



Employer Education Series:

Background Screening and Employer Compliance with the FCRA

Provided by:
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The information in this document is presented for general educational purposes and is provided solely for the convenience of its readers. It is not a substitute for legal advice. Consultation with qualified legal counsel is recommended for all matters of employment law.

This document addresses US federal requirements as found in the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 et seq. related to the procurement and use of consumer reports and investigative consumer reports (also known as background reports) for employment purposes. Although the FCRA also addresses the use of Consumer Reports/Investigative Consumer Reports for purposes other than employment, such use is outside the scope of this document. Additionally, this document does not address background screening requirements found in State law, International law, or regulated industries.

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Appendix 1: *Notice to Users of Consumer Reports: Obligations of Users under the FCRA*

<http://www.ftc.gov/os/2004/11/041119factaappg.pdf>

Appendix 2: *Remedying the Effects of Identity Theft*

<http://www.ftc.gov/bcp/online/pubs/credit/idtsummary.pdf>

Appendix 3: *A Summary of Your Rights under the Fair Credit Reporting Act*

<http://www.ftc.gov/bcp/online/pubs/credit/fcrasummary.pdf>

Section 1: Introduction

The purpose of this document is to present educational information about compliance with federal law when employers obtain background reports from a background screening company. It specifically addresses the US Federal Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 et seq.¹ Employers should be aware, however, that legal requirements exist at the state and international level and compliance is required. Further, employers in regulated industries (such as transportation, financial services, healthcare, etc.) are subject to industry laws and regulations.

Dispelling the Myths

Common misconceptions exist about background screening, information sources, procedures, and requirements to obtain these reports. The information below corrects some of the most significant misconceptions. Therefore, contrary to some popular opinion:

- The federal *Fair Credit Reporting Act (FCRA)*, 15 U.S.C. 1681 et seq. applies to all background screening, not just screening which includes credit.
- Unless it is a case of suspected wrong doing, an applicant must always receive disclosure and authorize the background investigation - even if the background report will only contain public information.
- The criminal record databases maintained by the US Federal Bureau of Investigation are not available to background screening companies. Likewise, these databases are not available directly to employers unless the employer is in a regulated industry where such a check is required.
- Many background checks cannot be done instantly. Contact with schools, previous employers, state agencies, and references are often required. Similarly, record searches at county courthouses must often be done in person to obtain up-to-date information.

Definitions

The official definition of many of the following terms is provided in the FCRA. The following conversational definitions are provided to establish a common understanding of these terms as used in this document.

- **Adverse Action:** A negative employment action such as not hiring an applicant; not promoting or not retaining an employee.
- **Authorization:** Obtaining written permission from the applicant/employee for the background investigation to be conducted.

¹ The Fair Credit Reporting Act can be found at: <http://www.ftc.gov/os/statutes/fcradoc.pdf>

- **Background Check:** Usually refers to one item of information in a background report; i.e., one academic background check, one employment background check, one driving record check. However, sometimes this term is also used to describe the background report in its entirety.
- **Background Investigation:** Another term for background report or background check.
- **Consumer:** The person who is the subject of the background report; the person who is seeking employment, retention, or promotion by an employer.
- **Consumer Report:** Under the FCRA, one of two official names for a background report. The other name is "investigative consumer report." Most often the distinction between a "consumer report" and an "investigative consumer report" is that a "consumer report" contains only factual information while an "investigative consumer report" contains some opinions.

Example: "Was s/he employed by your company?" This calls for a factual response. "How did s/he perform on the job?" This calls for an opinion.

- **Consumer Reporting Agency:** Another name for a background screening company.
- **Disclosure:** Refers to the document and the process of informing an applicant/employee that he/she will be the subject of a background report.
- **Employment Purposes:** Hiring an applicant; promoting or retaining an employee.
- **Fair Credit Reporting Act (FCRA):** The federal law that governs the preparation, dissemination, and use of background reports for employment purposes.
- **Federal Trade Commission (FTC):** The government agency responsible for the administration of the FCRA. This agency has issued many non-binding opinions interpreting the FCRA.
- **Final Adverse Action:** Referring to the document and the process when a negative employment decision is made, the applicant/employee receives notice of the decision.
- **First Notice:** Another name given to pre-adverse or preliminary adverse action.
- **Investigative Consumer Report:** Under the FCRA, one of two official names for a background report. The other name is "consumer report." Most often the distinction between a "consumer report" and an "investigative consumer report" is that a "consumer report" contains only factual information while an "investigative consumer report" contains some opinions.

Example: "Was s/he employed by your company?" This calls for a factual response. "How did s/he perform on the job?" This calls for an opinion.

- ***Notice to Users of Consumer Reports: Obligations of Users under the FCRA:***² Prepared by the Federal Trade Commission, this document must be given by the background screening company to employers before background screening information is provided to the employer. This most current version of this document was released on 11/19/04.

