***This information presented here is not legal advice and is presented for general education purposes ONLY. KRESS Inc recommends that you consult with legal counsel for advice and opinions.***

##### Adverse Action Guide for Employers

**What is the Fair Credit Reporting Act?**

The Fair Credit Reporting Act (FCRA) is federal legislation that became effective in April 25, 1971, designed “to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer’s right to privacy.”

Under the Fair Credit Reporting Act (FCRA), employers are required to take certain actions whenever they obtain a consumer report on a job applicant or employee. All background screening reports produced by outside vendors are classified as consumer reports and therefor fall under FCRA. FCRA requirements include notification, certification and action before and after an adverse event.

##### Why is the FCRA important to my company?

The FCRA governs employment screening reports obtained from third party agencies, such as KRESS Inc. There are also rules and

requirements that must be followed by the potential employe

to insure that the information is used fairly.

If a hiring department relies on any part of the information from a pre-employment screening report obtained from an approved vendor to take "adverse action" (such as denying employment or reassigning or terminating an employee), they must ensure that appropriate notice will be provided to the applicant.

##### What are my company’s requirements?

When you order an employment screening report, you need to certify to KRESS Inc:

* the purpose for requesting the report and use the information ONLY for that purpose.
* 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.
* that the

onsumer report or investigative consumer report will

not be ordered for retention or promotion purposes

without the consumer’s authorization.

The KRESS Inc Client Service Agreement needs to be signed and returned to our office prior to initiating your account and contains the above information.

##### I have a small company and only hire one or two people per year. Do I still need to follow the Fair Credit Reporting Act?

Yes. Any company who orders and uses a consumer report or an investigative consumer report in full or in part to make a hiring decision is required to follow the guidelines of the FCRA.

##### 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 reportin

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 criminal records, credit reports, educational 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 knowledge concerning any such items of information.”

with whom he is acquainted or who may have

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.

KRESS Inc provides both types of reports to our clients for employment purposes.

##### How do I notify applicants I am requesting a background check?

Any time a consumer report is ordered for employment purposes, you must notify your applicants. The simplest way to do

this

is to have your applicants

sign the KRESS Inc Notice and Acknowledgement Authorization and Release which is a

standalone document and notifies your applicants that a consumer report may be ordered on them. The document also contains information regarding the applicants’ rights as prescribed by the FTC and the CFPB.

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

If the information found on the background report would make you consider not hiring or rescinding a job offer to an applicant, you must notify the applicant of this fact in the Pre-Adverse Action phase. As the employer / potential employer, you must

* provide a copy of the report along with the Summary of Rights
* notify the applicant of the potential adverse action either orally, in writing or electronically.

Once

the applicant has been

sent the Pre-Adverse Action notice, you

need to give the applicant a reasonable amount of

time to dispute the information in the background screening report.

Once the applicant has had reasonable time to dispute the information, the Adverse Action step may be taken. As the employer/ potential employer, you must provide the applicant with the following:

* description in writing of the applicant’s right to obtain a free report within 60 days to dispute any inaccuracies with the consumer reporting agency.
* reporting agency’s name, address and telephone number
* a statement noting that the consumer reporting agency did not the adverse decision.

make the decision and cannot provide the reason for

KRESS Inc has also simplified these processes for you and has included samples of the Pre-Adverse and Adverse Action letters and the FCRA Summary of Rights in the packet.

##### 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 p rposes that adversely affects any current or prospective employee.” These decisions include not hiring, not retaining or not promoting an individual.

##### What does this mean for my company?

If your company uses a consume

report/investigative consumer report in whole or in part to deny someone employment or

promotion, you are obligated under the FCRA to provide BOTH the Pre-Adverse and the Adverse Action Notifications to those applicants/employees.

##### What is a Pre-Adverse Action Notification?

The notification 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

reasonable

time to dispute the information. While there is no time limit specified in the FCRA, legal opinion states five to

seven business days as reasonable. KRESS gives 14 calendar days between notices.

##### What is an Adverse Action Notice?

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

Yes.

Both are required under the FCRA.

##### Where can I get samples of these disclosures?

Sample Pre-Adverse and Adverse Action notices are included in this packet, or you may contact our office at 888-636-3694 to receive copies of these lett rs in Word format.

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

Legal opinions have varied; however, there is nothing in the FCRA that states an employer must consider any correction that a reporting agency may make. The job should be kept open during the five to seven business days to allow the applicant to dispute the information, but after that, whether or not the information is disputed by the applicant, the employer can make a hiring decision. An employer may choose to wait until the dispute is resolved, but there are no requirements in the FCRA to hold a job open for a long period of time.

##### What are the 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.

##### How can KRESS help me?

KRESS has created a seamless solution for the Adverse Action Notifications by doing this entire process for you. Once you have determined you will not be hiring a potential employee based on the consumer report we provide you, simply contact us or log into your account online to begin the process, as we will not send the notifications without your approval to do so. Once the notifications have been mailed, you will receive copies of the letters in a final report for your records.

