

FAIR CREDIT REPORTING ACT

The Fair Credit Reporting Act, ("FCRA") (15 U.S.C. §1681, et. seq.) (16 C.F.R. § 600.1, et seq.) is a consumer protection statute designed to regulate the use of credit reports in the United States.

I. INTRODUCTION AND DEFINITIONS

The FCRA regulates the use of "consumer reports" and "investigative consumer reports." A **consumer report** is any written, oral or other communication of information by a credit reporting agency bearing on an individual's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. An **investigative consumer report**, on the other hand, means a consumer report in which information on an individual's character, general reputation, personal characteristics or mode of living is obtained through personal interviews with neighbors, friends or associates of the individual reported on and which does not include specific factual information on an individual's credit record.

II. REQUIREMENTS FOR USE OF A REPORT

A. Obtaining a Consumer Report - Under the FCRA, it is permissible for an employer to order and use a consumer report or an investigative consumer report in order to evaluate an individual for employment, promotion, reassignment or retention as an employee. In order to obtain a consumer report, the employer must:

1. Make a clear and conspicuous disclosure in writing to the employee or applicant, in a document that consists solely of the disclosure that a consumer report may be obtained for employment purposes; and
2. Obtain a written authorization from the employee authorizing the procurement of a consumer report; and
3. The employer must certify to the consumer reporting agency that it has complied with the notice and authorization requirements set forth immediately above;

B. Obtaining an Investigative Consumer Report - The obligations of an employer who wants to use an

investigative consumer report are slightly different. Within 3 days of ordering an investigative consumer report, the employer must disclose to the subject individual that it is ordering a report that will include information as to the individual's character and general reputation. In addition, the employer must:

1. Inform the individual that he or she has a right to request disclosure from the employer of the nature and scope of the investigation requested, and
2. Provide a copy of the "Summary of Rights." If the individual being investigated asks for disclosure, the employer must disclose the nature and scope of the investigation requested, in writing, within 5 days. In addition, the employer must provide the consumer-reporting agency with a certification that it has made the above-mentioned disclosures and that it will comply with the requirement of providing information regarding the nature and scope of its investigation requested.

III. ADVERSE EMPLOYMENT ACTIONS

A. Prior to Action - If an employer is going to take an adverse employment action against an individual because of information in a consumer report or an investigative consumer report, the employer must, prior to taking such adverse action:

1. Advise the individual that the adverse employment action was taken because of information in the report; and
2. Supply the individual with a copy of the report.
3. Provide a copy of the Summary of Rights Document (attached).
4. Provide a certification to the employee that the information in the consumer report will not be used in violation of federal or state employment laws.

B. Subsequent to Action - After taking an adverse action, the employer must, additionally:

1. Provide the name, address and telephone number of the consumer reporting agency (including a toll free number, if applicable); and

2. Furnish the applicant or employee with a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the employee or applicant the specific reasons why the action was taken; and
 3. Give notice of the employee or applicant's right to obtain a free copy of the report from the consumer reporting agency within 60 days, as well as his or her right to dispute the accuracy or completeness of the information in the report with the consumer reporting agency.
- C. Establish Procedural Safeguards - As a practical matter, employers who use either consumer reports or investigative consumer reports in making employment decisions should establish reasonable procedures designed to assure compliance with the various notice and information provisions of the FCRA. By establishing such procedures, employers may protect themselves from liability for an inadvertent or negligent failure to comply with the FCRA.**

IV. PENALTIES FOR VIOLATION

- A. Negligent Violation - An employer who negligently violates the FCRA and who does **not** have appropriate procedures in place to assure compliance may be liable to the affected individual for:
1. Actual damages resulting from the employer's failure to comply; and
 2. Attorney's fees and costs.
- B. Willful Violation - An employer who willfully violates the FCRA, whether it has appropriate procedures to assure compliance in place or not, may be liable to the affected individual for:
1. Actual damages resulting from the employer's failure to comply; and
 2. Punitive damages to punish the employer and prevent the reoccurrence of violations, in an amount determined by the court; and
 3. Attorney's fees and costs.

A violation of the FCRA is "willful" where the employer knowingly and intentionally committed an act in conscious disregard of the rights of the affected individual.

A Summary of Your Rights Under the 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 general 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 also are 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

receive your report be notified of the change.

- **Inaccurate information must 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 your 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 of (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 * 1-877-FTC-HELP
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 Programs Washington, DC 20552 *800-842-6929
Federal credit unions (word "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 Washington, DC 20250 *202-720-7051