcy.

Enforcement Cont.

- The CFPB has continued limited public enforcement, for example:
 - Craig Manseth, Jacob Adamo, Darren Turco, United Debt Holding LLC, JTM Capital Management, LLC, and United Holdings Group, LLC
 - Complaint filed January 2022
 - Debt collection – a stated priority
 - FDCPA claims include:
 - Falsely representing that consumers would be sued if they did not settle their debts
 - Falsely representing that repaying/not repaying would affect consumers' credit scores
 - Includes substantial assistance claims

Section 1042 of Dodd-Frank Act

- Section 1042 of the Dodd-Frank Act permits state attorneys general and state regulators to bring actions to enforce the provisions of Title X of the Dodd-Frank Act
 - Generally understood that UDAAP is enforceable by states
 - Some disagreement about the 18 enumerated federal consumer financial laws, including FCRA and TILA
 - 2022 CFPB interpretive rule – states can bring actions under Title X for violations of 18 enumerated federal consumer financial laws, including FCRA and TILA
 - A federal court has agreed with this view.
 - 2025 rescission of 2022 interpretive rule - took the position that Congress did not intend to permit states to enforce “any provision of any [f]ederal consumer financial law.”
 - Limitation considerations (e.g., covered person)
 - Penalty considerations

FCRA Developments

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Background

The Fair Credit Reporting Act, 15 U.S.C. § 1681a, et seq.

- Governs consumer reports and credit reporting agencies (“CRA”), resellers, users, or those who furnish information to them
- Credit Report: Defined by 15 U.S.C. §1681(a)(d)
 1. written, oral, other communication of information
 2. by a CRA
 3. bearing on consumer’s credit-worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living
 4. used or expected for use/collection as a factor in establishing consumer eligibility for credit/insurance for mostly personal/family/household purposes, employment or any FCRA-authorized purpose.
- CRA: Defined by 15 U.S.C. § 1681(a)(f)
 1. any person which,
 2. for monetary fees, dues, or on a cooperative nonprofit basis,
 3. regularly engages in whole or in part
 4. in the practice of assembling or evaluating consumer credit information or other information on consumers
 5. for the purpose of furnishing consumer reports to third parties, and
 6. which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

Background

Permissible Purposes of Credit Reports, 15 U.S.C. § 1681b

CRAs, users of a credit report, and those who furnish information for them can only create or use credit reports for permissible purposes, which include:

- response to the order of a court having jurisdiction to issue such an order or subpoena or
- consumer's consent or
- where provider reasonably believes user intends to use the information
 - in connection with a credit or collection transaction or
 - for employment purposes; or
 - in connection with the underwriting of insurance involving the consumer; or
 - to determine consumer's eligibility for a license/other govt benefit that requires consideration of financial responsibility/status; or
 - as a potential investor/servicer/insurer for valuation/assessment of the credit/prepayment risks of existing credit obligation; or
- certain government purposes such as for government charge cards, child support, or bank liquidation.

Background

Requirements for Credit Report Users, 15 U.S.C. § 1681m

- Can only obtain and use credit reports for permissible purposes, with additional requirements for employment and medical information and financial institutions and creditors.
- Red Flags Rule: need to identify theft prevention program designed to detect the warning signs of identity theft in their day-to-day operations and prevent them, such as data security and disposal of consumer info.
- Must notify a consumer when they take an adverse decision (e.g., denial of loan, insurance) based (in whole or part) on information in a CRA stating:
 1. CRA's contact info;
 2. CRA did not make the adverse decision and is not able to explain why the decision was made;
 3. they have right to obtain a free disclosure of their file from the CRA within 60 days;
 4. they have right to dispute directly with the CRA the accuracy or completeness of any information provided by the CRA.
- To avoid/limit liability, have a written policy for all of the above.

Background

Requirements for Credit Report Furnishers, 15 U.S.C. § 1681s-2

- FCRA (and Reg V) include requirements governing “furnishers,” which covers entities, such as mortgage lenders and servicers, that provide information to CRAs about borrowers (on-time payments, delinquencies, foreclosures, etc.).
- Furnishers may not report information they know or have reasonable belief is inaccurate, they must take steps to correct information given to CRAs, and have reasonable policies for the same.
- To avoid liability:
 1. clearly and conspicuously specify to consumers an address where they can submit credit reporting disputes
 2. Have a written policy for conducting reasonable investigation into disputes:
 - a) Review all relevant information provided by consumer as part of dispute;
 - b) Complete investigation and report results to consumer generally within 30 days of receipt of dispute;
 - c) Promptly notify CRAs to correct inaccurate info.
 3. Train staff on the policy and execute it.

