

CHAPTER 1

Hiring

Helpful Websites

www.boli.state.or.us
www.ftc.gov

PREEMPLOYMENT INQUIRIES

General Constraints

Oregon state and federal anti-discrimination laws limit inquiries that may be made of applicants for employment. Restrictions on the information an employer may obtain prior to an offer of employment apply to application forms, preemployment interviews and any other type of interrogation of persons seeking employment. Rules also apply when inquiries are made to persons other than the applicant and when inquiries are made by third parties on the employer's behalf. Employers should review job application forms and interview practices to ensure compliance with these laws.

Inquiries that elicit information about age, race, creed, color, national origin, sex, genetic information, marital status or disability may be evidence of discriminatory selection unless there is a legitimate employment-based need for the information. Therefore, such inquiries are suspect and are strong evidence of discrimination unless the employer can show that the information was not used for discriminatory purposes and that the information provided a valid criterion for employment. The Equal Employment Opportunity Commission (EEOC) has developed guidelines on appropriate pre-employment inquiries, in particular with respect to disability-related inquiries under the Americans with Disabilities Act (ADA).

The following guidelines are designed to assist management in interviewing prospective employees. These guidelines do not cover every possible question. The questions listed serve only as examples to assist employers in selecting applicants. Interview questions must not give the applicant the impression that a particular protected group will be favored or disfavored. Questions that convey this impression to a reasonable person should not be asked even if they are not made with the intent of unlawful discrimination.

Interviewers must cautiously avoid not only intentional discrimination, but also the possibility that their expressions and actions may be so interpreted. A good rule of thumb is to ask all applicants the same job-related questions. The last two sets of questions below are general, job-related inquiries around which to focus an interview.

	YOU CANNOT ASK	YOU CAN ASK
NAME	<p>“What is the origin of your name?” (Also, do not say “Kowalski—that’s Polish isn’t it?”)</p> <p>“Has your name been changed by marriage or court order?”</p>	<p>“Do any of the references listed on your application know you by a different name than your present name? If yes, what name?”</p> <p>“Were you known under any other name at any school listed on your application? If yes, what name?”</p> <p>Have you ever worked for this company or an affiliated company under a different name?”</p> <p>Have you ever worked for a competitor of this company under a different name? If yes, what name did you use?”</p>
NATIONAL ORIGIN	<p>“What is your national origin?”</p> <p>“Where were you born?”</p> <p>“What is your mother tongue?”</p> <p>“What is your parents’ national origin?”</p> <p>“What country do your ancestors come from?”</p> <p>“Do you read, write or speak Spanish?” (Or another foreign language) (Unless based on job requirements.)</p>	<p>No questions about national origin. (See the discussion of the Federal Immigration Reform and Control Act of 1986 in the section on Inquiries About Citizenship below, as well as in Chapter 4.)</p>
COLOR OR RACE	<p>Any questions concerning race or color of skin, eyes, hair, etc.</p>	<p>No questions about race or color.</p>
RELIGION OR CREED	<p>“What is your religion?”</p> <p>“What church do you go to?”</p> <p>“Who is your minister?”</p>	<p>No questions about religion or creed.</p>

	YOU CANNOT ASK	YOU CAN ASK
	“What are your religious holidays?”	
SEX	Any questions regarding the applicant’s sex.	No questions regarding the applicant’s sex.
GENETIC INFORMATION	Any questions regarding the applicant’s genetic information.	No questions regarding the applicant’s genetic information.
ADDRESS/ RESIDENCE	<p>“Do you own your home or rent?”</p> <p>“Do you live with your husband (or wife)?”</p> <p>“With whom do you live?”</p>	<p>“Can you be reached at this address? If not, would you care to leave another?”</p> <p>“Can you be reached at these telephone numbers? If not, would you care to leave another?”</p>
AGE	<p>Any questions that imply a preference for persons of any particular age group.</p> <p>“What is your birthdate?”</p>	<p>“If under 18, can you provide a birth certificate or other proof of your age?”</p> <p>“If under 18, can you provide a work permit?”</p>
HEIGHT AND WEIGHT	<p>“How tall are you?”</p> <p>“How much do you weigh?”</p>	No questions about height and weight.
MARITAL STATUS	<p>“Is it Mrs. or Miss?”</p> <p>“Are you married?”</p> <p>“Are you divorced?”</p> <p>“Are you separated?”</p> <p>“Are you engaged?”</p> <p>“Are you widowed?”</p> <p>“Are you single?”</p>	No questions concerning marital status.
FAMILY	“How many children do you have?”	“Do you have any commitments that would prevent you from working regular hours?”

	YOU CANNOT ASK	YOU CAN ASK
	<p>“Who takes care of your children while you are working?”</p> <p>“What does your husband think about you working outside the home?”</p> <p>“What does your husband (or wife) do?”</p> <p>“What is your husband’s (or wife’s) salary?”</p>	<p>“Can you work overtime, if needed?”</p> <p>“Are you now or do you expect to be engaged in any other business or employment? If yes, what kind of business or employment is it? How much time does it require?”</p>
PREGNANCY AND HEALTH	<p>“Are you pregnant?”</p> <p>“When was your most recent pregnancy terminated?”</p> <p>“Do you plan to become pregnant?”</p> <p>Any other questions about medical history concerning pregnancy and related matters.</p>	<p>“How long do you plan to stay on the job?”</p> <p>“Estimate the number of work days you missed in the last year.”</p> <p>“Would you be able to work the hours required for this job on a regular basis?”</p>
DISABILITY	<p>“Have you applied for or received worker’s compensation?”</p> <p>“Do you have any disabilities?”</p> <p>Under the Americans with Disabilities Act, you may not ask about the need for accommodation. See a more detailed discussion in the section on Disability below.</p>	<p>“Are you able to perform the tasks listed on the job description we shared with you, with or without accommodations?”</p> <p>“Would you describe how you would perform these tasks?”</p> <p>General questions about attendance, such as, “How many days of work did you miss at your prior job last year?”</p>

