Avoiding Hiring Liability:
Conducting Background Checks and Complying with the FCRA
An Overview for Independent Schools
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Please note that this article is provided for general information only. The information provided should not be construed as legal advice nor should it be used as a substitute for consulting with legal counsel. Schools are advised to work with their own attorneys before implementing policy and utilizing the example forms provided herein.

I. Introduction

With increasing frequency, independent schools are subjected to claims filed by injured teachers, students, and other members of the school community alleging negligent hiring. The theory behind these claims is that as organizations entrusted with the custody, care, and education of children, independent schools must ensure safe and healthy learning environments. As a result, institutions have the obligation to assure that the individuals they employ are not only qualified to perform the job they are hired to perform but also trustworthy enough to be brought into the school environment. Protecting students and employees and avoiding claims of negligent hiring require that schools utilize reasonable hiring processes to screen out applicants who pose a danger to the school community. An increasingly mobile workforce has eased the ability of individuals to relocate outside and beyond the community familiar with past actions. At the same time, fear of claims of defamation and slander lead many employers to avoid sharing information beyond the job title and dates of employment of former employees.

The increasing need for information and decreasing willingness of those who possess it to share relevant details require that schools remain diligent in their screening of applicants and that they maintain a comprehensive record of the screening processes they utilize and efforts made in the attempt to obtain information. Such documentation will assist schools in establishing proof of their efforts to screen out unqualified or dangerous individuals and in defending themselves in the case of negligent hiring, even if ultimately such efforts failed due to the unavailability of relevant information.

Like other selection tools, background checks provide information that may shed light on an applicant’s possible success in the job for which he/she has applied. While no hiring process can screen out every unfit applicant, background checks aid independent schools in determining whether an applicant is qualified for the job and whether he/she is likely to succeed based on prior performance and behavior. Background checks, which can include inquiries into education, professional certification and licensure, criminal history, driving history, and credit history, can also provide insight into whether the applicant is trustworthy and whether the applicant has a propensity to engage in inappropriate or even illegal behavior.

As important and enlightening as investigations into an applicant’s background may prove such inquiries are not without limitations and potential liability exposure. As a result, care must be taken when such inquiries are conducted. First, background checks may be incomplete or inaccurate and even those background checks providing complete and accurate information may lead to poor decisions when improperly used or misinterpreted. These limitations and an interest in protecting privacy led Congress to pass the Fair Credit Reporting Act (the "FCRA"). The FCRA outlines the obligations of employers when obtaining background investigations. This paper discusses the FCRA and its implications for independent schools in their role as employers.
II. **Background**

The FCRA is the federal law that governs how employers may gather and use background information on applicants for employment as well as existing employees. The FCRA exists to ensure that applicants and employees ("consumers") who are the subject of covered background investigations are treated in a fair and equitable manner with regard to the confidentiality, accuracy, relevancy, and proper utilization of information compiled, maintained, and reported by "consumer reporting agencies." The FCRA does so by limiting the use of these reports and requiring specific notification, consent, and disclosure procedures of entities utilizing the information contained in the reports. Consumer reports and investigative consumer reports may only be obtained from a Consumer Reporting Agency ("CRA") for purposes that are considered permissible under the FCRA. Employers and potential employers are permitted to obtain these reports only for employment purposes. In the employment setting, the FCRA most commonly affects background checks and reference checks obtained through third parties, such as criminal and credit background check companies. Although many federal agencies have authority to enforce the FCRA, the Federal Trade Commission ("FTC") is the most active on FCRA issues relevant to employers.

Many states have enacted similar legislation addressing the compilation, reporting, and use of background information. These states include Arizona, California, Colorado, Georgia, Kansas, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Rhode Island, Tennessee, Texas, Virginia, and Washington. While the provisions of some states closely follow or even parrot the requirements of the FCRA, the provisions of others expand the scope of coverage and/or the procedural safeguards required under the federal FCRA.

