

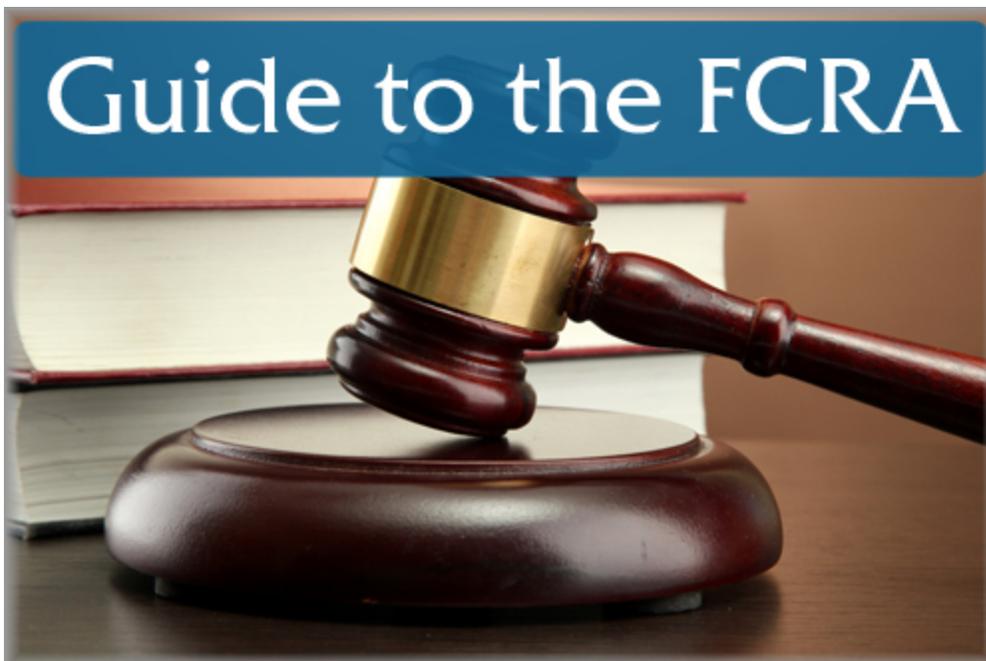


# Justifacts

Credential Verification, Inc.



## Justifacts Guide to Understanding the FCRA



Justifacts Credential Verification, Inc.

Last Revised on **12/23/2013**



## Overview

To request further information about FCRA Compliance or Justifacts employment screening services, please contact the Justifacts Sales team:

**Request information from our website** - [Request for Information](#)

**Send an email** - [Sales@justifacts.com](mailto:Sales@justifacts.com)

**Call direct** - (800) 356-6885

## Notice to Users

Every effort has been made to ensure that the information in this document is accurate. Information in this document is subject to change without notice.

It is important to note that Justifacts is providing this information as a service to our clients. None of the information contained herein should be construed as legal advice, nor is Justifacts engaged to provide legal advice. Although we go to great lengths to make sure our information is accurate and useful, we recommend you consult your attorney or legal department if you want assurance that our information, and your interpretation of it, is appropriate to your particular situation.

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## Table of Contents

Overview .....	2
Notice to Users .....	2
Introduction .....	4
<b>The Fast Track to Compliance .....</b>	<b>4</b>
Section § 604 Conclusion.....	7
Section § 605. Requirements Relating to Information Contained in Consumer Reports.....	7
Section § 605 Conclusion.....	8
Section § 606. Disclosure of Investigative Consumer Reports.....	8
Section § 606 Conclusion.....	9
Section § 607. Compliance Procedures .....	9
Section § 607 Conclusion.....	10
Section § 609. Disclosure to Consumers.....	10
Section § 609 Conclusion.....	11
Section § 610. Condition and Form of Disclosure to Consumers .....	11
Section 610 Conclusion .....	12
Section § 611. Procedure in Case of Disputed Accuracy.....	12
Section § 611 Conclusion.....	16
Section § 612. Charges for Certain Disclosures.....	16
Section § 612 Conclusion.....	17
Section § 613. Public Record Information for Employment Purposes .....	17
Section § 613 Conclusion.....	17
Section § 614. Restrictions on Investigative Consumer Reports and Section § 615. Requirements on Users of Consumer Reports.....	18
Section § 614 & 615 Conclusion .....	18



## Introduction

In this age of increased security risks, workplace violence incidents and negligent hiring lawsuits, employers are using background checks as a tool to identify the most qualified individual available, thereby increasing security and decreasing liability and improving the quality of their workforce. For many employers, pre-employment background checks have become a permanent part of the hiring process.