	YOU CANNOT ASK	YOU CAN ASK
	“How many days were you out on sick leave last year?”	
RELATIVES	Names and addresses of any relatives other than those already employed by the company or by a competitor.	<p>“Do you have any relatives employed by this company? If so, what are their names? What is their relationship to you?”</p> <p>“Do you have any relatives employed by a competitor of this company? If so, what are their names? What is their relationship to you?”</p>
EDUCATION	<p>“Who paid for your educational expenses while you were in school?”</p> <p>“Did you go to school on a scholarship?”</p> <p>“Do you still owe on loans taken out during school?”</p>	<p>“Are you presently enrolled in or do you intend to enroll in school?”</p> <p>“What subjects did you excel at in school?”</p> <p>“Did you participate in extra curricular activities?”</p> <p>“Why did you select _____ as your major?”</p> <p>“Did you work at an outside job while at school? Doing what? What did you like/dislike about your part-time job during school?”</p> <p>“Are you interested in continuing your education? Why? When? Where?”</p> <p>“Did your education prepare you for the job you are seeking with us? In what ways?”</p>
MILITARY SERVICE	<p>“Have you served in the army of a foreign country?”</p> <p>“What type of discharge did you receive from the U.S. military service?”</p>	<p>“Have you served in the U.S. military?”</p> <p>“Did your military service experience and training provide you with skills you could put to use in this job?”</p>

	YOU CANNOT ASK	YOU CAN ASK
	"Can you provide your discharge papers?"	"How did you feel about your stay in the Army (Navy, etc.)?"
EXPERIENCE, SKILLS AND ACTIVITIES		<p>"Do you have any special skill or knowledge?"</p> <p>"Are your skills recent?"</p> <p>"When did you last use a calculator (or any other machine or skill)?"</p> <p>"Do you enjoy being active in community affairs?"</p> <p>"Are there any activities which have provided you with experience, training or skills which you feel would be helpful to a position with us?"</p> <p>"How will your involvement in _____ (activities) affect your work here?"</p>
ORGANIZATIONS	For a list of all organizations, clubs, societies and lodges to which the applicant belongs.	About a specific organization membership, excluding any organization the name or character of which indicates the race, color, creed, sex, marital status, religion, national origin or ancestry of its members. Use the community activities question under "Experience" above: "Do you enjoy being active in community affairs?"
PHOTOGRAPHS	An applicant to submit a photograph either mandatorily or optionally before hiring.	For a photograph after hiring for identification purposes.
PRIOR EMPLOYMENT	"How did your husband (wife) (parents) (children) feel about your job with _____ company?"	<p>"Would you tell me about your last (or present) job?"</p> <p>"What were your major responsibilities?"</p>

	YOU CANNOT ASK	YOU CAN ASK
		<p>“Of all your responsibilities, which presented the most difficulty to you?”</p> <p>“What were some of the more challenging aspects of your last (or previous) job?”</p> <p>“How much and what type of training did you receive on your last (or present) job?”</p> <p>“What position did your immediate supervisor hold?”</p> <p>“What was his or her major responsibilities?”</p> <p>“Do you feel you were treated fairly at your last place of employment?”</p> <p>“What were your advancement options? Were they realized?”</p> <p>“In what ways do you feel your previous employment will help you in performing the job we have open?”</p> <p>“Describe a typical day on your last job.”</p> <p>“What were some of the problems you encountered in performing your last job?”</p> <p>“How did you overcome problems you faced there?”</p> <p>“Which problems frustrated you the most?”</p> <p>“Of these jobs indicated on your application, which did you enjoy the most and why?”</p> <p>“What were all the reasons for leaving your last job?”</p>

YOU CANNOT ASK		YOU CAN ASK
GENERAL	“Have you even declared personal bankruptcy?”	“Have you ever been discharged from any position? If so, for what reasons?”
		“What kind of work would you most like to do?”
		“What do you consider your strong points?”
		“What do you consider your weak points?”
		“What is your strongest personal quality or qualification?”
		“What is your weakest area?”
		“Are there certain activities you feel more confident of performing than others? What are they and why do you feel that way?”
		“Why do you feel you are qualified for this job?”
		“What are your specific goals in a job?”
		“What specific job factors are important to you? Why?”
		“What job factors would you like to avoid in a job? Why?”
		“What do you want from your next job that you are not getting from your present (previous) job?”
		“What is your real career objective? What have you done or intend to do outside your job to help you reach this objective?”

These guidelines do not prohibit an employer from making inquiries about gender, race, age, marital status, etc., after an individual is hired, as long as the records are not used in connection with discrimination. To guard against improper use or allegations of discrimination, personnel records should be maintained to limit access to information upon which unlawful employment actions could be based. For example, supervisors may not need access to forms upon which employees list their birth date, race or medical history.

As an exception to the preemployment inquiry guidelines noted above, affirmative action employers, such as federal contractors, may make inquiries about an applicant's gender and race. Such requests must be accompanied by an explanation of purpose. A sample employment application form with a tearoff sheet designed to support an affirmative action program is included as Appendix 1-A.

Reference Checks

Before hiring an applicant, employers should at least try to obtain information concerning the applicant's performance from prior employers. Employers should ask questions concerning job-specific work duties and behavior the applicant would have if hired. Additionally, employers should attempt to verify the applicant's reason for leaving and eligibility for rehire.

Oregon law makes an employer immune from civil liability if it discloses information about a former employee's job performance to a prospective employer of the former employee upon request of the prospective employer or of the former employee. An employer will only be subject to liability for the disclosure or its consequences if the employer provided information that was knowingly false, deliberately misleading, rendered with malicious purpose, or violated any civil right of the former employee protected by Oregon's employment discrimination statutes.

Nevertheless, employers may find it hard to obtain useful information from reference checks. Past employers are often unwilling to provide information about a former employee, and many follow a policy of only verifying employment dates, position held, and salary. A signed release from the employee may increase the likelihood of obtaining more substantive reference information from a former employer. However, employers with strict reference check policies may still refuse to offer more than the bare minimum. Even in a world of neutral references, employers should at least verify positions held, dates of employment, and final pay.

Strategy Tips

Reference Checks

- Include a release and waiver of defamation or other claims above the signature line on the application form (see Appendix 1-A)
- Request applicants sign a separate form authorizing former employers to answer specific questions about job performance and conduct (see Appendix 1-B)
- Send a form to former employers requesting job-related information (see Appendix 1-C)
- Request applicants provide copies of their performance evaluations from prior jobs

Inquiries About Citizenship

It is improper to ask whether an applicant is a United States citizen because such an inquiry might divulge the applicant's ancestry or national origin.