Background

Federal Changes

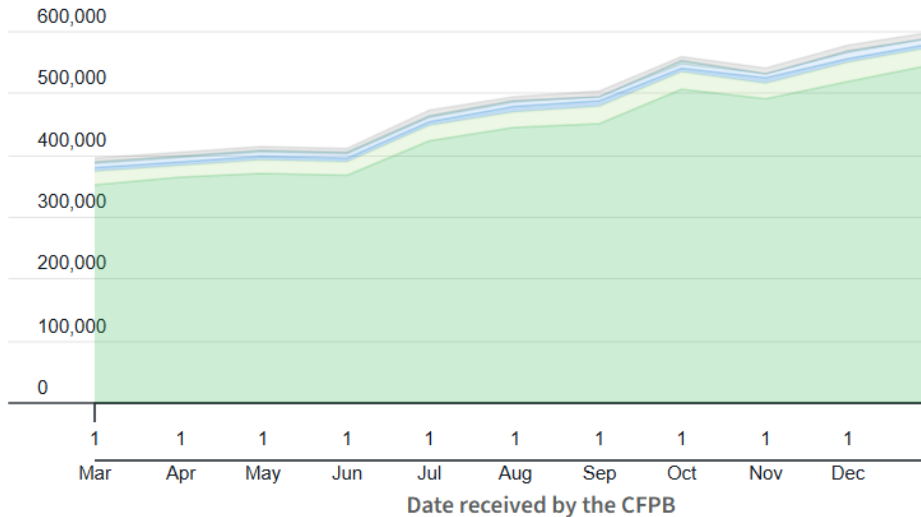
- FCRA was originally within purview of FTC, that changed after the 2008 financial crises and ensuing legislation, especially Dodd–Frank Act.
- While FTC, CFPB, and other banking/finance agencies could still theoretically all enact regulations and bring enforcement actions concerning FCRA, CFPB has been the agency doing it for last decade.
- With cuts to CFPB, questions linger about how much FCRA work it will continue to do and whether the FTC will step up to FCRA rulemaking and enforcement.
- Chris Mufarrige, director of FTC's Bureau of Consumer Protection and former senior advisor at CFPB, remarks at National Advertising Division Annual Conference in September 2025 mentioned renewed emphasis on FCRA. He also noted that FTC would focus enforcement on cases where economic analysis shows consumer harm.

Regulatory Landscape

Current CFPB Landscape

Note: Data from incomplete time intervals are not shown

Complaints



- Credit reporting claims continue to be vast majority of complaints CFPB receives.
- From 2/10/2025–2/10/2026 CFPB received:
 - Credit reporting: 5,165,611
 - Debt collection: 286,050
 - Credit card: 87,942
 - Checking/Savings: 71,104
 - Money Transfer: 35,410
 - Mortgage: 24,427
 - Vehicle Loans/Leases: 20,725
 - Student Loans: 20,560
 - Payday/Title/Personal Loans: 13,124
 - Prepaid Card: 6,080
 - Debt/Credit Management: 3,843

Government Enforcement

CFPB v. Experian, 8:25-cv-00024 (C.D. Cal.)

- CFPB filed complaint on January 7, 2025.
- Complaint contains allegations that Experian failed to conduct reasonable investigations of consumer disputes challenging the accuracy and completeness of information in consumer reports, including by failing to forward all relevant information to furnishers, provide adequate notice to consumers of dispute outcomes, and use reasonable procedures to ensure accuracy and completeness of reports.
- On May 5, 2025, the Court partially dismissed the complaint at an in chambers hearing because discrete violations were time-barred, as complaint did not mention Parties' tolling agreements, which would have put the case within the applicable statute of limitations. The Court allowed CFPB to amend.
- On August 22, 2025, the CFPB filed an amended complaint with portions under seal, which was granted.
- On September 5, 2025, Experian filed a motion to dismiss, filing portions under seal.
- On October 22, 2025, the Court denied the motion to dismiss in a sealed order.

