

FISHER PHILLIPS LLP
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EMPLOYER'S COMPLIANCE GUIDE

TO THE

FAIR CREDIT REPORTING ACT

(EMPLOYMENT ASPECTS)

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FAIR CREDIT REPORTING ACT

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FAIR CREDIT REPORTING ACT

I. INTRODUCTION

Applicant/employee background reports can be vital tools for employers, especially in the hiring process and sometimes during employment. The following pages contain guidelines and sample documents for obtaining and using certain background reports, known as “consumer reports,” in accordance with the Fair Credit Reporting Act (“FCRA”).

A. Increased Applicant and Employee Rights

Amendments to the FCRA significantly increased the rights of applicants and employees to receive certain disclosures and to choose whether to authorize certain background reports. Given the increase in litigation over privacy interests, employers (as well as their attorneys and investigators) are well-advised to pay close attention to the detailed requirements of the FCRA.

B. What is a “Consumer Report?”

An employer triggers FCRA obligations when it requests a “consumer report,” a term which includes a broad category of reports from a “consumer reporting agency” containing any information “bearing on a consumer’s credit worthiness, credit rating, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.” Reports such as driving records, criminal records, credit reports, and many other reports normally constitute “consumer reports” when an employer obtains them for employment purposes from a third-party, consumer reporting agency such as a credit-reporting company, a record-checking company, or an investigative firm.

C. What is an “Investigative Consumer Report?”

A special subset of consumer reports, called “investigative consumer reports,” contain information obtained by a consumer reporting agency through personal interviews with neighbors, friends, associates, acquaintances, or others with knowledge of the consumer. For example, an investigative consumer report could include a report prepared by an investigator who interviews an applicant’s former employers on behalf of the prospective employer. If an employer intends to obtain an investigative consumer report, the FCRA imposes additional disclosure requirements in addition to all of the requirements that apply to ordinary consumer reports.

D. What if an Employer Obtains Information Directly from Public Records?

Sometimes employers themselves go directly to original governmental sources to obtain records (such as department-of-motor-vehicles records, local or state criminal records, courthouse records, etc.). Based upon informal opinions of staff attorneys at the Federal Trade Commission (“FTC”), as well as older court decisions, reports obtained in this manner are generally not considered to be FCRA-covered consumer reports. On the other hand, if an employer retains a third party to obtain and evaluate reports for employment purposes, the third party who goes to governmental sources for such reports will normally be considered a consumer reporting agency providing consumer reports.

II. IMPORTANT DEFINITIONS

The Fair Credit Reporting Act defines many key terms in the text of the statute itself.

A. “Consumer Report”

The term **“consumer report”** means 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 (A) credit or insurance to be used primarily for personal, family, or household purposes; (B) employment purposes; or (C) any other purpose authorized in the FCRA.

B. “Investigative Consumer Report”

The term **“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.

C. “Consumer Reporting Agency”

The term **“consumer reporting agency”** means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

D. “Adverse Action”

For employment purposes, the term “adverse action” means a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.

III. USING CONSUMER REPORTS

For employers using consumer reports, the FCRA requires the following steps:

A. Provide Prior Written Disclosure to the Applicant and/or Employee.

The disclosure of intent to obtain reports must be a “stand-alone” document containing only this disclosure, but it may also include a section for the applicant’s or employee’s authorization. (See attached sample “*Disclosure of Intent to Obtain Consumer Reports or Investigative Consumer Reports and Authorization*” at Appendix 1). The disclosure must tell the applicant/employee that a consumer report or an investigative consumer report may be obtained for employment purposes.

The attached disclosure document covers both consumer reports and investigative consumer reports, and it offers the applicant/employee the opportunity to request additional information regarding the nature and scope of an investigation. Appendix 2 contains a sample of such a nature-and-scope disclosure.

For hiring purposes, employers should give these two separate documents to the applicant (NOT attached to the employment application). These two documents may also be given to current employees and are designed to be usable for obtaining multiple reports over time.

