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WHAT INFORMATION DO DATA BROKERS HAVE ON CONSUMERS, AND HOW DO THEY USE IT?

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

DECEMBER 18, 2013

Printed for the use of the Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PUBLISHING OFFICE

95–838 PDF WASHINGTON : 2015

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

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ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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CONTENTS

	Page
Hearing held on December 18, 2013	1
Statement of Senator Rockefeller	1
Staff report entitled "A Review of the Data Broker Industry: Collection, Use, and Sale of Consumer Data for Marketing Purposes" by the Office of Oversight and Investigations Majority Staff	4
Statement of Senator Thune	54
Prepared statement of Alicia Puente Cackley, Director Financial Markets and Community Investment, U.S. Government Accountability Office	56
Statement of Senator Booker	119
Statement of Senator Johnson	121
Statement of Senator Blumenthal	123
Statement of Senator Markey	126
Statement of Senator McCaskill	129
Statement of Senator Fischer	135

WITNESSES

Jessica Rich, Director, Bureau of Consumer Protection, Federal Trade Commission	66
Prepared statement	68
Pam Dixon, Executive Director, World Privacy Forum	72
Prepared statement	73
Joseph Turow, Robert Lewis Shayon Professor of Communication, Associate Dean for Graduate Studies, Annenberg School for Communication, University of Pennsylvania	102
Prepared statement	104
Tony Hadley, Senior Vice President of Government Affairs and Public Policy, Experian	105
Prepared statement	107
Jerry Cerasale, Senior Vice President of Government Affairs, Direct Marketing Assocation	110
Prepared statement	111

APPENDIX

Response to written question submitted to Jessica Rich by:	
Hon. John D. Rockefeller IV	143
Hon. Kelly Ayotte	143
Response to written questions submitted to Jerry Cerasale by:	
Hon. Amy Klobuchar	145
Hon. Kelly Ayotte	145

WHAT INFORMATION DO DATA BROKERS HAVE ON CONSUMERS, AND HOW DO THEY USE IT?

WEDNESDAY, DECEMBER 18, 2013

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 2:31 p.m., in room SR–253, Russell Senate Office Building, Hon. John D. Rockefeller IV, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV, U.S. ENATOR FROM WEST VIRGINIA

The CHAIRMAN. The Committee will come to order.

There are, at this point, two people sitting at the dais, and they are two wonderful people, but I would be pleased if there were more. Senator Blumenthal and Senator Pryor, Senator Markey, Senator Fischer, Senator Warner will be here.

But this is the day that we almost vote on the budget, actually. We don't quite. We always find ways to do it. You have the motion to proceed to it, and then you have a motion to—whatever. And then tomorrow at some point we vote on the budget. Just be grateful you are in private life.

[Laughter.]

The CHAIRMAN. OK. You are all welcome.

The disclosures about U.S. intelligence activities over the past few months have sparked a very public debate in this country about what kinds of information the government should be gathering and how we protect the privacy of Americans who have done nothing wrong.

The Snowden disclosures have harmed our country's national security, but they have made Americans think more than they usually do about how their lives, both online and offline, can be tracked, monitored, and analyzed. People are aware of that, not to the extent that they are in Great Britain, where they are so accustomed to being videotaped in everything they do. We are still going through that adjustment period.

I am glad we are talking about these important privacy issues, in general and today. We have all benefited from the rapid advances in computing technology, but we also cherish our personal freedoms. We always use that word, "cherish" our personal freedoms. But we do. And it is a complicated subject. And we want to

be able to protect ourselves and our loved ones from the unwanted gaze of the government and our neighbors.

What has been missing from this conversation so far is the role that private companies play in collecting and analyzing our personal information. A group of companies known collectively as "data brokers" are gathering massive amounts of data about our personal lives and selling this information to marketers. We don't hear a lot about the private-sector data broker industry, but it is playing a large and growing role in our lives.

Let me provide a little perspective. In the year 2012, which you will recall was last year, the data broker industry generated $156 billion in revenues—that is more than twice the size of the entire intelligence budget of the United States Government—all generated by the effort to learn about and sell the details about our private lives. Whether we know it or like it or not, makes no difference.

One of the largest data broker companies, Acxiom, recently boasted to its investors that it can provide, quote, "multi-sourced insight into approximately 700 million customers worldwide."

When government or law enforcement agencies collect information about us, they are restrained by our Constitution and our laws, and they are subject to the oversight of courts, inspectors general, and the United States Congress through the Intelligence Committee in the Senate and the House.

And I have served on the Intelligence Committee since before 9/11, and I can declare to you absolutely without a single thought that the protection that NSA provides to security and secrecy is far better than what we are going to be talking about today. They have rules. They have all kinds of judges and hoops that you have to jump through. The FBI is involved, DOJ. It is all—it is very tight.

And every day you read the paper, you would think it didn't exist, it is just the government gone wild. But particularly when it comes to domestic, which is called Section 215, it is very tightly monitored, and there is never content, there is never e-mail, and there is never a name—never a name. There is just a telephone number.

But data brokers go about their business with little or no oversight. While there are laws on the books that protect the privacy of Americans' health and financial information, they do not cover data brokers' marketing activities.

Collecting consumers' information for marketing purposes is not a new business. For decades before the Internet was invented, retailers, marketers, and, yes, political candidates compiled mailing lists that they used to send catalogs, coupon books, or other materials to their potential customers.

But the data broker industry has been revolutionized in recent years by the tremendous advances in computing and data analysis. And as consumers spend more and more time socializing and shopping online, they are generating rich new streams of personal data to collect and analyze, on the part of the data brokers.

These days, data brokers don't just know our address, our income level, our political affiliation, most probably, they probably know the weight of everybody in the family. They have collected thou-

sands of data points about each one of us, and we are simply not aware of it, except in theory.

They know if you have diabetes or suffer from depression. They know if you smoke cigarettes. They know your reading habits, your browsing habits. They know how much you and your family members weigh. And they may even know how many whiskey drinks you have consumed in the last 30 days.

We wouldn't reveal that kind of information, would we?

Senator THUNE. Of course not.

The CHAIRMAN. No.

[Laughter.]

The CHAIRMAN. Like the pieces of a mosaic, data brokers combine data points like these into startlingly detailed and intimate profiles of American consumers.

Under current laws, we have no right to see these pictures of ourselves that these companies have created. We have no right. For the past year, this committee has been trying to bring some much-needed oversight to the data broker industry.

Where is the copy of our report? Oh, it is under here. I have it.

We have been pushing the data brokers to answer the same kinds of questions many Americans have been asking the government since the Snowden disclosures: What information are you collecting about us, and how are you using the information?

Today's hearing is the first time we are publicly discussing what we are learning in this investigation. The Commerce Committee staff has also prepared a report for me and for the Ranking Member on the progress of this investigation. It is thus. More to come.

I ask unanimous consent to put a copy of this report in the record of this hearing.

[The report follows:]

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION

OFFICE OF OVERSIGHT AND INVESTIGATIONS
MAJORITY STAFF

A Review of the Data Broker Industry: Collection, Use, and Sale of Consumer Data for Marketing Purposes

STAFF REPORT FOR CHAIRMAN ROCKEFELLER
DECEMBER 18, 2013

Table of Contents

Executive Summary

Background

A. GAO Review of Privacy Laws Applicable to Data Brokers
B. Voluntary Industry Guidelines
C. Privacy and Consumer Protection Issues Regarding Data Broker Practices
Privacy Issues
Potentially Harmful Uses of Data Broker Products
Use of Predictive Scoring Products for Marketing
Data Breaches
D. Recent FTC and Congressional Reviews of the Data Broker Industry

II. Committee Investigation

III. Committee Majority Staff Findings Regarding Industry Practices

A. Data Broker Collection of Consumer Data
1. Nature of Data Collected
2. Sources of Consumer Data
a. Government Records and Other Publicly Available Data
b. Purchase or License
c. Cooperative Arrangements
d. Self-Reporting by Consumers
e. Social Media
B. Data Broker Products
1. How Data Brokers Package Consumer Information
2. Issues Regarding Data Broker Products
a. Products that Identify Financially Vulnerable Populations
b. Scoring Products that Mirror Tools Regulated under the Fair Credit Reporting Act
C. Data Broker Customers and How They Use Data Broker Products
1. Who Buys the Data
2. New Mechanisms for Using Data
D. Data Broker Transparency and Privacy Practices
1. Disclosure Limitations
2. Consumer Access and Control Rights
3. Opt-Out Rights

IV. Conclusion

Appendices and Exhibits

Appendix I: Federal Laws that May Be Applicable to Information Collected by Data Brokers

Appendix II: Sample List of Targeting Products Identifying Financially Vulnerable Populations

Appendix III: Sample List of Offline Elements Available for Online Advertising

Exhibit A: Sample Consumer Surveys

Exhibit B: Sample Product Descriptions

Exhibit C: Experian ChoiceScore Marketing Description

Executive Summary

Consumers are conducting more and more of their daily business online and through their mobile devices. They use the Internet and their smart phones and tablets to make purchases, research medical conditions, plan vacations, interact with friends and relatives, do their jobs, map travel routes, and otherwise pursue their interests. With these activities, consumers are creating a voluminous and unprecedented trail of data regarding who they are, where they live, and what they own.

At the same time, the Internet and other technological advances have made consumer data easier to access, analyze, and share. Information that in years past was accessible only through a trip to the library or courthouse can now be readily available to millions online, as computing capabilities for storing and reviewing information continue to grow at exponential rates.

These changes have fueled the growth of a multi-billion dollar industry that largely operates hidden from consumer view. Today, a wide range of companies known as "data brokers" collect and maintain data on hundreds of millions of consumers, which they analyze, package, and sell generally without consumer permission or input. Since consumers generally do not directly interact with data brokers, they have no means of knowing the extent and nature of information that data brokers collect about them and share with others for their own financial gain.

Data brokers collect and sell information for a variety of purposes including for fraud prevention, credit risk assessment, and marketing. Their customer base encompasses virtually all major industry sectors in the country in addition to many individual small businesses. Some of the most well-known products sold by data brokers are credit reports that businesses use to make eligibility determinations for, among other things, credit, insurance, and employment—activities where consumers have detailed statutory consumer protections regarding the accuracy and sale of their information.

This Committee Majority staff report focuses on data broker activities that are subject to far less statutory consumer protection: the collection and sale of consumer data specifically for marketing purposes. In this arena, data brokers operate with minimal transparency.

One of the primary ways data brokers package and sell data is by putting consumers into categories or "buckets" that enable marketers—the customers of data brokers—to target potential and existing customers. Such practices in many cases may serve the beneficial purpose of providing consumers with products and services specific to their interests and needs. However, it can become a different story when buckets describing consumers using financial characteristics end up in the hands of predatory businesses seeking to identify vulnerable consumers, or when marketers use consumers' data to engage in differential pricing.

