

New Background Check Forms Required under the FCRA

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The Fair Credit Reporting Act ("FCRA") provides guidelines which must be followed in order for employers to gather certain information about employees or applicants. Generally, there are two types of reports: a *consumer report* or an *investigative consumer report*. A *consumer report*, which provides information regarding, among other things, a person's credit worthiness, is what most employers use. An *investigative consumer report* is used less often and includes information about an individual obtained through personal interviews. The Consumer Financial Protection Bureau ("CFPB") is the federal agency responsible for enforcing the FCRA. The CFPB took these duties over from the Federal Trade Commission in 2011.

While employers have long been required to provide certain information under the FCRA, the forms have recently changed and employers should now be aware of the updated forms issued by the CFPB. The most important form is the "Summary of Your Rights Under the Fair Credit Reporting Act" ("Summary of Your Rights") which must be provided to applicants by employers, *inter alia*, prior to the employer taking an adverse employment action based upon a consumer report. The second form, "Notice to Users of Consumer Reports: Obligations of Users Under the FCRA," and third form "Notice to Furnishers of Information: Obligations of Furnishers Under the FCRA" are generally provided by consumer reporting agencies to users of their services (i.e. employers).

The three new forms are Appendix K, Appendix M, and Appendix N to 12 C.F.R. Part 1022.

As a reminder to Rhode Island employers, anytime the federal "Summary of Your Rights" form must be provided, you must also provide applicants with a notice of their right under Rhode Island General Law 6-48-6 to obtain a security freeze on their credit report.

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