

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2011-193

Council Meeting Date: 07-11-2011

Date Adopted: 07-11-2011

TITLE: RESOLUTION AWARDING CONTRACT TO AMERICAN BACKGROUND INFORMATION SERVICES, INC. AND NATIONAL SECURITY ASSURANCE, LLC FOR BACKGROUND INFORMATION SERVICES

Councilperson Galluccio submitted the following resolution, which was duly seconded by Councilperson Cucco.

WHEREAS, the Community Activities Department has received a grant from the Summit Area Public Foundation Program in the amount of \$7,600.00 to conduct Background Checks of Volunteer Coaches; and

WHEREAS, three (3) quotes were received and reviewed by the Community Activities Director; and

WHEREAS, the Director of the Community Activities Department has recommended the quote from American Background Information Services, Inc. and their agent, National Security Assurance, LLC, be accepted and the contract awarded to same, subject to a review of proposal documents by the Borough Attorney.

NOW THEREFORE BE IT RESOLVED by the Mayor and Borough Council of the Borough of New Providence, County of Union and State of New Jersey, that they award a contract to American Background Information Services, Inc. and their agent, National Security Assurance, LLC, to conduct background checks of volunteer coaches in accordance with the attached contract and price schedule for an amount not to exceed \$7,600.00.

APPROVED, this 11th day of July, 2011.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
CUCCO	X			
GALLUCCIO	X			
GENNARO	X			
LESNEWICH	X			
MUÑOZ	X			
VYZAS	X			
HERN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 11th day of July, 2011.

Wendi B. Barry, Borough Clerk



AMERICAN BACKGROUND INFORMATION SERVICES, INC.

629 Cedar Creek Grade, Suite C
Winchester, VA 22601
800-669-2247

SERVICE AGREEMENT

Authorized ABI Sales Agent
46 Essex Street, Suite 300
Milburn NJ 07041
1-973-376-3330

THIS AGREEMENT ("Agreement") is entered into this day of _____, 2011 (the "Effective Date"), between American Background Information Services, Inc. ("American Background") and its authorized Sales Agent, National Security Assurance, LLC ("NSA") and Borough of New Providence, New Providence Recreation Department ("End User"). WHEREAS, End User desires to purchase background information services from American Background through NSA; and WHEREAS, American Background desires to perform such services for End User; NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein, the parties agree as follows:

- 1. Services. During the existence of this Agreement, End User may request pre-employment background information services from American Background at the rates and terms provided herein...
2. Payment for Services. End User agrees to pay NSA fees for services rendered in accordance with the fee schedule in Attachment A...
3. When Payments Are Due. Subject to satisfactory credit approval, NSA shall bill End User for services rendered by providing End User with an invoice specifying all services and associated fees...
4. Term of Agreement. This Agreement is effective from the Effective Date written above and will remain in force for a period of one (1) year...
5. Indemnity; Limits of Liability. (a) End User agrees that American Background, NSA, TransUnion, Equifax, Experian, and other credit reporting agencies shall not be responsible for the accuracy of information contained in public records reported to End User... (b) End User shall defend, indemnify and hold harmless American Background and NSA... (c) American Background and NSA shall defend, indemnify and hold harmless End User...

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the willful misconduct, whether active or passive, of American Background or NSA or anyone employed by American Background or NSA in connection with activities or services under this Agreement, including, but not limited to, actions for defamation, tortious interference with business relations, or invasion of privacy, except such loss, damage, liability or expense as may be caused by the willful misconduct or negligence of End User. End User shall give American Background and NSA written notice of any asserted claims or actions indemnified against hereunder and shall cooperate with American Background and NSA in the defense of any such claims or actions.

(d) Except with respect to Section 8 and Section 5(b) and 5(c), in no event shall either party be liable to the other party or any third party for any special, incidental, indirect, punitive, or consequential damages of any kind (including but not limited to lost profits) in connection with this Agreement, even if a party has been informed in advance of the possibility of such damages or such damages could have been reasonably foreseen by such party.