² See Appendix 1.

- **Permissible Purpose:** Under the FCRA, this is a legal purpose for obtaining a background report.
- **Preliminary Adverse Action:** Referring to a document and the process when a negative employment decision is being considered, the applicant/employee receives notice, a copy of his/her background report, and *A Summary of Your Rights under the Fair Credit Reporting Act*. This is also referred to as "Pre-Adverse Action" and "First Notice."
- **Remedying the Effects of Identity Theft:**³ Prepared by the Federal Trade Commission, this document must be given to applicants/employees who believe they are the victim of identity theft. The current (and only) version of this document was released on 11/19/04.
- **Second Notice:** Another name for "Final Adverse Action."
- **A Summary of Your Rights under the Fair Credit Reporting Act:**⁴ Prepared by the Federal Trade Commission, this document must be attached to a background report being provided to an applicant/employee. This most current version of this document was released on 11/19/04. Commonly referred to as "Summary of Rights."
- **User Certification:** A document provided by the background screening company which must be signed by the employer before the screening company will provide background reports to the employer.
- **User of Consumer Reports:** An employer who, as part of an employment decision, considers the information in a background report.

Summary of Process

Following are the key steps that an employer must take to obtain a background report on an applicant/employee.⁵

1. Employer discloses in writing⁶ to applicant/employee that he/she will be the subject of a background report as part of the employment selection process.
2. Employer obtains signed⁷ authorization for preparation of a background report from applicant/employee.
3. Employer provides information about the applicant/employee to the background screening company and requests background screening.

³ See Appendix 2.

⁴ See Appendix 3.

⁵ In cases of suspected misconduct or illegal activity by an employee and with the exception of credit information, disclosure and authorization is not required. Limited disclosure after the fact, however, is required.

⁶ Alternate methods of providing disclosure are permitted for those positions under the authority of the US Secretary of Transportation and positions subject to safety regulations by a State Transportation Agency.

⁷ Alternate methods of obtaining authorization are permitted for those positions under the authority of the US Secretary of Transportation and positions subject to safety regulations by a State Transportation Agency.

4. Background screening company conducts the background checks which were requested by employer and prepares background report.
5. Background screening company provides background report to the employer and, if requested by applicant/employee, provides copy to applicant/employee.
6. Employer reviews completed background report and determines if any information will adversely impact employment decision. If no adverse impact results from information in the background report, the employer will proceed with other steps in the employment process.

NOTE: Steps 7-10 are used only when an employer is considering an adverse employment action.

7. If employer is considering an adverse employment action based in whole or part on information in the background report, the employer⁸ must: a) notify applicant/employee, b) provide a copy of the background report, and c) provide "*A Summary of Your Rights under the Fair Credit Reporting Act.*" (This process is sometimes called "Pre-Adverse Action" or "Preliminary Adverse Action" or "First Notice.")
8. Applicant/employee contacts background screening company if s/he disputes any information in background report.
9. Background screening company re-investigates any disputed items of information and issues updated report to employer and applicant/employee.
10. Employer reviews updated report and makes final employment decision. If the employment decision is adverse, a notice of adverse action is sent to applicant/employee.⁹ (This process is sometimes called "Final Adverse Action.")

The key steps in this process which are the responsibility of the employer are addressed in greater detail in Section 3 of this document.

⁸ Per the FTC, this may be done by the background screening company on behalf of the employer. FTC Opinion Letter from William Hayes, FTC Staff Attorney, to Michael Rosen; June 9, 1998.
<http://www.ftc.gov/os/statutes/fcra/rosen.htm>

⁹ See Footnote 6.

Section 2: Becoming a User of Background Reports

When a background screening company provides background reports to an employer, the employer becomes a “client” or “customer” of the background screening company and a “user” of background reports. Before background screening companies may provide background reports to a client (the employer), the screening company is legally required to take reasonable steps to ensure the employer is a legitimate business entity and will use the background information in a legal manner. In doing so, the background screening company will likely:

- Require business documents from the employer evidencing the employer’s status as a legitimate business entity. This may be a business license, articles of incorporation, bank references, etc.
- Check stock exchange membership, business listings, state licensing boards, and other professional entities.
- Visit (or have their agent visit) one of the employer’s offices or facilities. The background screening company may take photos of the exterior of the facility, as well as in the interior. If taken in the interior, no confidential areas or information will be included in the photos.

NOTE: The onsite visit may not be required in the case of publicly traded companies.

Once the background screening company has authenticated the employer, the screening company is required to obtain the employer’s signature on a “User Certification.” Under the FCRA, the User Certification must include the following items:

1. The employer will provide disclosure to the applicant/employee before procuring a background report.¹⁰
2. The employer will obtain written authorization from the applicant/employee before procuring a background report.¹¹
3. The employer will not use the information in the background report in violation of any federal or state equal opportunity laws.
4. The employer will use the background report only for a permissible purpose.
5. The employer will follow adverse action procedures if a negative employment action is considered.
6. The employer has received a copy of *Notice to Users of Consumer Reports: Obligations of Users under the FCRA*.

