

FCRA Compliance for Employers

What is the Fair Credit Reporting Act (FCRA)?

The Fair Credit Reporting Act (FCRA) is a federal law (15 U.S.C. § 1681 *et seq.*) that regulates the collection, dissemination, and use of consumer information, including consumer credit information. Almost any type of background check that an employer requests from Key Background Screening to be used in the hiring process is considered a consumer report. In addition, Key Background Screening is considered a Consumer Reporting Agency. Employers must follow all FCRA requirements in order to remain in compliance. This page will provide a summary of information that is helpful to employers when using consumer reports for employment purposes.

What is a "Consumer Report"?

According to the FCRA, a *consumer report* is "any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for...employment purposes."

Employment purposes may include hiring, promotion, reassignment or retention.

In addition to consumer reports, there is another type of report called an investigative consumer report. An *investigative consumer report* "means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living 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." Examples of this type of consumer report are personal references or employment verifications that include information related to the employee's performance, attitude, character, etc.

As you can see, the FCRA not only governs credit information, but also other consumer reports such as criminal court records, driving records, and employment verification. Adherence to these federal rules, as well as any state variations, is not optional.

Requesting Consumer Reports

Before a consumer reporting agency such as Key Background Screening may provide or prepare a consumer report for an employer, it must obtain certification from the employer that the employer (1) provided the required disclosure to the applicant/employee, (2) received written permission to obtain the report, (3) will not use the information in violation of any applicable equal employment opportunity law or regulation, and (4) will abide by the requirements stated before taking any adverse employment action.

Key Background Screening will obtain certification from each end-user/client during the account setup process, and as each new order is placed that all of the requirements will be adhered to. We will also determine what the end-user's permissible purpose is for requesting consumer report, which, in this case, is employment purposes. Reports may be acquired and used for no other reason than the stated permissible purpose.

In addition, we must provide each end-user/client with a copy of the "Notice to Users of Consumer Reports." Each client should read and be familiar with the contents of this document.

Before an employer may obtain a consumer report or cause one to be prepared, it must **disclose** to that person in writing that such a report may be obtained and secure the person's **written authorization**. This written disclosure must be contained in a separate document

used solely for that purpose, and **it may not simply be included on an employment application or in an employee handbook**. Per the FTC, the disclosure and written authorization may be included in the same document.

If an employer wishes to obtain an investigative consumer report, it must follow the requirements discussed above with respect to consumer reports and meet the following additional requirements:

- An employer must advise the employee or applicant in writing that an investigative consumer report may be requested no later than three days after the report is requested.
- It must advise the employee or applicant that the report may include information as to his/her character, general reputation, personal characteristics and mode of living.
- It must advise the employee or applicant that, on written request, it will provide additional information, including a "complete and accurate disclosure of the nature and scope of the investigation requested" and a copy of the employee or applicant's summary of rights under the law. If the additional disclosure is requested by the employee within a "reasonable period of time," this information must be provided by the employer in writing and delivered (personally or by mail) no later than five days after receipt of the request or five days after the report is ordered, whichever is later.

Key Background Screening will provide each end-user with FCRA-compliant forms that may be used to procure consumer and/or investigative consumer reports on applicants/employees. When utilizing our electronic QuickApp report ordering process, all of the required forms and disclosures will be sent directly to the applicant without the need to distribute any paper forms.

Using Consumer Reports

Before taking any "adverse action" (which includes "a denial of employment or any other decision for employment purposes that adversely affects and current or prospective employee") based in whole or in part on a consumer report, an employer must provide the affected person with a copy of the report and a written description of that person's rights under the FCRA. This allows the consumer to review the information and, if they feel the information is inaccurate or incomplete, dispute the information in the consumer report.

The FTC has taken the position that the legislative history of the FCRA clearly anticipates that this notice will be accompanied by an opportunity to clear up any errors in the report. The FCRA, however, does not require employers to refrain from taking any action based on a negative report once the notice has been given.

After taking any adverse action, the employer again must notify the consumer that adverse action has been taken based in whole or in part on a consumer report. Further, the employer must provide the individual with:

- The name, address and telephone number of the reporting agency (including the toll-free number of a national agency);
- Notice of the person's right to obtain an additional free copy of the report by making the request within 60 days;
- Notice of the person's right to dispute the accuracy or completeness of the report with the consumer reporting agency; and
- A notice that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the person the specific reasons why the action was taken.

Adverse Action Assistance

To help employers maintain compliance with the requirements of the FCRA, we offer Adverse Action Assistance at no additional charge. While processing the reports if any negative information is found, we will dispatch directly to the applicant the required Pre-Adverse Action letter electronically. Step One of this critical two-step process is automatically completed for you.

What do we send?

First Communication:

- Notification that you may not be offering employment due to information contained in the report
- A complete copy of all consumer reports pertaining to the individual
- A copy of A Summary of Your Rights Under the Fair Credit Reporting Act
- Request for Disclosure form that the applicant may use to dispute the information contained in the report or to request another copy of their report

What do you send?

Second Communication:

- Notice of the adverse action
- Name, address, and telephone number of the consumer reporting agency that provided the report
- A statement informing the consumer of their right to obtain another free copy of the report within 60 days
- A statement that the CRA did not make the decision and is unable to provide specific reasons why adverse action was taken
- A statement informing the consumer of their right to dispute the accuracy or completeness of any information in the report directly with the CRA
- Another Request for Disclosure form that the applicant may use to dispute the information contained in the report or to request another copy of their report

All of these steps must be completed to be in compliance with the FCRA. At a nominal fee, we can assure you that every step in the compliance procedure will be carried out.

FCRA Links

[Fair Credit Reporting Act \(FCRA\)](#) - full text

[Fair and Accurate Credit Transactions Act \(FACT Act\)](#) - full text. The FACT Act is a 2003 amendment to the FCRA.

State Consumer Reporting Laws

In addition to the federal FCRA, employers must also be aware of state consumer reporting laws that govern the use of consumer reports. Many states have enacted legislation regarding consumer reports that may be more restrictive than federal law. We suggest you consult your legal counsel to determine if your policies and procedures are compliant.