

INDEPENDENT INSURANCE AGENTS & BROKERS OF LOUISIANA
9818 BLUEBONNET BOULEVARD
BATON ROUGE, LA 70810
TEL: (225) 819-8007
FAX: (225) 819-8027
www.iiial.com

TECHNICAL ADVISORY

TA 218

January 3, 2003

SUBJECT: Fair Credit Reporting Act Compliance Guidelines for the Use of Driving Records, Consumer Reports and Credit Scores

<p>This memorandum is not intended to provide specific advice about individual legal, business or other questions. It was prepared solely for use as a guide, and is not a recommendation that a particular course of action be followed. If specific legal or other expert advice is required or desired, the services of an appropriate, competent professional, such as an attorney, should be sought.</p>

INTRODUCTION

This memorandum generally describes the federal Fair Credit Reporting Act (“FCRA” or “Act”) and the obligations of insurance agents with respect to the use of driving records, consumer reports (sometimes referred to as credit reports), and credit scores under the Act. It does not address other aspects of the FCRA or any requirements on insurance agents under state laws. It is divided into sections as follows: FAIR CREDIT REPORTING ACT OVERVIEW; DRIVING RECORD AND CONSUMER REPORT PRACTICES; CREDIT SCORE PRACTICES; OTHER CREDIT AND INSURANCE-RELATED INFORMATION; and REQUIRED FORMS.

FAIR CREDIT REPORTING ACT OVERVIEW

The FCRA was enacted in 1970 to protect the privacy of consumers’ credit information and to assure that the information is as accurate as possible. The Act applies only to information about individuals. Information about entities, such as corporations and partnerships, is not regulated by the Act.

The FCRA imposes requirements on the collection and dissemination of certain information regarding individuals. These requirements apply not only to consumer reporting agencies and those who furnish information to them, but also to users of consumer reports, such as insurance agents. Under the Act, consumer reports include

information about an individual's personal and credit characteristics, such as his/her credit history and driving record.

The FCRA is enforced by the Federal Trade Commission ("FTC"). Violations of the FCRA's requirements can result in fines of up to \$1,000 per violation for actions initiated by consumers, plus punitive damages, attorney's fees, and costs of the lawsuit. Actions initiated by the FTC can result in penalties of up to \$2,500 per violation.

DRIVING RECORD AND CONSUMER REPORT PRACTICES

Insurance agents sometimes are asked to provide services to their clients that assist the clients in evaluating potential employees. These services range from providing to the clients copies of current or potential employees' driving records from state agencies or third party consumer reporting services to providing insurability assessments based on driving records. Agents also may be asked to provide other consumer reports on clients' current or potential employees, including information prepared by consumer reporting agencies on credit worthiness, credit standing/capacity, and other personal characteristics used as a factor in establishing eligibility for employment. Some IIABA state associations also provide driving records and other consumer reports to insureds and member agents. These MVR and other consumer reports may be used in making employment decisions, or for credit or insurance purposes. All of these practices are regulated by the FCRA.

The FCRA requirements applicable to these practices can be satisfied by taking **all** of the following steps:

1. Prior to responding to a request for driving records, insurability assessments based on driving records or consumer reports, obtaining from the client either:
 - a) A document signed by the job applicant/employee that consists solely of an authorization to obtain the applicant's/employee's driving records and/or consumer reports, and stating any necessary information required to conduct the driving records or consumer reports research. (See Appendix D for a sample letter.)

or

- b) A document signed by the client that states that the client-insured has reviewed its obligations as a user under the FCRA and that the client-insured: (i) certifies that it has received or will receive in advance of requesting information about the driving records of or consumer reports about any applicant/employee an authorization similar to the one in Appendix D in which the applicant/employee authorizes in writing the procurement of his/her driving records or consumer reports; (ii) acknowledges that the authorization will be kept on file in the company's office as required by law; and (iii) agrees to timely provide all required notices to the applicant/employee. (See Appendix E for a sample letter.) It should be noted that the Act is not specific about whether this document must be provided prior to each driving records or consumer reports request, or if it may be provided once for all future requests. While the most cautious approach is to require the client-insured

to provide the document prior to each driving records or consumer reports request, the lack of a statutory mandate has led many to conclude that one comprehensive document is adequate.

