

# Fair Credit Reporting Act(FCRA)

The following contains information about the Fair Credit Reporting Act and the amendments to it thru the Consumer Reporting Clarification Act of 1998. The Act applies to providers, end users and consumers. The act defines pre-employment background reports as either “consumer reports” or “investigative consumer reports” depending on the nature of the information acquired. The actual Act can be downloaded from the internet by accessing the following: <http://www.ftc.gov/os/statues/fcra.htm>.

The information provided in this section is a condensation of the FCRA and should not be interpreted as legal advice. To get the correct legal opinion on any particular aspect of this act you should consult with attorneys familiar with this legislation. In general, the information provided below is focused toward employment related issues although we do additional work in the tenant screening area.

The permissible purposes to request that a consumer report be created are (1) Credit Transactions, (2) Employment, (3) Insurance, (4) Eligibility for governmental licenses, or (5) other legitimate business needs initiated by the consumer. To cause a consumer report to be generated you must agree to abide by the FCRA and have a permissible purpose for its creation.

A prerequisite to ordering a consumer report is to notify the consumer and obtain his/her signed authorization for its creation. To obtain or cause its creation without this authorization is a violation of this Act and has severe penalties associated with infractions. The Act provides for protection for both the suppliers and the users of these reports.

If you use information included in these reports in part or in total to deny employment, you must notify the applicant of this fact, provide a copy of the report and notify him/her of how to contact the provider of the report. In addition, the applicant must be given a copy of their rights under the FCRA. Justifacts provides forms to comply with these requirements which customers can use, as is, or modify, as appropriate. The applicant must also be told who has received the investigative report. Justifacts policy is to treat consumer reports as single usage items. That is, the information contained in the report is intended only used for the client who orders it. If the applicant applies to another client of ours we would prepare the report as if the first report did not exist.

The applicant has 60 days to dispute information in the report and the provider has 30 days to re-investigate disputed information. An applicant can request a copy of the report from the CRA and receive it free of charge. A CRA is a credit reporting agency which is how the Federal Trade Commission defines all providers of consumer reports in the FCRA. Justifacts reinvestigates applicants disputes in an attempt to resolve their issue. However, it is necessary for the applicant to provide information to substantiate their position. If the applicant simply doesn't like the information in the report as opposed to

the information being incorrect then the FCRA defines this as being frivolous, and the CRA is not required to make changes. If Justifacts makes changes to a consumer report, it sends the client a copy of this amendment.

In general, credit reports, driving records, criminal records, and other factual employment data are the types of information defined as consumer reports. Interviews with past supervisors and professional/personal references tend to be classified as investigative consumer reports. Justifacts does not distinguish between these two classifications in reports sent to its customers.

Justifacts requires applicants to provide suitable identification prior to receiving copies of consumer reports as provided by the FCRA. Justifacts provides trained personnel to help consumers who have questions concerning information contained in their consumer report.

## Requirements for California Employers

California employers hiring personnel within the State of California must comply with the FCRA as well as additional requirements of California law. The California Investigative Consumer Reporting Agencies Act (ICRA), Cal. Civil Code 1786 et seq adopts many aspects of the FCRA and adds additional requirements. The principal requirement on employers is to furnish applicants with a copy of the consumer report within seven(7) days of the receipt of the report. This is different from the FCRA which provides this requirement only if the applicant is denied employment. This act requires employers to provide a copy of the report to all applicants. In addition, employers are required to provide a notice of the applicants rights under California law as well as a cover page on the front of the report.

### **A Summary of Your Rights Under the Fair Credit Reporting Act**

The 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, at the Federal Trade Commission’s Web site (<http://www.ftc.gov>). 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 are also 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 files 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 the 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 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 kept off 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.

The FCRA gives several different federal agencies authority to enforce the FCRA:

FOR QUESTIONS OR CONCERNS REGARDING:	PLEASE CONTACT:
CRAs, Creditors and others not listed below	Federal Trade Commission Consumer Response Center - FCRA Washington, DC 20580 (202) 326-3761
National banks, federal branches/agencies of foreign banks (word "National" or initial "N.A." appear in or after bank's name)	Office of the Comptroller of the Currency Compliance management, Mail stop 6-6 Washington, DC 20219 (800) 613-6743
Federal Reserve System member banks (except national banks, and federal branches/agencies of foreign banks)	Federal Reserve Board Division of Consumer & Community Affairs Washington, DC 20551 (202) 452-3693
Savings associations and federally chartered savings banks (word "Federal" or initials "F.S.B." appear in the federal institutions name.)	Office of Thrift Supervision Consumer Programs Washington, DC 20552 (800) 842-6929
Federal Credit Unions (words "Federal Credit Union" appear in the institutions name)	National Credit Union Administration 1775 Duke Street Alexandria, VA 22314 (703) 518-6360
State-chartered banks that are not members of the Federal Reserve System	Federal Deposit Insurance Corporation Division of Compliance & Consumer affairs Washington, DC 20590 (800) 934-FDIC
Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission	Department of Transportation Office of Financial Management Washington, DC 20590 (202) 366-1306
Activities subject to the Packers and Stockyards Act, 1921	Department of Agriculture Office of Deputy Administrator - GIPSA Washington, DC 20250 (202) 720-7051