Further, the data breaches that have repeatedly occurred in this industry and with others in the data economy underscore the public's need to understand the volume and specificity of data consumer information held by data brokers.

In light of these issues and the Chairman's longstanding commitment to consumer protection and privacy matters, the Committee opened an inquiry last October to shine a light on how the data broker industry operates, with a specific focus on nine representative companies that sell consumer data for marketing purposes. The Committee's inquiry sought answers to four basic questions:

- What data about consumers does the data broker industry collect?
- How specific is this data?
- How does the data broker industry obtain consumer data?
- Who buys this data and how is it used?

In response to the Committee's inquiries, the companies queried provided documents and narrative explanations. While some of the companies have been completely responsive to this inquiry, several major data brokers to date have remained intent on keeping key aspects of their operations secret from both the Committee and the general public.

Based on review of the company responses and other publicly available information, this Committee Majority staff report finds:

(1) *Data brokers collect a huge volume of detailed information on hundreds of millions of consumers.* Information data brokers collect includes consumers' personal characteristics and preferences as well as health and financial information. Beyond publicly available information such as home addresses and phone numbers, data brokers maintain data as specific as whether consumers view a high volume of YouTube videos, the type of car they drive, ailments they may have such as depression or diabetes, whether they are a hunter, what

types of pets they have; or whether they have purchased a particular shampoo product in the last six months;

(2) *Data brokers sell products that identify financially vulnerable consumers.* Some of the respondent companies compile and sell consumer profiles that define consumers in categories or "score" them, without consumer permission or knowledge of the underlying data. A number of these products focus on consumers' financial vulnerability, carrying titles such as "Rural and Barely Making It," "Ethnic Second-City Strugglers," "Retiring on Empty: Singles," "Tough Start: Young Single Parents," and "Credit Crunched: City Families." One company reviewed sells a marketing tool that helps to "identify and more effectively market to under-banked consumers" that the company describes as individuals including "widows" and "consumers with transitory lifestyles, such as military personnel" who annually spend millions on payday loans and other "non-traditional" financial products. The names, descriptions and characterizations in such products likely appeal to companies that sell high-cost loans and other financially risky products to populations more likely to need quick cash, and the sale and use of these consumer profiles merits close review;

(3) *Data broker products provide information about consumer offline behavior to tailor online outreach by marketers.* While historically, marketers used consumer data to locate consumers to send catalogs and other marketing promotions through the mail, or contact via telephone, increasingly the information data brokers sell marketers about consumers is provided digitally. Data brokers provide customers digital products that target online outreach to a consumer based on the dossier of offline data collected about the consumer;

(4) *Data brokers operate behind a veil of secrecy.* Data brokers typically amass data without direct interaction with consumers, and a number of the queried brokers perpetuate this secrecy by contractually limiting customers from disclosing their data sources. Three of the largest companies—Acxiom, Experian, and Epsilon—to date have been similarly secretive with the Committee with respect to their practices, refusing to identify the specific sources of their data or the customers who purchase it. Further, the respondent companies' voluntary policies vary widely regarding consumer access and correction rights regarding their own data—from virtually no rights to the more fulsome policy reflected in the new access and correction database developed by Acxiom.

I. Background

While there is no statutory definition for "data brokers," the Federal Trade Commission (FTC) has defined this term to include "companies that collect information, including personal information about consumers, from a wide variety of sources for the purpose of reselling such information to their customers for various purposes, including verifying an individual's identity, differentiating records, marketing products, and preventing financial fraud."[1] This report relies on the FTC definition of data broker, and focuses specifically on the collection and sale of consumer information for the purpose of marketing.

The practice of collecting and selling consumer data to help businesses conduct marketing has existed for many decades. Long before the advent of the Internet, e-mail, or the mobile economy, data brokers developed expertise in compiling consumer data to facilitate targeted outreach to consumers through direct mail.[2] Toward that end companies have for many years assembled information about consumers from public records, surveys and sweepstakes entries, to develop consumer lists for use by marketers in targeting mailings and phone calls.[3]

What is new in recent years, however, is the tremendous increase in the volume and quality of digitally recorded data—and the technological advances that have fa-

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[1] Federal Trade Commission, *Protecting Consumer Privacy in an Era of Rapid Change,* at 68 (Mar. 2012) (hereafter "FTC Privacy Report"). These companies may also be referred to as "information resellers." *See* Government Accountability Office, *Information Resellers: Consumer Privacy Framework Needs to Reflect Changes in Technology and the Marketplace,* GAO–13–663 (Sept. 2013) (hereafter "GAO Information Resellers Report").

[2] For example, after the introduction of zip codes in 1963, direct mail marketing companies used zip code data to make assumptions about individuals, such as the kinds of magazines they read, the foods they ate, and political affiliations. In 1974, social scientist Jonathan Robbin created *PRIZM* (Potential Rating Index for Zip Markets), which combined ZIP Codes with census data and consumer surveys to help target direct mail marketing. Michael J. Weiss, *The Clustering of America* (1988).

[3] Financial Times, *Data Brokers Compile Lists to Map Your Life before you Reach the Cradle* (June 13, 2013).

cilitated access to, storage, analysis, and sharing of this information.[4] Information that was previously public but required a trip to places such as a library or courthouse to retrieve can now be instantaneously accessible to millions when posted on the Internet. At the same time, consumers increasingly are expanding their digital data footprint as they go about their daily routines.

For example, millions of consumers are now using computers, smart phones, and tablets to make purchases, plan trips, and research personal financial and health questions, among other activities.[5] These digitally recorded decisions provide insights into the consumer's habits, preferences, and financial and health status. A wide and ever-expanding variety of other routine activities also are becoming part of consumers' digital trail—from viewing decisions regarding video streaming services[6] to online searches and mapping requests[7] to personal fitness monitoring through wearable devices[8] to stocking "smart" refrigerators that record food purchases and monitor expiration dates.[9]

Amid this continuing growth in consumers' digital records, there has been a "vast increase" in the number and types of companies that collect and sell consumer data.[10] No comprehensive list of such companies currently exists, but estimates indicate the data broker industry consists of many hundreds of members.[11] Media accounts and other reports in recent years have provided glimpses into some of the ways data brokers are obtaining, compiling, and sharing consumer data.[12] However, data broker activities have remained largely obscured from public view because these companies generally do not collect data directly from consumers and many of their practices lie outside the ambit of Federal consumer protection laws.

A. GAO Review of Privacy Laws Applicable to Data Brokers

In light of these changes regarding the availability and sale of consumer information, Chairman Rockefeller requested that the Government Accountability Office (GAO) review the privacy laws applicable to consumer information collected and sold for marketing purposes.[13] In response, in September 2013, GAO released a report concluding that there is no one comprehensive privacy law governing information collection and sale of consumer data by private sector companies[14] and that further, existing privacy laws have "limited scope" regarding the collection, use, and sale of consumer data for marketing purposes.[15]

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[4] *See* Kenneth Cukier and Viktor Mayer-Schhöenberger, *The Rise of Big Data: How It's Changing the Way We Think about the World,* Foreign Affairs, at 28–40 (May/June 2013) (noting that while in 2000 "only one quarter of all the world's stored information was digital" and "the rest was preserved on paper, film, and other analog media," by 2013 "less than two percent of all stored information is non-digital"); Charles Duhigg, *The Power of Habit: Why We Do What We Do in Life and Business,* Chapter 7; Software & Information Industry Association, *Data-Driven Innovation: A Guide for Policymakers—Understanding and Enabling the Economic and Social Value of Data,* at 1–9 (2013); Organization for Economic Co-operation and Development, *The Evolving Privacy Landscape: 30 Years After the OECD Privacy Guidelines,* OECD Digital Economy Papers, No. 176, at 16–18 (2011) (online at *http://dx.doi.org/10.1787/5kgf09z90c31-en*).

[5] *See* Pew Internet & American Life Project, *Broadband and Smartphone Adoption Demographics* (Aug. 27, 2013) (online at *http://www.pewinternet.org/Infographics/2013/Broadband-and-smartphone-adoption.aspx*) ("Today 56 percent of American adults own a smartphone or some kind, compared with 70 percent who have broadband at home"); Pew Internet & American Life Project, *Cell Phone Activities 2012.*

[6] Salon.com, *How Netflix is Turning Viewers into Puppets* (Feb. 1, 2013).

[7] Time Magazine, *Data Mining: How Companies Now Know Everything About You* (Mar. 10, 2011).

[8] Entrepreneur, *How Fitbit Is Cashing In on the High-Tech Fitness Trend* (July 27, 2012).

[9] NPR, The Salt, *The 'Smart Fridge' Finds the Lost Lettuce, for A Price* (May 4, 2012).

[10] GAO Information Resellers Report, *supra* n.1, at 34.

[11] GAO Information Resellers Report, *supra* n.1, at 5 (noting: "Several privacy related organizations and websites maintain lists of data brokers—for example, Privacy Rights Clearinghouse lists more than 250 on its website—but none of these lists claim to be comprehensive. The Direct Marketing Association, which represents companies and nonprofits that use and support data-driven marketing, maintains a proprietary membership list, which it says numbers about 2,500 organizations (although that includes retailers and others that typically would not be considered information resellers)").

[12] *E.g.,* New York Times, *You for Sale: Mapping, and Sharing, the Consumer Genome* (June 16, 2012) (focusing on data broker Acxiom and reporting that the company maintains about 1,500 data points per consumer that include information on the size of home loans, household incomes, or whether a household is concerned about certain health conditions).

[13] GAO Information Resellers Report, *supra* n. 1 at 1. To address these objectives, GAO analyzed laws, studies and other documents, and interviewed representatives of Federal agencies, the date broker industries, consumer and privacy groups, and others. *Id.*

[14] GAO Information Resellers Report, *supra* n.1, at 7.

[15] GAO Information Resellers Report, *supra* n.1, at 16.

