



Compliance Packet



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www.inquirehire.com

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Required Actions

Fax, email or send the following:

Copy of drivers license

Copy of business license or type and number

Tax ID number

Copy of lease agreement (if renting) or property record (if owned)

Fax: 563-323-5441

Email: inbox@inquirehire.com

COMPLIANCE STATEMENT

The information we provide to our customers on consumers is highly regulated. Inquirehire take the position that any information requested, processed, transmitted, disseminated and used must be done legally and in compliance with all applicable Federal and State laws and regulations. As a Consumer Reporting Agency (CRA) we have specific restrictions and requirements in regard to all consumer information. As a User of Consumer Information, you too, have specific restrictions and requirements. Our failure to abide by the restrictions and requirements can subject both of us to loss of access, civil monetary penalties and or criminal charges.

This compliance packet is designed to assist Inquirehire customers with compliance for Federal and State laws regulating pre-employment screening and tenant screening. We strive to keep you informed of all applicable laws and regulatory issues concerning consumer reports.

We require that you read through this compliance packet and familiarize yourself with its content. We suggest that you encourage each person accessing consumer information to read this packet as well.

Important Notification: Inquirehire cannot provide legal advice. The information in this compliance packet is for awareness and education and should not be considered as legal advice. Inquirehire recommends that you consult with legal counsel in regard to your specific screening program, policies and procedures to ensure legal compliance.

If you should have any questions concerning the content of this compliance packet, please contact Jim Sweeney at 563-323-5922 or jim@inquirehire.com.

Thank you for your business!

James M. Sweeney
President

Explanation of Forms

When an employer uses a third party agency to help conduct a background check, both the third party and the employer must abide by provisions in the Fair Credit Reporting Act (FCRA). Even though the law uses the term “credit”, the FCRA goes beyond the use of credit reports. A background report is a “consume report” and therefore establishes specific requirements. In order to comply with the FCRA, you will need to use or be aware of the following forms. Here are the forms and a brief explanation:

Disclosure and Authorization Form – The employer is required to disclose to the applicant that a background report may be requested. The employer must also obtain written consent from the applicant before procuring the report. This form meets both requirements. Please note that this form is to be separate and distinct from an employment application. Feel free to put this on your own letterhead or tailor to your needs. You should consult legal counsel before implementing this form or substituting your own.

Client Adverse Action Protocol – This document provides an explanation as to how an employer should proceed when taking adverse action.

Pre-Adverse Action Notice – When an employer receives a consumer report and intends not to hire the applicant based upon the report, the applicant then has certain rights. If the “adverse action” is intended as a result of a consumer report, then the applicant is entitled to certain documents. This pre-adverse action notice is given to the applicant so they have the opportunity to see the report with the information being used against them and to dispute the information if necessary. This is a sample pre-adverse action notice. You should consult legal counsel before implementing this form or substituting your own.

Adverse Action letter – If an employer makes a final decision not to hire an applicant, the employer must send a notice of adverse action. This is a sample adverse action letter. You should consult legal counsel before implementing this form or substituting your own.

Policy and Procedure for Dispute Resolution – This outlines the re-investigation process which is undertaken when a consumer disputes information found in the background report.

Summary of Rights – A copy of this must be given to the applicant if you deny employment based on information received in the report. This must accompany the Pre-adverse Action notice.

Notice to Users of Consumer Reports – This document details what your obligations are under the Fair Credit Reporting Act (FCRA). The FCRA requires that a consumer reporting agency provide a copy of this document to every employer that requests a consumer report.

Access Security Practices – Suggested Security practices when using on-line services.

Q & A about the EEOC Guidance – This has question and answers regarding the EEOC policy on the use of criminal records by employers.

Consumer Information Privacy Policy – This is Inquirehire’s Privacy Policy

Employment and Education Verification Disclosure – This explains the general guidelines we follow when performing these verifications.

Resource Page – This is a list of resource for employers concerning laws that impact the procurement and use of background investigations.

Consumer Information Privacy Policy

Inquirehire respects your concerns about maintaining the privacy of non-public personal information (NPI) data submitted to us by clients in connection with the employment background and credential verification services that Inquirehire provides. The privacy policy covers all information that we collect including the data we collect from third parties and other sources in connection with the services that we provide. All data will be collected, stored and used in compliance with applicable law, which may include the Fair Credit Reporting Act (“FCRA”), and other state and federal laws. This notice explains why we collect NPI, what we do with NPI, and how we protect your privacy.

Collecting Information

We collect NPI about our customers and individuals to provide them with investigative and pre-employment screening services. This may include telephone number, address, date of birth, Social Security number, occupation, employment information, and financial information. We may receive NPI from your applications and forms, other businesses, and other service providers.

Intended use of Information

Our clients provide us with personal information in connection with the collection & preparation of data reports. Such personal information may include employment history and other credentials related to the prospective employment with our clients. Inquirehire will use such information only for the purpose of performing pre-employment screening and credential verification services, including to verify the accuracy of the personal information and to check on references. In addition to the data that is submitted to Inquirehire by our clients, Inquirehire may collect data from third parties, such as contact information, public records, biographical information, credit and other lawful checks. Inquirehire may prepare interview notes, comments from references and a record of our contact with individuals. Inquirehire will provide all such information to our clients in one or more reports.

Sharing Information

We share the types of NPI described above primarily with people who perform research of public records and other professional investigative services in order to fulfill investigative requests. We may occasionally share information with professional services that may help us to collect fees, make payments or detect fraud. The organization may retain the NPI and disclose it to others for whom it performs services. We may also share NPI when otherwise required or permitted by law, such as sharing with governmental or other legal authorities. When legally necessary, we ask your permission before sharing NPI about you. Our practices apply to our former, current and future customers.

Please be assured we do not share your NPI to market any product or service.

When other companies help us conduct business, we expect them to follow applicable privacy laws. We do not authorize them to use or share NPI except when necessary to conduct the work they are performing for Inquirehire or to meet regulatory or other governmental requirements.

Personal Information Disclosure: United States or Overseas

Inquirehire opposes the “offshoring” of NPI of consumers – such as names, dates of birth, and Social Security numbers (SSNs) – sent overseas outside of the United States and its territories and beyond the protection of U.S. Privacy laws. Inquirehire believes consumers are best served by keeping all such

information in the United States.

Inquirehire is a member of ConcernedCRA's (<http://www.concernedcras.com/>) a group of Consumer Reporting Agencies (CRAs) dedicated to protecting consumer privacy by not offshoring NPI. Inquirehire has adopted the policy of ConcernedCRA's and operates in as follows:

Domestic Background Screening: Where a CRA (background screening firm) is providing background screening services for consumers in the United States based upon information available in the U.S., a firm displaying the ConcernedCRA seal certifies that it does not send data outside the U. S. or its territories for processing or preparation of a background check report or for any other reason. All work is done in the U.S.