The Federal Immigration Reform and Control Act, however, makes it illegal to hire individuals not authorized to be employed in the United States. Under that Act, employers must ask new employees for documentation to verify their identity and employment eligibility. For further discussion of this Act and its requirements, see Chapter 5 on I-9 Verification.

It is therefore proper to ask if visa or immigration status prohibits employment, and to seek proof of status after hiring. An employer should ask:

“Are you prevented from becoming employed in the United States because of visa or immigration status?”

The employer may also note on the application that:

“Documentation proving legal right to work in the United States will be required upon hiring.”

English Language Requirements

Requiring that applicants speak fluently, whether English or another language, is permitted if this is required for effective job performance. Employers should avoid applying fluency requirements to broad ranges of dissimilar positions, and instead focus on proficiency requirements for each particular job. For example, an employee may need minimum proficiency in speaking English to qualify as an assembly line worker, but also need proficiency in written English for a position as manager at the same company. Additionally, “English-only rules” may only be used if needed to promote safe or efficient operation of an employer's business. Employers may only base employment decisions on an applicant's accent if effective oral communication in English is required to perform the job duties and a foreign accent materially interferes with the ability to communicate in English.

Inquiries About Arrests or Convictions

Although many employers may believe that arrest and conviction inquiries provide relevant and crucial information about a potential employee, employment discrimination agencies have historically discouraged or even prohibited such questions. Generally, questions about *arrest* records receive greater scrutiny than questions about *conviction* records. An arrest may not result in a conviction or plea, and the concept of “innocent until proven guilty” may cause arrest information to be viewed as unreliable or inaccurate. It is important to note, however, that convictions result not just from guilty findings after a trial, but also from “Alford pleads,” pleading “guilty” or pleading “no contest.” The end result is a conviction unless the conviction is expunged or the individual is pardoned.

Expunged Juvenile Criminal Records

Oregon law prohibits discrimination based on an individual's juvenile record that has been expunged. An employer should therefore not ask questions relating to an expunged juvenile criminal record.

Arrests

Oregon does not expressly prohibit discrimination on the basis of arrest records. However, the EEOC takes the position that because the use of arrest records as a bar to employment has a disparate impact on some protected classes, such records alone may not be used to routinely exclude persons from employment. Conduct that indicates unsuitability for a particular position, on the other hand, is a proper basis for exclusion. However, arrests alone are not reliable evidence that a person has actually committed a crime. The EEOC advises that exclusion is justified where it appears that the applicant or employee engaged in the conduct for which he was arrested and the conduct is job-related and relatively recent.

As a general rule, employers should avoid general inquiries about arrests that are not job-related, if they could disproportionately or adversely affect minorities. And, before taking any employment action based on an arrest record, an employer should (1) be able to show that the conduct alleged in the arrest record is related to the job at issue; and (2) evaluate whether the arrest record reflects the applicant's conduct by examining the surrounding circumstances, offering the applicant or employee an opportunity to explain, and, if he or she denies engaging in the conduct, making the follow-up inquiries necessary to evaluate his/her credibility.

Convictions

Oregon law does not specifically prohibit taking employment actions on the basis of criminal conviction records other than expunged juvenile records. However, the EEOC is alert to the fact that use of conviction information has the potential for discrimination based on certain protected classes. Employers are advised to consider such factors as the date of the conviction and available data on the extent to which persons convicted of that crime are likely to repeat it before taking any adverse action including failure to hire.

Inquiries concerning specific convictions that reasonably relate to fitness to perform the particular job applied for are not unlawful preemployment inquiries. However, the employer must advise the applicant or employee that an inquiry may be made into a criminal record. Such inquiries should be limited to convictions of relatively recent occurrence. A good rule of thumb, borrowed from credit inquiries, is seven years. For example, it is appropriate to ask:

“Have you been convicted of any criminal offense involving violence against others, taking money or property, or other dishonesty in the last seven years? If so, please explain.”

An employer who believes that it is impracticable to inquire about specific convictions may inquire generally about all convictions. However, such general inquiries should be accompanied by a disclaimer informing applicants that a conviction record will not necessarily bar them from employment.

In certain situations, other statutes will require an employer to make pre-employment inquiries relating to criminal convictions beyond those recommended based on EEOC concerns. Under the Federal Deposit Insurance Act, for example, banks may not hire individuals convicted of any crime involving dishonesty or breach of trust, even if the conviction is more than seven years old. Employers should seek legal counsel in such areas.

Strategy Tips

Practical Advice For Employers Using Conviction Records

- Consider only inquiring about convictions within the last ten years, unless justified by business necessity, or required by other laws or regulations covering your particular industry or business.
- Allow job applicants to explain convictions, or conduct a follow-up inquiry to evaluate candidate credibility. You can check criminal court files to verify if a candidate's explanation is complete and accurate.
- Analyze positions carefully to ensure that a criminal record inquiry is closely related to job skills, performance, and responsibilities.
- Document why inquiries into conviction records are essential to job duties/performance, and why this is a "business necessity."
- Inquire about convictions with all applicants, or all applicants for a particular position.
- The more recent the job-related arrest or conviction, the more likely it should disqualify an applicant.

Criminal Background Checks

Oregon law requires certain employers to run criminal background checks.

Positions With Access to Children

Public schools must and private schools may request criminal background information on individuals seeking employment, through the Department of Education. If the criminal records check indicates that the individual was convicted of a relevant crime, the school district must not and the private school may decide not to employ the individual. If the individual refuses to consent to a criminal records check or refuses to be fingerprinted, the school district must terminate the individual's employment or contract. If the individual knowingly made a false statement as to the conviction of a crime, the school district or private school may choose to employ the individual or terminate his employment (ORS 326.603).

Fingerprints may be required of the following:

1. An individual applying for initial licensing as a teacher, administrator or personnel specialist who has not submitted to a criminal records check within the previous year with the Teacher Standards and Practices Commission.
2. An individual who is applying for reinstatement of a license as a teacher, administrator or personnel specialist whose license has lapsed for at least three years.
3. An individual who is applying for initial licensing as a certified school nurse.
4. A person who is registering with the Teacher Standards and Practices Commission for student teaching, practicum or internship as a teacher, administrator or personnel specialist, if the person has not submitted to a criminal records check by the commission within the previous three years for student teaching, practicum or internship as a teacher, administrator or personnel specialist.