2. Providing a copy of the FTC “Prescribed Summary of Consumer Rights” with **every** driving record, insurability assessment or consumer report that it transmits to clients-insureds. (The “Prescribed Summary of Consumer Rights” is attached as Appendix A.)
3. Providing a copy of the FTC “Prescribed Notice of User Responsibilities” to each client- insured that uses the driving records-related or consumer reports services. This notice only needs to be provided once. (The “Prescribed Notice of User Responsibilities” is attached as Appendix C.)
4. Retaining copies for at least two years after the date of the request of whatever the insurance agent relies upon to document the right to respond to driving records or consumer reports requests.

The consumer is entitled to obtain from the credit reporting agency a copy of all information in his/her file, and a list of everyone who requested it during the two-year period preceding the consumer’s request for information. The only exception to this disclosure requirement is that the consumer is not entitled to information concerning credit scores or other evaluations of credit worthiness or insurability.

CREDIT SCORE PRACTICES

Insurance agents frequently obtain insurance application information from potential policyholders, either in person or on the telephone. During such a conversation, the agent may be able to determine the insurability of the customer based solely on information provided by the customer. However, often that information is supplemented by reviewing the customer’s credit report. The “credit score” included in that credit report sometimes is used to determine whether the customer is eligible for insurance from one of the companies the agent represents and for which policies the customer is eligible.

The FCRA does not apply to insurability decisions based on credit scores if:

1. the client is an entity, such as a corporation or partnership, rather than an individual;
or
2. the agent informs the customer that he/she is ineligible for insurance from one of the companies the agent represents and that determination is based solely on information provided by the customer.

In all other situations in which credit scoring is used to make insurability decisions, the FCRA does apply. If the FCRA does apply, and if an action is taken that is considered to be an “adverse action” under the FCRA, then an adverse action notification must be

provided to the consumer. In general terms, the Act defines an “adverse action” to be an action adverse to the interests of the consumer, such as: (i) a denial or cancellation of, an increase in any charge for, or a reduction or unfavorable change in the terms of coverage or amount of insurance; or (ii) a denial of employment or other employment decision adverse to a job applicant/employee.

According to an informal (and non-binding) Federal Trade Commission staff attorney letter issued on March 1, 2000, any determination based on a credit score (or on any other information obtained from a consumer report) that results in an applicant or insured being charged a higher premium requires the issuance of an “adverse action” notice. If the interpretation of this advisory letter is followed, an applicant or insured must be given an adverse action notice whenever information contained in a credit report is used to deny coverage, offer reduced coverage, or charge a higher premium than would have been charged if the consumer report had been more favorable. Under one of the scenarios described in the advisory letter, an adverse action notification also must be given to an insured if the agent uses the insured’s credit score to determine that the insured is not eligible to receive a discounted premium rate – even if the insured was not aware that the agent was making this inquiry on his/her behalf. As noted above, advisory letters from FTC staff are not binding; however, they generally are followed by the FTC. The position in the advisory letter defines “adverse action” more broadly than it previously has been defined. Thus, the most prudent course of action for whoever makes the adverse decision is to provide an adverse action notification whenever consumer report information is used to make a determination that an applicant or insured is not eligible for the lower rate. Similarly, when information from a consumer report is used to deny or offer reduced coverage to an applicant or insured, the most prudent course is for the consumer to be provided with an adverse action notification.

Absent an agreement or standardized process between an agent and the companies he/she represents, any adverse action notification burden would fall on the person who actually makes the coverage eligibility determination. For example, if the agent submits an application to an insurer for coverage at the “preferred rate” and the application is denied, then the Company is responsible for satisfying the adverse action notification obligation required by the FCRA. However, if the agent determines that the customer’s application should be denied, based on a credit score or information in a consumer report, the agent would be required to provide the adverse action notification.

