



# Consumer FAQs

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[www.napbs.com](http://www.napbs.com)

**Best Practices Committee**

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The National Association of Professional Background Screeners (NAPBS) is committed to fairness, accuracy, and compliance to consumers and clients. As part of this commitment, we offer the following educational information.

As applicants for employment or tenancy and the subject of the reports our members prepare, you are an essential part of the background screening process. Employers, landlords, and background screeners must work diligently to provide a fair, accurate, and compliant process for you.

The information below is intended to provide you, the subject of background check reports, with general knowledge of the process, terminology used, and your rights. Note that the information provided is geared towards individuals in the United States; however, individuals outside of the U.S. may also find the information helpful.

***The following is provided as general educational information and is not legal advice, either express or implied. Consultation with qualified legal counsel is recommended for all legal matters.***

### **Common Definitions**

***Note: The following terms are defined as they relate to Consumer Reports for employment and tenant screening purposes (i.e., background screening).***

**Fair Credit Reporting Act (FCRA)** - The federal law that regulates the collection, dissemination, and use of consumer information, including consumer credit information. The Fair Credit Reporting Act can be found at, 15 U.S.C. § 1681 et seq. and also electronically at [www.ftc.gov](http://www.ftc.gov).

**Adverse Action (related to employment)** - The two-step process an employer is required to follow anytime the employer intends to make an adverse decision with respect to the individual's employment if the decision is based, in whole or in part, on information contained in the Consumer Report.

Step 1 (commonly “Pre-Adverse Action”): Prior to actually taking Adverse Action, the employer must provide the individual with a copy of the Consumer Report, the Consumer Financial Protection Bureau (CFPB) document “A Summary of Your Rights Under the FCRA,” and provide an opportunity for him/her to dispute inaccurate or incomplete information prior to a final decision being made.

Step 2 (commonly “Adverse Action” or “Final Adverse Action”): Communicating with the individual that adverse action is being taken (i.e., the individual will not be hired, promoted, etc.), as explained in Section 615 of the FCRA.

**Adverse Action (related to tenancy)** - A one-step adverse action process communicating with the individual that adverse action is being taken as explained in Section 615 of the FCRA.

**Authorization and Disclosure** - Before an End-User (employer, landlord, etc.) may request a Consumer Report on an individual, the End-User must get the individual’s consent. For an employment purpose, the employer must notify the individual in writing (disclosure) and the individual must grant permission for the report to be prepared (authorization). This is typically done via an electronic or actual (wet) signature. Authorization and Disclosure forms are often referred to as “consent forms” and “release forms.”

**Consumer** - An individual who is the subject of a background check, often an applicant for employment or tenancy.

**Consumer Report** - A report or document containing one or more of the following pieces of information about an individual: credit standing, credit history, credit capacity, personal characteristics, character, general reputation, and/or mode of living. This information is

primarily provided through verification of employment, references, education, licensure, as well as criminal, motor vehicle, and credit report record gathering. The report is prepared by a third party and used by employers and landlords when considering the individual for employment or tenancy (but may be used for other permissible purposes as outlined in the FCRA). Consumer Reports are often referred to as Background Investigations, Background Checks, Screening Reports, and other similar names.

**Investigative Consumer Report** – A Consumer Report that includes interviews with the individual’s friends, neighbors, associates or former employers. Exception: In California, all Consumer Reports, except stand-alone credit reports, are considered “Investigative Consumer Reports.”

**Consumer Financial Protection Bureau (CFPB)** - A regulatory agency charged with overseeing financial products and services that are offered to consumers. The Consumer Financial Protection Bureau works together with the Federal Trade Commission to protect and educate consumers about the various types of financial products and services that are available. The newly created CFPB has now become the agency primarily responsible for interpreting the FCRA.

**Consumer Reporting Agency (CRA)** - Business that assembles information on individuals at the request of a third party, i.e., their client (often an employer, landlord, etc.). CRAs are provided with certain information pertaining to an individual, such as name, date of birth, social security number, address, etc. and use that information to gather additional information and compile its

findings into a report to be used for employment purposes, tenancy and credit evaluation and other purposes.

Note: Consumer Reporting Agencies are often referred to as “Background Screening Companies,” Credit bureaus are also considered Consumer Reporting Agencies (background screening companies are not, however, considered credit bureaus).

**Credit Report** - a Report consisting of an individual’s credit history including, but not limited to, items such as payment history, liens, charge-offs, bankruptcies and other actions as well as outstanding balances held. Credit Reports are prepared by credit bureaus (see links below to the three primary credit bureaus) or their authorized agents and may be contained in a Consumer Report. Credit Reports obtained for employment purposes do not include a (FICO) score, while tenant credit reports may show the (FICO) score. A consumer may contact a credit bureau directly to dispute credit information the consumer believes is inaccurate.

**Dispute** – The consumer has the right to dispute inaccurate information in their consumer report. The FCRA requires consumer reporting agencies to reinvestigate the matter to confirm the information is accurate, delete or correct information that is inaccurate, and/or delete information which cannot be confirmed, usually within 30 days and free of charge. If the reinvestigation results in a change in the consumer report, the CRA must provide the individual and the End-User with an updated copy of the report.

