Welcome to Associated Services!

We are very pleased that you have chosen to partner with us for your background screening needs. Included in this packet is information you should review in order to understand the processes involved when obtaining employment background checks from a Consumer Reporting Agency like us. Also included is general information about background checks, our company, criminal records, and helpful tips about using our online system. Please feel free to reach out to us by phone or email if you should have any questions or need help in any way.

The following forms and documents are included in this packet:

Information Regarding Our Systems, Ordering and Billing Processes
FCRA Notice to Users of Consumer Reports
EEOC: Pre-Employment Inquiries and Arrests/Convictions
EEOC Guidelines and Other Best Practices for Consumer Background Reports
Using Criminal Database Searches: FAQs
Background Checks: What Employers Need to Know
Sample Pre-Adverse Action Letter
Sample Adverse Action Letter

Thank you again for becoming our client. We appreciate your business and hope to partner with you for many years to come.

Sincerely,

Tricia Havis

Tricia Havis
General Manager
713-461-7381 Ext. 708
thavis@assocserve.com

Information Regarding Our Systems, Ordering, and Billing Processes

AUTOMATED ONLINE SYSTEM

We offer an automated online system for processing your background checks. Our system allows you to go online and place orders, check the status of your reports, and view/print or manage your reports at any time 24/7. Any questions or possible delays regarding your order will be emailed to you and viewable online as a note attached to your request. Upon completion, your background reports will be automatically emailed to you, but they are always available online as well.

RECOMMENDATION PRIOR TO ORDERING

View the demo videos on how to use our online system by clicking the links on our demo page at http://assocserve.com/demo-page/

For SwiftHire, the electronic consent system, there are demos and instructions also on the above link. You may also view the User guide/manual for our Verocity system.
We would love to walk you through processing your first online order, so please feel free to reach out to us at any time during regular business hours. We can give you tips and tricks to make it a smooth experience.

HOW TO ACCESS THE ONLINE SYSTEM

www.assocserve.com – Click on the *"Client Login"* link on our home page

Type in your user id and password where indicated
(User names and passwords are case-sensitive, there are no spaces, and we recommend that you change your password online for security purposes at regular intervals.)

Can't remember your password? Click the "forgot password" link and the system will automatically email you a link to reset your password. You just need to type in your user id and/or email address.

Can't remember your user id? Email us at customerservice@assocserve.com and we will send it to you.

You may add additional users to your account online or email us and we will add them or make changes to the account for you.

NEED HELP WITH THE SYSTEM OR ORDERS?

Email to: customerservice@assocserve.com
(800) 290-1826 Ext. 708 or 704

TIPS FOR ORDERING BACKGROUND REPORTS ONLINE

Call us to walk you through your first order.

View the online client module demo videos through our company Web site at www.assocserve.com
Review the client Verocity ordering guide that was emailed to you.

A signed "Disclosure & Authorization" form from the candidate is required unless you are using SwiftHire which includes an electronic consent form.

Tips and notes about entering or reviewing orders online: Our system will automatically add to the order every name and location found on the SSN Trace/Past address history (if that is part of your package). So before placing an order, you must remove any items from the order that you do NOT really want to order, prior to clicking the "order" button or you may incur the additional costs.

First, be sure to check under "Additional Names to Search" (which will show up, if any, under the candidate's name, address, SSN, etc. on your screen) and remove any *invalid* names that may have been added by the system. Invalid names include nicknames, misspelled versions of names, reversed first/middle/last names or initials, etc. You only want to check for records under the person's valid legal name(s) that may have been on their DL or ID card because that is the name under which they would have been arrested.

Second, if the person has lived in more jurisdictions/locations than are included in your package, those will have been added at an additional cost per location. You may leave them if you would like to do a more thorough criminal check, or you may remove the additional ones and stick to your package price. The choice is yours. (For example, if your package includes County Criminal checks, you can click on the words "County Criminal" on your screen, and it will open like a drop down box. There you can choose which counties you want to have us check for records. Be sure to save your changes!)

Please **review the cost of your order carefully** BEFORE placing the order.
The cost you see is what you will be charged!

Always call us PRIOR TO placing an order if you have any questions – This is an *automated* system;
By submitting the order, you are agreeing to purchase all of those services.

SYSTEM FEATURE: SWIFTHIRE

We have a feature in our system called ***SwiftHire***. It includes electronic consent and automatic ordering. No more data entry required! This will save time and expedite the ordering process.

What is SwiftHire?: SwiftHire allows you to login to your account online and email your candidates a link to an electronic disclosure and background check authorization form. Your candidate fills it out and submits it, and when you login, you will see that there is a Swifthire order to review that was automatically created from the information the candidate filled out. This will save data entry time. You must review the order that the system created, and make sure that everything the candidate entered is accurate and complete, and then you remove anything extraneous that you do not want or need to order. Once you click the Order button, it is sent to us for processing.

How do you set it up?: Login and click the tab called "SwiftHire" and you will see the settings need to be configured. You need to set it up first before using it for the first time. (Each user on your account who places orders must login individually and set this up.) If you need assistance with the settings, or would prefer that we do it for you, just call us.