International Screening: Where there is an international background check for verification of employment, education, or a professional degree, or for a criminal record check, some information may have to go offshore by necessity since the information being sought is offshore. However, firms displaying the ConcernedCRA seal have taken measures to protect personal and confidential data: **a.)** Documentation or information such as passport numbers, or unique identification numbers and date of birth, are not sent to anyone overseas other than the actual verification provider (e.g. employer or school registrar) whenever possible. **b.)** Where it is necessary to utilize a local firm, the local firm will first be asked to provide local contact information so that the CRA can contact the foreign verifying party directly. **c.)** If, due to infrastructure or other issues in a foreign country, a foreign research firm must perform the verification, then the CRA or its agent has properly vetted the local firm, and will redact any unnecessary information.

Where a CRA utilizes a third party service to perform domestic or international services in connection with providing background reports, firms that adopted this standard have made reasonable inquiries to ensure that any provider is also following the ConcernedCRA standard.

Safeguarding Information

Inquirehire will take all appropriate measures to assure the security of personal data. Inquirehire web site and any data transmitted to or from it are protected by a secure socket layer (SSL) which encrypts the data. All data that is stored on our systems is accessible only to our authorized personnel, those of which have been trained to protect against loss, misuse, unauthorized access, disclosure of personal data under Inquirehire control. Our location has an onsite security system that enables physical entry only by an electronic identification badge and we have implemented multiple policies concerning the safeguarding of information. We value our knowledge in our technology and our security policies.

Inquirehire requires disposal practices that are reasonable and appropriate to prevent the unauthorized access to or use of NPI. Inquirehire uses reasonable measures for disposing of hard copy and electronic NPI that meets the standards of the National Association for Information Destruction (NAID).

Access to Information

You may request access to certain NPI we collect to provide the investigative and pre-employment services. You must make your request in writing and send it to the address below. The letter should include your full name, address, and telephone number. If you request, we will send copies of the NPI to you. We may charge a reasonable fee to cover our copying costs.

Correction of Information

If you believe NPI we have about you is incorrect, please write to us. Your letter should include your full name, address, and telephone number. Your letter should also explain why you believe the NPI is inaccurate. If we agree with you, we will correct the NPI and notify you of the correction. We will also notify any person who may have received the incorrect NPI from us in the past two years if you ask us to contact that person.

If we disagree with you, we will tell you we are not going to make the correction. We will give you the reasons for our refusal. We will also tell you that you may submit a statement to us. Your statement should include the NPI you believe is correct. It should also include the reasons why you disagree with our decision not to correct the NPI in our files. We will file your statement with the disputed NPI. We will include your statement anytime we disclose the disputed NPI. We will also give the statement to any person designated by you if we may have disclosed the disputed NPI to that person in the past two years.

Contacting Us

If you feel that your personal information has been compromised and/or need assistance with respect to Inquirehire's privacy policy or practices, please contact the following: Jim Sweeney Inquirehire 320 LeClaire Street, Davenport, IA 52801, 800-494-5922 or jim@inquirehire.com.

We reserve the right to modify this notice. We will provide you with a new notice if we make material changes to our privacy practices.

Revised Jan 2014

Remedying the Effects of Identity Theft

Para informacion en espanol, visite www.consumerfinance.gov/learnmore o escribe a la Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.

You are receiving this information because you have notified a consumer reporting agency that you believe that you are a victim of identity theft. Identity theft occurs when someone uses your name, Social Security number, date of birth, or other identifying information, without authority, to commit fraud. For example, someone may have committed identity theft by using your personal information to open a credit card account or get a loan in your name. For more information, visit www.consumerfinance.gov/learnmore or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.

The Fair Credit Reporting Act (FCRA) gives you specific rights when you are, or believe that you are, the victim of identity theft. Here is a brief summary of the rights designed to help you recover from identity theft.

1. You have the right to ask that nationwide consumer reporting agencies place "fraud alerts" in your file to let potential creditors and others know that you may be a victim of identity theft. A fraud alert can make it more difficult for someone to get credit in your name because it tells creditors to follow certain procedures to protect you. It also may delay your ability to obtain credit. You may place a fraud alert in your file by calling just one of the three nationwide consumer reporting agencies. As soon as that agency processes your fraud alert, it will notify the other two, which then also must place fraud alerts in your file.

- Equifax: 1-800-685-1111; www.equifax.com
- Experian: 1-888-397-3742; www.experian.com
- TransUnion: 1-800-888-4213; www.transunion.com

An initial fraud alert stays in your file for at least 90 days. An extended alert stays in your file for seven years. To place either of these alerts, a consumer reporting agency will require you to provide appropriate proof of your identity, which may include your Social Security number. If you ask for an extended alert, you will have to provide an identity theft report. An identity theft report includes a copy of a report you have filed with a federal, state, or local law enforcement agency, and additional information a consumer reporting agency may require you to submit. For more detailed information about the identity theft report, visit www.consumerfinance.gov/learnmore.

2. You have the right to free copies of the information in your file (your "file disclosure").

An initial fraud alert entitles you to a copy of all the information in your file at each of the three nationwide agencies, and an extended alert entitles you to two free file disclosures in a 12-month period following the placing of the alert. These additional disclosures may help you detect signs of fraud, for example, whether fraudulent accounts have been opened in your name or whether someone has reported a change in your address. Once a year, you also have the right to a free copy of the information in your file at any consumer reporting agency, if you believe it has inaccurate information due to fraud, such as identity theft. You also have the ability to obtain additional free file disclosures under other provisions of the FCRA. See www.consumerfinance.gov/learnmore.

3. You have the right to obtain documents relating to fraudulent transactions made or accounts opened using your personal information. A creditor or other business must give you copies of applications and other business records relating to transactions and accounts that resulted from the theft of your identity, if you ask for them in writing. A business may ask you for proof of your identity, a police report, and an affidavit before giving you the documents. It may also specify an address for you to send your request. Under certain circumstances, a business can refuse to provide you with these documents. See www.consumerfinance.gov/learnmore.

4. You have the right to obtain information from a debt collector.

If you ask, a debt collector must provide you with certain information about the debt you believe was incurred in your name by an identity thief - like the name of the creditor and the amount of the debt.

5. If you believe information in your file results from identity theft, you have the right to ask that a consumer reporting agency block that information from your file.