**End-User** - An entity (employer, landlord, etc.) that requests a Consumer Report from a Consumer Reporting Agency for a permissible purpose (i.e. employment or tenancy).

**Federal Trade Commission (FTC)** - A federal agency, the FTC protects consumers by stopping unfair, deceptive or fraudulent practices in the marketplace by conducting investigations into companies and people that violate the law, and educate consumers and businesses about their rights and responsibilities.

**Permissible Purpose-** The instances which the FCRA has deemed acceptable for an End-User to obtain a Consumer Report. Employment and Tenancy are common types of permissible purposes.

**Summary of Rights-** A document prepared by the Consumer Financial Protection Bureau intended as a resource for individuals which states their rights with respect to Consumer Reports. This document must be provided to an individual anytime the individual receives a copy of his/her report, including those instances where an adverse hiring/tenancy decision is made and a copy of the report must be provided. The official name of this document is "A Summary of Your Rights under the Fair Credit Reporting Act."

## Frequently Asked Questions

IMPORTANT NOTE: Several states have state-specific regulations and/or requirements which have not been taken into consideration in the compilation of this information. The questions and answers provided below assume that a Consumer Reporting Agency was used to prepare the Consumer Report. In the event that an entity prepares the report without using a third-party CRA, the FCRA does not apply.

### **1. How do Consumer Reporting Agencies (Background Screening Companies) conduct background investigations?**

When an employer or landlord (End-User) orders a Consumer Report on an individual, the employer/landlord is responsible for specifying to the CRA what components they would like included in the Consumer Report. Typical searches may include, but are not limited to, one or more of the following: Social Security Number trace, criminal history, employment verification, education verification, driver's record/license history, professional license, personal/professional reference, and credit history. The CRA will compile the report through various means including contacting the information source directly as well as utilizing databases of information.

### **2. What can I do if I was denied employment because of a background check?**

The first step you should take is to review the contents of the Consumer Report. You should have received a copy of the report, a Summary of your Rights as prepared by the CFBP, and Pre-



Adverse Action notification from your prospective employer or other End-User. If you did not, immediately contact the prospective employer and request a copy of the report. If any portion of the report is inaccurate or incomplete, you can dispute the findings by contacting the CRA that prepared the report and/or End-User that requested the Consumer Report. Generally, a CRA has thirty days to reinvestigate any dispute. A couple of notes:

(1) Understand that the hiring decision rests solely with the employer and not with the CRA. Even though the background screening company prepared the report for the employer's use, it is not involved in the hiring decision nor can it influence it or answer questions about it.

(2) Certain criminal record(s) may be eligible for expungement, expunction, sealing, dismissal, etc. However, *in most cases* you are required to file a motion for any of these to occur, i.e. the record does not always automatically become expunged, expunct, sealed, dismissed, etc. once you have completed the sentence or alternative adjudication. Consult with legal counsel to review your options with respect to your eligibility for taking any of these actions.

### **3. What is the Adverse Action process?**

When an End-User (i.e., employer or landlord) takes Adverse Action against you (denies you a job, promotion or tenancy) based on any information in the Consumer Report, the FCRA requires that the employer or landlord follows certain procedures in doing so.

For employment-related decisions, employers follow a two-step process. First, employers are required to provide you a copy of your report and a “Summary of Your Rights” as prescribed by the CFPB. Many employers will send this information along with the CRA’s contact information in a notice stating they intend to make an adverse decision which was based, at least in part, on the information contained in the report. You should be afforded the opportunity to dispute any information or inaccuracies in your report by contacting the CRA that prepared your report, often within a specified timeframe in which to dispute (Note: If you have not already done so, you may wish to let your prospective employer know that you are disputing the contents of the report as well.). Once the re-investigation is complete, the hiring/promotion decision is again at the discretion of the employer. If the employer still chooses to take adverse action (i.e., not hire, promote you) or if you did not dispute the contents of the report, the second step is for the employer to inform you of their adverse decision, provide contact information for the CRA for further dispute, and let you know the CRA did not make the decision.

Denying tenancy based on a tenant screening report only requires that one notification be sent to you, which must include information on how a person can request a free copy of his or her report and a copy of a “Summary of Your Rights” as prescribed by the CFPB.

#### **4. What can I do if the information on my background check is inaccurate?**

Contact the CRA to initiate a dispute. The CRA will conduct a reinvestigation to determine if your record is inaccurate, incomplete, etc. A CRA typically goes directly to the information source to reinvestigate and must generally complete its reinvestigation within 30 days from receiving notice of the dispute. If the CRA correctly reported information as it appears at the

source, you may need to go to the original source (courthouse, school, etc.) to correct the inaccuracy before the CRA will be able to update its report. It is imperative to correct your records at the source or future Consumer Reports will continue to report the inaccurate data.

