



FCRA Requirements For End-Users (Employers/Insurers) - General

BEFORE USING A CONSUMER REPORT:

- You must first certify to the consumer reporting agency:
 1. the permissible purpose for which the information is sought; and
 2. certify that the information will be used only for the permissible purpose.¹
- You must also confirm that you will use the report for a “permissible purpose” under the FCRA. “Permissible purpose” means, among other uses, furnishing a consumer report under the following circumstances:
 - In accordance with the written instructions of the consumer to whom it relates.
 - For employment purposes
 - In connection with the underwriting of insurance involving the consumer; OR
 - For a legitimate business need:
 - In connection with a business transaction that is initiated by the consumer; or
 - To review an account to determine whether the consumer continues to meet the terms of the account.²

*Note: These should NOT be construed as legal advice, guidance or counsel. You should consult your own attorney about your compliance responsibilities under the FCRA and applicable state law. SambaSafety expressly disclaims any warranties or responsibility or damages associated with or arising out of information provided.

¹ See 15 U.S.C. § 1681e(a).

² See 15 U.S.C. § 1681b(a).

EMPLOYERS – USING A CONSUMER REPORT FOR “EMPLOYMENT PURPOSES”

Q: WHAT QUALIFIES AS USING A CONSUMER REPORT FOR “EMPLOYMENT PURPOSES”?

A: The term “employment purposes” means using a consumer report to evaluate a consumer for employment, promotion, reassignment or retention as an employee.³

- If using a report for “employment purposes” then you must do the following⁴:
 - Give the applicant/employee a clear and conspicuous written disclosure, in a stand-alone document, that informs the person that a consumer report may be obtained. You may include some additional information in the notice, so long as it is minor and does not detract from the notice or create confusion.
 - Obtain the applicant/employees written permission to obtain his or her consumer report. This can be done as part of the document that you use to notify them about the consumer report (described above). Note that if you wish to use this authorization to get consumer reports throughout the person’s employment, rather than just once, you must state so clearly and conspicuously
- Certify to SambaSafety that:
 1. You have provided the written disclosure to the applicant/employee and gotten the person’s written permission to obtain a consumer report;
 2. The consumer report will not be used in violation of any applicable federal or state equal employment opportunity law or regulations; and
 3. You will comply with the FCRA requirements for taking adverse actions, if applicable.
- If you are obtaining medical information on a consumer report:
 - A consumer must provide specific written consent that describes in “clear and conspicuous” language the use for the information. The medical information must be relevant to the employment.
 - Note that medical information obtained through a consumer report cannot be disclosed to another person, except as necessary to carry out the original purpose of the consumer report (or as otherwise permitted by statute/regulation).⁵

³ See 15 U.S.C. § 1681a(h).

⁴ See 15 U.S.C. § 1681b(b)(1)-(2); see also Federal Trade Commission, “Using Consumer Reports: What Employers Need to Know,” available at <https://www.ftc.gov/tips-advice/business-center/guidance/using-consumer-reports-what-employers-need-know>.

⁵ See 15 U.S.C. §§ 1681b(g)(1)(B), (g)(4).

- Taking an adverse action based on information in a consumer report:
 - An “adverse action” in the employment context means denying employment, or any other decision that adversely affects the applicant or current employee – including rejecting an application, reassigning an employee or denying a promotion.⁶
 - Before taking any type of adverse employment action based on the consumer report, an employer must provide to the consumer:
 1. A notice that includes a copy of the consumer report; and
 2. A copy of “A Summary of Your Rights Under the Fair Credit Reporting Act,” which SambaSafety provides.⁷
- If you decide to take an adverse action based on information in a consumer report, you must give the applicant/employee an adverse action notice. This can be done orally, in writing, or electronically – although best practice would be to keep a written copy of the notice and retain the copy in line with the company’s recordkeeping policy.
- This notice must include:
 1. The name, address and phone number of the consumer reporting agency that furnished the report;
 2. A statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to give the applicant/employee the specific reasons why the adverse action was taken;
 3. That the employee/applicant has a right to obtain a free copy of the consumer report if they request it within 60 days;
 4. That the employee/applicant has a right to dispute the accuracy or completeness of any information in the consumer report with the consumer reporting agency;
 5. A numerical credit score used in taking the adverse action and certain other information relating to the credit score (this must be in written or electronic form).⁸

