

# Background Checks

## What Employers Need to Know



**W**hen making personnel decisions — including hiring, retention, promotion, and reassignment — employers sometimes want to consider the backgrounds of applicants and employees. For example, some employers might try to find out about the person's work history, education, criminal record, financial history, medical history, or use of social media. Except for certain restrictions related to medical and genetic information (see below), it's not illegal for an employer to ask questions about an applicant's or employee's background, or to require a background check.

However, any time you use an applicant's or employee's background information to make an employment decision, regardless of how you got the information, you must comply with federal laws that protect applicants and employees from discrimination. That includes discrimination based on race, color, national origin, sex, or religion; disability; genetic information (including family medical history); and age (40 or older). These laws are enforced by the Equal Employment Opportunity Commission (EEOC).

In addition, when you run background checks through a company in the business of compiling background information, you must comply with the Fair Credit Reporting Act (FCRA). The Federal Trade Commission (FTC) enforces the FCRA. This publication explains how to comply with both the federal nondiscrimination laws and the FCRA. It's also a good idea to review the laws of your state and municipality regarding background reports or information because some states and municipalities regulate the use of that information for employment purposes.

# Before You Get Background Information

## EEOC

In all cases, make sure that you're treating everyone equally. It's illegal to check the background of applicants and employees when that decision is based on a person's race, national origin, color, sex, religion, disability, genetic information (including family medical history), or age (40 or older). For example, asking only people of a certain race about their financial histories or criminal records is evidence of discrimination.

Except in rare circumstances, don't try to get an applicant's or employee's genetic information, which includes family medical history. Even if you have that information, don't use it to make an employment decision. (For more information about this law, see the EEOC's publications explaining the Genetic Information Nondiscrimination Act, or GINA.) Don't ask any medical questions before a conditional job offer has been made. If the person has already started the job, don't ask medical questions unless you have objective evidence that he or she is unable to do the job or poses a safety risk because of a medical condition.

## FTC

**If you get background information (for example, a credit or criminal background report) from a company in the business of compiling background information, there are additional procedures the FCRA requires beforehand:**

- Tell the applicant or employee you might use the information for decisions about his or her employment. This notice must be in writing and in a stand-alone format. The notice can't be in an employment application. You can include some minor additional information in the notice (like

a brief description of the nature of consumer reports), but only if it doesn't confuse or detract from the notice.

- If you are asking a company to provide an “investigative report” – a report based on personal interviews concerning a person's character, general reputation, personal characteristics, and lifestyle – you must also tell the applicant or employee of his or her right to a description of the nature and scope of the investigation.
- Get the applicant's or employee's written permission to do the background check. This can be part of the document you use to notify the person that you will get the report. If you want the authorization to allow you to get background reports throughout the person's employment, make sure you say so clearly and conspicuously.
- Certify to the company from which you are getting the report that you:
  - notified the applicant and got their permission to get a background report;
  - complied with all of the FCRA requirements; and
  - won't discriminate against the applicant or employee, or otherwise misuse the information in violation of federal or state equal opportunity laws or regulations.

## Using Background Information

### EEOC

Any background information you receive from any source must not be used to discriminate in violation of federal law. This means that you should:

- Apply the same standards to everyone, regardless of their race, national origin, color, sex, religion, disability, genetic information (including family medical history), or age (40 or older). For example, if you don't reject applicants of one ethnicity with certain financial histories or criminal records, you can't reject applicants of other ethnicities because they have the same or similar financial histories or criminal records.
- Take special care when basing employment decisions on background problems that may be more common among people of a certain race, color, national origin, sex, or religion; among people who have a disability; or among people age 40 or older. For example, employers should not use a policy or practice that excludes people with certain criminal records if the policy or practice significantly disadvantages individuals of a particular race, national origin, or another protected characteristic, and does not accurately predict who will be a responsible, reliable, or safe employee. In legal terms, the policy or practice has a "disparate impact" and is not "job related and consistent with business necessity."
- Be prepared to make exceptions for problems revealed during a background check that were caused by a disability. For example, if you are inclined not to hire a person because of a problem caused by a disability, you should allow the person to demonstrate his or her ability to do the job – despite the negative background information – unless doing so would cause significant financial or operational difficulty.

