



Background Screening Best Practices Policies

By: Ji Kim, Director of Business Development, Shield Screening

As an employer, implementing a solid background screening policy is one of several tasks entrusted to Human Resources. A thorough background screening policy ensures your organization's compliance with the FCRA while onboarding and maintaining well qualified employees. This policy should outline the purpose, scope and procedures revolving around a pre-employment background screen.

While national database searches may provide a seemingly affordable, quick and convenient background screening solution, reliance on these searches alone risks becoming non-compliant under the current FCRA guidelines.

Section 613 of the FCRA requires that each organization must establish "reasonable procedures to assure maximum possible accuracy of the information concerning the individual about who the report relates." National databases alone do not meet these best practice requirements as they do not provide up to date, real time information.

Additionally, when a background screen contains public record information – such as court records – the FCRA dictates that you must inform the applicant when this public record information is reported. Alternatively, "strict procedures" must be created and maintained to ensure that the reported public record data is accurate and up to date. It is essential to ensure that your current background screening provider implements one or both of these procedures in order to remain compliant. Since national databases are not updated in real time, it is impossible for these searches alone to fulfill the "up to date" data provision under the FCRA.

Due to this, for best practice purposes it is recommended that criminal database searches not be the foundation of your background screening policy. Rather, these should be used as a supplement to a package revolving around county and statewide searches that provide current record information. Your CRA should ensure the packages available to your organization meet the industry standards required to guarantee your compliance with Section 613 of the FCRA.

Along with a reputable accredited background screening partner and best practice package, your organization will need to implement a detailed adverse action process to ensure you are compliant with FCRA regulations.

With the growing trend of pre-employment litigation targeting the adverse action phase of the screening process, it is important to implement a clear adverse action policy to limit your civil liability. Whether your adverse action process is handled in-house or through your background screening provider (CRA), here are some simple practices to mitigate your liability in the event litigation is brought against your company:

Verify that your pre-adverse action provides the applicant:

- A copy of their Consumer Report
- The Consumer Financial Protection Bureau's "A Summary of Your Rights Under the FCRA"
- A reasonable opportunity to dispute the contents of their Consumer Report before adverse action is taken.
 - A minimum of five business days is recommended.
- Contact information for your background screening provider/CRA

Effective 1/1/2018, California passed “ban the box” for most employers in the state. This new law requires additional information to be provided in the pre-adverse and adverse action notices. This requirement can be satisfied by outlining the specific record conviction(s) that disqualified an applicant from employment in the pre-adverse letter or by stating the conviction is highlighted in the provided report.

While reinvestigations during the dispute process are typically given 30 days to complete, it is best practice to conduct and complete these as soon as possible. Confirm with your CRA that they have a specific policy in place to start the dispute process as well as a logbook to record and track the progress of the investigation. Preferably, your CRA will provide real-time updates for ongoing disputes. When reinvestigations are completed, ensure that your CRA provides the applicant a written letter detailing the reinvestigation process, the results, the applicant’s rights, and what updates, if any, were made to their Consumer Report.

In the event that you proceed with adverse action, provide the applicant:

- Official notice of adverse action
- A copy of their Consumer Report
- CFPB’s “A Summary of Your Rights Under the FCRA”
- Contact information for your BSP

Maintaining thorough records is essential to mitigating your future liability. Your adverse action policy should include a detailed record of events. Any action taken during the adverse action phase should be documented, and any communication with the applicant or CRA should be similarly logged for the record. This should include any documentation the applicant may provide during the dispute process.

It is important to be mindful of the timeliness issue with post mail. Where allowed, electronic communication can greatly reduce the time involved in the adverse action process. Additionally, receipt of electronic communications is much easier to verify and record than by post mail.

Understandably, the potential for lawsuits related to the employment process are always a cause for concern. Moreover, the adverse action stage of the hiring process can be an easy target for litigation if you do not have a policy in place to protect your organization. However, implementing a few policies and procedures such as these can mitigate much of the risk your company may face in future litigation in this field.



ABOUT THE AUTHOR:

Ji Kim grew up in Tulsa, OK and moved to Syracuse, NY where she studied Economics and Psychology at Syracuse University. After graduation, Ji worked in various sales and marketing positions prior to settling into the background screening industry. With 10 + years of experience, she has developed an in-depth knowledge of the industry and spends much of her time consulting with companies regarding compliance, policies and best practices for their specific industry.

Currently, Ji is the Director of Business Development at Shield Screening, LLC, which is an NAPBS accredited firm in Tulsa, OK. She is responsible for company growth and strategic alliances while also directing the account management team. Thanks to Ji’s leadership, the company’s annual sales have grown by over 700% since she took over in 2013 and Shield prides itself as having some of the best customer support in the industry.