6. Compliance with the Fair Credit Reporting Act. End User shall comply with the terms of the Fair Credit Reporting Act, 15 U.S.C. §1681, et. seq. (“FCRA”) as amended by the Consumer Credit Reporting Reform Act of 1996, the Clarification Act of 1998, the FACT Act of 2003, and as otherwise amended from time to time, and agrees that a consumer report, as defined by the FCRA, will be requested only when End User intends to use the report for employment purposes, as instructed by the consumer in writing, or otherwise in connection with a legitimate business transaction initiated by the consumer. End User hereby certifies that it will comply with the following provisions: (i) End User will ensure that prior to requesting an investigative consumer report, a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is requested, in a document that consists solely of the disclosure, that an investigative consumer report may be obtained for employment purposes. (ii) The consumer has authorized in writing the request of the report by End User. (iii) A disclosure has been made in writing of the consumer’s right, under FCRA Section 606(b), to make a request for a complete and accurate disclosure of the nature and scope of investigation requested. (iv) In using an investigative consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, End User shall provide the consumer with a copy of the report and a description of the rights of the consumer under the FCRA. (v) The information from the investigative consumer report will not be used in violation of any applicable federal or state equal employment opportunity law or regulation. End User agrees to properly dispose of consumer report information as defined and outlined in the FACT Act. End User agrees not to resell any information contained in the consumer report. End User agrees to furnish the document referenced in (ii) above to American Background upon request. (For a more detailed description of End User responsibilities, see the attached Notice to Users of Consumer Reports). End User agrees to complete the Customer/End User Certificate of Use, which is attached to this Service Agreement and hereby made a part of this Service Agreement. Likewise, American Background and NSA agree to comply with any applicable FCRA provisions.

7. Compliance with the Driver’s Privacy Protection Act. End User certifies that it shall order, receive and use motor vehicle records in compliance with all applicable federal and state statutes and regulations including, but not limited to, the FCRA and its state analogues, the Driver’s Privacy Protection Act, 18 USC § 2721, et seq. (“DPPA”), as amended, and its state analogues, and statutes and regulations governing fair information practices. End User certifies that upon request of American Background it shall execute any and all certification forms required by states from which End User receives motor vehicle records. End User understands that it is prohibited from selling, disseminating, or otherwise distributing motor vehicle records, in whole or in part, to any third party and that it shall order, receive, and use these records solely as an end user. If End User uses information from a motor vehicle record to take adverse action against a consumer, End User agrees to notify, in writing, the adversely affected applicant specifying that the motor vehicle record influenced the employment decision. Further, End User must provide the adversely affected applicant with American Background’s address and toll free national telephone number so that American Background can make full disclosure of any information reported or held by it on said consumer or provide information concerning the source of the information reported by American Background. Likewise, American Background agrees to comply with any applicable DPPA provisions.

8. Confidentiality. Each party may disclose to the other party certain non-public, proprietary and confidential information (“Confidential Information”) to be used in the performance of this Agreement. The recipient of a disclosing party’s Confidential Information shall (a) hold such Confidential Information in strict confidence, (b) undertake all necessary efforts, but in no case less than a reasonable degree of care, to preserve the secrecy of Confidential Information and (c) restrict access to the Confidential Information. The recipient may disclose the disclosing party’s Confidential Information only to recipient’s employees (and employees of its affiliated companies) and consultants who absolutely need the information to fulfill the obligations under this Agreement and who are subject to confidentiality provisions no less restrictive than those set forth herein. Each party’s confidentiality obligation shall continue in full force and effect and shall survive expiration or termination of this Agreement for any reason, except that the confidentiality obligation shall not extend to any information which, and to the extent that: (i) it was in the public domain at or subsequent to the time it was communicated to recipient by disclosing party through no fault of recipient; (ii) it was rightfully in the recipient’s possession free of any obligation of confidence at or subsequent to the time it was communicated to the recipient by the disclosing party; (iii) it was developed by employees or agents of the recipient independently of and without reference to any information communicated by the disclosing party; or (iv) the communication was in response to a valid order by a court or other governmental body or was otherwise required by law. If requested by the disclosing party upon

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termination of this Agreement or earlier, the recipient shall promptly shred/destroy or deliver to the disclosing party all of the disclosing party's Confidential Information including all copies thereof in its possession or control.

