

December 3, 2012

Modifications to FCRA Forms

The Fair Credit Reporting Act (“FCRA”) outlines requirements for employers conducting background checks through credit reporting agencies. The Consumer Financial Protection Bureau (“CFPB”) recently took over enforcement of the FCRA from the Federal Trade Commission and mandated modifications to certain FCRA notices which must be implemented by January 1, 2013. The modifications are not substantive and generally substitute references to the Federal Trade Commission with references to the CFPB.

The affected forms include, among others: 1) “Notice to Users of Consumer Reports: Obligations of Users under the FCRA,” which background check providers must give to employers seeking to obtain background check reports, and 2) “Summary of Your Rights Under the Fair Credit Reporting Act,” which employers must provide to applicants and employees with the FCRA authorization form and any pre-adverse action notice. A modified Summary of Your Rights model form can be found at: <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=a149189aec349f4e044c7e8b0e9fa53e&rgn=div9&view=text&node=12:8.0.2.14.16.13.1.2.34&idno=12>.

Please note that the CFPB has modified the model forms twice during the past year, with the second set of modifications, issued on November 14, 2012, intended to correct typographical and other technical errors. Employers who have already begun using modified model forms, but began using the forms before the CFPB’s second set of modifications, should promptly transition to the newly updated models. The CFPB has stated, however, that use of the first set of modified forms will be deemed compliant until further notice.

If you have any questions about the contents of this advisory, please contact Farah Mollo at (212) 758-7600.

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