Government Enforcement

CFPB v. Experian, continued

- On November 3, 2025, Experian filed an answer to the amended complaint, in which Experian largely denied the critical allegations or answered that it lacked sufficient knowledge.
- On November 24, 2025, Experian filed an amended answer to the complaint, which provided additional support for the affirmative defenses.
- On December 15, 2025, CFPB filed a motion to strike Experian's lack of notice, estoppel, waiver, laches, and mootness affirmative defenses.
- On January 1, 2026, the Court struck Experian's laches defense without leave to amend but declined to strike the other challenged affirmative defenses.
- The case remains pending.

Government Enforcement

FTC v. Accelerated Debt Settlement Inc., et al., 2:25-cv-02443 (D. Ariz.)

- On July 14, 2025, the FTC filed a complaint seeking a permanent injunction to stop “accelerated debt” companies, which targeted senior citizens for enrollment in a debt relief scam by acquiring the victims’ credit reports without a permissible purpose so that they could use the information to make representations about their credit data (such as claims their accounts had been compromised or needed to be closed). In some instances, Defendants or their agents impersonated federal or CRA agents and caused victims to pay illegal advance fees, which placed victims in further debt, lowered their credit scores, and threatened their employment.
- The complaint contained allegations that Defendants violated 15 U.S.C. § 1681b(f)(1), which prohibits persons from using or obtaining a consumer report for any purpose unless it is for a purpose authorized under FCRA.
- On the same date, the Court granted a TRO, freezing Defendants’ assets, appointing a receiver, and scheduling an injunction hearing.
- On August 7, 2025, the Parties filed a consent preliminary injunction freezing Defendants’ assets and continuing the receivership.
- On September 16, 2025, the Parties filed a motion regarding release of certain assets from the freeze, which the Court granted.

Government Enforcement

FTC v. Accelerated Debt Settlement Inc., et al, continued

- On January 30, 2026, the FTC filed a status report stating that the parties have “negotiated final settlements in this matter with the three individual Defendants.”
- Under the FTC’s Rules of Practice and regulations, FTC counsel has authority to negotiate settlement agreements, but a majority of FTC Commissioners must approve the settlement agreement and authorize its filing in court.
- The Commissioners’ review and approval or denial of the settlement remains ongoing and can take several weeks.
- The FTC, however, intends to continue pursuing the case against the corporate Defendants.
- Pursuant to the Court’s December 15, 2025 order, attorneys for the corporate Defendants were permitted to withdraw and the Corporate Defendants have until February 13, 2026, to retain new counsel.
- According to the FTC’s status report, the FTC intends to begin default proceedings against the corporate Defendants if they do not retain new counsel by the Court’s deadline.

Litigation Landscape

Private Enforcement

- FCRA has a private right of action and cases continue to increase:
 - In December 2025, FCRA cases were up 15.6% from the prior month and 37.4% from the prior year.
 - The 11th Circuit continues to be a hotbed of activity.
- CARES Act/Covid forbearance programs prohibited reporting certain types of unpaid debts (mortgage, student loans), as more consumers leave forbearance or collections resume, inaccuracies with changes to debt and payment reporting could lead to rise in FCRA lawsuits.
- Standing requirements remain a reliable means of dismissing FCRA claims, especially class ones, as each plaintiff must suffer an actual (not simply a possible) “concrete harm” of interests protected by FCRA. See, e.g., *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021).

Litigation Landscape

Roberts v Carter-Young, Inc., 131 F.4th 241 (4th Cir., Mar. 14, 2025)

- Plaintiff disputed debt from former landlord with collections agency that furnished information to CRA.
- Collection agency only confirmed the debt with the landlord which Plaintiff claimed was not reasonable under FCRA.
- The District Court dismissed Plaintiff's claims, because her disputes involved legal, not factual, matters and FCRA did not require furnishers to investigate legal disputes.
- Appeals court vacated and remanded because "there is no hard line rendering legal disputes unverifiable."
- Court stated:
 - "the scope of an investigation into objectively and readily verifiable information is not limited to confirming accurate transcription of a debt's amount or the name of the debtor. . . . Whether a debt has been paid could, in some instances, be objectively and readily verifiable. So might claims that alleged debts never occurred. Also, while many legal disputes will not involve objectively and readily verifiable information, some disputes that implicate legal questions and legal doctrines will."
 - "Requiring investigations that resemble full court proceedings would not be reasonable."