## FTC

**When taking an adverse action** (for example, not hiring an applicant or firing an employee) **based on background information obtained through a company in the business of**

**compiling background information**, the FCRA has additional requirements:

- Before you take an adverse employment action, you must give the applicant or employee:
  - a notice that includes a copy of the consumer report you relied on to make your decision; and
  - a copy of “A Summary of Your Rights Under the Fair Credit Reporting Act,” which you should have received from the company that sold you the report.

By giving the person the notice in advance, the person has an opportunity to review the report and explain any negative information.

- After you take an adverse employment action, you must tell the applicant or employee (orally, in writing, or electronically):
  - that he or she was rejected because of information in the report;
  - the name, address, and phone number of the company that sold the report;
  - that the company selling the report didn’t make the hiring decision, and can’t give specific reasons for it; and
  - that he or she has a right to dispute the accuracy or completeness of the report, and to get an additional free report from the reporting company within 60 days.

# Disposing of Background Information

## EEOC

Any personnel or employment records you make or keep (including all application forms, regardless of whether the applicant was hired, and other records related to hiring) must be preserved for one year after the records were made, or after a personnel action was taken, whichever comes later. (The EEOC extends this requirement to two years for educational institutions and for state and local governments. The Department of Labor also extends this requirement to two years for federal contractors that have at least 150 employees and a government contract of at least \$150,000.) If the applicant or employee files a charge of discrimination, you must maintain the records until the case is concluded.

## FTC

Once you've satisfied all applicable recordkeeping requirements, you may dispose of any background reports you received. However, the law requires that you dispose of the reports – and any information gathered from them – securely. That can include burning, pulverizing, or shredding paper documents and disposing of electronic information so that it can't be read or reconstructed. For more information, see *“Disposing of Consumer Report Information? Rule Tells How”* at [www.business.ftc.gov/documents/disposing-consumer-report-information-rule-tells-how](http://www.business.ftc.gov/documents/disposing-consumer-report-information-rule-tells-how).

# Further Information

## EEOC

To find out more about federal antidiscrimination laws, visit [www.eeoc.gov](http://www.eeoc.gov), or call the EEOC toll-free, 800-669-4000 (voice); TTY: 800-669-6820. The EEOC is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information. The EEOC investigates, conciliates, and mediates charges of employment discrimination, and also files lawsuits in the public interest. For specific information on:

- **Preemployment medical inquiries:** see *Preemployment Disability-Related Questions and Medical Examinations* at [www.eeoc.gov/policy/docs/preemp.html](http://www.eeoc.gov/policy/docs/preemp.html).
- **Medical inquiries during employment:** see *Questions and Answers: Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA)* at [www.eeoc.gov/policy/docs/qanda-inquiries.html](http://www.eeoc.gov/policy/docs/qanda-inquiries.html).
- **Genetic inquiries, including inquiries about family medical history:** see *Background Information for EEOC Final Rule on Title II of the Genetic Information Nondiscrimination Act of 2008* at [www.eeoc.gov/laws/regulations/gina-background.cfm](http://www.eeoc.gov/laws/regulations/gina-background.cfm).
- **EEOC recordkeeping requirements:** see *Summary of Selected Recordkeeping Obligations in 29 C.F.R. Part 1602* at [www.eeoc.gov/employers/recordkeepingobligations.cfm](http://www.eeoc.gov/employers/recordkeepingobligations.cfm).

- **Using arrest and conviction records to make employment decisions:** see *Questions and Answers about EEOC's Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII* at [www.eeoc.gov/laws/guidance/qa\\_arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/qa_arrest_conviction.cfm).
- **Whether arrest and conviction records act as an automatic bar to all employment:** see *Reentry Myth Buster: On Hiring/Criminal Records Guidance* at [csgjusticecenter.org/wp-content/uploads/2012/11/Reentry\\_Council\\_Mythbuster\\_Employment.pdf](http://csgjusticecenter.org/wp-content/uploads/2012/11/Reentry_Council_Mythbuster_Employment.pdf).
- **Background on the EEOC for small businesses:** see Get the Facts Series: Small Business Information, [www.eeoc.gov/eeoc/publications/smallbusiness.cfm](http://www.eeoc.gov/eeoc/publications/smallbusiness.cfm).