**5. I was convicted of an offense many years ago; will that show up on my background check?**

It depends. The FCRA allows criminal convictions to be reported without limitation. That means if you were convicted of a crime, that record can be reported to End-Users under federal law, regardless of the age of the conviction. There are, of course, exceptions to the general rule that convictions are reportable regardless of age, exceptions include:

- a. A few states have laws that limit the reporting of conviction information to a specified number of years. Assuming the state law was passed and effective prior to the provision of the FCRA which addresses reporting criminal convictions, the state law would supersede federal law and older convictions would not be reported,
- b. Some End-Users may request only a specified number of years be included in the reports prepared for them (though it cannot be less restrictive than the FCRA),
- c. Court records may be limited based on the court's archiving/retention practices

Non-conviction information may only be reported within the most recent seven years (note that state laws vary on what may be considered non-conviction information).

**6. I have a criminal record; does that mean I won't get the job?**

Not necessarily. End-users consider various factors when evaluating candidates for employment/promotion. One such factor may be criminal history. When considering criminal history information, employers often look at the incident itself, the severity of the incident, the length of time elapsed since the incident occurred, relevance to the position sought, as well as whether the candidate misrepresented his/her criminal history upon request.

**7. I have been an employee at my current job for several years; I have been told that my employer can check my background whenever they want. Is this true?**

It depends. The Disclosure and Authorization form you signed may allow your employer to request a Consumer Report throughout your employment relationship. Verify the contents of this form by contacting your supervisor and/or human resources department.

**8. How can I get a copy of my report?**

You may request a copy either from the CRA that prepared the report or from the End-User who ordered the report (in some instances the End-User may direct you to the CRA for a copy). In instances where Adverse employment Action has been taken, you should have been provided with a copy of the report from the End-User as dictated by the FCRA. In some states, the Disclosure and Authorization form will contain a check box asking you to check if you would like to receive a copy, and if checked, a copy will be provided by the End-User or the CRA.

**9. I heard that I can receive a free credit report every year. Is this true?**

Yes. The Fair Credit Reporting Act allows you access to your credit report for free from each of the three nationwide credit bureaus (Experian, Equifax, and TransUnion) once every 12 months. The best way to access your credit report is to visit [www.AnnualCreditReport.com](http://www.AnnualCreditReport.com) or call 877-322-8228. NAPBS recommends that you review your credit report from all three bureaus at least annually to be sure the information is accurate and up-to-date.

Note: Typically, a CRA cannot help you obtain a copy of your credit report if it was not requested as part of a Consumer Report. If it was part of a Consumer Report, a CRA will provide a copy upon request.

**10. I don't understand the information that was on my background check. Whom do I call?**

You may contact either the CRA directly or the End-User who requested the Consumer Report. Either entity should be able to discuss the report with you. In the event that the End-User is not able to provide the answers you are looking for, they may consult with the CRA or refer you directly to the CRA.

**11. What is different about a Tenant Screening Report?**

For the most part, reports for tenancy purposes are very similar to those for employment purposes in that they may include the same components and are governed by the same federal law, the FCRA. Primary differences include (a) the adverse action process as mentioned in FAQ

#3 and (b) if a credit report is ordered by the landlord it may show a (FICO) score on the Credit Report (employment credit reports do not provide a score).

**The following links are provided to you on behalf of the NAPBS. We hope they serve as valuable navigational tools and resources to assist you.**

**NAPBS Resources:**

History of Background Screening:

<http://pubs.napbs.com/pub/0AB6324C-D7E7-B818-DAE0-A74DB354EA3B>

CFPB

<http://www.consumerfinance.gov/>

Summary of Your Rights

[http://files.consumerfinance.gov/f/201504\\_cfpb\\_summary\\_your-rights-under-fcra.pdf](http://files.consumerfinance.gov/f/201504_cfpb_summary_your-rights-under-fcra.pdf)

**General FTC Links:**

Fair Credit Reporting Act:

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

**Links to consumer privacy articles:**

<http://www.privacyrights.org>

<http://www.privacyrights.org/ar/rosencrim.htm>

<http://www.privacyrights.org/fs/fs16-bck.htm>

**Consumer FAQ Page:** <http://www.privacyrights.org/fs/FS16c-FAQ-BkgChk-060928.htm>

**FTC Resource for Identity Theft:**

<http://www.ftc.gov/bcp/edu/microsites/idtheft/index.html>

**Identity Theft Resource Center:**

<http://www.idtheftcenter.org/index.html>

**Credit Bureaus Consumer Information and FAQ Resources:**

**TransUnion**

- They have a great consumer Q&A section called Ask Audrey:  
<http://content.truecredit.com/LearningCenter/askAudrey/overview.page?>
- Here are what they list as the top three questions:  
[http://www.truecredit.com/help/top3Questions.jsp?fc\\_se=headerTab&cb=TransUnion](http://www.truecredit.com/help/top3Questions.jsp?fc_se=headerTab&cb=TransUnion)

**Equifax:** <http://www.equifax.com/credit-report-customer-service/>

- Here is a link to the Equifax “learn” website: <http://learn.equifax.com/learn/>

**Experian:** <http://www.experian.com/credit-education/credit-information.html>

**Glossary of Credit Terms:** <http://www.experian.com/credit-education/glossary.html>