



Human Resources' Guide to the New FCRA (Fair Credit Reporting Act)

As pertaining to Employment
Background Checks

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The Human Resources' Guide to the New FCRA is designed to help the human resource person understand the guidelines in the Fair Credit Reporting Act (FCRA) and how to apply them to a background check program.

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Disclaimer

This information is compiled directly from the FCRA and any interpretations are gathered straight from opinion letters written by staff attorneys for the Federal Trade Commission (FTC) which is the governing body of the FCRA. The opinions expressed herein represent the opinions of the FTC staff and are not binding on the FTC. As with any legal advice, you should always consult your attorneys before taking any action.

The limitations on the content of consumer reports discussed herein are meant to explain only content limited by the FCRA. There are other Acts and laws, both federal and state, as well as rulings by administrative agencies which may serve to further limit the content and/or usage of consumer reports in your state. Your local attorney can advise you as to your specific situation. This information is not intended as legal advice and is no substitute for the competent advice of your local counsel.

What is the FCRA?

Congress passed the Fair Credit Reporting Act (FCRA) in its present form in September of 1996. The changes took effect one year later on September 31, 1997. It has been updated and/or amended in 1998, 2001, 2003, 2006, and most recently in 2007. As its name suggests, this legislation began as a way to regulate the collection and use of credit information by credit bureaus. Its goal was to provide consumers with a way to see what was contained in these files which were playing an ever-increasing role in their lives. It also outlined procedures by which consumers could dispute and correct information they believed to be in error. Initially it was enacted due to a growing amount of erroneous information in consumer credit reports and a growing frustration of people when trying to correct this information.

As privacy rights issues became a popular cause, the FCRA was expanded to control who could obtain credit reports and under what circumstances. During the past decade, negligent hiring has been the fastest growing segment of employment law. With this increase in litigation and with the tight labor market, employers, in increasing numbers, began to turn to background checks as a way of evaluating candidates and protecting themselves from liability. Congress decided to overhaul the FCRA and make it apply to all types of consumer reports, not just credit reports.

It then went about imposing strict procedures for obtaining and using the consumer reports. These changes to the FCRA are not widely understood, and yet they affect nearly all of us in the human resource industry.

Consider the following cases...

You advertise for a credit manager. You get 150 applications. You want to look at the applicant's credit history to determine whether or not they are qualified. What are your obligations?

You suspect an employee of stealing from the company. During your investigation you wish to see if the applicant has any criminal record. Do you have to inform the applicant and receive written authorization for the check even under these circumstances?

You are considering an employee for a promotion into management. Can you initiate a background check at that point to assure only responsible people are promoted?

Your employment application already contains a release for all applicants to sign; are you covered?

You only check references and education on an applicant; does the FCRA even apply to you?

Most of you will be surprised by the answers to these questions. There are some simple actions you can take to make sure you are in compliance with the FCRA and still get the critical information every employer should have before making a hiring decision.

Part Two

Definitions

Consumer Report: The FCRA defines *consumer report* “to mean any oral, written or other communication by a consumer reporting agency (CRA) bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, which is used, expected to be used, or collected in whole or in part for the purpose of serving as a factor in establishing a consumer’s eligibility for employment”.

**It is interesting to note that this most recent definition is very broad in scope and has been interpreted to apply to almost all types of reports. In fact, in defining a consumer report, the Congress found it easier to specify as to the few things it did not include rather than what it did include.*

Investigative Consumer Report: An *investigative consumer report* is a specific type of consumer report. The main differentiation is in the manner that information is gathered. In an investigative consumer report, information is obtained “through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information.” When conducted by a CRA, this type of report could include such things as personal reference checks and employment reference checks.

Employment reference checks, which only verify factual information given on an application (i.e. positions and dates of employment) would be considered a regular consumer report and not an investigative consumer report (FCRA staff opinion letter Kane-Hinkle 7/9/98).

Consumer Reporting Agency: A *Consumer Reporting Agency* is “any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating...information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means of interstate commerce for the purpose of preparing or furnishing consumer reports”.

Essentially, anyone issuing consumer reports of any type to a third party is a consumer reporting agency. Also note that the terms used include simply the act of collecting and/or assembling the information. This means, according to FTC staff attorney Clarke Brinckerhoff (From staff opinion letter Brinckerhoff-Slyter 6/12/98), even a private investigator hired directly by a company which provides copies of court cases, generating no report of his own, would be a CRA and subject to the provisions of the FCRA.

