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By: C. Ann Jordan, Esq.

**NEW REGULATIONS ON DESTRUCTION OF “CONSUMER INFORMATION”**

Effective June 1, 2005, regulations under the Fair and Accurate Credit Transaction Act (FACT Act) require all employers obtaining consumer reports (typically in connection with a background check for employment purposes) to adopt reasonable disposal practices to protect against unauthorized access to or use of the information. Under the Act, covered information includes any personal data gained by an employer as a result of a consumer-report background check and any compilation of such information. The regulation also covers computer data that is transferred to an outside party. The Act is intended to protect prospective, current, and former employees from the ever-growing crime of identity theft.

Unlike many previously enacted state laws, the federal statute allows an aggrieved party to collect damages and attorney fees from an entity found in violation of the Act. Additionally, the FTC is empowered to independently fine a noncompliant employer. Although the Act fails to specify specific procedures for discarding covered information, the FTC offered the following suggestions:

- Implement policies requiring the burning, pulverizing, or shredding of consumer information so that it cannot be read or reconstructed, and routinely oversee compliance with such policies;
- Implement and monitor a similar policy addressing the destruction or erasure of electronic media containing consumer information; or

- Contract with an entity specializing in information disposal. Before hiring an outside company, be sure to complete a thorough background check, inquire of its affiliation with a recognized trade association, and conduct an independent review of the company's disposal security policies and practices.

In response to the Act, employers must adopt a secure plan for storing and disposing "consumer information." Once a policy is established and disseminated to employees charged with its administration, employees should conduct routine reviews to ensure proper functioning of the disposal system.

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If you have any questions about the issues raised by this e-alert, please feel free to contact C. Ann Jordan at (414) 273-3910 or by e-mail at [ajordan@lindner-marsack.com](mailto:ajordan@lindner-marsack.com).

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