

## THE WASHINGTON REPORT May 2013

### On The Hill

While the Senate rejected a proposal to expand circumstances under which background checks must be conducted in connection with firearms purchases, background check issues in a variety of areas continue to percolate on Capitol Hill, including credit report accuracy, E-Verify, and EEOC activity, all familiar areas of attention in Washington. On May 7th, for example, the Senate Commerce Committee's Subcommittee on Consumer Protection, held a hearing on the accuracy and completeness of consumer credit reports which is discussed further in the "At the FTC" section below.

Immigration also continues to be a hot topic. On April 26th, Rep. Lamar Smith (R-TX) introduced H.R. 1772, which would mandate the use of the E-Verify employment eligibility verification system to evaluate the legal status of new hires by companies with 10,000 or more employees. The bipartisan so-called Gang-of-Eight also introduced their immigration reform proposal (S. 744), and, as expected, it included a provision requiring the use of E-Verify by employers, with the requirement to be phased in over a period of five years, beginning with the largest employers and gradually expanded to include smaller employers. The bill would preempt existing state laws requiring the use of E-Verify.

On May 16<sup>th</sup>, during the Senate Judiciary Committee's mark-up of S. 744, several amendments regarding E-Verify were considered by the Committee. The Committee approved amendments to require annual audits of the accuracy of the information in the E-Verify system; to require enhanced reporting within the Department of Homeland Security about individuals that receive a final "nonconfirmation" of eligibility through E-Verify; and to require the development of protocols to notify individuals when a query for the individual has been processed through E-Verify. The Committee rejected amendments which would have shortened the implementation period from five years to 18 months and which would have grandfathered existing state E-Verify requirements until the federal provision was fully implemented. An amendment which would have prohibited the use of E-Verify to reverify the employment authorization of an acquired company's workforce if there was a substantial continuity of business operations was withdrawn.

As this month's *Washington Report* goes to press, the House Education and Workforce Committee's Subcommittee on Workforce Protections has scheduled a hearing for Wednesday May 22 on "Examining the Regulatory and Enforcement Actions of the Equal Employment Opportunity Commission." EEOC Chairwoman Jacqueline Berrien is scheduled to testify and the hearing, according to a media release from the Committee, is expected to focus on EEOC efforts to address "systemic discrimination that involves an alleged pattern or practice of discrimination." EEOC efforts regarding

the use of criminal history and credit information for employee screening uses also are expected to be examined during the hearing.

### **At the FTC**

In testimony on May 7<sup>th</sup>, before the Senate Commerce Committee's Subcommittee on Consumer Protection, Product Safety and Insurance, Maneesha Mithal, Associate Director of the FTC Division of Privacy and Identity Protection, told the Committee that "vigorous enforcement of the FCRA is a high priority" for the FTC. The focus of the Senate Commerce Committee hearing, as noted, was the accuracy and completeness of consumer credit reports, but the FTC's testimony addressed the Commission's FCRA enforcement efforts more broadly. Corey Stone, CFPB Assistant Director for Deposits, Cash, Collections, and Reporting Markets, also testified at the hearing, but focused his testimony more narrowly on credit reporting accuracy issues.

Associate Director Mithal noted the FTC's action against HireRight last year as a prominent example of the FTC's FCRA enforcement efforts regarding the accuracy of consumer reports. She also noted that one of the tools that FTC is using as part of its enforcement efforts is test shopping initiatives. Last month's *Washington Report* discussed the FTC's warning letters to operators of six websites that sell tenant history information of their obligations if they are functioning as consumer reporting agencies. On May 7<sup>th</sup>, the FTC followed those tenant screening warning letters with letters to ten information companies that FTC test shopping suggested may be selling consumer information for other FCRA permissible purposes without complying with FCRA requirements, including six that appeared to be selling reports for employment purposes. The six companies receiving letters in the employment space were identified by the FTC as Crimcheck.com, 4Nannies, U.S. Information Search, People Search Now, Case Breakers, and USA People Search.

**Disclaimer: The *Washington Report* provides a general summary of recent legal and legislative developments and is for informational purposes only. It is not intended to be, and should not be relied upon as legal advice. For more information, please contact Kevin Coy at 202-677-4034.**