Fifth, limit access to reference information to those making selection decisions.

Finally, check relevant state laws about permissible and impermissible reference-check practices. Also, determine whether your organization is covered by state reference immunity laws, which provide some degree of immunity from civil liability to organizations that in good faith provide information about the job performance and professional conduct of former or current employees. Organizations in these states (currently 39) may be more willing to request and provide reference information.[59]

ckground Checks: Credit and Criminal

Credit Checks

The first legal requirement for the organization is to comply with the federal Fair Credit Reporting Act (FCRA; see Chapter 2). The FCRA governs the gathering and use of background information on applicants and employees. Its requirements apply to both consumer reports and investigative consumer reports. Consumer reports are prepared from accessible databases by a consumer reporting agency and bear on the person's creditworthiness and standing, character, general reputation, personal information, and mode of living. Investigative consumer reports are a subset of consumer reports; they obtain information about the applicant's or employee's general reputation, character, personal characteristics, and mode of living via personal interviews with friends, neighbors, or business associates.

Before obtaining a consumer report, the organization must (1) give the applicant clear notice in writing that a report may be obtained and used in hiring or promotion procedures, and (2) obtain the applicant's written authorization to seek the report. These notification requirements do not apply to an organization conducting a third-party investigation of suspected employee misconduct. The consumer reporting agency may not furnish a consumer report to the organization unless the organization certifies to the agency that it has given the required notice and received authorization. Before taking any adverse action, such as denial of employment, based in whole or part on the report received, the organization must wait a reasonable amount of time and then provide the applicant with a copy of the report and a written description of his or her consumer rights put forth by the Consumer Financial Protection Bureau. After taking an adverse action, the organization must (1) notify (by written, oral, or electronic means) the applicant of the adverse action, (2) provide the name, address, and phone number of the consumer reporting agency to the applicant, and (3) provide notice of the applicant's right to obtain a free copy of the report from the agency and to dispute the accuracy and completeness of the report. The organization is not required to inform the applicant which information in the report led to the adverse action, but it must inform the applicant that the agency had no part in the decision.

Another legal requirement for the organization is to comply with the state and local laws that govern background checks. This should include the state/locale in