

RHR Information Services, Inc

# SelectSmart News

## Editor's Note

As an employer, you may use consumer reports when you hire new employees and when you evaluate employees for promotion, reassignment and retention. Under the FCRA there are many specific requirements of an employer utilizing a consumer report.

The FCRA is designed primarily to protect the privacy of consumer report information and to guarantee that the information supplied by the CRAs is as accurate as possible. Congress expanded employer responsibilities because of a concern that inaccurate or incomplete consumer reports could cause applicants to be denied jobs or cause employees to be denied pro-

motions unjustly.

This issue is dedicated solely to informing you about the FCRA and its guidelines and what that means to you, the employer. You will find an important article on the key provisions of the FCRA, as well as an article on what can happen if you don't comply with those provisions. Also take a look at our new feature article that talks about how we've made it easier for you to comply. Not sure if your background checks are covered under the FCRA? Read our article describing what a consumer report is.

As always, if you have any questions regarding any of the material you read here, please don't hesitate to call us.

Elizabeth Army

Client Relations Coordinator



## New Feature: Applicant Copy Retrieval for Employers

Employers are required to take certain steps before they take any adverse action regarding a possible employee. To assist in those responsibilities we have added a new feature. When viewing a report employers will now see a button titled "Print Applicant Copy."

An employer may need to provide an applicant with a copy of their report before taking adverse action. By using this feature the employer will print not only a stamped copy of the applicant's report, but it will also come with an FCRA compliant cover page

and a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act." Providing these things as part of a smart hiring program in conjunction with adverse action requirements can show compliance and due diligence by the employer.

## Key Provisions of FCRA

There are 3 key provisions of the FCRA amendments that employers should know about.

1. Certification to CRAs
2. Written Notice and Authorization
3. Adverse Action Procedures

Before an employer starts a relationship with a CRA (Consumer Reporting Agency) or the CRA provides the employer with an individual's consumer report, the

agency will require the employer to certify that they are in compliance with the FCRA and that they will not misuse any information in the report or violate any federal or state laws or regulations.

Before an employer receives a consumer report for employment purposes, they must notify the individual in writing, in a document consisting solely of the notice, that a report may be ob-

tained and used in the employment process. An employer must also get the person's written authorization (usually at the bottom of the aforementioned notice) before they order a consumer report.

Before an employer takes adverse action they must determine if the decision was made wholly or in part based on information

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## Non-Compliance Violations

There are legal consequences for businesses and employers that fail to get an applicant's permission before requesting a consumer report, or who fail to provide pre-adverse action disclosures and adverse action notices to unsuccessful job applicants.

The FCRA allows individuals to sue employers for damages in federal court. A person who

successfully sues is entitled to recover court costs and reasonable legal fees. The law also allows individuals to seek punitive damages for deliberate violations. In addition, the Federal Trade Commission, other federal agencies and the states may sue employers for non-compliance and obtain civil penalties.

The FCRA places plenty of the

responsibility for the consumer report on the employer. To be compliant, an employer must be aware of, and understand, the requirements the FCRA has put forth. If an employer chooses not to, the consequences could be costly.

If you have any questions or concerns regarding compliance, please contact your RHR Rep.

## A Consumer Report, what is it?

A consumer report can contain information about a person's personal and credit characteristics, character, general reputations and lifestyle. To be covered by the FCRA, a report must be prepared by a consumer reporting agency (CRA) - a busi-

ness that assembles such reports for other businesses.

Employers often do a background check on applicants and get a consumer report during their employment. Some employers only want an applicant's or employee's credit history;

others want driving records and criminal information.

All of these types of reports and more are consumer reports (and subject to the FCRA) if they are obtained from a CRA.

## Consumer Information Disposal

A new federal rule enacted to protect the privacy of consumers and to help reduce the risk of fraud and identity theft, is requiring businesses to take appropriate measures to dispose of sensitive information derived from consumer reports.

Any business or individual who uses a consumer report for a business purpose is subject to the requirements of the Disposal Rule. The Rule requires the

proper disposal of information in consumer reports and records to protect against “unauthorized access to or use of the information.”

According to the FTC, the standard for the proper disposal of information derived from a report is flexible, and allows the organizations to determine what measures are reasonable based on the sensitivity of the information, the cost and benefits of

different disposal methods and changes in technology.

Although the Disposal Rule applies to consumer reports and the information derived from the reports, the FTC encourages those who dispose of any records containing a consumer’s personal or financial information to take similar protective measures.

## What If...?

What if you need to hire a cashier and receive 100 applications? You want to look at the credit reports of each applicant and eliminate those candidates with poor credit histories. What are your obligations?

You can get credit reports, as long as the applicants have signed a release. Before you reject an applicant based on their

credit report, you must begin the adverse action process by notifying the applicant with a pre-adverse action notice, then follow up with the adverse action notice.

What if you are considering some long-term employees for major promotions? Can you check their credit reports to ensure that only financially respon-

sible individuals are considered?

You can only get the reports if the employees have been notified that reports may be obtained and those employees have given written authorization.

What if a job applicant has authorized you to obtain a credit report and you find that the applicant has poor credit history.

## What If...continued.

Although the credit history is a negative factor, it is the applicants lack of experience that’s driving you to offer the position to someone else. What procedure must you follow?

In any case where information in a consumer report is a factor in

your decision for employment you must follow the procedures mandated by the FCRA. In this case you would be required to provide the applicant with a pre-adverse action disclosure and an adverse action notice.

Procedures mandated by FCRA

are outlined in other stories in this issue. If you have other questions, please contact your RHR Information Services / SelectSmart Representative.

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## SelectSmart The Right Path to the Right People

Disclaimer: This newsletter has been developed for informational purposes only for use by the customers of RHR Information Services, Inc., and should not be relied upon as definitively accurate. Due to the complex nature of employment law, we strongly suggest that you work closely with legal council when making employment related decisions.

## Provisions, continued

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contained in the consumer report. If this is the case then the employer must take certain steps mandated by the FCRA.

Step 1: An employer must give the individual a pre-adverse action disclosure that includes a copy of the individual's report and a copy of "A Summary of Your Rights Under FCRA"

Step 2: An employer must give the individual notice—orally, in writing or electronically—that the action described in the pre-adverse action notice has been taken. This notice must include the following:

-the name, address and phone number of the CRA that supplied the report

-a statement that the CRA that supplied the report did not make the decision to take the adverse action and cannot give specific reasons for it

-a notice of the individual's right to dispute the accuracy or completeness of any information the agency furnished, and his or her right to an additional free consumer report from the agency upon request within 60 days.

Should you need any information on employ-

ers' responsibilities under the FCRA please feel free to contact your SelectSmart Representative.