

Summary of End-Users Obligations
Federal Fair Credit Reporting Act (FCRA)
And
California Investigative Consumer Reporting Agencies Act (CA ICRA)

INTRODUCTION - Description and purpose in background screening

The following information provides an outline of the Federal Fair Credit Reporting Act (FCRA), and the California Investigative Consumer Reporting Agencies Act (CA ICRA), as they pertain to use of background screening reports. A summary of your obligations under these laws is provided. Since language within laws can be unclear, varying interpretations exist regarding obligations. Your company is ultimately responsible for compliance with these and other governing laws.

This document is not intended as legal advice. Applicant Insight (Ai) strongly recommends that you consult with legal counsel to ensure you are in compliance. This document was prepared for Ai's clients as an informative guideline only.

The Federal Fair Credit Reporting Act (FCRA) was first enacted in 1971, and revised in 1997. In very general terms, the purpose of the FCRA is to place certain obligations on both providers and users of background screening reports, in an effort to protect the individual of the report, from being denied an opportunity such as obtaining credit, employment and insurance, based on inaccurate information. For example, the users of such reports are required to 1) notify the individual that a report will be prepared containing information about him/her; 2) obtain authorization from the individual prior to requesting the report; and 3) give the individual an opportunity to dispute information in the report that will have an adverse effect on him/her.

This document addresses the requirements of using background screening reports for making decisions related to employment and contract work. To understand why the same requirements are being presented for both employment and contract work, refer to the section of this document titled CONTRACT WORKERS and Consumer Reports under the FCRA. For requirements to use these reports for other permissible purposes, please refer to the FCRA. A link to the website has been provided in this document.

The California Investigative Consumer Reporting Agencies Act (CA ICRA) was enacted in 2002 and is similar to the FCRA in that it imposes obligations on providers and users of background screening reports in an effort to protect individuals who are subjects of these reports. It is commonly referred to as the "Identity Theft Bill". Over the years due to an increase in identity theft, (i.e. a social security number is "stolen" and used fraudulently), the information contained within a credit report or public record may be inaccurate as a result of fraudulent activity, as well as human error. Keep in mind that the CA ICRA is in the California State civil code, which generally only applies to CA companies and/or CA residents; therefore it may not be applicable to your company (or only under some circumstances). The CA ICRA takes users obligations a step further than the FCRA; therefore if applicable to your company, the additional requirements must be complied with, pursuant to the FCRA. You should seek legal counsel to determine if, and under what circumstances you must comply with the CA ICRA.

Under both laws, the background screening reports (as provided by Ai) are called "Consumer Reports" or "Investigative Consumer Reports", depending on what information it contains. The applicant or employee, who is the subject of the report, is called the Consumer". Ai, a company providing Consumer and Investigative Consumer Reports, is called a "Consumer Reporting Agency."

Your company and its employees, as requestors and users of Consumer Reports, are considered "End-Users" of the information. You request the Consumer Report and use the results to make a decision regarding hire, transfer, promotion, or assignment, of an applicant, employee or contract worker.

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CONTRACT WORKERS and Consumer Reports under the FCRA

Companies that utilize contract workers (independent contractors) often request Consumer Reports on them to determine eligibility, prior to entering into an agreement. After “hiring” a contract worker, subsequent Consumer Reports may be procured to determine continued eligibility to work. For example, a trucking operation may contract with individuals who own and operate their own equipment. The company’s requirement may be to first procure Consumer Reports, including driving records and criminal history reports in order to determine eligibility. If the individual is hired, subsequent motor vehicle reports may be required by the company to determine continued eligibility for contract renewal.

