

**HR-E Alert**  
**NEW FEDERAL REQUIREMENTS FOR DISPOSING OF**  
**PERSONAL RECORDS AND INFORMATION**  
**July 1, 2005**

Businesses and individuals that use credit and other background checks may need to adopt new safeguards in response new Federal Trade Commission regulations that took effect June 1, 2005. New "Disposal Rule" regulations that took effect June 1, 2005 under the Fair and Accurate Credit Transactions Act of 2003 (FACTA), now require businesses and individuals to take appropriate measures to dispose of sensitive information derived from consumer reports and records to protect against "unauthorized access to or use of the information."

The new Disposal Rule applies to people and both large and small organizations that use consumer reports. Covered persons include consumer reporting companies; lenders; insurers; employers that conduct credit or other regulated background checks on applicants or employees; landlords; government agencies; mortgage brokers, car dealers; attorneys; private investigators; debt collectors; individuals who pull consumer reports on prospective home employees, such as nannies or contractors; and entities that maintain information in consumer reports as part of their role as a service provider to other organizations covered by the Disposal Rule.

The Disposal Rule applies to consumer reports or information derived from consumer reports. The Fair Credit Reporting Act defines a "consumer report" to include information obtained from a consumer reporting company that is used – or expected to be used – in establishing a consumer's eligibility for credit, employment, or insurance, among other purposes. Examples of consumer reports include credit reports, credit scores, reports businesses or individuals receive with information relating to employment background, check writing history, insurance claims, residential or tenant history, or medical history.

The new Disposal Rule requires disposal practices that are reasonable and appropriate to prevent the unauthorized access to or use of information in a consumer report. The standard for the proper disposal of information derived from a consumer report provides covered persons and organizations with much flexibility to determine what safeguards are required, provided that they can demonstrate the reasonability of their choices. Covered organizations and individuals are required to conduct risk assessments of their particular circumstances to determine what measures are reasonable based on the sensitivity of the information, the costs and benefits of different disposal methods, and changes in technology. Under the Disposal Rule, the adequacy of the due diligence conducted by a covered party and the adequacy of the practices and measures for disposal of consumer reports depends on the particular circumstances. Covered organizations and individuals need to be prepared to demonstrate both that they conducted a reasonable assessment and to justify the reasonability and adequacy of the disposal practices and policies they select.

The New Disposal Rule in the latest addition to a series of federal regulations requiring that organizations and individuals take steps to safeguard sensitive information against improper access, use, or identity theft. Financial institutions subject to both the Disposal Rule and the Gramm-Leach-Bliley (GLB) Safeguards Disposal Rule, which requires institutions to take steps to protect sensitive customer information, should incorporate practices dealing with the proper disposal of consumer information into the information security program that the Safeguards Disposal Rule requires. Information is available at [www.ftc.gov/privacy/privacyinitiatives/safeguards.html](http://www.ftc.gov/privacy/privacyinitiatives/safeguards.html).

A copy of the new Disposal Rule is available at [www.ftc.gov/os/2004/11/041118disposalfrn.pdf](http://www.ftc.gov/os/2004/11/041118disposalfrn.pdf). The FTC also has issued a new publication, "New Disposal Rule Seeks to Protect Privacy by Requiring Proper Disposal of Sensitive Consumer Information," available at [www.ftc.gov/bcp/online/pubs/alerts/disposalalrt.htm](http://www.ftc.gov/bcp/online/pubs/alerts/disposalalrt.htm), to educate businesses about the new requirements.

If you have questions or need help evaluating or responding to the effects of Hurricane Katrina or other concerns relating to your human resources, employee benefit, insurance or other operations, or to request information about upcoming programs or alerts, please contact: Cynthia Marcotte Stamer, P.C., Member, Glast, Phillips & Murray, P.C., 2200 One Galleria Tower, 13355 Noel Road, LB 48, Dallas, Texas 75240. Telephone (972) 419-7188. E-mail [cstamer@gpm-law.com](mailto:cstamer@gpm-law.com).

For other helpful resources or additional information about Ms. Stamer and/or Glast, Phillips & Murray, P.C., see [CynthiaStamer.com](http://CynthiaStamer.com) or [gpm-law.com](http://gpm-law.com) or contact Ms. Stamer. If you would like to receive future Alerts or announcements about other programs or developments, please be sure that we have your current contact information – including your preferred e-mail – by providing that information to us via telephone, fax or e-mail using the above contact information.

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