Specifically, GAO found that under current law, consumers have no Federal statutory right to know what information data brokers have compiled about them for marketing purposes, or even which data brokers hold any such information. Further, with the exception of information used for pre-screened offers of credit and insurance,[16] consumers generally do not have the right to control what personal information is collected, maintained, used, and shared about them—even where such information concerns personal or sensitive matters about an individual's physical and mental health. In addition, no Federal law provides consumers with the right to correct inaccuracies in the data or assumptions made by data brokers on their own profiles.[17]

GAO does note that a "more narrowly tailored" set of laws concerning private sector use of consumer information exists which "apply for specific purposes, in certain situations, to certain sectors, or to certain types of entities." [18] For example, the Fair Credit Reporting Act imposes a number of obligations on consumer reporting agencies (CRAs), which are entities that assemble consumer information into "consumer reports," [19] commonly referred to as credit reports, for use by issuers of credit and insurance, and by employers, landlords, and others in making eligibility decisions affecting consumers. The FCRA prohibits the sale of consumer reports for other than a permissible purpose. The FCRA does not allow the use of credit reports for marketing purposes, though marketing via pre-screened offers of credit and insurance is allowed, where it is a firm offer of credit and consumers are provided the opportunity to opt-out of such offers in the future.[20]

GAO also found that current Federal law does not fully address the use of new technologies, despite the fact that social media, web tracking, and mobile devices allow for faster, cheaper and more detailed data collection and sharing among resellers and private-sector entities.[21]

Appendix I at the end of this report provides a detailed summary of the FCRA, and other existing Federal privacy laws and their applicability to the collection and dissemination of consumer data by data brokers.

B. Voluntary Industry Guidelines

The direct advertising and data broker industries have consistently asserted that Congress should defer to industry self-regulation rather than enacting broader consumer privacy legislation.[22] Industry members assert that their interest in avoiding reputational harm motivates them to engage in strong self-regulation and provides consumers with meaningful privacy protections.[23] Privacy advocates, on the other hand, have argued that self-regulation does not adequately addresses concerns regarding the potential for consumer abuse in this arena.[24]

Industry trade associations that include data brokers have identified voluntary best practice guidelines for its members.[25] For example, the Direct Marketing Association (DMA) issued Guidelines for Ethical Business Practice that include principles of conduct, including recommendations on how members should handle and protect consumer information. Specifically, these guidelines provide that the members should offer notice of its policy "regarding the rental, sale, exchange or transfer of data about them" and the ability to opt-out of inclusion on a mailing list or other

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[16] 15 U.S.C. § 1681b(c). The Fair Credit Reporting Act provides consumers opt-out rights for such information. 15 U.S.C. § 1681b(e).

[17] GAO Information Resellers Report, *supra* n.1, at 16–19.

[18] GAO Information Resellers Report, *supra* n.1, at 7.

[19] A "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of making eligibility decisions. 15 U.S.C. § 1681a (d).

[20] 15 U.S.C. § 1681b (e). Pre-screened offers of credit or insurance—sometimes called "pre-approved" offers—are sent to consumers unsolicited, usually by mail. They are based on information in consumers' credit reports that indicates that the individuals receiving the offer meet the criteria set by the company making the offer. The FCRA limits the circumstances in which consumer reports can be used to make pre-screened offers, and provides that all such offers must include a notice of consumers' right to stop receiving future pre-screened offers.

[21] GAO Information Resellers Report, *supra* n.1, at 19.

[22] *See, e.g.,* Senate Committee on Commerce, Science and Transportation, *The Need for Privacy Protections: Is Industry Self-Regulation Adequate,* 112th Cong. (2012) (S. Hrg. 112–785).

[23] *Id.*

[24] *Id.*

[25] Direct Marketing Association, *Direct Marketing Association Guidelines for Ethical Business Practice* (May 2011).

marketing methods,[26] as well as specific ways to handle health information.[27] A number of the companies that are the subject of the Committee's inquiry are DMA members and have agreed to abide by the association's guidelines.

In addition, the Digital Advertising Alliance, the trade association of the online advertising industry, has implemented Ad Choice, a program that allows consumers some control over their online information as it is used for online behavioral advertising.[28]

C. Privacy and Consumer Protection Issues Regarding Data Broker Practices

Privacy and information experts have raised concerns regarding data broker practices. These include issues relating to consumer privacy rights with respect to the use of their own personal information; the potential harmful ways consumer profiles can be used; the extent to which data broker products categorize consumers based on financial characteristics are serving as substitutes or supplements for the consumer report products that are more highly regulated; and the vulnerability of data broker computer systems to a data breach.

Privacy Issues. One major issue raised by privacy advocates is that data brokers operate without transparency to consumers. Since data brokers generally collect information without the consumers' knowledge, consumers have limited means of knowing how the companies obtain their information, whether it's accurate, and for what purposes they are using it.[29]

Privacy experts further point out that consumers currently lack control over the compilation and use of data that may contain intimate details about them. For example, the *Financial Times* reported one data broker is selling lists of addresses and names of consumers suffering from conditions including cancer, diabetes, and depression, and the medications used for those conditions; another is offering lists naming consumers, their credit scores, and specific health conditions.[30] Citing these and other examples, FTC Commissioner Julie Brill recently raised the question: "What damage is done to our individual sense of privacy and autonomy in a society in which information about some of the most sensitive aspects of our lives is available for analysts to examine without our knowledge or consent, and for anyone to buy if they are willing to pay the going price."[31]

Data brokers argue that the creation and use of consumer profiles for marketing does not pose substantial privacy issues for consumers because this information cannot be used in decisions affecting a consumer's eligibility for credit or insurance, or in employment or housing decisions. Rather, such profiling benefits consumers by facilitating targeted outreach about products and services that are relevant to consumers' specific interests, needs, or preferences.[32]

However, an incident involving Target highlights how marketing based on consumer profiling may pose unintended privacy issues. According to a *New York Times* report, Target developed a pregnancy prediction model to enable the company to target marketing of certain products to expectant mothers. In one case, Target sent maternity and baby clothes coupons to the household of a teenage girl who, through use of this model, they predicted was pregnant. These mailings alerted the girl's father that she was pregnant—before she had told him the news herself.[33]

Potentially Harmful Uses of Data Broker Products. Some consumer advocates also have noted that targeted marketing means consumers have unequal access to helpful information, offers, and benefits, and have questioned the fairness of this result when the basis for such targeting are consumer profiles constructed without the consumer's knowledge, input, or permission—and that in fact may not be accurate. World Privacy Forum Executive Director Pam Dixon has elaborated as follows:

> Two people going to one website or one retail store could already be offered entirely different opportunities, services, or benefits based on their modern permanent record comprised of the previous demographic, behavioral, transactional, and associational information accrued about them.[34]

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[26] *Id.* at 18–19.

[27] *Id.* at 20 (Article #33: Collection, Use, and Transfer of Health-Related Data).

[28] *See* AdChoices website at *http://www.youradchoices.com/* (accessed Dec. 13, 2013).

[29] *See* FTC Privacy Report, *supra* n.1, at 61–69.

[30] Financial Times, *Companies Scramble for Consumer Data* (June 12, 2013).

[31] Keynote Address by Commissioner Julie Brill, *Reclaim Your Name,* 23rd Computers Freedom and Privacy Conference (June 26, 2013).

[32] *See* GAO Information Resellers Report, *supra* n.1, at 40–41 (summarizing industry arguments on benefits of information sharing for consumers).

[33] Charles Duhigg, *The Power of Habit,* Chapter 7.

[34] Testimony of Pam Dixon, Executive Director, World Privacy Forum, House Committee on Energy and Commerce, Subcommittee on Communications, Technology, and the Internet (Nov. 19, 2009). *See also* Dwork & Mulligan, *It's Not Privacy, and It's Not Fair,* 66

A related issue is whether ready access to increasingly detailed consumer data lends to differential pricing. Indeed, several recent media accounts have described cases where website retailers offered consumers different prices for the same product based on analysis of customer characteristics. For example, a *Wall Street Journal* report found that office supply retailers have varied prices displayed for the same product based on customers'geolocation and other factors.[35] In another example the travel website Orbitz reportedly showed costlier travel options to visitors whose browsers indicated they were using Mac computers, because this brand was assumed to be used by more affluent consumers.[36] While it does not appear from these news accounts that third party data broker products were involved with these particular examples, these reports underscore that targeting the most "relevant" information to consumers does not always equate to providing consumers information about the best deals.

A few recent cases also have highlighted the value of consumer profiles to predatory businesses seeking to target vulnerable consumers. In October of 2012, the FTC alleged that the credit reporting division of Equifax improperly sold more than 17,000 "prescreened" lists of consumers who were late on their mortgage payments to Direct Lending Source, Inc. and its affiliate companies. Direct Lending subsequently resold some of these lists to third parties, who "used the lists to pitch loan modification and debt relief services to people in financial distress," including to companies that had been the subject of prior law enforcement investigations.[37]

In June 2011, Teletrack, Inc. paid a $1.8 million penalty to settle FTC charges that it sold lists of consumers who had previously applied for non-traditional credit products, including payday loans, to third parties—primarily pay day lenders and sub-prime auto lenders—that wanted to use the information to target potential customers. The FTC alleged that the information Teletrack sold constituted consumer reports and could not be sold for marketing.[38]

Similarly, the *New York Times* reported in 2007 that data broker InfoUSA had sold lists of consumers with titles such as "Suffering Seniors" to individuals who then used the lists to target elderly Americans with fraudulent sales pitches.[39]

Use of Predictive Scoring Products for Marketing. Consumer advocates have suggested that that use of scoring products that predict consumer behavior merits further scrutiny. Companies reportedly are using predictive scoring products for a range of purposes, such as assessing which customers will receive special offers, or looking at credit risks associated with certain mortgage applications—but consumers are generally not aware of these products and do not have access to the data underlying them. The FTC plans to hold a hearing in the Spring to examine the use of these products, including the types of consumer protections that should be provided.[40]

Data Breaches. Finally, a series of incidents over recent years have underscored that data brokers—like others who collect and maintain sensitive consumer data—

Stan.L.Rev.Online 35 (Sept. 3, 2013) (arguing that increasing use of consumer profiles by marketers and others could inadvertently result in social discrimination where unfair or inaccurate profiles are created and reinforced without consumers' input).

[35] Wall Street Journal, *Websites Vary Prices, Deals Based on Users' Information* (Dec. 24, 2012).

[36] Wall Street Journal, *On Orbitz, Mac Users Steered to Pricier Hotels* (Aug. 23, 2012).

[37] The FTC charged Equifax with a host of FCRA violations, including that it provided credit report information to entities that lacked a permissible purpose. The FTC further charged that Equifax's failure to employ appropriate measures to control access to sensitive consumer information was unfair, in violation of Section 5 of the FTC Act. Direct Lending was also charged with violating Section 5 and the FCRA for, among other reasons, obtaining pre-screened lists without having a permissible purpose and failing to maintain reasonable procedures to ensure that prospective users to whom it had resold the reports had a permissible purpose. Equifax and Direct Lending combined paid nearly $1.6 million to resolve charges that they violated the Fair Credit Reporting and the FTC Act. Press Release, *FTC Settlements Require Equifax to Forfeit Money Made by Allegedly Improperly Selling Information About Millions of Consumers Who Were Late on Their Mortgages,* Federal Trade Commission (Oct. 10, 2012) (available at *http://www.ftc.gov/news-events/press-releases/2012/10/ftc-settlements-require-equifax-forfeit-money-made-allegedly*).