B. Obtain Signed Authorization from the Applicant and/or Employee.

The employer must obtain the applicant’s or employee’s signed authorization before requesting either a consumer report or an investigative consumer report. For convenience, we combined this authorization with the disclosure described in Step A, above. See, “*Disclosure of Intent to Obtain Consumer Reports or Investigative Consumer Reports and Authorization*” (Appendix 1).

C. Make the Certification to the Consumer Reporting Agency.

An employer must certify to the consumer reporting agency that the employer follows proper procedures and uses the reports only for employment purposes. An employer may send a consumer reporting agency a single certification to cover all future reports requested for employment purposes. Most consumer reporting

agencies will provide employers with a certification form, however, we attach a recommended certification at Appendix 3.

D. Give Written Notice Before Taking “Adverse Action.”

Before taking an adverse action (such as not hiring the applicant) based in whole or in part on information contained in a consumer report, an employer must give the applicant or employee the following documents:

- A copy of the consumer report or investigative consumer report
- A copy of the “*Summary of Your Rights Under The Fair Credit Reporting Act*” (copy included in Appendix 4).

The FCRA does not require a cover letter for this step, but we recommend that you use a cover letter to provide some explanation and a written record. Appendix 5 contains a suggested “*Pre-Adverse Action Notice*” for this purpose.

An employer must provide the report and the *Summary of Rights* to the applicant or employee a reasonable period of time before actually taking adverse action. A “reasonable period of time” (typically at least 5 business days) depends on the circumstances including such factors as the industry, the employer’s business needs and past practice, and the information in the report.

E. Give Written Notice After Taking “Adverse Action.”

When an employer actually takes adverse action based in whole or in part on a consumer report or investigative consumer report, the employer must give the applicant or employee a written notice of the adverse action along with specific information about the consumer reporting agency which provided the consumer report. Appendix 6 contains a sample “*Adverse Action Notice*.”

If the employer uses a “credit score” in taking adverse action, the adverse action notice shall also disclose: (1) the numerical credit score which was used by the employer; (2) the range of possible credit scores under the credit scoring model; (3) all of the key factors, which shall not exceed four, that adversely affected the credit score of the consumer in the scoring model used; [Note: if a factor is the number of credit inquiries made, that factor shall also be included in the disclosure along with up to four other key factors.] (4) the date on which the credit score was created; and (5) the name of the person or entity that provided the credit score or credit file upon which the credit score was created.

F. Special Rule for Certain Employee Investigations

Employers have always been free to conduct internal investigations using their own employees without risk of triggering the FCRA. Effective March 31, 2004, Congress stepped in to ensure that employers who want to hire an outside expert to investigate certain types of misconduct should not be bound by all of the FCRA's notice, authorization, and disclosure requirements. The amendment to the FCRA provides a simpler procedure for handling certain types of reports to employers. Specifically, the amendment applies to a report from an outside investigator hired by an employer where:

- (1) the oral or written report is made to an employer in connection with an investigation of (A) suspected misconduct relating to employment or (B) compliance with federal, state, or local laws and regulations, the rules of a self-regulatory organization, or any preexisting written policies of the employer;
- (2) the report is not made for the purpose of investigating a consumer's credit worthiness, credit standing, or credit capacity; and
- (3) the report is not provided to any person except (A) the employer or an agent of the employer, (B) a government officer, agency, or department, (C) any self-regulatory organization with regulatory authority over the employer or employee, or (D) as otherwise provided by law.

For reports such as those described above, there is no advance-notice or authorization requirement, and the only disclosure obligation on the employer will be this: After taking any adverse action based in whole or in part on such a report, the employer must disclose to the employee a summary containing the nature and substance of the report. In that summary, the sources of interview information acquired solely for use in preparing the report do not need to be disclosed.

G. Identity Theft Issues

One set of FTC rules (known as the "Red Flags Rule") applies only to financial institutions and creditors and to their relationships with account holders and customers. Those rules are beyond the scope of this guide.

