



# Reintroduction to FCRA

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**AUTHORS:**

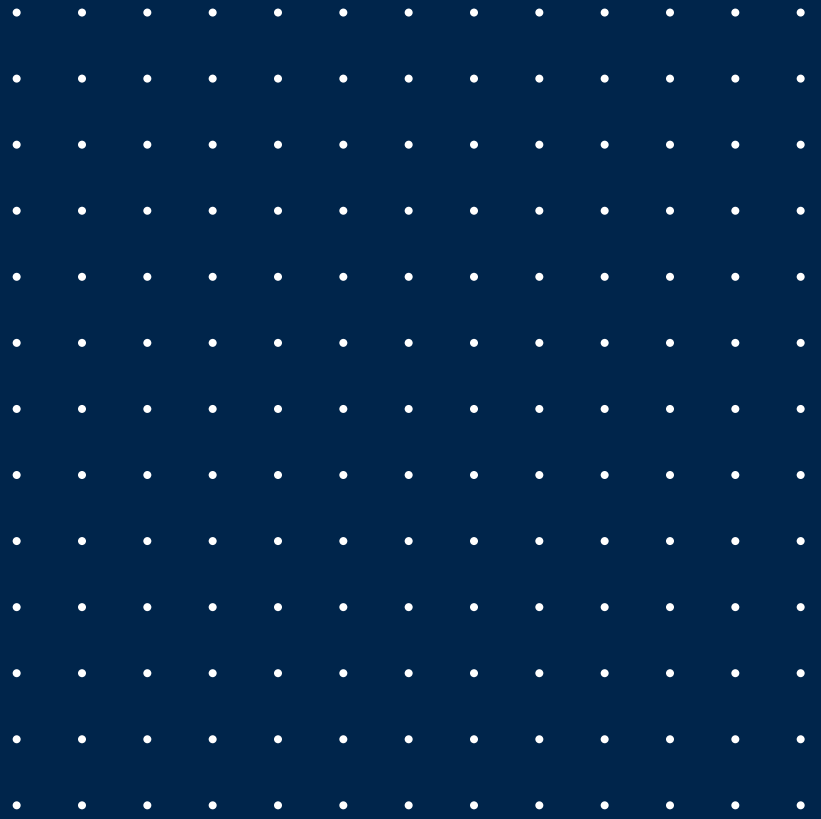
**Michael Canale**  
Managing Director  
michael.canale@thinkbrg.com  
646.809.8082

**John DelPonti**  
Managing Director  
jdelponti@thinkbrg.com  
202.480.2691

**Laura Gudaitus**  
Associate Director  
lgudaitus@thinkbrg.com  
212.782.1465

**Emily Ness**  
Managing Consultant  
eness@thinkbrg.com  
212.782.1416

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## Introduction to FCRA

Enacted in 1970, the Fair Credit Reporting Act (FCRA) ensures the accuracy, integrity, fairness, and privacy of information in consumer credit bureaus. The Federal Trade Commission (FTC) and Consumer Financial Protection Bureau (CFPB) enforce FCRA, which regulates obtaining and using consumer reports, sharing information among affiliates, disclosures to consumers, consumer alerts and ID theft, and—most important—the duties of furnishers and users of consumer reports.

FCRA defines a consumer report as any written or oral communication that was prepared by a credit reporting agency (CRA); contains information on creditworthiness, standing, capacity, character, or reputation; and is used for eligibility for credit, insurance, or employment. The three major CRAs are Equifax, Experian, and TransUnion.

Under FCRA rules, furnishers must submit information with both *accuracy* and *integrity*, which are defined below:

*Accuracy* means that information a furnisher provides to a CRA about an account or other relationship with the consumer correctly:

- reflects the terms of and liability for the account or other relationship.
- reflects the consumer's performance and other conduct with respect to the account or other relationship.
- identifies the appropriate consumer.

*Integrity* means that information a furnisher provides to a CRA about an account or other relationship with the consumer:

- is substantiated by the furnisher's records at the time it is furnished.
- is furnished in a form and manner that is designed to minimize the likelihood that the information may be incorrectly reflected in a consumer report.
- includes the information in the furnisher's possession about the account or other relationship that the credit bureau maintains, the absence of which would likely be materially misleading in evaluating a consumer's creditworthiness, credit standing, or credit capacity.

The FCRA also requires that a furnisher's policies and procedures be appropriate to the nature, size, complexity, and scope of the furnisher's activities. This includes establishing and implementing appropriate internal controls regarding the accuracy and integrity of information about consumers furnished to consumer reporting agencies, such as implementing standard procedures and verifying random samples of information provided to consumer reporting agencies.

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## Why is FCRA important?

