

Inquirehire Advisory: FCRA Compliance/Mandates Document Disposal

On June 1, 2005, a new administrative rule came into effect under the [Fair and Accurate Credit Transactions Act](#) (FACTA). This rule requires every employer that employs one or more employees to follow a **disposal rule** to shred any and all documents that contain information derived from a credit report. The Rule also applies to people and both large and small organizations that use consumer reports, including: consumer reporting companies; lenders; insurers; employers; 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 Rule.

Penalties for failing to obey the shredding provisions could be severe and include: civil liability in which an employee can recover actual damages from his/her employer for all damages incurred from identity theft; statutory damages of up to \$1,000 per employee; an employer may open itself to class action liability if a large number of employees are affected; federal fines of up to \$2,500 for each violation; and state fines of up to \$1,000 per employee.

FACTA was enacted to protect consumer and company privacy.

What information does the Disposal Rule cover?

The Disposal Rule applies to consumer reports or information derived from consumer reports. The Fair Credit Reporting Act defines the term 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. Credit reports and credit scores are consumer reports. Also any reports businesses or individuals receive with information relating to employment background, check writing history, insurance claims, residential or tenant history or medical history.

What is 'proper' disposal?

The Disposal Rule requires disposal practices that are reasonable and appropriate to prevent the unauthorized access to – or use of – information in a consumer report. For example, reasonable measures for disposing of consumer report information could include establishing and complying with policies to:

- burn, pulverize, or shred papers containing consumer report information so that the information cannot be read or reconstructed;

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- destroy or erase electronic files or media containing consumer report information so that the information cannot be read or reconstructed;
- conduct **due diligence** and hire a document destruction contractor to dispose of material specifically identified as consumer report information consistent with the Rule.

Due diligence could include:

- reviewing an independent audit of a disposal company's operations and/or its compliance with the Rule;
- obtaining information about the disposal company from several references;
- requiring that the disposal company be certified by a recognized trade association such as NAID (National Association of Information Destruction);
- reviewing and evaluating the disposal company's information security policies or procedures.

The FTC (Federal Trade Commission) says that financial institutions that are subject to both the Disposal Rule and the Gramm-Leach-Bliley (GLB) Safeguards Rule should incorporate practices dealing with the proper disposal of consumer information into the information security program that the Safeguards Rule requires.

Reference: The [Fair Credit Reporting Act \(FCRA\)](#), enforced by the Federal Trade Commission, promotes accuracy in consumer reports and is meant to ensure the privacy of the information in them as amended by the [Fair and Accurate Credit Transactions Act of 2003 \(FACTA\)](#) (PL 108-159, 12/04/03). The FACTA requires the Commission and other agencies to implement many of the new provisions of the FCRA by means of [rules and regulations](#) issued in 2004.

Consumer Reporting Agencies:

If you've ever applied for a charge account, personal loan, insurance or job, there's a file about you. This file contains information on where you work and live, how you pay your bills and whether you've been sued, arrested or have filed for bankruptcy.

Companies that gather and sell this information are called **Consumer Reporting Agencies (CRAs)**. The most common type of CRA is the credit bureau. The activities of other CRAs – such as tenant or employment screening services or agencies whose data is limited to your check writing history – that offer reports on consumers in specific situations are also governed by the FCRA. CRAs may sell information about you to creditors, employers, insurers and other businesses in the form of a consumer report. Medical information and information used to prevent and detect fraud are sometimes governed by the FCRA.

For more information about this provision, please contact Inquirehire.

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