Depending on the background screening company, the User Certification may include other items such as international, state, information source, and business requirements. The User Certification must at a minimum, however, include Items 1-6 above.

The background screening company must retain on file a copy of the employer’s signed User Certification.

¹⁰ See Footnote 5.

¹¹ See Footnote 5.

Section 3: Detailed Process and Requirements

This section expands upon Items 1, 2, 7, and 10 found in Section 1, "Summary of Process." These four items are key responsibilities of the employer in the background screening process. For reference purposes, these four items are repeated at the beginning of the relevant subsection. In addition, some optional activities and common procedures are included.

3.1 Optional - Initial Notice

Initial Notice is making it known to all employees and applicants that the employer conducts background screening. If Initial Notice is used, it must be provided to all employees and applicants in order to not appear discriminatory. It is recommended that such notice occur prior to requesting written authorization for background screening. Some methods for Initial Notice include:

- Signs in Human Resources
- Letters or notices to current employees
- Statement on the company's website
- Statement in advertising, job postings, or other recruiting tools

3.2 Required - Disclosure to Applicant/Employee

Summary Step 1 (from Section 1, Summary of Process): Employer discloses in writing to applicant/employee that he/she will be the subject of a background report as part of the employment selection process.

Before a background report for employment purposes may be procured from a background screening company by the employer, disclosure must occur.¹² Disclosure is the act of informing the applicant/employee that s/he will be the subject of a background investigation. The disclosure must be in writing.¹³ It must be *"...in a document that consists solely of the disclosure"* or the *"...authorization may be made on the [disclosure] document..."*¹⁴

The employer must retain the original document. It is recommended that the applicant/employee be offered a copy of the document. Although not required, "A Summary of Your Rights under the Fair Credit Reporting Act" may be provided to the applicant/employee at this time. However, note that the *Summary of Rights* document must still be provided to the applicant/employee whenever a copy of the background report is provided to the applicant/employee.

As noted in Definitions on Page 4, a "Consumer Report" deals with facts while an "Investigative Consumer Report" also includes opinions. If the background report to be procured is an "Investigative Consumer Report," special language must be included in the

¹² See Footnote 5.

¹³ See Footnotes 6.

¹⁴ Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681b(b)

disclosure. Per the FCRA, the document must clearly and accurately disclose to the applicant/employee that inquiries about “...*information as to his character, general reputation, personal characteristics and mode of living, whichever are applicable, may be made...*”¹⁵

The applicant/employee must be notified no later than three days after the employer requests an Investigative Consumer Report that such report has been requested from the screening company. The notification must include the fact that s/he has the right to obtain additional information as to the nature and scope of the investigation requested and must include “A Summary of Your Rights under the Fair Credit Reporting Act.”

Many employers include the Investigative Consumer Report language in their standard disclosure document, thereby eliminating the need for a second disclosure. If the employer is going to wait a significant amount of time between the disclosure and requesting an Investigative Consumer Report, a second disclosure is recommended.

3.3 Required - Written Authorization

Summary Step 2 (from Section 1, Summary of Process): Employer obtains signed authorization for preparation of a background report from applicant/ employee.

As noted above, the FCRA permits the authorization be combined with the disclosure. Further per the FTC, the disclosure and authorization may also be used to collect identifying information about the applicant/employee.¹⁶ Regardless of whether combined with the disclosure or as a standalone document, the authorization must be signed¹⁷ by the applicant/employee before a background report may be procured from a background screening company.

The employer may wish to include language in the authorization which states the authorization is valid throughout the term of employment. This allows the employer to procure background reports on the employee without obtaining a new authorization for each background report. This is particularly helpful for those employers who conduct annual checks such as driving or criminal.

The employer may be required to provide a copy of the authorization (or combined disclosure and authorization) to the background screening company when requesting a background investigation. The FTC has opined that the background screening company is not required to have a copy of the authorization in their possession.¹⁸ From a practical standpoint, however, the background screening company is likely to need to supply a copy of the authorization to one or more information sources. For purposes of efficiency, most background screening companies will recommend the authorization be provided at time of background screening request.

¹⁵ Ibid § 1681d(a)

¹⁶ FTC Opinion Letter from Cynthia Lamb, FTC Investigator, to Richard Steer; October 21, 1997. <http://www.ftc.gov/os/statutes/fcra/steer.htm>

¹⁷ See Footnotes 6 and 7.

¹⁸ FTC Opinion Letter from Shoba Kammula to Stephen Kilgo; July 28, 1998.