III. **Coverage**

Although it is called the "Fair Credit Reporting Act," the FCRA covers far more than reports addressing credit. The FCRA covers all "consumer reports" and "investigative consumer reports" prepared by a "consumer reporting agency" and allows such reports to be obtained for certain permissible purposes, one of which is for making employment decisions. The obligations of an employer obtaining a report from a "Consumer Reporting Agency" ("CRA") depend on the type of report obtained from the agency. The FCRA defines a "consumer reporting agency" as a business that assembles consumer reports for other businesses. "Consumer reports" are reports containing information about a consumer's personal and credit characteristics, character, general reputation, and lifestyle. Credit records, driving records, criminal histories, and educational histories each are covered consumer reports if they are obtained through a consumer-reporting agency. "Investigative consumer reports" are reports in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, acquaintances, or associates of the consumer or others who may have knowledge concerning any such items. Employers utilizing consumer reports and investigative consumer reports obtained through a consumer reporting agency must comply with the requirements of the FCRA with respect to those consumer reports. Investigations that are conducted by consumer reporting agencies on behalf of employers regarding alleged workplace misconduct by current employees may also be covered by the FCRA as "investigative consumer reports" if the investigations gather information related to an individual's creditworthiness, credit standing or credit capacity.

The FCRA’s coverage of employment verifications and reference checks depends greatly on: 1) who conducts these checks; and 2) how the check is conducted. If the verification or reference checking is done directly by the employer, and not through a consumer-reporting agency, then the obligations under ...
the FCRA do not apply. For employment verifications and reference checks conducted by a consumer-reporting agency, the employer’s obligations depend on the type of information obtained as well as the manner in which it is obtained. As previously mentioned, the FCRA distinguishes between "investigative consumer reports" and "consumer reports" and provides differing obligations depending upon the type of report obtained. "Investigative consumer reports" are obtained through personal interviews of individuals conducted by representatives of the consumer-reporting agency. Consumer reports do not include interviews of individuals and are simply the collection of materials and information, although sometimes such information is gathered through conversations with individuals.

The FTC has indicated that simply checking and or verifying the facts stated on a job applicant's employment application, such as asking a prior or current employer whether an individual worked at the company during specific years, what the individual's job titles were during the employment period, and the individual's final salary, does not constitute an "interview" for purposes of FCRA obligations. An employer obtaining a report from a consumer reporting agency based on responses to these questions would be obtaining a consumer report, but not an investigative consumer report. If, on the other hand, the consumer reporting agency representative asked the applicant’s prior or current employer to rate the individual's job performance or asked whether the individual had ever been disciplined on the job or was terminated for cause, such questioning would go beyond fact-checking and would constitute an interview. An employer obtaining a report with the responses to these questions would be obtaining an investigative consumer report and would be subject to additional obligations under the FCRA.

IV. Requirements

The FCRA requires four major types of activity from employers obtaining consumer reports from consumer reporting agencies. These obligations are: 1) providing notice to the applicant or employee of the intent to investigate; 2) obtaining authorization from the applicant to conduct the check; 3) certifying to the CRA compliance with the FCRA; and 4) disclosing potential or actual adverse action resulting from information obtained from the report to the applicant. The Federal Trade Commission, which as noted above, oversees compliance with the FCRA, provides documentation to be used when complying with certain of these obligations. The specific requirements of the FCRA obligations are:

Providing Written Notice and Obtaining Written Authorization

Prior to obtaining a consumer report for employment purposes, an employer must provide the individual employee/applicant who is the subject of the report with a clear and conspicuous written notice that the employer may be obtaining a consumer report and that the information included in the report may be considered in the employment decision. This written notice must be a "separate document." It may not be a section of another document, such as an employment application, job posting, or employee handbook. The employer must also obtain the individual’s written authorization to obtain the report before requesting the report from the consumer-reporting agency. The FTC has indicated that employers may use one document to satisfy the notice and authorization obligation; however, the document may not be combined with or made part of any other form. Thus, a notice and authorization incorporated into an application form is not valid.