However, with the rise of computerization of records and the increased availability of information at our fingertips, legislators and consumer rights groups are taking notice of the background screening industry. They make the point that it is important that the rights of the applicant be balanced with the need for employers to hire the best candidate.

The primary law regulating the procurement, preparation and use of a background report is the Fair Credit Reporting Act (FCRA). This federal law was first introduced in 1971 and has undergone several changes over the years. It is designed to protect the rights of consumers (applicants) and to hold the users and preparers of consumer reports accountable for the information contained in and the use of the reports.

If a company's procedures are not in compliance with the FCRA, it is likely a large group of individuals will have been affected. Plaintiffs are eligible to receive statutory damages (no proof of actual damages required) of \$100 to \$1000 per violation, and there is no cap on the damages that can be awarded against the defendant. Furthermore, if it is found that an employer willfully violated the FCRA, they can be on the hook for punitive damages, costs of litigation and reasonable attorney's fees. As the use of background checks continues to increase, so will the volume of case law. Courts are awarding settlements in the millions and lawyers are seeing green.

As with any law, the FCRA is a difficult read and contains much technical jargon. This guide will be expanding on the specific sections of the Fair Credit Reporting Act that are pertinent to reports used for employment purposes.

## The Fast Track to Compliance

In the simplest possible terms, employers just need to remember **four easy steps**:



1. **Disclosure** – the FCRA requires employers to provide a disclosure statement about background checks to their applicants. This disclosure statement must be clear and conspicuous; it should be completely separate from the job application.
2. **Authorization** – Employers must obtain a written or electronic authorization from the applicant giving express permission to conduct a background check.
3. **Pre-Adverse Action Letter** – If negative information is reported in a background check, and based on that information the decision has been made to deny employment, a Pre-Adverse Action Letter must be sent to the applicant. This letter is going to include a **copy of the background check** and the **FCRA Summary of Consumer Rights** and your **CRA's contact information**. The purpose of this letter is to allow the applicant an opportunity to dispute any information in the report. If any inaccuracies are uncovered, corrections must be made to the report and the hiring process can continue. Employers must allow applicants a “reasonable time” to dispute the report. This has generally been defined as five working days. If this reasonable time has passed, and the applicant does not dispute the information, employers may now move to the next step;
4. **Adverse Action Letter** – This notification is going to disclose the final decision to deny employment based “in whole or in part” on the results of the background check. Again with this letter you are going to include the **completed background check** as well as the **FCRA Summary of Consumer Rights** and your **CRA's contact information**.

**Contact Justifacts for detailed educational information such as sample disclosures, authorization forms, and a fully automated adverse action plan.**

## **Section § 604. Permissible Purposes of Consumer Reports**

In general any consumer reporting agency may furnish a consumer report under the following circumstances and no other:

- 1) In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a Federal grand jury.
- 2) In accordance with the written instructions of the consumer to whom it relates.
- 3) To a person which it has reason to believe
  - A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer
  - B) intends to use the information for employment purposes
  - C) intends to use the information in connection with the underwriting of insurance involving the consumer



D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status

E) intends to use the information, as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation

F) otherwise has a legitimate business need for the information

i) in connection with a business transaction that is initiated by the consumer

ii) to review an account to determine whether the consumer continues to meet the terms of the account.

#### **Conditions for Furnishing and Using Consumer Reports for Employment Purposes.**

- 1) **Certification from User:** A consumer reporting agency may furnish a consumer report for employment purposes only if:
  - a. the person who obtains such report from the agency certifies to the agency that the person has complied with paragraph (2) with respect to the consumer report, and the person will comply with paragraph (3) with respect to the consumer report if paragraph (3) becomes applicable; and information from the consumer report will not be used in violation of any applicable Federal or State equal employment opportunity law or regulation
  - b. the consumer reporting agency provides with the report, or has previously provided, a summary of the consumer's rights under this title, as prescribed by the Bureau under section 609.
  
