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ATTORNEYS

CLIENT ALERT

**PROPOSED REVISIONS TO
CRIMINAL OFFENDER RECORD INFORMATION (“CORI”) REGULATIONS:
FOR EMPLOYERS**

The Massachusetts Department of Criminal Justice Information Services (“DCJIS”) recently proposed revisions to the current regulations that govern employers’ access to CORI. Notable proposed changes are described below. (Proposed CORI regulations applicable to housing applicants are not discussed here.)

I. SCOPE

What is considered CORI? The proposed regulations expand the definition of CORI to include criminal records compiled by any Massachusetts criminal justice agency, rather than simply records obtained from the iCORI system. All such records are considered CORI under the proposed regulations and the employer must still abide by the procedures set forth in the regulations in handling them.

At what age does criminal history information become accessible CORI? The current regulations exclude from CORI all criminal history developed before a person’s 17th birthday; the proposed regulations exclude from CORI all criminal history before a person’s 18th birthday (in each case, unless the minor was adjudicated as an adult). However, this proposed change only applies to offenses committed after September 18, 2013.

Whose CORI may employers access? The proposed regulations make clear that employers can access the CORI not only of all employees, but also of volunteers, subcontractors, contractors, and vendor applicants.

II. PROCESS

The proposed regulations provide that volunteer organizations, as well as employers, may register for an iCORI account; however, registration for an iCORI account is not complete until the user agrees to all iCORI terms and conditions and completes a CORI training.

III. LEVELS OF ACCESS

Under the proposed regulations, users with “open access” will have access to felony convictions for *two* years (rather than *one* year) following the date of disposition or the date of release from incarceration or custody, whichever is later.

IV. PREREQUISITES TO ACCESS

Acknowledgment Form. The proposed regulations require that volunteer organizations, landlords, property management companies, real estate agents, and public housing authorities obtain a signed CORI Acknowledgment Form. The proposed regulations clarify that in order to access CORI, the CORI Acknowledgment Form must be signed (which was implied but is not clear under the current regulations). The CORI Acknowledgment Form must also include a statement notifying the subject that the requesting entity may request CORI at any time for a period of one year following the execution of the CORI Acknowledgment Form. Unlike the current regulations, subsequent notice during that one-year period is not required. However, the CORI Acknowledgment Form becomes invalid if the subject’s professional license becomes invalid or is revoked. The proposed regulations permit CORI Acknowledgment Forms to be collected electronically, but only if the form is notarized. CORI Acknowledgment Forms must be retained for at least one year.

Verification of Identity. Under the proposed regulations, the entity requesting access to CORI must verify the subject’s identity by examining a “suitable” form of government-issued identification containing a photograph of the subject. Under the current regulations, the verification process did not require a photo, nor did it recognize Native American Tribal documents as a suitable form of identification. The proposed regulations also clarify the procedure to be followed when a subject does not have an acceptable form of government-issued identification. In that circumstance, the requestor must verify the subject’s identity by reviewing either the subject’s birth certificate or social security card. Unchanged by the proposed regulations is the procedure that must be followed if a requestor is wholly unable to verify the subject’s identity and signature. In that situation, the subject must execute a CORI Acknowledgment Form before a notary public. The proposed regulations eliminate the requirement that the subject’s name, date of birth, and partial social security number must match the information in the iCORI database exactly, in order for the requesting entity to obtain CORI from the iCORI database.

Subsequent CORI Checks. If a requesting entity seeks to access the CORI of a subject whose CORI Acknowledgment Form expired, the requesting entity must obtain a new CORI Acknowledgment Form. The requesting entity is not required to verify the identity of the subject again, unless the information on the new CORI Acknowledgment Form differs from the information on the expired CORI Acknowledgment Form.

V. STORAGE, RETENTION, AND DESTRUCTION OF CORI

Storage. The proposed regulations allow CORI to be stored on a cloud storage system, provided that the requesting entity enters into a written agreement with the cloud storage

provider which is reviewed and approved by DCJIS. A cloud storage system which is used to store CORI must have encryption and password protection capabilities.

Access. The proposed regulations require that all persons with access to CORI sign an individual nondisclosure agreement, a copy of which the requesting entity must maintain and make available to DCJIS upon request. Moreover, the proposed regulations provide that all entities that request CORI must maintain a “need to know” list of staff that is authorized to request, receive, or review CORI. The requesting entity must update this list no less than once every six months, and must make this list available to DCJIS upon request.

Destruction. The proposed regulations clarify that hard copies of CORI Acknowledgment Forms must be destroyed by shredding or burning. Electronic copies must be destroyed by: (i) deleting them from the device on which they are stored; (ii) deleting them from any system used to back up the information; and (iii) “by degaussing the device or overwriting the fields with 1s and 0s multiple times.”

VI. WRITTEN CORI POLICY REQUIREMENTS

The proposed regulations provide that any person or entity which acts as a decision maker on an application or interacts directly with a subject, and which annually conducts five or more criminal background investigations (whether CORI is obtained from DCJIS or from another source) must maintain a written CORI policy. The current regulations only impose this requirement on employers and governmental licensing agencies.

VII. TAKING AN ADVERSE ACTION

The proposed regulations set forth specific procedures that requesting entities must follow when deciding to take an adverse action against the subject of a CORI. Although these procedures are substantially unchanged from those required by the current regulations, the proposed regulations also require that an employer follow the same procedures when deciding to take an adverse employment action against a *current* employee. In addition, these employers will be required to follow the same procedures, even when the information prompting the adverse action was gleaned from a source other than the iCORI system; employers contemplating the adverse action will be required to disclose the source of the CORI that prompted the action. Under the proposed regulations, an adverse decision may also be made on the basis of a subject’s objection to a request for CORI.

VIII. USING A CRA TO OBTAIN CORI

Under the proposed regulations, if a requesting entity uses a credit reporting agency (“CRA”) to procure CORI, the requesting entity will be required to register for an iCORI account and designate the CRA as an entity authorized to submit iCORI checks on the employer’s behalf. This registration must take place before the CRA requests any CORI. The proposed regulations confirm that, even when a requesting entity requests CORI through a CRA, the requesting entity is still required to obtain a CORI Acknowledgement Form. The same procedures for taking an adverse action described above will apply, even when a CRA is used to procure CORI

IX. AUDITS BY DCJIS

The proposed regulations permit DCJIS to enter into a consent agreement with a requesting entity if DCJIS conducts an audit of the requesting entity and finds the entity out of compliance with the regulations. In this consent agreement, the audited entity would admit to “certain audit findings, and, in lieu of further proceedings, agree[] to resolve [the] audit findings by agreeing to pay a fine and/or by agreeing to other conditions regarding access to CORI.”

X. NEXT STEPS

When the updated regulations are finalized, employers will need to revise their employee handbooks, as well as their procedures and documentation relating to CORI checks. Krokidas & Bluestein LLP will update you as final regulations issue. In the meantime, for further information regarding current CORI requirements or the proposed regulations, feel free to contact attorney Elka Sachs (esach@kb-law.com) or law clerk Allison Belanger (abelanger@kb-law.com).

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