5. A person who is applying for initial issuance of a registration as a public charter school teacher or administrator.
6. A school district or private school contractor, whether part-time or full-time, or an employee of a school district contractor, whether part-time or full-time, who has direct, unsupervised contact with students, as determined by the school district or private school.
7. An individual newly hired, whether part-time or full-time, by a school district or private school in a capacity not described in (1) through (5) above.
8. An individual who is a community college faculty member providing instruction at a kindergarten through grade 12 school site during the regular school day.
9. A person who is an employee of a public charter school.

Individuals described in (6), (7), (8) or (9) above may not be checked if the individual or the individual's employer was checked in one school district or private school and is currently seeking work in another school district or private school, unless the individual lived outside the state during the period between the two periods of time working in the school district or private school (ORS 181.539).

An individual described in (6), (7) or (9) may not be required to submit to fingerprinting until he has been offered employment or a contract.

Child care agencies may hire only persons (subject individuals) who have been enrolled in the Central Background Registry, established and maintained by the Child Care Division of the Employment Department. If an individual has been convicted of a crime relevant to his working with children or made a false statement as to their conviction of a crime, the Division will determine whether the individual may be enrolled in the registry. Individuals may be enrolled only if they have no criminal or child protective services history or if they have dealt with the issues and provided evidence of suitability for the registry. Individuals who refuse to consent to a criminal record check or refuse to be fingerprinted will not be enrolled in the registry (ORS 657A.030).

Subject individuals, for purposes of the Central Background Registry are individuals who apply to be:

1. The operator or an employee of a child care or treatment program.
2. The operator or an employee of an Oregon pre kindergarten program or parent-as-teacher program.
3. The operator or an employee of a federal Head Start program, regulated by the United States Department of Health and Human Services.
4. An individual in a child care facility who may have unsupervised contact with children, as identified by the Division.
5. A contractor or an employee of a contractor who provides early childhood special education or early intervention services.
6. A child care provider who is required to be enrolled in the Central Background Registry by any state agency.
7. A contractor, employee or volunteer of a metropolitan service district who may have unsupervised contact with children.

8. A provider of respite services for parents pursuant to a properly executed power of attorney who is providing respite services as a volunteer with a private agency or organization that facilitates the provision of such respite services.

Caregivers

Certain community mental health programs, community developmental disabilities programs, or individuals or businesses or organizations, whether public, private, for-profit, nonprofit or voluntary, that provide care, including a business or organization that licenses, certifies or registers others to provide care, must conduct a background check through the Department of Human Services on individuals that provide care, treatment, education, training, instruction, supervision, placement services, recreation or support to children, the elderly or persons with disabilities. Individuals that are determined to be unfit may not be employed, licensed, certified or registered. Individuals may, however, be hired on a probationary basis, pending the results of a criminal background check. Refusing to consent to a criminal background check will result in a denial or termination of employment (ORS 181.537).

Inquiries About HIV and Other Infectious Diseases

HIV status is a protected disability under Oregon disability discrimination law and the Americans with Disabilities Act Amendments Act (ADA). Therefore, employers should not inquire whether an applicant (or current employee) has AIDS or is HIV positive. Furthermore, although it is proper to require a physical examination of all applicant-finalists in a particular job category after an offer of employment is made, the discovery that someone is HIV positive or has AIDS is not grounds for withdrawing an offer unless it substantially interferes with the ability to do the job or poses a direct threat. Additionally, an employee with AIDS who is otherwise qualified to work may be entitled to accommodation, like any other disabled worker.

For a more in depth discussion of AIDS in the workplace, see Chapter 2 on Health Issues.

Inquiries About Disability

The ADA and Oregon disability discrimination law protects qualified disabled individuals from discrimination by prohibiting any preemployment inquiries about a disability. The ADA applies to employers with 15 or more employees and the Oregon statute applies to employers with six or more employees.

Under the ADA, employers may not seek any information whether a job applicant has a disability, or about the nature or severity of a disability, either on application forms, during job interviews, or in background or reference checks. Employers may ask applicants questions about their ability to perform specific job functions, tasks or duties, as long as these questions are not phrased in terms of a disability and are asked uniformly of all candidates. Interviewers may also ask all applicants to describe or demonstrate how they will perform a job, with or without accommodation.

General questions about attendance are permissible, but not inquiries about use of sick leave or worker's compensation claims. Additionally, employers may not make any medical inquiry or conduct any medical examination prior to making a conditional offer of employment. Employers may make job offers contingent on the results of a medical examination or on the responses to medical inquiries if the examination or inquiry is required of all entering employees in the same job category, regardless of disability.

An employer may withdraw a contingent job offer based on the results of a medical examination only if the applicant cannot perform essential job functions (even with reasonable accommodation) or would pose a direct threat (i.e., a significant risk of substantial harm) to the health or safety of the applicant or to others. Employers who wish to require medical examinations of applicants should consult with legal counsel because the ADA imposes significant limitations on the use of medical examinations.

Properly conducted medical examinations or inquiries should be job-related or consistent with business necessity. If certain criteria of the exams or inquiries screen out employees with disabilities, the exclusionary criteria must be job-related and consistent with the needs of the employer's operations.

Any information obtained through a physical examination or inquiry regarding the medical condition or health history of an applicant must be collected and maintained on separate forms and in separate medical files. Employers must treat this information as a confidential medical record, except under specified circumstances. For example, the employer may inform an employee's supervisors or managers regarding necessary accommodations and necessary restrictions on the worker's duties. An employer can also inform first aid and safety personnel, when appropriate, if the disability might require emergency treatment.

Credit History

Oregon law prohibits employers from obtaining or using for employment purposes information contained in the credit history of an applicant for employment or an employee. The law also prohibits employers from refusing to hire, discharging, demoting, suspending, retaliating or otherwise discriminating against an applicant or an employee with regard to promotion, compensation or the terms, conditions or privileges of employment based on information in the credit history.

