



## 106 - Nuts & Bolts of Employment Screening: I-9s, Background Checks, & Medical Exams

**Ellen Cho**  
*Senior Counsel*  
Children's Place Retail Stores Inc.

**Russ Dempsey**  
*Assistant General Counsel*  
Nationwide Insurance

**Krishna McVey**  
*Managing Attorney, Labor & Employment Law*  
Michelin North America, Inc.

## Faculty Biographies

### Ellen Cho

Ellen Cho is senior counsel for The Children's Place Retail Stores, Inc., a leading specialty retailer of children's merchandise based in Secaucus, New Jersey. Ms. Cho handles the employment, litigation, and intellectual property matters for the company and its subsidiaries.

Prior to joining The Children's Place, Ms. Cho was the general counsel and director of human resources for Change Technology Partners, Inc., a New York based multimedia company. Ms. Cho also practiced with law firms in Florida and New York, and was a law clerk for a federal judge in the United States District Court, Southern District of Florida.

Ms. Cho is a member of the Employment Law Committee for the National Retail Federation.

Ms. Cho received a B.A. from Columbia University and her J.D. from Fordham University School of Law.

### Russ Dempsey

Russ Dempsey is assistant general counsel for Nationwide Financial in Columbus, Ohio. His responsibilities include providing legal counsel to Nationwide's private sector retirement plan business regarding legal and regulatory matters, retirement plan administration, trust administration, and contracts. Nationwide's private sector retirement business has more than 25,000 plans and in excess of 33 billion dollars in assets under management.

Prior to joining Nationwide, Mr. Dempsey served as general counsel for Validex Employment Screening Services, where he provided counsel in a variety of areas with a focus on the Fair Credit Reporting Act and related state laws. He has also served as general counsel for Augusta Fiberglass, and worked for the Internal Revenue Service's division of Tax Exempt and Government Entities.

He has presented on the Fair Credit Reporting Act and employment screening at several events including continuing legal education conferences sponsored by the Kentucky Bar and Ohio Bar Associations, and a conference hosted by the American Society for Industrial Security. In addition, Mr. Dempsey has performed Pro Bono services for The Legal Aid Society of Columbus and Corporate Pro Bono.

Mr. Dempsey received a B.A. from Marshall University and his J.D. and LL.M., from Capital University Law School.

### Krishna McVey

Kris McVey is currently the managing attorney for Michelin North America's Labor Law Group. There she uses her undergraduate degree in French, her Masters in Human Resources and her Law Degree, all of which she proudly earned at the University of South Carolina. Her practice consists of handling all labor and employment related matters for Michelin's over 22,000 US employees, including bargaining unit employees at four facilities. Kris came to Michelin following seven years of private practice in a management defense labor and employment law firm.

She is a contributing author to the South Carolina Bar's third edition of "Labor and Employment Law for South Carolina Lawyers." She is certified SPHR by the Society for Human Resource Management.



## **Session 106: Nuts & Bolts of Employment Screening: I-9s, Background Checks, & Medical Exams**

**Krishna Y. McVey, Michelin North America, Inc.  
Ellen Cho, The Children's Place Retail Stores, Inc.  
Russ Dempsey, Nationwide Financial**

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## **IMMIGRATION**

- New State Legislation
- IRCA Preemption
- E Verify
- DHS Reform

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### States Enacting Immigration Related Legislation in 2007 As of July 2, 2007



○ States With Enacted Legislation

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### Main Topics in State Immigration-Related Legislation as of July 2, 2007

Main Topics	Number of Bills Introduced	States	Enacted Laws	States
Education	118	31	10	8
Employment **	234	44	26	19
Health	134	31	11	9
Human Trafficking	79	29	15	11
ID/Driver's Licenses/Other Licenses	229	45	35	26
Law Enforcement	148	34	11	7
Legal Services	20	10	3	3
Miscellaneous	103	29	6	5
Comprehensive Measures	26	8	0	0
Public Benefits **	115	39	15	11
Voting	46	20	0	0
Resolutions	152	34	38	14
<b>TOTAL</b>	<b>1404</b>	<b>50</b>	<b>170</b>	<b>41</b>



## Employment Immigration Law

- *26 laws enacted in 19 states: Arkansas, Arizona, Colorado, Georgia, Hawaii, Kansas, Kentucky, Maine, Minnesota, Mississippi, Montana, New Mexico, Nevada, Oregon, Tennessee, Texas, Utah, Virginia and West Virginia. Two bills are pending Governor Approval in Illinois. One bill in Washington was partially vetoed.*

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## IRCA Preemption

- **Controversial immigration ordinances enacted by city government of Hazleton, PA overturned.**
- **In Lozano v. City of Hazleton** the court held that Hazleton Ordinance Nos.2006-18, 2006-40 and 2007-6 (Illegal Immigration Relief Act "IIRA") and Hazleton Ordinance No.2006-13, (Tenant Registration Order "RO"), are unconstitutional. The court **PERMANENTLY ENJOINED** the defendant from enforcing IIRA and RO.

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## Formerly Basic Pilot, Now E Verify

- Electronic verification system for employment.
- Requires employers within 1 working day of hire to check each new employee's work eligibility and identity.
- Establishes a secondary verification process of up to 10 days in case of tentative non-confirmation.

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## E Verify

- Process would be required to give employer a confirmation or non-verification of work eligibility.
- Employers could not terminate individuals that had received tentative non-confirmation until they receive a non-verification or the 10 day period has elapsed.

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## E Verify

- “No-Match” Letter from Social Security Administration is evidence of possible violation of immigration law.
- Under new rule employers will receive a general notice from DHS outlining their obligations to satisfy the requirement.

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## E Verify

- Safe Harbor provision to protect employers that attempt to comply with the law.
  - Employer is given opportunity to correct the problem, contact the employee to correct the error, or submit new information.
  - If the employer acts to correct the error, the new rule says, employers can protect themselves from potential liability.

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## E Verify

- Will add component allowing employers to match photographs provided by employees with photographs that already exist in federal databases (visa holders and permanent resident green card pictures).
- Will approach states to obtain drivers' license pictures as well.

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## Homeland Security Immigration Reform

- Administration will commence a rulemaking process to require all federal contractors and vendors to use E-Verify
  - There are more than 200,000 companies doing Federal business.
  - E-Verify will be bolstered to include new sources of data to cross check visa and passport information.

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## Homeland Security Immigration Reform

- “No-Match” Regulation – Helps Employers Ensure Their Workers are Legal.
  - SSA will send employer a letter when inaccurate personal data is identified. Employers may be held liable if they ignore the “No-Match” problem by failing to take specific steps within 90 days.
  - SSA estimates they will send out 140,000 letters this year.

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## Homeland Security Immigration Reform

- Reduction in number of documents that employer must accept to confirm identity.
  - This regulation will reduce unlawful employment by weeding out insecure documents now used often for identity fraud.
- Civil fines increased 25% on employers who knowingly hire illegal immigrants.

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## Homeland Security Immigration Reform

- Administration will continue to expand criminal investigations against employers who knowingly hire large numbers of illegal immigrants.
  - Arrests by US Immigration and Customs Enforcement increased from 24 in FY 1999 to 716 in 2006.
  - There have been 742 criminal arrests FY 2007 (through July 31)

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## Background Checks

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## Definitions

- **Consumer:** an individual.
  
- **Consumer Report:** report containing any written or oral communication *of any information bearing on the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living* which is used or expected to be used or collected for a permissible purpose.

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## Definitions

- **Investigative Consumer Report:** a special type of consumer report, in which the information is gathered through *personal interviews* of friends, neighbors, employers, or associates of the consumer.

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## Definitions

- **Consumer Reporting Agency (CRA):** person or entity that, for monetary fees, regularly prepares consumer reports for third parties.



## Definitions

- **Permissible Purposes:** Evaluating a consumer's eligibility for credit, insurance, or employment.
- **Employment Purpose:** Evaluating a consumer for employment, reassignment, or retention as an employee.



## Definitions

- **Adverse Action:** A denial of employment or any other decision regarding employment purposes that adversely affects any current or prospective employee.



## Does FCRA Apply?

- Key questions
- Is a CRA preparing the report?
- Is a consumer report being created?



## Does FCRA Apply?

- In-house background screening
- Use of a private investigator
- Use of a records search firm
- State Agencies
- Accessing proprietary online databases
- Employing the services of a CRA
- Drug testing

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## FCRA Requirements

Employers must:

- 1) Make certifications to the CRA
- 2) Provide disclosure
- 3) Obtain written authorization
- 4) Follow adverse action procedures

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## Employer Certifications

Employer promises the CRA that they will:

- 1) provide the required disclosures and obtain written consent
- 2) follow adverse action rules
- 3) not use info in violation of federal or state equal employment opportunity law
- 4) use report for permissible purpose

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## Disclosure & Authorization

- Employer must clearly and conspicuously disclose in writing prior to obtaining a report that a consumer report may be obtained for employment purposes
- Employer must obtain written authorization prior to requesting a report

The disclosure and authorization can be combined in a single document.

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## Disclosure – ICR

- If an Investigative Consumer Report has been requested, notify applicant that they have the right to obtain additional information as to the nature and scope of the investigation requested, and they must receive a copy of the FTC document, “Summary of Your Rights.”

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## Adverse Action

- First notice: The pre-adverse action notice must be provided before adverse action is taken, and must include FTC notice, “Summary of Your Rights” and a copy of the report.

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## Adverse Action

- Second notice: Adverse action notice must be provided after action is taken, and inform applicant of CRA's contact info, statement that CRA did not take the action, they have a right to dispute report, and right to another free copy of report within 60 days.

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## CRA Requirements

- Must follow reasonable procedures to assure maximum possible accuracy of information concerning the individual about whom the report relates
- Must re-investigate, free of charge, and determine if information is accurate within 30 days of dispute

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## FCRA Reporting Limits

CRA's may not report:

- 1) Bankruptcy cases more than 10 years old
- 2) Paid tax liens more than 7 years old
- 3) Civil suits or judgments, and arrest records more than 7 years old
- 4) Accounts placed for collection or charged to profit and loss more than 7 years old
- 5) Any other adverse information, other than records of convictions, that predate the report by more than seven years

The above restrictions do not apply to employees reasonably expected to earn \$75,000 or more per year.

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## State Reporting Limits

Convictions limited to 7 years:

- |               |               |
|---------------|---------------|
| California    | Nevada        |
| Colorado      | New Hampshire |
| Kansas        | New Mexico    |
| Maryland      | New York      |
| Massachusetts | Texas         |
| Montana       | Washington    |

KS, MD, MA, NH, and WA waive that limit if the applicant is reasonably expected to make \$20,000 per year. NY limit is \$25,000.

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### State Reporting Limits - Arrests

- |               |              |
|---------------|--------------|
| California    | New York     |
| Hawaii        | Ohio         |
| Illinois      | Pennsylvania |
| Kentucky      | Rhode Island |
| Massachusetts | Utah         |
| Michigan      | Virginia     |
| Montana       | Washington   |
| Nevada        | Wisconsin    |
| New Hampshire |              |

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### State Law – Expunged records

- |                         |                         |
|-------------------------|-------------------------|
| Alaska                  | New Hampshire           |
| California              | New Jersey              |
| Colorado                | Ohio                    |
| Connecticut             | Oklahoma                |
| Delaware                | Oregon (juvenile only)  |
| Florida                 | Pennsylvania            |
| Georgia                 | Rhode Island            |
| Hawaii                  | Utah                    |
| Illinois                | Virginia                |
| Kansas (has exceptions) | Wyoming (juvenile only) |
| Massachusetts           |                         |
| Mississippi             |                         |

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## EEOC Considerations

- The EEOC has stated that the use of arrest records is considered a discriminatory employment practice, absent a strong showing of business necessity.
- Employment decisions based on convictions should be job-related and consistent with business necessity.
- Request for date of birth is not, in itself, a violation of the ADEA.

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## Vail Letter and FACT ACT

- Investigations conducted in good faith into suspected misconduct relating to employment are exempted from FCRA's notice and disclosure requirements.
- If adverse action is taken based on the investigation, the employer is required to provide an investigation summary.

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## Medical Examinations

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## Pre-employment medical inquiries

- Americans With Disabilities Act (“ADA”) regulates the types of questions an employer may ask an individual during the hiring process.

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## Timing of Medical Inquiries

- ADA separates hiring process into three stages:
  - pre-offer
  - post-offer
  - employment

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## Pre-Offer Stage

- All “disability-related questions” and “medical examinations” are prohibited, even if they are related to the job.
- “Applicant” is anyone who applies for the job in question, including an existing employee who applies for a new job with the same employer.

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## Post-Offer/Conditional Offer

- Employer may ask disability-related questions or perform medical examination, regardless of whether they are related to the job, so long as employer does so for all entering employees in the job category.
- Information must be maintained in separate forms and in separate medical files and must be treated as confidential.

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## When Is Job Offer “Real”?

- Job offer must be “real” for employer to ask disability-related questions or perform medical examination.
- Job offer is “real” if the employer has evaluated all relevant non-medical information which it could responsibly have obtained and analyzed prior to giving the offer. *Leonel v. American Airlines, Inc.*, 400 F.3d 702, 708 (9<sup>th</sup> Cir. 2005)

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## ***Leonel v. American Airlines, Inc., 400 F.3d 702 (9<sup>th</sup> Cir. 2005)***

- Plaintiffs, who are HIV positive, applied for flight attendant positions with AA.
- AA conducted interviews and then extended conditional offers of employment, contingent upon passing both background check and medical examination.
- AA conducted medical examination prior to obtaining results of background check. Plaintiffs did not disclose HIV positive status on medical history questionnaire.
- AA rescinded job offers after they learned of plaintiffs' HIV positive status, citing plaintiffs' failure to disclose information during the medical examinations.

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## ***Leonel v. American Airlines, Inc., 400 F.3d 702 (9<sup>th</sup> Cir. 2005)***

- Medical examination is not permitted until after employer has made “real” job offer to applicant.
- AA’s offer was not “real” because it was contingent on critical non-medical component, i.e., background check.
- Because medical examination was pre-mature, AA could not penalize plaintiffs for failing to disclose their HIV-positive status.
- Offers contingent on polygraph test, personal interview and background investigation have also been held not to be “real” job offers.

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## Employment

- Employer may make disability-related inquiries and require medical examinations only if they are “job-related and consistent with business necessity.”