An identity thief may run up bills in your name and not pay them. Information about the unpaid bills may appear on your consumer report. Should you decide to ask a consumer reporting agency to block the reporting of this information, you must identify the information to block, and provide the consumer reporting agency with proof of your identity and a copy of your identity theft report. The consumer reporting agency can refuse or cancel your request for a block if, for example, you don't provide the necessary documentation, or where the block results from an error or a material misrepresentation of fact made by you. If the agency declines or rescinds the block, it must notify you. Once a debt resulting from identity theft has been blocked, a person or business with notice of the block may not sell, transfer, or place the debt for collection.

6. You also may prevent businesses from reporting information about you to consumer reporting agencies if you believe the information is a result of identity theft.

To do so, you must send your request to the address specified by the business that reports the information to the consumer reporting agency. The business will expect you to identify what information you do not want reported and to provide an identity theft report.

To learn more about identity theft and how to deal with its consequences, visit www.consumerfinance.gov/learnmore, or write to the Consumer Financial Protection Bureau. You may have additional rights under state law. For more information, contact your local consumer protection agency or your state Attorney General.

In addition to the new rights and procedures to help consumers deal with the effects of identity theft, the FCRA has many other important consumer protections. They are described in more detail at www.consumerfinance.gov/learnmore.

Revised Jan 2014



DISCLOSURE and AUTHORIZATION

Pursuant to the Fair Credit Reporting Act, this notice is to inform you that as part of our procedure in processing and evaluating your application for employment, we will be obtaining and reviewing a consumer report or an investigative consumer (Background Check) report for employment purposes. This authorization may be used to obtain a consumer report at any time during my employment.

I, _____, hereby consent and authorize Inquirehire or its agents to prepare an investigative consumer report, including but not limited to obtaining a consumer report and information as to my credit worthiness, credit standing, character, general reputation, credit capacity, personal characteristics, and mode of living. This report may involve personal interviews with sources, such as neighbors, friends, associates, past employers and educational institutions in which case I understand that I am entitled to a copy of my rights under the FCRA as well as to request additional disclosures of the nature and scope of the investigation. Public records may be used in this report, such as civil and criminal records, driving records, liens, and judgments that are deemed to have a bearing on my job performance. This consumer report will be used for employment purposes as it is defined in the Fair Credit Reporting Act, section 603 (h).

I am providing the following information for the preparation and proper verification of the consumer report.

Have you used another name such as maiden name or other married name? Yes _____ No _____

If yes, list names and corresponding years. _____

Drivers License number: _____ State of issuance (DL): _____

Date of Birth: _____ Social Security Number: _____

List all past **counties** of residence **and** corresponding years: (i.e. Scott, IA 2004 – 2014)

County _____ Years: From _____ through _____

County _____ Years: From _____ through _____

County _____ Years: From _____ through _____

County _____ Years: From _____ through _____

Current Address, City, State, & Zip

☐ For **Minnesota and Oklahoma and California**, check here if you would like a copy of the consumer report.

New York Applicants or employees: You have the right to inspect and receive a copy of any investigative consumer report requested by employer by contacting Inquirehire at 800-494-5922. By signing below you acknowledge receipt of Article 23-A of NY Correction Law.

New York & Maine Applicants Only: You have the right to inspect and receive a copy of any investigative consumer report requested by the Company by contacting the consumer reporting agency identified below. You may also contact the Company to request the name, address and telephone number of the nearest unit of the consumer reporting agency designated to handle inquiries, which the Company shall provide within 5 days.

Oregon Applicants Only: - Information describing your rights under federal and Oregon law regarding consumer identity theft protection, the storage and disposal of your credit information and remedies available should you suspect or find that the Company has not maintained secured records is available upon request.



Washington State Applicants or Employees only: You also have the right to request from the consumer reporting agency a written summary of your rights and remedies under the Washington Fair Credit Reporting Act.

California Only: *Under CA law, employers are prohibited from obtaining a consumer credit report unless it meets one of the following exceptions.

(1) a position in the state Department of Justice, (2) a managerial position, as defined, (3) that of a sworn peace officer or other law enforcement position, (4) a position for which the information contained in the report is required by law to be disclosed or obtained, (5) a position that involves regular access to specified personal information for any purpose other than the routine solicitation and processing of credit card applications in a retail establishment, (6) a position in which the person is or would be a named signatory on the employer's bank or credit card account, or authorized to transfer money or enter into financial contracts on the employer's behalf, (7) a position that involves access to confidential or proprietary information, as specified, or (8) a position that involves regular access to \$10,000 or more of cash.

I hereby acknowledge that I have read and understand this document and authorize the obtaining the consumer report.

Signature

Date

Email address

Print Full Name - Include Middle Name (please print legibly)

Parent/Guardian Signature if under 18

Date

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Inquirehire Privacy Policy: <http://www.inquirehire.com/misc/privacy.php>

Revised Jan 2014

NOTICE TO USERS OF CONSUMER REPORTS: OBLIGATIONS OF USERS UNDER THE FCRA

The Fair Credit Reporting Act (FCRA), 15 U.S.A. 1681-1681y, requires that this notice be provided to inform users of consumer reports of their legal obligation. State law may impose additional requirements. The text of the FCRA is set forth in full at the Bureau of Consumer Financial Protection's website at www.consumerfinance.gov/learnmore. At the end of this document is a list of United States Code citations for the FCRA. Other information about user duties is also available at the Bureau's website. **Users must consult the relevant provisions of the FCRA for details about their obligation under the FCRA.**

The first section of this summary sets forth the responsibilities imposed by the FCRA on all users of consumer reports. The subsequent sections discuss the duties of users of reports that contain specific types of information, or that are used for certain purposes, and the legal consequences of violations. If you are a furnisher of information to a consumer reporting agency (CRA), you have additional obligations and will receive a separate notice from the CRA describing your duties as a furnisher.

I. OBLIGATIONS OF ALL USERS OF CONSUMER REPORTS

Users Must Have a Permissible Purpose

Congress has limited the use of consumer reports to protect consumers' privacy. All users must have a permissible purpose under the FCRA to obtain a consumer report. *Section 604* of the FCRA contains a list of the permissible purposes under the law. They are:

- As ordered by a court or a federal grand jury subpoena. *Section 604(a)(1)*
- As instructed by the consumer in writing. *Section 604(a)(2)*
- For the extension of credit as a result of an application from a consumer, or the review or collection of a consumer's account. *Section 604(a)(3)(A)*
- For employment purposes, including hiring and promotion decisions, where the consumer has given written permission. *Section 604(a)(3)(B) and 604(b)*
- For the underwriting of insurance as a result of an application from a consumer. *Section 604(a)(3)(C)*
- When there is a legitimate business need, in connection with a business transaction that is initiated by the consumer. *Section 604(a)(3)(F)(i)*
- To review a consumer's account to determine whether the consumer continues to meet the terms of the account. *Section 604(a)(3)(F)(ii)*
- To determine a 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. *Section 604(a)(3)(D)*
- For use by a potential investor or servicer, or current insurer, in a valuation or assessment of the credit or prepayment risks associated with an existing credit obligation. *Section 604(a)(3)(E)*
- For use by state and local officials in connection with the determination of child support payments, or modifications and enforcement thereof. *Section 604(a)(4) and 604(a)(5)*

In addition, creditors and insurers may obtain certain consumer report information for the purpose of making "prescreened" unsolicited offers of credit or insurance. The particular obligations of users of this "prescreened" information are described in Section VII below.