There are four exceptions to the prohibition:

1. Bank and credit union employers
2. Employers that are required by state and federal law to use credit histories for employment purposes
3. Public safety officer employers
4. Employers that can demonstrate that credit information is "substantially job-related" and that provide written disclosure of the reasons for the use of the credit check

The Oregon Bureau of Labor and Industries (BOLI) has not adopted rules defining what is "substantially job related," and no case law has interpreted the term. Employers that intend to rely on credit histories in making employment decisions should proceed with caution and consult legal counsel to determine whether they fit into one of the statute's exceptions.

Employers who do fit into one of the enumerated exceptions and who use the services of a consumer reporting agency to obtain credit information on applicants and employees must also comply with the Fair Credit Reporting Act (FCRA), discussed in detail below, before obtaining a credit report on an applicant or current employee.

Furthermore, 11 U.S.C. § 525(b) of the Bankruptcy Code makes it illegal for a private employer to fire or discriminate against an individual because he or she filed bankruptcy, was "associated" with an individual who filed bankruptcy, or was insolvent before or during filing of the bankruptcy.

Additionally, a private employer is prohibited from refusing to hire or firing an individual because he or she has not paid a debt that was discharged in bankruptcy.

FAIR CREDIT REPORTING ACT

Any employer who engages a consumer reporting agency to obtain a consumer report or any investigative consumer report on an employee or applicant must comply with the federal Fair Credit Reporting Act (FCRA). The FCRA does not apply if the employer itself checks employment references or contacts government agencies (such as the Oregon State Police) to obtain information in public records. The FCRA is only implicated when the employer uses a third party “consumer reporting agency” to check address, references, education or conviction records, credit histories or the validity of social security numbers. Failure to comply with the FCRA when using a consumer reporting agency engenders a significant risk of liability to the employer.

The FCRA definition of “consumer reporting agency” is broad enough to include almost any person or organization engaged by an employer to obtain information about an applicant or employee. The definition includes any person or agency that engages in the practice of assembling or evaluating consumer credit information or other consumer information for the purposes of furnishing consumer reports to third parties. This is because a “consumer report” is defined as a written or verbal communication by a consumer reporting agency concerning a person’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living that is used to determine a person’s eligibility for credit or insurance, for employment purposes, or any other purposes under FCRA’s Section 604. An “investigative consumer report” is a report that includes information about a person’s character, reputation, personal characteristics or mode of living based on interviews with neighbors, friends, associates, or others with whom he/she is acquainted or who may have knowledge regarding such information. Thus, employers who use vendors to obtain such information must comply with the FCRA requirements detailed below.

FCRA Requirements

Employers must make two disclosures under the FCRA: one to the applicant / employee and one to the consumer reporting agency providing the report. The disclosure to the employee / applicant must be a clear, stand alone document and may not be part of the job application. To the employee / applicant, the employer must: (1) make a clear and conspicuous written disclosure that a consumer report may be obtained for purposes of considering the applicant for employment; and (2) obtain that employee / applicant’s written consent to obtaining the report.

If the employer decides to procure an investigative consumer report, it must also provide the consumer with: (1) written notice that the report may include information about the applicant’s character, reputation, personal characteristics and mode of living, as applicable; (2) written notice of the applicant’s right to a disclosure of the nature and scope of the investigation requested; and (3) a summary of the applicant’s rights under the FCRA. (See example of an authorization and disclosure form in Appendix 1-D.) Copies of sample FCRA rights summaries are available from the FTC website at <http://www.ftc.gov/os/statutes/2-fedreg.htm>. Always check the FTC website for the most current summary of the FCRA rights.

If the applicant / employee requests disclosure of the nature and scope of the investigation, a written description of the investigation must be mailed or delivered within five days after receiving the request, or after first requesting the report, whichever is later.

Before obtaining the report from the consumer reporting agency, the employer must certify to the consumer reporting agency providing the report that: (1) appropriate disclosure has been made to the applicant / employee; (2) the employer received written consent from the applicant / employee; (3) the report will not be used illegally; and (4) the employer will abide by any other legal requirements before taking adverse action based on the report. The consumer reporting agency usually prepares this form and requires the employer to complete and return it.

Note:

A consumer reporting agency may not provide consumer reports containing medical information unless the applicant or employee expressly consents to release of medical information in addition to authorizing the consumer report. Employers who wish to gather such medical information should consult with counsel before obtaining such information, as gathering and using medical information before the last stage of the hiring process could violate the disability discrimination laws.

Adverse Action Based on the Report

The FCRA also prescribes limitations on employers taking any adverse action against the employee or applicant based in whole or in part on the information provided in the report. Before taking any adverse action, the employer must provide the applicant or employee with the following information:

- Copy of the report;
- Name, address and toll-free number of the consumer reporting agency, with a statement that the agency did not make and cannot explain the decision;
- Description of the employee's / applicant's rights under the Acts (the consumer reporting agency usually provides this description with the report); and
- Reasonable opportunity to respond to any information in the report under dispute by the employee / applicant.

If the employer takes an adverse action, it must also provide the applicant / employee with: (1) a notice of the contemplated action (e.g., an adverse decision regarding hiring, promotion, reassignment or retention); and (2) later notice of the actual "adverse action." The individual must also be informed that she or he has the right to obtain a free report from the consumer reporting agency within 60 days and to dispute the accuracy and completeness of the information with the agency. Samples of both types of adverse action letters are provided in Appendices 1-E and 1-F.

If an employer using consumer reporting information negligently or willfully fails to comply with any requirement imposed by the FCRA, the employer may be liable to the employee / applicant for actual damages, costs and attorneys' fees (or nominal damages up to \$1,000 if no actual damages exist). In the case of willful noncompliance, punitive damages may be awarded. Potential liability for noncompliance with the FCRA can be substantially reduced if the employer can show that at the time of the violation, it maintained reasonable procedures to assure compliance.

CHILD SUPPORT ENFORCEMENT INFORMATION – NEW HIRE REPORTING

As part of a nationwide effort to collect child support payments, the State of Oregon requires employers to report the hiring of new employees to the Child Support Division of the Oregon Department of Justice. All employers are required to report all newly-hired employees within 20 days of hiring. Newly hired employees include any employee who is required to fill out a W-4 form and will be earning wages, as well as any returning employee who has been absent for more than 45 days. In the case of an employer transmitting reports magnetically or electronically, the employer shall report newly-hired employees each month, not less than 12 days nor more than 16 business days apart.