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## “Disability-Related Questions”

- A question that is likely to elicit information about a disability, including questions directly about a disability and those closely related to a disability.
- Disability-related inquiries also include questions directed at the individual’s co-workers, family members, or doctor’s about the individual’s disability.
- Employment: Employer may make disability-related inquiries and require medical examinations only if they are “job-related and consistent with business necessity.”

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## Permissible vs. Impermissible Questions

### Permissible

1. Can you perform the duties of the job you are applying for?
2. Can you meet the attendance requirements of this job?
3. What days and hours can you work?
4. How many days of leave did you take last year?
5. Have you ever been disciplined for tardiness?
6. Have you ever used illegal drugs?
7. Are you currently using any illegal drugs?
8. Do you drink alcohol?

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## Permissible vs. Impermissible Questions

### Impermissible

1. Do you have any disabilities?
2. Do you have any medical conditions?
3. Do you have any restrictions which might prevent you from doing this job?
4. What current or past medical problems might limit your ability to do a job?
5. How many days were you sick last year?
6. Are you currently taking any medication?
7. Have you ever been addicted to illegal drugs or alcohol?
8. How much alcohol do you drink?
9. Have you ever filed for worker's compensation?

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## “Medical Examination”

- Procedure or test that seeks information about an individual’s physical or mental impairment or health.
- Medical examinations include vision tests, blood, urine, and breath analyses, blood pressure screening and cholesterol testing, diagnostic procedures.

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## What Are Not Considered Medical Examinations?

- Blood and urine tests to determine current use of illegal drugs;
- Physical agility and physical fitness tests that measure performance of physical tasks such as running or lifting, so long as tests do not include examinations that could be considered medical;
- Psychological tests that measure personality traits such as honesty, performance, and habits;
- Polygraph examinations.

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## Rejection of applicant

- If employer rejects applicant after conditional offer is made, employer must demonstrate:
  - Reason for rejection is “job-related and consistent with business necessity.”
  - If reason for rejection is safety reason, applicant poses “direct threat,” i.e., poses significant risk of substantial harm to him or herself or others and that risk cannot be reduced below the direct threat level through reasonable accommodation.

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### APPENDIX:

#### FAIR CREDIT REPORTING ACT: Guidelines For Compliance (Federal)

- Form F-1: Sample Written Disclosure to Applicant and Consent to Request Consumer Report Information
- Form F-2: Sample Written Disclosure to Current Employee and Consent to Request Consumer Report Information
- Form F-3: Sample Written Disclosure to Applicant and Consent to Request Consumer Report and Investigative Consumer Report Information
- Form F-4: Sample Written Disclosure of Investigative Consumer Report
- Form F-5: Sample Written Pre-Adverse Action Notice to Applicants
- Form F-6: Sample Written Pre-Adverse Action Notice to Current Employees
- Form F-7: Sample Written Adverse Action Notice to Applicants
- Form F-8: Sample Written Adverse Action Notice Current Employees
- Form F-9: A Summary of Your Rights Under the Fair Credit Reporting Act
- Form F-10: End User Certification of Use for Consumer Credit Reports

#### FAIR CREDIT REPORTING ACT: Guidelines For Compliance (New York and Federal)

- Form NY-1: Sample Written Disclosure to Applicant and Consent to Request Consumer Report Information
- Form NY-2: Sample Written Disclosure to Current Employee and Consent to Request Consumer Report Information
- Form NY-3: Sample Written Disclosure to Applicant and Consent to Request Consumer Report and Investigative Consumer Report Information
- Form NY-4: Sample Written Disclosure to Employee and Consent to Request Consumer Report and Investigative Consumer Report Information
- Form NY-5: Sample Written Disclosure of Investigative Consumer Report
- Form NY-6: Sample Written Pre-Adverse Action Notice to Applicants
- Form NY-7: Sample Written Pre-Adverse Action Notice to Current Employees
- Form NY-8: Sample Written Adverse Action Notice to Applicants
- Form NY-9: Sample Written Adverse Action Notice to Current Employees

#### FAIR CREDIT REPORTING ACT: Guidelines For Compliance (California and Federal)

- Form CA-1: Sample Written Disclosure to [Applicant] [Current Employer] and Consent to Request Consumer Report and Investigative Consumer Report Information
- Form CA-2: Sample Written Disclosure Letter For Investigative Consumer Report to California Applicants [Use Only if No Contract Signed With Agency to Provide Report Directly to Consumer]
- Form CA-3: Sample Written Pre-Adverse Action Notice to California Applicants/Employees
- Form CA-4: Sample Written Adverse Action Notice to California Applicants/Employees

#### FAIR CREDIT REPORTING ACT: Guidelines For Compliance (Massachusetts and Federal)

- Form MA-1: Sample Written Disclosure to Applicant and Consent to Request Consumer Report Information
- Form MA-2: Sample Written Disclosure to Current Employee and Consent to Request Consumer Report Information
- Form MA-3: Sample Written Disclosure to Applicant and Consent to Request Consumer Report and Investigative Consumer Report Information
- Form MA-4: Sample Written Disclosure to Employee and Consent to Request Consumer Report and Investigative Consumer Report Information
- Form MA-5: Sample Written Disclosure of Investigative Consumer Report
- Form MA-6: Sample Written Pre-Adverse Action Notice to Applicants
- Form MA-7: Sample Written Pre-Adverse Action Notice to Current Employees
- Form MA-8: Sample Written Adverse Action Notice to Applicants
- Form MA-9: Sample Written Adverse Action Notice to Current Employees
- Form MA-10: Summary of Your Rights Under the Massachusetts Consumer Credit Reporting Act

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11/14/03

Rev.

**FAIR CREDIT REPORTING ACT: Guidelines For Compliance (Federal)**Step 1**Provide Disclosure And Obtain Written Consent**

Provide the applicant, at time s/he completes employment application, a disclosure and consent form granting permission to conduct an initial and possible subsequent background checks. *See Form F-1 attached hereto.*

The background investigation cannot be conducted without a signed consent form, and the applicant should not be considered for employment without the signed form.

If a background check is to be conducted on a current employee, and the employee has not previously signed a disclosure and consent form that complies with FCRA, provide the employee with a consent form granting permission to conduct a background check. *See Form F-2 attached hereto.*

There should be a job-related reason for conducting a background investigation of a current employee. The background investigation of a current employee cannot be conducted without a signed disclosure and consent form. If the employee refuses to sign the consent, s/he should be told the employee will not be considered for the promotion, expanded benefit, etc., and/or the employment decision will be made without the benefit of the background investigation.

If an investigative consumer report will be conducted, have the applicant (or employee) sign the combined disclosure and consent to request consumer report/investigative consumer report information, and give him/her a copy of the FTC's Summary of Rights. *See Forms F-3 and F-9 attached hereto.*

If the applicant/employee, who is the subject of an investigative consumer report, requests to be notified as to the "nature and scope" of any request for an investigative consumer report, you must provide him/her with a separate disclosure, not later than five days after the applicant's request was made or five days after the request for investigative consumer report was made, whichever is later. *See Form F-4 attached hereto.*

Step 2**Notify Applicant or Employee of Negative Report Before Adverse Action is Taken**

If the CRA reports information that may be used, in whole or part, as a basis for an adverse employment action, the applicant must receive notification before a final decision is made not to hire. In the case of an employee, s/he must receive notification before any adverse employment

action is taken. Provide copy of report and notice of rights. *See Forms F-5 and F-6 attached hereto.*

Step 3**Proceed with Decision or Consider**

If applicant or employee does not respond to notification within applicable time frames, proceed with decision. If applicant or employee does respond, consider carefully information submitted, then make decision.

Step 4**Notify Applicant or Employee of Adverse Action**

Provide applicant or employee with notice of adverse action, name, address and telephone number of consumer reporting agency (toll free number, if applicable), statement that consumer reporting agency did not make decision and does not know why decision was made and notice of right to obtain report and dispute information. *See Forms F-7 and F-8 attached hereto.*

Step 5

For all adverse decisions, document each step taken and forward to the Legal Department for review.

**FEDERAL – FORM F-1**

**Sample Written Disclosure to Applicant and Consent to Request Consumer Report Information**

I understand that F. Schumacher & Co. will utilize the services of a consumer reporting agency as part of the procedure for processing my application for employment. I also understand if my application for employment is granted, F. Schumacher & Co. may obtain further information through subsequent investigations by a consumer reporting agency so as to update, renew or extend my employment.

I understand a consumer reporting agency's investigation may include obtaining information covering up to the last seven years, regarding my credit background, references, character, past employment, work habits, education, general reputation, personal characteristics, mode of living, civil judgments, and liens, as well as any information about my criminal conviction background consistent with federal and state law.

I understand such information may be obtained by direct or indirect contact with former employers, schools, financial institutions, landlords and public agencies or other persons who may have such knowledge.

I also understand that before I am denied employment based, in whole or part, on information obtained in the report, I will be provided a copy of the report and a description in writing of my rights under the Fair Credit Reporting Act.

I understand if I disagree with the accuracy of any information in the report, I must notify F. Schumacher & Co. within five business days of my receipt of the report. If I notify F. Schumacher & Co. within five business days of the receipt of the report that I am challenging information in the report, F. Schumacher & Co. will not make a final decision on my employment status until after I have had a reasonable opportunity to address the information contained in the report.

I hereby consent to this investigation and authorize F. Schumacher & Co. to procure a report on my background as stated above from a consumer reporting agency.

\_\_\_\_\_  
(Signature of applicant)

\_\_\_\_\_  
(Date)

**FEDERAL – FORM F-2**

**Sample Written Disclosure to Current Employee and Consent to Request Consumer Report Information**

I understand that F. Schumacher & Co. will utilize the services of a consumer reporting agency to obtain information through investigations subsequent to my date of hire.

I understand a consumer reporting agency's investigation may include obtaining information covering up to the last seven years regarding my credit background, references, character, past employment, work habits, education, general reputation, personal characteristics, mode of living, civil judgments, and liens, as well as any information about my criminal conviction background consistent with federal and state law.

I understand such information may be obtained by direct or indirect contact with former employers, schools, financial institutions, landlords and public agencies or other persons who may have such knowledge.

I also understand that before F. Schumacher & Co. takes any adverse employment action based, in whole or part, on information obtained in the report, I will be provided a copy of the report and a description in writing of my rights under the Fair Credit Reporting Act. Such adverse action includes but is not limited to denial of promotion, demotion, or discipline up to and including discharge.

I understand if I disagree with the accuracy of any information in the report, I must notify F. Schumacher & Co. within five business days of my receipt of the report. If I notify F. Schumacher & Co. within five business days of the receipt of the report that I am challenging information in the report, F. Schumacher & Co. will not make a final decision on my employment status until after I have had a reasonable opportunity to address the information contained in the report.

I hereby consent to this investigation and authorize F. Schumacher & Co. to procure a report on my background as stated above from a consumer reporting agency.

\_\_\_\_\_  
(Signature of employee)

\_\_\_\_\_  
(Date)

FEDERAL – FORM F-3

Sample Written Disclosure to Applicant and Consent to Request Consumer Report and Investigative Consumer Report Information

I understand that F. Schumacher & Co. will utilize the services of a consumer reporting agency as part of the procedure for processing my application for employment. I also understand if my application for employment is granted, F. Schumacher & Co. may obtain further information through subsequent investigations by a consumer reporting agency so as to update, renew or extend my employment.

I understand a consumer reporting agency's investigation may include obtaining information covering up to the last seven years, regarding my credit background, references, character, past employment, work habits, education, general reputation, personal characteristics, mode of living, civil judgments, and liens, as well as any information about my criminal conviction background consistent with federal and state law.

In the event an investigative consumer report is conducted, I understand such information may be obtained by **personal interviews** with my neighbors, friends or associates or with others whom I am acquainted or who may have knowledge concerning my character, general reputation, personal characteristics or mode of living. I understand such information may also be obtained through direct or indirect contact with former employers, schools, financial institutions, landlords and public agencies or other persons who may have such knowledge.

I understand that I have the right to receive notice about the nature and scope of any investigative consumer report requested within five days after the Company receives my request or five days after the investigative consumer report was requested, whichever is later.

By checking the box, I indicate that I wish to receive further disclosure about the nature and scope of any Company request for an investigative consumer report.

I acknowledge that I have received the attached summary of my rights under the Fair Credit Reporting Act.

I also understand that before I am denied employment based, in whole or part, on information obtained in the consumer or investigative consumer report, I will be provided a copy of the report and a description in writing of my rights under the Fair Credit Reporting Act. I understand if I disagree with the accuracy of any information in the report, I must notify F. Schumacher & Co. within five business days of my receipt of the report. If I notify F. Schumacher & Co. within five business days of the receipt of the report that I am challenging information in the report, F. Schumacher & Co., will not make a final decision on my employment status until after I have had a reasonable opportunity to address the information contained in the report.

I hereby consent to this investigation and authorize F. Schumacher & Co. to procure a consumer report and/or an investigative consumer report on my background as stated above from a consumer reporting agency.

\_\_\_\_\_  
(Signature of applicant)

\_\_\_\_\_  
(Date)

FEDERAL – FORM F-4

Sample Written Disclosure of Investigative Consumer Report

Dear [Applicant] [Employee]:

This is to advise you that on [date], F. Schumacher & Co. has requested an investigative consumer report [as part of the procedure for your application of employment].<sup>4</sup>

Pursuant to your prior request, we are providing you with the nature and scope of the investigation as follows:

[Be Specific]

Previously, we provided you with a summary in writing of your rights under the Fair Credit Reporting Act. If you would like another copy, please contact us.

Sincerely,

[Name]  
[Title]

<sup>4</sup> This parenthetical should be revised if the investigative consumer report is obtained for a current employee; e.g. "as part of the procedure for considering your promotion/transfer/relocation/grant of Company car, etc."  
Macintosh HD:Desktop Folder:FCRA- Federal -FSC.doc Rev.  
11/14/03

FEDERAL – FORM F-5

Sample Written Pre-Adverse Action Notice to Applicants

Dear [Applicant]:

When you applied for employment with F. Schumacher & Co., you consented to an independent investigation conducted by a consumer reporting agency. This investigation may have included obtaining information covering up to the last seven years regarding credit background, references, character, past employment, work habits, education, general reputation, personal characteristics, mode of living, civil judgments, and liens, as well as any information about your criminal conviction background consistent with federal and state law.