B. Users Must Provide Certifications

Section 604(f) of the FCRA prohibits any person from obtaining consumer report from a consumer reporting agency (CRA) unless the person has certified to the CRA (by a general or specific certification, as appropriate) the permissible purpose(s) for which the report is being obtained and certifies that the report will not be used for any other purpose.

Users Must Notify Consumers When Adverse Actions Are Taken

The term “adverse action” is defined very broadly by *Section 603* of the FCRA. “Adverse actions” include all business, credit, and employment actions affecting consumers that can be considered to have a negative impact – such as denying or canceling credit or insurance or denying employment or promotion. No adverse action occurs in a credit transaction where the creditor makes a counteroffer that is accepted by the consumer.

1. Adverse Actions Based on Information Obtained From a CRA

If a user takes any type of adverse action that is based at least in part on information contained in a consumer report, the user is required by *Section 615(a)* of the FCRA to notify the consumer. The notification may be done in writing, orally or by electronic means. It must include the following:

- The name, address, and telephone number of the CRA (including a toll-free telephone number, if it is a nationwide CRA) that provided the report.
 - A statement that the CRA did not make the adverse decision and is not able to explain why the decision was made.
 - A statement setting forth the consumer’s right to obtain a free disclosure of the consumer’s file from the CRA if the consumer requests the report within 60 days.
 - A statement setting forth the consumer’s right to dispute directly with the CRA the accuracy or completeness of any information provided by the CRA.
- 2. Adverse Actions Based on Information Obtained From Third Parties Who Are Not Consumer Reporting Agencies**

If a person denies (or increases the charge for) credit for personal, family, or household purposes based either wholly or partly upon information from a person other than a CRA, and the information is the type of consumer information covered by the FCRA, *Section 615 (b)(1)* of the FCRA requires that the user clearly and accurately disclose to the consumer his or her right to obtain disclosure of the nature of the information that was relied upon by making a written request within 60 days of notification. The user must provide the disclosure within a reasonable period of time following the consumer’s written request.

3. Adverse Actions Based on Information Obtained From Affiliates

If a person takes an adverse action involving insurance, employment, or a credit transaction initiated by the consumer, based on information of the type covered by the FCRA, and this information was obtained from an entity affiliated with the user of the information by common ownership or control, *Section 615(b)(2)* requires the user to notify the consumer of the adverse action. The notification must inform the consumer that he or she may obtain a disclosure of the nature of the information relied upon by making a written request within 60 days of receiving the adverse action notice. If the consumer makes such a request, the user must disclose the nature of the adverse action notice. If the consumer makes such a request, the user must disclose the nature of the information not later than 30 days after receiving the request. If consumer report information is shared among affiliates and then used for an adverse action, the user must make an adverse action disclosure as set forth in I.C.1 above.

Users Have Obligations When Fraud and Active Duty Military Alerts are In Files

When a consumer has placed a fraud alert, including one relating to identity theft, or an active duty military alert with a nationwide consumer reporting agency as defined in Section 603(p) and resellers, Section 605A(h) imposes limitations on users of reports obtained from the consumer reporting agency in certain circumstances, including the establishment of a new credit plan and the issuance of additional credit cards. For initial fraud alerts and active duty alerts, the user must have reasonable policies and procedures in place to form a belief that the user knows the identity of the applicant or contact the consumer at a telephone number specified by the consumer; in the case of extended fraud alerts, the user must contact the consumer in accordance with the contact information provided in the consumer's alert.

Users Have Obligations When Notified of an Address Discrepancy

Section 605(h) requires nationwide CRAs, as defined in Section 603(p), to notify users that request reports when the address for a consumer provided by the user in requesting the report is substantially different from the addresses in the consumer's file. When this occurs, users must comply with regulations specifying the procedures to be followed, which will be issued by the Consumer Financial Protection Bureau and the banking and credit union regulators. The Consumer Financial Protection Bureau regulations will be available at www.consumerfinance.gov/learnmore.

Users Have Obligations When Disposing of Records

Section 628 requires that all users of consumer report information have in place procedures to properly dispose of records containing this information. The Consumer Financial Protection Bureau, the Securities and Exchange Commission, and the banking and credit union regulators have issued regulations covering disposal. The Consumer Financial Protection Bureau may be found at www.consumerfinance.gov/learnmore.

II. CREDITORS MUST MAKE ADDITIONAL DISCLOSURES

If a person uses a consumer report in connection with an application for, or a grant, extension, or provision of, credit to a consumer on material terms that are materially less favorable terms available to a substantial proportion of consumers from or through that person, based in whole or in part on a consumer report, the person must provide a risk-based pricing notice to the consumer in accordance with regulation prescribed by the Consumer Financial Protection Bureau.

Section 609(g) requires a disclosure by all persons that make or arrange loans secured by residential real property (one to four units) and that use credit scores. These persons must provide credit scores and other information about credit scores to applicants, including the disclosures set forth in Section 609(g)(1)(D) ("Notice to the Home Loan Applicant").

III. OBLIGATIONS OF USERS WHEN CONSUMER REPORTS ARE OBTAINED FOR EMPLOYMENT PURPOSES

A. Employment Other Than in the Trucking Industry

If information from a CRA is used for employment purposes, the user has specific duties, which are set forth in *Section 604(b)* of the FCRA. The user must:

- Make a clear and conspicuous written disclosure to the consumer before the report is obtained, in a document that consists solely of the disclosure, that a consumer report may be obtained.
- Obtain prior written authorization from the consumer. Authorization to access reports during the term of employment may be obtained at the time of employment.

- Certify to the CRA that the above steps have been followed, that the information being obtained will not be used in violation of any federal or state equal opportunity law or regulation, and that, if any adverse action is to be taken based on the consumer report, a copy of the report and a summary of the consumer's rights will be provided to the consumer.
- Before taking an adverse action, provide a copy of the report to the consumer as well as the summary of the consumer's rights. (The user should receive this summary from the CRA, because *Section 604(b)(1)(B)* of the FCRA requires CRAs to provide a copy of the summary with each consumer report obtained for employment purposes.) A section 615(a) adverse action notice should be sent after the adverse action is taken.

An adverse Action notice also is required in employment situations if credit information (other than transactions and experience data) obtained from an affiliate is used to deny employment. Section 615(b)(2)

The procedures for investigative consumer reports and employee misconduct investigations are set forth below.