9. Mutual Representations and Warranties. Each party represents and warrants to the other as follows: (a) It is a legal entity with all right and authority necessary to enter and perform under this Agreement; (b) This Agreement has been duly entered into by it; (c) Its performance under this Agreement does not violate any law, regulation, court order or material agreement to which it is subject; (d) It has not and will not provide or use in connection with this Agreement: any (1) trademark in violation of any right of a third party in a trademark; or (2) intellectual property in violation of any third party patent, copyright, trade secret or other proprietary or intellectual property right; and (e) It has not and will not provide or use in connection with this Agreement any tangible or intangible information in violation of any privacy law or regulation or third party's confidentiality or privacy right.

EXCLUSIONS: THE REPRESENTATIONS AND WARRANTIES SPECIFIED IN THIS AGREEMENT ARE THE SOLE WARRANTIES MADE BY ANY PARTY IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT, AND ARE MADE TO AND FOR THE BENEFIT OF THE OTHER PARTY ONLY. NEITHER PARTY MAKES ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR ARISING FROM COURSE OF DEALING OR PERFORMANCE, AND HEREBY DISCLAIMS AND EXCLUDES FROM THIS AGREEMENT ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, NONINTERFERENCE WITH DATA, ACCURACY, OR THAT THE SERVICE IS ERROR-FREE. FURTHER, AND NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, AMERICAN BACKGROUND MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER ARISING FROM THE INFORMATION SUPPLIED TO AMERICAN BACKGROUND BY ANY CONSUMER REPORTING AGENCY OR OTHER THIRD PARTY DATA SUPPLIER, EXCEPT THAT AMERICAN BACKGROUND HAS SUPPLIED THE INFORMATION IN ACCORDANCE WITH THE TERMS OF AN AGREEMENT WITH SUCH CONSUMER REPORTING AGENCY OR OTHER THIRD PARTY DATA SUPPLIER. SOME STATES DO NOT ALLOW THE DISCLAIMER OF IMPLIED WARRANTIES, SO THE FOREGOING DISCLAIMER MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

10. Modification. This Agreement may be amended only in writing and with the express written approval of both American Background and End User, except as otherwise provided herein.

11. Governing Law. This Agreement shall be governed by and construed according to the internal laws of the Commonwealth of Virginia excluding its conflicts of law provisions.

12. Taxes. In addition to the fees and charges set forth elsewhere in this Agreement, End User shall pay all applicable taxes, including all income, sale, use, personal property, *ad valorem*, value added, or other taxes, based on or measured by this Agreement, whether such taxes are being currently imposed or imposed after the effective date of this Agreement, excluding taxes based on American Background's net income.

13. Venue. The parties agree that Frederick County, Virginia, shall be the exclusive, proper, and convenient venue for any legal proceeding in federal or state court relating to this Agreement, and shall waive any defense that Frederick County, Virginia, is an improper or inconvenient venue.

14. Waiver of Breach. The waiver by either party of a breach of any provision of this Agreement by the other party must be in writing and shall not operate or be construed as a waiver of any subsequent breach by such other party.

15. Legal Fees. In the event of any litigation between the parties to this Agreement, or any of them, concerning this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court-related costs, including its reasonable attorneys' fees rendered on appeal.

16. Severability. In the event any portion of this Agreement shall be determined to be invalid under any applicable law, such provision shall be deemed void and the remainder of this Agreement shall continue in full force and effect.

