

Employers Must Update FCRA Notices in Background Screening Process by January 1, 2013

December 21, 2012

By Jeffrey M. Landes, William J. Milani, Susan Gross Sholinsky, Dean L. Silverberg, Anna A. Cohen, and Jennifer A. Goldman

Effective January 1, 2013, employers must begin using a new Fair Credit Reporting Act (“FCRA”) notice in connection with their background screening process. The Consumer Financial Protection Bureau (“CFPB”)¹ recently issued regulations updating the notice entitled “A Summary of Your Rights Under the FCRA” (“Summary of Consumer’s Rights”), among other notices.²

The updated notices now refer to the CFPB, not the Federal Trade Commission, as the point of contact for any questions pertaining to the FCRA, and provide the CFPB’s website address, www.consumerfinance.gov/learnmore.

Background

The FCRA requires employers to follow specific procedures when using third parties to procure consumer reports and/or investigative consumer reports (including credit, criminal background, motor vehicle records, and educational records checks, among others). In particular, employers must provide a copy of the Summary of Consumer’s Rights to an applicant or employee during various steps of the background screening process, such as when requesting applicant/employee authorization to perform a background check, when issuing pre-adverse action notices, and when sending adverse

¹ The CFPB, which was established under the Dodd Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), is now the federal agency primarily responsible for issuing rules, regulations, and guidance under the FCRA as well as enforcing the statute. Prior to the creation of the CFPB, the Federal Trade Commission (“FTC”) handled these tasks. While the CFPB has broad authority to administer and enforce the FCRA, the FTC retains some enforcement authority over FCRA and other federal consumer protection laws.

² The other two notices that have been amended are: (1) the Notice to Users of Consumer Reports of their Obligations under the FCRA (“Notice to Users”) and (2) the Notice to Furnishers of Information of their Obligations under the FCRA (“Notice to Furnishers”). The Notice to Users is a notice that Consumer Reporting Agencies (“CRAs”) must provide to users of consumer reports (such as employers) who procure background checks. The Notice to Users can be accessed via the CFPB’s website or by clicking [here](#). The Notice to Furnishers is a notice that furnishers of consumer information provide to CRAs. That notice describes the responsibilities of persons or entities that furnish consumer information to CRAs. The Notice to Furnishers is also available on the CFPB’s website, or by clicking [here](#).

action notices (when the employer bases a negative employment action, in whole or in part, on results obtained from a consumer report).

The Summary of Consumer's Rights Notice can be accessed via the CFPB's website or by clicking [here](#).

What Employers Should Do Now

- By January 1, 2013, begin using the updated Summary of Consumer's Rights notice, as required under the FCRA:
 - When obtaining an employee's or applicant's authorization to procure a consumer report and/or investigative consumer report;
 - When notifying an employee or applicant of your organization's intent to take adverse action based on information that you received in connection with a background check; and
 - When providing notice that your organization will, indeed, take an adverse action based on information that you received in connection with a background check.
- Review your organization's background screening policies, including all forms and notices to employees, to ensure compliance with the FCRA.
- While reviewing your forms and notices, ensure compliance with any applicable state FCRA statutes in states where your organization does business.

For more information about this Advisory, please contact:

Jeffrey M. Landes
New York
212-351-4601
jlandes@ebglaw.com

William J. Milani
New York
212-351-4659
wjmilani@ebglaw.com

Susan Gross Sholinsky
New York
212-351-4789
sgross@ebglaw.com

Dean L. Silverberg
New York
212-535-4246
dsilverberg@ebglaw.com

Anna A. Cohen
New York
212-351-4922
acohen@ebglaw.com

Jennifer A. Goldman
New York
212-351-4554
jgoldman@ebglaw.com

Nicole Scarangella, a Law Student Extern in Epstein Becker Green's New York office, contributed significantly to the preparation of this Advisory.

This Advisory has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice.

About Epstein Becker Green

Epstein Becker & Green, P.C., founded in 1973, is a national law firm with approximately 300 lawyers practicing in 11 offices, in Atlanta, Boston, Chicago, Houston, Indianapolis, Los Angeles, New York, Newark, San Francisco, Stamford, and Washington, D.C. The firm is uncompromising in its pursuit of legal excellence and client service in its

areas of practice: [Health Care and Life Sciences](#), [Labor and Employment](#), [Litigation](#), [Corporate Services](#), and [Employee Benefits](#). Epstein Becker Green was founded to serve the health care industry and has been at the forefront of health care legal developments since 1973. The firm is also proud to be a trusted advisor to clients in the financial services and hospitality industries, among others, representing entities from startups to Fortune 100 companies. Our commitment to these practices and industries reflects the founders' belief in focused proficiency paired with seasoned experience. For more information, visit www.ebglaw.com.

© 2012 Epstein Becker & Green, P.C.

Attorney Advertising

ATLANTA | BOSTON | CHICAGO | HOUSTON | INDIANAPOLIS | LOS ANGELES
NEW YORK | NEWARK | SAN FRANCISCO | STAMFORD | WASHINGTON, DC

www.ebglaw.com

Epstein Becker & Green, P.C.