Employee: It is interesting to note that for the purposes of the FCRA, employees are defined by the existence of an “employment relationship”, not by common definitions of employees. Therefore, in FCRA staff opinion letter Isaac-Allison, dated 2/23/98; Mr. Isaac suggests that bona fide independent contractors would be considered employees since a definite employment relationship exists for the purposes of the FCRA.

And indeed, the U.S. Court of Appeals for the Fourth Circuit agreed that the term “employment purposes” should be interpreted liberally to effectuate the broad remedial purpose of the FCRA. The court ruled that when the Texas Board of Medical Examiners, in evaluating a candidates’ application for licensure to practice medicine, requested information, it was obtaining a consumer reports for employment purposes and was subject to the FCRA.

Permissible Purpose: In order to obtain consumer reports of any kind, an individual or company must have some permissible purpose, or reason, as defined by the FCRA. In the context of the employment

relationship, the permissible purpose specifically included in the FCRA is “the information intends to be used for employment purposes”. (See definition of ‘employment purposes’)

Employment Purposes: When used in the FCRA, the term ‘employment purposes’ means, “Evaluating a consumer for employment, promotion, reassignment, or retention as an employee”. This is a relatively broad definition, which allows employers to obtain reports under a variety of circumstances. With a proper release, employers may basically obtain a report at any time during a consumers’ employment.

Adverse Action: This term refers to “a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee”. This means that for whatever purpose you are requesting a report you decide against hiring, retaining, or promoting the applicant or employee. For example, if requesting the report on an applicant, the adverse action would be not hiring him or her. If requesting for promotion, it would be not promoting that employee, etc.

Part Three

Actions That Need To Be Taken Prior to Requesting a Consumer Report

Release Forms

Disclosure

The FCRA states that a disclosure of the consumer report, as well as written permission, is obtained from the consumer prior to requesting a consumer report from a CRA. Specifically, the FCRA mandates that the disclosure be “clear and conspicuous” and “in writing to the consumer at any time before the report is procured, in a document that consists solely of the disclosure”. This means that release forms on the backs and bottoms of applications would not hold up to scrutiny under the requirement that the disclosure be a separate document.

With respect to the written authorization, it may still be included on applications, with a separate disclosure going to the consumer as well. However, in FTC staff opinion letter Lamb-Steer dated 10/21/97 it is indicated that the written authorization may be combined with the disclosure on a single form without violating the “separate document” provision.

The disclosure simply needs to reveal the “nature and scope” of the consumer report. It is advisable to include all types of reports that may possibly be requested for this consumer. For example, it should list what information may be obtained and whom the information may be obtained from.

How Long to Keep on File?

How long must these documents be kept on file? From a strict standpoint, there is no requirement specifically set forth in the FCRA to maintain a file of the disclosure and authorization at all. As a practical matter, there are two considerations. First, as we will discuss in a moment, the release may apply to future reports, and thus should be kept on file throughout the consumer’s tenure as an employee. Secondly, there is a statute of limitations for suing for violations of the FCRA of two years. With this in mind, it is advisable

to keep the written disclosure and authorization on file for two years beyond a consumer's tenure as an employee.

How Long is it Good For?

Does a new release have to be obtained each time a consumer report is requested? This can become an important question when you consider it in the context of internal investigations. When a company is investigating an employee for potential fraud and as part of that investigation, it orders a consumer report, does it still need to provide disclosure and obtain a release? The FTC has stated that it believes under the FCRA, the answer is yes. This means that the employee would be tipped off as to the investigation and possibly even refuse to grant permission for the consumer report in the first place.

Another possible scenario is that you are considering several internal candidates for promotion. You have not conducted background checks because they were not at a level that required background checks yet in your company's policy, or maybe they have had background checks conducted at hiring, but now you would like an updated or more in-depth report. Under these circumstances, you may want to examine the reports prior to interviewing or otherwise letting the candidate know that they are being considered for the promotion.

Is there any way to obtain a consumer report without getting a new release? The answer is a qualified yes. It basically depends upon the wording your original disclosure and authorization contained. In FTC opinion letter Isaac-Brisch, dated 6/11/98, it was noted that the FCRA requires *at any time* before the report is requested. Based upon that, it is sufficient to have given a disclosure and authorization form at the time of hire and/or application. This is why it is important to keep these documents on file for the duration of the consumer's employment. The disclosure can serve as a disclosure currently and at any time in the future.

Further supporting this is the House committee report accompanying H.R. 1015, where the committee said:

Although [this] bill requires the disclosure and consent occur before a consumer report is procured, it does not require that a consumer consent each time his or her report is procured.

