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Recent Changes and New Complexities in Credit Reporting

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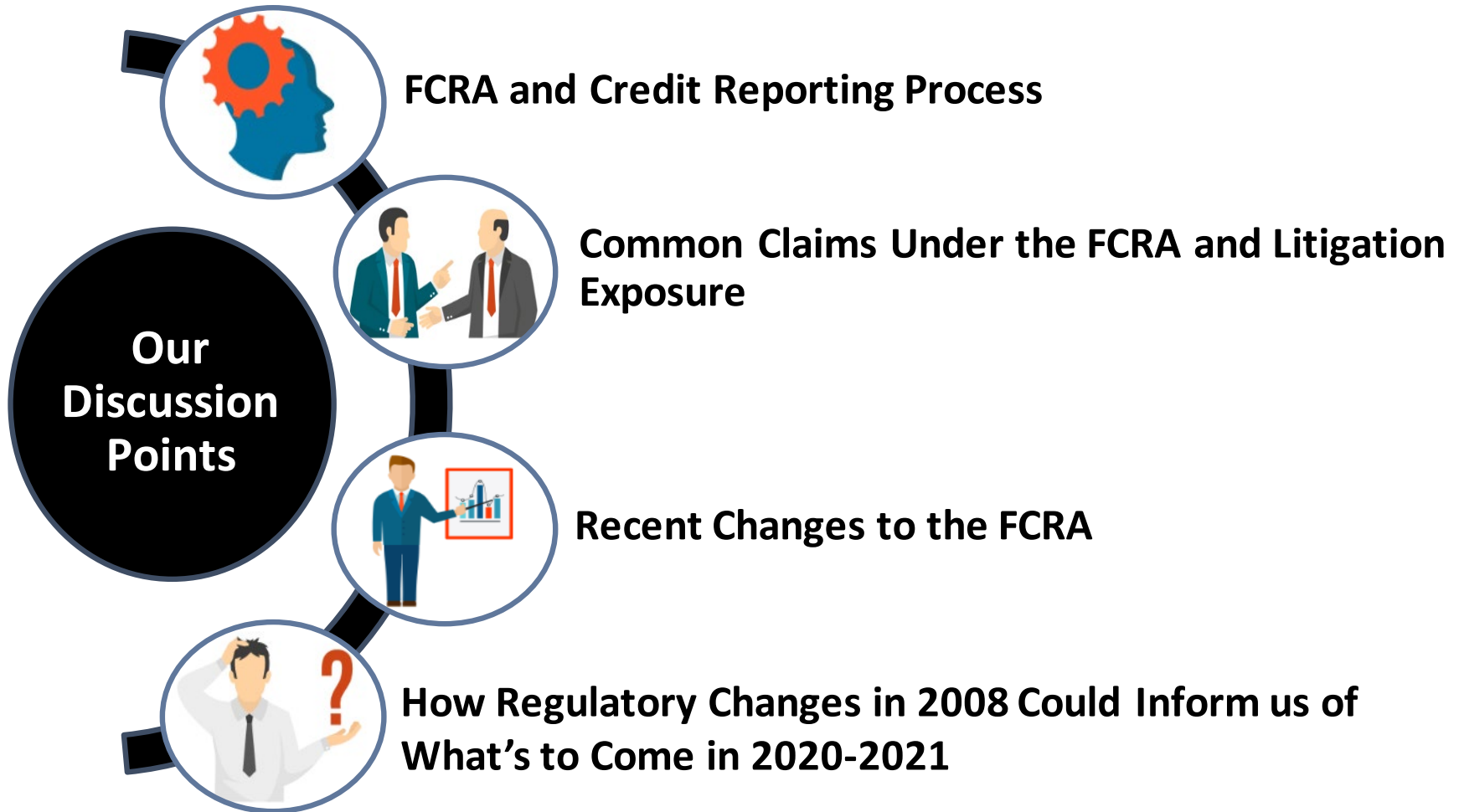
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Overview



What is the FCRA?

Statute governing the collection, maintenance, and disclosure of consumers' personal information



Regulates Consumer Reporting Agencies



Regulates parties that supply consumer information to Credit Reporting Agencies and third parties



What is a Consumer Report?