Another set of FTC rules (known as the "Address Discrepancy Rule") applies to all users of consumer reports obtained from the nationwide consumer reporting agencies (Experian, Equifax, and Trans Union).

In summary, the Address Discrepancy rules require the nationwide consumer reporting agencies (CRAs) -- Experian, Equifax and Trans Union -- to provide users of consumer reports (including employers) with a notice of address discrepancy

when there is a "substantial difference" between the address the agency has on file for a consumer and the address provided by the employer when requesting the report. The regulations also require users of such consumer reports (including employers obtaining background reports from those agencies) to establish reasonable policies and procedures designed to enable the employer to form a reasonable belief that the consumer report relates to the individual involved (for example, the applicant or employee) when the employer receives such a notice of address discrepancy. Under certain circumstances (i.e. if the employer is able to form a reasonable belief that such a consumer report relates to the consumer at issue and if the employer establishes a continuing relationship with the consumer), the employer must also provide to the CRA the address which the employer has reasonably confirmed is accurate. This notification to the CRA must take place in the ordinary course of business when the employer regularly furnishes information reports to the CRA.

The regulations also say that examples of such reasonable policies and procedures are: (1) comparing information in the consumer report with information that the user (employer) has in its own records (such as applications, change of address notifications, etc.); or (2) verifying with the consumer the information provided by the CRA.

IV. USING INVESTIGATIVE CONSUMER REPORTS

Using an investigative consumer report may require an additional step if the applicant or employee requests additional information. The applicant or employee may request (1) disclosure of the nature and scope of the investigation to be conducted and/or (2) a summary of consumer rights prepared by the Federal Trade Commission. If an applicant or employee requests this information, provide the attached "*Response to Request for Information Regarding Investigative Consumer Report*" (Appendix 7) with appropriate enclosures.

To satisfy a request for information regarding the "nature and scope" of the investigation, you may refer to the Disclosure Of Nature And Scope Of Investigation For Investigative Consumer Report (contained in the draft Disclosure in Appendix 2 of this Guide, if applicable) or you may attach a blank copy of the form that the consumer reporting agency will use in making its investigative consumer report. If the consumer reporting agency does not have an investigation form, you should contact your Fisher & Phillips LLP attorney for alternative "nature and scope" disclosure suggestions.

To satisfy disclosure number (2), you should provide a copy of "*A Summary of Your Rights Under the Fair Credit Reporting Act*" at Appendix 4.

When an applicant or employee makes a proper written request for information regarding an investigative consumer report, an employer must respond in writing within **five days** after one of the following:

- (a) receiving the applicant or employee's request for the information, **or**
- (b) the date on which the employer first requests the investigative consumer report, whichever date is later.

V. DOT-COVERED EMPLOYEES.

For employers considering applicants for driver positions subject to DOT regulation or state transportation or safety regulations, the FCRA allows for oral (instead of written) disclosures to applicants, and oral authorizations from applicants, regarding some consumer reports. Also, the written "pre-adverse action notice" may be replaced with an appropriate notification given to the applicant within three business days after the adverse decision.

These oral procedures may be used if, at the time of procuring the consumer report or causing the report to be procured, the only interaction between the driver applicant and the employer in connection with the employment application has been by mail, telephone, computer, or other similar means. The employer also must give this applicant the FTC summary of rights before obtaining the consumer report. In contrast, if the driver applies in person, these oral procedures may not be used, and the employer must use written FCRA disclosures, authorizations, and notices.

VI. EFFECT OF STATE LAWS

In addition to complying with the FCRA, employers using consumer reports and investigative consumer reports must comply with any applicable state laws providing additional protections to consumers.

Employers in several states must alter the sample documents in this Guide in order to comply with state law. See Appendix 9 for such state law requirements.