Consequently, a person may comply with the requirements of this section by making the proper disclosure to a consumer and obtaining the consumer's blanket, written authorization to obtain his or her consumer report for employment purposes at any time during the tenure of the consumer's employment.

The FTC further clarified this in opinion letter Hayes-James, dated 8/5/98. In it, they stated that it is permissible for employers to obtain authorization and to provide disclosure once at the beginning of the employment process, which remains intact throughout the consumer's employment. They do note that the Act calls for a "clear and conspicuous" disclosure made to the consumer. Therefore, whenever a disclosure and authorization is intended by the employer to cover both the application for employment and, if hired, any additional reports ordered throughout the consumer's employment, the disclosure and authorization should clearly state this fact.

By wording the disclosure and authorization properly, employers' can achieve their objectives of ordering additional reports throughout a consumer's tenure with the company without obtaining consent each and every time.

Must the company send a copy of the authorization to the consumer reporting agency before obtaining a consumer report? The answer is no. Users of consumer reports are required to make a certification to the CRA prior to pulling any reports.

Certification

According to FCRA section 604 (b)(1), a CRA may only furnish information for employment purposes if it receives a certification from the end user. This certification must state that the user has a permissible purpose for obtaining the reports. It must further state that the user will comply with all disclosure and authorization requirements, as well as any adverse action requirements, which may become necessary.

This certification means that it is your responsibility as a user of consumer reports to make sure the requirements of the FCRA are being met. It is also necessary for you to train any employees who will be using consumer reports to make sure the requirements of the FCRA are being met. Your CRA should be able to help you with this.

Part Four

After You Receive the Consumer Report

Age of the Information

The FCRA regulates how old information in consumer reports is allowed to be. Generally speaking, certain types of information which are more than seven years old are not allowed to be included in the consumer report. Section 605(a)(5) specifically prohibits information regarding “records of arrest, indictment, or conviction of a crime which, from the date of disposition, release, or parole, antedate the report by more than seven years”. Paragraph (6) is more general in stating that “any other adverse item of information which antedates the report by more than seven years” may not be included.

It is important to note that the seven-year period in the case of criminal information begins *after* the disposition. Many CRA’s will simply look at the date of the case and will not report cases older than seven years. As a user of consumer reports, however, you may want to inquire as to your CRA’s policy. By investigating all cases found and determining when the disposition took place, the CRA may be able to provide you with valuable information other CRA’s may overlook.

The FCRA does provide for an exception, which allows companies to further investigate individuals applying for higher level jobs. The standard used to be if the salary was greater than \$20,000.00, then the time rules did not apply. In the revised FCRA, Congress raised the bar considerably and Section 605 (3) now reads that the seven-year reporting restriction does not apply to “the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal \$75,000.00 or more”.

Another question that has been raised many times is in regards to verifying degrees and employment for an applicant. Oftentimes, an applicant will have received his or her college degree well over seven years ago, and yet it is a bona fide requirement of the job. In staff opinion letter Hayes-Scham, dated 4/17/98, the FTC addresses this issue. They note that the seven-year period only applies to certain types of information, including criminal and adverse information. They conclude that the fact that someone held a job or attended college is not, in their opinion, considered “adverse”. They do note that sometimes a CRA may report that an individual did not attend or graduate from a college, even sometimes erroneously, and that this indeed may cause an adverse action to be taken (i.e. the denial of employment). They go on to note, though, that procedures for taking adverse action would adequately protect the consumer in this case and therefore they conclude that the seven-year period for reporting information *does not* apply to verifications of education or employment.

Accuracy of Public Record Information

The FCRA states in Section 613(2) that CRA's shall "maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date". Criminal record information is definitely considered to be public record. The FCRA goes on to elaborate what it means by these procedures. "For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgements shall be considered up to date if the current public record status of the item at the time of the report is reported."

This paragraph may very well mean that if your CRA is using a database or records relating to arrest, indictment, or conviction, you may be in violation of the FCRA. This is simply because a database is only updated every so often and it is therefore impossible to ensure that the current public record status as of the date of the report is reported.

Adverse Action Requirements

There are two types of disclosure that must be made when you are considering adverse action against a consumer. The first of these can be thought of as a *pre* adverse action disclosure and the second as a *post* adverse action disclosure. These apply if the adverse action is taken based in whole or even in part on the content of the consumer report.

