



FCRA ADVERSE ACTION PROCEDURES

The FCRA (15 U.S.C. § 1681) states that if you take “Adverse Action” (i.e., decide not to hire the applicant, not to promote, etc) based on a Consumer Report (i.e., a background check), you must notify them if the adverse action is based in whole or in part on a Consumer Report.

Step One: Pre-Adverse Action Letter (*before* adverse action is taken)

Send the applicant a copy of “summary of their rights under the FCRA”, a copy of their report, and a “Pre-Adverse Action” cover letter *before* the action is taken.

Send To The Applicant:

- Pre-Adverse Action Letter.
- Summary or Your Rights Under The Fair Credit Reporting Act
- A copy of the report

The clear intent of the FCRA Adverse Action steps is to give the applicant/employee an opportunity to dispute or explain information in the Consumer Report before the adverse action is taken. After the individual receives the above information, the FCRA is totally silent on how long an employer should wait before following up with the prescribed *Adverse Action Letter*. This time period will depend on how the consumer report and Summary of Rights are transferred to the applicant/employee -- regular mail, express mail, email, in person. For example, when ESS handles this process for our clients, we send the documents by regular mail unless specified otherwise. To allow for mail time, we wait 4-5 days before following up with the Adverse Action Letter. If the documents were delivered personally or by email, waiting a couple days before sending the Adverse Action Letter may be more reasonable.

Step Two: Adverse Action Letter (*after* adverse action is taken)

Within a reasonable period of time (*see above*), the pre-adverse action letter should **be** followed by a written notification of the adverse action. The notification must include the name, address, and phone number of the reporting agency (ESS) and a statement that the agency did not make the non-hiring decision

Send To The Applicant:

- Adverse Action Letter.
- Summary or Your Rights Under The Fair Credit Reporting Act

As part of this packet you will find the two letters needed with a copy of the FCRA Summary of Your Rights included with each. The letters are PDF “interactive” files so you may enter the applicant’s and your company’s information before printing. If you are not using your company’s letterhead include your company information in the closing of the letter. Copies of these files are available at

<http://www.essclientservices.com/New-DownloadableForms.htm>

After receiving the Consumer Report, the applicant/employee may wish to dispute or explain information in the report. Sometimes a dispute is lodged through the employer; or, the individual may contact ESS directly, in which case we document the disputed information or explanation and immediately notify our Client. Again, the FCRA does not comment on whether an employer should wait for a possible applicant/employee dispute, or if notified of a dispute, wait before proceeding to fill the position with another applicant. This is entirely an internal decision; the only requirement is giving the individual a reasonable opportunity to dispute or explain information in the report before the actual adverse action is taken.

The FCRA gives consumer-reporting agencies 30 days to reinvestigate disputed information and to issue its findings to both the employer and to the consumer. ESS can typically reinvestigate and issue findings in 2-3 days. Sometimes the applicant/employee does not dispute report information but simply wants to explain information in the report, in which case ESS adds a Consumer Statement to the report and re-issues the report right away.

The steps to notify an applicant that he or she is not being hired need only be taken if your decision was based in whole or in part on a Consumer Report. You do not need to take these steps if your decision not to hire was based on other reasons, such as the candidate did not have the necessary qualifications for the position, or someone else was better qualified, or the candidate misrepresented himself or herself (for example, on a resume, application, or in an interview.)

ESS is happy to handle the Adverse Action process on your behalf. When faced with this issue, simply send the adverse action request to adverseaction@employscreen.com. You will get a receipt confirmation and additional confirmations when the process is completed. As mentioned, you will be notified immediately if the report is disputed. The fee is \$5 per case; another \$6 added if certified mail is to be used for the letters.

Note the information above is not offered as legal advice. As always, you should consult your own corporate attorney for direction.

Please let us know if you have any questions or concerns. Thanks!

Para informacion en espanol, visite www.consumerfinance.gov/learnmore o escribe a la Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20006.

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, DC 20006.**

You may have additional rights under Maine’s FCRA, Me. Rev. Stat. Ann. 10, Sec 1311 et seq.

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or another 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 identify 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:
<p>1.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 Bureau:</p>	<p>a. Bureau of Consumer Financial Protection 1700 G Street NW Washington, DC 20006</p> <p>b. Federal Trade Commission: Consumer Response Center – FCRA Washington, DC 20580 (877) 382-4357</p>
<p>2. 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>
<p>3. Air carriers</p>	<p>Asst. General Counsel for Aviation Enforcement & Proceedings Department of Transportation 400 Seventh Street SW Washington, DC 20590</p>
<p>4. Creditors Subject to Surface Transportation Board</p>	<p>Office of Proceedings, Surface Transportation Board Department of Transportation 1925 K Street NW Washington, DC 20423</p>
<p>5. Creditors Subject to Packers and Stockyards Act</p>	<p>Nearest Packers and Stockyards Administration area supervisor</p>
<p>6. Small Business Investment Companies</p>	<p>Associate Deputy Administrator for Capital Access United States Small Business Administration 406 Third Street, SW, 8th Floor Washington, DC 20416</p>
<p>7. Brokers and Dealers</p>	<p>Securities and Exchange Commission 100 F St NE Washington, DC 20549</p>
<p>8. Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations</p>	<p>Farm Credit Administration 1501 Farm Credit Drive McLean, VA 22102-5090</p>
<p>9. Retailers, Finance Companies, and All Other Creditors Not Listed Above</p>	<p>FTC Regional Office for region in which the creditor operates <u>or</u> Federal Trade Commission: Consumer Response Center – FCRA Washington, DC 20580 (877) 382-4357</p>

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- **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 identify theft and place a fraud alert in your file;
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