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LABOR AND EMPLOYMENT BULLETIN

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Amendments to the Fair Credit Reporting Act Impact Employers' Obligations—Starting on January 31, 2005

The Fair and Accurate Credit Transactions Act (“FACTA”), signed into law on December 4, 2003, amended the Fair Credit Reporting Act (“FCRA”) in two important ways for employers. The changes relate to: (1) the notice employers must provide to applicants and employees before taking any adverse employment action based on “consumer reports,” and (2) how an employer disposes of the “consumer reports” after they have been obtained.

Generally, pursuant to the FCRA, employers who use “consumer reports” (including, for example, credit reports and criminal background checks) in making decisions relating to an applicant or employee must obtain both consent and authorization from the applicant or employee prior to obtaining the consumer report. In addition, with limited exceptions, prior to taking adverse action based in whole or in part on the “consumer report,” the employer must provide the applicant or employee with a copy of the consumer report and a copy of document entitled, “A Summary of Your Rights Under the Fair Credit Reporting Act” (“Summary”).

Pursuant to FACTA, on November 30, 2004, the Federal Trade Commission issued a revised version of the Summary, which adds new provisions, including language advising Spanish speaking individuals how to obtain information regarding the FCRA in Spanish and advising individuals that they have a right to obtain their numerical credit scores. The new Summary must be used beginning January 31, 2005. A copy of the new Summary is attached to this Bulletin and may be found at <http://www.ftc.gov/os/2004/11/041119factaappf.pdf>.



FACTA also places new requirements on what an employer must do when *disposing* of the “consumer report.” FACTA amended the FCRA to require that any person who disposes of a “consumer report” must do so in a manner that will reduce the risk of identity theft. The Federal Trade Commission has promulgated new regulations, effective June 1, 2005, which will require that any employer who disposes of FCRA-protected information must “tak[e] reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.” Examples of “reasonable measures” include “burning, pulverizing, or shredding of papers containing consumer information so that the information cannot practicably be read or reconstructed.”

The final regulation was published in the Federal Register on November 24, 2004 (69 Fed. Reg. 68689, to be codified at 16 C.F.R. Part 682).



L A B O R A N D E M P L O Y M E N T C O N T A C T S

BIRMINGHAM, AL

Leslie M. Allen
205.226.3484
lallen@balch.com

David R. Boyd
205.226.3485
334.269.3132
dboyd@balch.com

Douglas B. Kauffman
205.226.8758
dkauffman@balch.com

N. DeWayne Pope
205.226.3421
dpope@balch.com

Lisa J. Sharp
205.226.8714
lsharp@balch.com

M. Jefferson Starling, III
205.226.3406
jstarling@balch.com

HUNTSVILLE, AL

David B. Block
256.512.0105
dblock@balch.com

JACKSON, MS

R. Pepper Crutcher, Jr.
601.965.8158
rcrutcher@balch.com

Armin J. Moeller, Jr.
601.965.8156
amoeller@balch.com

David M. Thomas, II
601.965.8157
dthomas@balch.com

E. Russell Turner
601.965.8159
rturner@balch.com

ATLANTA, GA

Cary Ichter
404.760.3502
cichter@balch.com

T. Joshua R. Archer
404.760.3556
jarcher@balch.com

MONTGOMERY, AL

W. Pete Cobb, II
334.269.3128
pcobb@balch.com

Charles B. Paterson
334.269.3143
cpaterso@balch.com

Dorman Walker
334.269.3138
dwalker@balch.com

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Para informacion en espanol, visite www.ftc.gov/credit o escribe a la FTC Consumer Response Center, Room 130-A 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, go to www.ftc.gov/credit or write to: Consumer Response Center, Room 130-A, Federal Trade Commission, 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.**

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.
- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your “file disclosure”). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
 - a person has taken adverse action against you because of information in your credit report;
 - you are the victim of identify theft and place a fraud alert in your file;
 - your file contains inaccurate information as a result of fraud;
 - you are on public assistance;
 - you are unemployed but expect to apply for employment within 60 days.In addition, by September 2005 all consumers will be entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.ftc.gov/credit for additional information.
- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.
- **You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.ftc.gov/credit for an explanation of dispute procedures.
- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.

- **Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.
- **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need -- usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.
- **You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.ftc.gov/credit.
- **You may limit "prescreened" offers of credit and insurance you get based on information in your credit report.** Unsolicited "prescreened" offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt-out with the nationwide credit bureaus at 1-800-XXX-XXXX.
- **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.
- **Identity theft victims and active duty military personnel have additional rights.** For more information, visit www.ftc.gov/credit.

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. Federal enforcers are:

TYPE OF BUSINESS:	CONTACT:
Consumer reporting agencies, creditors and others not listed below	Federal Trade Commission: Consumer Response Center - FCRA Washington, DC 20580 1-877-382-4357
National banks, federal branches/agencies of foreign banks (word "National" or initials "N.A." appear in or after bank's name)	Office of the Comptroller of the Currency Compliance Management, Mail Stop 6-6 Washington, DC 20219 800-613-6743
Federal Reserve System member banks (except national banks, and federal branches/agencies of foreign banks)	Federal Reserve Board Division of Consumer & Community Affairs Washington, DC 20551 202-452-3693
Savings associations and federally chartered savings banks (word "Federal" or initials "F.S.B." appear in federal institution's name)	Office of Thrift Supervision Consumer Complaints Washington, DC 20552 800-842-6929
Federal credit unions (words "Federal Credit Union" appear in institution's name)	National Credit Union Administration 1775 Duke Street Alexandria, VA 22314 703-519-4600
State-chartered banks that are not members of the Federal Reserve System	Federal Deposit Insurance Corporation Consumer Response Center, 2345 Grand Avenue, Suite 100 Kansas City, Missouri 64108-2638 1-877-275-3342
Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission	Department of Transportation, Office of Financial Management Washington, DC 20590 202-366-1306
Activities subject to the Packers and Stockyards Act, 1921	Department of Agriculture Office of Deputy Administrator - GIPSA Washington, DC 20250 202-720-7051