- 2) **Disclosure to Consumer:** In general. Except as provided in subparagraph (B), a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless
  - a. a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and
  - b. the consumer has authorized in writing the procurement of the report by that person.



- 3) **Conditions on Use for Adverse Actions:** In using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates
  - a. a copy of the report
  - b. a description in writing of the rights of the consumer under this title, as prescribed by the Bureau under section 609

## Section § 604 Conclusion

Section 604 discusses both the purposes of requesting and conditions of using/furnishing consumer reports. In order to follow the regulations of Section 604, Justifacts must receive certification from our clients that:

- 1) A disclosure has been made to the consumer who is the subject of the report;
- 2) If adverse action is taken, the consumer will be provided with a copy of the report and a summary of their rights under this title;
- 3) Information from the report will not be used in violation of any applicable Federal or State equal employment opportunity law or regulation.

## Section § 605. Requirements Relating to Information Contained in Consumer Reports

Except as exempted by this section, no consumer reporting agency may make any consumer report containing any of the following items of information:

- 1) Cases under title 11 [United States Code] or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication that are ten years older than the report.
- 2) Civil suits, civil judgments, and records of arrest that from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period
- 3) Paid tax liens which, from the date of payment, are seven years older than the report
- 4) Accounts placed for collection or charged to profit and loss which are seven years older than the report



- 5) Any other adverse item of information, other than the records of conviction of crimes which are seven years older than the report.

**\*\* Exempted cases**

- 1) A credit transaction involving, or which may reasonably be expected to involve, a principal amount of \$150,000 or more.
- 2) The underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of \$150,000 or more
- 3) The employment of any individual at an annual salary which equals, or which may reasonably be expected to equal \$75,000, or more

## **Section § 605 Conclusion**

Employers should be aware that are certain occasions where an individual may have adverse information in their history that is not reportable. The FCRA protects consumers (applicants) from having outdated information used against them.

## **Section § 606. Disclosure of Investigative Consumer Reports**

A person (employer) may not procure or cause to be prepared an investigative consumer report on any consumer (applicant) unless:

- 1) It is clearly and accurately disclosed to the consumer that an investigative consumer report (background check) including information to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made.
  - A) This disclosure must be made in writing. It must be mailed or otherwise delivered to the consumer, not later than three days after the date on which the report was first requested.
  - B) The disclosure must include a statement informing the consumer of his right to request the additional disclosures provided for under subsection 2 of this section and the written summary of the rights of the consumer prepared according to section 609 (see Part 6 of this series)
  - C) The person (employer) certifies or has certified to the consumer reporting agency (Justifacts) that
    1. The person (employer) has made the disclosures to the consumer required by paragraph 1
    2. The person (employer) will comply with paragraph 2.



- 2) **Disclosure on request of nature and scope of investigation-** If a consumer submits a written request within a reasonable period of time after receipt of the above mentioned disclosure; they have the right to receive, in writing, a disclosure that explains the nature and scope of the investigation requested. This disclosure must be mailed or otherwise delivered to the consumer within five days of the request from the consumer or such report was first requested, whichever is the later.
- 3) **Prohibitions -**
  - a. **Certification-** A consumer reporting agency cannot prepare or furnish an investigative consumer report unless the agency has received a certification from the person (employer) who requested the report.
  - b. **Inquiries-** A consumer reporting agency cannot make any inquiries in the preparation of an investigative consumer report that would violate applicable Federal or State equal employment opportunity law or regulation.
  - c. **Certain public information-** Except as otherwise provided in section 613, a consumer reporting agency cannot furnish an investigative consumer report that includes information that is a matter of public record and relates to an arrest, indictment, conviction, civil judicial action, tax lien, or outstanding judgment, unless the agency has verified the accuracy of the information during the 30-day period ending on the date on which the report is furnished
  - d. **Certain adverse information-** A consumer reporting agency shall not prepare or furnish and investigative consumer report on a consumer that contains negative information that is adverse to the interest of the consumer and that is obtained through a personal interview with a neighbor, friend, or associate of the consumer or with another person with whom the consumer is acquainted unless:
    1. The agency has followed reasonable procedures to obtain confirmation of the information from an additional source; or
    2. The person interviewed is the best possible source of the information.