## FTC

To find out more about federal laws relating to background reports, visit [www.business.ftc.gov](http://www.business.ftc.gov), or call the FTC toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. For specific information on employment background reports, see:

- **Using Consumer Reports: What Employers Need to Know** at [www.business.ftc.gov/documents/bus08-using-consumer-reports-what-employers-need-know](http://www.business.ftc.gov/documents/bus08-using-consumer-reports-what-employers-need-know)
- **The Fair Credit Reporting Act & social media: What businesses should know** at [www.business.ftc.gov/blog/2011/06/fair-credit-reporting-act-social-media-what-businesses-should-know](http://www.business.ftc.gov/blog/2011/06/fair-credit-reporting-act-social-media-what-businesses-should-know)

- **Background screening reports and the FCRA: Just saying you're not a consumer reporting agency isn't enough** at [www.business.ftc.gov/blog/2013/01/background-screening-reports-and-fcra-just-saying-youre-not-consumer-reporting-agency-i](http://www.business.ftc.gov/blog/2013/01/background-screening-reports-and-fcra-just-saying-youre-not-consumer-reporting-agency-i)
- **Reentry Myth Buster: Criminal Histories and Employment Background Checks** at [csgjusticecenter.org/wpcontent/uploads/2012/11/Reentry\\_Council\\_Mythbuster\\_FCRA\\_Employment.pdf](http://csgjusticecenter.org/wpcontent/uploads/2012/11/Reentry_Council_Mythbuster_FCRA_Employment.pdf).

The FTC works to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to businesses to help them comply with the law.





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A joint publication of the Equal Employment Opportunity Commission  
and the Federal Trade Commission

*Para información en español, visite [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore) o escribe a la Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.*

## **A Summary of Your Rights Under the Fair Credit Reporting Act**

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of 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](http://www.consumerfinance.gov/learnmore) or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.**

- **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 fraud;
- you are on public assistance;
- you are unemployed but expect to apply for employment within 60 days.

In addition, all consumers are 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](http://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](http://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 reports 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](http://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 1-888-567-8688.

- **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](http://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:**

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 CFPB:

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

3. Air carriers

4. Creditors Subject to Surface Transportation Board

5. Creditors Subject to Packers and Stockyards Act, 1921

6. Small Business Investment Companies

7. Brokers and Dealers

8. Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations

9. Retailers, Finance Companies, and All Other Creditors Not Listed Above

**CONTACT:**

a. Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

b. Federal Trade Commission: Consumer Response Center – FCRA  
Washington, DC 20580  
(877) 382-4357

a. Office of the Comptroller of the Currency  
Customer Assistance Group  
1301 McKinney Street, Suite 3450  
Houston, TX 77010-9050

b. Federal Reserve Consumer Help Center  
P.O. Box 1200  
Minneapolis, MN 55480

c. FDIC Consumer Response Center  
1100 Walnut Street, Box #11  
Kansas City, MO 64106

d. National Credit Union Administration  
Office of Consumer Protection (OCP)  
Division of Consumer Compliance and Outreach (DCCO)  
1775 Duke Street  
Alexandria, VA 22314

Asst. General Counsel for Aviation Enforcement & Proceedings  
Aviation Consumer Protection Division  
Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
Office of Proceedings, Surface Transportation Board  
Department of Transportation  
395 E Street S.W.  
Washington, DC 20423

Nearest Packers and Stockyards Administration area supervisor

Associate Deputy Administrator for Capital Access  
United States Small Business Administration  
409 Third Street, SW, 8th Floor  
Washington, DC 20416

Securities and Exchange Commission  
100 F St NE  
Washington, DC 20549

Farm Credit Administration  
1501 Farm Credit Drive  
McLean, VA 22102-5090

FTC Regional Office for region in which the creditor operates or  
Federal Trade Commission: Consumer Response Center – FCRA  
Washington, DC 20580  
(877) 382-4357