Litigation Landscape

Roberts v Carter-Young, Inc., continued

- Court noted it was not addressing whether furnisher did a reasonable investigation or what would be reasonable; the holding was about what was necessary to survive dismissal.
 - “a consumer must allege facts that, if true, indicate an inaccuracy or incompleteness in their credit report that is objectively and readily verifiable.”
- This tees the issue up for a Circuit split
 - 4th Circuit aligns here with 11th and 2nd Circuits, which refuse to impose a bright line rule that only factual errors are actionable under FCRA and recognized that some disputed inaccuracies will require application of law to facts and, where such application is straightforward, a failure to accurately report information is objectively and readily verifiable under the FCRA. See *Holden v. Holiday Inn Club Vacations, Inc.*, 98 F.4th 1359, 1363 (11th Cir. 2024) and *Sessa v. Trans Union, LLC*, 74 F.4th 38, 42 (2d Cir. 2023).
 - 1st and 10th Circuits have distinguished between factual and legal inaccuracies. See *Chiang v. Verizon New England Inc.*, 595 F.3d 26, 38 (1st Cir. 2010) (not responsible for resolving “disputed legal questions” only “factual inaccuracy”) and *Wright v. Experian Info. Sols., Inc.*, 805 F.3d 1232, 1242 (10th Cir. 2015).
 - This split could reflect a changing application of FCRA investigative standards for furnishers.

Litigation Landscape

Roberts v Carter-Young, Inc., continued

- On May 2, 2025, Plaintiff filed an amended complaint.
- On May 15, 2025, Collection agency filed a motion to dismiss the amended complaint.
- The motion to dismiss remains pending before the Court.

Litigation Landscape

Brown v. Turning Point Data, Inc., 24-cv-589 (N.D. Okla., Aug. 25, 2025)

- A consumer applying to a university got his own credit report and then forwarded to university. The report contained inaccurate information. He later sued CRA because report contained inaccuracies.
- Court denied dismissal under statutory interpretation because FCRA is not limited to third-party communications.
- “The plain language of §1681a(d)(1) expressly contemplates that ‘consumer reports’ are communications that are or are intended to be *used* by third parties, but the statute does not expressly require that ‘consumer reports’ be sent to third parties. The Court is reluctant to read this limitation into the statute when it cannot be found in the definition itself.”

Litigation Landscape

Brown v. Turning Point Data, Inc., continued

- “Congress did not add a third-party disclosure limitation to the definition of ‘consumer report,’ even though it knew how to do so. See 15 U.S.C. § 1681a(f). Congress did not exclude ‘self-reports’ from the definition of ‘consumer report,’ even though it excluded other communications from this definition based on the identity of the recipient. See 15 U.S.C. §1681a(d)(2)(A)(iii). And Congress used ‘consumer reports’ to refer to the reports sent to consumers, even though it could have chosen a different phrase to refer to those communications. See 15 U.S.C. § 1681a(g) (defining consumer “file” to mean “all information recorded and retained by a consumer reporting agency”); 15 U.S.C. § 1681c-1(a)(2)(A) (permitting consumers to request copies of their files). If Congress intended to limit ‘consumer reports’ to ‘reports to third parties,’ it could have, and should have. It did not. The statutory language does not support the construction.”
- The parties subsequently settled before Turning Point filed a motion for summary judgment.

Litigation Landscape

Recent cases involving mortgage companies

- In 2024, a federal district court denied a motion to dismiss in a case where a mortgage company allegedly violated 15 U.S.C. § 1681b of FCRA, by using or obtaining a consumer's credit report without a permissible purpose.
- The case arose when a plaintiff's account fell into default and the mortgagee foreclosed and sold the property.
- Plaintiff claimed that the foreclosure sale satisfied the mortgage, but the mortgagee accessed the plaintiff's credit reports after the foreclosure sale.
- The mortgage company's motion to dismiss argued that the plaintiff hadn't shown that it had no permissible purpose for accessing the plaintiff's credit.
- The court disagreed, noting that where a debtor-creditor relationship existed and the debt was discharged but certain obligations remained, lenders may use the borrower's credit report to review the account until all obligations are fulfilled. But, here, plaintiff alleged there were no ongoing debt obligations because they claimed the foreclosure sale extinguished the debt.
- In September 2025, the parties settled the case before trial.

