

Castle Branch Guide to the Fair Credit Reporting Act



888-723-4263

FAIR CREDIT REPORTING ACT [REGULATIONS]

CASTLE BRANCH, INC. GUIDE TO COMPLYING WITH THE FAIR CREDIT REPORTING ACT REGULATIONS

Castle Branch, Inc. prides itself on providing clients with unparalleled customer service. In an effort to further protect our clients we have prepared additional release forms. Standard applications provide some form of authorization to conduct employment screening, but the majority of these applications were created years ago and no longer comply with the Fair Credit Reporting Act (FCRA) and the Fair Trade Commission.

It is important that your company follows the attached procedures and obtains an applicant's signature where appropriate. The limited amount of extra work that these forms require is a small price to pay in the effort of complying with Federal regulations. A Castle Branch representative is always available to answer any questions you may have.

STEP 1: HAVE YOUR APPLICANT SIGN AND COMPLETE THE ATTACHED NOTIFICATION AND RELEASE FORM.

Notification and Release forms have been provided for your use. This complies with section 604.b.2.A.i&ii of the FCRA. This section states that "a clear and conspicuous disclosure has been made in writing to the consumer (applicant) at any time before the report is procured" and that "the consumer has authorized in writing the procurement of the report".

If the applicant applies by mail, phone or electronically, then before procuring a consumer report you must make available by mail, phone or electronically a notice that their consumer report may be obtained and a copy of "A Summary of Your Rights under the FCRA" (604.b.2.B). The applicant must either consent in writing, orally or electronically.

If you decide to hire the applicant then you do not need to proceed further. If you decide not to hire the applicant, based in whole or in part on a consumer report provided by Castle Branch, then you need to adhere to the following regulations, as stated in the FCRA.

STEP 2: PROVIDE YOUR APPLICANT WITH A COPY OF A PRE-ADVERSE ACTION DISCLOSURE.

If you decide not to hire someone based on the information provided in the consumer report, then you must first supply the applicant with a pre-adverse action disclosure (Form A). This disclosure must include a copy of the report and a copy of "A Summary of Your Rights under the FCRA" (604.b.3.A), before you take the adverse action.

If the applicant applies by mail, phone or electronically, then within three (3) days of taking the adverse action you must provide either in writing, orally or electronically that:

- I. A decision to not hire the applicant was based in whole or in part on a consumer report received from Castle Branch;
- II. Provide Castle Branch's name, address & phone number - they can call collect;
- III. Explain that Castle Branch did not make the decision and will be unable to provide specific reasons as to why the applicant wasn't hired;
- IV. Lastly, the applicant may request a free copy of the report and may dispute with Castle Branch the accuracy or completeness of any information in the report (604.b.3.B). (see Form B)

STEP 3: PROVIDE YOUR APPLICANT WITH A NOTICE OF ADVERSE ACTION.

If you have decided not to hire someone who has applied in person based on the information provided in the consumer report and you have sent the pre-adverse action letter (Form A), then you must send an adverse action notification. The adverse action notification (Form B) must include the following information:

- I. A decision to not hire the applicant was based in whole or in part on a consumer report received from Castle Branch;
- II. Provide Castle Branches' name, address & phone number - they can call collect;
- III. Explain that Castle Branch did not make the decision and will be unable to provide specific reasons as to why the applicant wasn't hired;
- IV. Lastly, the applicant may request a free copy of the report and may dispute with Castle Branch the accuracy or completeness of any information in the report (604.b.3).

**FORM A
EXAMPLE PRE-ADVERSE ACTION LETTER**

Dear Applicant/Employee:

Pursuant to your written authorization, (your company name) has obtained a consumer report through Castle Branch. Enclosed for your information is a copy of the consumer report and a copy of the document entitled "A Summary of Your Rights Under the Fair Credit Reporting Act" issued by the Federal Trade Commission.

**FORM B
EXAMPLE ADVERSE ACTION NOTIFICATION**

(your company name) regrets to inform you that we have found it necessary to reject your application for employment.

This action was influenced by customer information contained in a consumer report made, at our request, by:

Castle Branch Employment Screening
P.O. Box 1699
Wilmington, NC 28402
Call (888) 520-0520

Castle Branch did not make the adverse decision and cannot provide the reason for the decision.

You may obtain a free copy of the report within (60) days and you have the right to dispute the accuracy of the information with Castle Branch.