Want to see SwiftHire in action? Check out these videos:

1. These are short videos with just a very general overview showing how it allows your candidates to fill out everything online or with their mobile device:
   https://drive.google.com/file/d/0BzZiuonCaAZIUTJQS3VHckczQm8/view - SWIFTHIRE MOBILE
   https://vimeo.com/202435291 - SWIFTHIRE MOBILE

2. This "training" video (click the link below) is a bit *outdated* because it is for the older version of SwiftHire (which did not have the SwiftHire tab when you log in). *Mainly, you would not click "order report" like the video shows, but would click the "SwiftHire" tab instead.* (this video also assumes that you've already changed the settings on your end per the attached instructions.):
   Watch the SwiftHire video below for the online system overview:
   https://www.youtube.com/watch?v=3eLATvnAbCg – SWIFTHIRE Online Setup/Client Overview

BACKGROUND CHECK PROCESS

We understand that everybody's background check is a priority.
Orders are processed on a first-come/first-served basis, whether ordered manually or using SwiftHire. If you have a *special rush situation*, please let us know and we will work with you to expedite your request. (Rush fees may apply).

As soon as an order is placed in the system, the records search requests are automatically sent out to the appropriate jurisdiction or person who handles the specific location and type of request. We are directly connected electronically with numerous courts nationwide for the fastest turnaround times.

TURNAROUND TIMES FOR BACKGROUND CHECKS

Criminal background checks: **Typically no longer than 24-48 hours**.
Some reports may be back *the same day*, others may take *2-3+ days* -- the turnaround time usually depends on which county-level checks are requested, as some counties are slower to respond than others. Small and/or remote counties may have minimal staff or reduced hours that cause delays. Counties in states with laws requiring that a court clerk manually do each and every records search will take much longer to send results than those allowing electronic access, such as at a public courthouse terminal.

Verifications (past employment, references, license, education…): **Typically 1-3 business days**
(Our goal is no more than 48 hours, but the turnaround time varies and depends on how quickly employers, references, and schools return our calls, or how much research our staff must do to locate the proper entity or person who can provide the verification.)

SYSTEM-GENERATED E-MAILS

Please add the following two email addresses to your contacts and your "safe senders" list:
backgroundcheck@assocserve.com
accounting@assocserve.com
(in some cases, system-generated emails may be sent to your spam or junk mail folders by mistake or be blocked by your server spam filters.)

BILLING AND PAYMENTS

Billing Options

Option 1: **Credit Card / Debit Card** – Please fill out and sign a Credit Card Authorization Form. We can charge your credit/debit card once a month or throughout the month as you request background reports. Indicate on the form your preference. Credit card receipts will be emailed to you. ***We accept MasterCard, Visa, Discover, and American Express.***

Option 2: **Monthly Invoicing** – We will invoice your account once a month at the end of the month (or on the first day of the next month) for all background reports completed during the month.
Invoices will be emailed to you. Our payment terms are Net 15.

Option 3: **ACH Payments** – We will be happy to provide you with our bank information for you to make automatic check deposits electronically.

All users of consumer reports must comply with all applicable regulations, including regulations promulgated after this notice was first prescribed in 2004. Information about applicable regulations currently in effect can be found at the Consumer Financial Protection Bureau's website, www.consumerfinance.gov/learnmore.

NOTICE TO USERS OF CONSUMER REPORTS:
OBLIGATIONS OF USERS UNDER THE FCRA

The Fair Credit Reporting Act (FCRA), 15 U.S.C. §1681-1681y, requires that this notice be provided to inform users of consumer reports of their legal obligations. State law may impose additional requirements. The text of the FCRA is set forth in full at the Bureau of Consumer Financial Protection's website at www.consumerfinance.gov/learnmore.
At the end of this document is a list of United States Code citations for the FCRA. Other information about user duties is also available at the Bureau's website. **Users must consult the relevant provisions of the FCRA for details about their obligations under the FCRA.**

The first section of this summary sets forth the responsibilities imposed by the FCRA on all users of consumer reports. The subsequent sections discuss the duties of users of reports that contain specific types of information, or that are used for certain purposes, and the legal consequences of violations. If you are a furnisher of information to a consumer reporting agency (CRA), you have additional obligations and will receive a separate notice from the CRA describing your duties as a furnisher.