17. Entire Agreement; Amendments. This Agreement constitutes the entire indivisible agreement between the parties relating to the subject matter hereof and shall not be modified, amended, altered or changed except by written agreement signed by the parties.

18. Headings. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

If this box is checked, End User has waived maiden or additional name searches and releases American Background from any liability for failure to provide information that may be part of the public record related to such name.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date above first written. Both parties acknowledge that they have carefully reviewed this Agreement and understand and agree to the terms of this Agreement.

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End User

Company Name:

**Address: 360 Elkwood Avenue
New Providence, NJ 07974**

Signature:

Print Name:

Title:

Date:

American Background Information Services, Inc.

**629 Cedar Creek Grade, Suite C
Winchester, VA 22601**

Signature:

Print Name:

Title:

Date:

National Security Assurance, LLC

Authorized ABI Sales Agent

Address: 46 Essex Street, Suite 300

Millburn, NJ 07041

Signature:

Print Name: Marlene Meier

Title: Sr. Account Executive

Date:

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Additional Terms and Conditions of Service

Drug Screening Collection Fees

Our drug testing labs offer a number of in-network collection sites to meet most screening program needs. Every effort is made to assign in-network sites to all End Users. When an in-network site is used there are no additional fees. In areas where there are no in-network sites, an out of network location may be assigned. When an out of network site is utilized, typically a fee of \$12-\$30 per screen will apply. In the event that an applicant has been given the proper forms, set up in our system, and assigned to a collection site and fails to appear at the collection site, a \$5 fee will be charged.

Verification Fees

Many companies and institutions have out-sourced the verification of credentials to third parties. These third parties assess a fee ranging from \$2.50-\$15.00. When American Background encounters third parties verification services and is assessed a fee of this type, that fee will be applied to the End User's account.

Court Copy Fees

When an original court document is requested in addition to our standard report, a copy fee of \$35.00 will apply.

Missing Information/Cancellation

When American Background receives an order that omits vital information required to fulfill the request, attempts to gather this necessary information will be made by our Client Services Group. The search will be suspended until the necessary information is received and when it is received, the order will be re-initiated and a charge of \$4.50 will be assessed. After five (5) business days of no resolution of this missing information, American Background will cancel the order and apply a cancellation charge of \$15.00.

Additional Name(s)

Unless otherwise requested, additional names associated with an individual, such as maiden or legal name change, will automatically be added to criminal research in each jurisdiction and billed accordingly.

Court Access Fees

Of the more than 3,300 State, Federal, and local jurisdictions, a small percentage charge an access fee for disseminating court records to the public. American Background in turn applies this fee in addition to the charge for our research. Court access fees are dynamic and subject to periodic change. An updated schedule is posted on the "Client Services" page of our web site www.americanbackground.com and will be reflective of these changes, as we become aware of them.

Motor Vehicle Records Fees

As with many criminal court jurisdictions, each state DMV has established a statutory fee in relation to each applicant motor vehicle record accessed. American Background applies this fee in addition to the normal charge for our research. An updated schedule is posted on the "Client Services" page of our web site www.americanbackground.com and will be reflective of these changes, as we become aware of them.

Re -Verification

Requests to re-verify information subsequent to the completion of a final report, and not the result of an applicant dispute will be treated as an additional search and billed accordingly.

Criminal Offenses

All reported criminal offenses will be furnished with the report. In the event that an applicant has more than four (4) criminal offenses reported, there will be an additional charge of \$3.00 per criminal offense over four (4).

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Additional Terms and Conditions of Service (Continued)

Site Inspection and Account Set Up Fee - Waived

A one-time fee of \$125 will be required to set up an account with American Background. If you are purchasing credit reporting, a one-time setup fee of \$150 will be required to conduct a site inspection and process your membership with the credit bureau. You will also be required to pay an annual \$150 maintenance fee, which will cover site inspections and re-processing of your membership as required by the credit bureaus. If Canadian credit reporting is purchased additional fees may apply.