B. Employment in the Trucking Industry

Special rules apply for truck drivers when the only interaction between consumer and the potential employer is by mail, telephone, or computer. In this case, the consumer may provide consent orally or electronically, and an adverse action may be made orally, in writing, or electronically. The consumer may obtain a copy of any report relied upon by the trucking company by contacting the company.

IV. OBLIGATIONS OF USERS OF INVESTIGATIVE CONSUMER REPORTS

Investigative consumer reports are a special type of consumer report in which information about a consumer's character, general reputation, personal characteristics, and mode of living is obtained through personal interviews. Consumers who are the subjects of such reports are given special rights under the FCRA. If a user intends to obtain an investigative consumer report, *Section 606* of the FCRA requires the following:

- The user must disclose to the consumer that an investigative consumer report may be obtained. This must be done in a written disclosure that is mailed, or otherwise, delivered, to the consumer not later than three days after the date on which the report was first requested. The disclosure must include a statement informing the consumer of his or her right to request additional disclosures of the nature and scope of the investigations as described below, and must include the summary of consumer rights required by *Section 609* of the FCRA. (The summary of consumer rights will be provided by the CRA that conducts the investigation.)
- The user must certify to the CRA that the disclosures set forth above have been made and that the user will make the disclosure described below.
- Upon the written request of a consumer made within a reasonable period of time after the disclosures required above, the user must make a complete disclosure of the nature and scope of the investigation that was requested. This must be made in a written statement that is mailed, or otherwise delivered, to the consumer no later than five days after the date on which the request was received from the consumer or the report was first requested, whichever is later in time.

V. SPECIAL PROCEDURES FOR EMPLOYEE INVESTIGATIONS

Section 603(x) provides special procedures for investigations of suspected misconduct by an employee or for compliance with Federal, state, or local laws and regulations or the rules of a self-regulatory organization, and compliance with written policies of the employer. These investigations are not treated as consumer reports so long as the employer or its agent complies with the procedures set forth in Section 603(x), and a summary describing the nature and scope of the inquiry is made to the employee if an adverse action is taken based on the investigation.

VI. OBLIGATIONS OF USERS OF CONSUMER REPORTS CONTAINING MEDICAL INFORMATION

Section 604(g) limits the use of medical information obtained from the consumer reporting agencies (other than payment information that appears in a coded form that does not identify the medical provider). If the information is to be used for an insurance transaction, the consumer must give consent to the user of the report or the information must be coded. If the report is to be used for employment purposes – or in connection with a credit transaction (except as provided in regulations issued by the banking and credit union regulators) – the consumer must provide specific written consent and the medical information must be relevant. Any user who receives medical information shall not disclose the information to any other person (except where necessary to carry out the purpose for which the information was disclosed, or as permitted by statute, regulation, or order).

VII. OBLIGATIONS OF USERS OF “PRESCREENED” LISTS

The FCRA permits creditors and insurers to obtain limited consumer report information for use in connection with unsolicited offers of credit or insurance under certain circumstances. *Sections 603(1), 604(c), 604(e), and 615(d)*. This practice is known as “prescreening” and typically involves obtaining a list of consumers from a CRA who meet certain pre-established criteria. If any person intends to use prescreened lists, that person must (1) before the offer is made, establish the criteria that will be relied upon to make the offer and to grant credit or insurance, and (2) maintain such criteria on file for a three-year period beginning on the date on which the offer is made to each consumer. In addition, any user must provide with each written solicitation a clear and conspicuous statement that:

- Information contained in a consumer’s CRA file was used in connection with the transaction.
- The consumer received the offer because he or she satisfied the criteria for credit worthiness or insurability used to screen for the offer.
- Credit or insurance may not be extended if, after the consumer responds, it is determined that the consumer does not meet the criteria used for screening or any applicable criteria bearing on credit worthiness or insurability, or the consumer does not furnish required collateral.
- The consumer may prohibit the use of information in his or her file in connection with future prescreened offers of credit or insurance by contacting the notification system established by the CRA that provided the report. This statement must include the address and toll-free telephone number of the appropriate notification system.
- In addition, the Consumer Financial Protection Bureau has established the format, type size, and manner of the disclosure required by Section 615(d), with which user must comply. The relevant regulation is 12CFR 1022.54.

VIII. OBLIGATIONS OF RESELLERS

A. Disclosure and Certification Requirements

Section 607(e) requires any person who obtains a consumer report for resale to take the following steps:

- Disclose the identity of the end-user to the source CRA.
- Identify to the source CRA each permissible purpose for which the report will be furnished to the end-user.
- Establish and follow reasonable procedures to ensure that reports are resold only for permissible purposes, including procedures to obtain: (1) the identity of all end-users; (2) certifications from all users of each purpose for which reports will be used; and (3) certifications that reports will not be used for any purpose other than the purpose(s) specified to the reseller. Resellers must make reasonable efforts to verify this information before selling the report.

B. Reinvestigations by Resellers

Under Section 611(f), if a consumer disputes the accuracy or completeness of information in a report prepared by a reseller, the reseller must determine whether this is a result of an action or omission on its part and, if so, correct or delete the information. If not, the reseller must send the dispute to the source CRA for reinvestigation. When any CRA notifies the reseller of the results of an investigation, the reseller must immediately convey the information to the consumer.

C. Fraud Alerts and Resellers

Section 605A(f) requires resellers who receive fraud alerts or active duty alerts from another consumer reporting agency to include these in their reports.

IX. LIABILITY FOR VIOLATIONS OF THE FCRA

Failure to comply with the FCRA can result in state or federal enforcement actions, as well as private lawsuits. *Sections 616, 617, and 621.* In addition, any person who knowingly and willfully obtains a consumer report under false pretenses may face criminal prosecution. *Section 619.*

SAMPLE PRE-ADVERSE ACTION LETTER

CONFIDENTIAL TO BE OPENED BY ADDRESSEE ONLY

LESLIE LOCKE (Sample Name)

123 MAIN STREET

DAVENPORT, IOWA 52801

We are writing to inform you that in evaluating your application for employment we have received the enclosed consumer report. This notification is provided because we may make an adverse decision that may be based, in whole or part, on this report. We are hereby informing you of certain information pursuant to the Fair Credit Reporting Act and state law.

The report was procured pursuant to an authorization signed by you. A summary of your rights as a consumer is enclosed. If you have any questions regarding this report or believe that it may contain incorrect information, you may contact the provider of the report, Inquirehire, and they will respond to your inquiry. Their mailing address and phone number are listed below:

Inquirehire

320 LeClaire Street

Davenport, IA 52801

Phone: 563-323-5922

Fax: 563-323-5441

Inquirehire only provided us the consumer report and plays no part in the decision to take any action on your employment application. Inquirehire is unable to provide you with specific reasons for any employment related decisions to be made.