[38] Press Release, *Consumer Reporting Agency to Pay $1.8 Million for Fair Credit Reporting Act Violations,* Federal Trade Commission (June 27, 2011) (available at *http://www.ftc.gov/news-events/press-releases/2011/06/consumer-reporting-agency-pay-18-million-fair-credit-reporting*).

[39] New York Times, *Bilking the Elderly, with a Corporate Assist* (May 20, 2007).

[40] Press Release, *FTC to Host Spring Seminars on Emerging Consumer Privacy Issues,* Federal Trade Commission (Dec. 2, 2013) (available at *http://www.ftc.gov/news-events/press-releases/2013/12/ftc-host-spring-seminars-emerging-consumer-privacy-issues*).

are vulnerable to data breaches.[41] Privacy advocates emphasize the need to make sure appropriate protections against data breach are in place for consumer data.[42]

D. Recent FTC and Congressional Reviews of the Data Broker Industry

Several recent inquiries have explored data broker practices and related privacy and consumer protection issues. The FTC has held a series of workshops, opened a formal inquiry, written reports, and proposed principles for industry self-regulation on how companies collect, use and protect consumer data. In March of 2012, the Commission released a comprehensive report on protecting consumer's data privacy in light of the rapid advances of technological change. The Commission recommended that Congress consider enacting baseline privacy legislation across industry sectors. The report also called for greater transparency in the data broker and advertising industries.[43]

The 2012 report identified the data broker industry as one of the Commission's main focuses in implementing an enhanced privacy protection framework.[44] In examining the privacy implications of the data broker industry, the FTC has also noted how advances in technologies have rapidly allowed for the aggregating and selling of consumer information that combines data reflecting consumers' online activities as well as "offline" information that has been accessible since before the Internet.[45]

In December 2012, the FTC opened an inquiry pursuant to its authority under Section 6(b) of the FTC Act to examine privacy implications of the data broker industry's collection and use of consumer data.[46] This investigation is underway and will result in a study and recommendations on whether, and how, the data broker industry could improve its privacy practices.[47]

In addition to the FTC's ongoing work, in the summer of 2012, a bipartisan group of eight lawmakers led by Reps. Ed Markey (D–MA) and Joe Barton (R–TX) opened an inquiry into how data brokers collect and use consumer's personal data.[48] In November 2012 the lawmakers concluded their inquiry, finding that, "Many questions about how these data brokers operate have been left unanswered, particularly how they analyze personal information to categorize and rate consumers."[49]

II. Committee Investigation

In light of the gaps in public knowledge regarding data broker practices, in October 2012 the Committee opened an inquiry into the data broker industry to help the Committee better understand industry practices and the information data brokers collect and share about American consumers for marketing purposes. To obtain a snapshot of industry practices, the Committee focused on nine companies that collect and sell consumer information: Acxiom, Experian, Epsilon, Reed Elsevier, Equifax, TransUnion, Rapleaf, Spokeo, and Datalogix.

The companies include the three major credit reporting companies—Experian, Equifax, and TransUnion—each of which also sells consumer data for marketing purposes; and well-established targeted marketing companies—Acxiom, Epsilon, Reed Elsevier, and Datalogix—that maintain data on millions of consumers. In addition, the sample reflects companies with discrete focus on major data collection techniques and marketing uses: Rapleaf, which in 2010 specialized in collecting public data from social media sites, and Spokeo, which offers individual consumer look-up services.

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[41] Wall Street Journal, *Breach Brings Scrutiny* (April 5, 2011); *United States* v. *ChoicePoint, Inc.,* No. 1 06–CV–0198 (N.D. Ga. filed Jan. 30, 2006); Press Release, *Agency Announces Settlement of Separate Actions Against Retailer TJX, and Data Broker Reed Elsevier and Seisint for Failing to Provide Adequate Security of Consumer Data,* Federal Trade Commission (Mar. 27, 2008) (available at *http://www.ftc.gov/news-events/press-releases/2008/03/agency-announces-settlement-separate-actions-against-retailer-tjx*).

[42] FTC Privacy Report, *supra* n.1, at 24–26.

[43] FTC Privacy Report, *supra* n.1.

[44] FTC Privacy Report, *supra* n. 1, at 68, 72–73.

[45] FTC Privacy Report, *supra* n.1.

[46] Press Release, *FTC to Study Data Broker Industry's Collection and Use of Consumer Data,* Federal Trade Commission (Dec. 18, 2012) (available at *http://www.ftc.gov/news-events/press-releases/2012/12/ftc-study-data-broker-industrys-collection-use-consumer-data*). Three of the nine companies the FTC is examining are included in this inquiry.

[47] *Id.*

[48] New York Times, *Congress to Examine Data Sellers* (July 24, 2012).

[49] AdWeek, *Lawmakers Come Up Short in Data Brokers Probe* (Nov. 8, 2012).

On October 9, 2012, Chairman Rockefeller sent letters to the nine data broker companies requesting information about each company's data collection and use practices.[50] The letters highlighted four basic questions:

- What data about consumers does the industry collect?
- How specific is the data the industry collects about consumers?
- How does the industry obtain this data?
- Who buys the data and how is it used?

All nine companies provided narrative and documentary responses to the Committee letter. Some of these companies were forthcoming regarding all questions. For example, Equifax's response included a list of the specific entities that are data sources and customers they provided after clearing this disclosure with each entity. However, several large data brokers—Acxiom, Experian, and Epsilon—to date have refused to identify to the Committee their specific data sources. Instead, they have described general categories of sources—such as "surveys" and "public records."

One of the main consumer-facing data sources identified in the company responses is websites.[51] In an attempt to learn more about consumer information data brokers obtain from websites, on September 24, 2013, Chairman Rockefeller sent letters to twelve popular personal finance, health, and family-focused websites whose privacy policies allowed for sharing with third parties and that also indicate they collected consumer data through "surveys," "sweepstakes," and "questionnaires," which were identified by data brokers to the Committee as sources of consumer information. The letters asked whether the websites shared information with third parties, and if so, with whom.

On October 23, 2013, following press reports alleging that an Experian subsidiary sold data to an alleged identity theft operation,[52] Chairman Rockefeller sent a second letter to Experian requesting information about the incident and the company's customer vetting practices, and pressing the company to provide the Committee a complete list of its data purchasers and sources.[53] Experian to date has not provided the Committee either its specific data sources or its data purchasers.

In the course of the inquiry, Committee Majority staff reviewed thousands of pages of documents produced by respondent companies including narrative responses, company manuals and training materials, contracts, and marketing materials.

III. Committee Majority Staff Findings Regarding Industry Practices

The responses received by the Committee during this inquiry provide a glimpse into the operations of a large and continually evolving industry. The nine data brokers queried by the Committee hold a vast and varied amount of consumer data. Acxiom alone has "multi-sourced insight into approximately 700 million consumers worldwide,"[54] and Datalogix asserts its data "includes almost every U.S. household."[55] Some of the companies maintain thousands of data points on individual consumers, with one providing the Committee a list of approximately 75,000 individual data elements that are in its system.[56] Data collected by these companies includes detailed and personal information including data on consumers' health and financial status.

One of the main types of products offered for sale by respondent data brokers are "modeled" profiles of consumers that categorize consumers, or that "score" likelihood for certain behaviors, based on inferences drawn from consumer data. The respond-

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[50] Senate Committee on Commerce, Science, and Transportation, *Rockefeller Seeks Information About Data Brokers' Practices* (Oct. 10, 2012).

[51] For example, one company noted "there are over 250,000 websites who state in their privacy policy that they share data with other companies for marketing and/or risk mitigation purposes." Acxiom response to Chairman John D. Rockefeller IV (Mar. 26, 2013).

[52] Krebsecurity.com, *Experian Sold Consumer Data to ID Theft Service* (Oct. 20, 2013); PCMag.com, *Experian Confirms Subsidiary's Data Sold to Identity Theft Operation* (Oct. 22, 2013).

[53] Senate Committee on Commerce, Science, and Transportation, *Rockefeller's Latest Letter to Experian Requests Information on Reported Data Disclosures to Identity Theft Services* (Oct. 24, 2013).

[54] Acxiom Corp., 2013 10–K Annual Report for the Period Ending March 31, 2013 (filed May 29, 2013).

[55] *http://www.datalogix.com/about/*. The other companies queried by the Committee hold data on millions more. For example, Rapleaf claims to have at least one data point for over 80 percent of U.S. consumer e-mail addresses. *http://www.rapleaf.com/why-rapleaf/*.

[56] Equifax Response to the Committee (Aug, 23, 2013) (EFX PROD6 000010–001361). Acxiom claims to have "over 3,000 propensities for nearly every U.S. consumer." Acxiom Corporation (2013). *Form 10K 2013.*

ent companies offer for sale a number of modeled products that group consumers based on their degree of financial vulnerability, such as "Rural and Barely Making It," or "Ethnic Second-City Strugglers." The Committee has no evidence that any of the specific queried companies are currently selling such products for inappropriate purposes. However, the creation and use of these types of products merits close scrutiny, particularly in light of their value to predatory businesses that seek to target consumers who are economically fragile.[57]

Data brokers continue to develop new approaches to facilitate marketing outreach to consumers online. Some data brokers now offer products that enable marketers to tailor online advertisements based on off-line data about the consumer provided by the data broker.

As they conduct these various activities, data brokers remain largely invisible to the consumers whose information populates their databases. Consumers have limited means of learning that these companies hold their data, and respondent companies provide consumers rights of access and control regarding their data that vary widely by companies. Several of the largest respondent companies have been similarly secretive with the Committee, refusing to identify specific sources of their data, and specific customers who purchase it. And provisions in company contracts with customers perpetuate this secrecy by placing restrictions on customer disclosures regarding data sources.

Below is a detailed discussion of the Committee Majority Staff's findings regarding the information companies have provided to date regarding the collection, compilation, and sale of consumer data.