FCRA protects the rights of borrowers in how their credit report is being used and how long derogatory or negative information may stay on one's credit report. It ensures both lenders and furnishers are reporting information to the bureaus with accuracy and integrity to avoid misreporting or misrepresenting delinquency information on consumers' credit reports. The requirements to have policies, procedures, and controls aim to prevent inaccurate reporting.

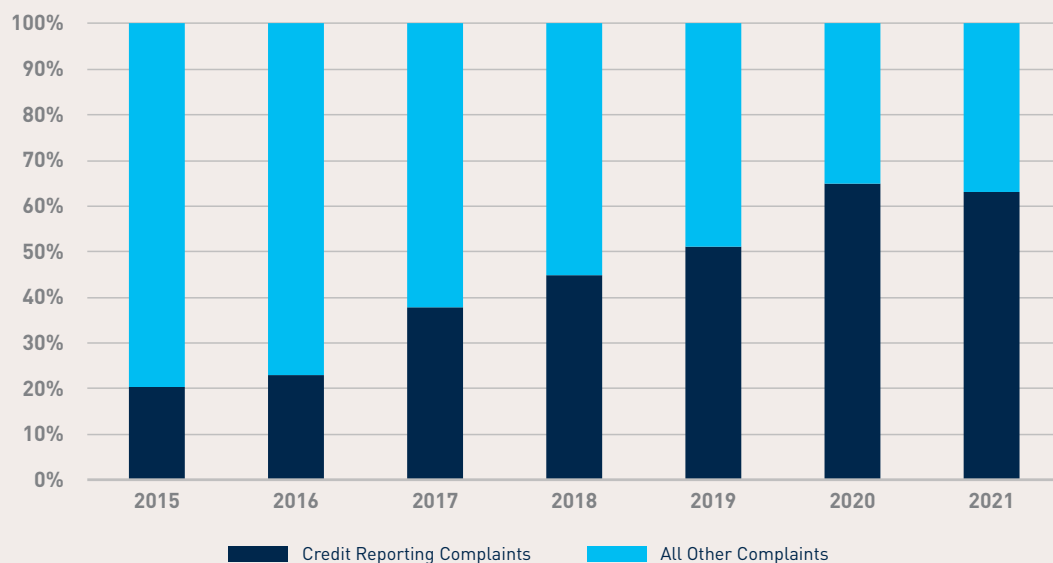
FCRA also gives consumers the power to review credit reports and any other information stored by the CRAs. Consumers have the right to dispute inaccurate information either with the CRAs or directly with furnishers and are ensured a timely response and updates, if required.

A 2012 FTC study found that 20 percent of consumers had an error in at least one of their credit reports, with 5 percent reporting errors that were economically damaging. A follow-up study in 2015 confirmed that 70 percent of the consumers surveyed in 2012 continued to dispute errors in their reports.<sup>1</sup>

Inaccurate reporting on a credit report may impact a borrower's ability to receive a loan, employment, insurance, or housing. Decisions on auto, mortgage, credit card, or installment loans—as well as rental applications for apartments, employment background checks, and other potential credit score checks—are based on credit scores. The impact of an error on a credit report may follow a consumer for years, forcing them to pay more for credit or causing them to be denied loans, jobs, or housing due to inaccurate reporting.

Credit reporting complaints to the CFPB have increased 815 percent since 2015 and are one of the top issues submitted to the CFPB. Credit reporting complaints overtook all other CFPB complaint issues in 2019 and now constitute over 60 percent of all CFPB complaints.