## Section § 606 Conclusion

An applicant has the right to know that a background check is being performed on him/her. Furthermore, individual applicants may request to know what the scope of that investigation is. A background check company, such as Justifacts, may not begin conducting a background check on any applicant until we have received certification from our clients that the proper disclosures have been made.

## Section § 607. Compliance Procedures

**Identity and Purposes of Credit Users-** Section 607 states that CRAs need to take reasonable measures to make sure that they do not violate section 605 Furthermore, a CRA is required to make sure that consumer reports (background checks) are only being used by appropriate people and for legitimate



purposes, as spelled out in Section 604. CRAs are responsible for taking reasonable means to verify the identity of an employer/prospective user and ascertain that the background check will be used for permissible purposes. A CRA cannot furnish a background report if it has reasonable grounds for believing that the report will not be used for a purpose listed in section 604.

**Accuracy of Report-** A CRA must follow reasonable procedures to ensure maximum accuracy of the information concerning the individual about whom the report relates

**Disclosure of Consumer Reports by Users Allowed-** A CRA may not prohibit an employer from disclosing the results of a background check to an applicant, if adverse action against the applicant has been taken by the employer based in whole or in part on the report.

**Notice to Users and Furnishers of Information-** A CRA shall provide to any person who regularly furnishes information to the CRA with respect to any applicant; or to whom a background check is provided by the CRA, a notice of such a person's responsibilities under this title. The FTC shall prescribe the content of notices under this paragraph, and a CRA shall be in compliance with this subsection if it provides a notice under this paragraph that is substantially similar to the FTC prescription under this paragraph.

**Procurement of Consumer Report for Resale -** A person may not procure a consumer report for purposes of reselling the report (or any information in the report) unless the person discloses to the CRA that originally furnishes the report the identity of the end-user of the report (or information); and each permissible purpose under section 604 for which the report is furnished to the end-user of the report (or information).

## Section § 607 Conclusion

A CRA, such as Justifacts, is responsible for ensuring that our clients are legitimate businesses. The background checks that we provide our clients may only be used for specific purposes. A CRA must take reasonable means to provide an accurate background check. If an employer chooses not to hire an applicant based on his/her background check the applicant has a right to that information. A CRA is responsible for providing furnishers of information with a notice of their responsibilities. Finally, any employer requesting a report may not resell the report without disclosing to the CRA the identity of the end user and the permissible purpose for which the report is requested.

## Section § 609. Disclosure to Consumers

**Information on File-** Every CRA (Consumer Reporting Agency) shall, upon request, and subject to 610, clearly and accurately disclose to the applicant:

- 1) All information in the applicant's file at the time of the request, except that- if the applicant to whom the file relates requests that the first 5 digits of the social security number (or similar identification number) of the applicant not be included in the disclosure and the CRA has received appropriate proof of the identity of the requester, the CRA shall so truncate the social



security number in such disclosure; and

- 2) The sources of information; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually use for no other purpose need not be disclosed. However, in the event of a lawsuit, the sources must be made available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.
- 3) Identification of each person that procured a background check for employment purposes, during the 2- year period preceding the date on which the request is made.

**Summary of Rights-** A CRA shall provide to an applicant, with each written disclosure by the agency to the applicant under this section-

- 1) The summary of rights prepared by the Bureau;
- 2) A list of all Federal agencies responsible for enforcing any provision of this title, and the address and any appropriate phone number of each such agency, in a form that will assist the applicant in selecting the appropriate agency;
- 3) A statement that the applicant may have additional rights under State law, and that the applicant may wish to contact a State or local consumer protection agency or State attorney general (or the equivalent thereof) to learn of those rights;
- 4) A statement that a CRA is not required to remove accurate, derogatory information from the file of an applicant, unless the information is outdated under section 605 or cannot be verified.

## Section § 609 Conclusion

In the event that an applicant requests to see their background check, they have a right to see, with some exceptions, all the information in their file. Applicants also have a right to know who and why information was requested on them. Furthermore, applicants must be provided with a summary of their rights, under the Fair Credit Reporting Act, during the application process.

## Section § 610. Condition and Form of Disclosure to Consumers

**Proper Identification-**A Consumer Reporting Agency (such as Justifacts) shall require, as a condition of making the disclosures required under section 609, that the consumer furnish proper identification.