VII. THE COSTS AND PENALTIES OF NON-COMPLIANCE

The FCRA provides the following remedies and penalties:

A. Liability

For **negligent failure** to comply, the FCRA authorizes individual suits for actual damages, attorney's fees, and costs. Federal and state agencies are also authorized to sue for such relief, to seek injunctive relief, and to recover up to \$1,000 per violation in lieu of actual damages.

For a **willful failure** to comply, an individual may also recover punitive damages and may recover up to \$1,000 in lieu of proving actual damages. For a **knowing violation** involving a pattern or practice of noncompliance, the FTC may also bring an action seeking a civil penalty of up to \$2,500 per violation.

For obtaining information from a consumer reporting agency under **false pretenses**, the penalties include a fine and/or imprisonment for up to two years. For unauthorized disclosure of information by a consumer reporting agency, the penalty is also a fine and/or imprisonment for up to two years.

B. Limitation on Liability

The FCRA contains a limitation on liability for certain users of consumer reports who maintain reasonable procedures for compliance. The FCRA states that no person may be held liable for a violation of certain disclosure and certification requirements if the person shows by a preponderance of the evidence that the person maintained reasonable procedures to assure compliance with those subsections of the law.

C. Managing Potential Liability

Some employers maintain in-house access to consumer reporting databases. Because of the potential for abuse, employers should warn employees with such access about the potential liability and that they must not obtain information on an individual without the proper disclosure, authorization, and purpose. We suggest a memo as set out in Appendix 8.

APPENDIX 1

Attached: DISCLOSURE OF INTENT TO OBTAIN CONSUMER REPORTS OR
INVESTIGATIVE CONSUMER REPORTS (AND AUTHORIZATION)

Provide the following page to the applicant/employee
as a stand-alone document (not attached to any other
document).

STAND-ALONE DOCUMENT: DISCLOSURE AND AUTHORIZATION

**DISCLOSURE OF INTENT TO OBTAIN
CONSUMER REPORTS OR INVESTIGATIVE CONSUMER REPORTS**

For employment purposes, the Company may obtain consumer reports on you as an applicant or from time to time during employment. "Consumer reports" are reports from consumer reporting agencies and may include driving records, criminal records, etc.

For such employment purposes, the Company may also obtain investigative consumer reports. Some reference checks by a consumer reporting agency fall into this category. An "investigative consumer report" is a consumer report in which information as to character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, associates, acquaintances, or others. You have a right to request disclosure of the nature and scope of an investigation and to request a written summary of consumer rights.

AUTHORIZATION

I authorize the Company to obtain consumer reports and/or investigative consumer reports regarding me from time to time for employment purposes.

Signature: _____

Date: _____

Print Name: _____

APPENDIX 2

Attached: DISCLOSURE OF NATURE AND SCOPE OF INVESTIGATION FOR
INVESTIGATIVE CONSUMER REPORTS (AND DISCLOSURES
REGARDING CERTAIN STATE LAWS)

Provide the following page to the applicant/employee
as a stand-alone document (not attached to any other
document).

**DISCLOSURE OF NATURE AND SCOPE
OF INVESTIGATION FOR INVESTIGATIVE CONSUMER REPORT**

If we request an investigative consumer report in connection with your employment application or continued employment, a consumer reporting agency will prepare such a report based on the following investigation: The agency may interview former employers, business references, personal references, and/or others for information regarding prior employment, work experience and performance, reasons for employment termination, and information as to character, general reputation, personal characteristics, or mode of living. The agency may also conduct a records check of driving, criminal, credit, education, degrees, professional licenses, and/or certification records, depending on the job position and the state involved. Such a report will be obtained from the following consumer reporting agency:

(agency name, address, phone, website):

Disclosures Regarding Certain State Laws

California, Minnesota, and Oklahoma Applicants: If you wish to receive a free copy of any credit, consumer, or investigative consumer report obtained, please indicate by checking this box.

Massachusetts and New Jersey Applicants: You have the right to have a copy of the investigative consumer report upon request.

Minnesota Applicants: Minnesota applicants may make a written request to the consumer reporting agency for information on the nature and scope of a consumer report prepared.