To comply with the requirements of the FCRA, an adverse action notification must cover four things:

- The name, address, and telephone number (including any toll-free number) of the consumer reporting agency (“CRA”) that provided the consumer report.
- A statement that the CRA did not make the adverse decision and cannot explain why the decision was made.
- A statement setting forth the consumer’s right to obtain a free copy of the consumer report from the CRA if the consumer requests the report 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.

(See Appendix F for a sample adverse action notification.)

In addition, the adverse action notification to the consumer must be accompanied by the FTC’s “Prescribed Summary of Consumer Rights.” (Appendix A)

OTHER CREDIT AND INSURANCE-RELATED INFORMATION

Insurance agents also may be required to satisfy FCRA requirements if they are providing credit or insurance-related information to consumer reporting agencies or third parties, or if the agents use information obtained from consumer reporting agencies for any reason. For example, the FCRA permits an insurance agent to obtain information from consumer reporting agencies to make solicitations for the purchase of insurance products that are not initiated by the customer, if the insurance agent provides to the customer with each written solicitation a “clear and conspicuous statement” in writing that:

1. information contained in the customer’s consumer report was used;
2. the customer received the solicitation because he/she satisfied certain credit worthiness or insurability criteria;
3. if applicable, the credit or insurance may not be offered if, after the customer responds to the offer, he/she does not meet the criteria used to select the customer for the offer or any applicable credit worthiness or insurability criteria; and
4. the customer has the right to prohibit information contained in his/her consumer credit file from being used in connection with any insurance solicitation not initiated by the customer by notifying the appropriate CRA.

REQUIRED FORMS

Three notification forms prescribed by the FTC are attached. These forms address many of the FCRA’s obligations and requirements that apply in a variety of contexts. The first form outlines the rights of consumers whose credit information is released or disclosed (Appendix A); the second form describes the obligations imposed on anyone who furnishes information to a credit reporting agency (Appendix B); and the third lists the responsibilities of anyone who uses or relies upon the information obtained from a consumer reporting agency to make or assist with the making of any credit, insurance or employment-related decision (Appendix C).

Appendix A to Part 601 Prescribed Summary of Consumer Rights The prescribed form for this summary is as a separate document, on paper no smaller than 8x11 inches in size, with text no less than 12-point type (8-point for the chart of federal agencies), in bold or capital letters as indicated. The form in this appendix prescribes both the content and the sequence of items in the required summary. A summary may accurately reflect changes in numerical items that change over time (e.g., dollar amounts, or phone numbers and addresses of federal agencies), and remain in compliance.

A Summary of Your Rights Under the Fair Credit Reporting Act The federal Fair Credit Reporting Act (FCRA) is designed to promote accuracy, fairness, and privacy of information in the files of every "consumer reporting agency" (CRA). Most CRAs are credit bureaus that gather and sell information about you -- such as if you pay your bills on time or have filed for bankruptcy -- to creditors, employers, landlords, and other businesses. You can find the complete text of the FCRA, 15 U.S.C. 1681 - 1681u, at the Federal Trade Commission's web site (<http://www.ftc.gov>). The FCRA gives you specific rights, as outlined below. You may have additional rights under state law. You may contact a state or local consumer protection agency or a state attorney general to learn those rights.