Retrieval of Reports

Final reports may be accessed at no charge via the Internet at anytime for up to one year. Should End User request American Background personnel to regenerate and re-send a report more than thirty (30) business days but less than one year past the original report date, a fee of \$4.50 will be charged. After one year the charge for that service will be \$12.50.

Call Before Faxing

When American Background is requested to give a verbal notification prior to sending a report via fax, the process must be handled manually by our systems thus creating extra work. We will impose a charge for this service of \$2.95.

Data Entry Fee – Waived

American Background provides a robust interactive on-line order entry process for our clients' needs. In some instances the client may not be able to utilize this order entry system and will require American Background to enter the data for the requested order. In those cases, American Background will impose a charge of \$3.25 per application.

Employment Verification Research Fee

American Background requires phone numbers for current and prior employers in order to conduct the verifications required. In those events where the phone number(s) is (are) missing, a research fee of \$1.50 per missing phone number will be charged.

Canadian and Virgin Islands Criminal Fees

In addition to our local jurisdiction charge, American Background incurs additional costs when searching all Canadian and Virgin Island jurisdictions. We will add \$15.40 for each such jurisdiction searched.

Crime Guard

This product is intended to enhance the area breadth of our criminal record search. This product is extracted from a criminal database encompassing various types of information from all 50 states but the source of the data is inconsistent from state to state and, as a result, may not contain all criminal history of an applicant. The End User is encouraged to employ other searches including a local jurisdiction criminal search in order to satisfy the due diligence needed to make a wise hiring decision.

Risk Scoring

If requested by End User, American Background will apply rejection criteria as determined by End User. These criteria will be applied through our proprietary risk-scoring engine. The engine will compare applicant history against End User determined criteria and generate one of three outcomes. The risk score consists of a red ("does not meet criteria"), yellow ("needs further review"), or green ("meets criteria") light. ***The Risk Score provided on the report will be determined by applying the rejection criteria as selected and instructed by the End User. In providing this Risk Score as instructed by the End User, American Background is not making an employment decision on behalf of the End User but is only reporting the results based on the End User's selected criteria and End User is solely responsible for any decision or action taken based on the Risk Score.***

FCRA Fulfillment

If specified in the End-User's statement of work, applicants that score red or yellow will be sent a copy of their background report as well as both pre-adverse and adverse action notices as prescribed by the Fair Credit Reporting Act and the Drivers' Privacy Protection Act. If requested, American Background will fulfill End User's adverse action notification requirements under these Acts provided that the End User provides the proper contact information for the applicant.

**Addendum to Service Agreement
Various State Requirements**

Pennsylvania Motor Vehicle Records (if requested):

- End User agrees to execute the necessary forms in order to allow American Background to perform searches.

Minnesota, Oklahoma & California:

- Reports of background checks performed for employment purposes are required to be furnished to the Applicant if requested by the Applicant. American Background will fulfill this obligation (required in Minnesota) and an additional fee of \$5.95 will be assessed.

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CUSTOMER/END USER CERTIFICATION OF USE FOR CONSUMER REPORTS AND INVESTIGATIVE CONSUMER REPORTS

In compliance with the Federal Credit Reporting Act (FCRA) as amended by the Consumer Credit Reporting Reform Act of 1996, and all subsequent updates. End User hereby certifies to American Background Information Services, Inc., that it will comply with the following provisions:

1. End User certifies that no report will be ordered except in connection with one of the following Permissible Purposes (Check One Box):
 - As instructed by the consumer in writing. FCRA Section 604(a)(2);
 - For employment purposes, including hiring and promotion decisions, where the consumer has given written permission. FCRA Sections 604 (a)(3)(B) and 604(b);
 - When there is a legitimate business need, in connection with a business transaction that is initiated by the consumer. FCRA Section 604(a)(3)(F)(i);
2. End User will ensure that prior to procurement or causing the procurement of a consumer report or an investigative consumer report for employment purposes:
 - (a) a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report or investigative consumer report may be obtained for employment purposes; and
 - (b) the consumer has authorized in writing the procurement of the report by the End User; and
 - (c) a disclosure has been made in writing of the consumer's right, under FCRA Section 606(b), to make a request for a complete and accurate disclosure of the nature and scope of investigation requested.
3. In using a consumer report or investigative consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the End User shall provide to the consumer to whom the report relates:
 - (a) a copy of the report; and
 - (b) a description of the rights of the consumer under the FCRA, a copy of which is attached hereto ("Summary of Consumer Rights").
4. The information from the consumer report or investigative consumer report will not be used in violation of any applicable federal or state equal employment opportunity law or regulation or for any purpose other than as prescribed by FCRA.
5. End User will comply with all other listed obligations under FCRA.

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**Notice to Users of Consumer Reports:
Obligations of Users under the FCRA**

All users subject to the Federal Trade Commission's jurisdiction must comply with all applicable regulations, including regulations promulgated after this notice was prescribed in 2004. Information about applicable regulations currently in effect can be found at the Commission's Web site, www.ftc.gov/credit. Persons not subject to the Commission's jurisdiction should consult with their regulators to find any relevant regulations.

The federal Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681-1681y, requires that this notice be provided to inform users of consumer reports of their legal obligations. State law may impose additional requirements. The text of the FCRA is set forth in full at the Federal Trade Commission's Website at www.ftc.gov/credit. At the end of this document is a list of United States Code citations for the FCRA. Other information about user duties is also available at the Commission's Web site. **Users must consult the relevant provisions of the FCRA for details about their obligations under the FCRA.**

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. If you are a furnisher of information to a consumer-reporting agency (CRA), you have additional obligations and will receive a separate notice from the CRA describing your duties as a furnisher.

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 of 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\(a\)\(3\)\(D\)](#)
- For use by a potential investor or servicer, or current insurer, in a valuation or assessment of the credit or prepayment 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.** [Section 604\(a\)\(4\) and 604\(a\)\(5\)](#)

In addition, creditors and insurers may obtain certain consumer report information for the purpose of making 'prescreened' unsolicited offers of credit or insurance. [Section 604\(c\)](#). The particular obligations of users or 'prescreened' information are described in Section VII below.

B. Users Must Provide Certifications

Section 604(f) prohibits any person from obtaining a consumer report from a consumer-reporting agency (CRA) unless the person has certified to the CRA 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. 'Adverse actions' include all business, credit, and employment actions affecting consumers that can be considered to have a negative impact as defined by Section 603(k) of the FCRA – such as denying or canceling credit or insurance, or denying employment or promotion. No adverse action occurs in a credit transaction where the creditor makes a counteroffer that is accepted by the consumer.

1. Adverse Actions Based on Information Obtained From a CRA

If a user takes any type of adverse action as defined by the FCRA that is based at least in part on information contained in a consumer report, Section 615(a) requires the user to notify the consumer. The notification may be done in writing, orally, or by electronic means. It must include the following:

Initials

- 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 makes a request within sixty (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.

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 on 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) requires that the user clearly and accurately disclose to the consumer his or her rights to be told the nature of the information that was relied upon if the consumer makes 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 notice 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. If consumer report information is shared among affiliates and then used for an adverse action, the user must make an adverse action disclosure as set forth in I.C.1 above.

D. Users Have Obligations When Fraud and Active Duty Military Alerts are in Files

When a consumer has placed a fraud alert, including one relating to identity theft, or an active duty military alert with a nationwide consumer reporting agency as defined in Section 603(p) and resellers, Section 605A(h) imposes limitations on users of reports obtained from the consumer reporting agency in certain circumstances, including the establishment of a new credit plan and the issuance of additional credit cards. For initial fraud alerts and active duty alerts, the user must have reasonable policies and procedures in place to form a belief that the user knows the identity of the applicant or contact the consumer at a telephone number specified by the consumer; in the case of extended fraud alerts, the user must contact the consumer in accordance with the contact information provided in the consumer's alert.