If medical information is to be obtained, the individual must explicitly consent to the release of medical information in addition to authorizing the employer to obtain a general consumer report. Substantial care must be exercised when collecting medical information as it may raise claims of discrimination under the Americans with Disabilities Act if utilized in an inappropriate manner.
Certifying Compliance

To obtain a consumer report from a consumer-reporting agency for employment purposes, an employer must certify that it has provided the required notice to the individual and has obtained written authorization from the individual to obtain the report. Additionally, the employer must certify that it will comply with the requirements of the FCRA in the event that it subsequently uses information obtained via the consumer report to take adverse action against the individual granting permission.

Disclosing Adverse Action

Once an employer has obtained a consumer report, the employer must notify the applicant/employee before taking adverse action based upon information contained in the report. Adverse action includes a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee. For example, if an independent school ordered background checks on three finalists for a head of school position and decided to reject one applicant based on information in the consumer report indicating a discrepancy with the educational history he reported, the school is obligated to notify the applicant prior to rejecting him. This "pre-adverse action disclosure" must include: 1) a copy of the applicant’s consumer report; and 2) a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act" (a document prescribed by the FTC and provided by the consumer-reporting agency).

The information from the consumer report need not be the determining factor to trigger the obligation. If, in making an adverse decision, the school relies on information from the consumer report, the school must make the pre-adverse action disclosure. If, for example, an applicant for director of development has a poor credit history and the school considers that a negative factor, but the applicant’s relative lack of experience in independent schools ultimately carries more weight in the decision to reject him, the school still must make the pre-adverse action disclosure because the information was a factor in the decision.

The information from the consumer report need not be negative to trigger this obligation. If a school decides to reject an applicant for accountant because the applicant’s credit report shows a debt load too high for the proposed salary, even though the applicant has a positive repayment history, then the school must make a pre-adverse action disclosure. Similarly, if the school decides to reject an applicant for controller because the applicant’s credit report shows only one credit account and the school wants someone who has an established track record of financial responsibility, the school must make a pre-adverse action disclosure. If any information in the consumer report influences an adverse decision, the applicant is entitled to the notice, even if the information is not, in itself, negative.

Providing the employee/applicant with this advance disclosure is intended to allow the individual the opportunity to correct inaccurate information that may be the basis of the rejection. The FTC has indicated that a five-day period between the pre-adverse action disclosure and the adverse action will generally suffice. Once the employer takes the adverse action, it must provide the individual with an adverse action notice informing the individual (orally, electronically, or in writing) of the adverse action. This notice must include: 1) notice of the action taken; 2) the name, address, and phone number of the credit bureau from which the report was obtained; 3) a statement that the credit bureau did not make the decision to take the adverse action and cannot provide specific reasons why it was taken; 4) notice of the consumer’s right to obtain a free copy of his or her credit report from the CRA within 60 days; and 5) notice of the consumer’s right to dispute the accuracy of the information in his or her credit report with a credit bureau.

Additional Requirements for Obtaining Investigative Consumer Reports
In addition to the notice and authorization required for consumer reports, employers obtaining investigative consumer reports face additional obligations. As noted above, an investigative consumer report is one in which interviews are conducted to collect information indicating character, general reputation, personal characteristics, and mode of living. By no later than three (3) days after requesting an investigative consumer report, the employer must clearly and accurately disclose, in writing, to the individual that an investigative consumer report including information as to his/her character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made. This disclosure must also include a statement informing the consumer of his/her right to make a written request for the disclosure of the nature and scope of the investigation to be made and to request a copy of his/her consumer rights under the FCRA. The FTC has recognized that, in some instances, the initial consumer report notice and authorization form may satisfy this additional notice requirement for investigative consumer reports. If the individual makes a written request for information on the nature and scope of the investigation, the employer must send this information, in writing, to the individual within five days of the date the request was received (or five days after ordering the report, if that is later). To obtain the report, the employer must certify to the consumer reporting agency that the employer has complied with all relevant requirements and that it will provide the written disclosure if requested by the individual.