Each report must include Employee Information (name, address, and social security number) and Employer Information (business name, business address, and Federal Employer Identification Number (FEIN)).

Note:

Employers may obtain more information on new hire reporting at

<http://dcs.state.or.us/employers/>;

or by email to emplnewhire.help@doj.state.or.us

APPENDIX 1-A

Application for Employment

LAST NAME		FIRST NAME		MIDDLE	WE ARE AN AFFIRMATIVE ACTION EMPLOYER. TO ASSIST US WE REQUEST THAT YOU PROVIDE THE FOLLOWING INFORMATION, WHICH WILL NOT BE USED IN EVALUATING YOUR APPLICATION. (COMPLETION OF THIS SECTION IS OPTIONAL)	
PHONE	SOCIAL SECURITY NO.	TODAY'S DATE	DATE AVAILABLE FOR WORK			
POSITION APPLIED FOR		SALARY DESIRED				
PRESENT ADDRESS		CITY	STATE	ZIP	SEX	MALE FEMALE
FORMER ADDRESS		CITY	STATE	ZIP	FOR COMPANY USE ONLY	
FORMER ADDRESS		CITY	STATE	ZIP		
IN EMERGENCY, NOTIFY		EMERGENCY PHONE			ETHNIC ORIGIN HISPANIC OR LATINO WHITE BLACK OR AFRICAN AMERICAN NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER ASIAN AMERICAN INDIAN OR ALASKA NATIVE TWO OR MORE RACES	
ARE YOU OVER THE AGE OF 18? YES NO		WILL VISA OR IMMIGRATION STATUS PREVENT LAWFUL EMPLOYMENT? YES NO				
					JOB GROUP	

Note:

For the printed version of this resource, this page is an optional tear-off slip for use by employers who are federal contractors who are required to maintain affirmative action plans. It should either be printed on carbonless paper overlapping the top portion of the first page of the application or as a separate form. The tear-off slip must be separated immediately from the basic application form before anyone involved in the hiring decision sees the application. Note that separate invitations to voluntarily self-identify as disabled or a veteran must be extended by affirmative action employers, after extension of a conditional job offer.

LAST NAME		FIRST NAME		MIDDLE	
PHONE	SOCIAL SECURITY NO.	TODAY'S DATE		DATE AVAILABLE FOR WORK	
POSITION APPLIED FOR		SALARY DESIRED			
PRESENT ADDRESS		CITY	STATE	ZIP	
FORMER ADDRESS		CITY	STATE	ZIP	
FORMER ADDRESS		CITY	STATE	ZIP	
IN EMERGENCY, NOTIFY		EMERGENCY PHONE			
ARE YOU OVER THE AGE OF 18? YES NO		WILL VISA OR IMMIGRATION STATUS PREVENT LAWFUL EMPLOYMENT? YES NO			

EDUCATION RECORD

NAME OF SCHOOL	LOCATION	YEARS ATTENDED	DID YOU GRADUATE?	YEAR LEFT SCHOOL	MAJOR / MINORS	DEGREE RECEIVED
HIGH SCHOOL						
COLLEGE						
COLLEGE						
OTHER						
OTHER						

EMPLOYMENT RECORD

EMPLOYER	EMPLOYMENT DATES	SALARY	POSITION	ELIGIBLE FOR REHIRE?
NAME	FROM	STARTING	STARTING	YES
ADDRESS	TO	ENDING	ENDING	NO
SUPERVISOR	REASON FOR LEAVING			
NAME	FROM	STARTING	STARTING	YES
ADDRESS	TO	ENDING	ENDING	NO
SUPERVISOR	REASON FOR LEAVING			
NAME	FROM	STARTING	STARTING	YES
ADDRESS	TO	ENDING	ENDING	NO
SUPERVISOR	REASON FOR LEAVING			
LIST PERIODS OF UNEMPLOYMENT OF MORE THAN 30 DAYS, AND EXPLAIN				
THIS COMPANY IS AN EQUAL OPPORTUNITY EMPLOYER AND DOES NOT UNLAWFULLY DISCRIMINATE ON THE BASIS OF RACE, SEX, AGE, COLOR, RELIGION, NATIONAL ORIGIN, GENETIC INFORMATION, MARITAL STATUS, VETERAN STATUS, DISABILITY STATUS, OR ANY OTHER CHARACTERISTIC PROTECTED BY FEDERAL, STATE OR LOCAL LAW. PLEASE LET US KNOW IF YOU NEED ACCOMMODATIONS IN ORDER TO PARTICIPATE IN THE APPLICATION PROCESS.				

PERSONAL DATA

WHO REFERRED YOU TO US?
HAVE YOU BEEN CONVICTED OR PLEADED NO CONTEST TO ANY CRIMINAL OFFENSE? [NOTE: CONSIDER EDITING THIS QUESTION TO ONLY INQUIRE ABOUT CONVICTIONS RELATING REASONABLY TO JOB DUTIES, CONVICTIONS OCCURRING WITHIN THE LAST TEN YEARS, OR SPECIFIED CONVICTIONS THE EMPLOYER MUST CHECK UNDER INDUSTRY SPECIFIC LAWS OR REGULATIONS.]
IF YES, INDICATE NATURE OF OFFENSE, DATE, COURT & DISPOSITION. (A CONVICTION WILL NOT NECESSARILY DISQUALIFY AN APPLICANT FROM EMPLOYMENT.)
ARE YOU ABLE TO PERFORM, WITH OR WITHOUT ACCOMMODATION, THE ESSENTIAL DUTIES OF THE JOB FOR WHICH YOU ARE APPLYING?