- **You must be told if information in your file has been used against you.** Anyone who uses information from a CRA to take action against you -- such as denying an application for credit, insurance, or employment - must tell you, and give you the name, address, and phone number of the CRA that provided the consumer report.
- **You can find out what is in your file.** At your request, a CRA must give you the information in your file, and a list of everyone who has requested it recently. There is no charge for the report if a person has taken action against you because of information supplied by the CRA, if you request the report within 60 days of receiving notice of the action. You also are entitled to one free report every twelve months upon request if you certify that (1) you are unemployed and plan to seek employment within 60 days, (2) you are on welfare, or (3) your report is inaccurate due to fraud. Otherwise, a CRA may charge you up to eight dollars.
- **You can dispute inaccurate information with the CRA.** If you tell a CRA that your file contains inaccurate information, the CRA must investigate the items (usually within 30 days) by presenting to its information source all relevant evidence you submit. The source must review your evidence and report its findings to the CRA. (The source also must advise national CRAs - to which it has provided the data - of any error.) The CRA must give you a written report of the investigation, and a copy of your report if the investigation results in any change. If the CRA's investigation does not resolve the dispute, you may add a brief statement to your file. The CRA must normally include a summary of your statement in future reports. If an item is deleted or a dispute statement is filed, you may ask that anyone who has recently received your report be notified of the change.
- **Inaccurate information must be corrected or deleted.** A CRA must remove or correct inaccurate or unverified information from its files, usually within 30 days after you dispute it. **However, the CRA is not required to remove accurate data from your file unless it is outdated (as described below) or cannot be verified.** If your dispute results in any change to your report, the CRA cannot reinsert into your file a disputed item unless the information source verifies its accuracy and completeness. In addition, the CRA must give you a written notice telling you it has reinserted the item. The notice must include the name, address and phone number of the information source.
- **You can dispute inaccurate items with the source of the information.** If you tell

anyone -- such as a creditor who reports to a CRA - that you dispute an item, they may not then report the information to a CRA without including a notice of your dispute. In addition, once you've notified the source of the error in writing, it may not continue to report the information if it is, in fact, an error. • **Outdated information may not be reported.** In most cases, a CRA may not report negative information that is more than seven years old; ten years for bankruptcies. • **Access to your file is limited.** A CRA may provide information about you only to those who have a need recognized by the FCRA -- usually to consider an application with a creditor, insurer, employer, landlord, or other business. • **Your consent is required for reports that are provided to employers, or reports that contain medical information.** A CRA may not give out information about you to your employer, or prospective employer, without your written consent. A CRA may not report medical information about you to creditors, insurers, or employers without your permission. • **You may choose to exclude your name from CRA lists for unsolicited credit and insurance offers.** Creditors and insurers may use file information as the basis for sending you unsolicited offers of credit or insurance. Such offers must include a toll-free number for you to call if you want your name and address removed from future lists. If you call, you must be kept off the lists for two years. If you request, complete, and return the CRA form provided for this purpose, you must be taken off the lists indefinitely. • **You may seek damages from violators.** If a CRA, a user or (in some cases) a provider of CRA data, violates the FCRA, you may sue them in state or federal court. The FCRA gives several different federal agencies authority to enforce the FCRA:

FOR QUESTIONS OR CONCERNS REGARDING:

CRA's, creditors and others not listed below

PLEASE CONTACT:

Federal Trade Commission Consumer Response Center - FCRA Washington, DC 20580 *202-326-3761

National banks, federal branches/agencies of foreign banks (word "National" or initials "N.A." appear in or after bank's name)

Office of the Comptroller of the Currency
Compliance Management Mail Stop 6-6
Washington, DC 20219 * 800-613-6743

Federal Reserve System member banks (except national banks, and federal branches/agencies of foreign banks)

Federal Reserve Board Division of
Consumer & Community Affairs Washington, DC
20551 * 202-452-3693

Savings associations and federally chartered savings banks (word "Federal" or initials "F.S.B." appear in federal institution's name)

Office of Thrift Supervision Consumer
Programs Washington, DC 20552 * 800-842-6929

Federal credit unions (words "Federal Credit Union" appear in institution's name)

National Credit Union Administration 1775
Duke Street Alexandria, VA 22314 * 703-518-6360

State-chartered banks that are not members of the Federal Reserve System

Federal Deposit Insurance Corporation
Division of Compliance & Consumer Affairs
Washington, DC 20429 * 800-934-FDIC

Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission

Department of Transportation Office of
Financial Management Washington, DC 20590 *
202-366-1306

