

December 29, 2004

FTC Issues Revised Summary of Rights under the Fair Credit Reporting Act Employers Should Use the Revised Summary Effective January 31, 2005

The Fair Credit Reporting Act (FCRA) imposes stringent notice requirements on employers who use reports from consumer reporting agencies (CRAs) when making employment decisions. A CRA is defined as any person or entity that regularly assembles or evaluates consumer information for a fee in order to furnish background information to third parties.

The FCRA recognizes two different types of reports. Consumer reports are written or oral communications from a CRA which bear upon a consumer's credit worthiness, character, general reputation, personal characteristics, or mode of living, which are used as a factor in establishing eligibility for employment. Investigative consumer reports are reports prepared by a CRA including information on a consumer's character, general reputation, personal characteristics or mode of living obtained through personal interviews with neighbors, friends or associates of the applicant or employee. The primary difference between these reports is that investigative consumer reports involve "personal interviews."

Employers who use CRAs to obtain background information are required to first notify the applicant or employee that a consumer report may be obtained and then get the individual's permission to obtain the report. If any adverse action is taken based in whole or in part upon the report, the employer has to comply with a two-step process notifying the applicant or employee, including providing a complete copy of the report to the individual, and then waiting for a period of time before actually taking the adverse action. If the report ordered from a CRA is an investigative consumer report, a notice prepared by the Federal Trade Commission (FTC) called "A Summary of Your Rights Under the Fair Credit Reporting Act" (Summary of Rights) should accompany the initial documentation given to the applicant or employee. Otherwise, a copy of the Summary of Rights must be given to the applicant or employee along with a copy of the report prior to taking any adverse employment action.

President Bush signed the Fair and Accurate Credit Transactions Act (the Fact Act) into law on December 4, 2003, amending the FCRA in several respects. The Fact Act required the FTC to create new notices reflecting the changes to the FCRA. On November 30, 2004, the FTC released the final version of the revised notices to consumers (e.g., employees and applicants), furnishers of information and users of consumer reports. The revised notices take effect on January 31, 2005. You can find a complete copy of the FTC's final rule and all of the revised notices at <http://www.ftc.gov/opa/2004/11/facta.htm>. A copy of the revised Summary of Rights can be found at <http://www.ftc.gov/os/2004/11/041119factaappf.pdf>.