**Other Forms of Disclosure-** If authorized by a consumer, a consumer reporting agency may make the disclosures required under section 609 in such a form as may be specified by the consumer and available from the agency

**Form-** A consumer may specify that disclosures under section 609 be made:

1. In person, a consumer appear in person at the place of business of a consumer reporting agency where disclosures are regularly provided, during normal business hours, and on reasonable



notice;

2. By telephone, if the consumer has made a written request for disclosure by telephone;
3. By electronic means, if available from the agency; or
4. By any other reasonable means that is available from the agency.

**Trained Personnel-** Any consumer reporting agency will provide trained personnel to explain to the consumer any information furnished to him/her pursuant to section 609.

**Person Accompanying Consumer-** The consumer is permitted to be accompanied by one other person of his/her choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in this person's presence.

**Justifacts provides all applicants with a copy of their report upon request – this can be done online from our website or by contacting the Justifacts Compliance Department.**

## Section 610 Conclusion

Although most consumer reports are provided in writing, the FCRA does allow some flexibility in regards to the delivery of consumer reports. Please feel free to contact Justifacts to determine which delivery method works best for your situation.

## Section § 611. Procedure in Case of Disputed Accuracy

### Reinvestigations of Disputed Information

1. **Reinvestigation Required-** If the completeness or accuracy of any item of information contained in a consumer's (applicant's) file at a consumer reporting agency (such as Justifacts) is disputed by the consumer and the consumer notifies the agency directly, or indirectly through a reseller, of such a dispute, the agency must, free of charge conduct a reasonable reinvestigation. This reinvestigation will determine whether the disputed information is inaccurate and record the status of the disputed information, or delete the item from the file. This must be done before the end of a 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer or reseller.
2. **Extension of period to reinvestigate-** the 30 day period described in subparagraph 1, may be extended for not more than 15 days if the consumer reporting agency receives information from the consumer during that time period that is relevant to the reinvestigation.
3. **Limitations on extension of period to reinvestigate-** Subparagraph 2 does not apply to any reinvestigation in which, during the 30-day period, the information that is being reinvestigated is found to be inaccurate or incomplete or the consumer reporting agency determines that the information cannot be verified.

### **Prompt Notice of Dispute to Furnisher of Information**

Before the expiration of the 5-business day period, beginning on the date on which a consumer reporting agency receives notice of dispute from any consumer or reseller, the agency must provide notification of the dispute to any person who provided any item of information pertaining to that dispute. The notice must be sent to the address and in the manner established with the person. The notice must include all relevant information regarding the dispute that the agency has received from the consumer or reseller.

### **Determination that the Dispute is Frivolous or Irrelevant**

In general, a consumer reporting agency may terminate a reinvestigation of information disputed by a consumer if the agency reasonably determines that the dispute is frivolous or irrelevant. This includes a failure by the consumer to provide sufficient information to investigate the disputed information.

Upon making a determination that a dispute is frivolous or irrelevant, a consumer reporting agency shall notify the consumer of such a determination within 5 business days. This must be done by mail or, if authorized by the consumer for that purpose, by any other reasonable means available to the agency. This notice must include the reasons for the determination and identification of any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.

### **Consideration of Consumer Information**

In conducting any reinvestigation with respect to disputed information, the consumer reporting agency must review and consider all relevant information submitted by the consumer.

### **Treatment of Inaccurate or Unverifiable Information**

If after a reinvestigation of any information disputed by a consumer, an item of information is found to be inaccurate or incomplete or cannot be verified the consumer reporting agency must:

1. Promptly delete that item of information from the file of the consumer, or modify that item of information to reflect the results of the reinvestigation; and
2. Promptly notify the furnisher of that information that the information has been modified or deleted from the file of the consumer

If any information is deleted from a consumer's file, it may not be reinserted in the file by the consumer reporting agency unless the person who furnishes the information certifies that the information is complete and accurate.



If any information that has been deleted from a consumer's file is reinserted in the file, the consumer reporting agency must notify the consumer of the reinsertion within 5 business days after the reinsertion. This notification must be done in writing, unless the consumer has authorized, for that purpose, any other means of communication available to the agency.