F. Schumacher & Co. contracted with [Consumer Reporting Agency] whose address and telephone number are [insert address/phone number].

[Consumer Reporting Agency] has reported to us the following information:

*[Insert disqualifying information]*

Based on this information, you would not be extended an offer of employment. [Consumer Reporting Agency] has not made this decision and is not able to explain why the decision was made.

F. Schumacher & Co. is enclosing a copy of the report and a copy of your rights under the Fair Credit Reporting Act. You have the right to obtain a free copy of your file from [Consumer Reporting Agency] if you request the report within 60 days. You also have the right to dispute directly with [Consumer Reporting Agency] the accuracy or completeness of any information provided by it.

If you believe the information listed above is not accurate, please contact *[insert name, telephone number of contact]* within five business days of receipt of this letter. We will not make a final decision regarding your application until *[insert date]*.

This will give you an opportunity to contact us if you want to dispute the report submitted by [Consumer Reporting Agency].

Sincerely,

[Your Name]  
[Your Title]

Enclosures

FEDERAL – FORM F-6

Sample Written Pre-Adverse Action Notice to Current Employees

Dear [Employee]:

You consented to an independent investigation conducted by a consumer reporting agency. This investigation may have included obtaining information covering up to the last seven years regarding credit background, references, character, past employment, work habits, education, general reputation, personal characteristics, mode of living, civil judgments, and liens, as well as any information about your criminal conviction background consistent with federal and state law.

F. Schumacher & Co. contracted with [Consumer Reporting Agency] whose address and telephone number are [insert address/phone number].

[Consumer Reporting Agency] has reported to us the following information:

*[Insert disqualifying information]*

This information would cause F. Schumacher & Co. to *[describe adverse action: e.g., denial of promotion, discipline or discharge]*. [Consumer Reporting Agency] has not made this decision and is not able to explain why the decision was made.

F. Schumacher & Co. is enclosing a copy of the report and a copy of your rights under the Fair Credit Reporting Act. You have the right to obtain a free copy of your file from [Consumer Reporting Agency] if you request the report within 60 days. You also have the right to dispute directly with [Consumer Reporting Agency] the accuracy or completeness of any information provided by it.

If you believe the information listed above is not accurate, please contact *[insert name, telephone number of contact]* within five business days of receipt of this letter. We will not make a final decision regarding your employment until *[insert date]*.

This will give you an opportunity to contact us if you want to dispute the report submitted by [Consumer Reporting Agency].

Sincerely,

[Your Name]  
[Your Title]

Enclosures



FEDERAL – FORM F-7

Sample Written Adverse Action Notice to Applicants

Dear [Applicant]:

We wish to advise you that we cannot give you any further consideration for employment. This action was influenced by information contained in a consumer report, made at our request and provided by:

Name  
Address  
City, State, Zip  
800-000-0000

Under the federal Fair Credit Reporting Act we are required to make the following disclosure to you:

You have the right to obtain a free copy of your file from the consumer reporting agency if you make a request with the agency within 60 days. Enclosed with our letter to you dated \_\_\_\_\_, you were provided with a copy of the report we received from **[Consumer Reporting Agency]**. You also have the right to obtain from the consumer reporting agency, free of cost, an additional copy of the report.

You also must be provided with a copy of the Federal Trade Commission's summary of Consumer Rights, which is attached to this letter. The summary was also included with our letter to you dated \_\_\_\_\_.

You have the right to dispute directly with the consumer reporting agency the accuracy or completeness of any information provided by the consumer reporting agency.

The consumer reporting agency did not make the adverse employment decision and is not able to explain why the decision was made.

Sincerely,

[Your Name]  
[Your Title]

Enclosures

FEDERAL – FORM F-8

Sample Written Adverse Action Notice to Current Employees

Dear [Employee]:

We wish to advise you that we are *[describe adverse employment action: e.g., denying promotion, disciplining, discharging]*. This action was influenced by information contained in a consumer report, made at our request and provided by:

Name  
Address  
City, State, Zip  
800-000-0000

Under the federal Fair Credit Reporting Act we are required to make the following disclosure to you:

You have the right to obtain a free copy of your file from the consumer reporting agency if you make a request with the agency within 60 days. Enclosed with our letter to you dated \_\_\_\_\_, you were provided with a copy of the report we received from **[Consumer Reporting Agency]**. You also have the right to obtain from the consumer reporting agency, free of cost, an additional copy of the report.

You also must be provided with a copy of the Federal Trade Commission's summary of Consumer Rights, which is attached to this letter. The summary was also included with our letter to you dated \_\_\_\_\_.

You have the right to dispute directly with the consumer reporting agency the accuracy or completeness of any information provided by the consumer reporting agency.

The consumer reporting agency did not make the adverse employment decision and is not able to explain why the decision was made.

Sincerely,

[Your Name]  
[Your Title]

Enclosures

**FEDERAL – FORM F-9**

**A 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 agency" (CRA). Most CRAs are credit bureaus that gather and sell information about you -- such as if you pay your bills on time or have filed bankruptcy -- to creditors, employers, landlords, and other businesses. You can find the complete text of the FCRA, 15 U.S.C. §§1681-1681u, at the Federal Trade Commission's web site (<http://www.ftc.gov>). The FCRA gives you specific rights, as outlined below. You may have additional rights under state law. You may contact a state or local consumer protection agency or a state attorney general to learn those rights.

**You must be told if information in your file has been used against you.** Anyone who uses information from a CRA to take action against you -- such as denying an application for credit, insurance, or employment -- must tell you, and give you the name, address, and phone number of the CRA that provided the consumer report.

**You can find out what is in your file.** At your request, a CRA must give you the information in your file, and a list of everyone who has requested it recently. There is no charge for the report if a person has taken action against you because of information supplied by the CRA, if you request the report within 60 days of receiving notice of the action. You also are entitled to one free report every twelve months upon request if you certify that (1) you are unemployed and plan to seek employment within 60 days, (2) you are on welfare, or (3) your report is inaccurate due to fraud. Otherwise, a CRA may charge you up to eight dollars.

**You can dispute inaccurate information with the CRA.** If you tell a CRA that your file contains inaccurate information, the CRA must investigate the items (usually within 30 days) by presenting to its information source all relevant evidence you submit, unless your dispute is frivolous. The source must review your evidence and report its findings to the CRA. (The source also must advise national CRAs -- to which it has provided the data -- of any error.) The CRA must give you a written report of the investigation, and a copy of your report if the investigation results in any change. If the CRA's investigation does not resolve the dispute, you may add a brief statement to your file. The CRA must normally include a summary of your statement in future reports. If an item is deleted or a dispute statement is filed, you may ask that anyone who has recently received your report be notified of the change.

**Inaccurate information must be corrected or deleted.** A CRA must remove or correct inaccurate or unverified information from its files, usually within 30 days after you dispute it. **However, the CRA is not required to remove accurate data from your file unless it is outdated (as described below) or cannot be verified.** If your dispute results in any change to your report, the CRA cannot reinsert into your file a disputed item unless the information source verifies its accuracy and completeness. In addition, the CRA must give you a written notice telling you it has reinserted the item. The notice must include the name, address and phone number of the information source.

**You can dispute inaccurate items with the source of the information.** If you tell anyone -- such as a creditor who reports to a CRA -- that you dispute an item, they may not then report the information to a CRA without including a notice of your dispute. In addition, once you've

notified the source of the error in writing, it may not continue to report the information if it is, in fact, an error.

**Outdated information may not be reported.** In most cases, a CRA may not report negative information that is more than seven years old; ten years for bankruptcies.

**Access to your file is limited.** A CRA may provide information about you only to people with a need recognized by the FCRA -- usually to consider an application with a creditor, insurer, employer, landlord, or other business.

**Your consent is required for reports that are provided to employers, or reports that contain medical information.** A CRA may not give out information about you to your employer, or prospective employer, without your written consent. A CRA may not report medical information about you to creditors, insurers, or employers without your permission.

**You may choose to exclude your name from CRA lists for unsolicited credit and insurance offers.** Creditors and insurers may use file information as the basis for sending you unsolicited offers of credit or insurance. Such offers must include a toll-free phone number for you to call if you want your name and address removed from future lists. If you call, you must be kept off the lists for two years. If you request, complete, and return the CRA form provided for this purpose, you must be taken off the lists indefinitely.

**You may seek damages from violators.** If a CRA, a user or (in some cases) a provider of CRA data, violates the FCRA, you may sue them in state or federal court.

The FCRA gives several different federal agencies authority to enforce the FCRA:

FOR QUESTIONS OR CONCERNS REGARDING:	PLEASE CONTACT:
CRAs, creditors and others not listed below	Federal Trade Commission Consumer Response Center - FCRA Washington, DC 20580 * 202-326-3761
National banks, federal branches/agencies of foreign banks (word "National" or initials "N.A." appear in or after bank's name)	Office of the Comptroller of the Currency Compliance Management, Mail Stop 6-6 Washington, DC 20219 * 800-613-6743
Federal Reserve System member banks (except national banks, and federal branches/agencies of foreign banks)	Federal Reserve Board Division of Consumer & Community Affairs Washington, DC 20551 * 202-452-3693
Savings associations and federally chartered savings banks (word "Federal" or initials "F.S.B." appear in federal institution's name)	Office of Thrift Supervision Consumer Programs Washington, DC 20552 * 800-842-6929
Federal credit unions (words "Federal Credit Union" appear in institution's name)	National Credit Union Administration 1775 Duke Street Alexandria, VA 22314 * 703-518-6260
State-chartered banks that are not members of the Federal Reserve System	Federal Deposit Insurance Corporation Division of Compliance & Consumer Affairs Washington, DC 20429 * 800-934-FDIC
Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission	Department of Transportation Office of Financial Management Washington, DC 20590 * 202-366-1306
Activities subject to the Packers and Stockyards Act, 1921	Department of Agriculture Office of Deputy Administrator - GIPSA Washington, DC 20250 * 202-720-7051

FEDERAL – FORM F-10

End User Certification of Use for Consumer Credit Reports

In compliance with the Federal Fair Credit Reporting Act, as amended (the Act”), F. Schumacher & Co. (“End User”) hereby certifies to \_\_\_\_\_ (“CRA”) that:

1. End User will ensure that prior to procurement or causing the procurement of a consumer report for employment purposes:
  - (a) a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and
  - (b) the consumer has authorized in writing the procurement of the report by the End User.
2. In using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the End User shall provide to the consumer, or authorize CRA on behalf of the End User to provide the consumer, to whom the report relates (i) a copy of the report, and (ii) a description in writing of the rights of the consumer under the Act, a copy of which is attached hereto (“Summary of Consumer Rights”).
3. End User will not use the information contained in a consumer report in violation of any applicable federal, state or local equal employment opportunity law or regulation.

Dated: \_\_\_\_\_

F. SCHUMACHER & CO.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

FAIR CREDIT REPORTING ACT: Guidelines For Compliance (New York and Federal)

Step 1

**Provide Disclosure And Obtain Written Consent**

Applicant at time s/he completes employment application receives a disclosure and consent form granting permission to conduct an initial and possible subsequent background checks if the applicant is hired, utilizing a third party service. See Form NY-1 attached hereto.

In New York, employers who wish to be conservative can provide the name and address of the consumer reporting agency in the initial disclosure. When a New York employer indicates that it may (as opposed to “will”) utilize a consumer reporting agency because it does not obtain a report in every case or does not know ahead of time whether and where it will obtain such report, it must also inform the applicant (or employee) that, upon request, he/she will be informed whether a consumer report was requested, and if such a report was requested, the name and address of the consumer reporting agency that furnished the report.

The background investigation cannot be conducted without a signed consent form. An applicant should not be considered for employment without the signed form.

If a background check is being conducted on a current employee for an employment purpose and the current employee has not previously signed a disclosure and consent form, s/he should be provided with a consent form granting permission to conduct a background check. See Form NY-2 attached hereto.

The background investigation of a current employee cannot be conducted without a signed disclosure and consent form. If the employee refuses to sign the consent, s/he should be told the employee will not be considered for the promotion, transfer, etc. and/or the employment decision will be made without the benefit of the background investigation.

If an investigative consumer report will be conducted, have the applicant/employee sign the combined disclosure and consent to request consumer report/investigative consumer report information and give him/her a copy of the FTC’s Summary of Rights. See Forms NY-3, NY-4 and F-9 attached hereto. You must also inform the applicant/employee that upon written request, s/he will be informed whether an investigative consumer report was requested, and if requested, supplied with the name and address of the consumer reporting agency. The applicant/employee must also be informed that s/he may review and receive a copy of the report by

contacting the consumer reporting agency. If the applicant/employee requests to be notified as to the "nature and scope" of any request for an investigative consumer report, you must provide him/her with the separate disclosure not later than five days after the applicant or employee's request was made or five days after the request for investigative consumer report was made, whichever is later. See *Form NY-5 attached hereto.*

Step 2 **Notify Applicant or Employee of Negative Report Before Adverse Action is Taken**

If the consumer reporting agency reports information, which may be used, in whole or part, as a basis for an adverse employment action, the applicant must receive notification before a final decision is made not to hire. In the case of an employee, s/he must receive notification before any adverse employment action is taken. Provide copy of report and FTC's Summary of Rights. See *Forms NY-6, NY-7 and F-9 attached hereto.*

Step 3 If applicant or employee does not respond to notification within applicable time frames, proceed with decision. If applicant or employee does respond, consider carefully information submitted, then make decision.

Step 4 **Notify Applicant or Employee of Adverse Action**

Provide applicant or employee with notice of adverse action, name, address and telephone number of consumer reporting agency, statement that consumer reporting agency did not make decision and does not know why decision was made and notice of right to obtain report and dispute information. See *Forms NY-8 and NY-9 attached hereto.*

Step 5 For all adverse decisions, document each step taken and forward to the Legal Department for review.

NEW YORK – FORM NY-1

**Sample Written Disclosure to Applicant and Consent to Request Consumer Report Information**

I understand that COMPANY(the "Company") [will] [may]<sup>1</sup> utilize the services of **[name and address of Consumer Reporting Agency]** [a consumer reporting agency], as part of the procedure for processing my application for employment. I also understand if my application for employment is granted, the Company may obtain further information through subsequent investigations by a consumer reporting agency so as to update, renew or extend my employment.