I. OBLIGATIONS OF ALL USERS OF CONSUMER REPORTS

A. Users Must Have a Permissible Purpose

Congress has limited the use of consumer reports to protect consumers' privacy. All users must have a permissible purpose under the FCRA to obtain a consumer report. Section 604 contains a list of the permissible purposes under the law. These are:

- As ordered by a court or a federal grand jury subpoena. Section 604(a)(1)
- As instructed by the consumer in writing. Section 604(a)(2)
- For the extension of credit as a result of an application from a consumer, or the review or collection of a consumer's account. Section 604(a)(3)(A)
- For employment purposes, including hiring and promotion decisions, where the consumer has given written permission. Sections 604(a)(3)(B) and 604(b)
- For the underwriting of insurance as a result of an application from a consumer. Section 604(a)(3)(C)
- When there is a legitimate business need, in connection with a business transaction that is initiated by the consumer. Section 604(a)(3)(F)(i)
- To review a consumer's account to determine whether the consumer continues to meet the terms of the account. Section 604(a)(3)(F)(ii)
- To determine a consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status. Section 604(a)(3)(D)
- For use by a potential investor or servicer, or current insurer, in a valuation or assessment of

the credit or prepayment risks associated with an existing credit obligation. Section 604(a)(3)(E)

• For use by state and local officials in connection with the determination of child support payments, or modifications and enforcement thereof. Sections 604(a)(4) and 604(a)(5)

In addition, creditors and insurers may obtain certain consumer report information for the purpose of making "prescreened" unsolicited offers of credit or insurance. Section 604(c). The particular obligations of users of "prescreened" information are described in Section VII below.

B. Users Must Provide Certifications

Section 604(f) prohibits any person from obtaining a consumer report from a consumer reporting agency (CRA) unless the person has certified to the CRA the permissible purpose(s) for which the report is being obtained and certifies that the report will not be used for any other purpose.

C. Users Must Notify Consumers When Adverse Actions Are Taken

The term "adverse action" is defined very broadly by Section 603. "Adverse actions" include all business, credit, and employment actions affecting consumers that can be considered to have a negative impact as defined by Section 603(k) of the FCRA – such as denying or canceling credit or insurance, or denying employment or promotion. No adverse action occurs in a credit transaction where the creditor makes a counteroffer that is accepted by the consumer.

1. Adverse Actions Based on Information Obtained From a CRA

If a user takes any type of adverse action as defined by the FCRA that is based at least in part on information contained in a consumer report, Section 615(a) requires the user to notify the consumer. The notification may be done in writing, orally, or by electronic means. It must include the following:

• The name, address, and telephone number of the CRA (including a toll-free telephone number, if it is a nationwide CRA) that provided the report.
• A statement that the CRA did not make the adverse decision and is not able to explain why the decision was made.
• A statement setting forth the consumer's right to obtain a free disclosure of the consumer's file from the CRA if the consumer makes a request within 60 days.
• A statement setting forth the consumer's right to dispute directly with the CRA the accuracy or completeness of any information provided by the CRA.

2. Adverse Actions Based on Information Obtained From Third Parties Who Are Not Consumer Reporting Agencies

If a person denies (or increases the charge for) credit for personal, family, or household purposes based either wholly or partly upon information from a person other than a CRA, and the information is the type of consumer information covered by the FCRA, Section 615(b)(1) requires that the user clearly and accurately disclose to the consumer his or her right to be told the nature of the information that was relied upon if the consumer makes a written request within 60 days of notification. The user must provide the disclosure within a reasonable period of time following the

consumer's written request.

3. Adverse Actions Based on Information Obtained From Affiliates

If a person takes an adverse action involving insurance, employment, or a credit transaction initiated by the consumer, based on information of the type covered by the FCRA, and this information was obtained from an entity affiliated with the user of the information by common ownership or control, Section 615(b)(2) requires the user to notify the consumer of the adverse action. The notice must inform the consumer that he or she may obtain a disclosure of the nature of the information relied upon by making a written request within 60 days of receiving the adverse action notice. If the consumer makes such a request, the user must disclose the nature of the information not later than 30 days after receiving the request. If consumer report information is shared among affiliates and then used for an adverse action, the user must make an adverse action disclosure as set forth in I.C.1 above.

D. Users Have Obligations When Fraud and Active Duty Military Alerts are in Files

When a consumer has placed a fraud alert, including one relating to identify theft, or an active duty military alert with a nationwide consumer reporting agency as defined in Section 603(p) and resellers, Section 605A(h) imposes limitations on users of reports obtained from the consumer reporting agency in certain circumstances, including the establishment of a new credit plan and the issuance of additional credit cards. For initial fraud alerts and active duty alerts, the user must have reasonable policies and procedures in place to form a belief that the user knows the identity of the applicant or contact the consumer at a telephone number specified by the consumer; in the case of extended fraud alerts, the user must contact the consumer in accordance with the contact information provided in the consumer's alert.

E. Users Have Obligations When Notified of an Address Discrepancy

Section 605(h) requires nationwide CRAs, as defined in Section 603(p), to notify users that request reports when the address for a consumer provided by the user in requesting the report is substantially different from the addresses in
the consumer's file. When this occurs, users must comply with regulations specifying the procedures to be followed, which will be issued by the Consumer Financial Protection Bureau and the banking and credit union regulators.

The Consumer Financial Protection Bureau regulations will be available at www.consumerfinance.gov/learnmore/.

F. Users Have Obligations When Disposing of Records

Section 628 requires that all users of consumer report information have in place procedures to properly dispose of records containing this information. The Consumer Financial Protection Bureau, the Securities and Exchange Commission, and the banking and credit union regulators have issued regulations covering disposal. The Consumer Financial Protection Bureau regulations may be found at www.consumerfinance.gov/learnmore/.

