

## Employers Must Begin Using New FCRA Forms As Of January 1, 2013

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The Consumer Financial Protection Board (“CFPB”) recently issued regulations modifying three of the forms required under the federal Fair Credit Reporting Act (“FCRA”) to reflect that the CFPB, rather than the Federal Trade Commission (“FTC”) is the agency from which consumers may obtain information about their rights under the FCRA. Accordingly, employers that use consumer reporting agencies (“CRAs”) or other third parties to conduct background screenings of applicants or employees need to ensure that the modified FCRA forms are implemented by no later than January 1, 2013.

**FCRA Litigation.** In recent years, many employers have been faced with expensive litigation, including class-action lawsuits, based on alleged technical violations of the FCRA. For example, in *Singleton, et al. v. Domino’s Pizza, LLC*, No. DKC 11-1823 (D. Md. Jan. 25, 2012), a federal district court denied the employer’s motion to dismiss a class action alleging that the employer violated the FCRA by providing FCRA disclosures as part of an overall application packet, rather than separately. As this case illustrates, it is critical that employers ensure that they meet all technical and procedural requirements imposed by the FCRA, and that CRAs and any other third parties used to conduct background checks are in compliance with the FCRA.

**Modifications To Forms.** Under the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, rulemaking responsibility under the FCRA was transferred from the FTC to the CFPB. Since then, the CFPB has published in the Federal Register an interim final rule establishing a new regulation. The new regulation does not implement any substantive changes to the existing regulations, but includes technical changes to reflect this transfer of authority.

To that end, the new regulations modify the following three FCRA forms to indicate that consumers may obtain further information about their rights under the FCRA from the CFPB, rather than the FTC.

**Summary Of Consumer Rights.** Employers must provide this notice to applicants and employees in various situations, including when an applicant or employee will be the subject of an investigative consumer report, or is receiving a pre-adverse action notice.

**Notice To Furnishers Of Information Regarding Their FCRA Obligations.** CRAs are required to provide this notice to furnishers of information in certain situations (e.g., when an applicant or employee disputes information contained in a credit report).

**Notice To Users Of Consumer Reports Of FCRA Obligations.** CRAs are obligated to provide this notice to all users of their services, including employers.

The new regulations, which include sample copies of the modified FCRA forms, can be accessed through the following links:

<http://www.gpo.gov/fdsys/pkg/CFR-2012-title12-vol8/pdf/CFR-2012-title12-vol8-part1022-appK.pdf>

<http://www.gpo.gov/fdsys/pkg/CFR-2012-title12-vol8/pdf/CFR-2012-title12-vol8-part1022-appM.pdf>

<http://www.gpo.gov/fdsys/pkg/CFR-2012-title12-vol8/pdf/CFR-2012-title12-vol8-part1022-appN.pdf>

**Recommendations For Employers.** As a result of the modification of these FCRA forms, we recommend that employers take the following steps:

Ensure that the revised FCRA forms are implemented by no later than January 1, 2013, for all background screenings carried out by CRAs or other third parties;

Carefully review, in consultation with counsel, their background-check procedures to ensure strict compliance with all of the requirements of the FCRA; and

Continue monitoring developments under the FCRA, including any further regulations that may be issued by the CFPB.

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Please contact us if you have any questions regarding these revised FCRA forms or any other background-check issues. We regularly assist employers with such matters, and we would be happy to assist you.

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