FCRA, TILA & UDAAP

A Bankers' Perspective: Intersection of Bankruptcy and Compliance

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Key Compliance Concerns in 3 Federal Consumer-Protection Laws with Regard to Bankruptcy

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FCRA
Fair Credit Reporting Act

15 U.S.C. §1681 et seq.

Accuracy of credit reports, Credit Bureau and Furnisher investigation duties and permissible purpose for credit pulls.

Why it matters: Post-discharge reporting errors are a frequent source of client claims.

TILA
Truth in Lending Act / Reg. Z

15 U.S.C. §1601 et seq.

Disclosure of credit costs, the right of rescission and mortgage servicing rules.

Why it matters: Disclosure defects can create estate assets or defenses to creditor claims.

UDAAP
Unfair, Deceptive or Abusive Acts or Practices

12 U.S.C. §§5531, 5536

A conduct-based standard enforced by the CFPB and state attorneys general.

Why it matters: Frames misconduct in collection, servicing and reaffirmation where no specific rule applies.

Common thread: accuracy, honest disclosure and fair treatment of the consumer before, during and after the transaction.

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Select Aspects of the Laws

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Law	Highest-value aspects for bankruptcy practice	Typical use
FCRA	Post-discharge reporting accuracy; Furnisher investigation duties (§1681s-2(b)); permissible purpose; 10-year reporting limit	Credit-report clean-up and damages claims after the case
TILA	Rescission (§1635); recoupment and setoff; Reg. Z mortgage servicing rules; reaffirmation disclosures	Estate assets, claim objections and foreclosure defense
UDAAP	Deceptive or abusive collection and servicing conduct; fee practices; misstatements about debt status	Pattern evidence, regulator complaints and state-law claims

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FCRA at a Glance: Verifying Who Owes What

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Consumer reporting agencies	Furnishers (creditors, servicers)	Users of reports
§1681e(b): Follow reasonable procedures to assure maximum possible accuracy. **§1681i:** Reinvestigate disputes, generally within 30 days, and notify the Furnisher. **Result:** Correct or delete information that cannot be verified.	**§1681s-2(a):** Do not report information known or reasonably believed to be inaccurate or undocumented. **§1681s-2(b):** After notice from a bureau, investigate, review the file and report results. **Result:** Correct and update the account, including discharge.	**§1681b:** Need a permissible purpose to obtain a consumer report. **§1681m:** Give adverse-action notices when credit is denied based on a report. **Result:** Pulling a report without a purpose can itself be a violation.

Compliance point: A dispute sent only to the Furnisher does not trigger a private claim under §1681s-2(b). Disputes that have originated with the credit bureaus carry greater legal risk for the Furnisher.

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CRA's FCRA Reinvestigation Responsibility

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- FCRA uses the term **"reinvestigation"** because the law assumes that a consumer reporting agency (CRA) performed an initial verification of the data when it was first placed on in a credit file.
- **Initial Duty of Accuracy (§ 1681e(b)):** FCRA requires CRAs to follow "reasonable procedures to assure maximum possible accuracy" whenever preparing a consumer report. In the eyes of the statute, compiling and reporting that initial data counts as the first "investigation" into the information included in a consumer file.
- **Checking Existing Records:** Because the item is already sitting in a credit file, a dispute forces the CRA to go back, re-examine what they already reported, and verify it a second time.
- **CRA vs. Furnisher Terminology:** FCRA draws a strict line between the two parties involved in a dispute:
  - **Credit Reporting Agencies (CRAs)** conduct a **"reinvestigation"** under **§ 1681i** because they are re-checking data they already accepted into their system.
  - **Data Furnishers** (banks, lenders, collection agencies) conduct an **"investigation"** under **§ 1681s-2(b)** because they are looking into their own primary business records for the first time in response to a consumer's formal dispute.

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FCRA: How a Bankruptcy Should Appear on a Credit Report

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10 yrs

Chapter 7 and 11

A bankruptcy may be reported for up to 10 years from the order for relief (§1681c(a)(1)).

7 yrs

Chapter 13

Bureaus commonly report Chapter 13 filings for 7 years from the filing date, although allowed up to 10 years.

