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FTC Releases Final Summary Of Rights Under FACTA

January 31, 2005 is the effective date for a new form of consumer disclosure required for companies that order “investigative consumer reports,” as that term is used in the Fair Credit Reporting Act (“FCRA”), as amended by the Fair and Accurate Credit Transactions Act of 2003 (“FACTA”) in the course of its underwriting process. The new summary of consumer rights replaces the current form previously adopted by the Federal Trade Commission (“FTC”). This new consumer disclosure does not change the disclosure notice that is required when companies take an adverse action based on a consumer report. Discussed below are more details about this new notice.

As we discussed in our March 2003 Client Alert “Adverse Underwriting Decisions: Recent Developments and a Framework for Simplifying Compliance,”¹ insurers may be subject to certain notice requirements when they use consumer reports in the underwriting process. In particular, we noted in the earlier Client Alert that the FCRA requires that insurers provide certain disclosures to the consumer if the insurer orders “investigative consumer reports” on the consumer to aid in underwriting. Unlike a typical consumer report that is a product of historical information gathered by consumer reporting agencies, an investigative consumer report is a consumer report in which information on a consumer’s character, general reputation, personal characteristics or mode of living is obtained through personal interviews with persons acquainted with the consumer.

If a company, including an insurer, orders an investigative consumer report, it is required under the FCRA to disclose (1) to the consumer, not later than three days after such report was requested, that an investigative consumer report was requested and (2) that the consumer has the right to request from the company information concerning the nature and scope of the investigation ordered and a *written summary of the consumer’s rights under Section 609(c) FCRA regarding such report* (emphasis added). The same duties apply to employers that use investigative consumer reports in background checks, as many employers do for sensitive positions which may, in some instances, apply to persons otherwise considered to be independent contractors. Companies that use standard consumer reports that are not investigative consumer reports, however, are not required to follow these requirements.

Section 609(c) of the FCRA requires the FTC to issue a general summary of consumer rights. The FTC initially issued a summary of consumer rights

in 1997. The changes to the FCRA with the passage of FACTA rendered the summary of rights issued in 1997 incomplete. On November 30, 2004, the FTC promulgated the revised summary of rights that becomes effective on January 31, 2005.² Please visit <http://www.ftc.gov/bcp/conline/pubs/credit/fcrasummary.pdf> for a revised summary of your rights under the FCRA.

Notable changes to the revised summary of consumer rights include (i) the addition of text directing Spanish-speaking consumers to a Spanish version of the summary; (ii) the inclusion of greater detail in a consumer’s rights under state laws; (iii) enhanced disclosure of a consumer’s right to receive a free copy of his or her consumer report; and (iv) the addition of text alerting the consumer to additional rights or identity theft victims and active duty military personnel.³

Companies, including insurers, that utilize investigative consumer reports in their business, such as insurers in their underwriting process, and employers that use such reports in background checks, must provide consumers the revised summary of rights for reports requested after January 31, 2005.

For additional information on this topic, please contact one of the authors or your Lord, Bissell & Brook LLP attorney.

Endnotes

- 1 You can find this publication at http://www.lordbissell.com/newsstand_story.cfm?NSID=289.
- 2 For additional information on the impact of FACTA on safeguarding of personal information, please refer to our Client Alert “Personal Data: Secure or Shred Before FTC Sweeps,” located at http://www.lordbissell.com/newsstand_story.cfm?NSID=706.
- 3 Please note that the State of California has enacted laws regarding the use of investigative consumer reports that differ from that of the FCRA. For further details, please contact your Lord, Bissell & Brook LLP attorney.

ABOUT THE AUTHORS

Carey Barney, Pat Hatfield and Jay Kallas have extensive experience in the corporate insurance industry, including privacy matters.