A SUMMARY OF YOUR RIGHTS UNDER THE FAIR CREDIT REPORTING ACT

The federal Fair Credit Reporting Act (FCRA) is designed to promote accuracy, fairness, and privacy of information in the files of every "consumer reporting agency" (CRA). Most CRAs are credit bureaus that gather and sell information about you -- such as if you pay your bills on time or have filed bankruptcy -- to creditors, employers, landlords, and other businesses. You can find the complete text of the FCRA, 15 U.S.C. §§1681-1681u online at <http://www.ftc.gov/os/statutes/fcra.htm>. The FCRA gives you specific rights, as outlined below. You may have additional rights under state law. You may contact a state or local consumer protection agency or a state attorney general to learn those rights.

- **You must be told if information in your file has been used against you.** Anyone who uses information from a CRA to take action against you -- such as denying an application for credit, insurance, or employment -- must tell you, and give you the name, address, and phone number of the CRA that provided the consumer report.
- **You can find out what is in your file.** At your request, a CRA must give you the information in your file, and a list of everyone who has requested it recently. There is no charge for the report if a person has taken action against you because of information supplied by the CRA, if you request the report within 60 days of receiving notice of the action. You also are entitled to one free report every twelve months upon request if you certify that (1) you are unemployed and plan to seek employment within 60 days, (2) you are on welfare, or (3) your report is inaccurate due to fraud. Otherwise, a CRA may charge you up to eight dollars.
- **You can dispute inaccurate information with the CRA.** If you tell a CRA that your file contains inaccurate information, the CRA must investigate the items (usually within 30 days) by presenting to its information source all relevant evidence you submit, unless your dispute is frivolous. The source must review your evidence and report its findings to the CRA. (The source also must advise national CRAs -- to which it has provided the data -- of any error.) The CRA must give you a written report of the investigation, and a copy of your report if the investigation results in any change. If the CRA's investigation does not resolve the dispute, you may add a brief statement to your file. The CRA must normally include a summary of your statement in future reports. If an item is deleted or a dispute statement is filed, you may ask that anyone who has recently received your report be notified of the change.
- **Inaccurate information must be corrected or deleted.** A CRA must remove or correct inaccurate or unverified information from its files, usually within 30 days after you dispute it. **However, the CRA is not required to remove accurate data from your file unless it is outdated (as described below) or cannot be verified.** If your dispute results in any change to your report, the CRA cannot reinsert into your file a disputed item unless the information source verifies its accuracy and completeness. In addition, the CRA must give you a written notice telling you it has reinserted the item. The notice must include the name, address and phone number of the information source.
- **You can dispute inaccurate items with the source of the information.** If you tell anyone -- such as a creditor who reports to a CRA -- that you dispute an item, they may not then report the information to a CRA without including a notice of your dispute. In addition, once you've notified the source of the error in writing, it may not continue to report the information if it is, in fact, an error.
- **Outdated information may not be reported.** In most cases, a CRA may not report negative information that is more than seven years old; ten years for bankruptcies.
- **Access to your file is limited.** A CRA may provide information about you only to people with a need recognized by the FCRA -- usually to consider an application with a creditor, insurer, employer, landlord, or other business.
- **Your consent is required for reports that are provided to employers, or reports that contain medical information.** A CRA may not give out information about you to your employer, or prospective employer, without your written consent. A CRA may not report medical information about you to creditors, insurers, or employers without your permission.
- **You may choose to exclude your name from CRA lists for unsolicited credit and insurance offers.** Creditors and insurers may use file information as the basis for sending you unsolicited offers of credit or insurance. Such offers must include a toll-free phone number for you to call if you want your name and address removed from future lists. If you call, you must be kept off the lists for two years. If you request, complete, and return the CRA form provided for this purpose, you must be taken off the lists indefinitely.
- **You may seek damages from violators.** If a CRA, a user or (in some cases) a provider of CRA data, violates the FCRA, you may sue them in state or federal court.
- **Identity theft victims and active duty military personnel have additional rights.** For more information, visit www.ftc.gov/credit.