I understand a consumer reporting agency's investigation may include obtaining information covering up to the last seven (7) years regarding my credit background, references, character, past employment, work habits, education, general reputation, personal characteristics, mode of living, judgments, liens, and criminal conviction background consistent with federal and state law.

I understand such information may be obtained by direct or indirect contact with former employers, schools, financial institutions, landlords and public agencies or other persons who may have such knowledge.

I also understand that before the Company takes any adverse action, in whole or part, on information obtained in the report, I will be provided a copy of the report and a description in writing of my rights under the federal Fair Credit Reporting Act.

I understand if I disagree with the accuracy of any information in the report, I must notify the Company within five business days of my receipt of the report. If I notify the Company within five business days of the receipt of the report that I am challenging information in the report, the Company will not make a final decision on my employment status until after I have had a reasonable opportunity to address the information contained in the report.

I hereby consent to this investigation and authorize the Company to procure a report on my background as stated above from a consumer reporting agency.

\_\_\_\_\_  
(Signature of applicant)

\_\_\_\_\_  
(Date)

<sup>1</sup> If "may" is used in the first sentence, the Company does not have to identify the consumer reporting agency by name, but must state, "Upon request, I will be informed whether a report was requested from a consumer reporting agency and provided with the name and address of the consumer reporting agency."

NEW YORK – FORM NY-2

**Sample Written Disclosure to Current Employee and Consent to Request Consumer Report Information**

I understand that COMPANY(the “Company”) [will] [may]<sup>2</sup> utilize the services of [**name and address of Consumer Reporting Agency**] [a consumer reporting agency] to obtain information through investigations subsequent to my date of hire.

I understand a consumer reporting agency’s investigation may include obtaining information covering up to the last seven years regarding my credit background, references, character, past employment, work habits, education, general reputation, personal characteristics, mode of living, judgments, liens, and criminal conviction background consistent with federal and state law.

I understand such information may be obtained by direct or indirect contact with former employers, schools, financial institutions, landlords and public agencies or other persons who may have such knowledge.

I also understand that before the Company takes any adverse action, in whole or part, on information obtained in the report, I will be provided a copy of the report and a description in writing of my rights under the federal Fair Credit Reporting Act.

I understand if I disagree with the accuracy of any information in the report, I must notify the Company within five business days of my receipt of the report. If I notify the Company within five business days of the receipt of the report that I am challenging information in the report, the Company, will not make a final decision on my employment status until after I have had a reasonable opportunity to address the information contained in the report.

I hereby consent to this investigation and authorize the Company to procure a report on my background as stated above from a consumer reporting agency.

\_\_\_\_\_  
(Signature of employee)

\_\_\_\_\_  
(Date)

<sup>2</sup> If “may” is used in the first sentence, the Company does not have to identify the consumer reporting agency by name, but must state, “Upon request, I will be informed whether a report was requested from a consumer reporting agency and provided with the name and address of the consumer reporting agency.”

NEW YORK – FORM NY-3

**Sample Written Disclosure to Applicant and Consent to Request Consumer Report and Investigative Consumer Report Information**

I understand that COMPANY(the “Company”) will/may utilize the services of [**name and address of Consumer Reporting Agency**] as part of the procedure for processing my application for employment. I also understand if my application for employment is granted, the Company may obtain further information through subsequent investigations by a consumer reporting agency so as to update, renew or extend my employment. **[If “may” is used in the first sentence, the employer does not have to identify the consumer reporting agency by name, but must state, “Upon request, I will be informed whether a report was requested from a consumer reporting agency and provided with the name and address of the consumer reporting agency.”]**

I understand a consumer reporting agency’s investigation may include obtaining information covering up to the last seven years regarding my credit background, references, character, past employment, work habits, education, general reputation, personal characteristics, mode of living, judgments, liens, and criminal conviction background consistent with federal and state law.

In the event an investigative consumer report is conducted, I understand such information may be obtained by **personal interviews** with my neighbors, friends or associates or with others whom I am acquainted or who may have knowledge concerning my character, general reputation, personal characteristics or mode of living. I understand such information may also be obtained through direct or indirect contact with former employers, schools, financial institutions, landlords and public agencies or other persons who may have such knowledge.

I understand that I have the right to receive notice about the nature and scope of any investigative consumer report requested within five days after the Company receives my request or 5 days after the investigative consumer report was requested, whichever is later.

By checking the box, I indicate that I wish to receive further disclosure about the nature and scope of any Company request for an investigative consumer report.

I further understand that I may review and receive a copy of the report by contacting the consumer reporting agency.

I acknowledge that I have received the attached summary of my rights under the Fair Credit Reporting Act.

I also understand that before I am denied employment based, in whole or part, on information obtained in the consumer or investigative consumer report, I will be provided a copy of the report and a description in writing of my rights under the Fair Credit Reporting Act. I understand if I disagree with the accuracy of any information in the report, I must notify the Company within five business days of my receipt of the report. If I notify the Company within five business days of the receipt of the report that I am challenging information in the report, the Company, will not make a final decision on my employment status until after I have had a reasonable opportunity to address the information contained in the report.

I hereby consent to this investigation and authorize the Company to procure a consumer report and/or an investigative consumer report on my background as stated above from a consumer reporting agency.

\_\_\_\_\_  
(Signature of applicant)

\_\_\_\_\_  
(Date)

NEW YORK – FORM NY-4

**Sample Written Disclosure to Employee and Consent to Request Consumer Report and Investigative Consumer Report Information**

I understand that COMPANY(the "Company") **will/may** utilize the services of [name and address of Consumer Reporting Agency] to obtain information through investigations subsequent to my date of hire.[If "may" is used in the first sentence, the employer does not have to identify the consumer reporting agency by name, but must state, "Upon request, I will be informed whether a report was requested from a consumer reporting agency and provided with the name and address of the consumer reporting agency."]

I understand a consumer reporting agency's investigation may include obtaining information covering up to the last seven years regarding my credit background, references, character, past employment, work habits, education, general reputation, personal characteristics, mode of living, judgments, liens, and criminal conviction background consistent with federal and state law.

In the event an investigative consumer report is conducted, I understand such information may be obtained by **personal interviews** with my neighbors, friends or associates or with others whom I am acquainted or who may have knowledge concerning my character, general reputation, personal characteristics or mode of living. I understand such information may also be obtained through direct or indirect contact with former employers, schools, financial institutions, landlords and public agencies or other persons who may have such knowledge.

I understand that I have the right to receive notice about the nature and scope of any investigative consumer report requested within five days after the Company receives my request or 5 days after the investigative consumer report was requested, whichever is later.

By checking the box, I indicate that I wish to receive further disclosure about the nature and scope of any Company request for an investigative consumer report.

I further understand that I may review and receive a copy of the report by contacting the consumer reporting agency.

I acknowledge that I have received the attached summary of my rights under the Fair Credit Reporting Act.

I also understand that before the Company takes any adverse action based, in whole or part, on information obtained in the consumer or investigative consumer report, I will be provided a copy of the report and a description in writing of my rights under the Fair Credit Reporting Act. I understand if I disagree with the accuracy of any information in the report, I must notify the Company within five business days of my receipt of the report. If I notify the Company within five business days of the receipt of the report that I am challenging information in the report, the Company will not make a final decision on my employment status until after I have had a reasonable opportunity to address the information contained in the report.

I hereby consent to this investigation and authorize the Company to procure a consumer report and/or an investigative consumer report on my background as stated above from a consumer reporting agency.

NEW YORK – FORM NY-5

**Sample Written Disclosure of  
Investigative Consumer Report**<sup>3</sup>

\_\_\_\_\_  
(Signature of employee)

\_\_\_\_\_  
(Date)

Dear [Name]:

This is to advise you that on [date], COMPANY. (the "Company") has requested an investigative consumer report [as part of the procedure for your application of employment].<sup>4</sup>

Pursuant to your prior request, we are providing you with the nature and scope of the investigation as follows:

[Be Specific]

Previously, we provided you with a summary in writing of your rights under the Fair Credit Reporting Act. If you would like another copy, please contact us.

Sincerely,

[Name]  
[Title]

<sup>3</sup> This disclosure must be mailed or otherwise delivered to the applicant or employee not later than 5 days after the Company received the applicant or employee's written request for this disclosure or 5 days after the investigative consumer report was first requested, whichever is later.

<sup>4</sup> This parenthetical should be revised if the investigative consumer report is obtained for a current employee.

NEW YORK – FORM NY-6

Sample Written Pre-Adverse Action Notice to Applicants

Dear [applicant]:

When you applied for employment, you consented to an independent investigation conducted by a consumer reporting agency. This investigation may have included obtaining information covering up to the last seven (7) years regarding credit background, references, character, past employment, work habits, education, general reputation, personal characteristics, mode of living, judgments, liens, and criminal conviction background consistent with federal and state law.

COMPANY(the "Company") contracted with [Consumer Reporting Agency] whose address and telephone number are [insert address/phone number].

[Consumer Reporting Agency] has reported to us the following information:

*[Insert disqualifying information]*

Based on this information, you would not be extended an offer of employment. [Consumer Reporting Agency] has not made this decision and is not able to explain why the decision was made.

The Company is enclosing a copy of the report and a copy of your rights under the federal Fair Credit Reporting Act. You have the right to obtain a free copy of your file from [Consumer Reporting Agency] if you request the report within 60 days. You also have the right to dispute directly with [Consumer Reporting Agency] the accuracy or completeness of any information provided by it.

If you believe the information listed above is not accurate, please contact *[insert name, telephone number of contact]* within five business days of receipt of this letter. We will not make a final decision regarding your application until *[insert date]*.

This will give you an opportunity to contact us if you want to dispute the report submitted by [Consumer Reporting Agency].

Sincerely,

[Your Name]  
[Your Title]

Enclosures

NEW YORK – FORM NY-7

Sample Written Pre-Adverse Action Notice to Current Employees

Dear [employee]:

You consented to an independent investigation conducted by a consumer reporting agency. This investigation may have included obtaining information covering up to the last seven (7) years regarding credit background, references, character, past employment, work habits, education, general reputation, personal characteristics, mode of living, judgments, liens, and criminal conviction background consistent with federal and state law.

COMPANY(the "Company") contracted with [Consumer Reporting Agency] whose address and telephone number are [insert address/phone number].

[Consumer Reporting Agency] has reported to us the following information:

*[Insert disqualifying information]*

This information would cause the Company to *[describe adverse action: e.g., denial of promotion, discipline or discharge]*. [Consumer Reporting Agency] has not made this decision and is not able to explain why the decision was made.

The Company is enclosing a copy of the report and a copy of your rights under the federal Fair Credit Reporting Act. You have the right to obtain a free copy of your file from [Consumer Reporting Agency] if you request the report within 60 days. You also have the right to dispute directly with [Consumer Reporting Agency] the accuracy or completeness of any information provided by it.

If you believe the information listed above is not accurate, please contact *[insert name, telephone number of contact]* within five business days of receipt of this letter. We will not make a final decision regarding your employment until *[insert date]*.

This will give you an opportunity to contact us if you want to dispute the report submitted by [Consumer Reporting Agency].

Sincerely,

[Your Name]  
[Your Title]

Enclosures



NEW YORK – FORM NY-8

Sample Written Adverse Action Notice to Applicants

Dear [applicant]:

We wish to advise you that we cannot give you any further consideration for employment. This action was influenced by information contained in a consumer report, made at our request and provided by:

Name  
Address  
City, State, Zip  
800-000-0000

Under the federal Fair Credit Reporting Act we are required to make the following disclosure to you:

You have the right to obtain a free copy of your file from the consumer reporting agency if you make a request with the agency within 60 days. Enclosed with our letter to you dated \_\_\_\_\_, you were provided with a copy of the report we received from [Consumer Reporting Agency]. You also have the right to obtain from the consumer reporting agency, free of cost, an additional copy of the report.

You also must be provided with a copy of the Federal Trade Commission’s summary of Consumer Rights, which is attached to this letter. The summary was also included with our letter to you dated \_\_\_\_\_.

You have the right to dispute directly with the consumer reporting agency the accuracy or completeness of any information provided by the consumer reporting agency.

The consumer reporting agency did not make the adverse employment decision and is not able to explain why the decision was made.

Sincerely,

[Your Name]  
[Your Title]

Enclosures

NEW YORK – NY-9

Sample Written Adverse Action Notice to Current Employees

Dear [employee]:

We wish to advise you that we are *[describe adverse employment action: e.g.,denying promotion, disciplining, discharging]*. This action was influenced by information contained in a consumer report, made at our request and provided by:

Name  
Address  
City, State, Zip  
800-000-0000

Under the federal Fair Credit Reporting Act we are required to make the following disclosure to you:

You have the right to obtain a free copy of your file from the consumer reporting agency if you make a request with the agency within 60 days. Enclosed with our letter to you dated \_\_\_\_\_, you were provided with a copy of the report we received from [Consumer Reporting Agency]. You also have the right to obtain from the consumer reporting agency, free of cost, an additional copy of the report.

You also must be provided with a copy of the Federal Trade Commission’s summary of Consumer Rights, which is attached to this letter. The summary was also included with our letter to you dated \_\_\_\_\_.

You have the right to dispute directly with the consumer reporting agency the accuracy or completeness of any information provided by the consumer reporting agency.

The consumer reporting agency did not make the adverse employment decision and is not able to explain why the decision was made.

Sincerely,

[Your Name]  
[Your Title]

Enclosures

**FAIR CREDIT REPORTING ACT: Guidelines For Compliance (California and Federal)****Step 1****Provide Disclosure And Obtain Written Consent For Consumer Report and Investigative Consumer Report**

California law broadly defines a "consumer report" as any information by a consumer credit reporting agency bearing on a consumer's credit worthiness, credit standing or credit capacity which is used or expected to be used for establishing the consumer's eligibility for, among other things, employment purposes. Similarly, an "investigative consumer report" is broadly defined under California law as a consumer report in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained **through any means**. [Note: The Federal statute generally limits investigative consumer credit reports to information gathered by personal interviews.] Similarly,

California law requires an applicant or employee to have the opportunity to check a box on the disclosure and consent form, which, if checked, requires the applicant/employee to receive a copy of the consumer credit report from the CRA at the same time it is sent to the employer. The disclosure and consent form requesting an investigative consumer report under California law must also contain a box to check, which, if checked, obligates the employer to send the report to the applicant/employee within three business days of the report being provided to the employer. The employer can contract with a third party, such as the investigatory consumer reporting agency, to perform this function. Consequently, it is advisable for the Company to contract with the consumer credit/investigative consumer reporting agency to send a combined investigative consumer/consumer credit report to any applicant/employee who checks the box at the same time the agency sends the report to the Company.