II. CREDITORS MUST MAKE ADDITIONAL DISCLOSURES

If a person uses a consumer report in connection with an application for, or a grant, extension, or provision of, credit to a consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person, based in whole or in part on a consumer report, the person must provide a risk-based pricing notice to the consumer in accordance with regulations prescribed by the Consumer Financial Protection Bureau.

Section 609(g) requires a disclosure by all persons that make or arrange loans secured by residential real property (one to four units) and that use credit scores. These persons must provide credit scores and other information about credit scores to applicants, including the disclosure set forth in Section 609(g)(1)(D) ("Notice to the Home Loan Applicant").

III. OBLIGATIONS OF USERS WHEN CONSUMER REPORTS ARE OBTAINED FOR EMPLOYMENT PURPOSES

A. Employment Other Than in the Trucking Industry

If the information from a CRA is used for employment purposes, the user has specific duties, which are set forth in Section 604(b) of the FCRA. The user must:

- Make a clear and conspicuous written disclosure to the consumer before the report is obtained, in a document that consists solely of the disclosure, that a consumer report may be obtained.
- Obtain from the consumer prior written authorization. Authorization to access reports during the term of employment may be obtained at the time of employment.
- Certify to the CRA that the above steps have been followed, that the information being obtained will not be used in violation of any federal or state equal opportunity law or regulation, and that, if any adverse action is to be taken based on the consumer report, a copy of the report and a summary of the consumer's rights will be provided to the consumer.
- **Before** taking an adverse action, the user must provide a copy of the report to the consumer as well as the summary of consumer's rights (The user should receive this summary from the CRA.) A Section 615(a) adverse action notice should be sent after the adverse action is taken.

An adverse action notice also is required in employment situations if credit information (other than transactions and experience data) obtained from an affiliate is used to deny employment. Section 615(b)(2).

The procedures for investigative consumer reports and employee misconduct investigations are set forth below.

B. Employment in the Trucking Industry

Special rules apply for truck drivers where the only interaction between the consumer and the potential employer is by mail, telephone, or computer. In this case, the consumer may provide

consent orally or electronically, and an adverse action may be made orally, in writing, or electronically. The consumer may obtain a copy of any report relied upon by the trucking company by contacting the company.

IV. OBLIGATIONS WHEN INVESTIGATIVE CONSUMER REPORTS ARE USED

Investigative consumer reports are a special type of consumer report in which information about a consumer's character, general reputation, personal characteristics, and mode of living is obtained through personal interviews by an entity or person that is a consumer reporting agency. Consumers who are the subjects of such reports are given special rights under the FCRA. If a user intends to obtain an investigative consumer report, Section 606 requires the following:

- The user must disclose to the consumer that an investigative consumer report may be obtained. This must be done in a written disclosure that is mailed, or otherwise delivered, to the consumer at some time before or not later than three days after the date on which the report was first requested. The disclosure must include a statement informing the consumer of his or her right to request additional disclosures of the nature and scope of the investigation as described below, and the summary of consumer rights required by Section 609 of the FCRA. (The summary of consumer rights will be provided by the CRA that conducts the investigation.)
- The user must certify to the CRA that the disclosures set forth above have been made and that the user will make the disclosure described below.
- Upon the written request of a consumer made within a reasonable period of time after the disclosures required above, the user must make a complete disclosure of the nature and scope of the investigation. This must be made in a written statement that is mailed or otherwise delivered, to the consumer no later than five days after the date on which the request was received from the consumer or the report was first requested, whichever is later in time.

V. SPECIAL PROCEDURES FOR EMPLOYEE INVESTIGATIONS

Section 603(x) provides special procedures for investigations of suspected misconduct by an employee or for compliance with Federal, state or local laws and regulations or the rules of a self-regulatory organization, and compliance with written policies of the employer. These investigations are not treated as consumer reports so long as the employer or its agent complies with the procedures set forth in Section 603(x), and a summary describing the nature and scope of the inquiry is made to the employee if an adverse action is taken based on the investigation.

VI. OBLIGATIONS OF USERS OF MEDICAL INFORMATION

Section 604(g) limits the use of medical information obtained from consumer reporting agencies (other than payment information that appears in a coded form that does not identify the medical provider). If the information is to be used for an insurance transaction, the consumer must give consent to the user of the report or the information must be coded. If the report is to be used for employment purposes – or in connection with a credit transaction (except as provided in regulations issued by the banking and credit union regulators) – the consumer must provide specific written consent and the medical information must be relevant. Any user who receives medical information shall not disclose the information to any other person (except where necessary to carry

out the purpose for which the information was disclosed, or a permitted by statute, regulation, or order).