Pre Adverse Action Notices

These notices must be given prior to taking the adverse action. Before taking the adverse action, you are required to provide the consumer with a copy of the consumer report, as well as a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act". This is a document proscribed by the FTC, which your CRA can provide you a copy of. These two documents must be given prior to adverse action being taken. The copy of the consumer report must be an exact copy of the entire consumer report as it was received from the CRA. The summary of rights must be in the format proscribed by the FTC. A copy of the summary is included in the appendices.

Post Adverse Action Notices

After taking adverse action, the individual must be given notice that the action was taken. This must be in the form of an adverse action notice, which must include 1) the name, address, and phone number of the CRA who supplied the report; 2) a statement that the CRA did not make the decision to take adverse actions and cannot give specific reasons for the adverse action; and 3) a notice that the individual has a right to dispute any information on the report as well as the right to request a free copy of the report from the CRA within the next 60 days. This form usually takes the form of a letter, a sample of which is contained in the appendices.

Time Frames

It is interesting to note the absence of any specific time frames. The FCRA requires that some of these notices are given to consumers prior to adverse action and some are given after the adverse action. While this implies that some amount of time pass between these notices, it gives no specific guidelines as to what this time may be. In the real world, in a tight labor market, it is hard to decide you do not want to hire an individual and then to have to implement some "waiting period" before actually taking the adverse action, that is not hiring him and hiring another individual instead.

The FTC speaks to this issue in staff opinion letter Haynes-Hawkey, dated 12/18/97. They acknowledge that the law is silent as to the time frame while agreeing that the law clearly intended for some period of time in between notices. They advise simply that “employers may want to consult with their counsel so that they develop procedures that are appropriate, keeping in mind the clear purpose of the provision to allow consumers to discuss reports with employers or otherwise respond before adverse action is taken”. With this in mind, it appears that it would also matter how the pre-adverse notice is delivered. If it is a situation where you are delivering it personally, you know when the person received it and a two-day waiting period may be appropriate. If the US mail is involved, a five-day period may be advisable. It is best to take the FTC advice and consult counsel on this issue.

Storage and Destruction of Records

All Records obtained from a CRA should be treated as private and confidential. All end users are required to take precautions to secure access to these records. These records should be kept separately in a locked filing cabinet or in a locked office. Access to them must be tightly controlled. If the access to the records is compromised, the new provisions require that any possibly affected individual be notified and steps be taken to protect these individuals from identity theft.

Likewise, after the statutory time to keep these records on hand, you may decide to destroy the records. Make sure this is done in accordance with the guidelines, which currently would include shredding or burning all documents. Never throw these documents into the common trash or other disposal methods.

CRA's as Custodians

With all the notices and letters that have to be sent, some CRA's have begun to offer, as a service, to act as a custodian to their clients in regards to their FCRA mandated duties. The FTC has acknowledged this and stated that it is all right for a CRA to act in a custodial manner for their client. What this means is that you, the client, simply call the CRA and inform them that you wish to take adverse action against a particular candidate. The CRA would then see to it that all letters and forms, in their appropriate format and at the proper times, were sent to the consumer.

This service makes it very easy and trouble free for you, the client. However, the FTC does warn that while you can allow a CRA to act for you in this manner, ultimately it is the company that bears the responsibility to make certain all FCRA requirements are being met.

Part Five

Conclusion

While the FCRA does impose many new requirements on users of consumer reports, with proper understanding of the regulations and well planned policy, the implementation of these new regulations can be relatively painless. By abiding by the requirements of the new FCRA, we are providing a system that is fair to consumers, and yet allows us to get the information we need to make appropriate decisions with speed and accuracy.

The appendices that follow include most of the documents mentioned throughout this booklet. The full text of the Fair Credit Reporting Act is there as well. Please feel free to use the examples contained and to modify them for your purposes. Remember, though, these are just examples and should be reviewed by your counsel prior to your use. While these examples may assure your compliance with the FCRA, only your local, competent counsel can advise you as to all of your local and/or state obligations.

UPDATE TO “HR’S GUIDE TO THE NEW FCRA” SUPPLEMENT

This update is a supplement to “HR’s Guide to the New FCRA” published by University Background Checks and reflects changes not incorporated into the booklet and is current as of the date indicated.

Since publishing the “HR’s Guide to the New FCRA”, there has been a significant development. As is pointed out, the FCRA was in conflict with other federal law on several key issues. To resolve these matters, and to address the concerns about several other issues, Congress acted with uncharacteristic speed and resolve. In November of 1998, President Clinton signed into law the Consumer Employment Clarification Act of 1998. The newest addition to the FCRA clarified and redefined four key areas that the original Act either did not address or addressed poorly.