3.4 Optional - Subject Notification

A Subject Notification is a notice advising the applicant/employee that a background check has been ordered. This notification is not required under federal law, however, it is recommended in cases when significant time has elapsed between disclosing to and obtaining authorization from the applicant/employee and the initiation of the background. If Subject Notification is provided, it is recommended that the employer also use the notice to remind the applicant/employee that s/he previously received disclosure and provided authorization.

3.5 Required - Adverse Action Procedures (Pre-Adverse Action)

Summary Step 7 (from Section 1, Summary of Process): If employer is considering an adverse employment action based in whole or part on information in the background report, the employer: a) notifies applicant/employee, b) provides a copy of the background report, and c) provides "A Summary of Your Rights under the Fair Credit Reporting Act." (This process is sometimes called "Pre-Adverse Action" or "Preliminary Adverse Action" or "First Notice.")

An adverse employment action includes not hiring an applicant, not promoting an employee, not retaining an employee, or any other action which has an adverse impact on the individual's employment status. Whenever an adverse action is being considered based in whole or part on information in the background report, no actual adverse action may be taken until the applicant/employee is so advised. In doing so, the employer must inform the applicant/employee that adverse action is being considered.

Further, the employer must provide the applicant/employee with a copy of his/her background report, a copy of "A Summary of Your Rights under the Fair Credit Reporting Act," and a reasonable period of time to dispute the accuracy or completeness of information in the report.

The FCRA does not specify how long an employer must wait after the pre-adverse action notice before actually taking adverse action. According to the FTC, employers should "...keep in mind the clear purpose of the provision to allow consumers to discuss reports with employers or otherwise respond before adverse action is taken."¹⁹ Thus, the applicant must have a meaningful opportunity to review the information and to respond. The FTC has suggested five business days as a reasonable amount of time.²⁰ If the employer falls under the auspices of the US Department of Transportation, three business days should be allowed.

Although not required by the FCRA, it is recommended that the pre-adverse action notice be provided to the applicant/employee in writing. The Summary of Rights must be in substantially the same form as that designed by the FTC. As shown in Appendix 3, this is currently a two page document.

¹⁹ FTC Opinion Letter from William Haynes, FTC Staff Attorney, to Harold Hawkey; December 18, 1997. <http://www.ftc.gov/os/statutes/fcra/hawkeycb.htm>

²⁰ FTC Opinion Letter from Clarke W. Brinckerhoff, FTC Staff Attorney to Erick Weisberg; June 27, 1997. <http://www.ftc.gov/os/statutes/fcra/weisberg.htm>

3.6 Required - Adverse Action Procedures

Summary Step 10 (from Section 1, Summary of Process): Employer reviews updated report and makes final employment decision. If the final employment decision is adverse, a notice of adverse action is sent to applicant/employee. (This process is sometimes called "Final Adverse Action" or "Second Notice.")

If the employee/applicant is denied employment, promotion or is dismissed based in whole or in part on information contained in the background report, s/he must be given a written notice of adverse action. This notice may be given only after the employer has followed the required pre-adverse action process and the applicant/employee has had the opportunity to dispute.

The adverse action notice does not need to include the specific reason for the adverse action, but must:

- State that the adverse action is based either in whole or part on information contained in the background report provided by the background screening company
- State that the Consumer Reporting Agency (the background screening company) did not make the adverse employment decision and does not know the basis for the decision.
- Include the name, address, and toll free number of the background screening company.
- State that the applicant/employee has the right to obtain another free copy of his/her background report within the next 60 days.

Note: If a background report is obtained without disclosure and authorization because of suspected wrongdoing and adverse action is taken, only a summary of the background report need be provided and certain sources may be redacted.

The FTC has opined that a background screening company may fulfill the employer's adverse action notification duties and send adverse action notices on behalf of the employer. However, the employer remains responsible for any duty imposed by the FCRA and may be subject to liability if the duties are not performed by the background screening company.²¹

²¹ FTC Opinion Letter from William Hayes, FTC Staff Attorney, to Michael Rosen; June 9, 1998. <http://www.ftc.gov/os/statutes/fcra/rosen.htm>

Section 4: Other Considerations

Reporting Limitations

Employers should be aware that the FCRA (as well as state law) place limitations on information that can be reported by a background screening company. The application of these limitations will likely be transparent to the employer.

Section 605 of the FCRA prohibits a background screening company from reporting the following:

- Bankruptcy cases that antedate the report by more than 10 years
- Paid tax liens that antedate the report by more than seven years
- Accounts placed for collection or charged to profit and loss that antedate the report by more than seven years
- Civil suits, civil judgments, and records of arrest that antedate the report by more than seven years
- Any other adverse information, other than records of convictions, which antedate the report by more than seven years.
- Any arrest record older than seven years

For employees reasonably expected to earn \$75,000 or more per year, the above time limits do not apply.

Employers should also be aware that in addition to the limitations found in the FCRA, a number of states place limitations on what information may be reported by background screening companies. Information commonly prohibited includes arrest records, convictions that antedate the report by a specified numbers of years, dismissed cases, and discharged cases.