Given the California requirements, the consumer and investigative consumer disclosure forms included in this manual have been combined, providing one box which, if checked, obligates the consumer/investigative consumer reporting agency to send the report to the applicant/employee at the same time it is sent to the Company.

The consumer credit report/investigative consumer report cannot be conducted without a signed consent form. An applicant should not be considered for employment without the signed form. If a consumer credit report/investigative consumer report is being obtained on a current employee, the employee must sign a disclosure and consent form **before** the employer obtains a consumer credit report. There should be a job related reason for requesting the consumer credit report/investigative consumer report. If the employee refuses to sign the consent, the employee should be told that he/she will not be considered for the promotion/reassignment and/or the employment decision will be made

without the benefit of the consumer credit report. Applicants and employees must be provided with a written summary of their rights under the FCRA when an investigative consumer credit report is requested. See *Forms CA-1 and F-9 attached hereto*.

In California, a consent and disclosure to obtain a consumer credit report must be obtained prior to each time that such a report is requested.

California requires that the notice of obtaining an investigative consumer report set forth the name, address and telephone number of the investigative consumer reporting agency conducting the investigation, the nature and scope of the investigation requested, and a summary of the state law provisions addressing the consumer's right to inspect the investigative consumer reporting agency's files, unless an investigative consumer report is sought in connection with determining whether to retain an employee when he or she is suspected by the employer of wrongdoing or misconduct. [Note: the FCRA and the California statute governing consumer credit reports (as opposed to investigative consumer reports) do not provide similar exemptions based upon a good faith belief of employee criminal activity. Accordingly, the Company should not rely on the criminal activity exclusion to avoid providing notice and obtaining consent for a consumer credit report or investigative consumer report without first consulting with the Legal Department.]

**Step 2****Provide Applicant/Employee With Consumer/Investigative Consumer Report**

California law generally limits an investigative consumer report inquiry regarding public records to the past seven years, and ten years for bankruptcy filings. Exceptions to this requirement are allowed only for employers who are required by a governmental agency to review records for a longer period of time. An employer is not allowed to inquire about or take adverse action against an applicant or employee concerning an arrest that did not lead to conviction or participation in pre-trial or post-trial diversion programs. An exception exists where the individual is currently on bail or released on his or her own recognizance. The same restrictions apply to certain marijuana convictions that are two or more years old. An investigative consumer reporting agency is prohibited from reporting on convictions which resulted in full pardons or arrests which did not result in conviction, except where judgment has not yet been pronounced.

If the applicant/employee checked the box on the consent form (see Step 1 above), you must provide him or her with a copy of the consumer report/investigative consumer report within three days of the date the Company received the report, unless the Company previously contracted with the CRA to provide the report directly to the applicant/employee. See *Form CA-2 attached hereto*.

CALIFORNIA – FORM CA-1

**Step 3** Notify Applicant or Employee of Negative Report Before Adverse Action is Taken

If the consumer reporting agency reports information that may be used, in whole or part, as a basis for an adverse employment action, the applicant must receive notification before a final decision is made not to hire. In the case of an employee, s/he must receive notification before any adverse employment action is taken. Provide copy of report and notice of rights. See *Form CA-3 attached hereto.*

**Step 4** Proceed with Decision or Consider Response

If applicant or employee does not respond to notification of adverse report within applicable time frames, proceed with decision. If applicant or employee does respond, consider carefully information submitted, then make decision.

**Step 5** Notify Applicant or Employee of Adverse Action

Under federal and California law, an employer must provide applicant or employee with notice of adverse action, name, address and telephone number of consumer reporting agency, a statement that consumer reporting agency did not make decision and does not know why decision was made and a notice of right to obtain report and dispute information. California law requires the notice to be in writing. See *Form CA-4 attached hereto.*

**Step 6** For all adverse decisions, document each step taken and forward to the Legal Department for review.

**Sample Written Disclosure to [Applicant] [Current Employee] and Consent to Request Consumer Report and Investigative Consumer Report Information**

I understand that COMPANY will utilize the services of [insert name, address and telephone number of Consumer Reporting/Investigative Consumer Reporting Agency], to obtain a consumer credit report/investigative consumer report as part of the procedure [for processing my application for employment.] [to update my employment, for purposes such as promotion, reassignment or retention as an employee.]

I understand a Consumer Reporting/Investigative Consumer Reporting Agency's investigation may include obtaining information covering up to: (1) the last seven years regarding my credit background, lawsuits, judgments, paid tax liens, unlawful detainer actions, failure to pay spousal or child support, accounts placed for collection, and criminal conviction records consistent with state law; and (2) the last ten years regarding bankruptcies. I understand such information may be obtained through any means, including but not limited to personal interviews with my neighbors, friends or associates or with others whom I am acquainted or who may have knowledge concerning my character, general reputation, personal characteristics or mode of living. I understand such information may also be obtained through direct or indirect contact with former employers, schools, financial institutions, landlords and public agencies or other persons who may have such knowledge.

The nature and scope of the investigation sought is as follows: [Be specific]

I have the right to request a copy of my consumer credit/investigative consumer report from the consumer credit reporting agency by checking the box below. The report will be mailed directly to me by the consumer reporting agency.

I wish to receive a copy of the consumer credit/investigative consumer report. (Check box only if you wish to receive a copy.)

I understand I have the right to inspect visually the files concerning me maintained by an investigative consumer reporting agency during normal business hours and upon reasonable notice. The inspection can be done in person if I appear in person and furnish proper identification; I am entitled to a copy of the file for a fee not to exceed the actual costs of duplication. I am entitled to be accompanied by one person of my choosing, who shall furnish reasonable identification. The inspection can also be done via certified mail if I make a written request, with proper identification, for copies to be sent to a specified addressee. I can also request a summary of the information to be provided by telephone if I make a written request, with proper identification for telephone disclosure, and the toll charge, if any, for the telephone call is prepaid by or directly charged to me. I further understand that the investigative consumer reporting agency shall provide trained personnel to explain to me any of the information furnished to me; I shall receive from the investigative consumer reporting agency a written explanation of any coded information contained in files maintained on me. "Proper identification" as used in this paragraph means information generally deemed sufficient to identify a person, including documents such as a valid driver's license, social security account number, military identification card and credit cards.

I also understand that before [I am denied employment] [the Company takes any adverse employment action] based, in whole or part, on information obtained in the report, I will be provided a copy of the report and a description in writing of my rights under the federal Fair Credit Reporting

Act.

This consent will not affect my ability to question or dispute the accuracy of any information contained in my credit report. I understand if I disagree with the accuracy of any information in the report, I must notify the Company within five business days of my receipt of the report. If I notify the Company within five business days of the receipt of the report that I am challenging information in the report, the Company will not make a final decision on my employment status until after I have had a reasonable opportunity to address the information contained in the report.

I acknowledge that I have received the attached summary of my rights under the Fair Credit Reporting Act.

I hereby consent to this investigation and authorize the Company to procure a consumer report and investigative consumer report on my background as stated above from a consumer reporting agency and/or investigative consumer reporting agency.

\_\_\_\_\_  
(Signature of Applicant/Employee)

\_\_\_\_\_  
(Date)

CALIFORNIA – FORM CA-2

Sample Written Disclosure Letter For Investigative Consumer Report to California Applicants  
[Use Only if No Contract Signed With Agency to Provide Report Directly to Consumer

Dear [applicant] [employee]:

[When you applied for employment,] [As part of the procedure to update your employment for purposes such as promotion, reassignment or retention as an employee,] you consented to an independent investigation into your background. Attached is a copy of the report we received in accordance with your authorization. You are receiving this report within three business days of the report being provided to the Company. The report was issued by:

Name  
Address  
City, State, Zip  
800-000-0000

Sincerely,

[Name and Title]

CALIFORNIA – FORM CA-3

Sample Written Pre-Adverse Action Notice to California Applicants/Employees

Dear [applicant] [employee]:

[When you applied for employment,] [As part of the procedure to update your employment for purposes such as promotion, reassignment or retention as an employee,] you consented to an independent investigation conducted by [Consumer Reporting/Investigative Consumer Reporting Agency]. This investigation may have included obtaining information covering up to: (1) the last seven years regarding credit background, lawsuits, judgments, paid tax liens, unlawful detainer actions, failure to pay spousal or child support, accounts placed for collection, your character, general reputation, personal characteristics or mode of living, and criminal conviction record consistent with state law; and (2) the last ten years regarding bankruptcies.

COMPANY contracted with [Consumer Reporting/Investigative Consumer Reporting Agency] whose address and telephone number are [insert address/phone number].

[Consumer Reporting/Investigative Consumer Reporting Agency] has reported to us the following information:

[Insert disqualifying information]

[Based on this information, you would not be extended an offer of employment.] [This information would cause F. Schumacher & Co. to (describe adverse action, e.g. denial of promotion, demotion, discharge).] [Consumer Reporting/Investigative Consumer Reporting Agency] has not made this decision and is not able to explain why the decision was made.

COMPANY is enclosing a copy of the report and a copy of your rights under the federal Fair Credit Reporting Act. You have the right to obtain a free copy of your file from [Consumer Reporting/Investigative Consumer Reporting Agency] if you request the report within 60 days. You also have the right to dispute directly with [Consumer Reporting/Investigative Consumer Reporting Agency] the accuracy or completeness of any information provided by it.

If you believe the information listed above is not accurate, please contact [insert name, telephone number of contact] within five business days of receipt of this letter. We will not make a final decision regarding your [application] [employment] until [insert date].

This will give you an opportunity to contact us if you want to dispute the report submitted by [Consumer Reporting/Investigative Consumer Reporting Agency].

Sincerely,

[Name and Title]

CALIFORNIA – FORM CA-4

Sample Written Adverse Action Notice to California Applicants/Employees

Dear [applicant] [employee]:

We wish to advise you that we [cannot give you any further consideration for employment.] [are (describe adverse employment action, e.g. denying promotion, demoting, discharging, etc.)] This action was influenced by information contained in [a consumer credit report/ investigative consumer report], made at our request and provided by:

Name  
Address  
City, State, Zip  
800-000-0000

Under the federal Fair Credit Reporting Act we are required to make the following disclosure to you:

You have the right to obtain a free copy of your file from the [Consumer Reporting/Investigative Consumer Reporting Agency] if you make a request with the agency within 60 days. Enclosed with our letter to you dated \_\_\_\_\_, you were provided with a copy of the report we received from [Consumer Reporting/Investigative Consumer Reporting Agency]. You also have the right to obtain from the [Consumer Reporting/Investigative Consumer Reporting Agency], free of cost, an additional copy of the report.

You also must be provided with a copy of the Federal Trade Commission's Summary of Consumer Rights, which is attached to this letter. The summary was also included with our letter to you dated \_\_\_\_\_.

You have the right to dispute directly with the [Consumer Reporting/Investigative Consumer Reporting Agency] the accuracy or completeness of any information provided by the [Consumer Reporting/Investigative Consumer Reporting Agency].

The [Consumer Reporting/Investigative Consumer Reporting Agency] did not make the adverse employment decision and is not able to explain why the decision was made.

Sincerely,

[Name and Title]

**FAIR CREDIT REPORTING ACT: Guidelines For Compliance (Massachusetts and Federal)**Step 1**Provide Disclosure And Obtain Written Consent**

Applicant at time s/he completes employment application receives a disclosure and consent form granting permission to conduct an initial and possible subsequent background checks if the applicant is hired, utilizing a third party service. See Form MA-1 attached hereto.

In Massachusetts, there is a seven (7) year limitation on obtaining information relating to criminal convictions, arrests and indictments, and any adverse information.

If a background check is being conducted on a current employee, and the employee has not signed a disclosure and consent form, s/he receives a consent form granting permission to conduct a background check utilizing a third party service. See Form MA-2 attached hereto.

The background investigation cannot be conducted without a signed consent form. The applicant should not be considered for employment without the signed form.

There should be a job-related reason for conducting a background investigation of a current employee. The background investigation of a current employee cannot be conducted without a signed disclosure and consent form. If the employee refuses to sign the consent, s/he should be told the employee will not be considered for the promotion and/or the employment decision will be made without the benefit of the background investigation.

If an investigative consumer report will be conducted, have the applicant/employee sign the combined disclosure and consent to request consumer report/investigative consumer report information, and give him/her a copy of the FTC's Summary of Rights. See Forms MA-3, MA-4 and F-9 attached hereto.

Under Massachusetts law, the applicant/employee, who is the subject of an investigative consumer report, must be notified as to the precise "nature and scope" of the investigation requested, and the right to have a copy of the report upon request. Investigative consumer reports typically involve personal interviews. For example, if a consumer reporting agency verifies factual information with a former employer and also asks open-ended questions (e.g., "What did you think of the person?"), the disclosure and notification requirements for an investigative consumer report apply.

Step 2**Notify Applicant or Employee of Negative Report Before Adverse Action is Taken**

If the consumer reporting agency reports information, which may be used, in whole or part, as a basis for an adverse employment action, the applicant must receive notification before a final decision is made not to hire. In the case of an employee, s/he must receive notification before any adverse employment action is taken. Provide copy of report and notice of rights. See Forms MA-5, MA-6, F-9 and M-10 attached hereto.

Step 3**Consider Response and Proceed**

If applicant or employee does not respond to notification within applicable time frames, proceed with decision. If applicant or employee does respond, consider carefully information submitted by the applicant/employee, then make decision.

Step 4**Notify Applicant or Employee of Adverse Action**

In Massachusetts, an employer must, within ten (10) business days of its decision to take adverse action, notify applicant or employee in writing of such adverse action, provide name, address and toll free number of consumer reporting agency and also provide applicant or employee with notice of rights under state law.

Provide applicant or employee with notice of adverse action, name, address and telephone number of consumer reporting agency, statement that consumer reporting agency did not make decision and does not know why decision was made and notice of right to obtain report and dispute information. See Forms MA-8, MA-9, F-9 and MA-10 attached hereto.