1. The most significant change involved the elimination of the seven-year reporting limitation with respect to any criminal convictions. The limitation still applies to arrest records, however. References to specific dates (i.e. dates of disposition vs. date of arrest) no longer apply and have been removed since the time limit is no longer present. The method of computing the seven-year limit for arrest records is simply seven years from the date of the arrest, not the date of trial or a finding of innocence. Again, if someone is convicted, the time limit does not apply.
2. The second change deals with companies, specifically transportation companies, which hire employees remotely. That is, the employee does not fill out or send in an application for employment. Therefore, it was argued that such companies could not possibly fill the requirement of obtaining a signed release. This amendment allows that the notice and authorization requirements may be fulfilled by “oral, written, or electronic means”. This change applies only to job applicants and not to any other kind of applicants. It also only applies when all of the interaction between and applicant and an employer prior to requesting the consumer reports have been by a remote means. (This means no applications faxed in, none mailed, etc.) These requirements make this amendment useful to only a handful of companies, most notably those in the transportation business.
3. The third change exempted certain federal agencies when conducting investigations involving “national security”. No such exemption was in place before.
4. Finally, there were a total of six corrections that are not substantive, but rather fixes to the language and position of statements.

All of these changes are effective retroactively to September 30, 1997 when the original amendments took effect. Certainly the most significant change is in allowing convictions to be reported for more than just the seven-year time period. A full copy of the newest version of the FCRA with all language changes can be found at the FTC’s web site, <http://www.ftc.gov> or you may contact University Background Checks to obtain a copy.

APPENDIX A

A SUMMARY OF YOUR RIGHTS UNDER THE FCRA (FAIR CREDIT REPORTING ACT)

The federal Fair Credit Reporting Act (FCRA) is designed to promote accuracy, fairness, and privacy of information in the files of every “consumer reporting agency” (CRA). Most CRAs are credit bureaus that gather and sell information about you – such as if you pay your bills on time or have filed bankruptcy – to creditors, employers, landlords, and other businesses. You can find the complete text of the FCRA, 15 U.S.C. 1681-1681u, at the Federal Trade Commission’s web site (<http://www.ftc.gov>). The FCRA gives you specific rights, as outlined below. You may have additional rights under state law. You may contact a state or local consumer protection agency or a state attorney to learn those rights.

- **You must be told if information in your file has been used against you.** Anyone who uses information from a CRA to take action against you – such as denying an application for credit, insurance, or employment – must tell you, and give you the name, address, and phone number of the CRA that provided the consumer report.
- **You can find out what is in your file.** At your request, a CRA must give you the information in your file, and a list of everyone who has requested it recently. There is no charge for the report if a person has taken action against you because of information supplied by the CRA, if you request the report within 60 days of receiving notice of the action. You are also entitled to one free report every twelve months upon request if you certify that (1) you are unemployed and plan to seek employment within 60 days, (2) you are on welfare, or (3) your report is inaccurate due to fraud. Otherwise, a CRA may charge you up to eight dollars.
- **You can dispute inaccurate information with the CRA.** If you tell a CRA that your file contains inaccurate information, the CRA must investigate the items (usually within 30 days) by presenting to its information source all relevant evidence you submit, unless your dispute is frivolous. The source must review your evidence and report its findings to the CRA. (The source also must advise national CRAs – to which it has provided the data – of any error). The CRA must give you a written report of the investigation and a copy of your report if the investigation results in any change. If the CRA’s investigation does not resolve the dispute, you may add a brief statement to your file. The CRA must normally include a summary of your statement in future reports. If an item is deleted or a dispute statement is filed, you may ask that anyone who has recently received your report be notified of the change.
- **Inaccurate information may be corrected or deleted.** A CRA must remove or correct inaccurate or unverified information from its files, usually within 30 days after you dispute it. **However, the CRA is not required to remove accurate data from your file unless it is outdated (as described below) or cannot be verified.** If your dispute results in any change to your report, the CRA cannot reinsert into your file a disputed item unless the information source verifies its accuracy and completeness. In addition, the CRA must give you a written notice telling you it has reinserted the item. The notice must include the name, address and phone number of the information source.
- **You can dispute inaccurate items with the source of the information.** If you tell anyone – such as a creditor who reports to a CRA – that you dispute an item, they may not then report the information to a CRA without including a notice of your dispute. In addition, once you’ve notified the source of the error in writing, it may not continue to report the information if it is, in fact, an error.
- **Outdated information may not be reported.** In most cases, a CRA may not report negative information that is more than seven years old; ten years for bankruptcies.
- **Access to your file is limited.** A CRA may provide information about you only to people with a need

recognized by the FCRA – usually to consider an application with a creditor, insurer, employer, landlord, or other business.

