



Obtaining Credit Checks on Applicants and Employees

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School districts, for one reason or another, may want to run credit checks on current or prospective employees. Questions often arise about when and how a district can run a credit check. This article will help answer questions about running credit checks on school district employees.

Fair Credit Reporting Act

Access to credit reports is determined by the federal Fair Credit Reporting Act (FCRA). A credit report, also known as a *consumer report*, is any written, oral, or other communication of any information by a consumer reporting agency about an individual's credit worthiness, credit standing, credit capacity, personal character, or general reputation that is used as a factor for establishing the individual's eligibility for credit, insurance, or employment. 15 U.S.C. § 1681a(d)(1). A *consumer reporting agency* is a person or entity that regularly engages in the practice of furnishing consumer reports to third parties. 15 U.S.C. § 1681a(f). References or criminal history record information that a school district obtains directly from law enforcement or criminal justice agencies, individuals, or employers are not covered by the FCRA because the district is not acting as a consumer reporting agency when it obtains the information.

The FCRA provides that an employer may request a credit report from a consumer reporting agency for purposes of deciding whether to hire a job applicant. An employer may also request a credit report for purposes of promotion, reassignment, or retention of a current employee. 15 U.S.C. § 1681a(h).

The FCRA sets forth specific procedures for obtaining a credit report for employment purposes. An employer must provide a written disclosure to the applicant or employee stating that a credit report may be obtained for employment purposes. The individual must authorize the disclosure of the credit report to the employer. 15 U.S.C. § 1681b(b)(2)(A). If an individual applies for employment by mail, telephone, computer, or other similar means, the employer may provide the required disclosure by oral, written, or electronic means and the consent from the individual may be oral, written, or electronic. 15 U.S.C. § 1681b(b)(2)(B). Before an employer takes adverse action, such as deciding not to hire an applicant or to terminate a current employee, based on information in a credit report, the employer must provide the applicant or employee with a copy of the report and a written notice of the individual's rights under the FCRA. 15 U.S.C. § 1681b(3)(A).

For additional information: *Privacy and Security*, Federal Trade Commission, <http://business.ftc.gov/privacy-and-security>.

Nondiscrimination Laws

Although the FCRA authorizes employers to obtain credit reports, employers should not use that authority in a way that would violate Title VII or any of the other nondiscrimination laws. All similarly-situated applicants and employees should be treated the same with respect to the decision to request a credit report and with respect to what information is considered from a credit report in making employment decisions. A school district should not make distinctions based on such factors as race, age, gender, marital or family status, ethnicity, or national origin. For example, an employer would violate Title VII if it requests credit reports only for female applicants or racial minorities. U.S. Equal Emp't Opportunity Comm., *Title VII: Employer Use of Credit Checks* (Mar. 9, 2010) available at www.eeoc.gov/eeoc/foia/letters/2010/titlevii-employer-creditck.html.

Moreover, school districts should be able to articulate job-related reasons for requesting credit reports for employment purposes. A school district may wish to ensure that its employees are of sound moral character and do not have poor financial histories. However, the Equal Employment Opportunity Commission (EEOC) takes the position that using credit checks for this reason could have a disparate impact on minority applicants and employees.

The EEOC has noted that credit checks are appropriate for certain positions, such as where an employee handles large amounts of cash. *Title VII: Employer Use of Credit Checks* (Mar. 9, 2010) available at www.eeoc.gov/eeoc/foia/letters/2010/titlevii-employer-creditck.html; see also *EEOC v. Kaplan Higher Educ. Corp.*, 748 F.3d 749 (6th Cir. 2014) (upholding Kaplan's practice of running credit checks on employees with access to student financial-aid information; noting that the EEOC itself obtains credit histories for the majority of its job positions because "[o]verdue just debts increase temptation to commit illegal or unethical acts as a means of gaining funds to meet financial obligations"). The EEOC recommends limiting the scope of inquiry and adopting explicit, objective guidelines for using financial history information. *Title VII and the Use of Criminal History and Financial History Information to Make Employment Decisions* (Apr. 19, 2013), available at www.eeoc.gov/eeoc/foia/letters/2013/title_vii_criminal_and_credit_history.html.

A little known law protects individuals who are in a bankruptcy proceeding or who have filed for bankruptcy in the past. A public employer, such as a school district, cannot discriminate against an applicant or employee solely because the individual has filed for bankruptcy. 11 U.S.C. § 525(b); *but see In re Banner*, 422 B.R. 608 (N.D. Tex., 2009) (finding that employee's poor job performance, in combination with bankruptcy, was valid reason to terminate employee).

For additional information: *Background Checks: What Employers Need to Know*, a joint publication of the Equal Employment Opportunity Commission and the Federal Trade Commission, www.ftc.gov/tips-advice/business-center/guidance/background-checks-what-employers-need-know.

Fair and Accurate Credit Transactions Act

A school district that uses credit reports must comply with the Fair and Accurate Credit Transactions Act (FACTA). Specifically, a district must establish procedures to resolve address discrepancies between applicant or employee information, and the information provided by consumer reporting agencies. If a consumer reporting agency notifies the school district of a discrepancy, and the district forms a reasonable belief that the report requested relates to the same person, the district must take steps to verify the information with the individual or compare the information with district records or information obtained from a third party.

An employer must properly dispose of a credit report after its use for employment purposes by taking reasonable measures to protect against unauthorized access. *Reasonable measures* include shredding papers in a manner so they cannot be read, erasing electronic media so that the information cannot be reconstructed, or contracting with a party engaged in the business of record disposal. 16 C.F.R. § 682.3; *see also* TASB Policies DBAA(LEGAL) and (LOCAL).

For additional information: *Disposing of Consumer Report Information? Rule Tells How*, www.ftc.gov/tips-advice/business-center/guidance/disposing-consumer-report-information-rule-tells-how; *Identity Theft Red Flags and Address Discrepancies*, www.nacua.org/documents/FACTA_GeneralSummary_091508.pdf; *FACTA and School Districts: Separating Fact from Fiction*, www.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Personnel/documents/facta_and_sch_dists_aug2013.aspx.

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Personnel/documents/obtaining_credit_checks_on_employees_nov15.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoollawsource.tasb.org.

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