Sincerely,

Important Notification: Inquirehire cannot provide legal advice. The information contained herein is for awareness and should not be considered as legal advice. Inquirehire recommends that you consult with legal counsel in regard to this document and your specific screening program, policies and procedures to ensure legal compliance.

Para informacion en espanol, visite www.consumerfinance.gov/learnmore o escribe a la Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20006.

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 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 or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, D.C. 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 identity theft and place a fraud alert in your file;
 - Your file contains inaccurate information as a result of a fraud;
 - You are on public assistance;
 - You are unemployed but expect to apply for employment within 60 days.In addition, all consumers will be 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 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 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 report 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.
 - **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 1-888-5-OPTOUT (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.

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:	a. Bureau of Consumer Financial Protection 1700 G Street NW., Washington, DC 20006 b. Federal Trade Commission: Consumer Response Center – FCRA Washington, D.C. 20580 877-382-4357
2. To the extent not included in item 1 above: a. National banks, federal savings associations, and federal branches and federal agencies of foreign banks b. 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 c. Nonmember Insured Banks, Insured State Branches of Foreign Banks, and insured state savings associations d. Federal Credit Unions	a. Office of the Comptroller of the Currency Compliance Management, Mail Stop 6-6 Washington, D.C. 20219 800-613-6743 b. Federal Reserve Consumer Help Center P.O. Box 1200, Minneapolis, MN 55480 c. FDIC Consumer Center 1100 Walnut Street, Box #11, Kansas City, MO 64106 d. National Credit Union Administration Office of Consumers Protection (OCP) Division of Consumer Compliance and Outreach (DCCO) 1775 Duke Street, Alexandria, VA 22314

3. Air carriers	Asst. General Counsel for Aviation Enforcement & Proceedings Department of Transportation 400 Seventh Street SW., Washington, DC 20590
4. Creditors Subject to Surface Transportation Board	Office of Proceedings, Surface Transportation Board Department of Transportation 925 K Street NW., Washington, DC 20423
5. Creditors Subject to Packers and Stockyards Act	Nearest Packers and Stockyards Administration area supervisor
6. Small Business Investment Companies	Associate Deputy Administrator for Capital Access United States Small Business Administration 409 F Street NE., Washington, DC 20416
7. Brokers and Dealers	Securities and Exchange Commission 100 F Street NE., Washington, DC 20549
8. Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Protection Credit Associations	Farm Credit Administration 1501 Farm Credit Drive, McLean, VA 22102-5090
9. Retailers, Finance Companies, and All Other Creditors Not Listed Above	FTC Regional Office for region in which the creditor operates or Federal Trade Commission: Consumer Response Center – FCRA Washington, DC 20580 877-382-4357

Sample Adverse Action Notice

Date

Name

Address

City, State, & Zip

Dear Applicant:

Pursuant to your authorization in your employment application process, a background investigation was completed as part of the selection process. The purpose of this letter is to inform you that there is information in the report which, if accurate, would prevent an offer of employment at this time.

If, after reviewing the report, (1) you believe that the information contained in it is inaccurate and/or (2) you want to know what information in the report falls outside our company guidelines, we ask that you contact us directly within five days. Otherwise we will assume that you no longer wish to pursue this employment opportunity with (Company Name).

The background record check related to your application was conducted by Inquirehire. If you have any questions regarding the check, you should contact an Inquirehire representative. The address and phone is:

Inquirehire
320 LeClaire Street, Davenport, IA 52801
(563) 323-5922 or (800) 494-5922

Inquirehire did not make the decision to deny you employment and is unable to provide specific reasons why you were not employed.

Under the law, you have the right to dispute directly with Inquirehire any information in this report. They will reinvestigate the disputed information free of charge and either record the current status of the disputed information or delete the item(s) within 30 days of receiving your dispute. If the information is found to be inaccurate or incomplete or cannot be verified, they will promptly delete that item or modify it. They will provide notification of the dispute to any person who provided the information you disputed within five business days of receiving your notice of dispute. You have the right to obtain an additional free copy of the report if you request it from Inquirehire within 60 days of when you receive this notice.

On behalf of (COMPANY NAME),

Important Notification: Inquirehire cannot provide legal advice. The information contained herein is for awareness and should not be considered as legal advice. Inquirehire recommends that you consult with legal counsel in regard to wording of this document and your specific screening program, policies and procedures to ensure legal compliance.

CLIENT'S PROTOCOL FOR SENDING ADVERSE ACTION

If you deny employment based in whole or in part on information in the background report, you must send the Pre-adverse Action Letter along with the Summary of Rights and applicant's report. You should send all three documents.

The purpose is to give an applicant the opportunity to see the report with the information being used against them. If the report is inaccurate or incomplete, the applicant then has the opportunity to contact the Consumer Reporting Agency (Inquirehire) to dispute or explain what is in the report. Otherwise, applicants could be denied employment without knowing they were the victims of inaccurate information or incomplete data.

After sending those documents, you must send the applicant a Notice of Adverse Action informing them of your final decision. We recommend you give them a copy of the Summary of Rights again.

While it seems redundant, the law clearly requires two notices.

*Of Special Note: A question that arises is how long an employer must wait before denying employment based upon information contained in a Consumer Report. The FCRA does not address this question. However, most legal opinions advise the employer to wait a "reasonable" amount of time before making a final decision. The time period should be the time needed by the applicant to meaningfully review the report and make known to the employer or the Consumer Reporting Agency of any inaccurate or incomplete information.

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ACCESS SECURITY PRACTICES

Client should implement and maintain a comprehensive information security program designed to ensure the security and confidentiality of sensitive data, including but not limited to subscriber codes, security digits, passwords or private consumer information, and protect against anticipated threats and unauthorized access to such information. The information security program should be written in one or more readily accessible parts. A designated employee or employees should manage the information security program.

