

FACTA COMPLIANCE & THE DISPOSAL OF CONSUMER INFORMATION

WHAT IS FACTA?

The Fair and Accurate Credit Transactions Act of 2003 ("FACTA") was adopted to ensure that all citizens are treated fairly when they apply for credit. This law will provide consumers, companies, consumer reporting agencies, and regulators with important new tools that expand access to credit and other financial services for all Americans, enhance the accuracy of consumers' financial information, and help fight identity theft. These reforms make permanent the uniform national standards of our credit markets, and institute new, strong consumer protections.

In general, the Act amends the Fair Credit Reporting Act ("FCRA") to enhance the accuracy of consumer reports and to allow consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. To promote increasingly efficient national credit markets, FACTA also establishes uniform national standards in key areas of regulation regarding consumer report information. Finally, the Act contains a number of provisions intended to combat consumer fraud and related crimes, including identity theft, and to assist its victims.

RELEVANT SECTIONS FOR RECORD DISPOSAL

The Federal Trade Commission ("FTC") finalized a rule under FACTA that governs the disposal of records that contain consumer information (The FACT Act Disposal Rule, 16 CFR Part 682). The proposed Disposal Rule was issued in April 2004, public comment period closed in July 2004, the final Rule was published in November 2004 and enforcement will begin on June 1, 2005.

The purpose of the Disposal Rule is to reduce the risk of consumer fraud created by improper disposal of any record that is, or is derived from, a consumer report. To further this objective, the Rule requires that any person that possesses or maintains covered consumer information take reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.

KEY DEFINITIONS

Possess or Maintain - (see Affected Companies section)

Consumer Information - Any record about an individual, whether in paper, electronic or other form (i.e. paper, magnetic tape, cartridges, disks, etc.), that is a consumer report or is derived from a consumer report. A "consumer report" is a written or oral communication of information by a consumer reporting agency related to a consumer's credit worthiness, reputation, personal characteristics, etc., prepared in connection with a credit application, insurance, employment, etc. A "consumer reporting agency" is any entity that for money regularly engages in the practice of collecting consumer credit information.

Reasonable Measures - Will vary according to an entity's nature and size, the costs and benefits of available disposal methods, the sensitivity of the information involved and relevant technological changes.

Disposing or Disposal - Discarding or abandonment of consumer information, the sale, donation, or transfer of any medium, including computer equipment, upon which consumer information is stored.

AFFECTED COMPANIES

Any company, regardless of industry or size, that obtains, possesses or maintains consumer reports for a business purpose including:

- (1) Businesses that sell consumer information - Examples include consumer reporting agencies, resellers of consumer reports
- (2) Businesses that use consumer reports - Examples include lenders, insurers, employers, landlords, government agencies, mortgage brokers, automobile dealers, etc.
- (3) Businesses that possess consumer information in connection with the provision of services to another entity - Examples include records management companies, shredding companies, recyclers

IMPLICATIONS OF THE DISPOSAL RULE

The Rule would require that businesses dispose of consumer information by taking reasonable precautions to protect against unauthorized disclosure. Reasonable measures would include:

- (1) Paper records - Implementing and monitoring compliance with policies and procedures that requires the shredding, burning, pulverizing of papers containing consumer information so that the information cannot practicably be read or reconstructed.
- (2) Electronic records - Implementing and monitoring compliance with policies and procedures that requires the destruction or erasure of electronic media containing consumer information so that the information cannot practicably be read or reconstructed.
- (3) Due Diligence & Contracts - After due diligence, entering into and monitoring compliance with a written contract with another party engaged in the business of record destruction to dispose of consumer information in a manner consistent with this rule.

THE COST OF NON-COMPLIANCE

Violation claims can be brought within 2 years from discovery of the violation or 5 years from the actual violation. The FCRA specifies the burden of these enforcement rules by stating that in the event of knowing violation, civil penalty not to exceed \$2,500 per violation. The court can also take into account the degree of culpability, any history of prior conduct, ability to pay, effect on ability to conduct business, and other such matters. Furthermore states may bring an action to enjoin and or to recover damages not to exceed \$1,000 per willful or negligent violation. In addition to fines that can be levied by federal or state agencies, these violations can irreparably damage a company's reputation.

FOR MORE INFORMATION

Iron Mountain.....800-899-IRON or www.ironmountain.com

FACTA.....<http://lcweb2.loc.gov/law/usa/us0412200301pl108-159.pdf>

Disposal Rule..... <http://www.ftc.gov/os/2004/04/040415factafrn.pdf>

Fair Credit Reporting Act.....<http://www.ftc.gov/os/statutes/031224fcra.pdf>