The FCRA limits the type of information that a consumer-reporting agency may include in investigative consumer reports. A consumer reporting agency may not make an inquiry for the purpose of preparing an investigative consumer report for an employer if the inquiry, if made directly by the employer, would violate any applicable federal or state equal employment opportunity law or regulation. Generally, a consumer reporting agency may not furnish an investigative consumer report that includes information that is a matter of public record and that relates to an arrest, indictment, conviction, civil judicial action, tax lien, or outstanding judgment, unless the consumer reporting agency has verified the accuracy of the information within the 30-day period preceding the date on which the report is furnished. Consumer reporting agencies may not prepare or furnish an investigative consumer report on an individual that contains information that is adverse to the interest of the individual 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 or who has knowledge of such item of information unless: 1) the agency has followed reasonable procedures to obtain confirmation of the information from an additional source that has independent and direct knowledge of the information; or 2) the person interviewed is the best possible source of the information. The FCRA also prohibits consumer reporting agencies from providing employers a report that contains medical information unless the information is relevant to "process or effect" an employment action and the individual "provides specific written consent for the furnishing of the report that describes in clear and conspicuous language the use for which the information will be furnished."

Requirements Affecting Third Party Investigations of Workplace Misconduct

From 1999 to 2003, the FTC took the position that the FCRA applied to investigations of workplace misconduct conducted by third parties that met the definition of consumer reporting agencies. This position generated considerable controversy, discouraging small and mid-size employers who may have lacked the experience or ability to conduct investigations from obtaining the assistance of an outside expert, for fear of triggering the FCRA’s requirements. Following these requirements entailed obtaining the permission of the person under investigation before the third party could begin the investigation and giving advance warning to those suspected of misconduct. Also required was providing the individual with notice of the scope and nature of the investigation and a pre-adverse action copy of the report (with the names of sources removed). Employers grew increasingly concerned that these requirements were not only interfering with investigations, but also discouraging other employees from coming forward to make complaints or to provide information to investigators for fear that their participation would
become public knowledge.

The Fair and Accurate Credit Transactions Act ("FACT Act"), signed into law in 2003, makes it easier for employers to utilize third party investigators by excluding from the definition of "consumer report" certain employee investigation communications. An investigation made for the purpose of gathering information related to an individual's creditworthiness, credit standing, or credit capacity remains a consumer report or investigative consumer report and is subject to the regular requirements of the FCRA. In contrast, most investigations into suspected misconduct, a violation of law or regulations, or a violation of any pre-existing written policies of the employer are now excluded from the FCRA’s regular requirements as long as the results of the investigation are limited to the employer, the agent(s) of the employer, and legal authorities, as appropriate. To preserve this exclusion, employers should not make copies of investigations available to other employees, even an employee whose complaint triggered the investigation, unless required by law. If the employer takes adverse action against an individual based on the investigation and/or the resulting report, the employer must disclose to the individual the nature and substance of the communication upon which the adverse action is based. The employer is not required to disclose the sources of the information, including the identities of individuals interviewed as part of the investigation.

V. Penalties

The FCRA provides several enforcement mechanisms to compel employers to comply with its requirements. The FTC, other federal agencies, and even state governments may sue employers for noncompliance and are even able to obtain civil penalties. Additionally, individuals may sue employers for damages in federal court. If successful in his/her suit, the individual suing the employer can recover court costs and reasonable fees in addition to damages. Individuals may even seek punitive damages for deliberate violations.

In a 2004 case, two employers agreed to pay $325,000 in penalties for failing to properly provide applicants with pre-adverse action and adverse action notices. Those employers, which were sister companies following similar processes, asked job applicants to sign a release form authorizing the employers to obtain the applicants' credit reports, then reviewed each credit report and used a "Background Form" to rate the applicant as either "Poor," "Fair," or "Good." Based on this rating, the applicant was labeled as "Favorable" or "Unfavorable." The FTC filed a complaint alleging that, in many cases, the employers' decisions not to hire particular applicants were based wholly or partly on information contained in the individuals' credit reports. As adverse actions under the FCRA, these decisions triggered the employers' pre-adverse action and adverse action notice obligations, which were not met. It is important to note that complying with the requirements of the FCRA would not necessarily have required the employers to change their ultimate decisions. It simply would have required them to provide appropriate notice.