U.S. MILITARY SERVICE

BRANCH OF SERVICE	DATE IN	DATE OUT	WHERE SERVED	SPECIALTY
-------------------	---------	----------	--------------	-----------

EXPERIENCE

_____ ADDING MACHINES	_____ BOOKKEEPING	_____ TYPIST	_____ WPM
_____ SUPERVISION	_____ STATISTICAL CLERK	_____ DICTATING EQUIPMENT	
_____ PROGRAMMING	_____ RECEPTIONIST/SWITCHBOARD	_____ WORD PROCESSING (SOFTWARE)	
	_____ LIBRARY	_____ COMPUTER (TYPES)	
_____ OFFICE MACHINES (SPECIFY)			
INDICATE ANY OTHER SKILLS RELATED TO THE POSITION YOU ARE SEEKING			

I CERTIFY THAT THE INFORMATION GIVEN ABOVE IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE. I UNDERSTAND THAT IF I AM EMPLOYED, DISCOVERY THAT I GAVE FALSE OR INCOMPLETE INFORMATION DURING THE APPLICATION PROCESS MAY RESULT IN IMMEDIATE DISMISSAL.

I FURTHER CERTIFY THAT I AM NOT ENGAGED IN ANY OUTSIDE ACTIVITY OR BUSINESS THAT COULD BE CONSIDERED IN CONFLICT WITH [EMPLOYER'S] INTEREST OR THOSE OF ITS CUSTOMERS, NOR WILL I BECOME ENGAGED IN SUCH ACTIVITY OR BUSINESS IF EMPLOYED.

I AUTHORIZE [EMPLOYER] TO SOLICIT INFORMATION REGARDING MY CHARACTER, GENERAL REPUTATION, PREVIOUS EMPLOYMENT AND SIMILAR BACKGROUND INFORMATION, AND TO CONTACT ANY AND ALL FORMER EMPLOYERS AND REFERENCES I HAVE GIVEN ON MY APPLICATION. I HEREBY RELEASE ANYONE CONNECTED WITH ANY SUCH REQUEST FOR INFORMATION FROM ALL CLAIMS, LIABILITIES AND DAMAGES FOR ANY REASON ARISING OUT OF THE FURNISHING OF SUCH INFORMATION. IF EMPLOYED, I RELEASE [EMPLOYER] FROM ANY LIABILITY FOR FUTURE REFERENCES IT MAY PROVIDE REGARDING MY WORK HISTORY WITH [EMPLOYER].

IN CONSIDERATION OF MY EMPLOYMENT, I AGREE THAT MY EMPLOYMENT WILL BE AT-WILL AND CAN BE TERMINATED WITH OR WITHOUT CAUSE, AND WITH OR WITHOUT NOTICE AT ANY TIME, AT THE OPTION OF EITHER [EMPLOYER] OR MYSELF. I UNDERSTAND THAT NO REPRESENTATIVE OF [EMPLOYER], HAS ANY AUTHORITY TO ENTER INTO ANY AGREEMENT FOR EMPLOYMENT FOR ANY SPECIFIED PERIOD OF TIME, OR TO MAKE ANY AGREEMENT CONTRARY TO AT-WILL EMPLOYMENT.

IF EMPLOYED, I FURTHER AGREE THAT IF [EMPLOYER] ADVANCES ANY PAID LEAVE BEFORE IT HAS BEEN ACCRUED, OR ADVANCES ANY WAGES OR LOANS ME ANY MONEY DURING THE COURSE OF MY EMPLOYMENT, OR IF I LOSE, DAMAGE, OR FAIL TO RETURN ANY [EMPLOYER] PROPERTY, [EMPLOYER] IS AUTHORIZED TO DEDUCT FROM MY WAGES SUFFICIENT FUNDS TO REPAY SUCH LOANS OR ADVANCES OR TO REPLACE ITS PROPERTY.

SIGNATURE

APPLICANT

DATE

APPENDIX 1-B

Reference Information Release

TO: _____

DATE: _____

ATTENTION: Personnel Records Custodian

The person identified has recently applied for a position with us, has supplied the following information about prior employment with your organization and has signed below authorizing this employment verification request. Please take a moment to respond to our inquiry. A self addressed envelope is enclosed for your convenience.

Name of Applicant

Social Security No.

Dates of Employment

Position Last Held

Final Rate of Pay/Base

Employee's Stated Reason for Leaving

Date

Signature

PLEASE SUPPLY THE FOLLOWING INFORMATION:

Is the above information correct? Yes _____ No _____.

If not, please insert your corrections above.

Performance rating on last review _____

Attendance Record _____

Your further comments concerning this individual would be appreciated.

Date

Signature

Title

AUTHORIZATION AND RELEASE:

I hereby authorize [Potential Employer] to solicit and receive all information relating to my employment with any previous employer and to verify the accuracy of the information on the attached form. I also hereby authorize any previous employer to provide information about me to [Potential Employer] and I release any previous employer and [Potential Employer] and all of their respective affiliates, parent corporations, related entities, officers, directors, agents, employees, insurers and all persons acting on their behalf from any and all claims and liabilities of any nature (including costs and attorneys' fees) arising from such inquiry and investigation or the supplying of information for such investigation.

Date

Signature of Applicant

APPENDIX 1-C

Reference Check Questions

Name of Applicant _____

Name of Reference _____ Position Held _____

Company _____

1. What dates was the applicant employed by your company? _____ to _____

2. What was applicant's position with you? _____

What was the applicant's last job title? _____

3. What were the applicant's responsibilities? _____

4. Did applicant advance while employed with you? _____ Yes _____ No

If yes, when and in what capacity? _____

If no, do you feel applicant could have advanced and to what level? _____ Yes _____ No

5. What areas do you feel were this applicant's strengths? _____

6. What areas do you feel we could help the applicant develop? _____

7. Under what circumstances did applicant leave your employ? _____

8. Is applicant eligible for rehire? _____ Yes _____ No

If not why? _____

9. How would you rate applicant's work performance?

Below average _____ Average _____ Above average _____ Excellent _____

What was the rating on the applicant's last performance appraisal? _____

10. How would you rate applicant's absences and tardiness?

Poor _____ Fair _____ Good _____ Excellent _____

11. How did applicant get along with coworkers/supervisors/customers? _____

12. How would you rate the applicant's safety consciousness? _____

13. Is there anything else you feel we should know about the applicant (his/her work performance, etc.)?

What was your experience with the applicant in _____ [list position's performance criteria]?

Signature _____ Date _____

APPENDIX 1-D

Disclosure and Authorization of Consumer Report

DISCLOSURE AND AUTHORIZATION OF CONSUMER REPORT

[Insert name of employer] may request a “consumer report” or an “investigative consumer report” from / through [insert name of consumer reporting agency], for the purpose of evaluating you for employment, and / or, if hired, for promotion, reassignment, and retention or other employment related purposes. A “consumer report” is based on public records sources; an “investigative consumer report” would also include personal interviews with your neighbors, friends or associates.