Regulatory Background: FDCPA / Regulation F

Regulation F: Debt Collection Rule – Background

- For decades, the FDCPA was enforced by the FTC, who had no authority to prescribe rules implementing the FDCPA
- As a result, the FDCPA was the subject of countless, and often times inconsistent, interpretations fashioned by the courts and federal regulators
- Dodd-Frank transferred FDCPA enforcement authority from the FTC to the CFPB and granted the CFPB with rulemaking authority to prescribe regulations with respect to the collection of debts by debt collectors
- CFPB began this process in 2013 by issuing an Advanced Notice of Proposed Rulemaking (“ANPR”)
- Following the ANPR, the Bureau, in conjunction with the OMB and the SBA’s Chief Counsel for Advocacy, convened a Small Business Regulatory Enforcement Fairness Act panel in 2016 to consult with representatives of small businesses that might be affected by the rulemaking
- On May 7, 2019, the Bureau finally issued a Notice of Proposed Rulemaking to amend Regulation F
- The CFPB issued a Final Rule to amend Regulation F in two parts:
 - Part one released October 30, 2020 – 653 pages
 - Part two released December 18, 2020 – 354 pages
- The Final Rule took effect on November 30, 2021

Regulation F: Debt Collection Rule – What's in it?

Key Provisions

- Inconvenient time and place restrictions
- Electronic communications – text messages and emails
- Communication Medium restrictions
- Limited-content message
- Call frequency limitations
- Collection of time-barred debts
- Credit reporting restrictions
- Debt validation

Regulation F: Debt Collection Rule – Threshold Issues

- The amendments to Regulation F (12 CFR 1006.1 et seq.) preserved the major components of the FDCPA
- The definition of “debt collector” remained the same
 - A mortgage servicer will be a debt collector with respect to any loans that it services for others and that were in default at the time of acquisition
- The CFPB did **not** rely upon its UDAAP authority

Regulation F: Debt Collection Rule – Inconvenient Time and Place

- **Inconvenient Time:** A debt collector may not communicate or attempt to communicate at an inconvenient or unusual time
 - Restriction applies to all mediums of communication (e.g., telephone, e-mail, text message, etc.)
 - Prior to 8:00 a.m. or after 9:00 p.m. at the consumer’s location is presumed to be inconvenient, but a consumer can also designate other times as inconvenient
 - Whether a time is inconvenient or unusual is based on information that a debt collector knows or should know
- **Inconvenient Place:** “[A] debt collector must not communicate or attempt to communicate with a consumer in connection with the collection of any debt . . . [a]t any unusual place, or at a place that the debt collector knows or should know is inconvenient.”

Regulation F: Debt Collection Rule – Electronic Communications Generally

- **General Rule:** Every electronic communication or attempt to communicate must include a method by which the consumer can opt out of further communications or attempts to communicate to that address or telephone number
 - Applies to all electronic communication mediums (email, text, social media)
 - Must be a clear and conspicuous statement
 - Opt-out method must be “reasonable and simple”
 - Examples:
 - Text message: “Reply STOP to stop texts to this telephone number.”
 - Email: “Click here to opt out of further emails to this email address.”
 - Email: “Reply with the word ‘stop’ in the subject line.”
 - Requiring the consumer to opt out by postal mail, telephone, or by visiting a website without providing a link is not “reasonable and simple”
- If a consumer opts out of receiving electronic communications, the debt collector may send an electronic confirmation that only includes a statement confirming the consumer’s request and that it will be honored

Regulation F: Debt Collection Rule – Communication Medium Restrictions

- **General Rule:** “In connection with the collection of any debt, a debt collector must not communicate or attempt to communicate with a person through a medium of communication if the person has requested that the debt collector not use that medium to communicate with the person.”
- **Exceptions:**
 - Limited exception for electronic messages that confirm a consumer’s opt out preference will be honored
 - One response permitted if consumer initiates contact through a previously prohibited medium
 - When applicable law requires the use of a specific medium