If the Company requested and obtained an investigative consumer report on an applicant/employee, the applicant/employee may request in writing a description as to the nature and scope of the investigative consumer report. The Company must provide this information to the applicant or employee not later than five days after the Company received the applicant or employee's written request for this disclosure or five days after the investigative consumer report was first requested, whichever is later. This notice is only sent if the applicant or employee requests in writing a copy of the investigative consumer report. See Form MA-5 attached hereto.

Step 5

For all adverse decisions, document each step taken and forward to the Legal Department for review.

MASSACHUSETTS – FORM MA-1

Sample Written Disclosure to Applicant and Consent to Request Consumer Report Information

I understand that COMPANY will utilize the services of a consumer reporting agency as part of the procedure for processing my application for employment. I also understand if my application for employment is granted, COMPANY may obtain further information through subsequent investigations by a consumer reporting agency so as to update, renew or extend my employment.

I understand a consumer reporting agency's investigation may include obtaining information covering up to the last seven years, regarding my credit background, references, character, past employment, work habits, education, general reputation, personal characteristics, mode of living, civil judgments, and liens, as well as any information about my criminal conviction background consistent with federal and state law.

I understand such information may be obtained by direct or indirect contact with former employers, schools, financial institutions, landlords and public agencies or other persons who may have such knowledge.

I understand that before I am denied employment based, in whole or part, on information obtained in the report, I will be provided a copy of the report and a description in writing of my rights under the federal Fair Credit Reporting Act, as well as a summary of my rights under Massachusetts law.

I also understand that in the event I am denied employment based, in whole or in part, on information obtained in the report, I will be provided with a description in writing of my rights under Massachusetts law.

I understand if I disagree with the accuracy of any information in the report, I must notify COMPANY within five business days of my receipt of the report. If I notify COMPANY within five business days of the receipt of the report that I am challenging information in the report, COMPANY will not make a final decision on my employment status until after I have had a reasonable opportunity to address the information contained in the report.

I hereby consent to this investigation and authorize COMPANY to procure a report on my background as stated above from a consumer reporting agency.

\_\_\_\_\_  
(Signature of Applicant)

\_\_\_\_\_  
(Date)

MASSACHUSETTS – FORM MA-2

Sample Written Disclosure to Current Employee and Consent to Request Consumer Report Information

I understand that COMPANY will utilize the services of a consumer reporting agency to obtain information through investigations subsequent to my date of hire.

I understand a consumer reporting agency's investigation may include obtaining information covering up to the last seven years regarding my credit background, references, character, past employment, work habits, education, general reputation, personal characteristics, mode of living, civil judgments, and liens, as well as any information about my criminal conviction background consistent with federal and state law.

I understand such information may be obtained by direct or indirect contact with former employers, schools, financial institutions, landlords and public agencies or other persons who may have such knowledge.

I understand that before COMPANY takes any adverse employment action based, in whole or part, on information obtained in the report, I will be provided a copy of the report and a description in writing of my rights under the Fair Credit Reporting Act, as well as a summary of my rights under Massachusetts law. Such adverse action includes but is not limited to denial of promotion, demotion, or discipline up to and including discharge.

I also understand that in the event adverse employment action is taken based, in whole or in part, on information obtained in the report, I will be provided with a description in writing of my rights under Massachusetts law.

I understand if I disagree with the accuracy of any information in the report, I must notify COMPANY within five business days of my receipt of the report. If I notify COMPANY within five business days of the receipt of the report that I am challenging information in the report, COMPANY will not make a final decision on my employment status until after I have had a reasonable opportunity to address the information contained in the report.

I hereby consent to this investigation and authorize COMPANY to procure a report on my background as stated above from a consumer reporting agency.

\_\_\_\_\_  
(Signature of Employee)

\_\_\_\_\_  
(Date)

MASSACHUSETTS – FORM MA-3

**Sample Written Disclosure to Applicant and Consent to Request Consumer Report and Investigative Consumer Report Information**

I understand that COMPANY will utilize the services of a consumer reporting agency as part of the procedure for processing my application for employment. I also understand if my application for employment is granted, COMPANY may obtain further information through subsequent investigations by a consumer reporting agency so as to update, renew or extend my employment.

I understand a consumer reporting agency's investigation may include obtaining information covering up to the last seven years, regarding my credit background, references, character, past employment, work habits, education, general reputation, personal characteristics, mode of living, civil judgments, and liens, as well as any information about my criminal conviction background consistent with federal and state law.

In the event an investigative consumer report is conducted, I understand such information may be obtained by **personal interviews** with my neighbors, friends or associates or with others whom I am acquainted or who may have knowledge concerning my character, general reputation, personal characteristics or mode of living. I understand such information may also be obtained through direct or indirect contact with former employers, schools, financial institutions, landlords and public agencies or other persons who may have such knowledge.

In the event an investigative consumer report is conducted, the nature and scope of the investigation is as follows: **Insert detailed description of what the investigative consumer report will entail.**

I understand that I have the right to have a copy of the report upon request. I acknowledge that I have received the attached summary of my rights under the Fair Credit Reporting Act. I also understand that before I am denied employment based, in whole or in part, on information obtained in the consumer or investigative consumer report, I will be provided a copy of the report and a description in writing of my rights under the Fair Credit Reporting Act. I also understand that in the event I am denied employment based, in whole or in part, on information obtained in the report, I will be provided with a description in writing of my rights under Massachusetts law.

I understand if I disagree with the accuracy of any information in the report, I must notify COMPANY within five business days of my receipt of the report. If I notify COMPANY within five business days of the receipt of the report that I am challenging information in the report, F. Schumacher & Co., will not make a final decision on my employment status until after I have had a reasonable opportunity to address the information contained in the report.

I hereby consent to this investigation and authorize COMPANY to procure a consumer report and/or an investigative consumer report on my background as stated above from a consumer reporting agency.

\_\_\_\_\_  
(Signature of applicant)

\_\_\_\_\_  
(Date)

MASSACHUSETTS – FORM MA-4

**Sample Written Disclosure to Employee and Consent to Request Consumer Report and Investigative Consumer Report Information**

I understand that COMPANY will utilize the services of a consumer reporting agency as part of the procedure for *[identify employment/job related reason for conducting investigative consumer report]*.

I understand a consumer reporting agency's investigation may include obtaining information covering up to the last seven years, regarding my credit background, references, character, past employment, work habits, education, general reputation, personal characteristics, mode of living, civil judgments, and liens, as well as any information about my criminal conviction background consistent with federal and state law.

In the event an investigative consumer report is conducted, I understand such information may be obtained by **personal interviews** with my neighbors, friends or associates or with others whom I am acquainted or who may have knowledge concerning my character, general reputation, personal characteristics or mode of living. I understand such information may also be obtained through direct or indirect contact with former employers, schools, financial institutions, landlords and public agencies or other persons who may have such knowledge.

In the event an investigative consumer report is conducted, the nature and scope of the investigation is as follows: **Insert detailed description of what the investigative consumer report will entail.**

I understand that I have the right to have a copy of the report upon request. I acknowledge that I have received the attached summary of my rights under the Fair Credit Reporting Act. I also understand that before my employment is adversely affected based, in whole or in part, on information obtained in the consumer or investigative consumer report, I will be provided a copy of the report and a description in writing of my rights under the Fair Credit Reporting Act. I also understand that in the event my employment is adversely affected based, in whole or in part, on information obtained in the report, I will be provided with a description in writing of my rights under Massachusetts law.

I understand if I disagree with the accuracy of any information in the report, I must notify COMPANY within five business days of my receipt of the report. If I notify COMPANY within five business days of the receipt of the report that I am challenging information in the report, F. Schumacher & Co., will not make a final decision on my employment status until after I have had a reasonable opportunity to address the information contained in the report.

I hereby consent to this investigation and authorize COMPANY to procure a consumer report and/or an investigative consumer report on my background as stated above from a consumer reporting agency.

\_\_\_\_\_  
(Signature of employee)

\_\_\_\_\_  
(Date)



MASSACHUSETTS – FORM MA-5

Sample Written Disclosure of Investigative Consumer Report

Dear [Applicant] [Employee]:

This is to advise you that on [date], COMPANY has requested an investigative consumer report [as part of the procedure for your application of employment] [to update your employment, for purposes such as promotion, reassignment or retention as an employee].<sup>1</sup>

Pursuant to your prior request, we are providing you with the nature and scope of the investigation as follows:

[Be Specific]

Previously, we provided you with a summary in writing of your rights under the Fair Credit Reporting Act. If you would like another copy, please contact us.

Sincerely,

[Name]  
[Title]

MASSACHUSETTS – FORM MA-6

Sample Written Pre-Adverse Action Notice to Applicants

Dear [applicant]:

When you applied for employment, you consented to an independent investigation conducted by a consumer reporting agency. This investigation may have included obtaining information covering up to the last seven years regarding credit background, references, character, past employment, work habits, education, general reputation, personal characteristics, mode of living, civil judgments, and liens, as well as any information about your criminal conviction background consistent with federal and state law.

COMPANY contracted with [Consumer Reporting Agency] whose address and telephone number are [insert address/phone number].

[Consumer Reporting Agency] has reported to us the following information:

[Insert disqualifying information]

Based on this information, you would not be extended an offer of employment. [Consumer Reporting Agency] has not made this decision and is not able to explain why the decision was made.

COMPANY is enclosing a copy of the report and a copy of your rights under the Fair Credit Reporting Act and state law. You have the right to obtain a free copy of your file from [Consumer Reporting Agency] if you request the report within 60 days. You also have the right to dispute directly with [Consumer Reporting Agency] the accuracy or completeness of any information provided by it.

If you believe the information listed above is not accurate, please contact [insert name, telephone number of contact] within five business days of receipt of this letter. We will not make a final decision regarding your application until [insert date].

This will give you an opportunity to contact us if you want to dispute the report submitted by [Consumer Reporting Agency].

Sincerely,

[Your Name]  
[Your Title]

Enclosures

<sup>1</sup> Choose appropriate bracketed language depending on whether the investigative consumer report was obtained for an applicant or a current employee.

MASSACHUSETTS – FORM MA-7

Sample Written Pre-Adverse Action Notice to Current Employees

Dear [employee]:

You consented to an independent investigation conducted by a consumer reporting agency. This investigation may have included obtaining information covering up to the last seven years regarding credit background, references, character, past employment, work habits, education, general reputation, personal characteristics, mode of living, civil judgments, and liens, as well as any information about your criminal conviction background consistent with federal and state law.

COMPANY contracted with [Consumer Reporting Agency] whose address and telephone number are [insert address/phone number].

[Consumer Reporting Agency] has reported to us the following information:

*[Insert disqualifying information]*

This information would cause COMPANY to *[describe adverse action: e.g., denial of promotion, discipline or discharge]*. [Consumer Reporting Agency] has not made this decision and is not able to explain why the decision was made.

COMPANY is enclosing a copy of the report and a copy of your rights under the Fair Credit Reporting Act and state law. You have the right to obtain a free copy of your file from [Consumer Reporting Agency] if you request the report within 60 days. You also have the right to dispute directly with [Consumer Reporting Agency] the accuracy or completeness of any information provided by it.

If you believe the information listed above is not accurate, please contact *[insert name, telephone number of contact]* within five business days of receipt of this letter. We will not make a final decision regarding your employment until *[insert date]*.

This will give you an opportunity to contact us if you want to dispute the report submitted by [Consumer Reporting Agency].

Sincerely,

[Your Name]  
[Your Title]

Enclosures

MASSACHUSETTS – FORM MA-8

Sample Written Adverse Action Notice to Applicants

Dear [applicant]:

We wish to advise you that we cannot give you any further consideration for employment. This action was influenced by information contained in a consumer report, made at our request and provided by:

Name  
Address  
City, State, Zip  
800-000-0000

Under the federal Fair Credit Reporting Act we are required to make the following disclosure to you:

You have the right to obtain a free copy of your file from the consumer reporting agency if you make a request with the agency within 60 days. Enclosed with our letter to you dated \_\_\_\_\_, you were provided with a copy of the report we received from [Consumer Reporting Agency]. You also have the right to obtain from the consumer reporting agency, free of cost, an additional copy of the report.

You must be provided with a copy of the Federal Trade Commission's Summary of Consumer Rights, which is attached to this letter. (The summary was also included with our letter to you dated \_\_\_\_\_.) You also must be provided with a summary of your rights under Massachusetts law, which also is attached to this letter.

You have the right to dispute directly with the consumer reporting agency the accuracy or completeness of any information provided by the consumer reporting agency.

The consumer reporting agency did not make the adverse employment decision and is not able to explain why the decision was made.

Sincerely,

[Your Name]  
[Your Title]

Enclosures

MASSACHUSETTS – FORM MA-9

Sample Written Adverse Action Notice to Current Employees

Dear [employee]:

We wish to advise you that we are [describe adverse employment action: e.g.,denying promotion, disciplining, discharging]. This action was influenced by information contained in a consumer report, made at our request and provided by:

Name  
Address  
City, State, Zip  
800-000-0000

Under the federal Fair Credit Reporting Act we are required to make the following disclosure to you:

You have the right to obtain a free copy of your file from the consumer reporting agency if you make a request with the agency within 60 days. Enclosed with our letter to you dated \_\_\_\_\_, you were provided with a copy of the report we received from [Consumer Reporting Agency]. You also have the right to obtain from the consumer reporting agency, free of cost, an additional copy of the report.

You must be provided with a copy of the Federal Trade Commission's Summary of Consumer Rights, which is attached to this letter. (The summary was also included with our letter to you dated \_\_\_\_\_.) You also must be provided with a summary of your rights under Massachusetts law, which is also attached to this letter.

You have the right to dispute directly with the consumer reporting agency the accuracy or completeness of any information provided by the consumer reporting agency.

The consumer reporting agency did not make the adverse employment decision and is not able to explain why the decision was made.

Sincerely,

[Your Name]  
[Your Title]

Enclosures

MASSACHUSETTS – FORM MA-10

**SUMMARY OF YOUR RIGHTS UNDER THE  
MASSACHUSETTS CONSUMER CREDIT REPORTING ACT**

You have the right to obtain a free copy of your credit file from a consumer credit reporting agency. You may be charged a reasonable fee not exceeding eight dollars. There is no fee, however, if you have been turned down for credit, employment, insurance, or rental dwelling because of information in your credit report within the preceding sixty days. The consumer credit reporting agency must provide someone to help you interpret the information in your credit file. Each calendar year you are entitled to receive, upon request, one free consumer credit report.