**THE FCRA GIVES SEVERAL DIFFERENT FEDERAL AGENCIES
AUTHORITY TO ENFORCE THE FCRA:**

FOR QUESTIONS OR CONCERNS REGARDING

CRAAs, creditors and others not listed below

National banks, federal branches/agencies
of foreign banks (word "National" or initials
"N.A." appear in or after bank's name)

Federal Reserve System member banks (except
national banks, and federal branches/agencies
of foreign banks)

Savings associations and federally chartered
savings banks (word "Federal" or initials
"F.S.B." appear in federal institution's name)

Federal credit unions (words "Federal Credit
Union" appear in institution's name)

State-chartered banks that are not members
of the Federal Reserve System

Air, surface, or rail common carriers regulated
by former Civil Aeronautics Board or Interstate
Commerce Commission

Activities subject to the Packers and Stockyards
Act, 1921

PLEASE CONTACT

Federal Trade Commission
Consumer Response Center - FCRA
Washington, DC 20580 • (202) 326-3761

Office of the Comptroller of the Currency
Compliance Management, Mail Stop 6-6
Washington, DC 20219 • (800) 613-6743

Federal Reserve Board
Division of Consumer & Community Affairs
Washington, DC 20551 • (202) 452-3693

Office of Thrift Supervision
Consumer Programs
Washington D.C. 20552 • (800) 842-6929

National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314 • (703) 518-6360

Federal Deposit Insurance Corporation
Division of Compliance & Consumer Affairs
Washington, DC 20429 • (800) 934-FDIC

Department of Transportation
Office of Financial Management
Washington, DC 20590 • (202) 366-1306

Department of Agriculture
Office of Deputy Administrator - GIPSA
Washington, DC 20250 • (202) 720-7051

FAIR CREDIT REPORTING ACT USING [CONSUMER REPORTS]

WHAT EMPLOYERS NEED TO KNOW

- Your advertisement for cashiers nets 100 applications. You want credit reports on each applicant. You plan to eliminate those with poor credit histories. What are your obligations?
- You are considering a number of your long-term employees for major promotions. Can you check their credit reports to ensure that only financially responsible individuals are considered?
- A job candidate has authorized you to obtain a credit report. The applicant has a poor credit history. Although the credit history is considered a negative factor, it's the applicant's lack of relevant experience that's more important to you. You turn down the application.

WHAT PROCEDURES MUST YOU FOLLOW?

As an employer, you may use consumer reports when you hire new employees and when you evaluate employees for promotion, reassignment, and retention - as long as you comply with the Fair Credit Reporting Act (FCRA). Sections 604, 606, and 615 of the FCRA spell out your responsibilities when using consumer reports for employment purposes.

The FCRA is designed primarily to protect the privacy of consumer report information and to guarantee that the information supplied by consumer reporting agencies is as accurate as possible. Amendments to the FCRA - which went into effect September 30, 1997 - significantly increase the legal obligations of employers who use consumer reports. Congress expanded employer responsibilities because of concern that inaccurate or incomplete consumer reports could cause applicants to be denied jobs or cause employees to be denied promotions unjustly. The amendments ensure (1) that individuals are aware that consumer reports may be used for employment purposes and agree to such use, and (2) that individuals are notified promptly if information in a consumer report may result in a negative employment decision.

WHAT IS A CONSUMER REPORT?

A consumer report contains information about your personal and credit characteristics, character, general reputation, and lifestyle. To be covered by the FCRA, a report must be prepared by a consumer reporting agency (CRA) - a business that assembles such reports for other businesses.

Employers often do background checks on applicants and get consumer reports during their employment. Some employers only want an applicant's or employee's credit payment records; others want driving records and criminal histories. For sensitive positions, it's not unusual for employers to order investigative consumer reports - reports that include interviews with an applicant's or employee's friends, neighbors, and associates. All of these types of reports are consumer reports if they are obtained from a CRA.

Applicants are often asked to give references. Whether verifying such references is covered by the FCRA depends on who does the verification. A reference verified by the employer is not covered by the Act; a reference verified by an employment or reference checking agency (or other CRA) is covered. Section 603(o) provides special procedures for reference checking; otherwise, checking references may constitute an investigative consumer report subject to additional FCRA requirements.

KEY PROVISIONS OF THE FCRA AMENDMENTS

Written Notice and Authorization.

Before you can get a consumer report for employment purposes, you must notify the individual in writing - in a document consisting solely of this notice - that a report may be used. You also must get the person's written authorization before you ask a CRA for the report. (Special procedures apply to the trucking industry.)