**Step One:**

Supply the applicant with:

* Pre-Adverse Action Notice;
* Copy of the Consumer Report;
* Summary of Your Rights Under the FCRA

**Step Two:**

Give the applicant sufficient time to respond and/or dispute the information, usually 14 days.

**Step Three:**

Send the Adverse A tion Notice with the Summary of Rights to those applicants you decide not to hire.

**Simple Steps in the Employment Screening Process**

Have the job applicant sign the KRESS Inc Disclosure and Authorization form.



Initiate the Pre-Employment process with KRESS Inc.



KRESS Inc processes the request and produces a complete report.

 

Report returns adverse information resulting in an adverse hiring decision.

No adverse information was returned in the report.

Move forward with your hiring decision.

**SAMPLE PRE-ADVERSE ACTION NOTICE**

Month Day, Year

Applicant Name Address 1

Address 2 City, State Zip

Dear Applicant Name;

Thank you for submitting an application of employment to YOUR COMPANY NAME.

As you

are aware,

YOUR COMPANY NAME conducts routine

background investigations

while reviewing applicants for employment. As part of that process and with your consent, we obtained an investigative consumer report from:

KRESS Employment Screening 320 Westcott St, Suite 108

Houston, Texas 77007

1-888-636-3693

Based in part upon information contained in that report, we may deny your application for employment.

Pursuant to your rights under the Fair Credit Reporting Act, we

are providing you with the

name,

address, telephone number, and

toll-free telephone number of the

company

that

furnished the report, a copy of the consumer report, and a written description of your rights under the Act.

Further,

we advise

you that the consumer reporting

agency listed above

does not make

decisions to take adverse action and is unable to provide you the specific reasons why any adverse action may be taken.

You have the right to dispute the accuracy or completeness

of any information in

the

#### consumer report furnished by the agency. We advise you, however, that the correction of any inaccurate or incomplete information would not necessarily result in your being hired by YOUR COMPANY NAME.

We thank you for applying with us.

Sincerely,

Enclosure



**SAMPLE FINAL ADVERSE ACTION NOTICE**

Name Address

City, State Zip

Dear Name:

Your application for employment with COMPANY NAME has been denied. This decision was made, in whole or in part, based upon information obtained from:

KRESS Employment Screening 320 Westcott St, Suite 108

Houston, Texas 77007

1-888-636-3693

This consumer reporting agency (CRA),

however, did not make

the decision to deny

your

employment and is unable to provide you with specific reasons for the decision.

Please be informed that you may obtain a

ree copy of the report from the CRA within 60 days

of your

receipt of

his notice,

and you may dispute

directly with the CRA

the accuracy or

completeness of any information in the consumer report.

This letter is sent to you in compliance with the Fair Credit Reporting Act.

Sincerely,

COMPANY NAME

***Para informacion en espanol, visite*** [***www.consumerfinance.gov/learnmore***](http://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**](http://www.consumerfinance.gov/learnmore) **or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20006.**

## **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](http://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](http://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](http://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.](http://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:

1.a. Banks, savings associations, and credit unions with total assets of over $10 billion and their affiliates.

b. Such affiliates that are not banks, savings associations, or credit unions also should list, in addition to the Bureau:

1. Bureau of Consumer Financial Protection 1700 G Street NW

Washington, DC 20006

1. Federal Trade Commission: Consumer Response Center – FCRA Washington, DC 20580

(877) 382-4357

1. To the extent not included in item 1 above:
	1. National banks, federal savings associations, and federal branches and federal agencies of foreign banks
	2. 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
	3. Nonmember Insured Banks, Insured State Branches of Foreign Banks, and insured state savings associations
	4. Federal Credit Unions
2. Office of the Comptroller of the Currency Customer Assistance Group

1301 McKinney Street, Suite 3450

Houston, TX 77010-9050

1. Federal Reserve Consumer Help Center

P.O. Box 1200 Minneapolis, MN 55480

1. FDIC Consumer Response Center 1100 Walnut Street, Box #11

Kansas City, MO 64106

1. National Credit Union Administration Office of Consumer Protection (OCP)

Division of Consumer Compliance and Outreach (DCCO) 1775 Duke Street

Alexandria, VA 22314

1. Air carriers Asst. General Counsel for Aviation Enforcement & Proceedings Department of Transportation

400 Seventh Street SW Washington, DC 20590

1. Creditors Subject to Surface Transportation Board Office of Proceedings, Surface Transportation Board

Department of Transportation 1925 K Street NW Washington, DC 20423

1. Creditors Subject to Packers and Stockyards Act

Nearest Packers and Stockyards Administration area supervisor

1. Small Business Investment Companies Associate Deputy Administrator for Capital Access United States Small Business Administration

406 Third Street, SW, 8th Floor Washington, DC 20416

1. Brokers and Dealers Securities and Exchange Commission 100 F St NE

Washington, DC 20549

1. Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations
2. Retailers, Finance Companies, and All Other Creditors Not Listed Above

Farm Credit Administration 1501 Farm Credit Drive McLean, VA 22102-5090

FTC Regional Office for region in which the creditor operates or Federal Trade Commission: Consumer Response Center – FCRA Washington, DC 20580

(877) 382-4357