Activities subject to the Packers and Stockyards Act, 1921

Department of Agriculture Office of Deputy
Administrator - GIPSA Washington, DC 20250 *
202-720-7051

**Appendix D – Sample Letter Authorizing Consumer Reports and/or Driving Records
to be Obtained – Signed by Job Applicant/Employee**

(Name of Job Applicant/Employee)
(Street Address)
(City, State, Zip Code)

(Date)

(Company Name of Employer)
(Street Address)
(City, State, Zip Code)

Dear (Company Name of Employer):

Consumer reports may be obtained as part of the (Company Name of Employer)'s evaluation of my job application/employment. The reports may be procured by (Insurance Agency Name or IIABA State Association's Name), and may include my driving record, an assessment of my insurability under the Company's insurance coverages or other consumer reports. By signing this disclosure, I hereby authorize the Company to procure such reports and additional reports about me from time to time, as it deems appropriate, to evaluate my insurability or for other permissible purposes.

Sincerely,

(Signature of Job Applicant/Employee)
(Typed Name of Job Applicant/Employee)

Appendix C to 16 CFR Part 601 – Prescribed Notice of User Responsibilities

Appendix C to Part 601 Prescribed Notice of User Responsibilities

This appendix prescribes the content of the required notice.

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

The federal Fair Credit Reporting Act (FCRA) requires that this notice be provided to inform users of consumer reports of their legal obligations. State law may impose additional requirements. This 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. The FCRA, 15 U.S.C. 1681 – 1681u, is set forth in full at the Federal Trade Commission's Internet web site (<http://www.ftc.gov>).

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 of the FCRA 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)*

Appendix C to 16 CFR Part 601 – Prescribed Notice of User Responsibilities

- For use by a potential investor or servicer, or current insurer, in a valuation or assessment of the credit or repayment 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 unsolicited offers of credit or insurance. The particular obligations of users of this "prescreened" information are described in Section V below.

B. Users Must Provide Certifications

Section 604(f) of the FCRA prohibits any person from obtaining a consumer report from a consumer reporting agency (CRA) unless the person has certified (by a general or specific certification, as appropriate) 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 of the FCRA. "Adverse actions" include all business, credit, and employment actions affecting consumers that can be considered to have a negative impact -- such as unfavorably changing credit or contract terms or conditions, denying or canceling credit or insurance, offering credit on less favorable terms than requested, or denying employment or promotion.

1. Adverse Actions Based on Information Obtained from a CRA

If a user takes any type of adverse action that is based at least in part on information contained in a consumer report, the user is required by Section 615(a) of the FCRA 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 requests the report within 60 days.

Appendix C to 16 CFR Part 601 – Prescribed Notice of User Responsibilities

- 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) of the FCRA requires that the user clearly and accurately disclose to the consumer his or her right to obtain disclosure of the nature of the information that was relied upon by making 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 notification 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. (Information that is obtained directly from an affiliated entity relating solely to its transactions or experiences with the consumer, and information obtained in a consumer report from an affiliate are not covered by Section 615(b)(2).)

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

If 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 prior written authorization from the consumer.
- 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 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.

Appendix C to 16 CFR Part 601 – Prescribed Notice of User Responsibilities

- Before taking an adverse action, provide a copy of the report to the consumer as well as the summary of the consumer's rights. (The user should receive this summary from the CRA, because Section 604(b)(1)(B) of the FCRA requires CRAs to provide a copy of the summary with each consumer report obtained for employment purposes.)

III. OBLIGATIONS OF USERS OF INVESTIGATIVE CONSUMER REPORTS

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. 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 of the FCRA 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 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 must include the summary of consumer rights required by Section 609 of the FCRA. (The user should be able to obtain a copy of the notice of consumer rights from the CRA that provided the consumer report.)
- 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 that was requested. 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.