⁶ See 15 U.S.C. § 1681a(k)(1)(B)(ii); see also FTC, Using Consumer Reports: What Employers Need to Know,” available at <https://www.ftc.gov/tips-advice/business-center/guidance/using-consumer-reports-what-employers-need-know>.

⁷ See 15 U.S.C. § 1681b(b)(3).

⁸ See 15 U.S.C. § 1681m(a).

TRUCKING INDUSTRY SPECIFIC REQUIREMENTS FOR EMPLOYERS

- Requirements for the trucking industry:
 - The FCRA grants certain exceptions for employment applications, for positions subject to the safety regulations by a state transportation agency or a position that the Secretary of Transportation establishes qualifications and maximum hours of service.
 - These exceptions apply where the applicant applies via mail, phone, computer or other means and that is the only interaction between the employer and applicant before obtaining a consumer report.
 - Before obtaining the consumer report:
 - The employer must provide the notice by oral, written or electronic means that a consumer report may be obtained for employment purposes; and
 - The employer must also provide a summary of the applicant's rights related to the consumer report, including:
 - The name, address and phone number of the consumer reporting agency that will furnish the report;
 - A statement that the consumer reporting agency will not make any decision to take adverse action and is unable to give the applicant/employee the specific reasons why the adverse action, if any, is taken;
 - That the applicant has a right to obtain a free copy of the consumer report; and
 - That the applicant has a right to dispute the accuracy or completeness of any information in the consumer report with the consumer reporting agency.
 - The consumer must consent in writing, or electronically to the employer obtaining the consumer report.⁹
 - Taking an adverse action:
 - No pre-adverse action notice is required.
 - Within three business days of taking the adverse action, the employer must provide to the applicant an oral, written, or electronic notification that:
 - An adverse action has been taken based on a consumer report received from a consumer reporting agency;
 - The name, address and telephone number of the consumer reporting agency that furnished the consumer report;

⁹ See 15 U.S.C. § 1681b(b)(2).

- That the consumer reporting agency did not make the decision to take the adverse action and is unable to give the applicant the specific reasons why the adverse action was taken; and
 - The consumer may, upon providing proper identification, request a free copy of a report and may dispute with the consumer reporting agency the accuracy or completeness of any information in a report.
- If the applicant requests a copy of the consumer report, then the employer must send the consumer a copy of the report and a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act."¹⁰

¹⁰ See 15 U.S.C. § 1681b(b)(3).

INSURERS – USING A CONSUMER REPORT

- For an insurer to use a consumer report, you must have a “permissible purpose,” which is generally:¹¹
 - With the consumer’s written permission;
 - In connection with the underwriting of insurance involving the consumer; or
 - Pre-screening
 - If in connection with an insurance transaction not initiated by the consumer (i.e., prescreening), the consumer report can only be used if:
 1. the consumer authorized the provision of the consumer reports; or
 2. the transaction consists of a firm offer of insurance.¹²
 - The term “firm offer of insurance” means any offer of insurance to a consumer that will be honored if the consumer is determined, based on information in a consumer report, to meet the specific criteria used to select the consumer for the offer, however the offer may be further conditioned on one or more of the following:
 1. The consumer being determined, based on information in the consumer’s application for the insurance, to meet specific criteria bearing on insurability, as applicable, that are established—
 - A. before selection of the consumer for the offer; and
 - B. for the purpose of determining whether to extend insurance pursuant to the offer.
 2. Verification—
 - A. that the consumer continues to meet the specific criteria used to select the consumer for the offer, by using information in a consumer report on the consumer, information in the consumer’s application for the insurance, or other information bearing on the insurability of the consumer; or
 - B. of the information in the consumer’s application for the insurance, to determine that the consumer meets the specific criteria bearing on insurability.
 3. The consumer furnishing any collateral that is a requirement for the extension of the insurance that was—

¹¹ See 15 U.S.C. § 1681b(a)(2), (3); see also Federal Trade Commission, “Consumer Reports: What Insurers Need to Know,” available at <https://www.ftc.gov/tips-advice/business-center/guidance/consumer-reports-what-insurers-need-know>.