VII. OBLIGATIONS OF USERS OF "PRESCREENED" LISTS

The FCRA permits creditors and insurers to obtain limited consumer report information for use in connection with unsolicited offers of credit or insurance under certain circumstances. Sections 603(1), 604(c), 604(e), and 614(d). This practice is known as "prescreening" and typically involves obtaining a list of consumers from a CRA who meet certain preestablished criteria. If any person intends to use prescreened lists, that person must (1) before the offer is made, establish the criteria that will be relied upon to make the offer and grant credit or insurance, and (2) maintain such criteria on file for a three-year period beginning on the date on which the offer is made to each consumer. In addition, any user must provide with each written solicitation a clear and conspicuous statement that:

- Information contained in a consumer's CRA file was used in connection with the transaction.
- The consumer received the offer because he or she satisfied the criteria for credit worthiness or insurability used to screen for the offer.
- Credit or insurance may not be extended if, after the consumer responds, it is determined that the consumer does not meet the criteria used for screening or any applicable criteria bearing on credit worthiness or insurability, or the consumer does not furnish required collateral.
- The consumer may prohibit the use of information in his or her file in connection with future prescreened offers of credit or insurance by contacting the notification system established by the CRA that provided the report. The statement must include the address and toll-free telephone number of the appropriate notification system.

In addition, the Consumer Financial Protection Bureau has established the format, type size, and manner of the disclosure required by Section 615(d), with which users must comply. The regulation is 12 CFR 1022.54.

VIII. OBLIGATIONS OF RESELLERS

A. Disclosure and Certification Requirements

Section 607(e) requires any person who obtains a consumer report for resale to take the following steps:

- Disclose the identity of the end-user to the source CRA.
- Identify to the source CRA each permissible purpose for which the report will be furnished to the end-user.
- Establish and follow reasonable procedures to ensure that reports are resold only for permissible purposes, including procedures to obtain:
  (1) the identify of all end-users;
  (2) certifications from all users of each purpose for which reports will be used; and
  (3) certifications that reports will not be used for any purpose other than the purpose(s) specified to the reseller. Resellers must make reasonable efforts to verify this information before selling the report.

B. Reinvestigations by Resellers

Under Section 611(f), if a consumer disputes the accuracy or completeness of information in a report prepared by a reseller, the reseller must determine whether this is a result of an action or omission on its part and, if so, correct or delete the information. If not, the reseller must send the dispute to the source CRA for reinvestigation. When any CRA notifies the reseller of the results of an investigation, the reseller must immediately convey the information to the consumer.

C. Fraud Alerts and Resellers

Section 605A(f) requires resellers who receive fraud alerts or active duty alerts from another consumer reporting agency to include these in their reports.

IX. LIABILITY FOR VIOLATIONS OF THE FCRA

Failure to comply with the FCRA can result in state government or federal government enforcement actions, as well as private lawsuits. Sections 616, 617, and 621. In addition, any person who knowingly and willfully obtains a consumer report under false pretenses may face criminal prosecution. Section 619.

The Consumer Financial Protection Bureau website, www.consumerfinance.gov/learnmore, has more information about the FCRA.

Citations for FCRA sections in the U.S. Code, 15 U.S.C. § 1618 et seq.:

	15 U.S.C. 1681
Section 603	15 U.S.C. 1681a
Section 604	15 U.S.C. 1681b
Section 605	15 U.S.C. 1681c
Section 605A	15 U.S.C. 1681c-1
Section 605B	15 U.S.C. 1681c-2
Section 606	15 U.S.C. 1681d
Section 607	15 U.S.C. 1681e
Section 608	15 U.S.C. 1681f
Section 609	15 U.S.C. 1681g
Section 610	15 U.S.C. 1681h
Section 611	15 U.S.C. 1681i
Section 612	15 U.S.C. 1681j
Section 613	15 U.S.C. 1681k
Section 614	15 U.S.C. 1681l
Section 615	15 U.S.C. 1681m
Section 616	15 U.S.C. 1681n
Section 617	15 U.S.C. 1681o
Section 618	15 U.S.C. 1681p
Section 619	15 U.S.C. 1681q
Section 620	15 U.S.C. 1681r
Section 621	15 U.S.C. 1681s
Section 622	15 U.S.C. 1681s-1
Section 623	15 U.S.C. 1681s-2
Section 624	15 U.S.C. 1681t
Section 625	15 U.S.C. 1681u
Section 626	15 U.S.C. 1681v
Section 627	15 U.S.C. 1681w
Section 628	15 U.S.C. 1681x
Section 629	15 U.S.C. 1681y

U.S. Equal Employment Opportunity Commission

Pre-Employment Inquiries and Arrest & Conviction

There is no Federal law that clearly prohibits an employer from asking about arrest and conviction records. However, using such records as an absolute measure to prevent an individual from being hired could limit the employment opportunities of some protected groups and thus cannot be used in this way.

Since an arrest alone does not necessarily mean that an applicant has committed a crime the employer should not assume that the applicant committed the offense. Instead, the employer should allow him or her the opportunity to explain the circumstances of the arrest(s) and should make a reasonable effort to determine whether the explanation is reliable.

Even if the employer believes that the applicant did engage in the conduct for which he or she was arrested that information should prevent him or her from employment only to the extent that it is evident that the applicant cannot be trusted to perform the duties of the position when

- considering the nature of the job,
- the nature and seriousness of the offense,
- and the length of time since it occurred.

This is also true for a conviction.

