



Workplace Privacy Counsel

Posted at 10:03 AM on November 19, 2012 by Privacy and Data Protection Practice Group

Even Administrative Agencies Make Mistakes: Corrected Model FCRA Forms Now Available To Employers Who Conduct Background Checks

By [Philip Gordon](#) and [Calder Huntington](#)

The Consumer Financial Protection Bureau (“CFPB”) — best known as a financial services regulator and for the Senate’s rejection of the nominee to be its first chief (who, in an ironic twist, won a Senate seat in the 2012 elections) — also exercises some regulatory authority with an impact on employers. More specifically, the CFPB has taken responsibility from the Federal Trade Commission for issuing several model forms required by the Fair Credit Reporting Act (FCRA). These forms include, among others, the following: (a) the “Notice to Users of Consumer Reports: Obligations of Users Under the FCRA,” which background check providers are required to give employers who procure background check reports, and (b) the “Summary of Your Rights Under the Fair Credit Reporting Act,” which employers are required to provide to applicants and employees with the FCRA disclosure and authorization form when the employer procures an investigative consumer report and with any pre-adverse action notice sent when an employer intends to rely in whole or in part on information contained in a background check report to make an employment decision.

Last week, the CFPB acknowledged that the Notice of User Responsibilities and the Summary of Rights (as well as two other forms not pertinent to employers) published by the Bureau in December 2011 contained typographical and other technical errors. The announcement is important for employers because the deadline for using the model forms issued by CFPB is January 1, 2013, and some employers and background check companies already had started to use the model forms published in December 2011.

CFPB’s corrected model forms are available [here](#) (www.gpo.gov) and [here](#) (Amazon – Federal Register Public Inspection).

Employers who were using CFPB’s earlier-issued and erroneous forms in advance of the January 1, 2013 deadline can breathe a sigh of relief. The CFPB has stated that it will regard the use of the error-filled forms published in December 2011 to be compliant “until further notice” so as to “mitigate the impact of these changes on the users of the model forms.” Nonetheless, employers should consider transitioning to the corrected model forms promptly. The CFPB did not state how much advance notice the Bureau will provide before ending the grace period. Transitioning to the corrected forms now will help to avoid a rushed transition later.

Additional information about the new forms can be found at our prior blog [post](#) discussing them.

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