Questions have been raised as to what a company’s obligations are under the FCRA, when using Consumer Reports on contract workers. There is Federal Trade Commission (FTC) legal *opinion*, suggesting that Consumer Reports procured on contract workers are governed by the FCRA, under section 603(h) for “employment purposes”. The FTC staff “*subscribes to the view, enunciated by the United States Court of Appeals for the Fourth Circuit in Hoke v. Retail Credit Corporation, that the term “employment purposes,” as used in the FCRA, should be interpreted liberally to effectuate the broad remedial purpose of the Act.*” *The court therein ruled that information furnished by a consumer reporting agency to the Texas Board of Medical Examiners, which had requested the information to aid its assessment of a physician’s application for a license to practice medicine, was furnished for “employment purposes” within the meaning of the FCRA, and thus was a “consumer report” subject to the provisions of the Act.*” If the provision of the Act is to protect a Consumer from being denied an opportunity to work, based on inaccurate information contained within a Consumer Report, seemingly it fits the employment purpose section, in a broad, not literal sense.

Although the FCRA does not specifically address independent contractors, it does state that you must have a permissible purpose prior to requesting a Consumer Report. Therefore, a decision has to be made as to which permissible purpose governs, and in turn, what obligations are required of the End-User (Ai’s Client).

Ai will not provide legal advice, however, will provide information to assist you with making decisions regarding compliance. Supporting documentation is available to demonstrate that Consumer Reports for independent contractors and employees can be procured using the same documents (disclosure and authorization), and procedures (pre-adverse and adverse action), under the FCRA permissible purpose of employment.

The documents that follow provide more specific information about the End-User’s obligations under the FCRA and the CA ICRA.

There are distinct differences in the requirements imposed by the FCRA and CA ICRA, for similar sections (disclosure, authorization, etc). They have been noted in this document.

It is strongly recommended that you consult legal advice to ensure your company is in compliance as applicable.

- To access the FCRA visit www.ftc.gov/os/statutes/fcrajump.htm
- To access the CA ICRA) visit www.privacyprotection.ca.gov/icraa.htm

(Conclusion to Introduction and Purpose)

Federal Fair Credit Reporting Act (FCRA) A Summary of End User's Obligations

Definitions for this Document

FCRA = Fair Credit Reporting Act

Consumer = The person who is the subject of a background screening report.

Consumer Report = A background screening report prepared by Ai, and used by companies or individuals, to make decisions related to hiring and/or retaining employees and contract workers.

Investigative Consumer Report = A type of Consumer Report containing information about a person's character, general reputation, personal characteristics and mode of living.

Consumer Reporting Agency = Ai, as a provider of Consumer Reports.

End User = The company / individual who requests a Consumer Report from Ai.

Application = The application completed by an individual who is being considered for hire.

Adverse Action = The decision not to hire, promote, transfer, retain, or grant a related opportunity based on information in the Consumer Report.

End User's Obligations under the FCRA:

Prior to requesting Consumer Reports from Ai, the End-User must comply with the following procedures:

1. Certification to Ai

An authorized individual must certify to Ai, on behalf of it's company, that every requestor, and End-User of Consumer Reports procured from Ai, will comply with applicable FCRA requirements including: providing written disclosure to the Consumer, obtaining written authorization from the Consumer, following all pre-adverse and adverse action procedures, and using the information only for a permissible purpose, and not in violation of any governing laws. Ai has a sample certification available for signature. These obligations are described in further detail below:

2. Disclosure to Consumer

Provide the Consumer with a clear and conspicuous disclosure, on a separate document, as notification that you may request a Consumer Report and/or Investigative Consumer report for "employment purposes". The disclosure for an Investigative Consumer Report requires more information than that of the Consumer Report. An Investigative Consumer Report is a type of Consumer Report that includes information as to a person's character, general reputation, personal characteristics and mode of living. Ai has sample disclosure statements available for guidance.

3. Authorization from Consumer

Obtain written consent/authorization from the Consumer, prior to requesting the Consumer Report from Ai. It is recommended that the authorization states that you may procure Consumer and/or Investigative Consumer Reports in connection with the application for employment or contract work and, if hired, at any time during employment or contract, for promotion, transfer renewal and/or continued employment or contract work. This permits procurement of subsequent Consumer Reports for the duration of the individual's employment or contract for service. Ai has a sample authorization available for guidance.