As of this writing, the following states have reporting limitations or special requirements related to background reports beyond those of the FCRA.

- | | | |
|-----------------|-----------------|----------------|
| ▪ California | ▪ Michigan | ▪ Pennsylvania |
| ▪ Colorado | ▪ Minnesota | ▪ Rhode Island |
| ▪ Hawaii | ▪ Montana | ▪ Utah |
| ▪ Illinois | ▪ Nevada | ▪ Virginia |
| ▪ Kansas | ▪ New Hampshire | ▪ Washington |
| ▪ Kentucky | ▪ New Mexico | ▪ Wisconsin |
| ▪ Maryland | ▪ New York | |
| ▪ Massachusetts | ▪ Oklahoma | |

As noted earlier in the Introduction, a discussion of US State law requirements related to background screening for employment purposes is beyond the scope of this document. For information on state requirements, please request NAPBS *Employer Education Series: Background Screening and Employer Compliance with State Laws*.

Equal Employment Opportunity

According to the Equal Employment Opportunity Commission, an employer's practice of excluding applicants from employment based on conviction or arrest records may have a disparate impact on certain minority segments of the population. Exclusion of applicants based on conviction records is prohibited unless the employer can show business necessity. To establish business necessity, an employer must be able to show that it considered: 1) the nature and gravity of the offense or offenses, 2) the time that has passed since the conviction and/or completion of the sentence, and 3) the nature of the position held or sought.²²

An employer must determine if it will use arrest records as part of its employment decisions. Conviction records are reliable proof that an individual committed the act in question since the prosecution must show "beyond a reasonable doubt" that the crime was committed. On the other hand, the EEOC does not consider an arrest alone as sufficient evidence that the individual committed a crime. The EEOC recommends employers determine whether the arrest record reflects the individual's conduct. To do so, employers should examine the circumstances, offer the applicant an opportunity to explain, and make follow-up inquiries if necessary.²³

Identity Theft

Identity theft is a growing concern in the United States. According to the Federal Trade Commission's *2003 Consumer Fraud and ID Theft Report*, 42 percent of all complaints received by the FTC in 2003 were related to identity theft. This concern was addressed in the *Fair and Accurate Credit Transactions Act of 2003*²⁴ (FACT ACT or FACTA), which amended the FCRA.

The FACT ACT introduced a new document in conjunction with FCRA identity theft requirements. Titled "*Remedying the Effects of Identity Theft*,"²⁵ this document provides useful information for individuals who suspect they may be victims of identity theft.

If an applicant/employee expresses any concern that they may be a victim of identity theft, the background screening company and/or the employer must provide this identity theft document to the applicant/employee. The document includes contact information for the FTC as well as the three nationwide credit reporting agencies.

²² EEOC Notice N-915, February 2, 1987.

²³ EEOC Notice N-915.061, September 7, 1990.

²⁴ The Fair and Accurate Credit Transactions Act of 2003; http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_public_laws&docid=f:publ159.108.pdf

²⁵ See Appendix 2.

Appendix 1: Notice to Users of Consumer Reports: Obligations of Users under the FCRA

(As provided by the Federal Trade Commission – 11/19/04)

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NOTICE TO USERS OF CONSUMER REPORTS: OBLIGATIONS OF USERS UNDER THE FCRA

The federal Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681-1681y, requires that this notice be provided to inform users of consumer reports of their legal obligations. State law may impose additional requirements. The text of the FCRA is set forth in full at the Federal Trade Commission's Website at www.ftc.gov/credit. At the end of this document is a list of United States Code citations for the FCRA. Other information about user duties is also available at the Commission's Website. **Users must consult the relevant provisions of the FCRA for details about their legal obligations.**

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. If you are a furnisher of information to a consumer reporting agency (CRA), you have additional obligations and will receive a separate notice from the CRA describing your duties as a furnisher.

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 consumers' 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 604(b)
- For the underwriting of insurance as a result of an application from a consumer. Section 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)(ii)
- To determine a consumer's eligibility for a license or other benefit granted by a 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 “prescreened” unsolicited offers of credit or insurance. Section 604(c). The particular obligations of users of “prescreened” information are described in Section VII below.
Appendix C to Part 601 -- Prescribed Notice of User Responsibilities

B. Users Must Provide Certifications. Section 604(f) prohibits any person from obtaining a consumer report from a consumer reporting agency (CRA) unless the person has certified to the CRA 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. “Adverse actions” include all business, credit, and employment actions affecting consumers that can be considered to have a negative impact as defined by Section 603(k) of the FCRA – such as denying or canceling credit or insurance, or denying employment or promotion. No adverse action occurs in a credit transaction where the creditor makes a counteroffer that is accepted by the consumer.