Written or Oral
Communication

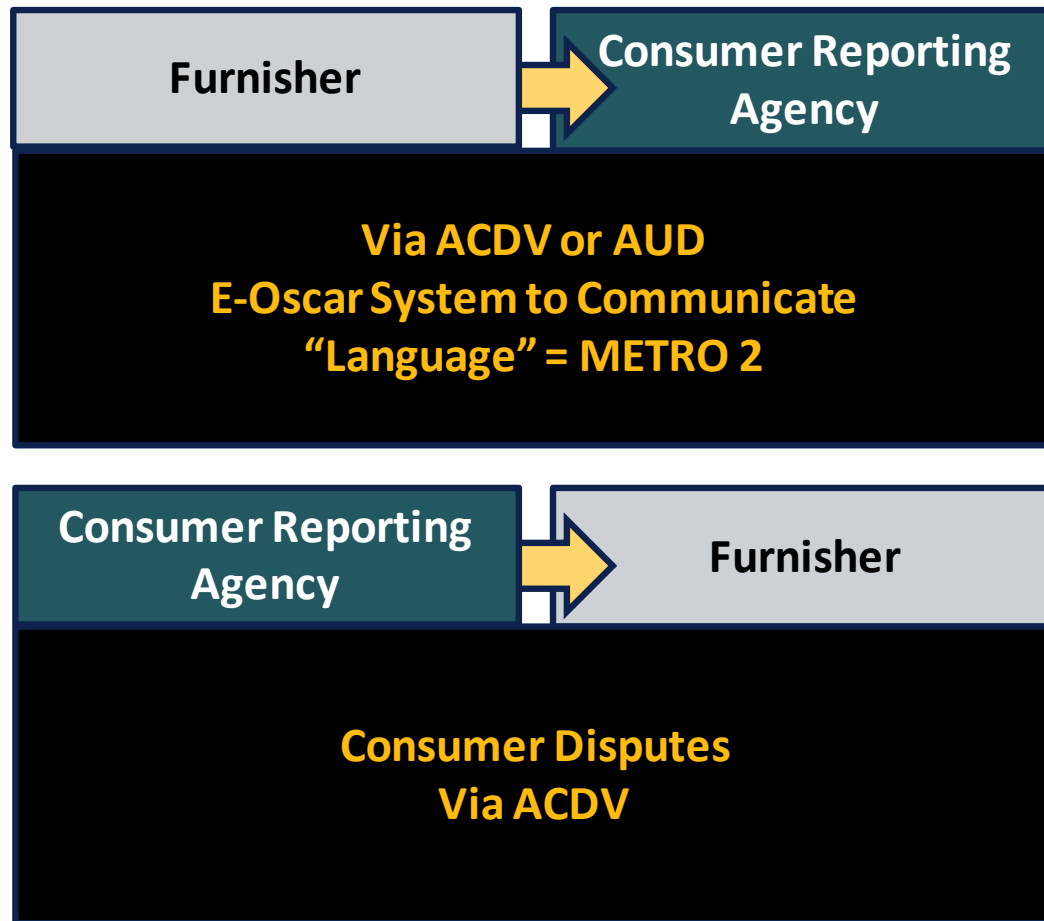
Prepared by a
Consumer Reporting
Agency

**CONSUMER
REPORT**

Bears on Consumer's
Creditworthiness

Establishes Eligibility
for a Particular
Purpose

How Furnishers Provide Consumer Information to CRAs and Vice Versa



Common Claims Under the FCRA



**Failure to follow reasonable procedures
for ensuring accuracy of consumer
information**

15 U.S.C. § 1681e(b)



**Failure to properly investigate or
reinvestigate a consumer's dispute**

15 U.S.C. § § 1681i(a)(1)(A), 1681s-2(b)



**Issuing or obtaining a consumer report
for an impermissible purpose**

15 U.S.C. § 1681b

Culpable Mental States Under FCRA

Negligent Violations

- Did defendant act reasonably
- Causal relationship
- Damages

Willful Violations

- Defendant knowingly or recklessly violated the statute

Liability Risks Under FCRA

Willful Violations

- Actual or statutory damages (\$100-\$1,000/violation)
- Punitive damages
- Reasonable Attorneys' Fees and Costs

