

FAIR CREDIT REPORTING ACT

Employers that use investigators or agencies like Oxford Document Management (ODM) to conduct background checks on prospective or current paid employees are required to comply with the notice and disclosure requirements of the federal Fair Credit Reporting Act (FCRA). Though a strong argument can be made that the FCRA does not apply to churches or other religious organizations on the basis of the free exercise clause of the First Amendment of the U.S. Constitution, we recommend that you get an opinion from your legal counsel.

The FCRA regulates the collection, storage and sale of personal information including, but not limited to, criminal history records, driving records, worker's compensation reports, educational credentials, credit history checks and employer reference checks for employment-related and other purposes. Under the FCRA, background investigation reports that include this personal information are an "investigative consumer report" (hereafter referred to as "Report") and the organization that collects or assembles this information for the benefit of a third party for a fee is called a "consumer reporting agency" (i.e. ODM). For a complete text of the FCRA, please visit the Federal Trade Commission website at www.ftc.gov/os/statutes/fcra.htm.

There are significant penalties for noncompliance with the FCRA. Under Section 617, if the FTC finds "negligent noncompliance" with FCRA requirements, violators are liable to an applicant or employee for actual damages, costs of a suit, and attorney's fees. In addition, an employer's "willful noncompliance," may result in fines of up to \$1,000 per violation, as well as punitive damages. Criminal penalties also may be imposed if a person obtains a credit report under false pretenses, including fines and/or up to two years imprisonment.

Given the tremendous importance of this topic, we recommend that you print this material for your future reference. The extent to which you will deal directly with the notice and disclosure requirements of the FCRA will depend on the on-line features you choose.

ODM MAKES COMPLYING WITH THE FAIR CREDIT REPORTING ACT SIMPLE

The steps required to comply with the FCRA are easily incorporated into our on-line screening process:

Employer-User Certification Required (FCRA Section 604). Prior to obtaining an investigative consumer report from a consumer reporting agency, the employer must first provide certification to the consumer reporting agency that the employer:

1. Is requesting the report for employment purposes (which includes evaluating an applicant or employee for employment, promotion, reassignment, or retention as an employee).
2. Has provided the required disclosure to the applicant or employee.
3. Has obtained the necessary written authorization to request the report.
4. Will provide the applicant or employee with a copy of the report and a written description of the applicant or employee's rights before taking any "adverse action" based in whole or in part on the report.
5. Will not use the information from the report in a manner that violates federal or state equal opportunity laws.

Many of these certifications are part of the "User Agreement" you agree to abide by. The remaining disclosure and notice responsibilities are managed as follows:

Disclosure/Authorization: The FCRA requires any employer intending to obtain a Report to first make a clear and conspicuous written Disclosure to the prospective or current employee that a Report may be obtained for employment purposes (FCRA Sections 604 and 606). The Disclosure must be provided in a standalone document and cannot be included in an employment application or other document that contains additional information. The employer must also obtain the prospective or current employee's Authorization before obtaining the Report.

→ ODM obtains the combined Disclosure/Authorization from your subject during our on-line screening process. If you choose not to utilize our on-line process, you will need to obtain a completed Disclosure/Authorization from your applicants before requesting our services. Maintain this important document in your permanent files. See “Sample Disclosure.” <below>

“Adverse Action” Notices: In the event an employer intends to take any “adverse action” based in whole or in part upon information contained in a Report, the FCRA requires the employer to make certain notifications to the applicant or employee (FCRA Section 604). For employment purposes, an "adverse action" means either: 1) a denial of employment; or 2) any other decision for employment purposes that adversely affects any current or prospective employee. The FCRA requires an employer to provide a copy of the Report to the applicant or employee **along with** a copy of his/her rights under the FCRA (the "Summary of Your Rights Under the FCRA") before taking adverse action based upon information contained in the Report. The purpose is to give them the opportunity to see the Report that contains information that is being used against them. If the Report is inaccurate or incomplete, the applicant then has the opportunity to contact the parties involved to dispute or explain what is in the Report. Otherwise, they may be denied employment without ever knowing they were the victims of inaccurate or incomplete data. Give the individual a “reasonable” amount of time in which to respond. We call this letter the **“Pre-Adverse Action Letter.”** <below>

→ You can order or create this Letter in the future via our website by logging into the “Member Log-In” area using your Church Client # and Password. Here you will have the option of having ODM prepare and mail this Letter (with enclosure) on your behalf for a \$15.00 fee, or you can link to the sample Letter we’ve provided to assist you in preparing this Letter on your own. See “Sample Pre-Adverse Action Letter.”

After the decision is made to decline employment or terminate an employee based in whole or in part upon information contained in a Report, the FCRA requires that the employer must provide the applicant or employee with an additional notice that includes: (We call this notice the **“Adverse Action Notice”**) <below>

1. The name, address, and telephone number of the consumer reporting agency issuing the report
2. A statement that the consumer reporting agency did not make the adverse decision and is not able to explain why the adverse decision was made
3. A statement regarding the applicant or employee's right to obtain a free disclosure of the applicant or employee's file from the agency if the applicant or employee requests the report within 60 days of notice of the adverse action
4. A statement regarding the applicant or employee's right to dispute directly with the consumer reporting agency the accuracy or completeness of any information provided by the agency.