A. Data Broker Collection of Consumer Data

The information the Committee obtained in this inquiry regarding the nature and specificity of information collected by data brokers paints a picture consistent with the following observation offered by one of the respondent companies: "The amount of available data has created an unprecedented amount of information about consumers: Their attitudes and behaviors, perceptions about brands, what they're buying and even where they happen to be at the moment the data is captured."[58]

1. Nature of Data Collected

Much of the information data brokers collect is demographic, such as consumers' names, addresses, telephone numbers, e-mail addresses, gender, age, marital status, presence of and ages of children in household, education level, profession, income level, political affiliation, and information about their homes and other property. In addition, data brokers collect many other categories of information about individuals. Some examples include:

- *Consumer purchase and transaction information,* including whether a purchase was made through a catalog, online, or in-store, as well as the frequency of such purchases;[59]
- *Consumers' available methods of payment,* including type of credit card and bankcard issuance date;[60]
- *Purchase of automobiles,* including makes and models of cars purchased or whether a consumer prefers new or used cars;[61]
- *Health conditions.* One company collects data on whether consumers suffer from particular ailments, including Attention Deficit Hyperactivity Disorder, anxiety, depression, diabetes, high blood pressure, insomnia, and osteoporosis, among others;[62] another keeps data on the weights of individuals in a household.[63] An additional company offers for sale lists of consumers under 44 different cat-

[57] *See infra* Section III.B.2(a) discussing consumer protection issues relating to such lists.

[58] Epsilon Targeting, *Data Intelligence* (EPS–COM–002026).

[59] Experian Narrative Response to Senate Commerce Committee (Dec. 14, 2013); Datalogix Narrative Response to Senate Commerce Committee (Nov. 16, 2013).

[60] Epsilon, *TotalSource Plus Data Enhancement Element Listing* (EPS–COM–5–25); Acxiom, *The Power of Insight: Consumer Data Products Catalog* (ACXM 190); Lexis Nexis, *MarketView Demographic Data Dictionary* (REP001397–1403).

[61] Acxiom, *The Power of Insight: Consumer Data Products Catalog* (ACXM 173–226); Lexis Nexis, *MarketView Demographic Data Dictionary* (REP001397–1403).

[62] Epsilon, *TotalSource Plus Data Enhancement Element Listing* (EPS–COM–16). Epsilon has provided that it collects data about health ailments solely through its "Shoppers Voice" survey through which consumers "self-report" data, which is described in more detail in Section III.A.2.d.

[63] Acxiom, *The Power of Insight: Consumer Data Products Catalog* (ACXM 184).

egories of health conditions, including obesity, Parkinson's disease, Multiple Sclerosis, Alzheimer's disease, and cancer, among others;[64]

- *Social media activity,* including the number of a consumer's friends and followers, and whether they view YouTube videos.[65]

The specificity of consumer data that brokers collect, maintain, and share varies depending on the entity. For example, TransUnion reported that it maintains and offers for sale primarily demographic data.[66] On the other hand, Equifax maintains approximately 75,000 individual data elements for its use in creating marketing products, including information as specific as whether a consumer purchased a particular soft drink or shampoo product in the last six months,[67] uses laxatives or yeast infection products;[68] OB/GYN doctor visits within the last 12 months,[69] miles traveled in the last 4 weeks,[70] and the number of whiskey drinks consumed in the past 30 days.[71] Some companies offer "data dictionaries" that include more than one thousand potential data elements, including whether the individual or household is a pet owner, smokes, has a propensity to purchase prescriptions through the mail,[72] donates to charitable causes, is active military or a veteran, holds certain insurance products including burial insurance or juvenile life insurance, enjoys reading romance novels, or is a hunter.[73]

2. Sources of Consumer Data

The information the responding companies provided to the Committee suggests that these data brokers primarily obtain consumer data through five major avenues: government records and other public data; purchase or license from other data collectors; cooperative agreements with other companies; self-report by consumers, often through surveys, questionnaires, and sweepstakes; and social media.[74]

Three companies—Acxiom, Experian, and Epsilon—declined to share specific data sources with the Committee, citing confidentiality clauses in their contracts, and concerns about putting themselves at a competitive disadvantage among the reasons. Instead, these companies provided general descriptions of the types of entities that are data sources.

a. Government Records and Other Publicly Available Data

Many companies reported obtaining information from public records sources. These include: census data; property records; court filings, including criminal convictions, judgments, liens, and bankruptcies; driver's license records; voter registrations; telephone directories; real estate listings; and marriage and death certificates.[75] Data brokers also obtain publicly available information from licensing filings including licenses for physicians and other medical professionals, attorneys, accountants, engineers, notaries, and real estate professionals, as well as hunting,

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[64] Experian, *List Services Catalog* (EXP002569). Experian provides its catalog, which contains more detail about element listings on its website (available at *http://www.experian.com/assets/data-university/brochures/ems-list-services-catalog.pdf*).

[65] Acxiom, *The Power of Insight: Consumer Data Products Catalog* (ACXM 173–206); Acxiom Narrative Response to Senate Commerce Committee at 7 (Mar. 1, 2013); and Acxiom, *Acxiom Predictive Scores for Social Media* (ACXM 473).

[66] Letter from TransUnion to Chairman John D. Rockefeller IV (Dec. 14, 2012).

[67] Equifax Response to Senate Commerce Committee (Aug, 23, 2013) (EFX PROD6 000010–001361). Equifax made clear in their response that the individual data elements are not sold as is, but are used to create their products and models. Individual-level data elements are aggregated for use in products sold to customers. *Id.*

[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] Acxiom, *The Power of Insight: Consumer Data Products Catalog* (ACXM 173–226).

[73] Epsilon, *TotalSource Plus Data Enhancement Element Listing* (EPS–COM–5–25).

[74] In November 2013, the Attorney General of New Jersey settled a case that suggested web browsing activity is potentially an additional source of information for data brokers. The case alleged that Dataium, a data company, used software to track websites visited by consumers, a practice known as "history sniffing," and then sold consumer preferences inferred from web browsing along with consumers' names, phone numbers, and e-mail addresses to Acxiom. *See* Office of New Jersey Attorney General, *Acting Attorney General Announces Settlement Resolving Allegations Data Company Engaged in Online "History Sniffing"* (Nov. 21, 2013) (available at *http://nj.gov/oag/newsreleases13/pr20131121a.html*).

[75] E.g., Acxiom Narrative Response to Senate Commerce Committee (Feb. 15, 2013).

fishing, and pilot licenses.[76] License information can supply contact information and license issuance and expiration dates.[77]

b. Purchase or License

Companies reported that several types of entities either sell or license them data, including:

Retailers. Retailers provide data brokers with consumers' purchase information, which can include consumer name, postal addresses, e-mail addresses, items purchased, transaction history, and whether the purchase was made in a store, online, or through a catalog.[78] Often, the information provided does not identify the specific item purchased, but rather the category or type of product, such as "collectibles" or "ladies apparel." Retailers are able to collect this information about consumers through many methods, among them store or brand loyalty/rewards cards.[79]

Financial institutions. Responding companies reported receiving information from a variety of financial institutions, such as banks, credit unions, brokerage services, and online trading platforms. Such sources provide information regarding bank deposits, brokerage assets, annuities, and mutual funds. Companies reported that the information obtained is not tied to specific consumers, but is received in an anonymized or aggregated form[80] and used to create models and scoring products.[81]

Other data brokers. All of the responding companies reported obtaining information from other data brokers either by purchasing or under sharing arrangements. Some have specified which other data brokers provide such information, while others refused to specify other data broker sources beyond generic descriptions such as "third-party partners."[82]

c. Cooperative Arrangements

Another way data brokers obtain information is through cooperative arrangements in which companies provide information about their customers in exchange for information to enhance their existing customer lists or identify new customers. Examples described by responding companies include:

- Epsilon operates a cooperative consisting of over 1,600 participating companies, which include catalog and retail companies, non-profits, and publishers.[83] Participants contribute household purchase information in exchange for information about prospective customers. Epsilon organizes this data into 22 "primary purchase categories," such as children's apparel and merchandise.[84]
- Experian manages a database open to catalog sellers as well as brick and mortar and e-commerce retailers. Participants provide customer transactional records, which may include consumer's name, address, gender, e-mail address, phone number, channel of purchase (*e.g.,* online or in-store), dollar amount, payment method, transaction date, and transaction product category.[85] Experian summarizes the information to describe buying behaviors at the household level within general product categories—such as "Kitchen and Tabletop," "Books," or "Vitamins/Health Products."[86] For example, "if a high-end retailer of men's

[76] *Id* at 5.
[77] *Id.*
[78] Datalogix Narrative Response to Senate Commerce Committee, at 1 (Nov. 2, 2012).
[79] Consumers who use loyalty cards allow retailers to collect information about their purchases in exchange for discounts, coupons, or other perks such as discounts on gasoline purchases. In 2012, Americans had a collective total of 2.65 billion loyalty program memberships. *See Bulking Up: The 2013 Colloquy Loyalty Census, Growth and Trends in U.S. Loyalty Program Activity,* Colloquy (June 2013).
[80] Financial institutions provide anonymous financial data, meaning it does not include consumers name, house number or street name; and information aggregated at the ZIP+4 level. Letters from Paul Zurawski, Senior Vice President Government Affairs and Regulatory Management, Equifax, to Chairman John D. Rockefeller IV (Feb. 13, 2013) and (Jan. 23, 2013).
[81] See Section III.B for a discussion of modeling and scoring.
[82] Experian Narrative Response to Senate Commerce Committee (May 24, 2013).
[83] Letter from Jeanette Fitzgerald, Senior Vice President and General Counsel, Epsilon, to Chairman John D. Rockefeller IV (Nov. 2, 2012); Epsilon, *Abacus Cooperative Overview* (EPS–COM–002114).
[84] Letter from Jeannette Fitzgerald, Senior Vice President and General Counsel, Epsilon, to Chairman John D. Rockefeller IV, at 5–6 (Nov. 2, 2012).
[85] Experian, *Z–24 Catalog Database File Information* (EXP001665).
[86] Experian Narrative Response to Senate Commerce Committee, at 5 (Dec. 14, 2012). Experian breaks purchase information into 64 different categories. Experian (EXP001667).

business suits reports a customer purchase of approximately $500, Experian would maintain a record showing only that the household engaged in a transaction involving Men's High-End Apparel."[87]

- Equifax runs a cooperative for financial institutions that contribute data at least twice per year about consumer and small business investments and bank accounts. According to the company, this information is anonymized, often including only zip code and year of birth;[88] it does not include information that could be used to individually identify consumers. Participants have access to certain information and products available only to members, including products that estimate total outstanding credit and that track assets.[89]
- Datalogix offers a cooperative arrangement that allows retailers to share information including customers' names, mailing addresses, e-mail addresses, purchase transaction histories, and transaction channel, such as Internet, catalog, or retail purchase. In return for supplying information, participants can receive mailing lists, or access to online audiences to identify new customers.[90]

d. Self-Reporting by Consumers

The responses to the Committee's inquiries indicate that data brokers obtain information directly from consumers through warranty cards, sweepstakes entries, and other types of surveys. Some of the data brokers conduct their own marketing surveys, both on-and off-line, and shared examples with the Committee.[91] These surveys ask detailed questions about household demographics, income levels, shopping preferences, and other personal matters such as health and insurance related information. For example, some surveys ask whether anyone in the household suffers from diabetes, or what types of insurance the household currently has or plans to obtain.[92] Surveys provided to the Committee disclose to consumers that the information they provide may be shared for marketing purposes in exchange for entry into a sweepstakes or other chances at prizes. However, the surveys do not generally indicate that they are affiliated with a specific data broker.