E. Users Have Obligations When Notified of an Address Discrepancy

Section 605(h) requires nationwide CRAs, as defined in Section 603(p), to notify users that request reports when the address for a consumer provided by the user in requesting the report is substantially different from the addresses in the consumer's file. When this occurs, users must comply with regulations specifying the procedures to be followed, which will be issued by the Federal Trade Commission and the banking and credit union regulators. The Federal Trade Commission's regulations will be available at www.ftc.gov/credit.

F. Users Have Obligations When Disposing of Records

Section 628 requires that all users of consumer report information have in place procedures to properly dispose of records containing this information. The Federal Trade Commission, the Securities and Exchange Commission, and the banking and credit union regulators have issued regulations covering disposal. The Federal Trade Commission's regulations may be found at www.ftc.gov/credit.

II. CREDITORS MUST MAKE ADDITIONAL DISCLOSURES

If a person uses a consumer report in connection with an application for, or a grant, extension, or provision of, credit to a consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person, based in whole or in part on a consumer report, the person must provide a risk-based pricing notice to the consumer in accordance with regulations to be jointly prescribed by the Federal Trade Commission and the Federal Reserve Board.

Section 609(g) requires a disclosure by all persons that make or arrange loans secured by residential real property (one to four units) and that use credit scores. These persons must provide credit scores and other information about credit scores to applicants, including the disclosure set forth in Section 609 (g)(1)(D) ('Notice to the Home Loan Applicant').

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

A. Employment Other Than in the Trucking Industry

If information from a CRA is used for employment purposes, the user has specific duties, which as 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 consist solely of the disclosure, that a consumer report may be obtained.
- Obtain from the consumer prior written authorization. Authorization to access reports during the term of employment may be obtained at the time of employment.
- Certifying 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 to be taken based on the consumer report, a copy of the report and a summary of the consumer's rights will be provide to the consumer.
- **Before** taking an adverse action, the user must provide a copy of the report to the consumer as well as the summary of consumer's rights. (The user should receive this summary from the CRA.) A Section 615(a) adverse action notice should be sent after the adverse action is taken.

An adverse action notice also is required in employment situations if credit information (other than transactions and experience data) obtained from an affiliate is used to deny employment. Section 615(b)(2)

The procedures for investigative consumer reports and employee misconduct investigations are set forth below.

B. Employment in the Trucking Industry

Special rules apply for truck drivers where the only interaction between the consumer and the potential employer is by mail, telephone, or computer. In this case, the consumer may provide consent orally or electronically, and an adverse action may be made orally, in writing or electronically. The consumer may obtain a copy of any report relied upon by the trucking company by contacting the company.

IV. OBLIGATIONS WHEN INVESTIGATIVE CONSUMER REPORTS ARE USED

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 by an entity or person that is a consumer-reporting agency. 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 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 at some time before or not later than three (3) 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 the summary of consumer rights required by Section 609 of the FCRA. (The summary of consumer rights will be provided by the CRA that conducts the investigation.)
- The use 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. This must be made in a written statement that is mailed, or otherwise delivered, to the consumer no later than five (5) days after the date on which the request was received from the consumer or the report was first requested, whichever is later in time.

V. SPECIAL PROCEDURES FOR EMPLOYEE INVESTIGATIONS

Section 603(x) provides special procedures for investigations of suspected misconduct by an employee or for compliance with Federal, state or local laws and regulations or the rules of a self-regulatory organization, and compliance with written policies of the employer. These investigations are not treated as consumer reports so long as the employer or its agent complies with the procedures set forth in Section 603(x), and a summary describing the nature and scope of the inquiry is made to the employee if an adverse action is taken based on the investigation.

