



# CREDENTIALCHECK®

## **Credential Check Corporation Adverse Action Program**

Client agrees that it will consult with its own legal or other counsel regarding the use of background screening information, including but not limited to, the legality of using or relying on reported information. Client understands that any conversation or communication with CredentialCheck's representatives regarding searches, verifications or other services offered by CredentialCheck are not to be considered a legal advice or opinion regarding such use.

In addition, provided sample Adverse Action Program represents only the federal minimum requirements. If client requires additional steps due to state and/or local nuances, samples may not apply.

05/01/2018



## Adverse Action under the FCRA

The Fair Credit Reporting Act (FCRA) is a United States federal law that regulates the collection, dissemination, and use of consumer information, including consumer credit information. The FCRA forms the foundation of consumer credit rights in the United States. It was originally passed in 1970, and is enforced by the US Federal Trade Commission and the Consumer Financial Protection Bureau.

In general the Fair Credit Reporting Act covers more than just credit reporting companies such as credit bureaus. It now defines and covers all Consumer Reporting Agencies (CRAs) that gather, retain, compile, issue, and use credit reports, employee background checks, tenant screening, and other consumer reports based on consumer reporting information such as consumer credit experiences, court records, and other personal consumer information.

When utilizing the information contained in the Consumer Report, both the employer and the CRA must abide by the individual obligations set forth in the FCRA. Failure to do so can result in substantial legal exposures.

### Step One: Employer FCRA Certification

- Prior to obtaining a Consumer Report, an employer must certify to the Consumer Reporting Agency (CRA), that the employer will follow all the steps set forth in the Fair Credit Reporting Act -Section 604. All clients certify to FCRA compliance in Credential Check's Client Service Authorization Agreement

### Step Two: Disclosure and Authorization

- A "clear and conspicuous" disclosure must be made in writing to the subject that a "Consumer Report May Be Obtained for Employment Purposes." The disclosure must consist "solely of the disclosure." In other words, it must be on a separate document. The purpose is to prevent the disclosure from being buried within other employment application documents.
- The subject must provide written authorization to the employer to procure the report.
  - \* If an employer wishes to receive an "Investigative Consumer Report," the FCRA requires additional disclosures. (Section 606) An Investigative Consumer Report is a type of consumer report that includes information on a consumer's *"character, general reputation, personal characteristics, or mode of living obtained through personal interviews with neighbors, friends, or associates of the consumer."*
- A Summary Of Your Rights - If the subject makes a written request to the employer within a reasonable time after the subject has received the disclosure described above, the employer has five days to make a complete and accurate disclosure of the nature and scope of the investigation.
- Employers must also certify to the Consumer Reporting Agency that they will make the above disclosures to the subject.



### **Step Three: Copy of Report and Summary of Rights**

Before taking Adverse Action based in Whole or in Part on the Consumer Report, the employer must:

- Provide the applicant with a copy of the consumer report
- Provide the applicant with a Summary of Consumer Rights

The purpose of this part of the FCRA is to give subject and employees an opportunity to view the report that may have an adverse impact on them. If they believe the report to be inaccurate or incomplete, subjects may contact the Consumer Reporting Agency and dispute or explain information in the report. This prevents the possibility of inaccurate or incomplete information from causing an applicant's denial of employment.

Neither the FCRA nor FTC prescribes any specific language to be used in a pre-adverse action communication. However, in addition to giving applicants a copy of the report and Summary of Consumer Rights, the employer should encourage them to contact the Consumer Reporting Agency as soon as possible if they believe any of the report's information to be inaccurate or incomplete.

Once a copy of the report and summary of consumer rights are given to an applicant, the FCRA also does not specify how long the employer should wait before taking adverse action. The intent of the law is to give applicants and employees ample time to read the report and dispute the information if they wish.

### **Step Four: Notice of Adverse Action (FCRA sec. 615)**

If the employer still wishes to proceed with adverse action based in whole or in part on the consumer report, the FCRA requires them to notify the subject. The notification must contain certain language:

- The notification should include the name, address, and toll free telephone number of the Consumer Reporting Agency that furnished the report.
- The notification should also state that the Consumer Reporting Agency did not make the decision, nor can they provide the consumer with specific reasons why the adverse action was taken.
- The subject should also be informed that he/she has a right to obtain a free copy of the consumer report from the Consumer Reporting Agency within 60 days. (This is in addition to the subject's right to a copy of the report as provided for in Step 3. If the subject does request another copy of the consumer report, he/she should also be sent another copy of the Summary of Consumer Rights).
- The consumer also has the right to dispute the accuracy or completeness of any information in the consumer report with the Consumer Reporting Agency.

## Sample Pre-Adverse Action Letter

[DATE]

[CANDIDATE NAME]

[ADDRESS 1]

[ADDRESS 2]

[CITY, STATE ZIP]

Dear [CANDIDATE NAME]:

Recently you authorized [CLIENT NAME] to obtain a consumer report or investigative consumer report from Credential Check Corporation, a consumer reporting agency. You are entitled by federal law to receive the following documents before an adverse decision is made in whole or in a part due to information obtained from a consumer report for employment purposes. Enclosed you will find a copy of the report and a summary of your Rights under the Fair Credit Reporting Act. Should you want to dispute or explain any of the information in this report, contact Credential Check Corporation as soon as possible at the contact information listed below:

Credential Check Corporation  
575 East Big Beaver Road  
Suite 300  
Troy, MI 48083

Toll-Free: (888) 689-2000  
Toll-Free Fax: (877) 689-1500

Sincerely,

[CLIENT NAME]

## Sample Adverse Action Letter

[DATE]

[CANDIDATE NAME]

[ADDRESS 1]

[ADDRESS 2]

[CITY, STATE ZIP]

Dear [CANDIDATE NAME]:

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

Credential Check Corporation  
575 East Big Beaver Road  
Suite 300  
Troy, MI 48083

Toll-Free: (888) 689-2000  
Toll-Free Fax: (877) 689-1500

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

Please note, Credential Check Corporation DID NOT make the decision to take the adverse action and is unable to provide you with the specific reason as to why the adverse action was taken.

Sincerely,

[CLIENT NAME]