A report may contain information on any criminal convictions, verify your residence addresses, education record, and / or social security number, or make inquiries about your character, general reputation, personal characteristics and / or prior employment.

Under the Fair Credit Reporting Act (“FCRA”), if information in such a report is relied on to make an adverse employment decision, before the decision is final, you will be provided with a copy of the report along with a description of your rights under the FCRA.

If an investigative consumer report is requested, 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 investigation we 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, whichever is later in time.

AUTHORIZATION

I authorize [insert name of employer] to obtain “consumer reports” (including “investigative consumer reports”) about me for the purposes of evaluating me for employment, promotion, reassignment, retention or other employment related purpose.

[DELETE IF NO CREDIT REPORT] [I expressly understand that as it is substantially related to the job for which I applied or am being considered, that I am giving my authorization for [insert name of employer] to also obtain a credit report through [insert name of consumer reporting agency.]

Signature

Print Name

Date

It is important that all blank spaces be completed appropriately

Print Full Name _____
(First) (Full Middle Name) (Last)

Provide any other name(s) used in the past 10 years and include dates of name changes:

Social Security Number:

Date of birth: _____ Place of birth: _____

Complete addresses of all physical residence(s) for the past ten years:
(Use back page for additional addresses)

Address: _____ City, State, Zip: _____

From: _____ To: _____

Address: _____ City, State, Zip: _____

From: _____ To: _____

Address: _____ City, State, Zip: _____

From: _____ To: _____

Address: _____ City, State, Zip: _____

From: _____ To: _____

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.ftc.gov/credit or write to: Consumer Response Center, Room 130-A, Federal Trade Commission, 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.**

- **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; or
 - you are unemployed but expect to apply for employment within 60 days.

In addition, by September 2005 all consumers will be entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.ftc.gov/credit 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.ftc.gov/credit 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.ftc.gov/credit.
- **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 1-888-5-OPTOUT (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.ftc.gov/credit.

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. Federal enforcers are:

TYPE OF BUSINESS:	CONTACT:
Consumer reporting agencies, creditors and others not listed below	Federal Trade Commission: Consumer Response Center - FCRA Washington, DC 20580 1-877-382-4357
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 Complaints 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 703-519-4600
State-chartered banks that are not members of the Federal Reserve System	Federal Deposit Insurance Corporation Consumer Response Center, 2345 Grand Avenue, Suite 100 Kansas City, Missouri 64108-2638 1-877-275-3342
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 1-E

Notice Of Contemplated Adverse Action

[Insert date]

«FirstName» «LastName»

«Address1»

«City», «State» «PostalCode»

Dear Applicant:

As you authorized during your employment process with *Company Name*, [Consumer Reporting Agency] has recently completed a pre-employment background check as part of *Company Name* employee selection process. We are providing you a copy of the report which we received from [Consumer Reporting Agency] and informing you that there is information in this report which, if accurate, would prevent us from offering you employment at this time. A copy of the report is enclosed. A summary of your rights under the Fair Credit Reporting Act is also enclosed.

Please understand that [Consumer Reporting Agency] does not make *Company Name's* employment decisions and is not able to provide you specific reasons why *Company Name* may not be offering you employment at this time. If you want that information, contact the undersigned.

If, after reviewing the enclosed report, you believe that the information contained in the report is inaccurate, under the law, you have the right to dispute, directly with [Consumer Reporting Agency] any information in this report. [Consumer Reporting Agency] will investigate the disputed information free of charge and either report the current status of the disputed information or delete the item(s) within 30 days of receiving your dispute. [Consumer Reporting Agency] will provide information of the dispute to any person who provides the information you dispute within 5 business days of receiving your notice of dispute. If the information is found to be inaccurate or incomplete or cannot be verified, [Consumer Reporting Agency] will promptly delete that item or modify it.

You have the right to obtain an additional free copy of [Consumer Reporting Agency's] report if you request it from [Consumer Reporting Agency] within 60 days of when you receive this notice.

If you wish to receive this additional free copy or if you wish to dispute the accuracy of the report, you may contact [Consumer Reporting Agency] at: [insert name Consumer Reporting Agency, address, toll free phone number, fax number].

Sincerely,

[NAME OF EMPLOYER]

[insert job title of person signing on behalf of company]

Enclosures: Consumer Report; Summary of Rights Under the Fair Credit Reporting Act

APPENDIX 1-F

Notice Of Adverse Action

[Insert date]

«FirstName» «LastName»

«Address1»

«City», «State» «PostalCode»

Dear Applicant:

As we stated in our letter to you dated [first day], *Company Name* has recently completed a background check as part of our employee selection process. That report contained information that fell outside our hiring guidelines. A copy of that report, and a summary of your rights under the Fair Credit Reporting Act, along with contact information for the [Consumer Reporting Agency] office that prepared that report, were included in that letter.

The purpose of this letter is to confirm that as a result of the information contained in this report, *Company Name* will not be offering you employment at this time. [Consumer Reporting Agency] did not make this decision and is unable to provide you the specific reasons why this action was taken. If you want to discuss our decision, please contact the undersigned.

Under the Fair Credit Reporting Act, you have the right to dispute, directly with the [Consumer Reporting Agency] any information in its report. [Consumer Reporting Agency] will reinvestigate the disputed information free of charge and either report the current status of the disputed information or delete the item(s) within 30 days of receiving your dispute. [Consumer Reporting Agency] will provide notification of the dispute to any persons who provided the information you disputed within 5 business days of receiving your notice of dispute. If the information is found to be inaccurate or incomplete or cannot be verified, [Consumer Reporting Agency] will promptly delete that item or modify it.

We are reminding you again that you have the right to obtain an additional free copy of the [Consumer Reporting Agency's] report if you request it from [Consumer Reporting Agency] within 60 days of when you received your first notice.

Again, if you wish to dispute the accuracy of the report, you may contact [Consumer Reporting Agency] at: [insert name of Consumer Reporting Agency, address, toll free phone number, and fax number].

Sincerely,

[NAME OF EMPLOYER]

[insert job title of person signing on behalf of company]