VI. OBLIGATIONS OF USERS OF MEDICAL INFORMATION

Section 604(g) limits the use of medical information obtained from consumer reporting agencies (other than payment information that appears in a coded form that does not identify the medical provider). If the information is to be used for an insurance transaction, the consumer must give consent to the user of the report or the information must be coded. If the report is to be used for employment purposes – or in connection with a credit

transaction (except as provided in regulations issued by the banking and credit union regulators) – the consumer must provide specific written consent and the medical information must be relevant. Any user who receives medical information shall not disclose the information to any other person (except where necessary to carry out the purpose for which the information was disclosed, or as permitted by statute, regulation, or order).

VII. OBLIGATION 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(1), 604(c), 604(e), and 615(d). This practice is known as ‘prescreening’ and typically involves obtaining from a CRA a list of consumers who meet certain preestablished 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 a consumer’s CRA 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 does not 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. The statement must include the address and toll-free telephone number of the appropriate notification system.

In addition, once the Federal Trade Commission by rule has established the format, type size, and manner of the disclosure required by Section 615(d), users must be in compliance with the rule. The FTC’s regulations will be at www.ftc.gov/credit.

VIII. OBLIGATIONS OF RESELLERS

A. Disclosure and Certification Requirements

Section 607(e) 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 before selling the report.

B. Reinvestigations by Resellers

Under Section 611 (f), if a consumer disputes the accuracy or completeness of information in a report prepared by a reseller, the reseller must determine whether this is a result of an action or omission on its part and, if so, correct or delete the information. If not, the reseller must send the dispute to the source CRA for reinvestigation. When any CRA notifies the reseller of the results of an investigation, the reseller must immediately convey the information to the consumer.

C. Fraud Alerts and Resellers

Section 605A(f) requires resellers who receive fraud alerts or active duty alerts from another consumer reporting agency to include these in their reports.

IX. LIABILITY FOR VIOLATIONS OF THE FCRA

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

The FTC’s Web Site, www.ftc.gov/credit, has more information about the FCRA, including publications for businesses and the full text of the FCRA.

Initials



	Price
NSA Client	
Product Pricing	
<p>CrimeGuard - nationwide database search* includes sexual predator database info (where available)</p> <p>Social Security Locator</p> <p>Local County Criminal Hand Search - Per Jurisdiction</p> <p>Federal - Per Jurisdiction</p> <p>Additional Legal Names (per name)</p> <p>7 Year U.S. National Federal Search</p>	<p>\$15.00 *</p> <p>\$10.00</p> <p>\$20.00</p> <p>\$20.00</p> <p>\$20.00</p> <p>\$24.00</p>
<p>Unified Statewide Criminal Searches (where available)</p> <p>Statewide (Per state, plus necessary local searches) Group 1 \$20.00</p> <p>Statewide (Per state, plus necessary local searches; Puerto Rico) Group 2 \$30.00 <i>(NJ Unified All County Statewide Search is in group 2)</i></p> <p>Sex Offender Registry (Per state) - through authoritative source</p> <p style="text-align: right;">Group 1 \$10.00</p> <p style="text-align: right;">Group 2 \$13.00</p>	
Other Searches	
<p>Risk Scoring - Add on \$4.00</p> <p>Credit Check \$12.00</p> <p>Employment Verification, (each) \$15.00</p> <p>Education Verification, (each) \$15.00</p> <p>Professional License Verification (each) \$28.00</p> <p>Drug Testing - Urinalysis 5 Panel call for pricing</p> <p>Motor Vehicle (MVR) Driving Records (WA not available) \$12.00 <i>(call for AK, NH, LA, DC)</i></p> <p>Healthcare Sanctions (Medicare Exclusion List) \$8.00</p>	

Note: Prices do not include court access fees, MVR access fees, and 900 number fees levied by jurisdictions. These fees are passed through to the client.