

**CREDIT REPORTING & NCAP**

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**Disclaimer!**

I'm an attorney, not your attorney.

This presentation is intended to provide general information about the subject matter covered & is designed to help the audience stay current and maintain competence in their industry. I do not render any legal advice here. Though I am an attorney, for purposes of this presentation I'm not your attorney. Before taking any action in reliance on the information provided, especially a change in how you operate or respond to a situation, you should speak with your attorney. Unless you conduct original research & work with an attorney to develop an opinion with regard to a specific legal matter or set of facts, you bear the risk of negative consequences & results based on the action taken. This is not legal advice & you may not rely upon it. Good luck out there.



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*Blessed are the young for they shall inherit the national debt.*

*-Herbert Hoover*

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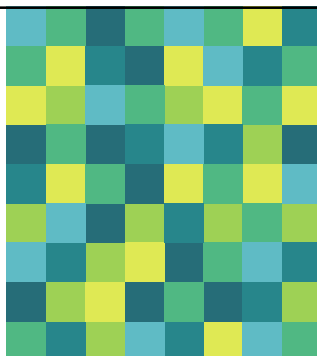
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# 1.

## A brief global history of credit

A good place to start



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### Off we go

- Ancient debt collection
  - Sumer 3000 BC, Babylon, Old Testament
    - Mostly enslavement of debtor/family
- First bankruptcy laws England 1543
  - Imprisonment instead of enslavement
- Seven Years War (global conflict 1756-63) caused prominent merchants to fail
  - First break of immorality/debtor link
- Colonial America – modeled after England
  - American Revolution: US govt spending, new businesses beginning
  - Debtor's prisons persist into late 1840s



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### Skipping hundreds of years as we go

- US Constitution 9/17/1787
  - Article 1 Section 8 reserves bankruptcy
- Lewis Tappan (1788-1873) a NY abolitionist
  - Failed business venture, home torched
    - Set out to tame the credit market by collecting reliable info on creditworthiness
  - 1841 founded The Mercantile Agency
    - Precursor to Dun & Bradstreet as well as modern CRAs



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### Almost to current day

- Industrial Revolution 1760-1840
  - More people owned chattels
  - Developments in financial products like loans secured by collateral
  - Banks earned iron-fist reputation via repo
- Diners Club Card 1950s
  - Game changer
  - BankAmericard system soon followed
    - Became Visa in 1977
  - CA banks form Interbank Master Charge
    - Became MasterCard 1979



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### The "Big 3" CRAs

- Equifax
  - Founded 1899
  - HQ Atlanta GA; started by TN grocery store owner
  - May be impetus for FCRA due to fancy for negative info on consumers' personal lives
- TransUnion
  - Founded 1968
  - HQ Chicago IL; started as railroad leasing co., acquired Credit Bureau of Cook Co.
- Experian
  - Founded 1996, formerly known as TRW
  - HQ Dublin Ireland; started as retail conglom with lots of customers paying on credit, dating back to London 1826

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### Modern debt collection

- FCRA 1970
- Agencies really came into existence as we know them today in the 1970s
  - High contingencies, large accounts
  - Race-to-the-bottom problem: FDCPA 1977
- Historical pattern: upheaval then reform
  - CFPB (est. July 2010) followed 2008-2009 financial crisis



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### Credit Scores in the US

- Fair Isaac introduced FICO score 1989
  - Exact formula a trade secret, but according to Wikipedia:

**CREDIT SCORE FACTORS**



- On-time payments
- Capacity used
- Length of credit history
- Types of credit used
- Past credit applications

- Get free report at [annualcreditreport.com](http://annualcreditreport.com) (15 USC 1681j)
  - If a company advertises it is free, it's not free
  - Does not include score

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### More on scoring

- Classic scoring range 300 – 850
- In 2017, 56.8% of people had a score between 700-850
- Fair Isaac calculates about 60 scores per person
  - Four active “generations” of scores
  - Classic, bankcard, personal finance, mortgage, installment loan, auto loan, etc.
    - Differs at each CRA
  - Changes over time as your info changes



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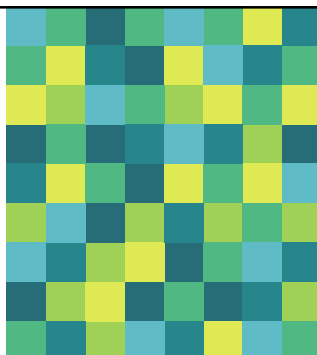
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## 2. FCRA Overview

What is it & what does it do, very generally speaking?