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***FTC Opinion regarding Disclosure and Authorization:** The FCRA states that the disclosure must be clear and conspicuous, in a document that consists solely of the disclosure. However, Federal Trade Commission legal opinion suggests that you can combine the disclosure and authorization statements on one document, but not as a part of the application, and it cannot contain other erroneous information. Therefore, if your authorization is already part of the application, you must put the disclosure on a separate document. If you decide to combine them in one document, the two statements should be separate and conspicuous from one another.

4. Follow Adverse Action Procedures

✓ **Pre-Adverse Action Notification First**

Prior to taking adverse action regarding the consumer, (decision not to hire, promote, retain, reassign, etc), when the decision is based, in whole, or in part, on the Consumer Report, the End-User, must:

Provide to the Consumer: **1)** a copy of the Consumer Report, **2)** a copy of the document named "A Summary of Your Rights Under the Fair Credit Reporting Act", and **3)** a Pre-Adverse Action notification (a letter that notifies Consumer that you may take adverse action based on the report, and are providing him/her an opportunity to dispute any information contained in the Consumer Report, prior to your final adverse action decision). A copy of the FCRA Summary of Rights and sample pre-adverse action documents are available from Ai.

✓ **Reasonable Waiting Time**

Once you have provided the Pre-Adverse Action notice, you must then give the Consumer a "reasonable" amount of time to dispute the information (reasonable is determined by the End-User). The FCRA is silent on a specific timeframe; therefore it is based on the End-User's circumstances and discretion. Note: A five day waiting period is commonly used, and may be extended or shortened based on the Consumer's actions/response to your pre-adverse action letter. However, you should consult legal advice on what is appropriate for your company, and establish a general policy.

✓ **Adverse Action Notification**

After following pre-adverse action procedures, if you still decide to take adverse action based on the Consumer Report, you must provide to the Consumer:

- A notice that you are taking adverse action based on the Consumer Report.
- The name, mailing address, and telephone number of Ai, the Consumer Reporting Agency that provided the report and a statement that "the Consumer Reporting Agency did not make the decision to take the adverse action and is unable to provide the specific reasons why the adverse action was taken."
- A notice to the Consumer of his/her right to obtain a free copy of the Consumer Report from Ai, within 60 days, and the right to dispute the accuracy of the information with the Consumer Reporting Agency that provided the information in the report.

Sample Adverse Action documents are available from Ai.

Important Notice: There are various state laws that impose further obligations regarding Consumer Reports for employment purposes. Additionally, some variations or exceptions may exist for regulated industries. You should consult legal counsel to ensure compliance with all governing laws applicable to your business.

(Conclusion of End-Users obligations under the FCRA)

California Investigative Consumer Reporting Agency (CA ICRA)

A Summary of End User's Obligations

First Determine if CA ICRA is Applicable

Since the CA ICRA is a California state law, if you are a California based employer or hire California residents, you should consult with your legal counsel to determine under what circumstance this law applies to you and, and what your company's obligations are for compliance. Since this is a recently enacted bill, which has already been amended, further amendments are anticipated which can change your obligations. The information prepared by Ai is intended solely as assistance to its customers, not as legal advice.

Note: The CA ICRA considers most background screening reports procured from Consumer Reporting Agencies as "Investigative Consumer Reports", except credit reports which are considered "Consumer Reports". For the purposes of this document both are referred to herein as "Consumer Reports". The language in the disclosure and authorization will require proper terminology.

Important Notice: If you have determined that you are required to comply with the CA ICRA, you must follow these obligations pursuant to those outlined in the FCRA.

Definitions for this Document

CA ICRA = California Investigative Consumer Reporting Agencies Act

FCRA = Fair Credit Reporting Act

Consumer = the person who is the subject of a background screening report.