For example, Epsilon obtains consumer data through its "Shopper's Voice" survey. The survey contains several pages of specific questions about the household, including demographic information, hobbies and interests, products purchased, and ailments. The survey includes questions about a range of health-related matters. For example, one category, titled "Heart Health," asks whether anyone in the household has a family history of heart disease, heart attack, high blood pressure or high cholesterol, whether anyone suffers from angina, atrial fibrillation, and whether these ailments are treated with a prescription.[93] The survey also asks the respondent to indicate whether they personally or another member of the household suffer from other listed ailments, such as depression, Bipolar disorder or other major depressive disorder, Lupus, or Parkinson's disease.[94] The Shopper's Voice survey is mailed to approximately 36 million households each January; approximately 5.2 million households complete and return it to Epsilon.[95] Consumers are encouraged to respond to the survey by being offered an opportunity for savings via coupons and a chance to win $10,000.[96] See Exhibit A for a complete example of the survey questions.

Experian collects data through the "Simmons National Consumer Surveys," which over 30,000 consumers fill out each year.[97] Questions cover subjects including demographic, hobbies and interests, military experience, participation in the lottery, and

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[87] Experian Narrative Response to Senate Commerce Committee, at 5 (Dec. 14, 2012).

[88] Equifax, *Member Data Submissions* (EFX PROD3 0143).

[89] Letter from Paul Zurawski, Senior Vice President Government Affairs and Regulatory Management, Equifax to Chairman John D. Rockefeller, at 3 (Feb. 13, 2013); Equifax Corporation, *IXI Services Core Products for Network Members* (EFX PROD3 0191).

[90] Datalogix Narrative Responses to Senate Commerce Committee (Nov. 2, 2012) and (Nov. 16, 2012).

[91] E.g. Experian Narrative Response to Senate Commerce Committee (Feb. 8, 2013); and Letter from Jeanette Fitzgerald, Senior Vice President and General Counsel, Epsilon, to Chairman John D. Rockefeller (Nov. 2, 2012).

[92] Epsilon, *Shopper'sVoice Consumer Product Survey of America* (2012) (EPS–COM–000001–000004).

[93] *Id.* at 2.

[94] Epsilon, *Shopper's Voice Survey* (EPS–COM–003757).

[95] Epsilon, *TargetSource Survey Data,* at 3 (EPS–COM–003150).

[96] Epsilon, *TargetSource Survey Data,* at 5 (EPS–COM–003152).

[97] Experian, *Simmons National Consumer Studies* (online at *http://www.experian.com/simmons-research/national-consumer-studies.html*).

product preferences.[98] Consumer responses are aggregated and used to create models that assign a shared set of characteristics to all households within a particular zip code. Simmons surveys include the Simmons National Consumer Survey; the Simmons National Kids and Teens Studies; the National Hispanic Consumer Survey; and the Simmons Lesbian, Gay, Bisexual and Transgender Study.[99] Adults may be paid $25 for their participation in the survey and teens receive $14 in addition to a keychain.[100]

According to narrative responses from Acxiom and Experian, consumers report personal information to them by completing surveys, entering sweepstakes, registering to receive coupons, or filling out other forms on Internet sites. The websites either directly feed this information to data brokers or provide it to other "data compilers" who then pass it to data brokers.[101]

Experian uses survey results in products including Experian's "BehaviorBank." As Experian explained:

> BehaviorBank is a database of self-reported information provided by consumers with the clear understanding of the consumer that the responses will be used for marketing. . .Experian acquires all such information from third-party partners. Such third parties typically either recruit consumers for their own surveys or obtain data from companies that have surveyed their own customers. In some cases, consumers are offered an incentive, such as an opportunity to win a prize, for participation in the survey.[102]

Experian refused to identify to the Committee the third-party website sources of data for the company.

Similarly, Acxiom said consumer-facing websites are a source of their consumer data, but declined to provide the Committee the specific identities of these websites except for six self-selected samples websites. Instead the company stated generally, "there are over 250,000 websites who state in their privacy policy that they share data with other companies for marketing and/or risk mitigation purposes."[103]

Of the six websites provided by Acxiom, one was not functional when Committee majority staff attempted to access it. The remaining five asked consumers for varying levels of personal information in exchange for benefits such as coupons and discounts, or the opportunity to compare health insurance quotes. The general counsel for the company that maintains the health insurance quote website, when contacted by Committee majority staff, said the company had no information sharing agreement with Acxiom, and that the entities that contract to receive the website's information are contractually prohibited from sharing that data with third parties such as Acxiom.[104] Acxiom represented that this website data source was provided by one of Acxiom's data aggregators.[105]

To explore the issue of website data sources further, Chairman Rockefeller queried 12 popular health and financial focused websites whose privacy policies appeared to allow for the sharing of consumer data obtained through surveys, sweepstakes, and questionnaires. In response, several websites acknowledged collecting personal information from consumers through surveys or sweepstakes entries. However, they largely denied sharing that data with third parties except in limited circumstances, including for their own advertising purposes, sweepstakes prize fulfillment, or with other third-party vendors to perform services on the websites' own behalf.

Two of the website companies reported relationships with Acxiom, but those relationships were for the benefit of the websites: one retained Acxiom's services to store consumer information solely for its own marketing efforts, and the other to perform services such as collecting additional information about visitors to its website. While neither arrangement allowed for Acxiom to share or use the data provided for Acxiom's own purposes, one company did share with Committee majority staff that Acxiom had approached them to become a data supplier, a request it declined.[106]

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[98] Experian, *Simmons National Consumer Survey* (EXP001785–1923).

[99] Experian Narrative Response to Senate Commerce Committee (Feb. 8 2013).

[100] Sample letters that accompany *Simmons National Consumer Survey* (EXP002099) and (EXP002100).

[101] Experian Narrative Responses to Senate Commerce Committee (May 24, 2013) (July 26, 2013); and Acxiom Narrative Response to Senate Commerce Committee (Apr. 5, 2013).

[102] Experian Narrative Response to Senate Commerce Committee, at 2–3 (May 24, 2013).

[103] Acxiom Narrative Response to Senate Commerce Committee (Apr. 5, 2013).

[104] Committee staff interview with website general counsel (Dec. 3, 2013).

[105] Acxiom Narrative Response to Senate Commerce Committee (April 5, 2013). It is unclear at this point whether or how information from this website flowed to Acxiom.

[106] Website responses to Senate Commerce Committee (Oct. 2013).

e. Social Media

Social media is a source of consumer information for many of the queried data brokers. For example, Acxiom says it obtains data about consumers' social media interests and usage to predict the likelihood that a consumer would fall into one of the following categories: "business fan," "heavy social media user " (including Facebook, LinkedIn, Twitter, and YouTube), "mobile social networker," "text messaging user," "poster" (including poster of photos, texts, and responders), "video sharer," "social influencer," and "social influenced." [107]

In 2010, the *Wall Street Journal* and other media outlets reported that Rapleaf was collecting information about consumers' social media accounts and selling that information to other companies.[108] Rapleaf had been "crawling" publicly available data consumers placed on social media sites such as Facebook, MySpace, LinkedIn, and others, to gather information including consumers' names, age, gender, location, colleges and universities attended, and occupations, information about membership on social media sites such as Facebook, Flickr, LinkedIn, Twitter, CafeMom, Amazon Wishlist, Pandora, Photobucket, and Dailymotion, number of friends and followers, and the URL of consumers' profiles.[109]

Following public backlash and requests by Facebook, Rapleaf deleted most of the information it collected through webcrawling.[110] However, companies that purchased this data before Rapleaf ceased this activity were not required to delete the information that they had previously purchased.[111]

B. Data Broker Products

Data brokers compile and analyze consumer data to create products and services that provide customers with data that has varying degrees of specificity about individual consumers. Most of the products described by respondent companies are essentially lists of consumers grouped by shared characteristics or predicted behaviors. The companies also provide data on individual consumers to supplement data customers may already have on the consumer.

Data broker products can consist of "actual" or "modeled" elements. Actual data includes factual information about individuals, such as their date of birth, contact information, and presence of children in a household. "Modeled" data results from drawing inferences about consumer characteristics or predicted behavior based on actual data. For example, a company may infer a consumer's marital status based upon use of the prefix "Mrs."; characterize an individual as having an interest in golf based on the fact that an individual subscribes to a golf magazine; [112] or characterize an individual as having a health interest in allergies based on the fact that the individual made a non-prescription purchase of over the counter allergy medication.[113]

The companies also use actual data to create "look-a-like" models. Look-a-like models use known information—such as living within a particular zip code and having children in the household—to predict characteristics such as the likelihood that an individual drives an SUV. With this model, a data broker could create a list of consumers likely to drive an SUV that a customer could purchase for targeted marketing.

Two prominent means by which data brokers provide consumer data to customers are "original lists" and "data appends." Original lists are sold to customers seeking a list of consumers who fit certain criteria—for example, women who live in Cleve-

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[107] Acxiom Narrative Response to Senate Commerce Committee at 7 (Mar. 1, 2013). Acxiom asserts that they "do not collect specific activity from social media sites, such as individual postings, lists of friends or any data that is not public." (ACXM 1422).

[108] *See* Wall Street Journal, *Facebook in Privacy Breach* (Oct. 18. 2010), and Wall Street Journal, *A Web Pioneer Profiles Users by Name* (Oct. 25, 2010).

[109] Rapleaf, *Report Data Dictionary,* (RAP–SEN–001–00121–RAP–SEN–001–00125).

[110] Letter from Phil Davis, Chief Executive Officer, Rapleaf, to Chairman John D. Rockefeller IV (Nov. 21, 2012). According to Rapleaf, the information it maintained was non-sensitive data consisting of age range, gender, zip code, and marital status. *Id.*

[111] Letter from Kenneth M. Dreifach, Counsel to Rapleaf, to Melanie Tiano, Counsel to the Senate Commerce Committee (Dec. 28, 2012); Committee staff conversation with Rapleaf Counsel (Dec. 5, 2012).

[112] Acxiom Narrative Response to Senate Commerce Committee (Feb. 15, 2013).