### **Notice of Results of Reinvestigation**

A consumer reporting agency must provide written notice to a consumer the results of a reinvestigation within 5 business days of the completion of the reinvestigation. This must be done by mail, unless authorized by the consumer, for that purpose, any other means of communication available to the agency. As a part of, or in addition to, the notice a consumer reporting agency must provide a consumer, in writing, before the expiration of the 5 business day period:

1. A statement that the reinvestigation is complete
2. A consumer report based on the consumer's file reflecting any revisions as a result of the reinvestigation
3. A notice that, if requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information will be provided to the consumer by the agency. This notice will include the business name and address of any furnisher of information contacted in connection with such information and the telephone number of such a furnisher, if reasonably available;
4. A notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the information;
5. A notice that the consumer has the right to request under subsection (d) that the consumer reporting agency furnish notifications under that subsection.

### **Description of Reinvestigation Procedure**

A consumer reporting agency shall provide to a consumer a description, referred to in item 3 above, by not later than 15 days after receiving a request from the consumer for that information.

### **Expedited Dispute Resolution**

If a dispute regarding an item of information in a consumer's file at a consumer reporting agency is resolved by the deletion of the disputed information by no later than 3 business days after the date on which the agency receives notice of the dispute from the consumer, then the agency is not required to provide either the "Notice of Results of Reinvestigation" or the "Description of the Reinvestigation Procedure" with respect to that dispute, if the agency:

1. Provides prompt notice of the deletion to consumer by telephone;



2. Provides written confirmation of the deletion and a copy of the consumer report that reflects the consumer's file after the deletion, no later than 5 business days after making the deletion.
3. Includes in that written confirmation a statement of the consumer's right to request that the agency furnish notifications listed under "Notification of Deletion of Disputed Information"

### **Statement of Dispute**

If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit such statement to not more than 100 words if it provides the consumer with assistance in writing a clear summary of the dispute.

Whenever a statement of dispute is filed, unless there are reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency must, in any subsequent report containing the information in question, clearly note that it is disputed by the consumer. The consumer reporting agency must provide either the consumer's statement or a clear and accurate codification or summary thereof.

### **Notification of Deletion of Disputed Information**

Following the deletion of information which has been found to be inaccurate or whose accuracy can no longer be verified, or any notation as to the disputed information, the consumer reporting agency must, at the request of the consumer, furnish notification that the item has been deleted or that the statement of dispute has been added to any person specifically designated by the consumer who has within the past two years received a consumer report for employment purposes, or within six months prior received a consumer report for any other purpose, which contained the deleted or disputed information.

### **Reinvestigation Requirement Applicable to Resellers**

If a reseller receives a notice from a consumer of a dispute concerning the completeness or accuracy of any item of information contained in a consumer report on such a consumer produced by the reseller, the reseller must within 5 business days of receiving such notice, and free of charge

1. Determine whether the item of information is incomplete or inaccurate as a result of an act of omission or the reseller; and
2. If the reseller determines that the item of information is incomplete or inaccurate as a result of an act or omission of the reseller, no later than 20 days after receiving such notice, correct the information in the consumer report or delete it; or
3. If the reseller determines that the item of information is not incomplete or inaccurate as a result of an act or omission of the reseller, convey the notice of the dispute, together with all relevant information provided by the consumer, to each consumer reporting agency that provided the reseller with the information that is the subject of the dispute, using an address or a notification mechanism specified by the consumer reporting agency for such notices.



Upon completion of a reinvestigation by a consumer reporting agency that received the notice of dispute from a reseller- the notice by the consumer reporting agency that received the notice of dispute from a reseller- the notice by the consumer reporting agency must be provided to the reseller in lieu of the consumer; and the reseller shall immediately re-convey such notice to the consumer.

No provision of this subsection shall be construed as prohibiting a reseller from conducting a reinvestigation of a consumer report directly.

## Section § 611 Conclusion

The clock starts ticking as soon as an applicant disputes any information reported by the CRA. Consumer reporting agencies are required to take any information an applicant is able to provide and use it to reinvestigate the background check. Consumer reporting agencies must conduct this reinvestigation under a strict time table and the results must be reflected in an updated report. Furthermore, if a dispute remains unresolved, applicants have a right to include a statement in their reports explaining their reasons for the dispute. In all instances, applicants have the right to a copy of their report. Furthermore, at the request of the consumer, it is the obligation of a consumer reporting agency to notify employers (or any others that have been provided with a background check) that changes have been made in the report.