Accurate post-discharge reporting generally shows

- A status reflecting that the account was discharged or included in bankruptcy
- A zero balance on discharged debts
- No ongoing delinquency or scheduled payments after the filing date
- Active status for reaffirmed or secured debts the client keeps paying
- Accurate pre-bankruptcy history, which may lawfully remain

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Chapter 13 Consumer Report Impact

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- The FCRA 7-year clock begins on the exact date the bankruptcy case was **filed** in court, not the date it was discharged.
- Because a Chapter 13 repayment plan typically lasts **3 to 5 years**, the bankruptcy record usually remains on a consumer's credit report for about **2 to 4 years after** finishing the plan and receiving their discharge.
- The major consumer reporting agencies (Equifax, Experian, and TransUnion) have a policy of removing **completed** Chapter 13 bankruptcies once the 7-year period expires.
  - The 7-year voluntary removal policy is generally intended for *completed* (discharged) Chapter 13 cases. If a Chapter 13 case is dismissed without completion, credit bureaus are legally allowed to leave it on the report for up to 10 years.
- Chapter 7 and Chapter 11 bankruptcies remain on your credit report for **10 years** from the filing date, making Chapter 13 a shorter reporting period.

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Consumer Disputes of Credit Report Information

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- Congress structured the FCRA enforcement rules such that while consumers can dispute errors directly with a lender or bank, the law separates those direct disputes from the specific legal duties that allow an individual to file a lawsuit.

The Statutory Trigger in § 1681s-2(b)

- Under 15 U.S.C. § 1681s-2(b), a data Furnisher's legal duty to investigate is not triggered when a consumer contacts them directly. The statute explicitly states that a Furnisher's investigation duties begin only *"after receiving notice pursuant to section 1681i(a)(2) of this title"* that must be sent within 5 business days of receiving the consumer dispute.
- **Gatekeeper Function.** Section 1681i(a)(2) governs how a **consumer reporting agency (CRA)** notifies a Furnisher that a consumer has disputed an item on their credit report. Federal courts consistently rule that because the statute specifies notice from a CRA, a consumer's direct letter or phone call to the Furnisher fails to trigger § 1681s-2(b) obligations.

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Why Accurate Furnishing Does Not Trigger Liability

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- FCRA Section 623 (§ 1681s-2) requires Furnishers to provide accurate and complete information and prohibits reporting information they know or have reasonable cause to believe is inaccurate.
- Even when information *is* inaccurate, FCRA is not a strict liability statute—statutory liability is triggered from ***negligent*** or ***willful*** failures to comply with statutory duties (such as failing to investigate a dispute or failing to correct and update inaccurate or unverifiable information), not simply from reporting accurate data.
- When a dispute is investigated and information is verified as accurate, reporting agencies and Furnishers are not required to delete it.

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FCRA: The Dispute Process After Discharge

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Client disputes

Writes to each bureau, identifying the account and the discharge.

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Bureau notifies

Sends the dispute to the Furnisher within 5 business days of dispute receipt.

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Furnisher investigates

Reviews its records and the bankruptcy notice, then reports results.

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Bureau resolves

Updates or deletes the entry and sends results to the consumer.

What Furnishers watch for: legal versus factual disputes

As bankers, we've been instructed that courts differ on whether a dispute that turns on a legal question, such as whether a debt was discharged, is actionable under the FCRA. Recent decisions have treated Furnishers, who know the case facts, differently from bureaus. Credit Bureaus and Furnishers are data aggregators and lenders, not judges. Furnishers role is report what is factually verifiable with integrity and accuracy.

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FCRA: Legal Versus Factual Disputes

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Legal question examples

Legal validity of debt: FCRA does not demand that a consumer reporting agency decide whether a debt is legally valid. They include data they believe accurate as provided by contractual Furnishers.

Chapter 13 discharge of mortgage: Whether a Chapter 13 discharge reached a mortgage is a legal question. Legal claim failed because the error was not objectively apparent from the credit bureau's records.

Factual inaccuracy examples

Balance or delinquency: a past-due status or balance shown after the discharge date.

Wrong discharge status: an account shown as discharged when it was paid on time and never in the plan. Prior court decisions have called this a factual error, not a legal one.

Factual inaccuracy test: can the error be seen in the records, without interpreting the Bankruptcy Code?

Compliance point: Furnishers should investigate the dispute as a factual error and attach the discharge order and schedules to support the integrity of what was reported.

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FCRA: Furnishers and Bureaus Treated Differently

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	Consumer Reporting Agencies (Credit Bureaus)	Furnishers (Creditors, Servicers)
Accuracy duty	Reasonable procedures for maximum possible accuracy (§1681e(b)) and reinvestigation of disputes (§1681i).	Report information that correctly reflects liability for the account (Reg. V); investigate after notice from a bureau (§1681s-2(b)).
Legal questions	Need not decide a debt's legal validity. Whether a student loan was discharged was held to be a legal call outside a bureau's role	Same case: claims against the Furnisher went forward. The court noted Furnishers may know the bankruptcy and the debt's status directly.
Practice point	Dispute with the bureau, attach the discharge order, and keep the dispute factual.	Allege the Furnisher knew the case outcome and verified the account anyway. Not all courts agree, so check your circuit.