The information security program should, include but may not be limited to administrative, technical and physical safeguards to:

- A. Ensure the security and confidentiality of, applications, systems, platforms or consumer information.
- B. Protect against any anticipated threats or hazards to the security or integrity of such information.
- C. Protect against unauthorized access to, or use of such information that could result in substantial harm or inconvenience to any consumer or party.
- D. Identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of sensitive data or consumer information.
- E. Maintain a security training programs to address security concerns and best practices.
- F. Review all relevant information systems, including network and software design, information processes, storage, transmission, disposal and physical locations, which may include homes where employees may handle sensitive information.
- G. Dispose of sensitive information in a secure manner. This includes all hard copies and electronic copies.
- H. Ensure processes exist for detecting, preventing and responding to attacks and intrusions.
- I. Oversee service providers by taking steps to select and retain service providers that are capable of maintaining appropriate safeguards.
- J. Require service providers by contract to have safeguards for protecting sensitive data or consumer information.
- K. Enforce mandatory Password Expiration – Passwords should expire at a minimum of every 90 days.
- L. Ensure account numbers and passwords are protected and only provided to key personnel. **DO NOT POST PASSWORDS IN ANY MANNER WHERE UNAUTHORIZED ACCESS CAN BE OBTAINED.**
- M. Ensure that any software used for system access (regardless of manufacturer) provides an environment in which the account number and password is hidden or access is limited to highly trusted supervisory personnel and that this information is not disclosed to any unauthorized individual in any manner.
- N. Ensure that each user of your system access software is assigned a unique logon password.
- O. Adopt an Inactive End User Policy for users of credit information where the user will have their access deactivated following a period of inactivity.
- P. Access to information shall be automatically timed out after 30 minutes of inactivity.
- Q. Permanent account lockout for three consecutive invalid login attempts.
- R. Access systems, terminals, etc. should be located in secure areas and locked out or turned off after hours as necessary to prevent unauthorized use of these systems.
- S. Electronic files, CD's, Diskettes and other types of media must be kept in a secure area and encrypted as necessary to prevent unauthorized use of these information.
- T. IP Restrictions – Client System administrator can limit access to information by the IP address to reduce risk of misuse. IP addresses should be captured and stored for future use in the event of a penetration or system breach.
- U. Ensure associates, employees, temporary employees, contractors and associates of service providers, handling sensitive information have passed a thorough background check beforehand. **Background checks may include, but may not be limited to:**
 - o Drug screening
 - o National criminal background check
 - o Credit check
 - o Employment verification

Client will immediately notify Inquirehire if they determine that any employee, contractor, subscriber or anyone else with access has misused any information. Inquirehire may request a detailed audit or written summary of the clients security program upon reasonable notice.

“Under Section 621 (a) (2) (A) of the FCRA, any person that violates any of the provisions of the FCRA may be liable for a civil penalty of not more than \$2,500 per violation.”

This material has been prepared for educational and informational purposes only. It is not legal advice or legal opinions on any specific matter. It should not be used to replace the advice of your own legal counsel.

Policy and Procedure for Reinvestigations of Disputes

Pursuant to the FCRA, we are required to re-investigate any consumer disputed information from a consumer report that we generate. It will be our policy to re-investigate and consumer dispute in a prompt and courteous manner and in the following manner:

1. Get all pertinent information from the consumer. Be sure you date the notes you are taking. Get all necessary information from the consumer including:
 - First, Last & Middle name
 - Social Security # & Date of Birth
 - Address
 - Phone Number
 - Email Address
 - Make copies of all documents / emails
 - Obtain detailed information on the disputed information
2. Document the conversation by either typing a memo or dictating a report. Be sure to include all details on the information in dispute. **If the dispute is in regard to Credit Report information, SEE ADDENDUM for instructions.**
3. Store the memo on the server at: Server/Inquirehire/disputes. Name and save the document using the LAST name of the consumer and CLIENT name. i.e. (Jones-Alcoa.)
4. Open up a case file and print out the memo. Place the memo in the case file and title the case file using the first and last name of the consumer.
5. Once we have received this dispute, we have **30 days** to reinvestigate it. There is NO FEE for reinvestigating a dispute.
6. We must notify all persons who provided us information that is being disputed. (i.e. TALX, Softech) A letter must be sent to those persons within **5 days** of our agency receiving the complaint. The letter must contain all relevant information regarding the dispute we have received from the consumer.
7. *EXAMPLE: If subject is disputing dates of employment with XYZ Company, a letter must be sent to XYZ detailing the subject's dispute.
8. We may terminate the investigation at this point if we find the dispute to be frivolous or irrelevant. This includes the consumer failing to provide us with sufficient information to investigate the disputed information.
9. If the dispute is found to be frivolous or irrelevant we have **5 business days** to notify the consumer by mail or, if authorized by the consumer for that purpose, by any other means available to us.
10. We are to consider ALL information provided to us by the consumer for investigation unless it is to be found frivolous or irrelevant.

11. If any item of the information being disputed is found to be inaccurate or incomplete or cannot be verified, we shall promptly delete that item of information from the consumers file or modify that item of information, as appropriate, based on the results of the investigation.
12. If the deleted information is eventually found to be complete and accurate and is reinserted into the file, we must notify the consumer in writing no later than **5 business days** after the reinsertion or, if authorized by the consumer for that purpose, any other means available to the agency.
13. Results of the reinvestigation: Our agency needs to provide the consumer written notice of the results of the reinvestigation not later than **5 business days** after the completion of the reinvestigation, by mail or, if authorized by the consumer for that purpose, by other means available to us.

*Contents of the written notice should contain:

- Statement that the reinvestigation is complete
- Consumer report with revisions to the consumers file
- Description of the procedure used to determine the accuracy and completeness of the information. Including address and phone number of the furnisher if requested by the consumer.
- Notice that the consumer has a right to add a statement to the file disputing the accuracy or completeness of the information; and a notice that the consumer has the right to request that we furnish notifications of anything that was deleted from the file.

14. Reissue corrected report to client and subject.

Important Notification: Inquirehire cannot provide legal advice. The information contained herein is for awareness and should not be considered as legal advice. Inquirehire recommends that you consult with legal counsel in regard to this document and your specific screening program, policies and procedures to ensure legal compliance.

Questions and Answers About the EEOC's Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII

On April 25, 2012, the U.S. Equal Employment Opportunity Commission (EEOC or Commission) issued its [*Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*](#), as amended, 42 U.S.C. § 2000e. The Guidance consolidates and supersedes the Commission's 1987 and 1990 policy statements on this issue as well as the discussion on this issue in Section VI.B.2 of the Race & Color Discrimination Compliance Manual Chapter. It is designed to be a resource for employers, employment agencies, and unions covered by Title VII; for applicants and employees; and for EEOC enforcement staff.

1. How is Title VII relevant to the use of criminal history information?

There are two ways in which an employer's use of criminal history information may violate Title VII ("disparate treatment discrimination"). First, Title VII prohibits employers from treating job applicants with the same criminal records differently because of their race, color, religion, sex, or national origin.

Second, even where employers apply criminal record exclusions uniformly, the exclusions may still operate to disproportionately and unjustifiably exclude people of a particular race or national origin ("disparate impact discrimination"). If the employer does not show that such an exclusion is "job related and consistent with business necessity" for the position in question, the exclusion is unlawful under Title VII.

