

Using Information from Data Brokers? Beware the FCRA and the FTC ...

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As sellers and Internet service providers gather increasing amounts of consumer information, the data broker industry has expanded. Identifying themselves as "market research" firms, data brokers buy, analyze, sort, aggregate, and resell public and non-public information and analytics about consumers to companies that use the data to target their marketing efforts. But the Federal Trade Commission (FTC), which enforces the Fair Credit Reporting Act (FCRA), takes the position that these data brokers are consumer reporting agencies (CRAs) regulated by the FCRA. The FCRA defines a CRA to include anyone who "regularly engages in assembling or evaluating credit or other consumer information" for the purpose of furnishing "consumer reports" to third parties, by means of interstate commerce. "Consumer reports" are broadly defined to include "any information" "communicated by" a CRA relating to "general reputation, personal characteristics, or mode of living" that may serve "as a factor" in establishing the consumer's eligibility for credit, insurance, or employment. The FTC aggressively pursues enforcement against key players in the credit reporting system: CRAs, furnishers of information, and consumer report users. In recent years it has sued and assessed millions of dollars in penalties against data brokers that sell information about consumers, including Instant Checkmate, InfoTrack, and Choice Point. According to FTC complaints, these companies operated as CRAs but violated the FCRA by, among other things, providing inaccurate information about consumers, and failing to screen prospective subscribers before selling them sensitive consumer information. The FCRA also requires users of consumer reports to provide the consumer with notice of any "adverse action" taken on the basis of information contained in the report, including denial of credit or eligibility for insurance. **Companies that use information purchased from data brokers or "market research" companies as "a factor in determining eligibility" for extension of credit or insurance should be aware that they may be subject to adverse action notice requirements under the FCRA.** The FTC has called for more transparency and accountability on the part of data brokers, and recently recommended to Congress that it consider legislation requiring data brokers to provide consumers information about the data they

collect, access to their data, and the ability to opt out of having it shared for marketing purposes: <http://www.ftc.gov/news-events/press-releases/2014/05/ftc-recommends-congress-require-data-broker-industry-be-more>.

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Consumer Finance

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