

## News and Legislation Relating to Employment and Background Checks

### Federal News and Legislation:

#### Background Checks

- On September 16<sup>th</sup>, Canon Business Solutions, Inc. (Canon) settled a proposed class action alleging that Canon violated the Fair Credit Reporting Act by failing to provide an employee terminated because of findings on a background report with a copy of a background report obtained in connection with her hiring and a chance to dispute the accuracy of information contained in the report. When the lead plaintiff transitioned from a temporary employee at Canon to a full-time position, Canon asked if she had been convicted of a crime within the last seven years, to which she responded that she had not, after which Canon notified her that it had discovered a 12-year-old felony conviction on her background report and terminated her employment.  
(*Anya McPherson v. Canon Business Solutions, Inc.*, No. 1:12-cv-07761 (D.N.J., Sep. 16, 2014).)
- On September 16<sup>th</sup>, Rep. Mike Kelly (R-PA) introduced H.R. 5482, the “*Enhanced Security Clearance Act*,” which would expand government background checks to include an applicant’s “publicly available electronic information,” including but not limited to that from social media accounts. The bill is similar to S. 1618, Sen. Susan Collins’ (R-ME) bill of the same name, introduced last October and reported out by the Senate Homeland Security and Governmental Affairs Committee on July 30<sup>th</sup>. In a press release, Kelly stated, “Especially in light of today’s anniversary of the Navy Yard shooting, it is critical that we remember the grave costs of security-related oversights and do not hesitate to take obvious and overdue action to save American lives.”  
(<http://kelly.house.gov/press-release/rep-kelly-introduces-enhanced-security-clearance-act-2014>)
- On September 12<sup>th</sup>, Federal Trade Commission (FTC) Chairwoman Edith Ramirez delivered prepared remarks at the opening of the FTC’s workshop entitled, “*Big Data: A Tool for Inclusion or Exclusion?*” Ramirez stated, “As part of the FTC’s ongoing work to shed light on the full scope of big data practices, our workshop will examine the potentially positive and negative effects of big data on low income and underserved

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populations.” In her remarks, Ramirez cited examples of the risks of big data, including that “web searches for distinctively black names were 25 percent more likely to produce an ad suggesting the person had an arrest record, regardless of whether that person had actually been arrested, than web searches for distinctively white names.” Ramirez identified three objectives for moving forward:

- The FTC should continue to rigorously enforce existing law in connection with uses of big data;
- Industry should understand its ethical obligations as “stewards” of consumer information; and
- “We should encourage businesses to guard against bias or disparate impact on low-income and vulnerable populations when designing their analytics systems, algorithms, and predictive products.”

Following Ramirez’ remarks, the workshop held panel discussions to:

- Assess the current uses of big data in various contexts, and the effects on consumers;
- Explore potential uses of big data, as well as those uses’ potential benefits and harms for particular consumer populations; and
- Review applicable anti-discrimination and consumer protection laws;
- Consider best practices for protecting consumers.

[http://www.ftc.gov/system/files/documents/public\\_statements/582421/big\\_data\\_worksh\\_op\\_opening\\_remarks\\_ftc\\_chairwoman\\_edith\\_ramirez\\_9-15-14.pdf](http://www.ftc.gov/system/files/documents/public_statements/582421/big_data_worksh_op_opening_remarks_ftc_chairwoman_edith_ramirez_9-15-14.pdf)

- On September 11<sup>th</sup>, Rep. Sean Duffy (R-WI) introduced H.R. 5452, the “*Child Support Assistance Act*,” which would “clarify the ability to use consumer reports in certain cases to establish and enforce child support payments.” During a September 10th hearing of the House Financial Services Committee’s Subcommittee on Financial Institutions and Consumer Credit, Duffy criticized the 10-day minimum notice that credit reporting agencies must provide to consumers prior to furnishing a credit report to a state or local agency in connection with child support payments. As Duffy later stated in a press release, the advance notice period “gives would-be deadbeat parents ample time to run up their credit, dump savings and assets or otherwise give the impression they can afford far less for their children.”

<http://www.gpo.gov/fdsys/pkg/BILLS-113hr5452ih/pdf/BILLS-113hr5452ih.pdf>

<http://duffy.house.gov/press-release/put-kids-ahead-of-deadbeat-parents>

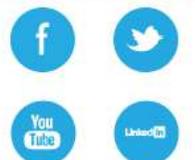
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- On September 10<sup>th</sup>, the House Financial Services Committee's Subcommittee on Financial Institutions and Consumer Credit held a hearing entitled, "*An Overview of the Credit Reporting System*," to "provide... a better understanding of the roles and responsibilities of the consumer reporting agencies, as well as the users and furnishers of consumer credit data."

The hearing panelists were:

- Stuart Pratt, President and CEO of the Consumer Data Industry Association;
- Howard Beales, Professor of Strategic Management and Public Policy at George Washington University;
- John Ikard, President and CEO of FirstBank Holding Company, appearing on behalf of the American Bankers Association; and
- Chi Chi Wu, Staff Attorney at the National Consumer Law Center.