→ You can also order or create this Notice in the future via our website by logging into the “Member Log-In” area using your Church Client # and Password. Here you will have the option of having ODM prepare and mail this Notice (with enclosure) on your behalf for a \$15.00 fee, or you can link to the sample Notice we have provided to assist you in preparing this Notice on your own. See “Sample Adverse Action Notice.”

SAMPLE DISCLOSURE/AUTHORIZATION

FAIR CREDIT REPORTING ACT

**DISCLOSURE & AUTHORIZATION REGARDING PROCUREMENT
OF AN INVESTIGATIVE CONSUMER REPORT**

In connection with your application for employment or when deciding whether to modify or continue your employment (if you are hired), we may obtain and use an “investigative consumer report” about you from a “consumer reporting agency.” A “consumer reporting agency” is a person or business which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly assembles or evaluates consumer credit information or other information on consumers for the purpose of furnishing “investigative consumer reports” to third parties.

This report may include information as to your character, general reputation, personal characteristics and mode of living. This information may be obtained by contacting your previous employers and/or references supplied by you or others.

In the event that information from the report is utilized in whole or in part in making an adverse decision with regard to your employment, before making the adverse decision, we will provide you with a copy of the investigative consumer report and a description in writing of your rights under the law.

Please be advised that you have the right to request, in writing, within a reasonable time, that we make a complete and accurate disclosure of the nature and scope of the information requested. Such disclosure will be made to you within 5 days of the date on which we receive the request from you or within 5 days of the time the report was first requested.

The Fair Credit Reporting Act gives you specific rights in dealing with consumer reporting agencies. You will be given a summary of these rights together with this document.

By your signature below, you hereby authorize us to obtain a consumer investigative report about you.

Applicants Signature: _____ Date: _____

Applicant's Printed Name: _____

Applicant's Address: _____

City/State/Zip: _____

Social Security Number: _____

Sample of an “Pre-Adverse Action Letter” to be sent to a candidate if you intend to deny employment based in whole or in part on any information in an ODM Report.

CHURCH LETTERHEAD

Date

Candidate Name

Address

City, State, Zip

Dear:

A decision is currently pending concerning your application for employment at _____ (church name)_____.

Enclosed for your information is a copy of the investigative consumer report that you authorized in regard to your application for employment. The purpose of this letter is to inform you that there is information in the report we received which, if accurate, would prevent us from offering you employment at this time.

If, after reviewing the report, (1) you believe that information contained in it is inaccurate and/or (2) you want to know what information in the report falls outside of our church guidelines, we ask that you contact us directly within five days. Otherwise we will assume that you no longer wish to pursue employment with us.

Enclosed along with the Report is a “Summary of Your Rights Under the Fair Credit Reporting Act.”

Sincerely yours,

(church representative)

Enclosures: Background Report, Summary of Your Rights Under the Fair Credit Reporting Act

Sample of an Adverse Action Notice to be sent to a candidate when you deny employment based in whole or in part on any information in an ODM Report.

CHURCH LETTERHEAD

Date

Candidate Name
Address
City, State, Zip

Dear:

As you authorized during your employment application process, _____ (church name) _____ has recently completed a pre-employment background check as part of the employee screening process. The purpose of this letter is to inform you that there is information in the “investigative consumer report” we received which, if accurate, would prevent us from offering you employment at this time. A copy of the report is enclosed.

If, after reviewing the report, (1) you believe that information contained in it is inaccurate and/or (2) you want to know what information in the report falls outside of our church guidelines, we ask that you contact us directly within five days. Otherwise we will assume that you no longer wish to pursue employment with us.

This report was furnished to us by Oxford Document Management (ODM), 655 Highway 10, Anoka, MN 55303. Phone number for them is 1-800-801-9114. Please understand that while ODM provided the report from sources they deem highly reliable, they did not make this decision, and they are unable to provide you with the specific reason why we made this decision.

Enclosed along with the report is a “Summary of Your Rights Under the Fair Credit Reporting Act.” Under the law you have the right to dispute, directly with ODM, any information in this report. They will reinvestigate the disputed information free of charge and either record the current status of the disputed information or delete the item(s) within 30 days of receiving your dispute. If the information is found to be inaccurate or incomplete or cannot be verified, they will promptly delete that item or modify it. They will provide notification of the dispute to any person who provided the information you dispute within five business days of receiving your notice of dispute. The enclosed Summary provides additional information about your rights.

You have the right to obtain an additional free copy of the enclosed report if you request it from ODM within 60 days of when you receive this notice.

Sincerely yours,

(church representative)

Enclosures: Background Report, Summary of Your Rights Under the Fair Credit Reporting Act

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 website (<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 D.C. 20552* 800- 842-6929
Federal credit unions (words "Federal Credit Union" appear in institution's name)	National Credit Union Administration 1775 Duke Street

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