[113] *Id.*

land and have an interest in cooking.[114] Typically, customers purchase this information in large quantities, hundreds or thousands of names at a time.[115]

"Data append," on the other hand, occurs when a customer has some information about specific consumers, but they want to create more complete profiles. In that case, the customer provides some identifying information about their customers, such as a list of names and zip codes or e-mail addresses, to a data broker company to purchase additional information about the specific consumers on the list.

The products companies described to the Committee include consumer profiles characterizing consumers based on degree of financial vulnerability and propensity to use payday loans and other non-traditional financial products. These types of data broker products merit close scrutiny as they appear tailor made for businesses that profit from taking advantage of consumers. Following is a discussion of major types of data broker products, methods for sharing these products, and questions raised by certain products described by respondent companies.

1. How Data Brokers Package Consumer Information

One product data brokers offer is "segments," or groupings of consumers defined by shared characteristics and likely behaviors. Many data brokers offer some variation of segmenting products, and several of the large data brokers included in the Committee's review offer dozens of different segment choices.

The idea of segmenting consumers for marketing purposes is not a novel concept. In the 1970s, Claritas—which merged with Nielsen in 2001—developed a segmenting product called *PRIZM,* which defined groups of consumers based on demographics and behaviors.[116] *PRIZM* is now advertised as "the industry-leading lifestyle segmentation system that yields rich and comprehensive consumer insights to help you reveal your customer's preferences."[117] When clustering first began, companies generally relied on census data to predict the behavior of consumers. Today, however, there are endless avenues to obtain consumer data.

Another type of product described by data brokers involves "scoring," a form of analytics that utilizes data to make predictions about likely consumer behavior. Scoring products are designed to provide marketers insight about existing and prospective customers by assigning a number or range that signifies each consumer's likelihood to exhibit certain characteristics or perform certain actions. For example, Acxiom offers a product that can provide marketers with predictive indicators of consumers' social media behaviors, assigning a number from 1–20 on the basis of whether they are likely to be a "social influencer" or are "socially influenced," and whether they are a frequent "text poster" or "business fan."[118]

2. Issues Regarding Data Broker Products

a. Products that Identify Financially Vulnerable Populations

A number of products described by data brokers focus on characterizing a consumer's economic status. For example, some of the consumer profiles they sell identify economically comfortable consumers. Consumers in clusters titled "Established Elite," "Power Couples," "American Royalty," and "Just Sailing Along," indicate a level of affluence that might be used to identify a likely audience for luxury products or investments. Data broker descriptions of such products provide further detail. For example, Experian describes "American Royalty" as "[w]ealthy, influential and successful couples and families living in prestigious suburbs."[119]

Understanding the financial circumstances of consumers is important for assessing how to best the reach those most likely to purchase particular goods or products.

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[114] Except in instances where a company offers some type of individual look-up product, "original list" information is not generally available to be purchased on an individual consumer basis. Spokeo, for example, offers consumers an individual look-up service that provides the ability to search for information about specific individuals. Products offered by Spokeo allow customers to search for people by name or address or through a "reverse search" service—where customers may enter a telephone number or e-mail address to identify the individual associated with that number or address. Customers are able to obtain a "person's name, address, phone number, e-mail address, occupation, property value, family relations, and social media accounts." Letter from Angela Saverice-Rohan, General Counsel, Spokeo, Inc., to Chairman John D. Rockefeller IV (Nov. 2, 2012).

[115] Committee staff conversations with respondent companies; several companies reported that segments are priced and sold by the thousand.

[116] Wall Street Journal, *Placing Products: Marketing Firm Slices U.S. into 240,000 Parts to Spur Clients' Sales* (Nov. 3, 1986).

[117] Nielsen, *My Best Segments* (online at *http://www.claritas.com/MyBestSegments/Default.jsp?ID=70&pageName=Learn percent2BMore&menuOption=learnmore*).

[118] Acxiom, *Precision Targeting and Messaging in Social Networks: Acxiom Predictive Scores for Social Media* (ACXM 473–474).

[119] Experian, *Mosaic USA New Segment and Group Names* (EXP002634–002678).

However, some of the targeting products described by the companies appear to focus specifically on identifying financially vulnerable populations. The table below represents a sample of the segments offered for sale by the queried companies:

Table I: Company Product Names

Sample List of Targeting Products Identifying Financially Vulnerable Populations			
"Burdened by Debt: Singles"	"Struggling Elders: Singles"	"Meager Metro Means"	"Very Elderly"
"Mid-Life Strugglers: Families"	"Retiring on Empty: Singles"	"Relying on Aid: Retired Singles"	"Rolling the Dice"
"Resilient Renters"	"Tough Start: Young Single Parents"	"Rough Retirement: Small Town and Rural Seniors"	"Fragile Families"
"Very Spartan"	"Living on Loans: Young Urban Single Parents"	"Financial Challenges"	"Small Town Shallow Pockets"
"X-tra Needy"	"Credit Crunched: City Families"	"Credit Reliant"	"Ethnic Second-City Strugglers"
"Zero Mobility"		"Rocky Road"	"Rural and Barely Making It"
"Hard Times"			
"Enduring Hardships"			
"Humble Beginnings"			

Source: Company Responses [120]

The product descriptions that data brokers provide to potential customers further elaborate on such vulnerability.[121] For example, "Hard Times" is described by Experian as, "Older, down-scale and ethnically-diverse singles typically concentrated in inner-city apartments." [122] The description continues: "This is the bottom of the socioeconomic ladder, the poorest lifestyle segment in the Nation. Hard Times are older singles in poor city neighborhoods. Nearly three-quarters of the adults are between the ages of 50 and 75; this is an underclass of the working poor and destitute seniors without family support. . . . One-quarter of the households have at least one resident who is retired." [123]

A number of scoring products similarly focus on consumers' financial vulnerabilities. One example is Experian's "ChoiceScore," which the company asserts "helps marketers identify and more effectively market to under-banked consumers." [124] According to the company's marketing materials for this product, "each year, under-banked consumers alone spend nearly $11 billion on non-traditional financial transactions like payday loans and check-cashing services." [125] These consumers include "new legal immigrants, recent graduates, widows, those with a generation bias

[120] Experian, *Mosaic USA New Segment and Group Names* (EXP002634–2636); Acxiom, *Personicx Classic,* (Mar. 1, 2013); Epsilon, *Niches 3.0* (EPS–COM–003484—003496); Equifax, *Economic Cohorts: Economic-based Household Segmentation* (EFX Prod4 0002–0292); Equifax, *Financial Cohorts: Direct-Measured Asset-Based Household Segmentation* (EFX PROD4 0293–0543). *See* Appendix II.

[121] *See* Exhibit B for sample product descriptions.

[122] Experian, *Mosaic USA Segment Descriptors* (EXP002946).

[123] Experian, *Mosaic USA Segment Descriptors* (EXP002947). In another example, "Resilient Renters" is described as "singles with high-school and vocational/technical educations. At a mean age of 39, they are renters in the second-tier cities and, if employed, earn wages in service and clerical positions." Acxiom Narrative Response to Senate Commerce Committee, Acxiom Personicx Classic (Mar. 1, 2013).

[124] Experian, *ChoiceScore: Improve Targeting and Customer Acquisition in the Untapped Under-banked Population* (EXP002353). *See* Exhibit C for ChoiceScore Marketing description.

[125] *Id.*

against the use of credit, followers of religions that historically have discouraged credit," and "consumers with transitory lifestyles, such as military personnel."[126]

The ChoiceScore options include a "Confidence Score" that "identifies and assigns a score, determining the propensity for a consumer to be in the under-banked population," and a "Risk Score," a "non-credit based score used to identify the most and least desirable consumers."[127] Suggested applications of the product include: "target under-marketed new prospect segments eager to accept direct-marketing offers; target invitation-to-apply credit card offers, secured card, prepaid debit and other non-traditional financial service offerings; and suppress records of those less likely to get approved."[128]

This Committee inquiry did not review whether any of the specific identified lists that designate financially vulnerable consumers have been used in a harmful manner. However, precedent underscores the value of such products to unscrupulous businesses that seek to take advantage of consumers. For example, the *New York Times* has reported on telemarketing criminals that succeeded in raiding the banking account of a 92-year old Army veteran.[129] Data broker InfoUSA sold his name and contact information to a scam artist. As detailed in the *Times'* account, InfoUSA advertised lists such as "Elderly Opportunity Seekers," described as older people "looking for ways to make money;" "Suffering Seniors," older people with cancer or Alzheimers disease; and "Oldies but Goodies," people described as "gullible . . . [who] want to believe their luck can change."

InfoUSA was not one of the companies examined in this Committee inquiry, but the concerns raised by lists identifying financially vulnerable customers are illustrated by this example. The names, descriptions and characterizations in these products—all generated by the data brokers—likely appeal to companies that sell high-cost loans and other financially risky products to populations more likely to need quick cash, such as payday and installment lenders.

Most of the companies provided to the Committee customer vetting and oversight policies that they assert ensure that information is used properly.[130] Further, several of the contracts reviewed by the Committee include provisions that prohibit resale of consumer data to certain types of businesses such as "debt repair"[131] and one specifically prohibits resale for "payday or short-term lending."[132] However, because data brokers operate in the shadows, with little oversight or regulation, companies in this industry have discretion regarding their voluntary enforcement of such restrictions. Indeed, an investigation into InfoUSA showed that employees routinely ignored rules about selling data to known fraudsters.[133] Unfortunately, three of the largest companies—Acxiom, Experian, and Epsilon—to date have declined to disclose their customers to the Committee. As a result, the precise range and nature of their customer base remains unknown.

One recent incident involving Experian's credit services arm underscored that customer vetting and oversight practices are not always failsafe. In October 2013, media accounts reported that an alleged identity theft operation had purchased consumer data from Court Ventures, a company Experian acquired in March 2012, and that sales of data to the operation went on "for almost a year after Experian did their due diligence" and purchased the company.[134] Concerned about implications of these reports regarding Experian's customer vetting processes, Chairman Rockefeller wrote Experian asking the company to confirm whether such sales had occurred, how long such sales had continued after Experian had acquired Court Ventures, and Experian's vetting of Court Ventures customers prior to and after acquisition. He also pressed the company for a complete customer list.[135]

Experian's response acknowledged that a person possibly engaged in criminal activity had been a Court Ventures customer before and after Experian's acquisition

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[126] *Id.*

[127] Experian, *List Services Catalog: ChoiceScore* (EXP002601).

[128] *Id.*

[129] The New York Times, *Bilking the Elderly, with Corporate Assist* (May 20, 2007).