The FACT Act extended the FCRA’s statute of limitations to the earlier of either two years from the date the employee or applicant discovers the violation, or five years after the date the violation actually occurred. Therefore, employers should keep records of consumer reports and investigative consumer reports on employees and applicants for at least five years.

VI. Developing a Background Check Strategy

When establishing a hiring process and determining the types of background checks to perform, the first job is to identify the type of information that will predict an applicant’s ability to succeed in the job and
at the school. This decision is highly influenced by a school’s culture and values. Many schools are not as concerned about an applicant’s former experience as they are about the applicant’s educational background. Other schools prefer making decisions based on a rigorous day of interviewing and are far less concerned with what appears in an applicant’s background. Schools utilizing background checks as part of the hiring process must plan carefully to ensure they obtain the information needed to make wise hiring decisions, avoiding and/or limiting liability, while still meeting the requirements of the FCRA.

Deciding when and how to use background checks involves balancing a number of factors, including cost, time, and ease of administration. The varying importance these factors will hold for different schools means the approach best for one school may not be appropriate or feasible for another. In addition to the practical financial and time factors, the issues to consider prior to establishing the process include: 1) which positions require a background check; 2) how much information to gather on each applicant; 3) when in the hiring process to obtain background checks; 4) which consumer reporting agency to use; and 5) how the information obtained will be weighed in the overall hiring process.

Basically, the checks can be divided into two categories; one is an investigation of an applicant’s background and the other is a verification of information provided. With regard to the applicant’s background, the checks involved are a criminal history conviction check and a credit check. It is important to remember that in order to avoid claims of discrimination based on one of the categories protected under the Equal Employment Opportunity Commission, the employer must have a business reason for not hiring the applicant as a result of the findings. For example, refusing to employ a controller if he/she was previously convicted of embezzlement would be justified as a business necessity. It may be more difficult to refuse to offer a receptionist the job if she had no responsibilities related to money or other financial obligations.

Many states already require that independent schools conduct criminal background checks through the state or federal agency prior to employment. For those schools not obligated to conduct such a check, it is wise to consider gathering criminal conviction history prior to hiring any employee at a school since all employees have access to children. Regardless of the culture, a school’s primary responsibility is the health and safety of each and every student. To this end, all faculty and staff must be screened in a sufficient manner such that the school can feel confident in its obligations and representations that the school is taking all precautions to avoid exposing students to damage or harm. To meet this goal, it is wise to consider conducting a criminal background check on each and every possible employee of the school prior to making the job offer. This includes substitutes, coaches and janitorial staff, in addition to teaching and administrative staff.

The other category of check is a verification of the information provided on the application. With increasing regularity, applicants are found to have misrepresented or omitted critical information from their resume and/or application for employment. For positions where an applicant’s education is important, including jobs in teaching and administration, the school may wish to add verification of educational background. Positions that involve transporting students, either in school-owned or personal vehicles, should require a driving record inquiry. Depending on the type of vehicle, additional Department of Transportation requirements may apply.

The other information that may be gathered by a consumer-reporting agency is reference checks. While reference verification information can simply be the confirmation of years and positions held, it can also include an interview of the reference for opinions on job performance as well as ability to be re-hired. Such investigative inquiries would trigger the requirements under the investigative consumer reports as outlined above.

Schools should seek only information that is relevant to the job in question. This helps control costs, as
increasing the number of checks conducted and/or the amount of information sought in those checks usually increases the overall cost to the school. Also, this helps to avoid needlessly screening out qualified individuals on the basis of irrelevant data. Focusing only on job-related data helps maintain a broader pool of qualified applicants and helps minimize adverse impact on individuals based on protected categories, such as race and gender. The information needed may also depend on the history of the individual applicant. Many consumer reporting agencies, by default, will check an applicant’s criminal history only in the hiring school’s state and the neighboring one or two states. When obtaining a background check, the school should review an applicant’s application and request background information for other states in which the applicant has lived or worked. While this may increase the cost of the background check, it will help increase the likelihood of uncovering past criminal activity of an applicant who is attempting to hide from his/her past inappropriate behavior.