You have a right to dispute inaccurate information by contacting the consumer credit reporting agency directly. However, neither you nor any credit repair company or credit service organization has the right to have accurate, current, and verifiable information removed from your credit report. In most cases, under state and federal law, the consumer credit reporting agency must remove accurate, negative information from your report only if it is over seven years old, and must remove bankruptcy information only if it is over ten years old.

If you have notified a consumer credit reporting agency in writing that you dispute the accuracy of information in your file, the consumer credit reporting agency must then, within thirty business days, reinvestigate and modify or remove inaccurate information. The consumer credit reporting agency may not charge a fee for this service. Any pertinent information and copies of all documents you have concerning a dispute should be given to the consumer credit reporting agency.

If reinvestigation does not resolve the dispute to your satisfaction, you may send a statement to the consumer credit reporting agency to keep in your file, explaining why you think the record is inaccurate. The consumer credit reporting agency must include your statement about the disputed information in a report it issues about you.

You have a right to receive a record of all inquiries relating to a credit transaction initiated in the six months preceding your request, or two years in the case of a credit report used for employment purposes. This record shall include the recipients of any consumer credit report.

You have the right to opt out of any pre-screening lists compiled by or with the assistance of a consumer credit reporting agency by calling the agency's toll-free telephone number or contacting the agency in writing. You may be entitled to collect compensation, in certain circumstances, if you are damaged by a person's negligent or intentional failure to comply with the provisions of the credit report act.

## FAIR CREDIT REPORTING ACT

### I. Introduction

A common misconception is that the Fair Credit Reporting Act ("FCRA") only applies to credit reports. However, the FCRA regulates much more than just credit reports. It covers other types of employment screening reports as well, such as, criminal checks, employment verifications, motor vehicle reports, education verifications, and drug testing where the investigation is conducted through a third party. Employers that utilize consumer reporting agencies to perform background checks on applicants or employees must comply with the FCRA's provisions relating to disclosure and authorization, adverse action, permissible use, as well as state laws and equal employment opportunity laws.

### II. Definitions

A) **Consumer:** means an individual. 15 U.S.C. §1681a(c).

B) **Consumer Report:** Any written or oral or other communication of any information (prepared by a consumer reporting agency) bearing on an applicant's or employee's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected for employment or any other permissible purpose. 15 U.S.C. §1681a(d).

C) **Investigative Consumer Report:** a special type of consumer report for which the information was gathered through personal interviews of neighbors, friends, or associates of the employee or applicant reported on, or from other personal acquaintances or persons who may have knowledge about information bearing on an applicant's or employee's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, mode of living which is used or expected to be used or collected for employment purposes. 15 U.S.C. §1681a(e).

D) **Consumer Reporting Agency:** Any person or entity which for monetary fees regularly prepares consumer reports for third parties. 15 U.S.C. §1681a(f).

E) **Employment Purpose:** Evaluating an applicant or employee for employment, reassignment, or retention as an employee. 15 U.S.C. §1681a(h).

F) **Adverse Action:** A denial of employment or any other decision for employment purposes based in whole or in part on a consumer report that adversely affects any current or prospective employee. 15 U.S.C. §1681a(k).

G) **Permissible Purpose:** A CRA may create a consumer report for a person

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for whom it has reason to believe intends to use the information to evaluate a consumer's eligibility for credit, insurance, or employment. 15 U.S.C. §1681a(d) and 15 U.S.C. §1681b.

### III. Determining if the FCRA Applies

A) Ask the following questions: 1) Are you working with a CRA, 2) Are they preparing a consumer report, and 3) Will the report be used for a permissible purpose? If the answers to those questions are yes, then the FCRA applies.

1. **In-house Screening.** The Federal Trade Commission has stated that where an employer directly obtains public record information, the employer's actions are not covered by the FCRA. (emphasis added) *See* FTC Opinion letter, from William Haynes, FTC Staff Attorney, to Sidney Lewis (June 11, 1998).

2. **Private Investigators, Record Search firms, and other CRAs.** The term "directly" is of significance in the FTC's opinion letter referenced above. If an employer uses the services of a private investigator or records search firm to perform employment screening, then the FCRA will apply. The FTC has made it clear that private investigators and record search firms that an employer hires to report public records are CRAs under the FCRA. *See* FTC Opinion letter, from Clarke W. Brinckerhoff, FTC Staff Attorney, to Steven Slyter (June 11, 1998).

3. **State Agencies.** State agencies and courthouses are not considered consumer reporting agencies. According to the FTC, to consider state agencies as a CRA would be contrary to their basic mission as a source of public record information. *See* FTC Opinion letter, from William Haynes, FTC Staff Attorney, to Michael Rosen (June 9, 1998).

4. **Databases.** Employers should be aware that the rules of the FCRA will be triggered if they use online private databases to access public records. Many of these databases meet the definition of a CRA, and if the report were used for employment purposes the reports would be subject to the FCRA.

Note: Consumer Reporting Agencies must maintain strict procedures designed to insure that the information is complete and up to date, or notify the applicant that a report is being made about them that contains public information. Public records relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported. (emphasis added). 15 U.S.C. §1681k. The FTC has stated that a CRA does not comply with the FCRA if the CRA reports negative public record information from stored data without first verifying the information is complete and up to date. *See* FTC Opinion letter, from Helen Foster, FTC Staff Attorney, to John Allan (May 5, 1999).

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IV. FCRA RequirementsA) Employer Requirements 15 U.S.C. §1681b(b).

1. Employers must certify to the CRA that (typically listed in the agreement with the CRA):

- a. They will provide the required disclosure(s) and obtain written authorization,
- b. They will follow the procedures for adverse action, if adverse action is intended,
- c. They will not use the information in violation of any federal or state equal employment opportunity law, and
- d. The report will only be used for a permissible purpose.

2. Employers must clearly and conspicuously disclose that a consumer report for employment purposes may be obtained. 15 U.S.C. §1681b(b). Also, employers must obtain a written authorization before obtaining a consumer report. Id. The disclosure and authorization can be combined in a single document, but should contain nothing more than the authorization and disclosure. See FTC Opinion letter, from Cynthia Lamb, FTC Investigator, to Richard Steer (October 21, 1997). **Note:** CA, MN, OK law requires a box that the applicant can check if he or she would like a free copy of their report.

3. Employers need a distinct disclosure for an Investigative Consumer Report. 15 U.S.C. §1681d(a). The consumer must be notified within three days that an Investigative Consumer Report has been requested, that they have the right to obtain additional information as to the nature and scope of the report, and they must receive a copy of the FTC document, "Summary of Your Rights."

4. The adverse action rules apply to decisions not to hire, suspend, or terminate an individual based in whole or in part on a consumer report. If adverse action is intended and before it is taken, an Employer must provide the applicant with a copy of the report and the FTC document, "Summary of Your Rights." 15 U.S.C. §1681b(b)(3). This is the **First Notice**, also called the Pre-Adverse Action notice.

5. After adverse action has actually taken place, the employer must notify the consumer of the action. 15 U.S.C. §1681m. This is the **Second Notice**. In the Adverse Action notice, the employer must provide the CRA's contact information, a statement that the CRA did not take the action, and notify the individual that he or she has a right to dispute the accuracy or completeness of the information and that they have a right to another free copy of report within 60 days. Id.

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Note: The FCRA is silent on how long an employer should wait after providing the pre-adverse action notice before sending the second notice. However, employers should keep, "in mind the clear purpose of the provision to allow consumers to discuss reports with employers or otherwise respond before adverse action is taken," according to the FTC. See FTC Opinion Letter, from William Haynes, FTC Staff Attorney, to Harold Hawkey (December 18, 1997). Thus, the applicant must have a meaningful opportunity to review the material and to respond. In another opinion letter dated June 27, 1997, the FTC indicated that five business days was reasonable, but noted that "the facts of any particular employment situation may require a different time."

B) Consumer Reporting Agency requirements

1. A Consumer Reporting Agency ("CRA") must obtain certifications from the employer, setting forth the duties of a user of a Consumer Report for employment purposes. The FCRA requires a user of a consumer report to certify that the:

- a. User will provide the required disclosures and obtain written authorization,
- b. User will follow the procedures for adverse action, and
- c. User will not use the information in violation of any federal or state equal employment opportunity law. 15 U.S.C. §1681b.

2. CRAs must follow reasonable procedures concerning identity and proper use. The FCRA provides that, every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of FCRA section 605 (regulating what may be reported) and furnish consumer reports only for the purposes listed under FCRA section 604. 15 U.S.C. §1681e(a). These procedures require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be not used for an unauthorized purpose.

3. CRAs must take measures to ensure accuracy of the information reported. Whenever a CRA prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates. 15 U.S.C. §1681e(b).

4. CRAs must provide employers with the FTC prepared summary, "Notice to Users of Consumer reports: Obligations of Users under the FCRA." 15 U.S.C. §1681e(d).

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5. CRAs must provide employers with FTC summary, "Summary of Your Rights," with every report or before sending a report. 15 U.S.C. §1681b(b)(1). The FTC indicated in an opinion letter that CRAs would be in compliance by providing sufficient copies, and that physical copies do not have to be attached to each report. *See* FTC Opinion Letter, from William Haynes, FTC Staff Attorney, to Douglas Hahn (December 23, 1997).

6. If a CRA reports items that are public record information, which are likely to have an adverse effect upon a consumer's ability to obtain employment, the CRA must maintain strict procedures designed to insure that the information is complete and up to date. Public records relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported. 15 U.S.C. §1681k(a)(2). An option is to inform the applicant that a report is being made about them that contains public information. 15 U.S.C. §1681k(a)(1).

7. When a CRA prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report, or the adverse information was received within the three-month period preceding the date the subsequent report is furnished. 15 U.S.C. §1681l.

8. In cases of disputed accuracy, a CRA has an obligation to re-investigate the disputed data free of charge, and determine if the information is accurate within 30 days. CRAs must give notify the furnisher of information within 5 days of the dispute. Depending on the results of the investigation other obligations may arise. 15 U.S.C. §1681i and 1681j.

9. Upon a request from a consumer, a CRA must disclose what is in the consumer's file, identify sources, identify everyone who procured a report for employment in the past two years, and meet other requirements (such as providing trained personnel who can explain to a consumer any information in the report.) 15 U.S.C. §1681g and 1681h. *Exception:* Sources of information acquired solely for use in an Investigative Consumer Report and not used for any other purpose need not be disclosed. 15 U.S.C. §1681g(a)(2).

#### C) Limits on Reporting

CRAs must follow the provisions of the FCRA when preparing consumer reports. Section 605 of the FCRA prohibits CRAs from reporting:

1. Bankruptcy cases that antedate the report by more than 10 years,
2. Civil suits, civil judgments, and records of arrest that antedate the report by more than seven years,
3. Paid tax liens that antedate the report by more than seven years,

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4. Accounts placed for collection or charged to profit and loss that antedate the report by more than seven years,

5. Any other adverse information, other than records of convictions, that antedate the report by more than seven years. 15 U.S.C. §1681c.

For employees reasonably expected to earn \$75,000 or more per year, the above time limits do not apply. In the employment-screening context, it is relevant that records of arrest may not be reported if the record antedates the report by more than seven years. In addition to the limitations found in the FCRA, a number of states restrict CRAs from reporting or prohibit an employer from considering any arrest record, and will not permit convictions to be reported if the record is more than 7 years old.

#### V. State Laws

1. States limiting reporting of convictions to seven years include: California, Colorado, Kansas, Maryland, Massachusetts, Montana, Nevada, New Hampshire, New Mexico, New York, Texas, and Washington.

2. The states listed below regulate the use or reporting of arrest records that did not result in a conviction, unless the charge is pending: California, Hawaii, Illinois, Kentucky, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New York, Ohio, Pennsylvania, Rhode Island, Utah, Virginia, Washington, Wisconsin.

3. Several states have statutes regulating the use of consumer reports, including California, Massachusetts, and New York.

4. Some states have specific legislation on in-house investigations. In California, for example, if an employer gathers information on an applicant that is related to that individual's character, general reputation, personal characteristics, or mode of living from a public record, then the employer must provide the applicant with a copy of the record within seven days of receipt. Cal.Civ.Code §1786.53.

#### VI. EEOC Considerations

A) When making employment decisions, arrests should not be considered and actions taken because of a conviction must be job related and consistent with business necessity, according to the EEOC.

1. The use of arrest records is considered a discriminatory employment practice in the absence of a strong showing of business necessity. *See* EEOC Notice N-915-061 (September 7, 1990); *See also Gregory v. Litton Systems, Inc.*, (1970), 316 F.Supp. 401.

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2. The employment practice of disqualifying individuals from consideration for employment because of their conviction records can be discriminatory practice if the conviction is not related to the job. *See* EEOC Notice N-915 (July 29, 1987).
3. The EEOC recommends that employers include a statement on applications informing the applicant that the disclosure of criminal convictions will not result in disqualification from consideration. *See* EEOC Decision 80-20 (August 26, 1980).
4. Requesting the applicant's date of birth is not, in itself, a violation of the Age Discrimination in Employment Act. The law does provide that since inquires into an applicant's age may tend to deter older applicants or indicate discrimination based on age, applications will be closely scrutinized to ensure the question is for a permissible purpose. 29 C.F.R. §1625.5.

VII. FACT Act: Fair and Accurate Credit Transaction ("FACT") Act

- A) Consumer reporting agencies operating on a nationwide basis are required to provide consumers with a free copy of their consumer report once every twelve months. 15 U.S.C. §1681j.
- B) The Vail letter and workplace investigations
  - 1) The FACT Act exempts investigations conducted in good faith into "suspected misconduct relating to employment" and investigations of "compliance with Federal, State or local laws and regulations, and rules of self regulatory organization, or any pre-existing written policies of the employer" from the notice and disclosure rules of the FCRA. 15 U.S.C. §1681a(x).
  - 2) Under the new rules, if an employer takes an adverse action based on the results of the investigation, then the employer is required to provide an "investigation summary" to the employee. The summary can exclude the names of the individuals who were interviewed or other sources of information. If no adverse action is taken, then a disclosure is not required. 15 U.S.C. §1681a(x).
- C) Disposal of Records. The FCRA and Regulations do not require the disposal of records, but does have applicable provisions if your company does dispose of consumer report records. 16 C.F.R. §682.3. You may destroy records or contract for the services of a company to shred or destroy records if "reasonable measures to protect against the unauthorized access to or use of the information in connection with its disposal" is taken. *Id.* Consumer record information should be disposed of in such a manner that the information cannot practicably be read or reconstructed.