IV. OBLIGATIONS OF USERS OF CONSUMER REPORTS CONTAINING MEDICAL INFORMATION

Section 604(g) of the FCRA prohibits consumer reporting agencies from providing consumer reports that contain medical information for employment purposes, or in connection with credit or insurance transactions, without the specific prior consent of the consumer who is the subject of the report. In the case of medical information being sought for employment purposes, the consumer must explicitly consent to the release of the medical information in addition to authorizing the obtaining of a consumer report generally.

Appendix C to 16 CFR Part 601 – Prescribed Notice of User Responsibilities

V. 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(l), 604(c), 604(e), and 615(d)* This practice is known as "prescreening" and typically involves obtaining a list of consumers from a CRA who meet certain pre-established 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 to 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 the consumer's 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 is not able to 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. This statement must include the address and toll-free telephone number of the appropriate notification system.

VI. OBLIGATIONS OF RESELLERS

Section 607(e) of the FCRA 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 identity 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.

Appendix C to 16 CFR Part 601 – Prescribed Notice of User Responsibilities

VII. LIABILITY FOR VIOLATIONS OF THE FCRA

Failure to comply with the FCRA can result in state or federal 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*

**Appendix D – Sample Letter Authorizing Consumer Reports and/or Driving Records
to be Obtained – Signed by Job Applicant/Employee**

(Name of Job Applicant/Employee)
(Street Address)
(City, State, Zip Code)

(Date)

(Company Name of Employer)
(Street Address)
(City, State, Zip Code)

Dear (Company Name of Employer):

Consumer reports may be obtained as part of the (Company Name of Employer)'s evaluation of my job application/employment. The reports may be procured by (Insurance Agency Name or IIABA State Association's Name), and may include my driving record, an assessment of my insurability under the Company's insurance coverages or other consumer reports. By signing this disclosure, I hereby authorize the Company to procure such reports and additional reports about me from time to time, as it deems appropriate, to evaluate my insurability or for other permissible purposes.

Sincerely,

(Signature of Job Applicant/Employee)
(Typed Name of Job Applicant/Employee)

Appendix E – Sample Letter Certifying Receipt of Authorization to Obtain Driving Records and Consumer Reports – Signed by Client-Insured

(Date)

(Insurance Agent's Name or IIABA State Association's Name)

(Insurance Agency's Name, if applicable)

(Street Address)

(City, State, Zip Code)

Dear (Insurance Agent's Name or IIABA State Association's Name):

(Company Name) has reviewed its obligations under the Fair Credit Reporting Act as a consumer report user, and certifies that it has received or will receive in advance of requesting information about the driving records of or consumer reports about any job applicant/employee, an authorization in which the applicant/employee authorizes in writing the procurement of his/her consumer reports, including driving records, and the procurement of additional reports about him/her from time to time to evaluate his/her insurability or for other permissible purposes.

(Company Name) will retain the job applicant's/employee's authorization on file in accordance with the requirements of the law for at least two years, and provide to the applicant/employee all required notices.

Sincerely,

(Signature of Company Employee)

(Typed Name of Company Employee)

Appendix F – Sample Adverse Action Notification from Insurance Agent

(Date)

(Name of Job Applicant/Employee)
(Street Address)
(City, State, Zip Code)

Dear (Name of Job Applicant/Employee):

We have carefully considered your application for insurance. We regret to inform you that we are not able to offer you an insurance policy through (Insurance Agency Name) due to certain adverse information contained in your consumer credit report.

We obtained this information from (Name of Consumer Reporting Agency), (Street Address of Consumer Reporting Agency), (City, State, Zip Code), (Telephone Number/Must Include Toll-Free Telephone Number if Available). (Name of Consumer Reporting Agency) was not responsible for the decision to deny your application for insurance coverage and is unable to provide you with the specific reasons as to why this adverse decision was made.

You have the right to obtain a free copy of your consumer report from (Name of Consumer Reporting Agency) within 60 days of this notice. You also have the right to dispute with the consumer reporting agency, the accuracy or completeness of any information in your consumer report.

Sincerely,

(Signature of Insurance Agent)
(Typed Name of Insurance Agent)