As discussed above, determining when in the hiring process to obtain background checks and what emphasis to place on background checks requires a balance of time, cost, and administrative constraints. Conducting background checks early in the hiring process can save interviewers time by eliminating applicants who do not pass the background check before they reach the interview stage. Conducting background checks at this early stage, however, increases the number of background checks conducted, which generally increases the ultimate cost to the school. Making background checks an early hurdle in the hiring process can also increase the administrative burdens of the hiring process.

As previously discussed, schools must provide pre-adverse action notices and adverse action notices to every applicant for whom the ultimate adverse decision was based on or influenced by information obtained in the background check. Obtaining background checks early in the process increases the likelihood that an adverse action will be based on or influenced by the background check. Even if the background check does not influence the decision, the fact that the school possessed the information prior to making the decision may serve as the basis for an inference that the school relied on the background check in reaching its decision. To minimize costs, administrative burdens, and the likelihood of alleged violations of the FCRA, schools may find it preferable to obtain background checks later in the hiring process, such as after identifying the top candidate (or the top few candidates), but before making an offer of employment or sending rejection notices to other applicants.

Schools that are more concerned with ensuring that all applicants advancing to final stages of consideration have already cleared the background check may determine that their needs are better met by obtaining background checks earlier in the process, even if this results in increased cost and administrative burdens. Again, the strategy taken may depend on the position in question. For a bus driver position, the applicant’s driving record and criminal record may be so important that the background check is one of the first steps in the hiring process. For other positions, such as head of school, the background check may serve more as a final step confirming that there is nothing in the leading candidate’s record to suggest that the applicant should not be hired.

Regardless of when in the process a school obtains background checks or what type of information it selects for a given position, the school must be consistent in how and when it obtains background checks for all applicants for a given position. For example, if a school is considering five applications for business manager after conducting an initial screening interview and it obtains a consumer report, including a credit history check on one of the applicants before scheduling him for a panel interview, the school should obtain a consumer report with credit history for the other four applicants before scheduling them for the panel interviews. This consistency ensures that all applicants are receiving equal consideration and that the school is not inadvertently making illegally discriminatory assumptions about applicants. After all, if employers could predict the results of an applicant’s background check reliably and accurately, there would be no need for background checks in the first place. Employers cannot make such predictions, however, and should therefore be consistent in their use of background checks.
checks for each position, rather than assuming they can tell which applicants are likely to be screened out by a background check.

Schools must also determine whether the use of background checks will be limited only to the hiring process. While it is generally not advisable to conduct blanket background checks of current employees, it may be appropriate to conduct a background check of a current employee under specific circumstances. For example, if a parent of a newly-admitted student from another state comes forward with an allegation that a teacher on staff was fired from the student’s prior school because of inappropriate sexual relations with a student, the school may wish to obtain a background check of the teacher for the state in question as a part of the investigation of the parent’s allegation. To conduct background checks of current employees, a school must provide notice to employees that such reports may be obtained during the term of employment and must have the employee’s written consent to obtain the background check. A disclosure in a handbook or other policy will not suffice; it must be made via a separate document, as with the pre-hire FCRA disclosure. To maintain the option of conducting background checks of current employees and to utilize third parties for investigations of potential misconduct, schools should ensure that their FCRA notices and authorizations provide for this possibility.

**VII. Conclusion**

Although no hiring process can guarantee that the applicants hired are qualified and trustworthy, background checks can help screen out applicants who were dishonest about their qualifications or those with a record for behavior that would pose a risk to students or other employees. Schools using the services of consumer reporting agencies to obtain background checks must be sure to comply with the requirements of the FCRA. Fortunately, once schools establish FCRA procedures and become accustomed to following those procedures, most are likely to find that the benefits of obtaining background checks far outweigh the time and expense involved. After all, the damage done by just one allegation of employee sexual misconduct involving a student can be irreparable. Unfortunately, background checks are only as good as the information available. Too often, school employees proven to have engaged in misconduct with students at one school are later found to have faced allegations of similar misconduct at a prior school. In some cases, in the hopes of minimizing embarrassment to the school and the employee, the prior employer(s) allowed the accused individual to resign instead of conducting an investigation or referring the matter to government authorities. With a clean official record, the individual gained employment elsewhere, only to once again become the subject of allegations.