1. Adverse Actions Based on Information Obtained From a CRA. If a user takes any type of adverse action as defined by the FCRA that is based at least in part on information contained in a consumer report, Section 615(a) requires the user 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(b)(1) requires that the user clearly and accurately disclose to the consumer his or her right to be told 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) requires 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.

If consumer report information is shared among affiliates and then used for an adverse action, the user must make an adverse action disclosure as set forth in I.C.1 above.

D. Users Have Obligation When Fraud and Active Duty Military Alerts are in Files. When a consumer has placed a fraud alert, including one relating to identity theft, or an active duty military alert with a nationwide consumer reporting agency as defined in Section 603(p) and resellers, Section 605A(h) imposes limitation on users of reports obtained from the consumer reporting agency in certain circumstances, including the establishment of a new credit plan and the issuance of additional credit cards. For initial fraud alerts and active duty alerts, the user must have reasonable policies and procedures in place to form a belief that the user knows the identity of the applicant or contact the consumer at a telephone number specified by the consumer; in the case of extended fraud alerts, the user must contact the consumer in accordance with the contact information provided in the consumer's alert.

E. Users Have Obligation When Notified of an Address Discrepancy. Section 605(h) requires nationwide CRA's, as defined in Section 603(p), to notify users that request reports when the address for a consumer provided by the user in requesting the report is substantially different from the addresses in the consumer's file. When this occurs, users must comply with regulations specifying the procedures to be followed, which will be issued by the Federal Trade Commission and the banking and credit union regulators. The Federal Trade Commission's regulations will be available at www.ftc.gov/credit.

F. Users Have Obligations When Disposing of Records. Section 628 requires that all users of consumer report information have in place procedures to properly dispose of records containing this information. The Federal Trade Commission, the Securities and Exchange Commission, and the banking and credit union regulators have issued regulations covering disposal. The Federal Trade Commission's regulations may be found at www.ftc.gov/credit.

II. CREDITORS MUST MAKE ADDITIONAL DISCLOSURES. If a person uses a consumer report in connection with an application for, or a grant, extension, or provision of, credit to a consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through the person, based in whole or in part on a consumer report, the person must provide a risk-based pricing notice to the consumer in accordance with regulations to be jointly prescribed by the Federal Trade Commission and the Federal Reserve Board.

Section 609(g) requires a disclosure by all persons that make or arrange loans secured by residential real property (one to four units) and that use credit scores. These persons must provide credit scores to applicants including the disclosure set forth in Section 609(g)(1)(D) ("Notice to the Home Loan Applicant")

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

Employment Other Than in the Trucking Industry

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. Authorization to access reports during the term of employment may be obtained at the time of employment.
- 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 an adverse action, the user must provide a copy of the report to the consumer as well as the summary of the consumer's rights. (The user should receive this summary from the CRA. A Section 615(a) adverse action notice should be sent after the adverse action is taken.

An adverse action notice also is required in employment situation if credit information (other than transactions and experience data) obtained from an affiliate is used to deny employment. Section 615(b)(2)

The procedures for investigative consumer reports and employee misconduct investigations are set forth below.

B. Employment in the Trucking Industry

Special rules apply for truck drivers where the only interaction between the consumer and the potential employer is by mail, telephone, or computer. In this case, the consumer may provide consent orally or electronically, and an adverse action may be made orally, in writing, or electronically. The consumer may obtain a copy of any report relied upon by the trucking company by contacting the company.

IV. OBLIGATIONS WHEN INVESTIGATIVE CONSUMER REPORTS ARE USED.

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 by an entity of person that is a consumer reporting agency. 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 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 at some time before or 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 summary of consumer rights will be provided by the CRA that conducts the investigation.)
- 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 disclosures required above, the user must make a complete disclosure of the nature and scope of the investigation. 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.

V. SPECIAL PROCEDURES FOR EMPLOYEE INVESTIGATIONS. Section 603(x) provides special procedures for investigations of suspected misconduct by an employee or for compliance with Federal, State or local laws and regulations or the rules of a self-regulatory organization, and compliance with written policies of the employer. These investigations are not treated as consumer reports so long as the employer or its agent complies with the procedures set forth in Section 603(x), and a summary describing the nature and scope of the inquiry is made to the employee if an adverse action is taken based on the investigation.

VI. OBLIGATIONS OF USERS OF MEDICAL INFORMATION. Section 604(g) limits the use of medical information obtained from consumer reporting agencies (other than payment information that appears in a coded form that does not identify the medical provider). If the information is to be used for an insurance transaction, the consumer must give consent to the user of the report of the information must be coded. If the report is to be used for employment purposes-or in connection with a credit transaction (except as provided in regulations issued by the banking and credit union regulators) – the consumer must provide specific written consent and the medical information must be relevant. Any user who receives medical information shall not disclose the information to any person (except where necessary to carry out the purpose for which the information was disclosed, or as permitted by statute, regulation, or order).