New York Applicants: Upon your request, you will be informed whether or not a consumer report was requested, and if such a report was requested, the name and address of the consumer reporting agency furnishing the report. You may inspect and receive a copy of such report by contacting such agency.

Washington State Applicants: You have the right to request from the consumer reporting agency the written summary of rights of the consumer prepared under the Washington Fair Credit Reporting Act section RCW 19.182.080(7).

Depending on the job and state involved, the Company may obtain a credit report for the reason that the employment position involves access to certain sensitive financial information or other assets.

I HAVE REVIEWED THIS DOCUMENT:

Signature: _____

Date: _____

Print Name: _____

APPENDIX 3

[COMPANY LETTERHEAD]

[CONSUMER REPORTING AGENCY]
[STREET ADDRESS]
[CITY, STATE, ZIP]

Date

RE: CERTIFICATION TO CONSUMER REPORTING AGENCY

To Whom It May Concern:

For employment purposes, our Company seeks to obtain consumer reports and/or investigative consumer reports on applicants and/or employees. In accordance with the Fair Credit Reporting Act (FCRA), our Company certifies to you as follows regarding such reports we request:

1. Our Company has complied with FCRA Section 604(b)(2) by providing the consumer an appropriate disclosure of intent to obtain consumer reports. We have also complied with FCRA Section 606(a)(1) by disclosing the definition of investigative consumer reports and informing the consumer of the right to request additional disclosures regarding an investigation and to request a written summary of consumer rights. The Company will provide those additional disclosures as required.
2. The consumer has authorized us in writing to obtain consumer reports, including investigative consumer reports.
3. The Company will comply with FCRA Section 604(b)(3) by providing the consumer a copy of the consumer report and the CFPB's written description of consumer rights before taking any adverse action based in whole or in part on the report.
4. Information from the consumer report will not be used in violation of any applicable federal or state equal employment opportunity law or regulation.
5. Our Company will use the consumer report for employment-related purposes and for no other purpose.

Sincerely,

For the Company

APPENDIX 4

Attached: "A Summary of Your Rights Under the Fair Credit Reporting Act"

A copy of the following document, along with a copy of the individual's consumer report, must be provided to the individual before taking adverse action based in whole or in part on information contained in the individual's consumer report. (See Section III(D) of this Guide).

Para informacion en espanol, visite www.consumerfinance.gov/learnmore o escribe a la Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, D.C. 20552.

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.consumerfinance.gov/learnmore or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, D.C. 20552.**

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or other 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 identity 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, all consumers are entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.consumerfinance.gov/learnmore 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.consumerfinance.gov/learnmore 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.consumerfinance.gov/learnmore.
- **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 1-888-567-8688.
- **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.consumerfinance.gov/learnmore.

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. For information about your federal rights, contact:

	TYPE OF BUSINESS:	CONTACT:
1.	<p>a. Banks, savings associations, and credit unions with total assets of over \$10 billion and their affiliates</p> <p>b. Such affiliates that are not banks, savings associations, or credit unions also should list, in addition to the CFPB:</p>	<p>a. Consumer Financial Protection Bureau, 1700 G. Street N.W., Washington, DC 20552</p> <p>b. Federal Trade Commission: Consumer Response Center – FCRA, Washington, DC 20580 (877) 382-4357</p>

