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New Federal Rule on the Disposal of Consumer Information

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On Nov. 18, 2004, the Federal Trade Commission issued a final rule requiring businesses to properly dispose of consumer information. The new rule, which is designed to help combat identity theft that results from the improper disposal of consumer information, is one of several new measures required by the Fair and Accurate Credit Transactions Act of 2003. The rule becomes effective on June 1, 2005.

The new rule is intended to protect consumer privacy and prevent fraud by requiring companies to take reasonable steps to guard against unauthorized access to or use of consumer information in connection with its disposal. In addition to consumer reporting agencies, entities that are affected by the rule include lenders, insurers, employers, landlords, mortgage brokers, car dealers, and other businesses that use consumer reports.

Who Is Covered?

The new Disposal Rule applies to any business that maintains or otherwise possesses consumer information. *Consumer information* means any record about an individual, whether in paper, electronic, or other form that is a consumer report or is derived from a consumer report (including compilations of these records). A *consumer report* is any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or collected as a factor in establishing the consumer's eligibility for —

- credit or insurance to be used primarily for personal, family, or household purposes;
- employment purposes; or
- any other permissible purpose authorized under the Fair Credit Reporting Act.

Information that does not identify individuals, such as aggregate or blind data, is not covered by the new Disposal Rule.

“Reasonable” Disposal Measures Required

The new rule requires covered entities to 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.” *Disposal* includes —

- discarding or abandoning consumer information; and
- selling, donating, or transferring any medium, including computer equipment, on which consumer information is stored.

The rule does not define what is *reasonable*, instead allowing for a flexible standard that permits covered entities to determine what measures are reasonable based on the sensitivity of the information, the costs and benefits of different disposal methods, and relevant changes in technology over time. The rule includes specific examples of measures the FTC believes satisfy the rule’s disposal standard. These examples, which are intended as guidance and not as safe harbors or exclusive methods for compliance, include the following:

- implementing policies and procedures that require (1) the burning, pulverizing, or shredding of papers containing consumer information and (2) the destruction or erasure of electronic media containing consumer information so the information cannot practicably be read or reconstructed;
- after conducting due diligence of the disposal company (which due diligence could include conducting an independent audit of the company’s operations, obtaining references, or requiring that the disposal company be certified), entering into a contract with the disposal company to dispose of consumer information in a manner consistent with the Disposal Rule;
- for disposal companies, implementing policies and procedures that protect against unauthorized or unintentional disposal of consumer information and disposing of such information in accordance with the first example set forth above; and
- for entities subject to the Gramm- Leach-Bliley Act’s Safeguards Rule, incorporating the proper disposal of consumer information as required by the Disposal Rule into the information security program required by the Safeguards Rule.

Significance of the New Rule

As the nation’s first federal law imposing a security standard on the disposal of consumer information retained by U.S. businesses that are not otherwise subject to financial or health information security requirements, this rule will have an immediate impact on many businesses that maintain information about consumers

While the rule is flexible, allowing covered businesses to make disposal decisions appropriate to their own unique circumstances, it seeks to ensure that relevant information will be disposed of properly.

By June 1, 2005, every business that maintains consumer report information must develop and implement procedures that provide for the proper disposal of this information. If you have any

questions about the significance of the new FTC Disposal Rule or need assistance complying with the new regulation, contact a qualified lawyer.

Reasonable Methods of Document Destruction

- Policies and procedures that require disposal of paper and electronic documents so the information cannot practicably be read or reconstructed.
- Conducting due diligence and contracting with a disposal company to dispose of consumer information in a manner consistent with the Disposal Rule.
- Policies and procedures for disposal companies that are in accordance with the first example set forth above.
- Incorporating the Disposal Rule into an information security program for organizations bound by the GLBA Safeguards Rule

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