Several state laws limit the use of arrest and conviction records by prospective employers. These range from laws and rules prohibiting the employer from asking the applicant any questions about arrest records to those restricting the employer's use of conviction data in making an employment decision.

In some states, while there is no restriction placed on the employer, there are protections provided to the applicant with regard to what information they are required to report.

The Fair Credit Reporting Act (FCRA) imposes a number of requirements on employers who wish to investigate applicants for employment through the use of consumer credit report or criminal records check. This law requires the employer to advise the applicant in writing that a background check will be conducted, obtain the applicant's written authorization to obtain the records, and notify the applicant that a poor credit history or conviction will not automatically result in disqualification from employment.

Certain other disclosures are required upon the employee's request and prior to taking any adverse action based on the reports obtained.

Source: http://www.eeoc.gov/laws/practices/inquiries_arrest_conviction.cfm

EEOC GUIDELINES AND OTHER BEST PRACTICES FOR CONSUMER BACKGROUND REPORTS

VIII. Employer Best Practices (EEOC Enforcement Guidance 4/25/12)

The following are examples of best practices for employers who are considering criminal record information when making employment decisions.

General

- Eliminate policies or practices that exclude people from employment based on any criminal record.

- Train managers, hiring officials, and decision makers about Title VII and its prohibition on employment discrimination.

Developing a Policy

- Develop a narrowly tailored written policy and procedure for screening applicants and employees for criminal conduct.

  - Identify essential job requirements and the actual circumstances under which the jobs are performed.

- Determine the <u>specific</u> offenses that may demonstrate unfitness for performing such jobs.

  - o Identify the criminal offenses based on all available evidence.

  - Determine the duration of exclusions for criminal conduct based on all available evidence.

    - o Include an individualized assessment.

- Record the justification for the policy and procedures.

  - Note and keep a record of consultations and research considered in crafting the policy and procedures.

- Train managers, hiring officials, and decisionmakers on how to implement the policy and procedures consistent with Title VII.

Questions about Criminal Records

- When asking questions about criminal records, limit inquiries to records for which exclusion would be job related for the position in question and consistent with business necessity.
- Keep information about applicants' and employees' criminal records confidential. Only use it for the purpose for which it was intended.

V. Disparate Impact Discrimination and Criminal Records (Excerpts…)

The "Green Factors": The Eighth Circuit identified three factors that were relevant to assessing whether an exclusion is job related for the position in question and consistent with business necessity:

- **The nature and gravity of the offense or conduct**
- **The time that has passed since the offense or conduct and/or the completion of the sentence**
- **The nature of the job held or sought**

The new EEOC guidelines want employers to develop "targeted" screening that includes, in addition to the above "Green Factors", an "individualized assessment" policy – which gives the candidate "an opportunity for the individual to demonstrate that the exclusion should not be applied due to particular circumstances – and the employer would give consideration "as to whether the additional information provided by the individual warrants an exception to the exclusion."

9. Individualized Assessment

Individualized assessment generally means that:
(1) an employer informs the individual that he may be excluded because of past criminal conduct;
[Give them a copy of the report and a Pre-Adverse Action notice at this time that states your policy]
(2) provides an opportunity to the individual to demonstrate that the exclusion does not properly apply to him; and
(3) considers whether the individual's additional information shows that the policy as applied is not job related and consistent with business necessity.

The individual's showing may include information that he was not correctly identified in the criminal record, or that the record is otherwise inaccurate. Other relevant individualized evidence includes, for example:
• The facts or circumstances surrounding the offense or conduct;
• The number of offenses for which the individual was convicted;
• Older age at the time of conviction, or release from prison;
• Evidence that the individual performed the same type of work, post-conviction, with the same or a different employer, with no known incidents of criminal conduct;
• The length and consistency of employment history before and after the offense or conduct;
• Rehabilitation efforts, e.g., education/training;

•Employment or character references and any other information regarding fitness for the particular position; and
• Whether the individual is bonded under a federal, state, or local bonding program.
(If the individual does not respond to the employer's attempt to gather additional information about his background, the employer may make its employment decision without the information.) *[Proceed with Adverse action]*

Arrest Records: The fact of an arrest does not establish that criminal conduct has occurred. Even if an individual is charged and subsequently prosecuted, he is presumed innocent unless proven guilty. Title VII calls for a fact-bases analysis to determine if an exclusionary policy or practice is job related and consistent with business necessity. [An *arrest* record standing alone should not be used against a candidate in an adverse manner, such as denying employment.]

Convictions: The EEOC "recommends that employers not ask about convictions on job applications and that, if and when they make such inquiries, the inquiries be limited to convictions for which exclusion would be job related for the position in question and consistent with business necessity." *(Many states now prohibit this question on all job applications.)*

Consumer Reporting Agencies: We are no longer reporting arrest records unless they are actual pending cases. If a case was a straight dismissal, nolle prosequi or dropped, etc., then we do not report it on the background check. We will report any open warrants that come up. We will also report deferred adjudication-type cases and plea agreements.

