The Fair Credit Reporting Act (FCRA), as originally passed in 1970, did not provide for any rulemaking authority for the Federal Trade Commission (FTC), which was the primary agency charged with its enforcement. In fact, prior to 1999, the FTC was actually prohibited from issuing regulations under the FCRA. In 1999, Congress finally lifted this restriction.\(^5\)

In 2003, the Fair and Accurate Credit Transactions Act (FACTA) amendments to the FCRA specifically required a number of regulations to implement its provisions.\(^6\) These regulations were to be issued by the FTC, the Federal Reserve Board (FRB), and the various banking regulators.\(^7\) Thus, most, if not all, of the FCRA’s regulations were originally promulgated by these agencies pursuant to the FACTA amendments. The FACTA amendments to the FCRA also required the FTC and other agencies to conduct several studies and issue reports on a broad range of credit reporting topics.\(^8\) These studies are available digitally as companion materials to this treatise.\(^9\)

The rulemaking scheme for the FCRA was drastically altered in 2011 by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act).\(^10\) The Dodd-Frank Act established the Consumer Financial Protection Bureau (CFPB) and transferred to that agency the bulk of the rulemaking authority for the FCRA.\(^11\) The Dodd-Frank Act also granted general rulemaking authority to the CFPB, enabling it to “prescribe such regulations as are necessary to carry out the purposes of this title” and “as may be necessary or appropriate to administer and carry out the purposes and objectives of this title, and to prevent evasions thereof or to facilitate compliance therewith.”\(^12\) This was an authority that the FTC never had under the FCRA. In addition, many of the oversight and enforcement responsibilities that had originally been within the province of the FTC and the banking regulators were transferred to the CFPB.\(^13\)

The Dodd-Frank Act did leave the rulemaking authority over two FCRA provisions—the red flag guidelines and the disposal rule—with the CFPB, enabling it to “prescribe such regulations as are necessary to carry out the purposes of this title” and “as may be necessary or appropriate to administer and carry out the purposes and objectives of this title, and to prevent evasions thereof or to facilitate compliance therewith.”\(^14\) This was an authority that the FTC never had under the FCRA. In addition, many of the oversight and enforcement responsibilities that had originally been within the province of the FTC and the banking regulators were transferred to the CFPB.\(^15\)

The CFPB has issued its own set of FCRA regulations, referred to as Regulation V, which essentially adopted the existing regulations of the FTC, the FRB, and the banking regulators, with the exception of regulations governing the red flag guidelines and disposal of consumer information.\(^16\) The FTC rescinded certain of its FCRA regulations.\(^17\) As of January 2017, the Office of Comptroller of Currency and FDIC have withdrawn certain of their FCRA regulations, while the FRB, the National Credit Union Administration, and the SEC have yet to do so. Appendix B [1], infra, includes copies of Regulation V and the FTC’s regulations for the red flag guidelines and disposal rule.

In addition to transferring rulemaking and enforcement authority to the CFPB, the Dodd-Frank Act required the CFPB to issue a study analyzing the differences between different types of credit scores sold to lenders versus consumers.\(^18\) The CFPB actually ended up issuing two studies, which are available digitally as companion materials to this treatise.\(^19\)

Footnotes

\(^{51}\) [49] Pub. L. No. 106-102, § 506(b) (1999) (striking 15 U.S.C. § 1681s(a)(4)). This amendment was part of the Gramm-Leach-Bliley Act of 1999. In addition to regulations, the rules of the FTC allowed the agency to issue formal advisory opinions pursuant to request, and formal interpretations if an issue posed industry-wide concern. See 16 C.F.R. §§ 1.1 to 1.4 (FTC Rules of Practice). However the FTC never issued such a formal advisory opinion.


\(^{53}\) [51] The banking regulators were the Office of the Comptroller of Currency (OCC) for national banks; the Office of Thrift Supervision (OTS) for federal thrifts; the Federal Deposit Insurance Corporation (FDIC) for certain state banks; the National Credit Union Administration (NCUA) for federal credit unions; and the Federal Reserve Board (FRB) for a set of other banks. The OTS was dissolved by the Dodd-Frank Act, and the Consumer Financial Protection Bureau (CFPB) now has regulatory authority over banks with more than $10 billion in assets. See § 13.2.2 [2], infra. Smaller banks remain under the authority, respectively, of the OCC, the FDIC, the NCUA, and the FRB.
54 [52] These include studies on the following: (i) the use of biometrics and other technologies to reduce identity theft; (ii) prescreened solicitations; (iii) the effects of a requirement that consumers who have experienced an adverse action receive a copy of the same report as the user who took the adverse action; (iv) the comprehensibility of various forms and disclosures; (v) the effects of credit scores on the affordability and availability of financial products; (vi) furnishers’ prompt investigation, completeness and correction or deletion of information reported to CRAs; (vii) a national strategy to promote financial literacy and financial education; and (viii) a study on the accuracy and completeness of credit reports. Pub. L. No. 108-159, §§ 157, 213, 214, 215, 313(h), 318, and 319 (2003).


59 [57] See generally § 13.2.1 [5], infra.

60 [58] 15 U.S.C. §§ 1681m(e), 1681w. See also 15 U.S.C. § 1681s(e). Dodd-Frank also added the Commodities Futures Trading Commission to this list of regulatory agencies.


Source: National Consumer Law Center, Fair Credit Reporting [9th ed.], updated at www.nclc.org/library
Source URL: https://library.nclc.org/fcr/0103030101-0

Links
[1] https://library.nclc.org/nclc/link/FCR.AB
[2] https://library.nclc.org/nclc/link/FCR.13.02.02
1.3.3.1.1 The FCRA’s rulemaking scheme and history