**FIGURE 1. Credit Reporting Complaints as a Percentage of All Other CFPB Complaints<sup>2</sup>**

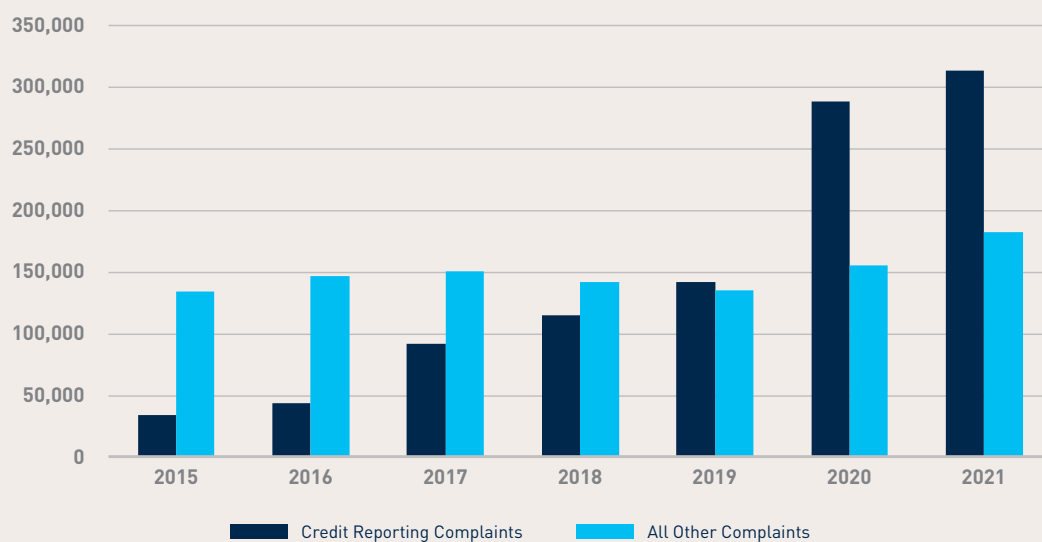


<sup>1</sup> FTC, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003* (January 2015) <https://www.ftc.gov/system/files/documents/reports/section-319-fair-accurate-credit-transactions-act-2003-sixth-interim-final-report-federal-trade/150121factareport.pdf>

<sup>2</sup> BRG analysis of data pulled from the CFPB's Consumer Complaint Database on February 6, 2022: <https://www.consumerfinance.gov/data-research/consumer-complaints/#download-the-data>



**FIGURE 2. CFPB Credit Reporting Complaint Volume Compared to All Other CFPB Complaints<sup>3</sup>**



Given these trends, regulatory and legislative scrutiny will continue to focus on credit reporting and FCRA compliance. Financial institutions will need to find creative solutions to improve the accuracy and efficiency of furnishing and disputes processes, while containing costs in a challenging labor market.

<sup>3</sup> Ibid.



## Letter from senators to the CFPB and recent CFPB report on CRAs



On November 10, 2021, seven Senate Democrats—Senate Banking, Housing, and Urban Affairs Committee Chairman Sherrod Brown (D-OH) and Senators Brian Schatz (D-HI), Ron Wyden (D-OR), Elizabeth Warren (D-MA), Jack Reed (D-RI), Chris Van Hollen (D-MD), and Ben Ray Lujan (D-NM)—sent a letter to CFPB Director Rohit Chopra urging him to take strong action to reform the credit reporting industry.<sup>4</sup>

While their list was not exhaustive, the senators detailed six key actions for the CFPB to consider:

1. Evaluate persistent errors in credit reporting and how CRAs consistently fail to resolve these errors, especially by failing to devote sufficient personnel and resources for dispute resolution.
2. Create an ombudsperson position at the CFPB to facilitate the dispute resolution process and help ensure accuracy.
3. Require nationwide CRAs to match all nine digits of a consumer's Social Security number versus the current practice of using partial Social Security numbers to match data from an information furnisher to a consumer's file. The CFPB's recent advisory opinion affirms that the practice of matching consumer records solely through the matching of names is illegal.
4. Require nationwide CRAs to perform periodic accuracy audits on information furnishers.
5. Review the potential of codifying provisions of the nationwide CRAs' settlement with state attorneys general that delayed reporting of medical debt for six months and removed debts paid by insurance.
6. Address concerns relating to algorithmic bias, which presents a risk of amplifying racial disparities in credit reporting, and a failure to provide reports in Spanish and other languages, which can impact consumers with limited English proficiency.

The issues highlighted by the senators are mirrored in the 2021 complaints received by the CFPB, as shown in the table below. In 2021, a majority (35 percent) of credit reporting complaints indicated that the information belonged to a different consumer. The top four issues account for 68 percent of all 2021 credit reporting complaints.

<sup>4</sup> US Senate Committee on Banking, Housing, and Urban Affairs, "Schatz, Brown, Senators To CFPB: Fix The Broken Credit Reporting System, Hold Credit Reporting Agencies Accountable" (November 10, 2021). <https://www.banking.senate.gov/newsroom/majority/schatz-brown-senators-to-cfpb-fix-the-broken-credit-reporting-system-hold-credit-reporting-agencies-accountable>

**TABLE 1. 2021 CFPB Credit Reporting Complaint Issues<sup>5</sup>**

Rank	Issue	Senate Issue #	Sub-issue	2021 Credit Reporting Complaints	2021 Credit Reporting Complaints %
1	Incorrect information on your report	3	Information belongs to someone else	110,384	35%
2	Problem with a credit reporting company's investigation into an existing problem	1,2	Their investigation did not fix an error on your report	44,507	14%
3	Problem with a credit reporting company's investigation into an existing problem	2	Investigation took more than 30 days	29,932	10%
4	Problem with a credit reporting company's investigation into an existing problem	2	Was not notified of investigation status or results	29,573	9%
5	Improper use of your report	N/A	Credit inquiries on your report that you don't recognize	18,076	6%
6	Incorrect information on your report	4	Account information incorrect	17,890	6%
7	Incorrect information on your report	4	Account status incorrect	17,436	6%
8	Improper use of your report	N/A	Reporting company used your report improperly	11,648	4%
9	Incorrect information on your report	3	Personal information incorrect	10,013	3%
10	Problem with a credit reporting company's investigation into an existing problem	2	Difficulty submitting a dispute or getting information about a dispute over the phone	3,534	1%
		N/A	<i>All Other Sub-issues</i>	20,552	7%
<b>Total Credit Reporting Issues</b>				<b>313,545</b>	<b>100%</b>

As consumers continue to submit high volumes of complaints related to their credit reporting, institutions should expect to see significant scrutiny from regulators and legislative bodies around FCRA enforcement.