VII. 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(l), 604(c), 604(e), and 615(d) This practice is known as "prescreening" and typically involves obtaining from a CRA a list of consumers 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 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.

In addition, once the Federal Trade Commission by rule has established the format, type size and manner of the disclosure required by Section 615(d), users must be in compliance with the rule. The FTC's regulations will be at www.ftc.gov/credit.

VIII. OBLIGATIONS OF RESELLERS.

A. Disclosure and Certification Requirements

Section 607(e) 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) certifications that reports will not be used for any purpose other than the purpose(s) specified to the reseller. Resellers must make reasonable efforts to verify this information before selling the report.

B. Reinvestigations by Resellers

Under Section 611(f), if a consumer disputes the accuracy or completeness of information in a report prepared by a reseller, the reseller must determine whether this is a result of an action or omission on its part and, if so, correct or delete the information. If not, the reseller must send the dispute to the source CRA for reinvestigation. When any CRA notifies the reseller of the results of an investigation, the reseller must immediately convey the information to the consumer.

C. Fraud Alerts and Resellers

Section 605A(f) requires resellers who receive fraud alerts or active duty alerts from another consumer reporting agency to include these in their reports.

IX. 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.

The FTC’s Website, www.ftc.gov/credit, has more information about the FCRA including publications for businesses and full text of the FCRA.

Citations for FCRA sections in the U.S. Code, 15 U.S.C. 1681 et seq.:

Section 602	15 U.S.C. 1681	Section 615	15 U.S.C. 1681m
Section 603	15 U.S.C. 1681a	Section 616	15 U.S.C. 1681n
Section 604	15 U.S.C. 1681b	Section 617	15 U.S.C. 1681o
Section 605	15 U.S.C. 1681c	Section 618	15 U.S.C. 1681p
Section 605A	15 U.S.C. 1681cA	Section 619	15 U.S.C. 1681q
Section 605B	15 U.S.C. 1681cB	Section 620	15 U.S.C. 1681r
Section 606	15 U.S.C. 1681d	Section 621	15 U.S.C. 1681s
Section 607	15 U.S.C. 1681e	Section 622	15 U.S.C. 1681s-1
Section 608	15 U.S.C. 1681f	Section 623	15 U.S.C. 1681s-2
Section 609	15 U.S.C. 1681g	Section 624	15 U.S.C. 1681t
Section 610	15 U.S.C. 1681h	Section 625	15 U.S.C. 1681u
Section 611	15 U.S.C. 1681i	Section 626	15 U.S.C. 1681v
Section 612	15 U.S.C. 1681j	Section 627	15 U.S.C. 1681w
Section 613	15 U.S.C. 1681k	Section 628	15 U.S.C. 1681x
Section 614	15 U.S.C. 1681l	Section 629	15 U.S.C. 1681y

Appendix 2: Remediating the Effects of Identify Theft

(As provided by the Federal Trade Commission – 11/19/04)

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Para informacion en espanol, visite www.consumer.gov/idtheft o escribe a la FTC, Consumer Response Center, Room 130-B, 600 Pennsylvania Avenue, N.W. Washington, D.C., 20580.

Remediating the Effects of Identity Theft

You are receiving this information because you have notified a consumer reporting agency that you believe that you are a victim of identity theft. Identity theft occurs when someone uses your name, Social Security number, date of birth, or other identifying information, without authority, to commit fraud. For example, someone may have committed identity theft by using your personal information to open a credit card account or get a loan in your name. For more information, visit www.consumer.gov/idtheft or write to: FTC, Consumer Response Center, Room 130-B, 600 Pennsylvania Avenue, N.W. Washington, D.C., 20580.

The Fair Credit Reporting Act (FCRA) gives you specific rights when you are, or believe that you are, the victim of identity theft. Here is a brief summary of the rights designed to help you recover from identity theft.

1. You have the right to ask that nationwide consumer reporting agencies place “fraud alerts” in your file to let potential creditors and others know that you may be a victim of identity theft. A fraud alert can make it more difficult for someone to get credit in your name because it tells creditors to follow certain procedures to protect you. It also may delay your ability to obtain credit. You may place a fraud alert in your file by calling just one of the three nationwide consumer reporting agencies. As soon as that agency processes your fraud alert, it will notify the other two, which then also must place fraud alerts in your file.

- Equifax: 1-800-525-6285; www.equifax.com
- Experian: 1-888-EXPERIAN (397-3742); www.experian.com
- TransUnion: 1-800-680-7289; www.transunion.com

An initial fraud alert stays in your file for at least 90 days. An extended alert stays in your file for seven years. To place either of these alerts, a consumer reporting agency will require you to provide appropriate proof of your identity, which may include your Social Security number. If you ask for an extended alert, you will have to provide an *identity theft report*. An *identity theft report* includes a copy of a report you have filed with a federal, state, or local law enforcement agency, and additional information a consumer reporting agency may require you to submit. For more detailed information about the *identity theft report*, visit www.consumer.gov/idtheft.