Regulation F: Debt Collection Rule – Limited-Content Message

- A “limited-content message” is a voicemail message for a consumer that includes all of the required content, that may include any of the optional content, and that includes no other content
- A limited-content message is **not** a “communication,” but it is **an attempt** to communicate

Required Content:

- Request that consumer reply to the message;
- Name or names of one or more natural persons the consumer can contact;
- Telephone number the consumer can use to reply; and
- Business name that does not indicate the debt collector is in the debt collection business

Optional Content:

- Salutation;
- Date and time of message;
- Suggested dates and times for the consumer to reply; or
- Statement that if consumer replies, the consumer can speak to any of the company’s representatives

Regulation F: Debt Collection Rule – Call Frequency Limitations

- **General Rule:** “In connection with the collection of a debt, a debt collector must not place telephone calls or engage any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.”
- The following frequency limits are presumed to comply with the General Rule:
 - No more than 7 call attempts per debt in a 7-day period; and
 - No contact for 7 days after speaking with a consumer about a particular debt
- Certain call attempts are excluded (e.g., consent provided w/in 7 days)
- CFPB chose to impose a rebuttable presumption framework rather than a bright-line rule
- Commentary includes non-exhaustive list of factors that may rebut the presumption of compliance or violation:
 - Frequency and pattern of telephone calls and/or voicemails
 - Content of prior communications (e.g., cease communication)
 - Compliance with other applicable law
 - Relation to active litigation
 - Necessary to allow consumer to avoid negative consequences

Regulation F: Debt Collection Rule – Time-Barred Debt

- **Action to enforce interest in real property:** A debt collector who brings a legal action against a consumer to enforce an interest in real property securing the consumer's debt must bring the action only in a judicial district or similar legal entity in which such real property is located.
- **Other legal actions:** A debt collector who brings a legal action against a consumer other than to enforce an interest in real property securing the consumer's debt must bring such action only in the judicial district or similar legal entity in which the consumer:
 - Signed the contract sued upon; or
 - Resides at the commencement of the action.

Regulation F: Debt Collection Rule – Credit Reporting Restrictions

- **Background:**
 - CFPB was concerned with what is known as debt parking or passive collections – reporting a debt to a consumer reporting agency (CRA) before attempting to communicate with the consumer about the debt
- **General Rule:**
 - A debt collector must not furnish information about a debt to a CRA before it: (A) speaks to the consumer about the debt in person or by telephone; or (B) sends a letter in the mail or sends an electronic message (e-mail, text message, etc.) to the consumer about the debt and waits a reasonable period of time to receive a notice of undeliverability
 - If a notice of undeliverability is received during the reasonable wait period, the debt collector cannot furnish until it has satisfied A or B.

Regulation F: Debt Collection Rule – Debt Validation

- Debt validation framework remains largely the same but expands debt validation notice requirements
- Regulation F requires the debt validation notice to include:
 - Debt collector communication disclosure (i.e., mini-Miranda);
 - Information about the debt;
 - Information about consumer protections; and
 - Consumer-response information
- For most residential mortgage loans, if the most recent periodic statement is enclosed then the notice need not include:
 - Itemization date;
 - Amount of the debt on the itemization date; and
 - Itemization of the current amount of the debt
- Regulation F provides a safe harbor for debt collectors who use any of the specified variations of the model notices in Appendix B