At the hearing, Committee Ranking Member Maxine Waters (D-CA) introduced a draft bill entitled the "*Fair Credit Reporting Improvement Act of 2014*," which is intended to "enhance requirements on the consumer reporting agencies (CRAs), and furnishers that provide information to these CRAs, to guarantee consumers have the capacity to ensure that the information on their credit reports is accurate and complete." Specifically, the proposal would:

- Restrict the use of credit reports for employment purposes;
- Set a dollar amount that a CRA may charge a consumer for his or her credit report;
- Require CRAs to provide consumers with a free annual credit or educational credit score upon request;
- Remove from credit reports adverse residential loan information connected to "predatory mortgage lenders and servicers";
- Shorten by three years the "unreasonably long time periods that most adverse information can remain on a person's credit report";
- Require furnishers to retain records related to adverse information for as long as such adverse information remains on a credit report;
- Require CRAs to remove fully paid or settled debt, including medical debt, from credit reports; and
- Require CRAs to remove adverse information on private education loans if the borrower makes consecutive, on-time monthly payments for a certain period of time.

<http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=392357>)

[http://democrats.financialservices.house.gov/FinancialSvcsDemMedia/file/003%20Maxine%20Waters%20Legislation/09\\_09\\_2014%20WATERS\\_038\\_xml%20FCRA%20Draft.pdf](http://democrats.financialservices.house.gov/FinancialSvcsDemMedia/file/003%20Maxine%20Waters%20Legislation/09_09_2014%20WATERS_038_xml%20FCRA%20Draft.pdf)

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- On September 9<sup>th</sup>, *The Washington Post* reported that the Office of Personnel Management (OPM) will not renew any contracts with USIS, a background screening company that currently conducts the majority of background checks for federal security clearances, when the current contracts expire on September 30<sup>th</sup>. The company has garnered media attention following revelations that it conducted the background checks for former National Security Agency contractor Edward Snowden and Navy Yard shooter Aaron Alexis, as well as allegations in a whistleblower suit that USIS violated the False Claims Act by “dumping” 665,000 background checks back to OPM that USIS knew were incomplete. Most recently, USIS suffered a cybersecurity incident that potentially exposed the personal information of thousands of federal employees. OPM did not respond to media requests for comment. USIS responded in a public statement that it is “deeply disappointed” with the decision but intends “to fulfill our obligations to ensure an orderly transition” and to “continue[] to provide high quality service to its many other valued government customers.”  
[http://www.washingtonpost.com/business/economy/opm-to-end-usis-contracts-for-background-security-checks/2014/09/09/4fcd490a-3880-11e4-9c9f-ebb47272e40e\\_story.htm](http://www.washingtonpost.com/business/economy/opm-to-end-usis-contracts-for-background-security-checks/2014/09/09/4fcd490a-3880-11e4-9c9f-ebb47272e40e_story.htm)
- On September 9<sup>th</sup>, Rep. Tim Walberg (R-MI) introduced H.R. 5422, the “*Litigation Oversight Act of 2014*,” which would amend the Civil Rights Act to require, “the [Equal Employment Opportunity Commission (EEOC) to] approve or disapprove by majority vote whether the Commission shall commence or intervene in litigation involving multiple plaintiffs, or an allegation of systemic discrimination or a pattern or practice of discrimination.” The bill would allow for a member of the Commission to require the whole Commission to approve or disapprove by majority vote whether to commence or intervene in any litigation, an authority neither the Commission nor a member of the Commission may delegate to any other person. The bill would further require that votes on commencing or intervening in litigation would be posted publicly not later than 30 days after such action. The bill is pending in the House Education and the Workforce Committee.  
<http://www.gpo.gov/fdsys/pkg/BILLS-113hr5422ih/pdf/BILLS-113hr5422ih.pdf>
- On September 8<sup>th</sup>, the EEOC filed a complaint in a federal district court in Minnesota against Cummins Power Generation, Inc., for allegedly violating the Americans with Disabilities Act and the Genetic Information Nondiscrimination Act (GINA) by requiring an employee to sign an “overly broad” medical records release form seeking information about disabilities unrelated to his position and certain genetic information. The EEOC stated in its complaint

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that the employee “was willing to go through the fitness-for-duty examination, but he objected to the release(s) that Cummins insisted that he sign.” Further, the EEOC states, Cummins was unwilling to narrow the scope of information it requested in the release form it provided to the employee to sign, and terminated the employee’s employment after the employee refused to sign. The specific charges under GINA allege that, “By and through the releases, including the diagnostic assessment form, Cummins required [the employee] to disclose genetic information in the form of family medical history,” and, “Cummins did not caution its providers against providing medical records containing genetic information in the form of family medical history.”

(*EEOC v. Cummins Power Generation, Inc.*, No. 0:14-cv-034080-SRN-SER (D. Minn., Sep. 8, 2014).)

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