Consumer Report = A background screening report prepared by Ai, and used by companies or individuals, to make decisions related to hiring and/or retaining employees and contract workers.

Investigative Consumer Report = A type of Consumer Report containing information about a person's character, general reputation, personal characteristics and mode of living.

Consumer Reporting Agency = Ai, as a provider of Consumer Reports.

End User = the company / individual who requests a Consumer Report from Ai.

Application = The application completed by an individual who is being considered for hire.

Adverse Action = the decision not to hire, promote, transfer, retain, or grant a related opportunity based on information in the Consumer Report.

Caution to End-Users: *There are distinct differences in the requirements imposed by the FCRA and CA ICRA, for similar sections (disclosure, authorization, etc). They have been noted within this document. It is strongly recommended that you consult legal advice to ensure your company is in compliance.*

End User's Obligations under CA ICRA:
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Prior to requesting any Consumer/Investigative Consumer Reports (herein referred to as Consumer Reports) from Ai, and pursuant to obligations under the FCRA, the End-User must comply with the following procedures:

1. Certification to Ai

Certify to Ai that the person(s) procuring or requesting Consumer Reports, will comply with all applicable FCRA and CA ICRA requirements regarding use of Consumer and Investigative Consumer Reports received from Ai including: providing a *specific* written disclosure to the applicant/employee, (referred to herein as the Consumer); obtaining written authorization from the Consumer; providing an option to the Consumer to request a copy of the report, following procedures for providing copies of the report; following all pre-adverse and adverse action procedures, and using the information only for a permissible purpose and not in violation of any governing laws. Ai has a certification available for signature.

2. Disclosure to Consumer

Provide a clear and conspicuous disclosure in writing to the Consumer, prior to requesting the report, in a document which consists solely of the disclosure that:

1. A Consumer and/or Investigative Consumer Report may be obtained;
2. Identifies the permissible purpose of the report (for employment purposes or contract work);
3. The report may include information on the consumer's character, general reputation, personal characteristics and mode of living;
4. Identifies the name, address and telephone number of the investigative consumer reporting agency; and
5. Notifies the Consumer in writing of the nature and scope of the investigation requested (what search will be conducted), including a summary of the provisions of 1786.22 (CA ICRA Summary of Rights). A copy of the Summary of Rights is available from Ai (it is not the same as the FCRA document).

Note regarding the Disclosure and Authorization statements: The CA ICRA states in section 1786.16(a) (2); "**If, at any time**, an investigative consumer report is sought for employment purposes..." the disclosure and authorization provisions apply. There is no clarification as to whether a one-time disclosure and authorization obtained for the initial report, permits procurement of all subsequent reports. You should consult legal counsel for guidance on how to comply with this section. There are varying opinions.

3. Authorization from the Consumer

Obtain written authorization from the Consumer to procure the Consumer Report, prior to requesting the report. A sample document is available from Ai.

**California Investigative Consumer Reporting Agency (CA ICRA)
A Summary of End User's Obligations**

4. Provide an option for the Consumer to request a copy of the Consumer Report obtained from Ai, a Consumer Reporting Agency

When obtaining reports from a Consumer Reporting Agency (Ai), you must provide a check box option for the Consumer to exercise his/her right to receive a copy of the Consumer or Investigative Consumer Report. The check box may be contained on either the disclosure form or a separate consent/authorization form. **Note:** there is a separate provision for reports that are not obtained from a Consumer Reporting Agency but are a matter of public record (See #5 of this section).

Requirement for providing a copy of the report prepared by Ai

When the box is checked by the Consumer indicating their request to receive a copy of the Consumer Report, you must send a copy within three business days of receipt of the report from Ai. You may contract with Ai or another entity to send a copy of the report to the Consumer on your behalf. The copy of the report must contain the name, address and telephone number of the Ai, and how to contact them.

