

If your decision not to move forward in hiring or retaining an applicant is related to information contained in their background screening report, you are bound by the FCRA (Fair Credit Reporting Act) to fulfill the adverse action letter obligations. Any time that employers, property-owners or lenders utilize a third-party CRA (Consumer Reporting Agency), they are required to remain compliant with the FCRA by delivering adverse action notifications correctly, and in a timely manner.

Frequently Asked Questions:

What is the Fair Credit Reporting Act?

The Fair Credit Reporting Act (FCRA) is federal legislation that was enacted on April 25, 1971 and is designed “to insure that consumer reporting agencies exercise their responsibilities with fairness, impartiality, and a respect for the consumer’s right to privacy.” The law was substantially amended on September 30, 1997 and additional amendments were made in 1998. The Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau (CFPB) are the departments that oversee consumer protection, which includes the FCRA.

Why is the FCRA important to my company?

The FCRA governs employment screening reports obtained from third party agencies, such as TruView BSI, LLC. There are rules and requirements that must be followed by the potential employer to insure that the information is used fairly.

What are my company’s requirements?

When ordering an employment screening report, you need to certify to your CRA:

- The purpose for requesting the report and use the information ONLY for that purpose (e.g., employment, tenant screening, etc).
- That you will comply with the disclosure requirements of the FCRA, including the adverse action provisions.
- That the information will not be used to violate any federal or state Equal Employment laws or regulations (e.g., EEOC, etc.).
- That the consumer report or investigative consumer report will not be ordered for retention or promotion purposes without the consumer’s authorization.

The TruView BSI, LLC *Background Screening Services Agreement* needs to be signed and returned prior to initiating your account and contains the above information.

What is a Consumer Report?

A Consumer Report is defined under the FCRA as “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 credit or insurance to be used primarily for personal, family or household purposes; employment purposes; or any other purpose authorized under Section 604 of the FCRA.”

In general, Consumer Reports contain factual information, including but not limited to criminal records, credit reports, educational or basic employment verifications and motor vehicle records.

What is an Investigative Consumer Report?

An Investigative Consumer Report is defined under the FCRA as “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 other with whom he is acquainted or who may have knowledge concerning any such items of information.”

In general, Investigative Consumer Reports contain opinions about your applicants/employees, including employment performance related issues and reference verification and may include interviews with neighbors, friends or associates of the consumer concerning the applicant’s character, general reputation, personal characteristics, or mode of living.

What is Adverse Action?

Section 603(k)(1) of the Fair Credit Reporting Act (FCRA) states that an adverse action is “a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.” These decisions include not hiring, not retaining or not promoting an individual.

What do I do if I receive a consumer report and decide not to hire the applicant?

If your company uses a consumer report/investigative consumer report in whole or in part to deny someone employment or promotion, this is an Adverse Action, and you are obligated under the FCRA to provide both PreAdverse and Final Adverse Action Disclosures to those applicants/employees.

TruView can provide these services on your behalf or can provide samples of the PreAdverse and Final Adverse Action letters.

What is a Pre-Adverse Action Disclosure?

This disclosure must contain information stating that an adverse employment action will be taken, a copy of the consumer report/investigative report, and a summary of the applicant’s/employee’s rights. The disclosure must also include the consumer reporting agency’s name and contact information.

Once the applicant/employee receives the disclosure, he or she must be given sufficient time (typically 5 business days) to dispute the information.

What is a Final Adverse Action Disclosure?

The Final Adverse Action Disclosure contains wording similar in nature to the Pre-Adverse Action Disclosure and must be done in a reasonable amount of time after the Pre-Adverse Action Disclosure.

The disclosure informs the applicant/employee of the final decision made by your company in not hiring, not retaining or not promoting an individual.

Do I need to do both the Pre-Adverse Action and the Final Adverse Action Disclosures?

Yes. Both are required under the FCRA.

If a report is disputed, do I need to keep the position open until the dispute is resolved?

Both the FCRA and the FTC emphasize the importance of adverse action and the dispute process BEFORE a final employment decision is made. Not holding a position open would be in conflict with the objective of the adverse action procedures.

Are there penalties for not complying with these procedures?

Failure to comply with the Fair Credit Reporting Act imposes civil liability which may result in litigation and costly penalties for your company.