
The Background Screening Credentialing Council has drafted the following response to a question we have received regarding the US Employment Screening / General Background Screening BSOAP Standard, this letter applies to US Version 2.0, 3.0 and General Version 1.0. This response is provided for *educational purposes only* and does not constitute legal advice, express or implied, of the BSCC, or the Professional Background Screening Association. Consultation with legal counsel is recommended in all matters of employment law.

For the purposes of this Letter, and to ensure our response applies to both Standards, the terms Organization and CRA may both be used.

TITLE: Clause 2.8 - Agreement from Client

Question: I spoke with the BSAAP auditor who took the position that a CRA / Organization must have these affirmations/certifications in its contract with an End User, or else a CRA / Organization cannot be accredited by the BSCC. Presently, they are in our contract; however, I am looking to pull these out of the contract and have our End Users execute a separate free-standing instrument containing the required affirmations. I am confident that such a separate document complies with the dictates of the federal FCRA, and I don't see why the BSCC should care whether the affirmations are directly integrated into the contract as opposed to affirmed in a free-standing instrument. The statute only requires that I obtain the certification; not the vehicle by which the certification is obtained.

Response: Thank you for your inquiry.

You have asked whether the end-user certifications are required to be a contractual provision of the CRA's client service agreement or are permissible in a separate certification or affirmation outside of that agreement. The short answer is that there is no specific requirement to include certifications in the service agreement itself, but they should be in writing and signed by the client.

Clause 2.8 does not specify the form of the agreement; whether it be a contractual or other signed agreement is up to the discretion of the applicant. The BSCC notes that since the writing of the Standard, there has been litigation regarding client certifications in the US, all of which has settled as of the date of this letter. The BSCC recommends all members required to obtain certifications to seek legal counsel to review the form, format, frequency and process of obtaining certifications from clients.

Thank you for submitting your inquiry and giving the BSCC an opportunity to review. We believe we have responded fully to your inquiry. Please let us know if you have any further questions.