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FCRA: Permissible Purpose and Credit Pulls

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Legal client's own file

With written authorization, pull all three bureau reports at intake and again after discharge (§1681b(a)(2)).

Use: Baseline for spotting errors

Discharged debts

Some courts hold a discharge severs the account relationship and limits a creditor's future permissible purpose

Use: Possible inquiry-based claims against creditor

Reaffirmed and secured accounts

A continuing account relationship may support account-review pulls. Outcomes turn on the facts.

Use: Confirm status before alleging a violation

Unauthorized pulls could support a willful-violation claim (§1681n). Creditors must have clear procedures regarding subsequent credit report inquiries.

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FCRA: Damages, Standing and Deadlines

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Issue	Recovery or rule	Key authority
Willful violation (§1681n)	Actual damages or statutory damages of $100 to $1,000; punitive damages; fees and costs	Safeco v. Burr (2007): reckless disregard counts as willful
Negligent violation (§1681o)	Actual damages plus fees and costs	No statutory or punitive damages
Standing	Inaccurate information must cause concrete harm, such as dissemination to third parties	Only those consumers whose reports were distributed had concrete injury
Deadline (§1681p)	Earlier of 2 years from discovery or 5 years from the violation	Calendar from the date the client learns of the error

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TILA at a Glance: What Lenders are Required to Disclose

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Annual percentage rate (APR)
The cost of credit as a yearly rate

Finance charge
The dollar cost of the credit

Amount financed
The credit actually provided to the borrower

Total of payments
What the borrower will have paid by the end of the term

Why it matters in bankruptcy

- Defective disclosures can unlock rescission, statutory damages and recoupment
- Covers closed-end loans (mortgages, autos, etc.) and open-end lines (cards, HELOCs, etc.)
- Regulation Z (12 CFR Part 1026) adds mortgage servicing, ability-to-repay and escrow rules

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TILA Rescission: Often the Highest-Value Claim

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3 yrs
Longest extended right to rescind (§1635(f))

Scope: Non-purchase-money loans secured by the consumer's principal dwelling, such as refinances and HELOCs (§1635(a)).

Clock: 3 business days normally; up to 3 years if required disclosures or notices were materially defective.

Method: Jesinoski v. Countrywide (2015): written notice within the period is enough; no lawsuit is required.

Bankruptcy angle: The right to rescind is considered estate property (§541). It is frequently raised in Chapter 13 plans and trustee negotiations.

Effect: The security interest can be voided and the lender returns finance charges and fees; the court may adjust tender (§1635(b)) and final settlement.

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TILA Regulation Z Mortgage Servicing Rules in Bankruptcy

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Periodic statements (§1026.41)
Servicers have a conditional exemption during and after bankruptcy but often must send modified statements. Verify the trigger: chapter, reaffirmation, surrender or lien avoidance (§1026.41(e)(5)).

Payoff statements (§1026.36(c)(3))
A payoff statement is due within 7 business days of a written request.

Adjustable-rate notices (§1026.20(c)-(d))
Rate and payment changes must be disclosed to the borrower in advance.

What to check in the client's file

- Statements received since filing
- Fees posted after the petition date compared with payoff figures
- Payment application against the plan and Rule 3002.1 notices
- Escrow analyses and shortage claims

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TILA Regulation Z Right of Rescission

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- Rescission provisions apply to both open-end and closed-end consumer credit
  - Provides a legal "cooling off" period (right to cancel) for consumer purpose non-purchase money loans secured by principal dwellings
- Coverage:
  1. First question: Do the rescission provisions apply (is it exempted)? Exemptions:
     - "Residential mortgage transaction": Purchase money loan or line of credit secured by what will be the principal dwelling
     - *Refinance* of a loan/line from the *original* lender, with no new money advanced
       - If there is new money, the right to rescind may apply to the new funds only
  2. Second question: If not exempt, *who* (if anyone) gets the right to rescind?
     - Regulation Z states "In a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind the transaction"; 2 parts to this:
       a. Someone's principal dwelling is taken as security for the loan; **then**
       b. Each person who has an ownership interest in his/her principal dwelling being taken as collateral gets the right to rescind
         - Note there are different types of ownership interests, such as contingent interests, remainderships, etc.

