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New FCRA Forms Take Effect January 1, 2013

Client Alert

September 19, 2012

Employers must adopt new Fair Credit Reporting Act (FCRA) forms by January 1, 2013, in light of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 shifting FCRA rulemaking authority from the Federal Trade Commission (FTC) to the new Consumer Financial Protection Bureau (CFPB). Indeed, the CFPB recently announced that employers must modify their FCRA forms to make clear that the CFPB, not the FTC, is the agency that consumers should contact about their rights under the FCRA.

By way of background, the FCRA governs third-party credit reporting agencies that perform background checks on applicants and employees on behalf of employers. Federal and state laws generally permit employers to obtain consumer reports and/or investigative consumer reports on applicants and employees if employers and their third-party consumer credit reporting agencies/background screening vendors follow certain protocol.

This protocol includes furnishing forms that (1) disclose to the applicant the employer's intention to obtain a consumer report and/or investigative consumer report; (2) obtain the applicant's advance authorization to conduct a background check; (3) notify the applicant in advance of the employer's intent to take adverse action based on the information contained in the report(s) and provide a copy of the report; and (4) notify the applicant of the adverse action.

As the hiring process has received increased legislative and administrative scrutiny in recent months and years, employers can expect that FCRA forms may continue to change. If you have any questions or concerns regarding the new FCRA forms or related developments, please contact your Proskauer lawyer or any co-chair of the Employment Law Counseling Practice Group.

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