5. Provide an "Opt-Out" provision for the Consumer regarding information NOT obtained from Ai, which is a matter of public record;

Any person who, without using the services of a Consumer Reporting Agency (Ai), collects, assembles, evaluates, compiles, reports, transmits, transfers or communications information about a Consumer's character, general reputation, personal characteristics or mode of living, for employment purposes, which are a matter of public record, shall provide a copy of the related public record to the Consumer within 7 days of receipt of the information (regardless if the information is received in oral or written format) unless the Consumer exercises an "Opt-Out" provision which must be provided by the End-User as follows:

In summary: A check box shall be provided on the job application or any other form, that permits the consumer to WAIVE his or her rights to receive a copy of any public record obtained as stated in this section (when not obtained by a Consumer Reporting Agency).

Comments Regarding Check Box Options: There is a significant difference in the two check box options required for Consumers. Section 4 pertains to reports obtained from a Consumer Reporting Agency. Section 5 pertains to information that contains public record information, obtained without the use of a Consumer Reporting Agency (for example, if you checked the public record). In section 4 when the box is checked, you must provide a copy of the report to the consumer within 3 days of receipt. In section 5 you must automatically provide a copy of the report to the consumer within 7 days of receipt from Ai, unless the box is checked, waiving the right to receive a copy.

Note: The above obligations under the CA/ICRA do not apply to reports procured for employment purposes due to suspicion held by an employer of wrongdoing or misconduct by the subject of the investigation. *However*, Adverse Actions procedures (FCRA) **do** apply if the Consumer Report received from Ai, or public record information obtained without Ai (or any Consumer Reporting Agency), *is the reason for taking adverse action*. Adverse Actions obligations for End-Users are outlined in the FCRA section.

(Conclusion of End-Users obligations under CA ICRA)

Summary of End-Users Obligations

Federal Fair Credit Reporting Act (FCRA)
And
California Investigative Consumer Reporting Agencies Act (CA ICRA)

Notable Remarks:

- Always consult legal counsel, prior to developing documents or implementing procedures for compliance with these or any other governing laws. End-Users are responsible for meeting compliance obligations, regardless of the source of information used in developing compliance procedures.
- Please remember that the CA ICRA obligations are pursuant (in addition) to the FCRA, therefore you must follow Adverse Action procedures and all additional obligations under the FCRA that are not listed in the enclosed CA ICRA obligations for End-Users.
- *Should* you decide to implement comprehensive documents to incorporate obligations of both the FCRA and CA ICRA, remember that there are some distinct differences in the requirements and language related to the disclosure statement, authorization, procedures/options for providing copy of reports to Consumers, and the Summary of Rights statements.
- Although FTC legal opinion suggests that it is permissible to combine the FCRA disclosure and authorization statements on one document, there is no supporting opinion regarding the CA ICRA. You should seek legal advice first to determine if it is deemed permissible to combine the disclosure with any other document under the CA law.
- Ai, as a Consumer Reporting Agency, has separate obligations under the FCRA and CA ICRA which are not listed in this document. There are differences in the timeframe and format of Consumer Reports furnished by Ai under the FCRA vs. the CA ICRA, as required by law. Please be aware that the CA ICRA prohibits reporting of adverse information prior to 7 years. This includes criminal convictions (with an exception for governmental agencies).

IMPORTANT NOTICE REGARDING THE CERTIFICATION DOCUMENT: It is your obligation under federal law and CA state law, prior to requesting any Consumer Reports from Ai, to provide certification to Ai, that you will comply with all applicable requirements of the FCRA and CA ICRA. To assist you, Ai has previously provided certification documents for signature to all customers. **If you have not signed the Ai End-User's Certification, under law, you are not permitted to request Consumer Reports.** Please contact Ai immediately, and a certification document will be forwarded to you. Ai will conduct audits to ensure that certification documents are on file, and will contact customers who have not returned a signed certification.

For any questions regarding clarification of this material, for sample documents, or an updated certification, please contact Ai's Compliance Department at (800) 771-7703 X2016.

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