2. You have the right to free copies of the information in your file (your “file disclosure”). An initial fraud alert entitles you to a copy of all the information in your file at each of the three nationwide agencies, and an extended alert entitles you to two free file disclosures in a 12-month period following the placing of the alert. These additional disclosures may help you detect signs of fraud, for example, whether fraudulent accounts have been opened in your name or whether someone has reported a change in your

address. Once a year, you also have the right to a free copy of the information in your file at any consumer reporting agency, if you believe it has inaccurate information due to fraud, such as identity theft. You also have the ability to obtain additional free file disclosures under other provisions of the FCRA. See www.ftc.gov/credit.

- 3. You have the right to obtain documents relating to fraudulent transactions made or accounts opened using your personal information.** A creditor or other business must give you copies of applications and other business records relating to transactions and accounts that resulted from the theft of your identity, if you ask for them in writing. A business may ask you for proof of your identity, a police report, and an affidavit before giving you the documents. It also may specify an address for you to send your request. Under certain circumstances, a business can refuse to provide you with these documents. See www.consumer.gov/idtheft.
- 4. You have the right to obtain information from a debt collector.** If you ask, a debt collector must provide you with certain information about the debt you believe was incurred in your name by an identity thief – like the name of the creditor and the amount of the debt.
- 5. If you believe information in your file results from identity theft, you have the right to ask that a consumer reporting agency block that information from your file.** An identity thief may run up bills in your name and not pay them. Information about the unpaid bills may appear on your consumer report. Should you decide to ask a consumer reporting agency to block the reporting of this information, you must identify the information to block, and provide the consumer reporting agency with proof of your identity and a copy of your *identity theft report*. The consumer reporting agency can refuse or cancel your request for a block if, for example, you don't provide the necessary documentation, or where the block results from an error or a material misrepresentation of fact made by you. If the agency declines or rescinds the block, it must notify you. Once a debt resulting from identity theft has been blocked, a person or business with notice of the block may not sell, transfer, or place the debt for collection.
- 6. You also may prevent businesses from reporting information about you to consumer reporting agencies if you believe the information is a result of identity theft.** To do so, you must send your request to the address specified by the business that reports the information to the consumer reporting agency. The business will expect you to identify what information you do not want reported and to provide an *identity theft report*.

To learn more about identity theft and how to deal with its consequences, visit www.consumer.gov/idtheft, or write to the FTC. You may have additional rights under state law. For more information, contact your local consumer protection agency or your state attorney general.

In addition to the new rights and procedures to help consumers deal with the effects of identity theft, the FCRA has many other important consumer protections. They are described in more detail at www.ftc.gov/credit.

Appendix 3: A Summary of Your Rights under the Fair Credit Reporting Act

(As provided by the Federal Trade Commission – 11/19/04)

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Para informacion en espanol, visite www.ftc.gov/credit o escribe a la FTC Consumer Response Center, Room 130-A 600 Pennsylvania Ave. N.W., Washington, D.C. 20580

A Summary of Your Rights under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, go to www.ftc.gov/credit or write to: Consumer Response Center, Room 130-A, Federal Trade Commission, 600 Pennsylvania Ave. N.W., Washington, D.C. 20580**

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.
- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your “file disclosure”). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
 - A person has taken adverse action against you because of information in your credit report;
 - You are the victim of identify theft and place a fraud alert in your file;
 - Your file contains inaccurate information as a result of fraud;
 - You are on public assistance;
 - You are unemployed but expect to apply for employment within 60 days.

In addition, by September 2005 all consumers will be entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.ftc.gov/credit for additional information.

- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.
- **You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.ftc.gov/credit for an explanation of dispute procedures.
- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.
- **Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.

- **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need -- usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.
- **You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.ftc.gov/credit.
- **You may limit “prescreened” offers of credit and insurance you get based on information in your credit report.** Unsolicited “prescreened” offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt-out with the nationwide credit bureaus at 1-888-5-OPTOUT (1-888-567-8688).
- **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.
- **Identity theft victims and active duty military personnel have additional rights.** For more information, visit www.ftc.gov/credit.

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. Federal enforcers are:

TYPE OF BUSINESS:	CONTACT:
Consumer reporting agencies, creditors and others not listed below	Federal Trade Commission: Consumer Response Center - FCRA Washington, DC 20580 1-877-382-4357
National banks, federal branches/agencies of foreign banks (word "National" or initials "N.A." appear in or after bank's name)	Office of the Comptroller 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 Complaints 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 703-519-4600
State-chartered banks that are not members of the Federal Reserve System	Federal Deposit Insurance Corporation Consumer Response Center, 2345 Grand Avenue, Suite 100 Kansas City, Missouri 64108-2638 1-877-275-3342
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 Washington, DC 20250 202-720-7051