Negligent Violations

- Actual damages
- Reasonable Attorneys' Fees and Costs

Actual damages includes emotional distress damages

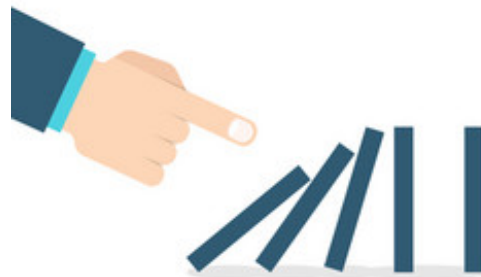
No cap on statutory damages in class actions

California Consumer Credit Reporting Agencies Act (“CCRAA”)

Governs credit reporting conduct that is not completely preempted by the FCRA.



Punitive damages capped at \$5,000 for each violation



Causation Requirement



No claim for failure to investigate

New Reporting Requirements Under the CARES Act



Does not apply to charged-off accounts

The CARES Act

The CFPB Weighs In

“flexible supervisory and enforcement approach”

Furnishers should continue to report accurate information

CFPB Statement

Will not cite in examination or take enforcement actions against furnishers who are accurately reporting payment relief measures being afforded to borrowers

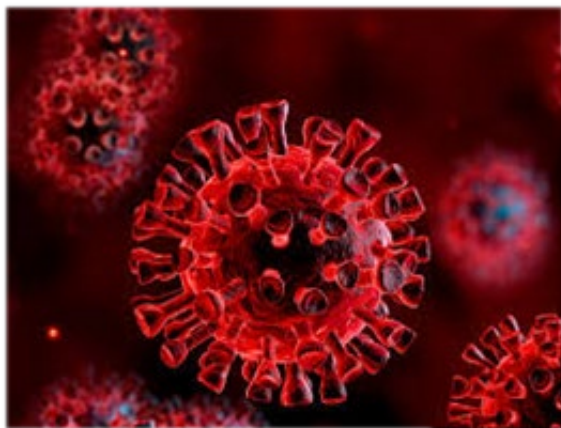
Will consider the circumstances entities face and the good faith efforts they make to comply with their obligations

Regulatory Developments 2008 vs. 2020



Subprime Mortgage Crisis

- Dodd-Frank
- Consumer Financial Protection Bureau (CFPB)
- Economic Stabilization Act of 2008
- Housing Economic Recovery Act of 2008
- State-level laws, such as Homeowner Bill of Rights



Covid-19 Crisis

- CARES Act
- Other pending stimulus bills (HEROES & HEALS Acts)
- Foreclosure and Eviction Moratoriums (CARES Act and Federal Housing Finance Agency)
- Paycheck Protection Program

Changes We Anticipate



**Greater Regulatory
Scrutiny**



**Business Operational
Changes**



Increase in FCRA Litigation

Resources FCRAland.com

The screenshot shows the homepage of FCRAland.com. At the top is a dark blue navigation bar with links for HOME, KEY FCRA STATUTORY TEXT, HELPFUL RESOURCES, OUR TEAM, and CONTACT. Below the navigation bar is the Womble Bond Dickinson logo and the text "FCRAland NAVIGATING THE FAIR CREDIT REPORTING ACT". A search bar is located to the right of the logo. The main content area features a large banner for "Consumer Financial Protection Bureau" with the sub-headline "CFPB Shifts Focus in Light of COVID-19" and the author "BY NIKKU KHALIFIAN ON JULY 22, 2020 - (1 COMMENT)". Below the banner is a section titled "ABOUT" with a welcome message. To the right of the "ABOUT" section is a featured article titled "Second Circuit Upholds Dismissal of FCRA Claim Due to Customer's Failure to Allege Dispute to CRA" by Nikku Khalifian on August 11, 2020. Further right are two sidebars: "FCRA FILINGS YEAR TO DATE" showing 1870 cases in 2020, and "RECENT FCRA FILINGS" showing 11 new cases today. A "SUBSCRIBE TO BLOG VIA EMAIL" form is also present.

Timely updates and insights regarding the FCRA. Visit and subscribe!

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