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TILA Right of Rescission

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The 3-Day Rescission Window

- Consumer has until **midnight of the third business day** after the later of these 3 events occurs to cancel:
  - Consumer signs the credit contract (closing, consummation)
  - Each consumer with the right to rescind receives the required accurate Truth in Lending disclosure form (TRID Closing Disclosure).
  - Consumer receives 2 copies of a notice explaining your right to rescind (only 1 copy required if consumer consented to electronic disclosure)

- **Extended Window for Missing Disclosures:** If the lender fails to give you the required disclosures or rescission notices, your right to cancel extends for up to **three years** (or until you sell the property, whichever comes first).

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UDAAP: CFPA's Three Standards for Misconduct

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Unfair	Deceptive	Abusive
• Causes or is likely to cause substantial injury • The injury is not reasonably avoidable by the consumer • Harm is not outweighed by benefits to consumers or competition	• A representation, omission or practice misleads or is likely to mislead • Judged from the view of a reasonable consumer • The misleading element is material	• Materially interferes with the consumer's ability to understand a term or condition • Or takes unreasonable advantage of a consumer's lack of understanding, inability to protect their interests, or reasonable reliance on the provider

Statutory basis: Consumer Financial Protection Act (CFPA) commonly referred to as the Dodd-Frank Act (12 U.S.C. §§5531(c)-(d) and 5536). Act does not have to be intentional to qualify.

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Examples of UDAAP in Bankruptcy Creditor Operations: Where Conduct Crosses the Line

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Collecting discharged debt
Calls, letters or statements demanding payment on a debt the client no longer owes.

Misstating debt status
Wrong balances or fees or claims that the stay or discharge does not apply.

Post-petition fees
Unsupported fees and escrow charges added after Chapter 13 filing; compare with Rule 3002.1 notices.

Reaffirmation pressure
Pushing clients to reaffirm without the safeguards in §524(c)-(d).

Reporting as collection
Reporting discharged debts as owed in order to pressure payment.

Debt-relief offers
Misleading credit-repair or settlement pitches aimed at distressed consumers.

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UDAAP: Enforcement and Its Risk Exposure

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What it does not give consumer

- No private right of action under the Consumer Financial Protection Act
- Federal enforcement priorities shift over time, so it can be challenging to judge current situation

Potential bank risk exposure

- Enforcers are the CFPB and state attorneys general (12 U.S.C. §5552)
- CFPB actions generally must start within 3 years of discovery (§5564(g))
- State UDAP statutes often add a private right of action and mirror the standard
- Cite the standard in demand letters and settlement talks; file complaints to build a record

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Side by side: Layman's Take on Remedies and Deadlines

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	FCRA	TILA	UDAAP
Private claim?	Yes (§§1681n, 1681o)	Yes (§1640)	Not under federal law; often under state UDAP statutes
Money remedies	Actual and punitive damages; statutory $100 to $1,000 if willful; fees	Actual damages; tiered statutory damages; fees; rescission relief, if applicable	CFPB and attorney general actions: restitution, penalties, injunctions
Deadline	2 years from discovery; 5 years from violation	Damages: 1 year; rescission: up to 3 years	CFPB actions: 3 years from discovery
Best bankruptcy use	Post-discharge report clean-up	Rescission and recoupment	Conduct standard and settlement leverage

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Compliance Checklist: Where to Look and When

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At intake

- Legal counsel will generally pull all three bureau reports with the client's written authorization
- Collect loan files, closing disclosures and rescission notices
- Calendar the 3-year rescission window, if applicable, from each closing date

During the case

- Review proofs of claim and Rule 3002.1 notices for fees
- Verify servicer statements and escrow analyses
- Keep a log of every creditor, credit bureau and legal contact

After discharge

- Consumer should request new reports 30 to 60 days after discharge to ensure creditor accruacy
- Dispute errors with each bureau in writing
- Send discharge notices to creditors
- Calendar the 2-year FCRA deadline to sue over credit reporting errors

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Key Compliance and Legal Risks in Bankruptcy

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FCRA	Post-discharge reporting is the most frequent day-to-day issue: Consumers can re-pull reports and dispute through the bureaus.
TILA	Rescission is the highest-value claim, but its 3-year clock is very strict.
TILA	Creditors must be aware that consumers can use recoupment and claim objections defensively when creditors sue or foreclose.
UDAAP	Understand that attorneys can treat it as a conduct standard: no federal private claim, but strong leverage and state-law parallels.
All three	Be aware that legal counsel will choose the forum deliberately and calendar every deadline at intake.

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