2.	<p>To the extent not included in item 1 above:</p> <p>a. National banks, federal savings associations, and federal branches and federal agencies of foreign banks.</p> <p>b. State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and Insured State Branches of Foreign Banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.</p> <p>c. Nonmember Insured Banks, Insured State Branches of Foreign Banks, and insured state savings associations.</p> <p>d. Federal Credit Unions</p>	<p>a. Office of the Comptroller of the Currency Customer Assistance Group 1301 McKinney Street, Suite 3450 Houston, TX 77010-9050</p> <p>b. Federal Reserve Consumer Help Center P.O. Box 1200 Minneapolis, MN 55480</p> <p>c. FDIC Consumer Response Center 1100 Walnut Street, Box #11 Kansas City, MO 64106</p> <p>d. National Credit Union Administration Office of Consumer Protection (OCP) Division of Consumer Compliance and Outreach (DCCO) 1775 Duke Street Alexandria, VA 22314</p>
3.	Air carriers	Asst. General Counsel for Aviation Enforcement & Proceedings Aviation Consumer Protection Division Department of Transportation 1200 New Jersey Avenue, S.E. Washington, DC 20590
4.	Creditors Subject to the Surface Transportation Board	Office of Proceedings, Surface Transportation Board Department of Transportation 395 E Street, S.W. Washington, DC 20423
5.	Creditors Subject to the Packers and Stockyards Act, 1921	Nearest Packers and Stockyards Administration area supervisor
6.	Small Business Investment Companies	Associate Deputy Administrator for Capital Access United States Small Business Administration 409 Third Street, S.W., 8 th Floor Washington, DC 20416
7.	Brokers and Dealers	Securities and Exchange Commission 100 F Street, N.E. Washington, DC 20549
8.	Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations	Farm Credit Administration 1501 Farm Credit Drive McLean, VA 22102-5090
9.	Retailers, Finance Companies, and All Other Creditors Not Listed Above	FTC Regional Office for region in which the creditor operates or Federal Trade Commission: Consumer Response Center – FCRA Washington, DC 20580 (877) 382-4357

APPENDIX 5
PRE-ADVERSE ACTION NOTICE

[COMPANY LETTERHEAD]

Date

[APPLICANT/EMPLOYEE]
[STREET ADDRESS]
[CITY, STATE, ZIP]

Re: Consumer Report

Dear _____:

You authorized us to obtain a consumer report on you in connection with your application for employment or current employment with us.

This letter is to inform you that [COMPANY NAME] is considering making an employment decision about you based in whole or in part on information contained in this consumer report. We provide you with the attached information:

- (a) a copy of the consumer report; and
- (b) a description in writing of your rights under the Fair Credit Reporting Act, as prescribed by the Consumer Financial Protection Bureau.

If you believe the information in the report is incorrect, please provide written documentation IMMEDIATELY.

If an adverse decision affecting your employment occurs based in whole or in part on the report, you will receive additional information.

Sincerely,

For [COMPANY NAME]

APPENDIX 6
ADVERSE ACTION NOTICE

[COMPANY LETTERHEAD]

Date

[APPLICANT/EMPLOYEE]
[STREET ADDRESS]
[CITY, STATE, ZIP]

Dear: _____:

1. Your recent application for employment has been denied, or your current employment has been terminated, based in whole or in part on information contained in a consumer report.
2. The consumer reporting agency providing this report was:
Name: _____
Address: _____
Phone: _____
Toll-free phone [if applicable]: _____
3. The above-named consumer reporting agency did not make the decision to take the adverse employment action and is unable to provide you the specific reasons why the action was taken.
4. You have the right under law to obtain an additional free copy of your consumer report from the above-named consumer reporting agency. **You have sixty (60) days from the date you receive this notice to request this free copy of your consumer report.**
5. You also have the right under law to dispute with the above-named consumer reporting agency the accuracy or completeness of any information contained in your consumer report.

Sincerely,

For [Company Name]

APPENDIX 7
RESPONSE TO REQUEST FOR INFORMATION REGARDING
INVESTIGATIVE CONSUMER REPORT

[COMPANY LETTERHEAD]

DATE

NAME
ADDRESS
CITY, STATE, ZIP CODE

Re: Your Request For Information Regarding Investigative Consumer Report

Dear _____:

This letter responds to your written request for information concerning the nature and scope of investigation requested to prepare an investigative consumer report in connection with your employment or application for employment.