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### FCRA Basics

- Cite: 15 USC 1681
- Statement of Purpose
  - Banking system depends on fair/accurate reporting
  - Elaborate mechanisms developed for investigating & evaluating credit worthiness, standing, capacity, character & reputation
  - CRAs assumed vital role
  - "Grave" responsibility for CRAs in fairness, impartiality & privacy



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### FCRA Basics (cont)

- Permissible purpose to pull (1681b)
  - Court order
  - Written request by consumer
  - Third party requests:
    - Evaluate a credit transaction
    - Employment
    - Underwrite insurance
    - Eligibility for a license
    - Potential investor
    - Other legitimate business need
      - Debt collection qualifies, but ONLY if transaction was initiated by consumer
      - After judgment, doesn't matter, you can pull



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### FCRA Basics (cont)

- Exclusions from reports (1681c)
  - Bankruptcies over 10 years old
  - Civil suits, judgments & arrests (not convictions) over 7 years
  - Paid tax liens over 7 years
  - Accounts placed for collection or charged off over 7 years
  - Name/addr/phone of medical furnisher
- Identity theft reports
  - Must put alert in the file, give a free copy



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**FCRA Basics (cont)**

- Many provisions regarding disclosures (1681d-h)
- Accuracy provisions (1681i)
  - Duty to investigate
  - Provisions for frivolous disputes
- CRAs have civil liability for willful (1681n) & negligent (1681o) non-compliance
- 2 kinds of disputes
  - (1) Direct to furnisher, & (2) indirect to agency
  - Must investigate both
- Only liable via lawsuit if dispute made to CRA
  - Limited private right of action against data furnisher (1681s-2); *Purcell v. Bank of Am.*, 659 F.3d 622, 623-625 (7th Cir. 2011)
  - Furnisher should report fact of dispute & result of investigation



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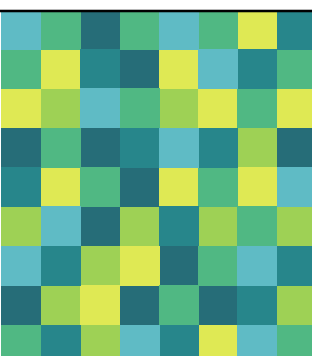
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**3.**

**National Consumer Assistance Plan (NCAP)**

The latest development in credit reporting



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**What is NCAP?**

- National Consumer Assistance Plan
  - Updated set of regulations regarding credit reporting
  - Proposed & implemented by the CRAs themselves
  - Stems from a May 2015 settlement between Big 3 & 31 state attorneys general led by New York state
    - CRAs also paid \$6 million to the states involved for "reporting errors"



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### What is NCAP (cont)?

- Intended to make credit reports more accurate, transparent & understandable
  - Despite the most recent comprehensive study finding credit reports are materially accurate 98% of the time
- Launched in March 2015 with 3-year implementation period
- Read more at [www.nationalconsumerassistanceplan.com](http://www.nationalconsumerassistanceplan.com), which is run by the Big 3 CRAs



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### NCAP Highlights

- Normally get 1 free report annually from each of Big 3; now if you dispute & get a correction, you get another one free
- Debts not arising from contract or agreement to pay (an FDCPA "transaction") are not to be reported
  - Think traffic tickets, parking fines, tax liens
- Provisions to combat fraud
- Must report entire file monthly; includes all open, paid in last 90 days, deletions/corrections



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### NCAP Highlights (cont)

- Medical debts not reported until after 180-day waiting period to allow time for insurance processing
  - Effect of medical debt less severe in overall score weight
- Furnisher must DELETE a medical claim PIF by insurance or in insurance reprocessing (not just mark as paid); does NOT apply to patient payment
- Both of these took effect Sept. 15, 2017



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### NCAP & civil judgments

- Beginning July 1, 2017 CRAs are excluding all civil judgment data that does not include:
  - Debtor's full name;
  - Debtor's address; &
  - Either
    - Full SSN or
    - Full DOB
- Expunging old data as well, as of 7/1/17
- Must visit courthouses every 90 days to ensure accurate reporting (not just use "scrubs" of public record)
- Proponents talk out both sides of their mouth: not necessary for credit decisions & it's public record, they can find it themselves (???)



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### NCAP & civil judgments

- Why not include the required information on judgments so CRAs will pick it up?
  - Because, most likely, you can't!
  - Missouri
    - MO Rule 2.02 governs redaction of personal information in publicly filed documents
    - SSNs are explicitly protected, DOBs are probably protected under the catch-all
  - Kansas
    - Rule 123 restricts use of SSNs to last 4 digits & DOB to year of birth only
- Other states probably have varying redaction rules



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## Your judgments won't be on credit reports.

It's a great time to be alive, ain't it?



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**4.**  
**Questions?**  
Discussion? Objections?  
Criticisms?



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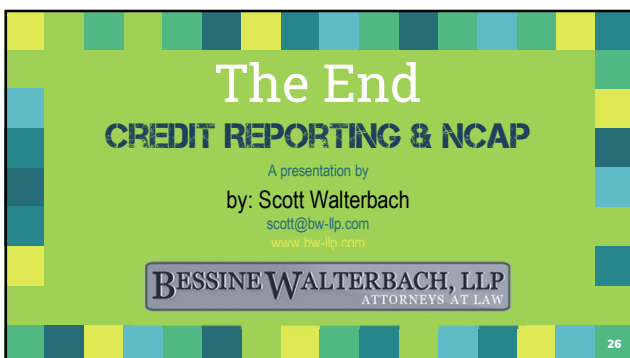
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**The End**  
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