In the wake of many high profile scandals involving student abuse and equally high profile vindications of employees falsely accused, schools and other institutions are increasingly dealing with these allegations by conducting full investigations and involving local authorities. The more that this trend continues, the more likely it is that background checks will uncover past wrongdoing by applicants. For now, schools should continue to use background checks and should supplement official records checks with informal information gathering, such as conducting a basic Internet search for an applicant’s name.

**VIII. Appendix - Example Forms**

- **Notice / Authorization Form:** A sample of the form that the employer must provide to the applicant / employee to meet the requirement of providing notice and obtaining authorization before obtaining a consumer report or investigative consumer report regarding that individual.
- **Pre-Adverse Action Notice:** A sample of the notice an employer must provide to an applicant / employee before taking adverse action in reliance on information obtained through a consumer report or investigative consumer report.

- **Adverse Action Notice:** A sample of the notice an employer must provide to applicant / employee once the employer has made the final decision to take adverse action with respect to that individual relying on information obtained through a consumer report or investigative consumer report.

- **A Summary of Your Rights Under the Fair Credit Reporting Act:** The notice prescribed by the Federal Trade Commission for informing applicants / employees of their rights under the FCRA and providing them with contact information for raising questions or concerns about consumer reports and investigative consumer reports.
Sample Notice / Authorization Form

CONSUMER REPORT DISCLOSURE AND AUTHORIZATION

I understand that, for employment purposes as part of the pre-employment background investigation and at any time during my employment with [SCHOOL] (the "School"), the School may obtain a consumer report or investigative consumer report that may include, but is not limited to, my creditworthiness or similar characteristics, employment and education verifications, social security verification, criminal and civil history, personal interviews, DMV records, any other public records and any other information bearing on my credit standing, credit capacity, character, general reputation, personal characteristics, and trustworthiness.

I hereby authorize and consent to [SCHOOL]’s procurement of such a report. I understand that, pursuant to the federal Fair Credit Reporting Act (15 U.S.C. § 1681 et seq), the School will provide me with a copy of any such report if the information contained in such report is, in any way, to be used in making an adverse decision regarding my fitness for employment with the School. I further understand that such report will be made available to me prior to any such decision being made, along with the name and address of the reporting agency that produced the report. I understand that, if an investigative consumer report is prepared, I have the right to request in writing complete and accurate disclosure of the nature and scope of the information requested and a summary of my rights as a consumer under the Fair Credit Reporting Act.

I release [SCHOOL] and/or its agents and any person or entity, which provides information pursuant to this authorization, from any and all liabilities, claims or lawsuits in regards to the information obtained from any and all of the above referenced sources used. I acknowledge that a telephonic facsimile or copy of this release shall be as valid as the original. In addition to private consumer reporting agencies, this release is valid for all federal, state, county, and local agencies and authorities.

The following is my true and complete legal name and all information is true and correct to the best of my knowledge:

Full Name (Printed)

Other Name(s) Used

Present Address City/State/Zip Time at this Address

Former Address City/State/Zip Time at this Address

*Date of Birth Social Security Number Driver's License Number State of License

Signature Date

*NOTE: The above information is required for identification purposes only, and is in no manner used in the employment decision-making process or as qualifications for employment. [SCHOOL] welcomes applications from all qualified individuals without regard to race, religion, color, sex, gender, age, disability, national origin, or any other category protected by law.

Pre-Adverse Action Notice

[APPLICANT NAME]
[APPLICANT ADDRESS 1]
Dear [APPLICANT],

Enclosed is a consumer report that we requested, with your authorization and consent, in connection with your application for employment with [SCHOOL]. In accordance with the Federal Fair Credit Reporting Act, also enclosed is a copy of your rights under the Act.

Based on our hiring criteria and the contents of this consumer report, we have made a preliminary decision not to consider you further for employment.