State Laws: If a state law is more stringent than the related federal law, then the state law takes precedence. In a nutshell, whichever law is more stringent, then that's the one to follow. For example, if you have a candidate living in California and is applying for a job in Arizona - and your corporate office is in Texas... you must consider the laws of all three states as well as local laws, and abide by the one most stringent - in this case, California's. Many states strictly limit how far back in time a record can be reported: Some of these states include (but not limited to…): California, Colorado, Indiana, Maine, Massachusetts, Montana, New Mexico, New York, Texas…. Most of these states only allow us to report convictions going back 7 years. Because state laws are constantly changing and being made more restrictive when it comes to consumer reports, we adhere to the industry standard of a 7-year disposition for all states unless the state has specified that we cannot go back even that far (in which case we will abide by their law.)

NOTE: FCRA COMPLIANCE IS *IN ADDITION TO* THE ABOVE EEOC GUIDELINES. PRE-ADVERSE AND ADVERSE ACTION MUST STILL BE PERFORMED IF YOU ARE SPECIFICALLY NOT HIRING SOMEONE BASED ON INFORMATION PROVIDED IN THE BACKGROUND REPORT. (ALL REPORTS PROVIDED BY ASEC ARE CONSUMER REPORTS UNDER THE FCRA.)

USING CRIMINAL DATABASE SEARCHES: FAQ's

Associated Services Employment Check offers nationwide and statewide criminal database searches to assist you in performing comprehensive background checks:

- ***Instant National Criminal Index**:* Database composed of available state criminal databases (some states have limited data) and all 50 state sex offender registries; also includes miscellaneous databases such as the FBI's most wanted lists, OFAC, Terrorist Watch lists, etc. *(A detailed list of jurisdictions searched is available upon request).*

- ***Statewide Criminal**:* Database that searches an individual state's criminal records database (if available) Some states have limited data.

Should I order a state or national database search as part of my standard background screening? Yes, highly recommended. They give your basic county-level criminal background check broader coverage – these databases should be used like a "safety net" to extend the width and depth of your criminal records search and to show due diligence in performing a thorough background check.

Are databases good stand-alone criminal searches? No, not recommended as stand-alone products. They are good for determining if there are any "red flags" out there that may need attention – but we always recommend using a combination of county-level PLUS database criminal searches for a most thorough and complete background check.

What should I do if a database shows a criminal record? If you are planning to take any type of *adverse action* against someone based on a criminal record found on a database search, you should first confirm that the information is current and complete by ordering the **county-level** search for the jurisdiction that shows the record in the database. *To avoid potential legal action, never base your adverse action decisions on a database alone.*

Why can't I just go with the database's information? Because there are many "holes" in databases – they may not be updated with the most current information; there may be many jurisdictions that do not report records to a state database; or the jurisdictions may only report records intermittently – some states do not even have a public criminal database. For these reasons, a background check may come back clear – no record found – when in fact, a county-level search in the jurisdictions where the person has lived and worked may have reported a criminal record. Alternately, there may be "false hits" due to common names found in databases, and duplications due to multiple jurisdictions checked. County-level records searches are the most thorough and "deep" because most records are maintained by the counties. Database searches are wider, but prone to inaccuracies and incompleteness.

Why does my database search show "In Progress"? Our database is "instant" if the search is clear. However, all possible records are reviewed by our in-house quality assurance team (during regular business hours) for accuracy, identification, and determination of whether the record can legally be reported to an employer. Turnaround time varies depending on research required (15 minutes to 1-2 hours on average) Occasionally (and only if necessary), you may be requested to order a county-level criminal search if our staff cannot make a final determination in-house.

Background Checks

What Employers Need to Know

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

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

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

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

Before You Get Background Information

EEOC

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

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

FTC

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

- Tell the applicant or employee you might use the information for decisions about his or her employment. This notice must be in writing and in a stand-alone format. The notice can't be in an employment application. You can include some minor additional information in the notice (like a brief description of the nature of consumer reports), but only if it doesn't confuse or detract from the notice.

- If you are asking a company to provide an "investigative report" – a report based on personal interviews concerning a person's character, general reputation, personal characteristics, and lifestyle – you must also tell the applicant or employee of his or her right to a description of the nature and scope of the investigation.

- Get the applicant's or employee's written permission to do the background check. This can be part of the document you use to notify the person that you will get the report. If you want the authorization to allow you to get background reports throughout the person's employment, make sure you say so clearly and conspicuously.

- Certify to the company from which you are getting the report that you:

  - notified the applicant and got their permission to get a background report;

  - complied with all of the FCRA requirements; and

  - won't discriminate against the applicant or employee, or otherwise misuse the information in violation of federal or state equal opportunity laws or regulations.

Using Background Information

EEOC

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

- Apply the same standards to everyone, regardless of their race, national origin, color, sex, religion, disability, genetic information (including family medical history), or age (40 or older). For example, if you don't reject applicants of one ethnicity with certain financial histories or criminal records, you can't reject applicants of other ethnicities because they have the same or similar financial histories or criminal records.