North South Group P.O. Box 123456 Pasadena, CA 91111-2222 (800) 123-4567 from 8am to 8pm EST, Monday to Saturday www.example.com	To: Person A 2323 Park Street Apartment 342 Bethesda, MD 20815 Reference: 584-345												
North South Group is a debt collector. We are trying to collect a debt that you owe to Bank of Rockville. We will use any information you give us to help collect the debt.													
Our information shows:	How can you dispute the debt?												
You had a Main Street Department Store credit card from Bank of Rockville with account number 123-456-789.	<ul style="list-style-type: none"> • Call or write to us by August 28, 2020, to dispute all or part of the debt. If you do not, we will assume that our information is correct. • If you write to us by August 28, 2020, we must stop collection on any amount you dispute until we send you information that shows you owe the debt. You may use the form below or write to us without the form. You may also include supporting documents. We accept disputes electronically at www.example.com/dispute. 												
<table border="1"> <tr> <td>As of January 2, 2017, you owed:</td> <td style="text-align: right;">\$ 2,234.56</td> </tr> <tr> <td>Between January 2, 2017 and today:</td> <td></td> </tr> <tr> <td>You were charged this amount in interest:</td> <td style="text-align: right;">+ \$ 75.00</td> </tr> <tr> <td>You were charged this amount in fees:</td> <td style="text-align: right;">+ \$ 25.00</td> </tr> <tr> <td>You paid or were credited this amount toward the debt:</td> <td style="text-align: right;">- \$ 50.00</td> </tr> <tr> <td>Total amount of the debt now:</td> <td style="text-align: right;">\$ 2,284.56</td> </tr> </table>	As of January 2, 2017, you owed:	\$ 2,234.56	Between January 2, 2017 and today:		You were charged this amount in interest:	+ \$ 75.00	You were charged this amount in fees:	+ \$ 25.00	You paid or were credited this amount toward the debt:	- \$ 50.00	Total amount of the debt now:	\$ 2,284.56	What else can you do? <ul style="list-style-type: none"> • Write to ask for the name and address of the original creditor, if different from the current creditor. If you write by August 28, 2020, we must stop collection until we send you that information. You may use the form below or write to us without the form. We accept such requests electronically at www.example.com/request. • Go to www.cfpb.gov/debt-collection to learn more about your rights under federal law. For instance, you have the right to stop or limit how we contact you. • Contact us about your payment options. • Póngase en contacto con nosotros para solicitar una copia de este formulario en español.
As of January 2, 2017, you owed:	\$ 2,234.56												
Between January 2, 2017 and today:													
You were charged this amount in interest:	+ \$ 75.00												
You were charged this amount in fees:	+ \$ 25.00												
You paid or were credited this amount toward the debt:	- \$ 50.00												
Total amount of the debt now:	\$ 2,284.56												
Notice: See reverse side for important information.													
Mail this form to: North South Group P.O. Box 123456 Pasadena, CA 91111-2222	How do you want to respond? <p>Check all that apply:</p> <p><input type="checkbox"/> I want to dispute the debt because I think:</p> <ul style="list-style-type: none"> <input type="checkbox"/> This is not my debt. <input type="checkbox"/> The amount is wrong. <input type="checkbox"/> Other (please describe on reverse or attach additional information). <p><input type="checkbox"/> I want you to send me the name and address of the original creditor.</p> <p><input type="checkbox"/> I enclosed this amount: \$ <input type="text"/></p> <p>Make your check payable to North South Group. Include the reference number 584-345.</p> <p><input type="checkbox"/> Quiero este formulario en español.</p>												
Person A 2323 Park Street Apartment 342 Bethesda, MD 20815													

Regulation F: Debt Collection Rule - Record Retention

- Regulation F requires retention of evidence of compliance or noncompliance with the rule starting on the date that the debt collector begins collection activity on a debt until three years after the debt collector's last collection activity on the debt.
- If a debt collector chooses to record telephone calls, a debt collector must retain those recordings for three years after the date of the telephone call.

Interplay Between Final Rule and State Law

- Mirroring the FDCPA, § 1006.104 of the Final Rule provides:
 - “Neither the Act nor the corresponding provisions of this part annul, alter, affect, or exempt any person subject to the provisions of the Act or the corresponding provisions of this part from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provisions of the Act or the corresponding provisions of this part, and then only to the extent of the inconsistency”
 - “[A] State law is not inconsistent with the [FDCPA] or the corresponding provisions of [the Final Rule] if the protection such law affords any consumer is greater than the protection provided by the [FDCPA] or the corresponding provisions of [the Final Rule].”
- Considering existing state laws:
 - The scope of state debt collection laws vary and may apply to debts not covered by the FDCPA, such as original creditor debts or performing debts. States may also have more extensive disclosure obligations or restrictive communication requirements.
 - For example:
 - California’s Rosenthal Fair Debt Collection Practices Act applies to “consumer debt” meaning money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. Cal. Civ. Code § 1788.2(f). Unlike the FDCPA, California’s law does not appear to be limited to loans in default. Additionally, California’s law incorporates the requirements of the federal FDCPA such that a debt collector under California law is subject to the federal FDCPA, even if it does not meet the FDCPA’s definition of a “debt collector.”