2. Does Title VII prohibit employers from obtaining criminal background reports about job applicants or employees?

No. Title VII does not regulate the acquisition of criminal history information. However, another federal law, the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. (FCRA), does establish several procedures for employers to follow when they obtain criminal history information from third-party consumer reporting agencies. In addition, some state laws provide protections to individuals related to criminal history inquiries by employers.

3. Is it a new idea to apply Title VII to the use of criminal history information?

No. The Commission has investigated and decided Title VII charges from individuals challenging the discriminatory use of criminal history information since at least 1969,¹ and several federal courts have analyzed Title VII as applied to criminal record exclusions over the past thirty years. Moreover, the EEOC issued three policy statements on this issue in 1987 and 1990, and also referenced it in its 2006 Race and Color

Discrimination Compliance Manual Chapter. Finally, in 2008, the Commission's E-RACE (Eradicating Racism and Colorism from Employment) Initiative identified criminal record exclusions as one of the employment barriers that are linked to race and color discrimination in the workplace. Thus, applying Title VII analysis to the use of criminal history information in employment decisions is well-established.

4. Why did the EEOC decide to update its policy statements on this issue?

In the twenty years since the Commission issued its three policy statements, the Civil Rights Act of 1991 codified Title VII disparate impact analysis, and technology made criminal history information much more accessible to employers.

The Commission also began to re-evaluate its three policy statements after the Third Circuit Court of Appeals noted in its 2007 *El v. Southeastern Pennsylvania Transportation Authority*² decision that the Commission should provide in-depth legal analysis and updated research on this issue. Since then, the Commission has examined social science and criminological research, court decisions, and information about various state and federal laws, among other information, to further assess the impact of using criminal records in employment decisions.

5. Did the Commission receive input from its stakeholders on this topic?

Yes. The Commission held public meetings in November 2008 and July 2011 on the use of criminal history information in employment decisions at which witnesses representing employers, individuals with criminal records, and other federal agencies testified. The Commission received and reviewed approximately 300 public comments that responded to topics discussed during the July 2011 meeting. Prominent organizational commenters included the NAACP, the U.S. Chamber of Commerce, the Society for Human Resources Management, the Leadership Conference on Civil and Human Rights, the American Insurance Association, the Retail Industry Leaders Association, the Public Defender Service for the District of Columbia, the National Association of Professional Background Screeners, and the D.C. Prisoners' Project.

6. Is the Commission changing its fundamental positions on Title VII and criminal record exclusions with this Enforcement Guidance?

No. The Commission will continue its longstanding policy approach in this area:

- The fact of an arrest does not establish that criminal conduct has occurred. Arrest records are not probative of criminal conduct, as stated in the Commission's 1990 policy statement on Arrest Records.

However, an employer may act based on evidence of conduct that disqualifies an individual for a particular position.

- Convictions are considered reliable evidence that the underlying criminal conduct occurred, as noted in the Commission's 1987 policy statement on Conviction Records.
- National data supports a finding that criminal record exclusions have a disparate impact based on race and national origin. The national data provides a basis for the Commission to investigate Title VII disparate impact charges challenging criminal record exclusions.
- A policy or practice that excludes everyone with a criminal record from employment will not be job related and consistent with business necessity and therefore will violate Title VII, unless it is required by federal law.

7. How does the Enforcement Guidance differ from the EEOC's earlier policy statements?

The Enforcement Guidance provides more in-depth analysis compared to the 1987 and 1990 policy documents in several respects.

- The Enforcement Guidance discusses disparate treatment analysis in more detail, and gives examples of situations where applicants with the same qualifications and criminal records are treated differently because of their race or national origin in violation of Title VII.
- The Enforcement Guidance explains the legal origin of disparate impact analysis, starting with the 1971 Supreme Court decision in *Griggs v. Duke Power Company*, 401 U.S. 424 (1971), continuing to subsequent Supreme Court decisions, the Civil Rights Act of 1991 (codifying disparate impact), and the Eighth and Third Circuit Court of Appeals' decisions applying disparate impact analysis to criminal record exclusions.
- The Enforcement Guidance explains how the EEOC analyzes the "job related and consistent with business necessity" standard for criminal record exclusions, and provides hypothetical examples interpreting the standard.

There are two circumstances in which the Commission believes employers may consistently meet the "job related and consistent with business necessity" defense:

- The employer validates the criminal conduct exclusion for the position in question in light of the Uniform Guidelines on Employee Selection Procedures (if there is data or analysis about criminal conduct as related to subsequent work performance or behaviors); or
 - The employer develops a targeted screen considering at least the nature of the crime, the time elapsed, and the nature of the job (the three factors identified by the court in *Green v. Missouri Pacific Railroad*, 549 F.2d 1158 (8th Cir. 1977)). The employer's policy then provides an opportunity for an individualized assessment for those people identified by the screen, to determine if the policy as applied is job related and consistent with business necessity. (Although Title VII does not require individualized assessment in all circumstances, the use of a screen that does not include individualized assessment is more likely to violate Title VII.).
- The Enforcement Guidance states that federal laws and regulations that restrict or prohibit employing individuals with certain criminal records provide a defense to a Title VII claim.
- The Enforcement Guidance says that state and local laws or regulations are preempted by Title VII if they "purport[] to require or permit the doing of any act which would be an unlawful employment practice" under Title VII. 42 U.S.C. § 2000e-7.
- The Enforcement Guidance provides best practices for employers to consider when making employment decisions based on criminal records.

RESOURCE PAGE

Inquirehire recommends that you familiarize yourself with the various laws and regulations that may impact the procurement and use of consumer reports (background investigation reports).

Drivers Privacy Protection Act – <http://www.accessreports.com/statutes/DPPA1.htm>

Fair Credit Reporting Act (FCRA) – <http://www.ftc.gov/os/statutes/031224fcra.pdf>

Fair and Accurate Credit Transaction Act (FACTA) - <http://www.treasury.gov/offices/domestic-finance/financial-institution/cip/pdf/fact-act.pdf>

FTC Disposal Rule – http://www.cdiaoonline.org/pdf/GLB_Teleseminar_FTC_Final_Disposal_Rule.pdf

Gramm-Leach-Bliley Act (GLB) - <http://banking.senate.gov/conf/grmleach.htm>

National Association of Professional Background Screeners (NAPBS) - <http://www.napbs.com>

Equal Employment Opportunity Commission - <http://www.eeoc.gov/>

Title VII of the Civil Rights Act of 1964 - <http://www.eeoc.gov/policy/vii.html>

The Americans with Disabilities Act of 1990 - <http://www.eeoc.gov/policy/ada.html>

The Age Discrimination in Employment Act of 1967 - <http://www.eeoc.gov/policy/adea.html>

The Civil Rights Act of 1991 - <http://www.eeoc.gov/policy/cra91.html>

EEOC Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 - http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm