

Fair Credit Reporting Act – Digest of Staff Opinion Letters by Employment Screening Resources (ESR)

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<http://www.ftc.gov/os/statutes/fcra/index.htm>

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The FTC Staff has discontinued writing such letters. For more information, see:
<https://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrareport.pdf>

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OPINION LETTERS

FCRA Staff Commentary

Cast (10-27-97)

Regulations will not be issued implementing the Fair Credit Reporting Act, but a "staff commentary," including model disclosures, may be issued. The Federal Trade Commission does not have the authority to issue substantive regulations implementing the amended FCRA. The Commission has, however, issued three notices as required by the FCRA amendments. The notices are (1) a summary of consumer rights that consumer reporting agencies will include whenever they deliver a consumer report to a consumer; (2) a notice to individuals and companies that furnish information to consumer reporting agencies; and (3) a notice to users of consumer reports. The notices were published in the Federal Register at 62 Fed. Reg. 35,586 (1997) (to be codified at 16 C.F.R. pt. 601). While Commission staff may issue a commentary on the amended FCRA some time in the future, the staff believes it would premature to do so until the staff has addressed a wide variety of requests for staff opinions.

Section 603(d)(1)

Definition of "consumer report" (general)

Goeke (06-09-98)

"[A] **state agency** that is providing information that is generally available to the public should not be considered a "consumer reporting agency" (CRA) under the FCRA, and the communication of that data by such an agency to an employer or other party should not be considered a "consumer report." Thus, criminal records requests by employers to state agencies (Highway Patrol, etc.) need not comply with FCRA.

Beaudette (06-09-98)

Criminal history searches, **education** verifications, **employment** verifications, and reference checks touch upon one or more of the characteristics set forth in Section 603(d)(1). Accordingly, such activities involve "consumer reports."

Islinger (06-09-98)

The definition of "consumer report" in Section 603(d)(1) is broad and includes information about an individual

consumer's "character, general reputation, personal characteristics, or mode of living" when made by a CRA. **Criminal histories, education, and licenses** held by consumers all involve one or more of these factors. Accordingly, when CRAs provide such information, they are providing consumer reports and must comply with the FCRA.

Poquette (06-09-98)

"Consumer report" as defined in 603(d)(1) is broadly defined and include more than just credit reports. The terms "character, general reputation, personal characteristics, or mode of living" in 603(d)(1) cover a great deal of **non-credit information**. For example, driving records, employment records, and criminal records all involve these characteristics, although these types of information do not necessarily reflect upon credit worthiness, credit standing, or credit capacity.

Lewis (06-11-98)

If a third party performing **criminal** or **driving** record checks qualifies as a "consumer reporting agency" (CRA) as the term is defined in Section 603(f) of the FCRA, reports furnished by the third party to an employer meet the definition of a "consumer report" under Section 603(d)(1) because they constitute information about the "character, general reputation, personal characteristics, or mode of living" of the individual.

Halpern (06-11-98)

To be a consumer report, information in the report need relate to only one of the characteristics enumerated in 603(d)(1): "Credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living." Since **driving records**

and **criminal records** do contain information about a consumer's character, general reputation, personal characteristics, or mode of living, these types of information are covered by the definition of "consumer report."

Slyter (06-12-98)

A records search firm or private investigator (a CRA) **hired** by an employer which forwards court documents to a client in response to a request for a criminal or civil records search on a named individual is communicating information about some or all of the 603(d)(1) factors (credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living) as they relate to that person. At a minimum, these records bear on an individual's character and general reputation, and may bear on credit factors as well.

Hinkle (07-09-98)

"Consumer reports" versus "**investigative consumer reports**":

Checking facts obtained from an employment application such as final salary, job title, duration of employment and job titles with a previous employer are "consumer reports" as defined by 603(d)(1). Asking about job performance and past discipline, however, would constitute an "interview", and if reported to a potential employer would be considered an "investigative consumer report" as defined by 603(e).

Leathers (09-09-98)

Nonwritten (telephonic) reports provided by a CRA concerning an employment applicant are "consumer reports" because Section 603(d) defines that term very broadly to include any information bearing on a consumer's credit standing, "character, general reputation, personal characteristics, or mode of living" which is used (among other things) to make employment decisions.

Sum (09-15-99)

Any information which is provided by a **commercial service** which provides only "**public record**" information is considered a consumer report under 603(d) if provided for the purpose of serving as a factor in establishing eligibility for credit or insurance to be used primarily for personal, family, or household purposes, employment purposes, or any other purpose authorized under Section 604. The "public record" status of any of this information is irrelevant.

Section 603(d)(2)

Definition of "consumer report" (exclusions)

[Islinger](#) (06-09-98)

When a drug lab provides the results of a drug test **directly** to the employer, the test is not a "consumer report" under the FCRA. When the information is furnished by an intermediary, there must be a factual analysis of the circumstances. An intermediary that provides only mechanical services (such as arranging for a lab test, collecting and forwarding samples to the lab, and transmitting test results) probably would not be a CRA making a "consumer report." However, an intermediary that retains copies of tests performed by drug labs and regularly sells this information to third parties for a fee is a CRA whose reports of drug test results are "consumer reports" covered by the FCRA.

[Hinkle](#) (07-09-98)

Section 603(d)(2)(A)(i) **excludes** from the definition of "consumer report" the communication from the former or current employer *to the CRA* when it involves only transactions between the consumer (the job applicant) and the person making the report (the current or former employer). The subsection does not exclude from the definition of "consumer report" the communication from the CRA to the potential employer because the transactions or experiences referred to in the communication are not between the job applicant and the CRA.

[Pickett](#) (07-10-98)

Where a "**reference check**" is performed **directly** by a party considering a consumer's application, the FCRA would not apply to any communication by a previous employer about the applicant's job performance because Section 603(d)(2)(A)(i) specifically exempts "experiences between the consumer and the person making the report" from the definition of "consumer report" in the FCRA.

Section 603(e)

Definition of "investigative consumer report"

[Hinkle](#) (07-09-98)

An "**investigative consumer report**" is defined in Section 603(e) as a consumer report or portion thereof in which information is obtained through **personal interviews** with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. Checking facts obtained from an employment application such as final salary, job title, duration of employment and job titles with a previous employer are "consumer reports" as defined by 603(d)(1). However, asking about job performance and past discipline would constitute an "interview", and if reported to a potential employer would be considered an "investigative consumer report" as defined by 603(e). Similarly, if a former or current employer volunteers **unsolicited information** concerning job performance or discipline to a CRA, this also qualifies as an "interview" but a report from the CRA would not qualify as an "investigative consumer report" unless such unsolicited interview information was contained in the report.

[Willner](#) (03-25-99)

Where an employer uses a third party agency to conduct reference checks concerning an applicant's past **job performance**, reports furnished by the third party to the

employer containing such information are regarded as investigative consumer reports as defined by 603(e).

Vail (04-05-99)

Determination of whether information is a "consumer report" or an "investigative consumer report" depends on the source and scope of information. An "investigative consumer report" is defined in Section 603(e) of the FCRA as "a consumer report . . . in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information." Reports prepared by outside organizations performing **sexual harassment** investigations for employers are most likely "investigative consumer reports" within the meaning of the FCRA.

Meisinger (08-31-99)

Practical problems exist in applying the FCRA to investigations by third parties of workplace misconduct. A report concerning **sexual harassment** by a current employee to an employer by an investigative agency may be an "investigative consumer report" as defined in Sections 603(e) of the FCRA. If a report to an employer is a consumer report, the FCRA requires employers to obtain the report subject's consent before procuring the report, and make certain disclosures (which may include providing a copy of the report itself) to that individual.

Fischel (10-01-99)

The FCRA neither prohibits nor authorizes an employer from taking adverse action against an employee or applicant who **refuses** to authorize the employer to procure a consumer report or investigative consumer report.

Section 603(f)

Definition of "consumer reporting agency"

Goeke (06-09-98)

A **state agency** that is providing information that is generally available to the public should not be considered a "consumer reporting agency" (CRA) under the FCRA, and the communication of that data by such an agency to an employer or other party should not be considered a "consumer report." However, a third party providing public information gathered from state agency sources to an employer would be considered a CRA.

LeBlanc (06-09-98)

Section 603(f) of the FCRA defines a CRA as any organization which, for monetary fees, "**assembles or evaluates**" credit information or other information on consumers for the purpose of regularly furnishing "consumer reports" to third parties using any means or facility of interstate commerce. As the terms "assemble" and "evaluate" are not defined by the FCRA and no special meaning is apparent from the legislative history or context of the statutory language, the common meaning is applied. Sending agents to court houses to collect **criminal records** for compilation and sale to investigation firms and employers constitutes a gathering or assembly of information and requires compliance with the FCRA.

Islinger (06-09-98)

If an **intermediary** contributes to (or takes any action that determines) the content of the information conveyed to an employer, it is "assembling or evaluating" the information and thus qualifies as a CRA. An intermediary that provides only mechanical services (such as arranging for a **lab test**, collecting and forwarding samples to the lab, and transmitting test results) probably would not be a CRA making a "consumer report." However, an intermediary that retains copies of tests performed by drug labs and regularly sells this information to third parties for a fee is a CRA whose reports of **drug test** results are "consumer reports" covered by the FCRA.

Copple (06-10-98)

A **state agency** which provides information such as criminal records checks to further law enforcement or other policies mandated by the state legislature should not be considered a CRA.

Slyter (06-12-98)

Private investigators and records search firms hired to report on court records are CRAs under the definition set forth in Section 603(f); individual researchers hired by such firms are not.

Leathers (09-09-98)

A provider of telephonic information to prospective employers about the prior **work experience** of applicants is a "consumer reporting agency" ("CRA") because Section 603(f) defines that term to include any party that "for monetary fees . . . regularly engages in . . . assembling . . . information on consumers for the purpose of furnishing consumer reports to third parties" in interstate commerce.

Vail (04-05-99)

Outside organizations utilized by employers to assist in their investigations of sexual harassment claims "assemble or evaluate" information. Once an employer turns to an outside organization for assistance in investigation of harassment claims, the assisting entity is a CRA because it furnishes "consumer reports" to a "third party" (the employer)

Sum (09-15-99)

A commercial entity which regularly engages in whole or in part in the practice of assembling or evaluating consumer information for the purpose of furnishing consumer reports to third parties meets the definitional requirement for a "consumer reporting agency" (CRA) in Section 603(f) of the FCRA and is covered by the law even if the only

information it collects, maintains, and disseminates is obtained from "**public record**" sources.

Section 603(g)

Definition of "file"

[Cohan](#) (08-01-00)

According to 603(g), "The term "file", when used in connection with information on any consumer, means all of the information on that consumer recorded and *retained* by a consumer reporting agency *regardless of how the information is stored.*" Emphasis added. A CRA cannot escape its obligation to make disclosure of information on a consumer simply by placing the information in a category that it considers **archival**.

Section 603(h)

Definition of "employment purposes"

[Allison](#) (02-23-98)

An employer that enters into a bona fide **independent contractor** relationship with an individual must comply with the applicable provisions of the Fair Credit Reporting Act ("FCRA") pertaining to consumer reports obtained for employment purposes because the term "employment purposes," as used in the FCRA, should be interpreted liberally to effectuate the broad remedial purpose of the Act.

[Greathouse](#) (10-20-98)

A report used for the purposes of evaluating whether a **worker's compensation** insurance claim should be denied for reasons of incorrect or fraudulent information is not a report used for "employment purposes" under 603(h). However see section 604 of the FCRA, which lists the permissible purposes for which a consumer reporting

agency ("CRA") may furnish a consumer report to a third party.

Solomon (10-27-98)

An entity obtaining consumer reports to determine whether the individual subjects of the reports are trustworthy must comply with the FCRA if the individuals will be performing work for such entity even though they are **not employees** because the term "employment purposes," as used in the FCRA, should be interpreted liberally to effectuate the broad remedial purpose of the Act.

Section 603(k)

Definition of "adverse action"

Greathouse (10-20-98)

Section 603(k)(1)(B)(iii) provides that the term "adverse action" means, *inter alia*, "a denial or cancellation of, an increase in any charge for, or any other adverse or unfavorable change in the terms of, any license or benefit described in section 604(a)(3)(D)." A denial of some or all of a worker's compensation insurance claim is a **denial** or unfavorable change of a **benefit** and would qualify as an adverse action .

Vail (04-05-99)

Section 603(k)(1)(B)(ii) of the FCRA provides that "adverse action" means "a denial of employment or any other decision for employment purposes that adversely affects any current . . . employee." Corrective or **disciplinary action** taken as a result of a sexual harassment investigation may reasonably be viewed as an "adverse action."

Section 603(o)

Definition of "consumer report" (exception for employment agencies)

[Basting](#) (06-11-98)

Reports in the form of reference checks by employee screening agencies do not qualify for 603(o) **exclusion** (communications which meet procedural safeguards of notice, consent by consumer and disclosure and are not regulated by the FCRA) as the exemption was intended by Congress to apply to **employment agencies**, but not screening organizations.

[Hahn](#) (07-08-98)

When a copy of a consumer report must be provided to an individual subject to an "adverse action", the exclusion provided by 603(o)(5)(C) for employment agencies limiting **disclosure of sources** does not apply in the case of a screening agency, which must provide a complete report including sources, if any.

In order to reduce concerns about disclosure of sources, CRAs may provide employers with reports that do not specifically identify sources. For example, instead of stating that a specific individual working for a named company provided an item of information, a CRA may state that the information came from a former employer without identifying either the individual or the employer. An employer may then release these reports to consumers "as is" consistent with the requirements of Section 604(b)(3) of the FCRA.

Section 603(p)

Definition of "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis"

[Cohan](#) (06-29-99)

A reseller of consumer reports is required to establish a toll-free number if it is a "**nationwide**" CRA, meaning its manner of business according to section 603(p) includes

assembling or evaluating, and maintaining for the purpose of furnishing consumer reports to third parties, *both* "(1) [p]ublic record information (and) (2)[c]redit account information from persons who furnish that information regularly and in the ordinary course of business."

Section 604(a)(2)

Written authorization of consumer

[Landever](#) (10-12-99)

A consumer authorization for the furnishing of a consumer report conveyed by **facsimile** transmission, properly executed by the consumer, constitutes "written instructions" within the meaning of Section 604(a)(2) of the FCRA.

[Zalenski](#) (05-24-01)

A consumer's consent is not invalid merely because it is communicated in electronic form. Section 604(a)(2) of the FCRA requires "written instructions" by a consumer to authorize the furnishing of a consumer report. In order to comply, the consumer's **electronic authorization** is considered a "record" that must be "capable of being retained and accurately reproduced for later reference" for the benefit of the consumer as specified by Section 101(e) of the Electronic Signatures in Global and National Commerce (ESIGN) Act.

Section 604(a)(3)(B)

Employment purposes

[Ross](#) (09-02-98)

It is permissible for a prospective employer to obtain a consumer report on job applicants prior to making an offer or **conditional offer of employment**. Of course, prior to obtaining such report, an employer must comply with the notice and consent provisions of Section 604(b).

Section 604(b)

Consumer reports for employment purposes

Allison (02-23-98)

An operation that uses consumer reports to evaluate whether to engage individuals as **independent contractors** must comply with the applicable provisions of the FCRA pertaining to consumer reports obtained for employment purposes, including the disclosure and authorization provisions of Section 604(b), Section 606, and Section 615

Rosen (06-09-98)

Section 604(b) requires that all employers who use consumer reports provide a copy of the report to the affected consumer before any **adverse action** is taken. Employers must comply with this provision even where the information contained in the report (such as a criminal record) would **automatically disqualify** the individual from employment or lead to an adverse employment action. It is important that the consumer be informed of the negative information in case the report is inaccurate or incomplete. If the report is in error, the employer may reconsider the tentative decision to take adverse action.

Beaudette (06-09-98)

A **criminal records** check is a consumer report when done by a CRA. Section 604(b) sets forth specific procedures that must be followed when such consumer reports are used for employment purposes. This provision imposes obligations upon both the CRAs that provide reports for employment purposes and the employers who use the reports.

Lewis (06-11-98)

Section 604(b)(3) requires the employer to provide a copy of the report and a copy of the summary of consumer rights (as prescribed by the Federal Trade Commission) to the affected consumer "**before** taking **adverse action**" based on the report. The statute does not impose a **waiting period** on the employer after providing the required disclosures, before taking the adverse action. However, the

circumstances may warrant giving the affected consumer time to address possible errors in the report.

[Hauxwell](#) (06-12-98)

Section 604(b) of the FCRA requires any employer who intends to obtain a consumer report for employment purposes to disclose this to the applicant or employee (in a document that consists solely of the disclosure) and to obtain the applicant or employee's written permission. The **disclosure notice** and the **authorization** may be **combined**. The form may include identifying information, but should not contain any extraneous information.

[Slyter](#) (06-12-98)

Section 604(b)(2) imposes **duties** on *employers that use consumer reports* provided by CRAs. Employers must, before obtaining any consumer report (even reports based solely on public records), (A) **disclose** to the consumer "in a document that consists solely of the disclosure" that the report may be obtained, and (B) procure the consumer's **written authorization** to do so. This is true regardless of whether the employer hires investigators to either furnish information as part of an **internal** investigation, or obtain copies of public records such as court documents.

[Pickett](#) (07-10-98)

When a private investigator is hired by a **school district** that is **required** by law to perform **background checks** on potential employees, the investigator is considered a Consumer Reporting Agency (CRA), and any information obtained from a CRA regarding an applicant is a consumer report. Compliance required of the school district by the FCRA would include making the **disclosures** required by Sections 604(b), 606, and 615(a).

Section 604(b)(1)

User certification requirements; CRA obligation to provide summary of rights

[Hahn](#) (12-23-97)

Section 604(b)(1)(B) does not specifically require that a copy of the **consumer rights summary** be physically attached to each report at all times during the process by which the report is transmitted from the consumer reporting agency to its customer. However, consumer reporting agencies must have in place procedures to ensure that their customers are given sufficient copies of the summary of consumer rights to match any consumer reports provided for employment purposes. It would help ensure compliance if the consumer reports contain a clear and conspicuous reference to the fact that the summary of rights must be associated with each report as required by Section 604(b)(1)(B).

[Kilgo](#) (07-28-98)

CRA is not required to maintain a **record** of the consumer's underlying written authorization in order to comply with the FCRA because Section 604(b)(1) of the FCRA requires only that a CRA receive the **employer's certification** before furnishing a consumer report for employment purposes.

Section 604(b)(2)

Pre-report disclosure to consumer by employer; authorization by consumer

[Steer](#) (10-21-97)

An employer can comply with Sections 604(b)(2)(A) and (B) of the FCRA by including the required disclosure statement in the **same document** with the required consumer authorization.

[Solganik](#) (10-23-97)

An employer can comply with Sections 604(b)(2)(A) and (B) of the FCRA by **combining** in one form the required disclosure statement in the **same document** with the required consumer authorization.

[Hawkey](#) (12-18-97)

An employer may continue to include in the employment application a disclosure that a consumer report may be

procured and provide a place for the consumer's written consent. However, an employer that follows this procedure must also clearly and conspicuously disclose in a completely **separate** document that a consumer report may be obtained for employment purposes, as required by Section 604(b)(2)(A). As for the **timing** of the disclosure required, Section 604(b) disclosure must be made before any consumer report -- including an investigative consumer report -- is requested for employment purposes.

[Brisch](#) (06-11-98)

Based on the language of the statute and the legislative history, employers obtaining consumer reports, even consumer reports on **current employees** suspected of **criminal** or other workplace **misconduct**, must (1) get written authorization and provide the disclosure required by Section 604(b)(2), and (2) before taking adverse action, provide a copy of the report and the summary of consumer rights, as required by Section 604(b)(3).

[Hauxwell](#) (06-12-98)

Section 604(b) of the FCRA requires any employer who intends to obtain a consumer report for employment purposes to disclose this to the applicant or employee (in a document that consists solely of the disclosure) and to obtain the applicant or employee's written permission. The **disclosure notice** and the **authorization** may be **combined**. The form may include identifying information, but should not contain any extraneous information.

[Slyter](#) (06-12-98)

Section 604(b)(2) imposes **duties on employers that use consumer reports** (such as Cargill) provided by CRAs. Employers must, before obtaining any consumer report, (A) **disclose** to the consumer "in a document that consists solely of the disclosure" that the report may be obtained, and (B) procure the consumer's **written authorization** to do so.

[Kilgo](#) (07-28-98)

When an employer asks a consumer reporting agency (CRA) to provide a consumer report for employment purposes, Section 604(b)(1)(A)(i) of the FCRA requires that the CRA obtain the employer's certification of compliance with Section 604(b)(2)(A) (disclosure) and 604(b)(2)(B) (written authorization). A CRA has no duty to keep the certifications for any length of time because the FCRA does not contain an express **record keeping** provision. However, Section 618 of the FCRA imposes a two-year statute of limitations on actions to enforce liability arising under the statute. Accordingly, a CRA might want to retain certifications for at least a two-year period.

[James](#) (08-05-98)

Although Section 604(b)(2) does not specifically address the issue of whether a disclosure must be made, and permission obtained, each time a consumer report is obtained, Congressional committee reports indicate that a one-time "**blanket**" disclosure may be made and permission obtained from applicants and current employees for the employer to obtain consumer reports at any time during the application process or during an employee's tenure. However, Section 604(b)(2)(A) requires that any disclosure be "**clear and conspicuous.**" Accordingly, whenever an employer intends for a disclosure and authorization to cover both the application for employment and, if the consumer is hired, any additional consumer reports obtained while the individual is an employee, the disclosure should clearly state this fact

[Leathers](#) (09-09-98)

The disclosure required by Section 604(b)(2)(A) may not be part of an employment application because the provision was enacted to ensure that the disclosure appears conspicuously in a document not encumbered by any other information. The reason for requiring that the disclosure be in a stand-alone document is to prevent consumers from being distracted by other information side-by-side with the disclosure.

[Willner](#) (03-25-99)

Section 604(b)(2)(A)'s requires that the disclosure by employers of any consumer report (investigative or other) be in a stand-alone document. However, the employer could also include the authorization required by Section 604(b)(2)(B), because the authorization would contain limited verbiage and would enhance the Section 604(b)(2)(A) disclosure, rather than detract from it.

[Fischel](#) (10-01-99)

The FCRA is silent on the issue of whether an employer can take adverse action against an **employee** if the individual **refuses** to give an employer **permission** to obtain a consumer report or investigative consumer report. It neither prohibits nor authorizes such action.

Section 604(b)(3)

Employer pre-adverse action report
copy and summary of rights to consumer

[Weisberg](#) (06-27-97)

Section 604(b)(3) applies specifically to employers. It requires them to provide to the consumer, **before** taking any **adverse action** based on a consumer report, a copy of (1) the report and (2) a summary of consumer rights under the FCRA. Section 615(a) requires certain notices to be provided **after** the action is taken. Employers must comply in full with both Section 604(b) and 615(a), even though there is some duplication of disclosures required in each subsection, because 615(a) highlights the important consumer right to dispute the findings of the report and the right to obtain a free copy of the report within a 60 day period is qualitatively different than being provided a copy under 604(b)(3) because reports can change over time.

[Solganik](#) (10-23-97)

Section 604(b)(3) requires an employer who expects to take adverse action, based in whole or in part on a consumer report, to provide the individual with a copy of the report and a summary of consumer rights under the FCRA **before** the action is taken. Section 615(a) requires certain notices to be provided **after** the action is taken. As a result, an employer's compliance with Section 604(b) alone is not enough to comply with Section 615(a), or vice-versa.

[Hawkey](#) (12-18-97)

Employers must comply with both Section 604(b)(3) and Section 615(a), which require disclosures at different times in the hiring process. Section 604(b)(3) requires a disclosure that can be thought of as a "pre-adverse action disclosure." It must be made **before** the adverse action is taken. The Section 615(a) notice, which is the actual "adverse action notice," must be provided **after** the adverse employment decision is made. In order to minimize confusion on the part of consumers, an employer may note in the Section 615(a) notice that the consumer has already received a copy of the report and summary of consumer rights. The law is silent as to **how long** the employer must **wait** after making the Section 604(b) pre-adverse action disclosure before actually taking adverse action. Additionally, Section 604(b) requires **employers** to **distribute** the FTC-prescribed summary of consumer rights under the FCRA as part of the pre-adverse action disclosure even though Section 609(c) requires CRAs to provide the summary to consumers because it is important that consumers be fully informed of their rights.

[Rosen](#) (06-09-98)

Nothing in the FCRA prohibits employers from providing copies of consumer reports to applicants as soon as the reports are received. In this case, the pre-adverse action disclosure required by Section 604(b)(3) need only reference the fact that the report has already been provided to the consumer and include the summary of consumer rights prescribed by the Commission. Additionally, an employer may arrange for the CRA to provide any pre-adverse action disclosures required by Section 604(b). However, the employer or other user remains responsible

for any duty imposed by the FCRA and may be subject to liability if the duties are not performed by the CRA.

[Brisch](#) (06-11-98)

Based on the language of the statute and the legislative history, employers obtaining consumer reports must (1) get written authorization and provide the disclosure required by Section 604(b)(2), and (2) before taking adverse action, provide a copy of the report and the summary of consumer rights, as required by Section 604(b)(3) even when obtaining consumer reports on **current employees** suspected of **criminal** or other workplace **misconduct**.

[Lewis](#) (06-11-98)

Section 604(b)(3) requires the employer to provide a copy of the report and a copy of the summary of consumer rights to the affected consumer "**before taking adverse action**" based on the report. The statute does not specify **how long** an **employer** must **wait**, after providing the required disclosures, before taking the adverse action. However, circumstances may warrant giving the affected consumer time to address possible errors in the report.

[Hahn](#) (07-08-98)

The requirement of Section 604(b)(3)(A) that an employer must provide a "copy of the report" to the consumer before taking adverse action on it is unqualified. An employer who redacts reference to **investigative sources** in the copy of the report, prior to providing it to the consumer, violates Section 604(b)(3)(A). However, CRAs may provide employers with reports that do not specifically identify sources.

[Hinkle](#) (07-09-98)

Section 604(b)(3) states that, before an employer takes an adverse action based on a consumer report, the employer must give the consumer "a copy of the report" and a the summary of consumer rights prescribed by the Commission. The section requires the employer to provide a copy of the **entire report**. However, CRAs may provide employers with reports that do not specifically identify sources.

[Leathers](#) (09-09-98)

Where the employer possesses **no written report** because the information is provided **verbally**, the employer may comply with Section 604(b)(3)(A) by telling the applicant orally what is in the report before taking adverse action. Because the report itself is oral, an **oral "copy"** seems the proper method of compliance.

[Solomon](#) (10-27-98)

Consumer reports concerning individuals (**independent contractors**) whom have entered into contracts with an entity to sell its products and perform other duties related to the business are consumer reports obtained for "employment purposes" under Section 603(h) and such an entity would have to comply with Section 604(b)(3) before taking any adverse actions against the individuals.

[Willner](#) (03-25-99)

Section 604(b)(3) requires that an employer who intends to take an adverse employment action based on a consumer report must first provide to the consumer a "copy" of the report. Accordingly, a copy of the **complete report** must be made available.

[Vail](#) (04-05-99)

Information cannot be redacted in those instances in which the FCRA requires that the consumer be provided a copy of a consumer report (Section 604(b)(3)(A)). However, if protection of **sources** is a concern, CRAs may

provide employers with reports that do not specifically identify sources.

[Meisinger](#) (08-31-99)

To assist an employer who will be required by Section 604(b)(3)(A)(i) to provide a copy of a report to an employee prior to adverse action, an investigative agency may draft its report to the employer to **minimize risks** attendant to such **disclosure**, most importantly by not naming parties that provide negative information regarding the employee.

Section 605(a)(5)

Time limits: Reporting adverse information (general)

[Seham](#) (04-17-98)

Information regarding accuracy of **graduation** information and dates of **past employment** that an applicant has recorded on a recently submitted resume or employment application is not "adverse" information as the term is used for Section 605. Therefore, a CRA may verify and report the information without regard to the **seven-year reporting period** set forth in Section 605.

[Goeke](#) (06-09-98)

Section 605 of the FCRA prohibits consumer reporting agencies from reporting adverse information to employers if it is more than **seven years** old. **State agencies** such as the Highway Patrol are not CRAs and are thus **not required** to limit criminal records information to seven years. There is nothing in the legislative history to indicate that Congress intended to require state agencies such as the Highway Patrol to withhold important publicly available conviction information, even if it is over seven years old.

[Nadell](#) (12-10-98)

Section 605 limits only the reporting of "adverse items" of information. However, as a result of the Consumer Reporting Clarification Act of 1998 (CRCA), **criminal convictions** may now be reported by CRAs **regardless** of the **length of time** that the conviction antedates the report. **Graduation** dates, **college degrees**, or dates of employment are not considered to be items of "adverse information." Such information is "**neutral**", so there is no restriction upon the reporting of this type of information even if the information antedates the report by more than seven years. Additionally, a CRA may verify education information and employment dates even where the information it provides to its customers may **contradict** what a consumer has listed on his or her application.

With the **exception of criminal convictions**, (which may now be reported without any time limit), bankruptcies (which may be reported for ten years), and civil suits and judgments (which may be reported for seven years or until the relevant statute of limitation expires), CRAs may not report information that they uncover if the information antedates the report by more than seven years. However, in the case of applicants for **high income jobs** (salary "which equals, or which may reasonably be expected to equal **\$75,000** or more"), a CRA may report adverse information without any time limitation. Additionally, no 605(a) reporting limitations apply to checks with past employers when done **directly** by the **employer**, nor to **employment agencies** that interview references provided by an applicant (covered by Section 603(o)).

[Rosen](#) (06-04-99)

Section 605(a)(5) provides that a CRA may not report "Any other adverse item of information, other than records of convictions of crimes, which antedates the report by more than seven years." A **parole** has a seven-year reporting period starting the day the parole commences, and a **parole violation** is a discrete item of "adverse information" with a different starting date. A violation of parole, or of probation, is an item of "adverse information" that can

reported for seven years from the date the violation occurred.

Sum (09-15-99)

Except for records of criminal convictions, which may now be reported without any time limitation, Section 605 of the FCRA **prohibits** consumer reporting agencies from **providing adverse information** that is **more than seven years old** (ten years in the case of bankruptcies) for employment purposes where the annual salary is less than \$75,000. There are no restrictions upon reporting adverse information for jobs involving salaries of more than \$75,000.

A CRA which **provides** adverse information that antedates the report by more than seven years for positions covered by the Section 605 reporting prohibition may **violate the FCRA**. In addition, the agency may be **liable** to the consumer for damages if the release of the information is **negligent or wilful**. There is, however, **no FCRA prohibition** upon the **use of information** that is more than seven years old. Accordingly, an employer may rely upon adverse information that is more than seven years old. However, the employer must comply with the provisions of the FCRA that apply to the "use" of information from consumer reporting agencies, such as Sections 604(b) and 615(a).

Holland (12-16-99)

Imprisonment may be reported by a CRA as long as it continues and for seven years after the release from custody. Similarly, section 605 does not prohibit reporting a **warrant** that is in fact "**open**" (*i.e.*, no arrest or other execution has occurred), regardless of how long it has been outstanding.

Section 605(b)

Time Limits: Exempted cases

Sum (09-15-99)

Except for records of criminal convictions, which may now be reported without any time limitation, Section 605 of the FCRA prohibits consumer reporting agencies from providing adverse information that is more than **seven years** old (ten years in the case of bankruptcies) for employment purposes where the annual salary is less than **\$75,000**. There are no restrictions upon reporting adverse information for jobs involving salaries of more than \$75,000.

Section 606

Investigative consumer report disclosures

Allison (02-23-98)

An operation that uses consumer reports to evaluate whether to engage individuals as **independent contractors** must comply with the applicable provisions of the FCRA pertaining to consumer reports obtained for employment purposes, including the **disclosure** and authorization provisions of Section 604(b), Section 606, and Section 615 like any other employer.

Beaudette (06-09-98)

The term "**interview**" is key to coverage by Section 606. Verifying factual information that a job applicant has offered during the application process with the custodian of the information -- such as the date that an applicant graduated from college -- does not constitute an "interview" for Section 606 purposes, even though the information is verified by telephone or personal contact with the college. Thus, this information is not investigative consumer report information. (The information is, however, "consumer report" information and should be treated as such.) On the other hand, if a CRA asks individuals at the college questions that go **beyond verifying facts** -- such as whether the applicant was a "good" student or took drugs -- the information gathering involves an "interview" and triggers the provisions of Section 606.

[Pickett](#) (07-10-98)

A private investigator hired under contract by a **school district** to investigate applicants is a CRA, and any communication to the district reporting on an employment applicant would be a "consumer report" (probably an "investigative consumer report") subject to the FCRA. The main duties of the school district would be to make the **disclosures required** by Sections 604(b), 606, and 615(a) of the FCRA of parties that use consumer reports.

Section 606(a)

Disclosure of preparation of investigative consumer report

[Hawkey](#) (12-18-97)

Section 606 applies only to employers who obtain a special type of consumer report called an "**investigative consumer report**" as defined by Section 603(e). The Section 606 disclosure may be made up to three days after an (investigative) report is first requested. In the case of employment, the investigative consumer report disclosure may only be made after the report is requested if a Section 604(b) disclosure that a **consumer report** may be obtained has been made before the **investigative report** is requested and the consumer has provided authorization. The "may be made" terminology is designed to allow the report user to make either or both of those disclosures at any time prior to the required date.

[Brisch](#) (06-11-98)

Giving a **general disclosure** to all employees and obtaining their **prior written authorizations** is **permissible** where an investigative consumer report may later be obtained by the employer. However, Section 606 of the FCRA sets forth specific procedures that an employer or other user must follow when requesting an investigative consumer report, including notifying the subject employee that an investigative consumer report may be obtained. Inasmuch as such disclosure is likely to generate requests from employees for access to any investigative consumer report

obtained on them, an employer should consider the value of prematurely disclosing that an investigative consumer report may be obtained when it has no present intention to order such a report.

[Hauxwell](#) (06-12-98)

Section 606(a)(1)(A) requires any person procuring an investigative consumer report to disclose this fact to the affected consumer **not later than three days after the date** on which the report was first requested. Second, Section 606(a)(1)(B) requires that the disclosure include a statement of the consumer's right to obtain **additional information** and a **copy of the summary of consumer rights** prescribed by the Commission. In comparison, Section 606(b) sets out the information that must be disclosed (the "nature and scope" of the investigation) when the consumer requests a disclosure pursuant to Section 606(a)(1)(B). Because the statutory language may be interpreted to require that the summary be sent with the subsequent Section 606(b) disclosure, it is unlikely that the Commission's staff would recommend any enforcement action if the notice is sent with the Section 606(b) notice instead of the Section 606(a) notice.

[Willner](#) (03-25-99)

Employers may **combine** the **disclosures** required by Section 606(b) relating to the "nature and scope of the investigation" with the initial disclosure that an investigative consumer report may be obtained required by Section 606(a), in those cases where the employer is able to describe with sufficient particularity the nature and scope of any such investigation that might be requested in the future.

Section 606(b)

Disclosure of nature and scope of report

[Brisch](#) (06-11-98)

Giving a **general disclosure** to all employees and obtaining their **prior written authorizations** is **permissible** where an investigative consumer report may later be obtained by the employer. However, Section 606 of the FCRA sets forth specific procedures that an employer or other user must follow when requesting an investigative consumer report, including notifying the subject employee that an investigative consumer report may be obtained. Inasmuch as such disclosure is likely to generate requests from employees for access to any investigative consumer report obtained on them, an employer should consider the value of prematurely disclosing that an investigative consumer report may be obtained when it has no present intention to order such a report.

[Hauxwell](#) (06-12-98)

Section 606(b) sets out the information that must be disclosed (the **nature and scope of the investigation**) when the consumer requests a disclosure pursuant to Section 606(a)(1)(B). Because the statutory language may be interpreted to require that the Commission's summary of consumer rights be sent with the subsequent Section 606(b) disclosure, it is unlikely that the Commission's staff would recommend any enforcement action if the notice is sent with the Section 606(b) notice instead of the Section 606(a) notice.

[Willner](#) (03-25-99)

Section 606(b) requires the report user to disclose the "**nature and scope** of the investigation requested" upon request by the consumer, no later than five days after receiving the request (or five days after ordering the report, if that is later). Employers may **combine** the **disclosures** required by Section 606(b) relating to the "nature and scope of the investigation" with the initial disclosure that an investigative consumer report may be obtained required by Section 606(a), in those cases where the employer is able to describe with sufficient particularity the nature and scope of any such investigation that might be requested in the future.

Section 607(a)

Reasonable procedures to comply with §§ 604 and 605

[LeBlanc](#) (06-09-98)

Section 607(a) requires CRAs to maintain "**reasonable**" **procedures** to avoid violations of Section 605 (which limits the time that adverse information may be reported by CRAs) and Section 604 (which limits the purposes for which information may be provided). It is a **reasonable procedure** for a CRA which provides reports limited to **publicly available information** to rely upon **certifications** provided by clients that the information is to be provided for employment purposes.

[Landever](#) (10-12-99)

Consumer reporting agencies are required by Section 607(a) of the Act to maintain **reasonable procedures** to assure that consumer reports are supplied only for permissible purposes (including the permissible purpose created by the "written instructions" of the consumer). Any consumer report user employing **facsimile authorization**, and any consumer reporting agency relying on that form of written instruction, would be wise to employ prudence in assessing the **validity** and **reliability** of the consumer authorization.

Section 607(b)

Reasonable procedures to assure maximum possible accuracy

[LeBlanc](#) (06-09-98)

Section 607(b) requires CRAs to maintain "reasonable" procedures to assure maximum possible accuracy. A CRA which provides reports limited to **publicly available information** and maintains "**strict procedures**" designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date in accordance with Section 613(a)(2) would likely also be in compliance with the requirements of 607(b).

[Watkins](#) (06-24-99)

The **duties of CRAs** under Section 607(b) were neither expanded nor reduced by the addition of Section 623 by the Consumer Credit Reporting Reform Act of 1996 (CCRRA). Section 623 imposes accuracy duties on furnishers where none existed prior to the effective date of the CCRRA, and despite some deficiencies in Section 623(a) from the consumer perspective, nothing suggests that, in prescribing obligations for furnishers for the first time, Congress intended to change CRA duties under Section 607(b).

Section 607(d)

Notice to users and furnishers

[LeBlanc](#) (06-09-98)

Section 607(d) requires CRAs to provide their clients with a **prescribed notice** of their **duties as users** of consumer reports under the FCRA. A consumer reporting agency shall be in compliance with 607(d) if it provides a notice that is substantially similar to the Federal Trade Commission prescription.

Section 607(e)

Procurement of reports for resale

[Goeke](#) (06-09-98)

Section 607(e), the provision that imposes **duties on resellers**, applies only to those who "procure a consumer report for purposes of reselling the report..." An entity's administrative intermediary whose only function is to funnel criminal records requests from employer facilities to state agencies would not be a reseller subject to the duties imposed by 607(e) because public information provided directly by state agencies to an employer or administrative arm of an employer is not a "consumer report" as defined by 603(d)(1).

Section 607(e)(1) requires a reseller to disclose to a CRA both the **identity of the end-user** of the report and each

permissible purpose. Neither of these disclosures can be sensibly applied to a party consulting a public source that makes information available to all comers, such as a five-dollar Highway Patrol report. The Highway Patrol must sell the information to anyone; it thus has no reason to know the identity, or purpose, of the end-user of the report.

[LeBlanc](#) (06-09-98)

Ordinarily, individual records searchers employed in some manner by a CRA are not CRAs themselves because one of the key definitional requirements of a CRA is to provide reports to "third parties," and employers are not third parties. Therefore, the information they provide does not constitute "consumer report" information, and a CRA furnishing information obtained in this manner is not a "**reseller**" subject to Section 607(e) in relation to the information that it obtains from these record searchers and provides to its customers.

[Rosen](#) (06-09-98)

A **public entity** such as a court which is required by law to make its records available for inspection and copying by the public should not be considered a CRA, and that information provided by the courthouse does not constitute a "consumer report." Because a CRA that obtains information from such a source is not "procur[ing] a consumer report" from the courthouse, the provisions of Section 607(e) that concern **resellers** of consumer reports do not apply.

Section 607(e) of the FCRA imposes special obligations upon entities that purchase consumer reports for resale from a CRA, including a requirement that the reseller must provide the selling CRA with the **actual identity of the reseller's user** (not just a description of the company/end-user). This obligation exists **regardless** of whether the selling CRA **requests** the information.

[Beaudette](#) (06-09-98)

A criminal records check transmitted by a CRA is a "consumer report." When a CRA obtains a consumer report from another CRA, it is procuring a consumer report for the purpose of **reselling** the report. It is therefore subject to all the requirements of the FCRA that apply to CRAs that are resellers, including the requirement of Section 607(e) to **identify the end-user** to the CRA from which they procure reports. Resellers who are concerned about identifying their clients to competitors may wish to deal with this issue through contract provisions.

Section 609

Disclosures to consumers

Beaudette (06-09-98)

An independent entity hired to provide various types of reports for employers, such as reference checks and verification of education and past employment meets the definition of a "**consumer reporting agency**" in Section 603(f) of the FCRA and **must comply** with all of the provisions of the FCRA that apply to CRAs, including Sections 609 (**Disclosures to consumers**) and 610 (Conditions and form of disclosure to consumers).

Cohan (08-01-00)

A consumer reporting agency ("CRA"), including a mortgage reporting agency or re-seller, is required to make the **consumer disclosures** prescribed by Section 609, whether the company designates its records "files" or "archives" or uses any other terminology for the information it retains on a consumer. Section 609 provides that every CRA shall disclose to the consumer "[a]ll information in the **consumer's file** at the time of the request." The term "file", when used in connection with information on any consumer, means all of the information on that consumer recorded and *retained* by a consumer reporting agency *regardless of how the information is stored*.

Section 609(a)(1)

Sources of information

[Hahn](#) (07-08-98)

Section 609 sets forth the duties of CRAs when consumers request the disclosure of information in CRA files. Subsection (a)(2) specifically permits CRAs to **delete** the **sources of investigative consumer report information** "acquired solely for use in preparing an investigative consumer report and actually used for no other purpose" before making the disclosures required by Section 609.

Section 609(a)(3)

Identification of recipients

[LeBlanc](#) (06-09-98)

Where a CRA does **not maintain on file** any of the public record information that it collects and thus, it will have no file information to disclose should a consumer request it, it still has obligations under Section 609(a)(3) to **identify recipients of consumer reports** for employment purposes in the last two years on any consumer who asks for that information, and under Section 609(c) to provide such consumers a copy of a prescribed summary of their rights under the FCRA.

[Rosen](#) (06-09-98)

It is important for a reseller of consumer reports to provide to the furnisher the actual identity of the person or entity that is receiving the report as required by 607(e) because it enables a credit bureau or other CRA that is the source of the information to comply with Section 609(a)(3) of the FCRA, which requires CRAs to **disclose to consumers** the **identities** (trade name, where applicable) of **all recipients** of their reports for employment purposes for the previous two years.

[Cohan](#) (08-01-00)

The fact that a consumer report was requested "**in error**" does not nullify the fact that the report was furnished; it is not permitted for the CRA to remove the inquiry from its file at the request of a re-seller – that **information** must be **retained** by the CRA so that it can comply with Sections 609(a)(3) and 611(d), among other reasons.

Section 609(c)

Summary of rights to be included with disclosure

LeBlanc (06-09-98)

Where a CRA does **not maintain on file** any of the public record information that it collects and thus, it will have no file information to disclose should a consumer request it, it still has obligations under Section 609(a)(3) to identify recipients of consumer reports for employment purposes in the last two years on any consumer who asks for that information, and under Section 609(c) to provide such consumers a **copy of a prescribed summary of their rights** under the FCRA.

Cohan (06-29-99)

Section 609(c)(1)(B) of the FCRA imposes the requirement of establishing a **toll-free number** at which personnel are available only on a "consumer reporting agency that **compiles and maintains files** on consumers on a **nationwide basis.**" Section 603(p) defines the quoted phrase to include only CRAs whose manner of business includes assembling or evaluating, and maintaining for the purpose of furnishing consumer reports to third parties, **both** "(1) [p]ublic record information (and) (2)[c]redit account information from persons who furnish that information regularly and in the ordinary course of business."

Section 610

Conditions and form of disclosure to consumers

Beaudette (06-09-98)

An independent entity hired to provide various types of reports for employers such as reference checks and verification of education and past employment, meets the definition of a "**consumer reporting agency**" in Section 603(f) of the FCRA and **must comply** with all of the provisions of the FCRA that apply to CRAs, including Sections 609 (Disclosures to consumers) and 610 (**Conditions and form of disclosure to consumers**).

Section 611(a)

Investigation of consumer disputes by CRAs

Cohan (08-01-00)

Section 623(b) requires a furnisher of consumer reports to conduct an investigation of disputed information when it is notified by a CRA pursuant to Section 611(a)(2) that a **consumer disputes** the **completeness** or **accuracy** of the furnisher's information with a consumer reporting agency. Section 611(a)(2) requires prompt notice to the furnisher of information of a consumer dispute. Even if the **furnisher fails** or **refuses** to conduct an investigation (which may constitute a separate violation of the FCRA by the furnisher), the **CRA must still comply** with Section 611. Section 611(a)(1)(A) requires **no written statements** of any kind by the consumer – the CRA's reinvestigation duties are triggered when the consumer "notifies the agency directly" of the dispute. At that time the consumer reporting agency is required to "reinvestigate . . . and **record** the **current status** of the disputed information, or **delete** the item from the file" if it cannot be verified within 30 days.

Section 612

Charges for disclosures

Cohan (08-01-00)

Section 612 of the FCRA requires that "[e]ach consumer reporting agency that maintains a file on a consumer shall

make all **disclosures** pursuant to Section 609 **without charge to the consumer**" under specified circumstances.

Section 613

Public record information for employment purposes

[Slyter](#) (06-12-98)

Section 613 imposes obligations on *consumer reporting agencies* that include **public record information** in the consumer reports they make to clients for employment purposes. Specifically, CRAs must **either** (1) **notify the consumer** when they provide reports containing public record information to the employer, or (2) "**maintain strict procedures** designed to insure that (adverse) public record information is **complete and up to date**" in such reports.

[Allan](#) (05-05-99)

Section 613 of the FCRA states that when a CRA compiles and reports adverse public record information on consumers for employment purposes, it must either (1) notify the consumer that the data is being reported, with the name and address of the employer who is receiving it, or (2) have "strict procedures" in place to ensure accuracy of the information. In order to comply with Section 613(2), a CRA which furnishes consumer reports for employment purposes that include negative public record information from **stored data** must first **verify** whether the information is complete and up to date. Items of public record 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.

[Holland](#) (12-16-99)

When an employer requests a report limited to specific types of public record data, the furnishing CRA must ensure that **each item** of information reported is **complete and up to date** in order to comply with 613(2). For example, if the CRA reports an indictment, it must also

report any dismissal or acquittal available on the public record as of the date of the report. Similarly, if the CRA reports a conviction, it must report a reversal that has occurred on appeal.

Section 615(a)

Required notice of adverse action based on a consumer report

Weisberg (06-27-97)

Any **employer** who uses consumer reports in making employment decisions **must comply** with **both** Section 604(b) and Section 615(a). Section 615(a)(3)(B) singles out the consumer's right to **dispute inaccurate or incomplete information** with the CRA, under Section 611, as part of the disclosure. The dispute rights are among the most important the FCRA gives consumers; thus, the Section 615(a) notice highlights these rights, even though they will have already been included in a general summary of consumer rights that the consumer received pursuant to Section 604(b). Similarly, Section 615(a)(3)(A) focuses on the consumer's right to a **free report for 60 days** under Section 612. The fact that a rejected employment applicant receives one copy before the adverse action when the employer complies with Section 604(b) does not negate his or her right to another free disclosure for a full two-month period.

An employer may provide the information required by Section 615(a) in a way that **minimizes duplication** with its compliance with Section 604(b). For example, when an employer provides the Section 615(a) notice it may also note that the consumer has already received (before adverse action was taken) a copy of his or her report and a summary of consumer rights under the FCRA.

Solganik (10-23-97)

An employer's compliance with Section 604(b) alone is not enough to comply with Section 615(a), or vice-versa. However, employers may provide the information required by Section 615(a) in a way that **minimizes duplication**

with that supplied pursuant to Section 604(b)(3) by noting that the consumer has already received (before adverse action was taken) a copy of his or her report and a summary of consumer rights under the FCRA when it provides the Section 615(a) notice.