## Section § 612. Charges for Certain Disclosures

As we have previously discussed, consumers (applicants) are entitled to receive a copy of their file. Section 612 of the FCRA discusses if/when it is appropriate to charge a consumer for his/her file.

**Free disclosure after adverse notice to consumer-** Each consumer reporting agency that maintains a file on a consumer shall make all disclosure without charge to the consumer, if, not later than 60 days after receipt by such a consumer of a notification of either pre-adverse or adverse action from an employer, the consumer requests a copy of his/her report.

**Free disclosure under certain other circumstances-** Upon the request of the consumer, a consumer reporting agency (such as Justifacts) shall make all disclosures once during any 12-month period without charge to the consumer if the consumer certifies in writing that the consumer:

1. Is unemployed and intends to apply for employment in the 60-day period beginning on the date on which the certification is made; or
2. Is a recipient of public welfare; or
3. Has reason to believe that the file on the consumer at the agency contains inaccurate information due to a fraud.

**Reasonable Charges Allowed for Certain Disclosures-** In the case of a request from a consumer other than a request that is considered above, a consumer reporting agency may impose a reasonable charge



on a consumer for making a disclosure to the consumer. This charge must be indicated to the consumer before making the disclosure. The Federal Trade Commission set the maximum charge at \$11.00, effective January 1, 2011.

## **Section § 612 Conclusion**

Under the above mentioned circumstances, applicants are permitted to request a copy of their file, free of charge, once in a 12-month period. Organizations are permitted to charge a fee of \$11.00 or less if the conditions of the free disclosure have not been met.

## **Section § 613. Public Record Information for Employment Purposes**

Section 613 of the FCRA protects employees from adverse information which would affect their employment. This section of the FCRA instructs consumer reporting agencies about reporting adverse public records.

A consumer reporting agency (such as Justifacts) which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers (applicants) which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall:

1. At the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or
2. Maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

## **Section § 613 Conclusion**

Consumer reporting agencies are obligated to report complete and up to date information. We must keep this section of the FCRA in mind when using any private database of public information. Although Justifacts National Criminal Database provides a great deal of useful information, the information may at times be outdated, and thus violate Section 613. In order to remain in strict compliance with the FCRA, Justifacts verifies case information found in our National Criminal Database with the originating jurisdiction. Employers must be wary of any consumer reporting agency who offers "instant criminal searches", these searches may carry risk of violating Section 613.



## **Section § 614. Restrictions on Investigative Consumer Reports and Section § 615. Requirements on Users of Consumer Reports**

### **Section § 614 Restrictions on Investigative Consumer Reports**

Whenever a consumer reporting agency (such as Justifacts) prepares an investigative consumer report (background check), no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent report, or the adverse information was received within the three month period preceding the date the subsequent report is furnished.

### **Section § 615 Requirements on Users of Consumer Reports**

**Duties of users taking adverse actions on the basis of information contained in consumer reports-**If any person takes any adverse action with respect to any consumer (applicant) that is based in whole or in part on any information contained in a consumer report, the person shall:

- a. Provide oral, written, or electronic notice of the adverse action to the consumer,
- b. Provide to the consumer orally, in writing, or electronically the name, address, and telephone number of the consumer reporting agency (including a toll-free number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person and a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken;
- c. Provide to the consumer an oral, written, or electronic notice of the consumer's rights to obtain, within 60 days, a free copy of a consumer report on the consumer from the consumer reporting agency and to dispute with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.

## **Section § 614 & 615 Conclusion**

We must respect the fact that applicants have the right to dispute adverse information found in their background check. Background check companies are restricted in their ability to add adverse information in any subsequent reports issued on an applicant. Furthermore, if adverse information is reported on an individual, measures must be taken to provide that individual with the adverse information that is being used against him/her. An applicant must be given the right to directly contact the consumer reporting agency that has conducted the background check on him/her and request a copy of that background check.

So employers take heart, with a little diligence it is possible to get the information you need without fear of repercussions down the road. FCRA Compliance does not have to be complicated and Justifacts is here to help.



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