

# Client Alert

A report  
for clients  
and friends  
of the firm     June 2005

## FTC Disposal Rule Aimed at Preventing Identity Theft Goes Into Effect

With identity theft a more common occurrence, protection of private information becomes a paramount concern. In order to prevent identity thieves from obtaining personal information from corporate trash bins, the Federal Trade Commission ("FTC") has enacted a final rule governing the proper disposal of consumer reports (the "Disposal Rule"). This Rule went into effect on June 1, 2005.

"Consumer Reports" are those which contain an individual's financial, credit, criminal background and/or other personal information obtained from third-party reporting agencies.<sup>1</sup> Generally, these reports also contain highly sensitive identification information, including the individual's full name, Social Security number and date of birth, that identity thieves need to perpetrate their crimes. The final Disposal Rule was issued pursuant to the Fair and Accurate Credit Transaction Act ("FACTA") and the Fair Credit Reporting Act ("FCRA"). FACTA, enacted in December 2003, directs various government agencies to adopt consistent rules regarding the disposal of consumer information. The Disposal Rule enacted by the FTC is aimed at protecting consumers from identity theft and other harm arising from the improper disposal of consumer reports and related records containing personal information.

The Disposal Rule neither mandates disposal, nor indicates how long records are to be maintained. Rather, it only addresses a proper disposal requirement should a company decide to dispose of

this material. The Rule requires that "any person who maintains or otherwise possesses consumer information for a business purpose . . . properly dispose of [consumer] information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal."<sup>2</sup> Any information or document that does not contain individual names or data is not included.<sup>3</sup> The Rule does not mandate that any particular steps be taken to properly dispose of the information. Instead, it requires that "reasonable measures" be taken to protect this personal and private information in the disposal process, whether the information is maintained in paper documents or electronic format. To this end, the Rule identifies non-exhaustive examples of possible "reasonable measures," including the following examples:

- Burning, pulverizing, or shredding of papers containing consumer information so that the information cannot practicably be read or reconstructed;
- Destruction or erasure of electronic media containing consumer information so that the information cannot practicably be read or reconstructed; and
- After due diligence, entering into a contract with a record destruction service.<sup>4</sup>

The Disposal Rule is broad, covering "any person over which the Federal Trade Commission has jurisdiction, that, for a business purpose, maintains or otherwise possesses consumer information."<sup>5</sup> In essence, this means that the Rule covers "any person that possesses or maintains consumer information other than an individual consumer who has obtained his or her own consumer report or file disclosure." This coverage of the Rule includes even small businesses

1 16 C.F.R. § 682.1.

2 16 C.F.R. § 682.3.

3 *Id.*

4 16 C.F.R. § 682.3(b).

5 16 C.F.R. § 682.2(b).

with only one or two employees. Financial institutions are already covered by a similar disposal rule, the Gramm-Leach-Bliley Act ("GLB Act") Safeguards Rule. To comply with the FTC's Disposal Rule, financial institutions need only ensure that the Disposal Rule's requirements are incorporated into the information security program which they should already have in place as required by the GLB Act Safeguards Rule.

***Editor's note:** Businesses need to heighten their awareness of the fact that personal private information collected on employees, customers and clients is grist for the identity theft mill. Thus, businesses need to ensure that not only is this information disposed of properly, but that care is taken in its day-to-day maintenance by securing such information and limiting access only to those who need to know it. Negligent handling of this information leading to improper disclosure could be a source of corporate liability. Moreover, businesses should be aware of record retention requirements and not rush to dispose of this type of information merely because this Rule specifies proper disposal procedures.*

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