1. A report has been requested from _____, whose street address is _____. A copy of a blank report form used in the investigation may be attached for your reference if it is available. The investigation will seek interviews with neighbors, friends, associates, acquaintances, or others who may be able to provide information concerning your character, general reputation, personal characteristics, mode of living, prior employment, or occupation. More specifically, the investigation will seek information regarding _____.
2. As you requested, we enclose a summary of consumer rights prepared by the Consumer Financial Protection Bureau.

Sincerely,

For [Company Name]

APPENDIX 8
WARNING MEMO TO EMPLOYEES HANDLING INFORMATION

[COMPANY LETTERHEAD]

MEMORANDUM

Date:

To:

From:

Subject: FAIR CREDIT REPORTING ACT

The Fair Credit Reporting Act, a federal law, regulates the use of credit information and other personal information from consumer reporting agencies. The law now provides **LIABILITY** for any person who misuses such credit information or personal information. Any person who obtains such information under false pretenses can also be fined and sentenced to prison for up to two years.

In addition to potential civil or criminal liability, employees who handle this kind of information also are subject to **IMMEDIATE TERMINATION** if they violate the Fair Credit Reporting Act by obtaining or using such information without proper disclosure, authorization, and purpose. If you have any questions about these matters, please discuss them with your supervisor.

APPENDIX 9
STATE-SPECIFIC GUIDELINES
(readers are advised to check state laws periodically for changes)

In California

California law adds significant changes to the process of obtaining consumer reports and investigative consumer reports. Employers should contact their Fisher & Phillips attorney for information and compliance documents to use in California.

In Maine

An employer who obtains a consumer report or an investigative consumer report is prohibited from disseminating such a report to any other person (other than the consumer who is the subject of the report). This rule does not apply to information contained in the employer's own files as a result of the employer's direct experience with the consumer.

In Massachusetts

In a separate disclosure document, disclose the precise nature and scope of the investigation, if an investigative consumer report is to be obtained, and disclose the individual's right to have a copy of such a report upon request. See Appendix 2.

The **Adverse Action Notice** must be provided not later than ten (10) business days after the decision to deny employment or terminate employment.

The **Adverse Action Notice** must be in a clear and conspicuous format, no smaller than ten-point type.

The **Adverse Action Notice** must include the following information which should be added as a new Paragraph 6:

6. "Under Massachusetts law, you have the right to obtain, from the consumer credit reporting agency which has been identified on this notice, a free copy of your credit report within sixty days. The consumer credit reporting agency must provide someone to help you interpret the information on your credit report. Each calendar year, you are entitled to receive, upon request, one free consumer report.

You have the right to dispute inaccurate information by contacting the consumer credit reporting agency directly. If you have notified a consumer credit reporting agency in writing that you dispute the accuracy of information in your file, the agency must then,

within thirty business days, reinvestigate and modify or remove inaccurate information. The consumer credit reporting agency may not charge a fee for this service.

If reinvestigation does not resolve the dispute to your satisfaction, you may send a statement to the consumer credit reporting agency, to be kept in your file, explaining why you think the record is inaccurate. The consumer credit reporting agency must include your statement about the disputed information in a report it issues about you.”

In Minnesota

In a separate disclosure document, state: “Under Minnesota Statutes Annotated section 13C.02(3), you have the right to ask the consumer reporting agency for additional information on the nature of the report. If you desire a free copy of your consumer report, pursuant to Minnesota law, please place an “X” in the box ”. See Appendix 2.

If the applicant/employee checks the box on the **Disclosure/Authorization** document requesting a free copy of his consumer report, the employer must ask the consumer reporting agency to provide a free copy of the report to the applicant/employee.

In Montana

If a consumer reporting agency notifies a user (such as an employer) that information in a consumer report is inaccurate or can no longer be verified, the user shall delete the information from its files.