## State Laws Related to Employment Screening

**Alaska:** Applicants may respond to inquiries into sealed criminal records as if such action had not occurred. *Alaska Stat. §12-62-180.*

**California:** Employers must provide a check the box option on the disclosure in order for applicant to request copy of report. *Cal. Civ. Code §1786.16.* Also, specific disclosure language must be included on investigative report. *Id.*

The adverse action letter must inform the applicant that the action was taken "in whole or in part" upon a consumer report. Under the FCRA that language is required in the pre-adverse action letter, but not the second adverse action letter. *Cal. Civil Code §1785.20.5.*

Employers may not inquire into specified marijuana offenses that are more than 2 years old. *Cal. Lab. Code §432.8.*

Inquiries into arrest records, sealed criminal records, misdemeanor convictions for which probation has been completed and case dismissed, or arrests where diversion program has been completed are prohibited. *Cal. Code of Reg. 2 §7287.4*

**Colorado:** Applicants may respond to inquiries relating to sealed criminal records as if no such action occurred. Also, No denial of employment solely on basis that applicant refused to provide sealed criminal records. *C.R.S. 24-72-308.*

**Connecticut:** An employment application form that contains any question concerning the criminal history of the applicant shall contain a notice, in clear and conspicuous language: (1) That the applicant is not required to disclose the existence of any arrest, criminal charge or conviction, the records of which have been erased, shall be deemed to have never been arrested within the meaning of the general statutes with respect to the proceedings so erased and may so swear under oath. *Conn. Gen. Stat. § 31-51i.*

Portion of application relating to criminal records must be kept confidential. *Id.*

Connecticut public sector employers should review Conn. Gen. Stat. §46a-80, which contains restrictions on use of conviction records.

**Georgia:** Employers may obtain criminal records by submitting fingerprints or official consent form signed and notarized to the GA Crime Information Center. If adverse action is taken based on results of such a search, then the person must be informed of the decision (including the fact that a criminal record was obtained), the content of the record, and the effect the record had on the decision. *Ga. Code §35-3-34.* Furthermore, the Crime Information Center may not provide records of arrests, charges, and sentences

for crimes relating to first offenders in cases where offenders have been exonerated and discharged without court adjudications of guilt, except as specifically authorized by law. Inquiries into sealed arrest records are prohibited. *Ga. Code §42-8-62, 63*

**Hawaii:** Consideration of conviction records of prospective employees may be done only after a conditional offer of employment, which may be later withdrawn if the conviction record bears a rational relationship to the duties and responsibilities of the position. *HI ST. §378-2.5.*

Employers may not discriminate against applicant based on arrest records. *HI ST. §378-2.*

Public employers cannot consider misdemeanor convictions for which a jail sentence could not be imposed in making employment decisions. *HI ST. §831-3.1.*

**Illinois:** Employers can obtain conviction records if it is necessary and will be used solely for evaluating the qualifications and character of employees or prospective employees. *IL ST Ch 775 §5/2-103.*

Application must provide that the applicant is not obligated to disclose sealed or expunged records of convictions or arrest. *§ 20 ILCS 2630/12.*

**Kansas:** The adverse action letter must inform the applicant that the action was taken “in whole or in part” upon a consumer report. Under the FCRA that language is required in the pre-adverse action letter, but not the second adverse action letter. *K.S.A. §50-714.*

In general, applicants may deny existence of expunged criminal records (note limited exceptions in statute). *Kan. Stat. Ann. §12-4516.*

Employers may inquire into an applicant's criminal history record information for purposes of determining the applicant's fitness for employment, otherwise such inquires are impermissible. *K.S.A. §22-4710*

**Kentucky:** Consumer reporting agencies are prohibited from reporting arrest records. *Ky. Rev. Stat. § 367.310.*

**Maryland:** The adverse action letter must inform the applicant that the action was taken “in whole or in part” upon a consumer report. Under the FCRA that language is required in the pre-adverse action letter, but not the second adverse action letter. *Md. Comm. Law. Code Ann. §14-1212.*

Inquiries into sealed criminal records are prohibited and applicant may deny the existence of such records. *Md. Crim. Proc. Ann. §10-109.*

**Massachusetts:** Specified summary of rights required to be furnished by CRA when information is disputed. *M.G.L.A. 93 §56.*

In the adverse action letter a notice, as specified in the statute, not smaller than 10 point font with the name, address, and phone number of the CRA. The user must give this notice within 10 days of the adverse decision. *M.G.L.A. 93 §62.*

Employers may not inquire into arrest records nor discriminate against applicants for failure to provide arrest record information or listed offenses (including first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace). *M.G.L.A. 151B§4(9).*

Applications for employment used by an employer which seeks information concerning prior arrests or convictions of the applicant shall include the following statement: "An applicant for employment with a sealed record on file with the commissioner of probation may answer 'no record' with respect to an inquiry herein relative to prior arrests, criminal court appearances or convictions. An applicant for employment with a sealed record on file with the commissioner of probation may answer 'no record' to an inquiry herein relative to prior arrests or criminal court appearances. In addition, any applicant for employment may answer 'no record' with respect to any inquiry relative to prior arrests, court appearances and adjudications in all cases of delinquency or as a child in need of services which did not result in a complaint transferred to the superior court for criminal prosecution." *M.G.L.A. 276§100A(4).*

**Michigan:** Inquiries into arrest records are prohibited. *Mich. Comp. Laws Ann. §37.2205a.*

**Minnesota:** User must give adverse action notice to consumer and CRA must provide copy of the report within 5 days of receipt of request. The adverse action letter must inform the applicant that the action was taken “in whole or in part” upon a consumer report. Under the FCRA that language is required in the pre-adverse action letter, but not the second adverse action letter. *M.S.A. §13C.03.*

**Montana:** The adverse action letter must inform the applicant that the action was taken “in whole or in part” upon a consumer report. Under the FCRA that language is required in the pre-adverse action letter, but not the second adverse action letter. *MCA 31-3-131.* Special rules if report was for credit purposes.

Inquiries into convictions are permissible; however, inquiries into arrest records are considered suspect. *Mont. Admin. R. 24.9.1406.*

**New Hampshire:** The adverse action letter must inform the applicant that the action was taken “in whole or in part” upon a consumer report. Under the FCRA that language is required in the pre-adverse action letter, but not the second adverse action letter. *N.H. Rev. Stat. §359-B:15.*

Application for employment, a person may be questioned about a previous criminal record only in terms such as "Have you ever been arrested for or convicted of a crime that has not been annulled by a court?" *N.H. Rev. Stat. §651:5.*



**New Jersey:** Must inform the applicant in the authorization form that the report is for employment purposes and no medical info unless specifically mentioned in the authorization. *N.J.S.A. 56:11-31.*

Applicants may respond to inquiries into expunged criminal records as if such actions had not occurred. *N.J.S.A. §2C: 52:27.*

**New York:** Inquiries into arrest records not resulting in convictions is prohibited. *N.Y. Exec. Law §296(16).*

Employer must review conviction records for a direct relationship between the criminal offenses and employment sought. *N.Y. Corr. Law §752; 753*

Employers must provide a written explanation for the denial of employment when based on a conviction record with in 30 days of an applicant's request. *N.Y. Corr. Law §754*

**Ohio:** No inquires into arrests records that have been expunged. Applicants may respond to such inquiries as if the arrest did not occur. *Ohio Rev. Code Ann. §2151.358.*

Inquiries into sealed conviction records are prohibited unless question has a substantial relationship to the position sought by applicant. *Ohio Rev. Code Ann. §2953.33.*

**Oklahoma:** In the disclosure inform the applicant that a consumer report will be used, and provide a check the box option to request a free copy. *24 Okl.St. Ann. §147.*

Applicants may respond to inquiries into sealed arrest and conviction records as if the applicant had not been arrested or convicted. *22 Okl.St. Ann. §19.*

**Oregon:** It is unlawful to seek access to criminal records for employment, unless the employee or applicant is first notified that the information may be sought. In requesting the records, employers must describe how the employee was informed of the request. *O.R.S §181.555(2)(b).*

No denial of employment based on expunged juvenile record. *O.R.S §659A.030(1).*

**Pennsylvania:** Felony and misdemeanor convictions may be considered only to the extent that they relate to an applicant's suitability for employment in the position for which he or she has applied. Employer must notify the applicant in writing if a decision not to hire is based in whole or in part on a criminal record. *18 PA SA §9125(b) & (c)*

It is against public policy for employer considering hiring of individual to consider any experience which applicant has with criminal justice system which falls short of conviction. *Cisco v. United Parcel Services, Inc., 476 A.2d 1340, 328 Pa.Super. 300, Super.1984.*

**Rhode Island:** The adverse action letter must inform the applicant that the action was taken "in whole or in part" upon a consumer report. Under the FCRA that language is required in the pre-adverse action letter, but not the second adverse action letter.

Inquiries into arrest records are prohibited. *R.I. Gen. Laws §28-5-7.*

Applicants may respond to inquiries into convictions that have been expunged as if the applicant had not been convicted. *R.I. Gen. Laws §12-1.3-4*

**Utah:** Applicants may respond to inquiries into sealed criminal records as if it had not occurred. *Utah Code Ann. §77-18-10.*

No inquiries into arrest records, but inquiries into felony convictions are permissible if job-related. *Utah Admin. Code R606-2-2.*

**Virginia:** Unlawful discriminatory practice includes conduct that violates state and federal regulations regarding discrimination. *Va. Code. Ann. §2.1-716.*

It is unlawful for an employer to require an applicant for employment to disclose information concerning any arrest or criminal charge that has been expunged. *Va. Code. Ann. §19.2-392.4(A).*

**Washington:** Inquiries into conviction records should reasonably relate to the job. *WA. Admin. Code 162-12-140.*

Inquiries into arrest records must include if the charges are pending, have been dismissed, or lead to conviction of behavior that would adversely affect job performance. *WA. Admin. Code 162-12-140.*

**Wisconsin:** It is employment discrimination, because of conviction record, to refuse to employ or license, or to bar or terminate from employment or licensing, any individual who has been convicted of any felony, misdemeanor or other offense the circumstances of which do not substantially relate to the circumstances of the particular job or licensed activity. *Wis. Stat. Ann. §111.335.*

Inquiries into arrest records are prohibited except when the record relates to a pending charge or when employment depends on bondability. *Id.*

**Wyoming:** Applicants may respond to inquiries into expunged juvenile records as if they had not occurred. *Wyo. Stat. §14-6-241.*

Important Differences with the FCRA:

At least five states have rules for the notice and initial disclosure that are different from the FCRA. Those states are: California, Massachusetts, Minnesota, Oklahoma, and New York. Consumers must have a check the box option on the disclosure form in CA, MN, and OK. In Massachusetts, the consumer must provide written authorization to the CRA, whereas the user must obtain authorization under the FCRA.

Several states rules regarding timing and notice for Investigative Consumer Reports vary from the FCRA. For example, in California, Massachusetts, Minnesota, New Jersey, and New York employers must obtain written authorization before the report is requested. Also, in Maine the consumer must receive notice within 3 business days of the date the report was requested.

Some state rules with respect to Adverse Action also diverge from the FCRA. In Minnesota, Maryland, Montana, New Hampshire, Rhode Island, and Kansas the adverse action letter must inform the applicant that the action was taken “in whole or in part” upon a consumer report. Under the FCRA that language is required in the pre-adverse action letter, but not the second adverse action letter. In Georgia, reasons must be provided for the action, and in Massachusetts a specified summary provided in the law must be included.

FCRA and Employment Screening

Hiring practices	<ol style="list-style-type: none"> <li>1) Include statement on application that conviction records will not necessarily be a bar to employment and that other factors such as time and seriousness of the offense, individual’s age, and rehabilitation will be considered. Check state law for other statements to be included on the employment application.</li> <li>2) Make conditional offer in writing and provide appropriate disclosure.</li> <li>3) Obtain written authorization for background check.</li> <li>4) If background check reveals disqualifying information follow adverse action procedures listed below.</li> </ol>
Employer requirements under FCRA	<ol style="list-style-type: none"> <li>1) Must promise CRA that employer will: (a) provide disclosure and obtain written authorization, (b) follow adverse action procedures, (c) not use info in violation of federal or state equal employment opportunity law, and (d) use report only for permissible purpose (employment is a permissible purpose). These are typically included in an agreement.</li> <li>2) If adverse action is intended and before it is taken, employer must provide consumer with copy of report and the FTC document, “Summary of Your Rights.” This is the Pre-Adverse Action notice.</li> <li>3) After Adverse Action decision, employer must notify the consumer of the action. In the notice, they must provide the CRA’s contact info, a statement that the CRA did not take the action and can’t explain why it was taken, that consumer has right to dispute accuracy or completeness of the report, and that they have right to another free report within 60 days.</li> <li>4) CRA should provide employer with FTC documents, “Notice to Users” and “Summary of Your Rights.”</li> </ol>
FCRA Reporting Limits for CRAs	<ol style="list-style-type: none"> <li>1) No reporting records of arrest, paid tax liens, civil cases, or any other adverse information (other than convictions) past 7 years.</li> <li>2) Can’t report bankruptcies past 10 years.</li> </ol> <p>*limits do not apply if person is expected to earn more than \$75,000.</p>
State Law	<ol style="list-style-type: none"> <li>1) States that limit the reporting of convictions to seven years: CA, CO, KS, MD, MA, MT, NV, NH, NM, NY, TX, and WA. Note: several of these states have exceptions for employees that are expected to have salaries in excess of a specified amount.</li> <li>2) States regulating reporting or use of arrest records: CA, HI, IL, KY, MA, MI, MT, NV, NH, NY, OH, PA, RI, UT, VA, WA, and WI.</li> </ol> <p>* According to the EEOC, arrest records should not be considered and actions taken because of a conviction must be job related and consistent with business necessity.</p>

Links: <http://www.asisonline.org/guidelines/guidelinespreemploy.pdf>

<http://www.ftc.gov/os/statutes/fcrajump.shtm>