- Take special care when basing employment decisions on background problems that

may be more common among people of a certain race, color, national origin, sex, or religion; among people who have a disability; or among people age 40 or older. For example, employers should not use a policy or practice that excludes people with certain criminal records if the policy or practice significantly disadvantages individuals of a particular race, national origin, or another protected characteristic, and does not accurately predict who will be a responsible, reliable, or safe employee. In legal terms, the policy or practice has a "disparate impact" and is not "job related and consistent with business necessity."

- Be prepared to make exceptions for problems revealed during a background check that were caused by a disability. For example, if you are inclined not to hire a person because of a problem caused by a disability, you should allow the person to demonstrate his or her ability to do the job – despite the negative background information – unless doing so would cause significant financial or operational difficulty.

FTC

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

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

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

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

and to get an additional free report from the reporting company within 60 days.

Disposing of Background Information

EEOC

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

FTC

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

Further Information

EEOC

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

- Preemployment medical inquiries: see *Preemployment Disability-Related Questions and Medical Examinations* at www.eeoc.gov/policy/docs/preemp.html.
- Medical inquiries during employment: see *Questions and Answers: Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA)* at www.eeoc.gov/policy/docs/qanda-inquiries.html.

- Genetic inquiries, including inquiries about family medical history: see *Background Information for EEOC Final Rule on Title II of the Genetic Information Nondiscrimination Act of 2008* at www.eeoc.gov/laws/regulations/gina-background.cfm.
- EEOC recordkeeping requirements: see *Summary of Selected Recordkeeping Obligations in 29 C.F.R. Part 1602* at www.eeoc.gov/employers/recordkeeping_obligations.cfm.
- Using arrest and conviction records to make employment decisions: see *Questions and Answers about EEOC's Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII* at www.eeoc.gov/laws/guidance/qa_arrest_conviction.cfm.
- Whether arrest and conviction records act as an automatic bar to all employment: see *Reentry Myth Buster: On Hiring/Criminal Records Guidance* at csgjusticecenter.org/wp-content/uploads/2012/11/Reentry_Council_Mythbuster_Employment.pdf.
- Background on the EEOC for small businesses: see Get the Facts Series: Small Business Information, www.eeoc.gov/eeoc/publications/smallbusiness.cfm.

FTC

To find out more about federal laws relating to background reports, visit www.business.ftc.gov, or call the FTC toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261.

For specific information on employment background reports, see:

- Using Consumer Reports: What Employers Need to Know at www.business.ftc.gov/documents/bus08-using-consumer-reports-what-employers-need-know
- The Fair Credit Reporting Act & social media: What businesses should know at www.business.ftc.gov/blog/2011/06/fair-credit-reporting-act-social-media-what-businesses-should-know
- Background screening reports and the FCRA: Just saying you're not a consumer reporting agency isn't enough at www.business.ftc.gov/blog/2013/01/background-screening-reports-and-fcra-just-saying-youre-not-consumer-reporting-agency-i
- Reentry Myth Buster: Criminal Histories and Employment Background Checks at csgjusticecenter.org/wpcontent/uploads/2012/11/Reentry_Council_Mythbuster_FCRA_Employment.pdf.

SAMPLE PRE-ADVERSE ACTION LETTER

[Date]

[Applicant Name
Address
City, State Zip]

Re: Notice of Background Report

Dear [Applicant Name]:

Enclosed is a consumer report that was requested in connection with your application for employment with our company. In accordance with the Federal Fair Credit Reporting Act, we have also enclosed a copy of your rights under the Act. This notification is provided because an adverse employment decision may be based, in whole or part, on this report.

You have the right to dispute the accuracy or completeness of information contained in the report(s) by contacting Associated Services Employment check, or if the report is a credit report, contacting the credit bureau that furnished the report:

Associated Services Employment Check
P. O. Box 800169
Houston, TX 77280
(713) 461-7381 Ext. 708 or (800) 290-1826 Ext. 708

Sincerely,

Human Resources Department
[Employer Company Name]
[Employer Company Address]

Enclosures:
Copy of Consumer Report
FCRA Notice of Rights/FCRA Contact Sheet

SAMPLE ADVERSE ACTION LETTER

[Date]

[Applicant Name
Address
City, State Zip]

Re: Notice of Adverse Action

Dear [Applicant Name]:

Enclosed is a consumer report that we requested in connection with your application for employment with our company. In accordance with the Federal Fair Credit Reporting Act, also enclosed is a copy of your rights under the Act.

Based on our hiring criteria and the contents of this consumer report, we have made a decision not to consider you for employment at this time.

This decision was made in part from information we received from Associated Services Employment Check. Please be advised that Associated Services Employment Check does not make these decisions and is unable to provide you with the specific reasons for the decisions.

You have the right to dispute the accuracy and completeness of information contained in the report(s) by contacting Associated Services Employment check, or if the report is a credit report, contacting the credit bureau that furnished the report:

Associated Services Employment Check
P. O. Box 800169
Houston, TX 77280
(713) 461-7381 Ext. 708 or (800) 290-1826 Ext. 708

Sincerely,

Human Resources Department
[Employer Company Name]
[Employer Company Address]

Enclosures:
Copy of Consumer Report
FCRA Notice of Rights/FCRA Contact Sheet