[Hawkey](#) (12-18-97)

When taking an **adverse action**, employers must comply with **both** Section 604(b)(3) and Section 615(a), which require disclosures at different times in the hiring process. Section 604(b)(3) requires a disclosure that can be thought of as a "pre-adverse action disclosure." It must be made before the adverse action is taken. The Section 615(a) notice, which is the actual "adverse action notice," must be provided after the adverse employment decision is made. An employer must comply with all the requirements of both sections but, in order to minimize confusion on the part of consumers, may note in the Section 615(a) notice that the consumer has already received a copy of his or her report and the summary of consumer rights.

[Allison](#) (02-23-98)

An operation that uses consumer reports to evaluate whether to engage individuals as **independent contractors** must comply with the applicable provisions of the FCRA pertaining to consumer reports obtained for employment purposes, including the **disclosure** and authorization provisions of Section 604(b), Section 606, and Section 615.

[Pickett](#) (07-10-98)

A private investigator hired under contract by a **school district** to investigate applicants is a CRA, and any communication to the district reporting on an employment applicant would be a "consumer report" (probably an "investigative consumer report") subject to the FCRA. The

main duties of the school district would be to make the **disclosures required** by Sections 604(b), 606, and 615(a) of the FCRA of parties that use consumer reports.

[Allan](#) (02-14-00)

Section 615(a) of the FCRA **requires** that an **employer who rejects** a job application, based on a consumer report from a CRA, **must provide an "adverse action" notice** to the applicant even if an employer **delegates** its **hiring process** to a CRA or some other third party. Section 615(a)(2)(B) does not prohibit CRAs from making employment decisions for employers, nor does it authorize such a practice. If a CRA is involved in the decision to reject a job applicant, an employer is not required to include the statement required by Section 615(a)(2)(B) that the (CRA) *did not make the decision to take the adverse action* and is unable to provide the consumer the specific reasons why the adverse action was taken."

Section 616-617

Civil liability

[Greenblatt](#) (10-27-98)

Sections 616 and 617 impose **liability** for **willful noncompliance** and **negligent noncompliance**, respectively. The **monetary penalties** mandated by these two sections include **actual damages** proven by a consumer, **plus costs and attorneys fees** in each such case. In the case of willful violations, the court may also award **punitive damages** to a consumer. Any person who procures a consumer report under **false pretenses**, or knowingly **without a permissible purpose**, is liable for **\$1000 or actual damages** (whichever is greater) to both the consumer and to the consumer reporting agency from which the report is procured.

Section 618

Statute of limitations

[Kilgo](#) (07-28-98)

Section 618 of the FCRA imposes a **two-year statute of limitations** on actions to enforce liability arising under the statute. Accordingly, a CRA might want to retain certifications for at least a two-year period. As a practical matter, a CRA might consider maintaining certifications for an even longer period, depending on their scope. For example, if an employer submits a blanket certification for purposes of obtaining consumer reports on an employee during the term of that individual's employment, the CRA might wish to maintain a record of the certification indefinitely.

Section 621

Administrative enforcement

[Greenblatt](#) (10-27-98)

Section 621 governs **enforcement actions** brought by the Commission, other agencies, and the states, and provides for various monetary and injunctive penalties. The potential monetary penalties include, for those who knowingly violate the FCRA, up to **\$2500 per violation** in a civil action brought by the Commission in district court.

Section 623(a)(1)

Duty of furnishers to provide accurate information

[Watkins](#) (06-24-99)

Section 623(a)(1)(C) allows a party that furnishes information to a consumer reporting agency ("CRA") to provide an address for consumers to **dispute** information, and thereby avoid the general accuracy requirements of

Section 623(a)(1)(A). In addition, Section 623(c) **prohibits consumers from suing furnishers** who violate Section 623(a), meaning that the only remedy is enforcement by governmental authorities. However, these limitations do not increase the obligation of CRAs under Section 607(b), which requires such organizations to "follow reasonable procedures to assure maximum possible accuracy of the information" in their consumer reports. Section 623(a)(1)(B) forbids furnishers from continuing to report inaccurate information that is disputed by consumers in writing to the address provided by the furnisher. In addition, Section 623(b) imposes **clear investigative duties on furnishers** when they receive disputes from CRAs, and **allows consumers to sue violators** of this subsection to obtain damages (which may be punitive if the consumer shows willful violation) and attorney fees. Prior to the addition of Section 623 in 1996, the FCRA provided for none of those duties or liabilities on furnishers of information to CRAs. Even though the Section is limited in some respects, it imposes legal obligations where none existed before.

Section 623(a)(3)

Duty of furnishers to provide notice of dispute

[Harvey](#) (12-23-97)

Section 623(a)(3) of the Fair Credit Reporting Act ("FCRA") concerns the reporting of information to consumer reporting agencies once the **consumer has notified the furnisher that information is disputed**. That section states that when a consumer disputes the completeness or accuracy of any information furnished to a consumer reporting agency, the **information** in question **may not then be furnished without notice that it is disputed** by the consumer. That provision addresses the furnisher's obligation only when the furnisher continues to report disputed information. The statute is silent on the matter of the furnisher ceasing to report information while it is investigating the dispute. A furnisher that temporarily ceases to report disputed information while it investigates the matter, and then either (1) corrects the information if its investigation results in agreement with the consumer or (2) reports the item as disputed by the consumer where that is the result of the investigation, would comply with Section 623(a).

Section 623(b)

Duty of furnishers to investigate consumer disputes

[Cohan](#) (08-01-00)

Section 623(b) requires the **furnisher** of a consumer report to **conduct an investigation of disputed information** when it is notified by a CRA pursuant to Section 611(a)(2) that a consumer disputes the completeness or accuracy of the furnisher's information with a consumer reporting agency. A **furnisher** of information to CRAs **cannot require a reseller** of consumer reports to provide the "written consent of a consumer" before the furnisher complies with Section 623(b) of the FCRA.

Section 623(c)

Liability of furnishers

[Watkins](#) (06-24-99)

Section 623(a)(1)(C) allows a party that furnishes information to a consumer reporting agency ("CRA") to provide an address for consumers to **dispute** information, and thereby avoid the general accuracy requirements of Section 623(a)(1)(A). In addition, Section 623(c) **prohibits consumers from suing furnishers** who violate Section 623(a), meaning that the only remedy is enforcement by governmental authorities. However, these limitations do not increase the obligation of CRAs under Section 607(b), which requires such organizations to "follow reasonable procedures to assure maximum possible accuracy of the information" in their consumer reports. Section 623(a)(1)(B) forbids furnishers from continuing to report inaccurate information that is disputed by consumers in writing to the address provided by the furnisher. In addition, Section 623(b) imposes **clear investigative duties on furnishers** when they receive disputes from CRAs, and **allows consumers to sue violators** of this subsection to obtain damages (which may be punitive if the consumer shows willful violation) and attorney fees. Prior to the addition of Section 623 in 1996, the FCRA provided for none of those duties or liabilities on furnishers of

information to CRAs. Even though the Section is limited in some respects, it imposes legal obligations where none existed before.