

## News and Legislation Relating to Employment and Background Checks

### Federal News and Legislation:

#### Background Checks

- On January 22<sup>nd</sup>, the Office of Personnel Management (OPM) announced that the Department of Defense (DOD) will now handle the agency's background check operations and information systems. The news comes in response to OPM's massive data breach in the summer of 2015 that compromised the background check applications of 21.5 million current, former, and prospective federal government employees. DOD has created a new division known as the National Background Investigations Bureau (NBIB) to replace OPM's Federal Investigative Services agency. According to OPM Director James R. Clapper, "The administration will establish a transition team that will develop a plan to stand up NBIB and migrate the existing functions of the current Federal Investigative Service to the NBIB, and to make sure that agencies continue to get the investigative services they need during the transition." Under the new organizational structure, the president will appoint the head of NBIB, who will report to the director of OPM, and the agency will receive policy direction from, and be accountable to, OPM's Performance Accountability Council. (<http://thehill.com/policy/cybersecurity/266721-pentagon-will-secure-opm-background-checks-after-hacks>)
- On January 29<sup>th</sup>, a New York federal judge tentatively denied class certification to a group of satellite technicians suing Dish Network, LLC (Dish) over alleged violations of the Fair Credit Reporting Act (FCRA). According to the technicians' 2012 complaint, Dish violated the FCRA by obtaining their credit reports without proper authorization when conducting background checks. The technicians also claim that Dish violated the law when it did not provide notice before taking adverse action based on the content of the reports. However, the judge granted Dish's motion for a stay pending the Supreme Court's ruling in *Spokeo Inc. v. Robins*. According to the judge's order, "The Supreme Court's decision in *Spokeo* will likely clarify whether or not the named plaintiffs and potential class members in this case have Article III standing. The definitions for each of the plaintiffs' three proposed classes premise membership on Dish's alleged violations of various FCRA provisions. Similar to *Spokeo*'s arguments before the Supreme Court, defendants argue that two of the three named plaintiffs 'neither alleged to have suffered,

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nor actually suffered, any concrete harm other than a purported violation of their rights under the [FCRA].” In response to the judge’s order, plaintiffs’ counsel stated, “What corporate defendants fail to recognized in these cases is that, whatever the Supreme Court decides in Spokeo, the decision case will not operate as a get-out-of-jail-free card for corporations who break the law. Rather even, even the most extreme possible decision in Spokeo will simply mean that plaintiffs cannot sue in federal court.” (*Ernst et al. v. Dish Network LLC et al.*, case number 1:12-cv-08794, in the U.S. District Court for the Southern District of New York.)

### **State News and Legislation:**

#### **Background Checks**

- On January 28<sup>th</sup>, the Austin, Texas City Council approved the creation of the “Thumbs Up!” program, a public-private partnership that gives sharing economy participants the opportunity to pass a fingerprint background check. Thumbs Up! allows Uber and Lyft drivers to voluntarily undergo fingerprint background checks paid for by the city of Austin. In exchange for their participation in the program, drivers will be allowed to pick up riders at certain places and events previously off limits, including the Austin-Bergstrom International Airport and at events like the Austin City Limits music festival. According to Austin mayor Steve Adler, “The reason we’re doing this is because a number of people in the city of Austin have said they’d be safer if they had a driver who had undergone that level of background check. Without regard to whether it’s safer or not, the city council tomorrow is going to demonstrate that people have that option.” Both Uber and Lyft have expressed concern over the new program, which goes into effect on February 1, 2016, calling it “duplicative” of the background check procedures already in place. According to an Uber spokesperson, “The truth is the ‘badge program’ would penalize drivers who are unable to complete the city’s duplicative background check by revoking their access to critical earning opportunities... Uber continues to oppose it.” (<http://recode.net/2016/01/29/things-are-getting-ugly-in-ubers-and-lyfts-fight-against-fingerprint-checks-in-austin/>)

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