

Employer Background Checks – New Forms Required for FCRA Compliance

SEPTEMBER 20, 2018

Last week, the Consumer Financial Protection Bureau (CFPB) issued an interim final rule updating two model disclosure forms to reflect changes made to the Fair Credit Reporting Act (FCRA) in recent legislation. Employers must begin using the new model disclosure forms immediately in connection with their employee and applicant background checks.

The FCRA applies to an employer when the employer uses a consumer reporting agency to obtain a background check or “consumer report” on an employee or applicant. A consumer report typically contains information on the employee’s or applicant’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, and/or mode of living, including, information concerning the employee’s or applicant’s criminal history.

Employers are required by the FCRA to provide a “Summary of Consumer Rights” form to an employee or applicant at certain times in connection with obtaining a consumer report on the employee or applicant for employment purposes. For example, before obtaining a consumer report, an employer must (1) disclose to the employee or applicant that the employer is procuring a consumer report and that it may use information in the report for decisions related to consideration for employment or continued employment, (2) receive written permission from the employee or applicant, and (3) provide the employee or applicant with a Summary of Consumer Rights in the form prescribed by the CFPB.

In the interim final rule issued last week, the CFPB updated the Summary of Consumer Rights form to provide notice of new security freeze rights. The new security freeze rights allow an employee or applicant to obtain a “national security freeze” free of charge from the consumer reporting agency providing the consumer report. The “national security freeze” restricts prospective lenders from obtaining access to an individual’s credit report, which makes it harder for identity thieves to open accounts in the individual’s name. The interim final rule also updates a separate disclosure form—the Summary of Consumer Identity Theft Rights form—but that form is generally not required in connection with employee or applicant background checks or consumer reports.

Employers need to update their disclosure forms by **September 21, 2018**, to avoid exposure. The interim final rule provides that employers may comply by either (1) using the new Summary of Consumer Rights form **or** (2) using the 2012 version of the Summary of Consumer Rights form, along with a separate summary of the security freeze rights

that is set forth in the new form, so long as a separate page that contains the security freeze rights is provided at the same time.

The new forms are available on the CFPB website, [here](#).

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