In New Jersey

If an investigative consumer report will be obtained, provide a disclosure including the precise nature and scope of the investigation by adding the following (or similar information as appropriate) to a document separate from the **Disclosure/Authorization** document:

“Disclosure of Nature and Scope of Investigation for Investigative Consumer Report: If we request an investigative consumer report in connection with your employment application, a consumer reporting agency will prepare such a report based on some or all of the following investigation: The agency may interview former employers, business references, personal references, and/or others for information regarding prior employment, work experience and performance, reasons for employment termination, and information as to character, general reputation, personal characteristics, or mode of living. The agency may also conduct a records check of driving, criminal, credit, education, degrees, professional licenses, and/or certification records, depending on the job position and the state involved. You have the right to have a copy of the investigative consumer report upon request.”

Along with the **Pre-Adverse Action Notice** (and the FTC’s “Summary of Your Rights Under the FCRA” and a copy of the consumer report), also provide a written summary of consumer rights under the New Jersey Fair Credit Reporting Act.

Add to the letter containing the “Certification To Consumer Reporting Agency” (Appendix 2 in Fisher & Phillips Guide) the following statement: “If our Company were to request a report that contains medical information, our Company would do so only when the consumer consents in writing to the furnishing of such a report.”

In New Mexico

Credit bureaus must require written service contracts in which the user (such as an employer) certifies that he or she will use a report only for bona fide business transactions, such as evaluation of the qualifications of present or prospective employees.

In New York

In a separate disclosure document, state: “Upon your request you will be informed whether or not a consumer report was requested, and if such a report was requested, the name and address of the consumer reporting agency. You may inspect and receive a copy of such report by contacting such agency.” See Appendix 2.

Along with the **Disclosure/Authorization** document, provide a separate document containing Article 23-A of the New York Correction Law governing the licensure and employment of persons previously convicted of a crime.

If the consumer report obtained by the employer contains criminal conviction information, provide the applicant/employee a copy of Article 23-A of the New York Correction Law.

In Oklahoma

In a separate disclosure document, state: “If you desire a free copy of your consumer report, please check this box ”. See Appendix 2.

In Utah

One provision in Utah’s Employment Selection Procedures Act prohibits an employer from requesting an applicant’s Social Security number, date of birth, or driver’s license number until the time one of the following occurs: (a) the applicant is offered a job; or (b) the applicant reaches the point in the employer’s employment selection process when the employer obtains a criminal background check, credit history, or driving record.

Therefore, the **Disclosure/Authorization** document in Appendix 1 (which requests SSN, DOB, and driver's license number) must not be requested from a Utah applicant until either (a) or (b) occurs.

In Washington

An employer may not obtain a consumer report for employment purposes where any information in the report bears on the consumer's "creditworthiness, credit standing, or credit capacity," unless **either**: (a) the information is substantially job-related and the employer's reasons for the use of such information are disclosed to the consumer in writing; **or** (b) the information is required by law. If the employer will obtain such a "credit" type of report in reliance on option (a) above, then state those reasons in a separate document provided to the consumer.

In addition to giving the **Disclosure/Authorization** document to an applicant to obtain a consumer report, Washington employers must also give similar written notice after a person becomes an employee if the employer wants the broad right to obtain consumer reports while the person is employed. This notice to employees may be contained in employee guidelines or manuals available to employees or included in written materials provided to employees. (Note: Such published notice to an employee is not required with respect to obtaining a consumer report on an employee who the employer has reasonable cause to believe has engaged in specific activity that constitutes a violation of law.)

If the employer plans to use "investigative consumer reports," inform the applicant/employee in a separate document: "You also have the right to request from the consumer reporting agency the written summary of the rights of the consumer prepared under the Washington Fair Credit Reporting Act section RCW 19.182.080(7)." See Appendix 2.

Add to the **Pre-Adverse Action Notice**: "The consumer reporting agency which furnished the report is: (name) _____, (address) _____, and (phone) _____."

When providing the **Pre-Adverse Action Notice**, in addition to the FTC Summary of Rights also provide "a description of the consumer's rights under the Washington FCRA pertaining to consumer reports obtained for employment purposes."

In addition to providing the **Pre-Adverse Action Notice**, the employer must give the individual a reasonable opportunity to respond to any information in the report that is disputed by the individual.