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COMPTROLLER'S CIRCULAR NO. 2005-01

TO: All Department Heads

FROM: Russ K. Saito, State Comptroller *Russ K. Saito*

SUBJECT: Disposal Requirement for Consumer Information

A Federal Trade Commission Rule, 16 CFR Part 682, "Disposal of Consumer Report Information and Records," which implements section 216 of the Fair and Accurate Credit Transactions Act of 2003 (FACTA), took effect on June 1, 2005. This rule's purpose is to "reduce the risk of consumer fraud and related harms, including identity theft, created by improper disposal of consumer information" (16 CFR §682.2(a)).

The rule requires that "(a)ny person who maintains or otherwise possesses consumer information for a business purpose must properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal" (16 CFR §682.3(a)).

Consumer information is defined as "any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report. Consumer information also means a compilation of such records. Consumer information does not include information that does not identify individuals, such as aggregate information or blind data" (16 CFR §682.1(b)).

"This rule applies to any person over which the Federal Trade Commission has jurisdiction, that, for a business purpose, maintains or otherwise possesses consumer information," (16 CFR §682.2(b)), including government agencies.

A June 2005 *FTC Business Alert*, "Disposing of Consumer Report Information? New Rule Tells How," (<http://www.ftc.gov/bcp/online/pubs/alerts/disposalalrt.htm>), provides examples of proper disposal. It states:

“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;
- 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;
 - reviewing and evaluating the disposal company's information security policies or procedures.”

Any program that uses “consumer information” should be aware of the FTC rule and should take appropriate actions to comply with the rule.

For more information about this rule, contact Herb Arai at the DAGS Archives Division, Records Management Branch, 831-6769.