

FAIR CREDIT REPORTING ACT

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

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

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

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

ODM MAKES COMPLYING WITH THE FAIR CREDIT REPORTING ACT SIMPLE

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

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

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

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

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

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

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

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

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

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

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

SAMPLE DISCLOSURE/AUTHORIZATION

FAIR CREDIT REPORTING ACT

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

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

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

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

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

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

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

Applicants Signature: _____ Date: _____

Applicant's Printed Name: _____

Applicant's Address: _____

City/State/Zip: _____

Social Security Number: _____

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

CHURCH LETTERHEAD

Date

Candidate Name

Address

City, State, Zip

Dear:

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

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

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

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

Sincerely yours,

(church representative)

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

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

CHURCH LETTERHEAD

Date

Candidate Name

Address

City, State, Zip

Dear:

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

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

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

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

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

Sincerely yours,

(church representative)

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

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, go to www.consumerfinance.gov/learnmore or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.**

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.
- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your “file disclosure”). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
 - a person has taken adverse action against you because of information in your credit report;
 - you are the victim of identify theft and place a fraud alert in your file;
 - your file contains inaccurate information as a result of fraud;
 - you are on public assistance;
 - you are unemployed but expect to apply for employment within 60 days.

In addition, all consumers are entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.consumerfinance.gov/learnmore for additional information.

- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.
- **You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.consumerfinance.gov/learnmore for an explanation of dispute procedures.
- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.
- **Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.
- **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need – usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.
- **You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.consumerfinance.gov/learnmore.
- **You may limit “prescreened” offers of credit and insurance you get based on information in your credit report.** Unsolicited “prescreened” offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt-out with the nationwide credit bureaus at 1-888-567-8688.

• **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.

• **Identity theft victims and active duty military personnel have additional rights.** For more information, visit www.consumerfinance.gov/learnmore

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. For information about your federal rights, contact:

TYPE OF BUSINESS:	CONTACT:
1.a. Banks, savings associations, and credit unions with total assets of over \$10 billion and their affiliates.	a. Consumer Financial Protection Bureau 1700 G Street NW Washington, DC 20552
b. Such affiliates that are not banks, savings associations, or credit unions also should list, in addition to the CFPB:	b. Federal Trade Commission: Consumer Response Center – FCRA Washington, DC 20580 (877) 382-4357
2. To the extent not included in item 1 above:	
a. National banks, federal savings associations, and federal branches and federal agencies of foreign banks	a. Office of the Comptroller of the Currency Customer Assistance Group 1301 McKinney Street, Suite 3450 Houston, TX 77010-9050
b. State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and Insured State Branches of Foreign Banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act	b. Federal Reserve Consumer Help Center P.O. Box 1200 Minneapolis, MN 55480
c. Nonmember Insured Banks, Insured State Branches of Foreign Banks, and insured state savings associations	c. FDIC Consumer Response Center 1100 Walnut Street, Box #11 Kansas City, MO 64106
d. Federal Credit Unions	d. National Credit Union Administration Office of Consumer Protection (OCP) Division of Consumer Compliance and Outreach (DCCO) 1775 Duke Street Alexandria, VA 22314
3. Air carriers	Asst. General Counsel for Aviation Enforcement & Proceedings Aviation Consumer Protection Division Department of Transportation 1200 New Jersey Avenue, SE Washington, DC 20590
4. Creditors Subject to Surface Transportation Board	Office of Proceedings, Surface Transportation Board Department of Transportation 395 E Street S.W. Washington, DC 20423
5. Creditors Subject to Packers and Stockyards Act, 1921	Nearest Packers and Stockyards Administration area supervisor
6. Small Business Investment Companies	Associate Deputy Administrator for Capital Access United States Small Business Administration 409 Third Street, SW, 8th Floor Washington, DC 20416
7. Brokers and Dealers	Securities and Exchange Commission 100 F St NE Washington, DC 20549
8. Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations Farm Credit Administration 1501 Farm Credit Drive McLean, VA 22102-5090	Farm Credit Administration 1501 Farm Credit Drive McLean, VA 22102-5090
9. Retailers, Finance Companies, and All Other Creditors Not Listed Above	FTC Regional Office for region in which the creditor operates or Federal Trade Commission: Consumer Response Center – FCRA Washington, DC 20580 (877) 382-4357