Adverse Action Procedures.

If you rely on a consumer report for an "adverse action" - denying a job application, reassigning or terminating an employee, or denying a promotion - be aware that:

Step 1: Before you take the adverse action, you must give the individual a pre-adverse action disclosure that includes a copy of the individual's consumer report and a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act" - a document prescribed by the Federal Trade Commission. The CRA that furnishes the individual's report will give you the summary of consumer rights.

Step 2: After you've taken an adverse action, you must give the individual notice - orally, in writing, or electronically - that the action has been taken in an adverse action notice. It must include:

- 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; and
- 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.

Certifications to Consumer Reporting Agencies.

Before giving you an individual's consumer report, the CRA will require you to certify that you are in compliance with the FCRA and that you will not misuse any information in the report in violation of federal or state equal employment opportunity laws or regulations.

In 1998, Congress amended the FCRA to provide special procedures for mail, telephone, or electronic employment applications in the trucking industry. Employers do not need to make written disclosures and obtain written permission in the case of applicants who will be subject to state or federal regulation as truckers. Finally, no pre-adverse action disclosure or Section 615(a) disclosure is required. Instead, the employer must, within three days of the decision, provide an oral, written, or electronic adverse action disclosure consisting of: (1) a statement that an adverse action has been taken based on a consumer report; (2) the name, address, and telephone number of the CRA; (3) a statement that the CRA did not make the decision; and (4) a statement that the consumer may obtain a copy of the actual report from the employer if he or she provides identification.

In Practice...

- You advertise vacancies for cashiers and receive 100 applications. You want just credit reports on each applicant because you plan to eliminate those with poor credit histories. What are your obligations?

You can get credit reports - one type of consumer report - if you notify each applicant in writing that a credit report may be requested and if you receive the applicant's written consent. Before you reject an applicant based on credit report information, you must make a pre-adverse action disclosure that includes a copy of the credit report and the summary of consumer rights under the FCRA. Once you've rejected an applicant, you must provide an adverse action notice if credit report information affected your decision.

- You are considering a number of your long-term employees for a major promotion. You want to check their consumer reports to ensure that only responsible individuals are considered for the position. What are your obligations?

You cannot get consumer reports unless the employees have been notified that reports may be obtained and have given their written permission. If the employees gave you written permission in the past, you need only make sure that the employees receive or have received a "separate document" notice that reports may be obtained during the course of their employment - no more notice or permission is required. If your employees have not received notice and given you permission, you must notify the employees and get their written permission before you get their reports.

In each case where information in the report influences your decision to deny promotion, you must provide the employee with a pre-adverse action disclosure. The employee also must receive an adverse action notice once you have selected another individual for the job.

- A job applicant gives you the okay to get a consumer report. Although the credit history is poor and that's a negative factor, the applicant's lack of relevant experience carries more weight in your decision not to hire. What's your responsibility?

In any case where information in a consumer report is a factor in your decision - even if the report information is not a major consideration - you must follow the procedures mandated by the FCRA. In this case, you would be required to provide the applicant a pre-adverse action disclosure before you reject his or her application. When you formally reject the applicant, you would be required to provide an adverse action notice.

- The applicants for a sensitive financial position have authorized you to obtain credit reports. You reject one applicant, whose credit report shows a debt load that may be too high for the proposed salary, even though the report shows a good repayment history. You turn down another, whose credit report shows only one credit account, because you want someone who has shown more financial responsibility. Are you obliged to provide any notices to these applicants?

Both applicants are entitled to a pre-adverse action disclosure and an adverse action notice. If any information in the credit report influences an adverse decision, the applicant is entitled to the notices - even when the information isn't negative.

Non-compliance

There are legal consequences for employers who 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 noncompliance and obtain civil penalties.

For More Information

You can file a complaint with the FTC by contacting the Consumer Response Center by phone: (202) FTC-HELP (382-4357); TDD: (202) 326-2502; by mail: Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Ave, NW, Washington, DC 20580; or through the Internet, using the online complaint form. Although the Commission cannot resolve individual problems for consumers, it can act against a company if it sees a pattern of possible law violations.

The FTC publishes free brochures on many consumer issues. For a complete list of publications, write for **Best Sellers**, Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Ave, NW, Washington, DC 20580; or call (202) FTC-HELP (382-4357), TDD (202) 326-2502.