



REFERENCE SERVICES INC

The Professional Background Screening Company

30 minute Lunch & Learn Webinar Series

Compliance

JULY 20, 2023

Legal Disclaimer

- The information and opinions expressed are for educational purposes only and are based on current practice, industry related knowledge and business expertise. The information provided shall not be construed as legal advice, express or implied.

Presenters



Alicia Barker

Operations / Compliance
Manager



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Compliance / Special
Projects Manager



**Heather
Halbrook-Fraser**

Client Relations Specialist

Agenda



Our people

Presenters

Alicia Barker

Stephanie Pier

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Compliance

613 Letters / Adverse Action Process

Permissible Purpose / Verifying records with PII

CRA reporting – standard scope vs state law

National Federal for Comprehensive screening



Closing

Questions and Answers

sales@referenceservices.com

613 Letter

- (a) In general. A consumer reporting agency which furnishes a consumer report **for employment purposes** and which for that purpose compiles and reports items of information on consumers which are **matters of public record** and are **likely to have an adverse effect** upon a consumer's ability to obtain employment shall
 - (1) at the time such public record information is reported to the user of such consumer report, **notify the consumer** of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; **or**
 - (2) **maintain strict procedures** designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is **complete and up to date**. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if **the current public record status of the item at the time of the report is reported**.

613 Letter

- RSI send 613 letters for ALL public records reported for employment purposes
- RSI treats volunteers as employment purposes and sends 613 letters
- RSI send 613 letters for Social Media checks



DATE
Applicant Name
Street Address
City, State, Zip

Dear Consumer:

The purpose of this letter is to notify you that in connection with your application for employment, current employment or volunteer request with the company listed below Reference Services, Inc., a consumer reporting agency, was asked to complete a background check about you. This letter is to let you know Reference Services, Inc. may be reporting criminal or other public record information about you to:

Company Name
Street Address
City, State, Zip

This letter is for informational purposes only and neither the employer listed above nor Reference Services, Inc. is taking any negative action against you whatsoever. **INSTEAD, THIS NOTICE IS TO INFORM YOU THAT YOU MAY REQUEST A COPY OF YOUR CONSUMER REPORT AND/OR DISPUTE ANY INFORMATION IN YOUR CONSUMER REPORT BY CONTACTING 1-855-263-2205.**

Sincerely,
Reference Services, Inc.
613 Letter

Adverse Action

ADVERSE ACTION IS DEFINED IN THE FAIR CREDIT REPORTING ACT (FCRA) AS:

“denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee . . .” 603(k)(1)

“an action taken or determination that is (i) made in connection with an application that was made by, or a transaction that was initiated by, any consumer, ...and (ii) adverse to the interests of the consumer.” 603(k)(1)

Adverse Action

- SO . . . not just termination – it includes anything that could be viewed negatively by the employee, or cast them in a negative light
- It also includes adverse outcomes of tenant screening, such as denying an application or requiring a higher security deposit
- *Customized Adverse Action letters and supporting documents are built in to the RSI platform*

Adverse Action Process

FCRA REQUIRES A MULTI-STEP ADVERSE ACTION PROCESS

- 1. Pre-adverse action notice:** this notice is provided to the consumer along with a copy of the report and a summary of the consumer's rights under the FCRA to give the consumer the opportunity to dispute information on the report
- 2. Waiting period:** a waiting period (generally 5 business days) is required by the FCRA in order to give the consumer time to dispute the report
- 3. Post-adverse action notice:** this notice is provided to the consumer after the waiting period, and it must include contact information for the CRA, the summary of consumer rights, and a statement that the CRA did not make the decision to take adverse action

Permissible Purpose

ACRONYMS

- CFPB – Consumer Financial Protection Bureau
- FCRA – Fair Credit Reporting Act
- CRA – Consumer Reporting Agency

Permissible Purpose

JULY 2022 CFPB ADVISORY OPINION

- Re-confirmed that under the FCRA, CRAs can provide a consumer report to users only with permissible purpose
- Added that the permissible purposes are “consumer specific”
 - “They apply only with respect to the consumer who is the subject of the user’s request”
 - This means information not regarding the consumer in question should not appear on a consumer report

Permissible Purpose

NAME-ONLY MATCHING DOES NOT SATISFY THE REQUIREMENT

- In November 2021, the CFPB advised name-only matching does not satisfy the requirement for a CRA “to follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the [consumer] report relates”
- In the July statement they added “the use of poor matching procedures, such as name-only matching, can lead to violations of the FCRA’s permissible purpose provisions” since we “cannot rely on these procedures to form a reason to believe that all of the information it includes in a consumer report pertains to the consumer who is the subject of the user’s request.”

Michigan – removing PII

CLEAN SLATE LAW -

- **Criminal records will be automatically expunged if specific conditions are met**
- Up to 2 felony convictions will automatically be expunged the later of 10 years after sentencing or the person's release from custody.
- Up to 4 misdemeanors will automatically be expunged 7 years after sentencing.
 - The following convictions are not going to be eligible for automatic expungement:
 - convictions for "assaultive offenses";
 - convictions for "serious misdemeanors";
 - convictions for offenses punishable by 10 or more years imprisonment;
 - convictions that involve a minor, a vulnerable adult, injury or serious impairment of a person, death of a person;
 - convictions that involve human trafficking

CRA reporting

STANDARD SCOPE, STATE LAW AND MINORS

- **No Address History seen on Background Check**
 - Used as a tool to populate other names and jurisdictions to search and cannot be used for an employment decision
- **Some states have employer use laws, not CRA reporting laws**
 - **Federal Rule**
 - Convictions – reportable forever
 - Non-Convictions / Pending / Deferral – reportable 7 years from charge or file date, whichever is earlier
 - Never report sealed or expunged records
- **Client responsible for obtaining parent signature for minors**
 - RSI portal will not accept a second required signature

Negligent Hiring

CLAIMS WELL OVER \$1 MILLION

Negligent Hiring is “the failure of the employer to investigate a job applicant’s work experience, character, criminal history and other relevant data prior to the hiring of an employee.”

- ◆ Employers are responsible for what they do know and what they should have known about their employees.
- ◆ Employers lose approximately **79%** of negligent hiring cases with average claims over \$1 million, and climbing.

Negligent Hiring

CASES WELL OVER \$1 MILLION

- PBSA now reports that plaintiff lawyers are no longer simply asking whether your company ran a background check
- *They now want to know how “comprehensive” the background check was*
 - *There is an assumption that some type of background check was performed*

Comprehensive Criminal Screening

NATIONAL FEDERAL SEARCH

- RSI most Comprehensive criminal package
 - *Nationwide Criminal with Alias name search – 2200+ databases*
 - *inc. Sex Offender Registry*
 - *Patriot Search – OIG, OFAC, Terrorist watchlist, FBI/DEA/DHS most wanted, Medical exclusions list*
 - *Social Security trace – address history*
 - *County Criminal – 7 year address history*
 - *National Federal*
 - *Crimes brought by federal district courts. Drugs across state lines, medical fraud, financial fraud, etc.*

Key Takeaway



- Make sure the RSI team is aware of any special instructions you have for reporting.
- Consider State laws and company HR policies
- Schedule a call with RSI compliance to discuss
- Compliance@referenceservices.com



Thank you

sales@referenceservices.com