

One Minute Memo[®]



New FCRA Forms Will be Required by January 1, 2013

The Consumer Financial Protection Board (CFPB) recently issued regulations that call for the modification of three critical forms required by the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et seq., and which are typically used in the background screening process. The regulations require that employers and affected consumer reporting agencies (CRAs) begin using these new forms by January 1, 2013. In particular, the CFPB has modified three specific forms to make clear that it (the CFPB) is the agency from which consumers may obtain information about their rights under the FCRA, not the Federal Trade Commission (FTC).

Although the FTC has been the agency traditionally responsible for interpreting the FCRA, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, H.R. 4173), which was signed into law by President Obama on July 21, 2010, transferred rulemaking authority for the FCRA to the CFPB. The newly created CFPB has now become the agency primarily responsible for interpreting the FCRA.

Specifically, the regulations mandate that the following three forms be modified:

- 1) Summary of Consumer Rights under the FCRA:** This is a standard notice required under the FCRA to be used by CRAs and employers alike. CRAs must provide this form to employers. Employers must provide this form to applicants and employees in a wide variety of situations, such as when the applicant or employee will be subject to an investigative consumer report or when a pre-adverse action notice is sent to an applicant or employee.
- 2) Notice to Users of Consumer Reports of their Obligations under the FCRA:** The FCRA requires that CRAs provide each user, including their employer clients, with a copy of this notice.
- 3) Notice to Furnishers of Information of their Obligations under the FCRA:** The FCRA required that CRAs provide this notice to certain furnishers of information in specific situations.

The current version these forms are available [here](#). (Appendices F, G and H to 16 CFR part 698). The new forms, copies of which we include [here](#), are also available online [here](#). (Appendices K, M and N to 12 CFR part 1022). As previously mentioned, the main difference between the forms is that they indicate that consumers may now obtain information about their rights under the FCRA from the CFPB, instead of the FTC.

Although the CFPB has rulemaking and enforcement powers over the FCRA, it does not explicitly supervise CRAs. Notwithstanding this fact, in July 2012, the CFPB adopted a rule allowing it to supervise some CRAs as "larger participants". The Dodd-Frank Act authorizes the CFPB to supervise certain non-bank providers, including those who are "larger participants" in the consumer reporting market, defined as those that have more than \$7 million in annual receipts from consumer reporting activities.

Given this complex and shifting regulatory framework, increased regulation at the local, state and federal, and an increase in litigation surrounding the FCRA, employers and CRAs are well advised to keep abreast of the FCRA's requirements and the CFPB's rulemaking and enforcement of the same, including but not limited to, using these new forms no later than January 1, 2013.

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