The CFPB released a report in January 2022<sup>6</sup> reviewing complaints toward the three major credit bureaus. The report echoed the sentiment of the senators' letter, stating that consumers are unable to resolve inaccuracies on their credit reports due to furnishers and CRAs pointing fingers at each other for misreported data and automated systems where consumers are unable to find resources to solve issues. The number of credit reporting complaints is steadily increasing, with a higher number of repetitive complaints by the same consumers. The report also stated that credit bureaus increasingly use vague forms to respond to disputes and complaints and inaccurately state, with no criteria or proof, that complaints stem from credit repair agencies. Consumers interviewed by the CFPB stated they did not use credit repair agencies but used free online resources and standard language provided by the CFPB or FTC when submitting their complaint.

<sup>5</sup> Data pulled from the CFPB's Consumer Complaint Database on February 6, 2022: <https://www.consumerfinance.gov/data-research/consumer-complaints/#download-the-data>

<sup>6</sup> CFPB, *Annual report of credit and consumer reporting complaints* (January 2022). [https://files.consumerfinance.gov/f/documents/cfpb\\_fcra-611-e\\_report\\_2022-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_fcra-611-e_report_2022-01.pdf)

## Recommendations for post-accommodation CARES Act reporting

The 2020 Coronavirus Aid, Relief, and Economic Security (CARES) Act included an amendment to the FCRA for credit reporting during the COVID-19 pandemic. The CFPB defines an accommodation as “any payment assistance or relief granted to a consumer who is affected by the COVID-19 pandemic during the period from January 31, 2020, until 120 days after the termination of the COVID-19 national emergency declared by the President on March 13, 2020, under the National Emergencies Act.”<sup>7</sup>

FAQ 6 in the *CFPB Consumer Reporting FAQs Related to the CARES Act and COVID-19 Pandemic*<sup>8</sup> states that the CARES Act consumer reporting protections “apply to the time period that was covered by the accommodation after the accommodation ends.” Borrowers reported as current **before** the accommodation must remain current **after** the accommodation and should not be reported as delinquent until the borrower is thirty days past due on a post-accommodation scheduled payment. Similarly, delinquency cannot build for accounts that were delinquent at the start of the accommodation. For example, a borrower that is thirty days delinquent at the start of a 120-day forbearance cannot be reported as 150 days delinquent at the end of the forbearance period.

While many COVID-19–related accommodations have ended or are coming to an end, the Consumer Data Industry Association (CDIA) released post-accommodation reporting for COVID-19 accommodations.<sup>9</sup> See CDIA’s “CARES Act Post-Accommodation Reporting Guidelines” for more details.<sup>10</sup>

### Conclusion

FCRA continues to be a hot topic for financial institutions, consumers, regulators, and even legislators. Given the increased scrutiny around CARES Act compliance, renewed focus of the CFPB under the Biden administration, and recent legislative focus on the accuracy of credit reporting data, financial institutions should be prepared for renewed focus on their compliance with FCRA. Combined with ever-mounting pressure to contain costs, financial institutions need solutions to improve furnishing and dispute accuracy, expand quality assurance testing, and monitor performance in ways that ultimately reduce compliance program costs.

BRG’s FCRA experts can help financial institutions get exam ready. Our team has extensive advisory expertise in creating and implementing FCRA program operating models to increase operational maturity. Our tech experts provide solutions that reduce manual effort, increase monitoring, and ultimately help institutions do more with less.

<sup>7</sup> CDIA, *Metro 2® Format COVID-19 Post-Accommodation Reporting Guidance Now Available!!* <https://cdia-news.s3.amazonaws.com/CARES+Act+Post-Accommodation+Reporting+Guidance.pdf>

<sup>8</sup> CFPB, *Consumer Reporting FAQs Related to the CARES Act and COVID-19 Pandemic* (last updated February 23, 2022). [https://files.consumerfinance.gov/f/documents/cfpb\\_fcra\\_consumer-reporting-faqs-covid-19\\_2020-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_fcra_consumer-reporting-faqs-covid-19_2020-06.pdf)

<sup>9</sup> CDIA, *Metro 2® Format COVID-19 Post-Accommodation Reporting Guidance Now Available!!* <https://cdia-news.s3.amazonaws.com/CARES+Act+Post-Accommodation+Reporting+Guidance.pdf>

<sup>10</sup> Ibid.





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