You have the right to dispute the accuracy of the information in this report by contacting the consumer-reporting agency directly. Please note, however, that the consumer agency did not make this employment decision and cannot explain to you specific reasons why it was made. The consumer-reporting agency may be contacted at:

[CRA NAME]
[CRA ADDRESS 1]
[CRA ADDRESS 2]
[CRA Phone Number]

If we do not hear from you within five business days of the date of this notice, our preliminary decision will become final.

Sincerely,

[NAME]
[TITLE]

Enclosures:

Copy of Consumer Report
FCRA Notice of Rights
Adverse Action Notice

[APPLICANT NAME]
[APPLICANT ADDRESS 1]
[APPLICANT ADDRESS 2]

[DATE]

Dear [APPLICANT],

As you know, on [DATE OF PRE-ADVERSE ACTION NOTICE], we provided you with written notification of our preliminary decision not to further consider you for employment with [SCHOOL]. This notification was provided in accordance with the Federal Fair Credit Reporting Act.

Effective as of the date of this letter, based on our hiring criteria and the contents of the consumer report we obtained with your consent and authorization, our preliminary decision has become final.

As explained in the initial notice, you have the right to dispute the accuracy of the information in this report by contacting the consumer-reporting agency directly. Please note, however, that the consumer agency did not make this employment decision and cannot explain to you specific reasons why it was made. You may request from the consumer-reporting agency a free copy of your credit report within 60 days. The consumer-reporting agency may be contacted at:

[CRA NAME]
[CRA ADDRESS 1]
[CRA ADDRESS 2]
[CRA Phone Number]

We appreciate your application for employment with [SCHOOL] and wish you success in your future career endeavors.

Sincerely,

[NAME]
[TITLE]
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, at the Federal Trade Commission's website (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 also are entitled to one free report every 12 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; 10 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.

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

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<tr>
<th>FOR QUESTIONS OR CONCERNS REGARDING:</th>
<th>PLEASE CONTACT:</th>
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<tr>
<td>CRAs, creditors, and others not listed below</td>
<td>Federal Trade Commission Consumer Response Center - FCRA Washington, DC 20580 1-877-382-4367 (Toll-Free)</td>
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<td>National banks, federal branches/agencies of foreign banks (word &quot;National&quot; or initials &quot;N.A.&quot; appear in or after bank's name)</td>
<td>Office of the Comptroller of the Currency Compliance Management, Mail Stop 6-6 Washington, DC 20219 800-613-6743</td>
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<tr>
<td>Federal Reserve System member banks (except national banks, and federal branches/agencies of foreign banks)</td>
<td>Federal Reserve Board Division of Consumer &amp; Community Affairs Washington, DC 20551 202-452-3693</td>
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<td>Savings associations and federally chartered savings banks (word &quot;Federal&quot; or initials &quot;F.S.B.&quot; appear in federal institution's name)</td>
<td>Office of Thrift Supervision Consumer Programs Washington, DC 20552 800-842-6929</td>
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<tr>
<td>Federal credit unions (words &quot;Federal Credit Union&quot; appear in institution's name)</td>
<td>National Credit Union Administration 1775 Duke Street Alexandria, VA 22314 703-518-6360</td>
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<tr>
<td>State-chartered banks that are not members of the Federal Reserve System</td>
<td>Federal Deposit Insurance Corporation Division of Compliance &amp; Consumer Affairs Washington, DC 20429 800-934-FDIC</td>
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<td>Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission</td>
<td>Department of Transportation Office of Financial Management Washington, DC 20590 202-366-1306</td>
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<tr>
<td>Activities subject to the Packers and Stockyards Act, 1921</td>
<td>Department of Agriculture Office of Deputy Administrator - GIPSA Washington, DC 20250</td>
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The FTC provides a notice entitled "A Summary of Your Rights Under the Fair Credit Reporting Act." This notice is included in the attached appendix, along with a background check authorization form and sample pre-adverse action and adverse action notices.

Schools using general Internet searches are cautioned that, in doing so, they may be exposed to information that cannot be the basis of a hiring decision. Schools uncovering negative information about an applicant through a general Internet search must also be sure to confirm that the information actually pertains to the applicant, and not to another person with the same name.