¹² See 15 U.S.C. § 1681b(c)(1).

A. established before selection of the consumer for the offer of insurance;
and

B. disclosed to the consumer in the offer of insurance.¹³

- If you are obtaining medical information on a consumer report:
 - A consumer must consent to the consumer reporting agency issuing the report.
 - Note that medical information obtained through a consumer report cannot be disclosed to another person, except as necessary to carry out the original purpose of the consumer report (or as otherwise permitted by statute/regulation).¹⁴
- Taking an adverse action based on information in a consumer report:
 - An “adverse action” in the insurance context can mean denying, cancelling, increasing a rate, terminating a policy or any other unfavorable change in the terms of coverage or amount of any insurance, that is based in any part on information in a consumer report.¹⁵
 - If you decide to take an adverse action based on information in a consumer report, you must give the consumer an adverse action notice. This can be done orally, in writing, or electronically – although best practice would be to keep a written copy of the notice and retain the copy in line with the company’s recordkeeping policy.
 - This notice must include:
 1. The name, address and phone number of the consumer reporting agency that furnished the report;
 2. A statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to give the consumer the specific reasons why the adverse action was taken;
 3. That the employee/applicant has a right to obtain a free copy of the consumer report if they request it within 60 days;
 4. That the employee/applicant has a right to dispute the accuracy or completeness of any information in the consumer report with the consumer reporting agency;

¹³ See 15 U.S.C. § 1681a(l) (excluding information on issuing credit)

¹⁴ See 15 U.S.C. §§ 1681b(g)(1)(A), (g)(4).

¹⁵ See 15 U.S.C. § 1681a(k)(1)B(i); see also FTC, Consumer Reports: What Insurers Need to Know,” *available at* <https://www.ftc.gov/tips-advice/business-center/guidance/consumer-reports-what-insurers-need-know>.

5. A numerical credit score used in taking the adverse action and certain other information relating to the credit score (this must be in written or electronic form).¹⁶
- An adverse action notice is required if the adverse action was based in any part on the consumer report – even if there are other reasons and the consumer report was not the primary reason for the denial or rate increase.¹⁷

¹⁶ See 15 U.S.C. § 1681m(a).

¹⁷ For examples of situations when an adverse action notice is required, see FTC, Consumer Reports: What Insurers Need to Know," available at <https://www.ftc.gov/tips-advice/business-center/guidance/consumer-reports-what-insurers-need-know>.

USING INVESTIGATIVE CONSUMER REPORTS

- “Investigative consumer reports” have additional requirements beyond standard consumer reports:
 - An “investigative consumer report” is a consumer report where information on a consumer’s character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer.¹⁸
- In order to use an investigate consumer report, you must provide the consumer with a written disclosure that:
 1. States that the company will be obtaining an investigative consumer report including information as to his character, general reputation, personal characteristics and mode of living;
 2. Is delivered no later than 3 days after the day the report was requested; and
 3. Includes a statement informing the consumer of his right to request additional disclosures. If the consumer sends a written request for disclosures, then the company must send a written summary of the nature and scope of the investigation (within five days after the request for the disclosure was received from the consumer or the report was first requested, whichever is later).¹⁹
- You must certify to the consumer reporting agency you made the required disclosures and will comply with the requirements to provide additional disclosures if requested by the consumer.²⁰

¹⁸ See 15 U.S.C. § 1681a(e).

¹⁹ See 15 U.S.C. § 1681d(a)-(b).

²⁰ See 15 U.S.C. § 1681d(a)(2).