- **Your consent is required for reports that are provided to employers or reports that contain medical information.** A CRA may not give out information about you to your employer, or prospective employer, without your written consent. A CRA may not report medical information about you to creditors, insurers, or employers without your permission.
- **You may choose to exclude your name from CRA lists for unsolicited credit and insurance offers.** Creditors and insurers may use file information as the basis for sending you unsolicited offers of credit or insurance. Such offers must include a toll-free phone number for you to call if you want your name and address removed from future lists. If you call, you must be kept off the lists for two years. If you request, complete, and return the CRA form provided for this purpose, you must be taken off the lists indefinitely.
- **You may seek damages from violators.** If a CRA, a user or (in some cases) a provider of CRA data, violates the FCRA, you may sue them in state or federal court.

The FCRA gives several different federal agencies authority to enforce the FCRA:

FOR QUESTIONS OR CONCERNS REGARDING:	PLEASE CONTACT:
CRAs, creditors and others not listed below	Federal Trade Commission Consumer Response Center – FCRA Washington, DC 20580 * 202-326-3761
National banks, federal branches/agencies of foreign banks (word “National” or initial “N.A.” appear in or after bank’s name)	Office of the Controller of the Currency Compliance Management, Mail Stop 6-6 Washington, DC 20219 * 800-613-6743
Federal Reserve System member Banks (except national banks, and federal branches/agencies of foreign banks)	Federal Reserve Board Division of Consumer & Community Affairs Washington, DC 20551* 202-452-3693
Savings associations and federally chartered savings banks (word “Federal” or initials “F.S.B.” appear in federal institution’s name)	Office of Thrift Supervision Consumer Programs Washington, DC 20552 * 800-842-6929
Federal credit unions (words “Federal Credit Union” appear in institution’s name)	National Credit Union Administration 1775 Duke Street Alexandria, VA 22314 * 703-518-6360
State-chartered banks that are not members of the Federal Reserve System	Federal Deposit Insurance Corporation Division of Compliance & Consumer Affairs Washington, DC 20429 * 800-934-FDIC
Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission	Department of Transportation Office of Financial Management Washington, DC 20590 * 202-366-1306
Activities subject to the Packers and Stockyards Act, 1921	Department of Agriculture Office of Deputy Administrator - GIPSA

APPENDIX B

NOTICE TO USERS OF CONSUMER REPORTS: OBLIGATIONS OF USERS UNDER THE FCRA (FAIR CREDIT REPORTING ACT)

The federal Fair Credit Reporting Act (FCRA) requires that this notice be provided to inform users of consumer reports of their legal obligations. State law may impose additional requirements. This first section of this summary sets forth the responsibilities imposed by the FCRA on all users of consumer reports. The subsequent sections discuss the duties of users of reports that contain specific types of information, or that are used for certain purposes, and the legal consequences of violations. The FCRA, 15 U.S.C. 1681-1681i, is set forth in full at the Federal Trade Commission's Internet web site (<http://www.ftc.gov>).

I. OBLIGATIONS OF ALL USERS OF CONSUMER REPORTS

A. Users Must Have A Permissible Purpose

Congress has limited the use of consumer reports to protect consumer's privacy. All users must have a permissible purpose under the FCRA to obtain a consumer report. Section 604 of the FCRA contains a list of the permissible purposes under the law. These are:

- As ordered by a court or a federal grand jury subpoena. Section 604 (a) (1)
- As instructed by the consumer in writing. Section 604 (a) (2)
- For the extension of credit as a result of an application from a consumer, or the review or collection of a consumer's account. Section 604 (a) (3) (A)
- For employment purposes, including hiring and promotion decisions, where the consumer has given written permission. Sections 604 (a) (3) (B) and (b)
- For the underwriting of insurance as a result of an application from a consumer. Sections 604 (a) (3) (C)
- When there is a legitimate business need, in connection with a business transaction that is initiated by the consumer. Section 604 (a) (3) (F) (I)
- To review a consumer's account to determine whether the consumer continues to meet the terms of the account. Section 604 (a) (3) (F) (I)
- To determine a consumer's eligibility for a license or other benefit granted by governmental instrumentality required by law to consider an applicant's financial responsibility or status. Section 604 (a) (3) (D)
- For use by a potential investor or servicer, or current insurer, in a valuation or assessment of the credit or prepayment risks associated with an existing credit obligation. Section 604 (a) (3) (E)
- For use by state and local officials in connection with the determination of child support payments, or modifications and enforcement thereof. Sections 604 (a) (4) and 604 (a) (5)

In addition, creditors and insurers may obtain certain consumer report information for the purpose of making unsolicited offers of credit or insurance. The particular obligations of users of this "prescreened" information are described in Section V below.

B. Users Must Provide Certifications

Section 604 (f) of the FCRA prohibits any person from obtaining a consumer report from a consumer reporting agency (CRA) unless the person has certified to the CRA (by a general or specific certification, as appropriate) the permissible purpose(s) for which the report is being obtained and certifies that the report will not be used for any other purpose.

C. Users Must Notify Consumers When Adverse Actions Are Taken

The term "adverse action" is defined very broadly by Section 603 of the FCRA. "Adverse actions" include all business, credit, and employment actions affecting consumers that can be considered to have a negative impact – such as unfavorably changing credit or contract terms or conditions, denying or canceling credit or insurance, offering credit on less favorable terms than requested, or denying employment or promotion.

1. Adverse Actions Based on Information Obtained From a CRA:

If a user takes any type of adverse action that is based at least in part on information contained in a consumer report, the user is required by Section 615 (a) of the FCRA to notify the consumer. The notification may be done in writing, orally, or by electronic means. It must include the following:

- The name, address, and telephone number of the CRA (including a toll -free telephone number, if it is a nationwide CRA) that provided the report.

- A statement that the CRA did not make the adverse decision and is not able to explain why the decision was made.
- A statement setting forth the consumer's right to obtain a free disclosure of the consumer's file from the CRA if the consumer requests the report within 60 days.
- A statement setting forth the consumer's right to dispute directly with the CRA the accuracy or completeness of any information provided by the CRA.

2. **Adverse Actions Based on Information Obtained From Third Parties Who Are Not Consumer Reporting Agencies:** If a person denies (or increases the charge for) credit for personal, family, or household purposes based either wholly or partly upon information from a person other than a CRA, and the information is the type of consumer information covered by the FCRA, Section 615 (1) of the FCRA requires that the user clearly and accurately disclose to the consumer his or her right to obtain disclosure of the nature of the information that was relied upon by making a written request within 60 days of notification. The user must provide the disclosure within a reasonable period of time following the consumer's written request.

3. **Adverse Actions Based on Information Obtained From Affiliates:**

If a person takes an adverse action involving insurance, employment, or a credit transaction initiated by the consumer, based on information of the type covered by the FCRA, and this information was obtained from an entity affiliated with the user of the information by common ownership or control, Section 615 (b) (2) required the user to notify the consumer of the adverse action. The notification must inform the consumer that he or she may obtain a disclosure of the nature of the information relied upon by making a written request within 60 days of receiving the adverse action notice. If the consumer makes such a request, the user must disclose the nature of the information not later than 30 days after receiving the request. (Information that is obtained directly from an affiliated entity relating solely to its transactions or experiences with the consumer, and the information from a consumer report obtained from an affiliate are not covered by Section 615 (b) (2).

II. OBLIGATIONS OF USERS WHEN CONSUMER REPORTS ARE OBTAINED FOR EMPLOYMENT PURPOSES

If information from a CRA is used for employment purposes, the user has specific duties, which are set forth in Section 604 (b) of the FCRA. The user must:

- Make a clear and conspicuous written disclosure to the consumer before the report is obtained, in a document that consists solely of the disclosure, that a consumer report may be obtained.
- Obtain prior written authorization from the consumer.
- Certify to the CRA that the above steps have been followed, that the information being obtained will not be used in violation of any federal or state equal opportunity law or regulation, and that, if any adverse action is to be taken based on the consumer report, a copy of the report and a summary of the consumer's rights will be provided to the consumer.
- Before taking adverse action, provide a copy of the consumer's report to the consumer as well as the summary of the consumer's rights. (The user should receive this summary from the CRA, because Section 604 (b) (1) (B) of the FCRA requires CRAs to provide a copy of the summary with each consumer report obtained for employment purposes.)

III. OBLIGATIONS OF USERS OF INVESTIGATIVE CONSUMER REPORTS

Investigative consumer reports are a special type of consumer report in which information about a consumer's character, general reputation, personal characteristics, and mode of living is obtained through personal interviews. Consumers who are the subjects of such reports are given special rights under the FCRA. If a user intends to obtain an investigative consumer report, Section 606 of the FCRA requires the following:

- The user must disclose to the consumer that an investigative consumer report may be obtained. This must be done in a written disclosure that is mailed, or otherwise delivered, to the consumer not later than three days after the date on which the report was first requested. The disclosure must include a statement informing the consumer of his or her right to request additional disclosures of the nature and scope of the investigation as described below, and must include the summary of consumer rights required by section 609 of the FCRA. (The user should be able to obtain a copy of the notice of consumer rights from the CRA that provided the consumer report.)
- The user must certify to the CRA that the disclosures set forth above have been made and that the user will make the

disclosure described below.

- Upon the written request of a consumer made within a reasonable period of time after the disclosure of the nature and scope of the investigation that was requested. This must be made in a written statement that is mailed, or otherwise delivered, to the consumer no later than five days after the date on which the request was received from the consumer or the report was first requested, whichever is later in time.

IV. OBLIGATIONS OF USERS OF CONSUMER REPORTS CONTAINING MEDICAL INFORMATION

Section 640 (g) of the FCRA prohibits consumer reporting agencies from providing consumer reports that contain medical information for employment purposes, or in connection with credit or insurance transactions, without the specific prior consent of the consumer who is the subject of the report. In the case of medical information being sought for employment purposes, the consumer must explicitly consent to the release of the medical information in addition to authorizing the obtaining of a consumer report generally.

V. OBLIGATIONS OF USERS OF "PRESCREENED" LISTS

The FCRA permits creditors and insurers to obtain limited consumer report information for use in connection with unsolicited offers of credit or insurance under certain circumstances. Sections 603 (1), 604 (c), 604 (e), and 615 (d) This practice is known as "prescreening" and typically involves obtaining a list of consumers from a CRA who meet certain pre-established criteria. If any person intends to use prescreened lists, that person must (1) before the offer is made, establish the criteria that will be relied upon to make the offer and to grant credit or insurance, and (2) maintain such criteria on file for a three-year period beginning on the date on which the offer is made to each consumer. In addition, any user must provide with each written solicitation a clear and conspicuous statement that:

- Information contained in a consumer's CRA file was used in connection with the transaction.
The consumer received the offer because he or she satisfied the criteria for credit worthiness or insurability used to screen for the offer.
- Credit or insurance may not be extended if, after the consumer responds, it is determined that the consumer does not meet the criteria used for screening or any applicable criteria bearing on credit worthiness or insurability, or the consumer does not furnish required collateral.
- The consumer may prohibit the use of information in his or her file in connection with future prescreened offers of credit or insurance by contacting the notification system established by the CRA that provided the report. This statement must include the address and toll-free telephone number of the appropriate notification system.

VI. OBLIGATIONS OF RESELLERS

Section 607 (e) of the FCRA requires any person who obtains a consumer report for resale to take the following steps:

- Disclose the identity of the end-user to the source CRA.
- Identify to the source CRA each permissible purpose for which the report will be furnished to the end-user.
- Establish and follow reasonable procedures to ensure that reports are resold only for permissible purposes, including procedures to obtain:
 - (1) the identity of all end-users;
 - (2) certifications from all users of each purpose for which reports will be used; and
 - (3) certification that reports will not be used for any purpose other than the purpose(s) specified to the reseller.Reseller must make reasonable efforts to verify this information before selling the report.

VII. LIABILITY FOR VIOLATIONS OF THE FCRA

Failure to comply with the FCRA can result in state or federal enforcement actions, as well as private lawsuits. Sections 616, 617, and 621. In addition, any person who knowingly and willfully obtains a consumer report under false pretenses may face criminal prosecution. Section 619

APPENDIX C

SAMPLE ADVERSE ACTION LETTER

(As required by FCRA Section 615)

Date

Applicant Name

Applicant Address

Dear Applicant:

Thank you for your recent application for employment. We appreciate your interest and have carefully considered your application. We regret that, at this time, we are unable to offer you employment.

The reason or reasons for our decision were based in part on information obtained from the consumer reporting agency listed below. Enclosed, you will find a summary of your rights under the Fair Credit Reporting Act. You may contact the consumer reporting agency listed below for a free copy of the consumer report. The consumer reporting agency identified below did not make the decision and is unable to provide you, the consumer with specific reasons why this action was taken.

True Hire
11726 Cleveland Avenue
Uniontown, OH 44685
1-800-262-7301

Under the Fair Credit Reporting Act, you may dispute any information that is in your file by contacting this consumer reporting agency. If you disagree with the information contained in this file, please contact us within 5 days. Otherwise, we shall assume that you no longer wish to seek employment with us.

Sincerely,

WEB LINKS

FCRA BOOKLET

www.ftc.gov/os/statutes/fcradoc.pdf