[130] The procedures range from a very basic requirement that each new customer agree to Terms of Service to a thorough vetting process of each new customer. While several data brokers report that customers must agree to abide by the companies' terms of service or use, other companies described a stricter vetting process that include additional screening components. Company Narrative Responses to Senate Commerce Committee (2012).

[131] Acxiom Narrative Response to Senate Commerce Committee (Feb. 15, 2013).

[132] Sample Equifax Contract (EFX SUPP 008).

[133] The New York Times, *Bilking the Elderly, with Corporate Assist* (May 20, 2007).

[134] Krebsecurity.com, *Experian Sold Consumer Data to ID Theft Service* (Oct. 20, 2013); PCMAG.com, *Experian Confirms Subsidiary's Data Sold to Identity Theft Operation* (Oct. 22, 2013).

[135] Letter from Chairman John D. Rockefeller to Mr. Don Robert, Chief Executive Officer, Experian (Oct. 23, 2013).

of the company, and underscored that Experian stopped sales to this customer immediately after notification by authorities that this customer was under investigation. However, the company did not make clear how long the sales occurred undetected by Experian after acquisition of Court Ventures. The company further refused to provide specific customers to the Committee.[136]

Given that identifying vulnerable consumers is critical to the business of predatory lenders and fraudfeasors, and precedent where such entities have turned to data brokers for consumer data, the sale and use of data broker products segmenting financially vulnerable consumers merits close scrutiny.

b. Scoring Products that Mirror Tools Regulated under the Fair Credit Reporting Act

Some of the scoring products the respondent companies sell for marketing purposes resemble credit scoring tools that, under the Fair Credit Reporting Act, cannot be used for marketing. In materials describing one such product, "Summarized Credit Statistics," Experian emphasizes the distinction between the aggregated credit related information offered by the product and individual credit information, explaining: "because individual credit information may not be used for marketing purposes without a pre-approved offer, Experian developed Summarized Credit Statistics to characterize a neighborhood's consumer credit activity." [137]

Similarly, Equifax offers "Aggregated FICO Scores," which Equifax distinguishes from FICO scores which are generally prohibited for use in marketing under the Fair Credit Reporting Act. In its marketing materials for this product, the company states that "FICO Scores are no longer only for credit approvals: With aggregated FICO Scores, [customers] can leverage the basis of FICO scores for non-FCRA marketing applications such as prospecting and ITA [invitations to apply]." [138] The company further explains that "for the first time, marketers now have access to an aggregated, non-FCRA measure derived from the FICO Score.[139]

This Committee inquiry did not focus on FCRA compliance issues.[140] However, the emergence of marketing products that closely resemble credit scoring tools underscores the need for additional review of key questions including:

- whether there are privacy concerns surrounding the use of these tools
- whether additional consumer protections should be provided, and
- whether use of some of these scores might be considered eligibility determinations that should be scrutinized under the Fair Credit Reporting Act.[141]

C. Data Broker Customers and New Mechanisms for Using Data Broker Products

Responding data brokers told the Committee they sell their marketing products to a range of customers for a variety of types of marketing. These customers use data broker products for traditional mailing lists and increasingly to tailor outreach to individual consumer computers or mobile devices. Following is a discussion of the types of customers with whom data brokers share marketing products and what companies told the Committee about how their products are shared and used.

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[136] Letter from Tony Hadley, Senior Vice President of Government Affairs and Public Policy, Experian, to Chairman John D. Rockefeller IV (Nov. 8, 2013).

[137] Experian, *Summarized Credit Statistics* (EXP002109–EXP002110). This credit product includes the following:

- Median equivalency score—assesses the potential risk for seriously derogatory behavior. The scores range from 360 to 840 (high score equals low risk) to accommodate the industry standard use of credit scores,
- Median risk score—similar to median equivalency score, this option also characterizes neighborhoods or market segments based on their likelihood of having future derogatory credit activity. This score range (0–1000) has a direct correlation, where a low score equals a low risk, and,
- Median bankruptcy score—pinpoints neighborhoods or market segments that may be more likely to file for bankruptcy or become seriously delinquent over the next 12 months. This score is a leading indicator of potential derogatory impacts. Scores range from 108 to 1257, with a high score indicating great likelihood. *Id.*

[138] Equifax, *Aggregated FICO Scores: Utilize Aggregated FICO for Marketing Applications* (EFX PROD3 0258–0260).

[139] Equifax, *Aggregated FICO Scores from IXI Services* (EFX SUPP 168–169).

[140] Contracts that respondent data brokers provided the Committee make clear they require customers to comply with FCRA's prohibition against using marketing information for eligibility determinations.

[141] *See* discussion at part I.C regarding consumer protection issues relating to scoring products.

1. Who Buys the Data

The respondent companies told the Committee they sell consumer data to a wide range of customers. The types of customers included financial institutions, hotel chains, wireless telephone service providers, cable companies, and jewelry stores, as well as other data brokers or resellers. While, some companies provided identities of specific customers, others instead provided only general descriptions of the types of customers that purchase their data. For example, Acxiom's customers include "47 *Fortune* 100 clients; 12 of the top 15 credit card issuers; seven of the top 10 retail banks; eight of the top 10 telecom/media companies; seven of the top 10 retailers; 11 of the top 14 automotive manufacturers; six of the top 10 brokerage firms; three of the top 10 pharmaceutical manufacturers; five of the top 10 life/health insurance providers; nine of the top 10 property and casualty insurers; eight of the top 10 lodging companies; two of the top three gaming companies; three of the top five domestic airlines; six of the top 10 U.S. hotels." [142]

Experian's customers include "retailers, including online, storefront, and catalog sellers; consumer products manufacturers; charities and other nonprofit organizations; advertising agencies; media placement agencies; government agencies; Internet service providers; Internet portals; businesses offering services, especially local businesses; direct mail service providers; real estate agents; local, state, and Federal politicians; and colleges and universities." [143]

Epsilon provided a list of the industries associated with their customers, which includes "business to business, broker, consumer packaged goods, direct to consumer, emerging markets, finance, healthcare, high tech—telco, insurance, multichannel marketers (catalog), not for profit, publishing, research, retail, strategic partners, tobacco, and travel and entertainment." [144] The company further elaborated on several of these categories, explaining that list brokers are "buying agents for companies that send direct mail," that "research the types of available lists that a mailer could use for their offer." Emerging markets are "a collection of types of clients that are new to using direct marketing to reach customers," and strategic partners are "companies that license data as inputs for models they create and resell to other companies." [145]

2. New Mechanisms for Using Data

In their responses to the Committee, data brokers described client uses of their data in general terms such as fraud detection, identity authentication, and marketing. Specific customers named in some responses of the queried data brokers provided Committee staff with additional detail regarding their use of data broker products.

For example, one retail bank noted if it were seeking to determine ideal locations of new branches it may be interested in examining predicted borrowing and spending behaviors of their existing customers. Such information also might help banks when they are setting goals based upon the likely needs of their clientele, such as whether one branch should give more loans while another should open more new accounts.[146]

Further, the data broker responses made clear that customers are using data broker products to reach consumers both through on-line and off-line outreach. While American consumers are beginning to understand, and even expect, that their online activities will be tracked in order to send them online advertisements,[147] it is unclear whether they understand the extent to which data concerning their offline activities also may be collected and used to tailor online advertisements.[148]

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[142] Acxiom, *Fact Sheet: Consumer Insight Products* (ACXM 458). Acxiom also provided several examples of specific publicly identified clients. *E.g.,* Acxiom Response to Senate Commerce Committee (Nov. 2, 2012).

[143] Experian Narrative Response to Senate Commerce Committee, at 19 (Nov. 2, 2012).

[144] Letter from Lydia Parnes, Counsel to Epsilon, to Erik Jones, Deputy General Counsel to the Senate Commerce Committee, at 10 (Feb. 13, 2013).

[145] Letter from Lydia Parnes, Counsel to Epsilon, to Melanie Tiano, Counsel to Senate Commerce Committee (July 24, 2013). An example is a company that specializes in in serving not-for-profit clients on fund-raising matters, which then uses marketing data furnished by Experian to help their clients refine fund-raising mailing campaigns. *Id.* Epsilon also described to the Committee several examples of specific publicly identified clients. Epsilon Response to Senate Commerce Committee, (Feb. 13, 2013) (EPS–COM–003612–003650).

[146] Committee staff telephone interview with retail bank purchaser of segmenting buckets (Nov. 21, 2013).

[147] Joseph Turow, *The Daily You,* at 185 (2011) (citing a 2005 survey that showed 80 percent of respondents "believed that 'companies today have the ability to follow my activity across many sites on the web.")

[148] *See* Appendix III for a sampling of some of the data elements one company reported offering for online targeting.

Historically, data about consumers was used to locate consumers to send catalogs and other marketing promotions through the mail or contact via telephone. Increasingly, the information that data brokers make available about consumers—including demographic characteristics, financial information, and offline purchases and interests—is provided to clients digitally such that it informs the client's ability to target consumers online.[149]

The primary method for achieving online data sharing described by respondent companies is through the use of "cookies,"[150] and other technical means, such as "cookie syncing," or "cookie matching."[151] However, as Internet browser companies take steps to block cookie traffic, other technology to track consumers is developing rapidly, and some data broker companies appear to be finding new ways to follow consumers across different channels such as mobile devices. For example, in September 2013, Acxiom announced its "Audience Operating System (AOS)." AOS will combine data from multiple sources and enable digital marketers to segment and target audiences across channels and devices and would eliminate the need for third-party cookies, the current technology used to track consumers across the Internet.[152]

Data brokers are increasingly focused on using their offline consumer profiles for the purposes of serving online advertisements. Acxiom, for example, currently offers approximately 47 percent of its 1,500 data elements to help marketers target consumers online by personalizing websites for individual consumers or serving advertisements.[153] Similarly, Equifax offers many of its products digitally, including modeled FICO scores and the Ability to Pay Index.[154] Experian's Hitwise product enables marketers to obtain aggregate reports on the online behavior of their existing consumers by anonymously matching Experian offline marketing data with website traffic pattern analysis.[155]

Data brokers have asserted that digital products offer more privacy protections for consumers than traditional mail marketing because the data on consumers used in this context is not "personally identifiable" as that term is commonly understood. They point out that for marketing online, information about a consumer is often associated with a code instead of the consumer's name.[156] However, some privacy and information experts have expressed concerns that re-identification techniques may

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[149] As Datalogix explained its digital product offerings:

> The DLX Digital Display Media product is a direct and natural evolution of Direct Mail product for the digital era, in virtually every way. In the traditional mail world, the data was and is used to deliver catalogues and marketing promotions through the mail channel to the personal address of a family or individual. In the display business, the data is used to deliver an advertisement via a banner advertisement. If the consumer clicks on the advertisement, the consumer is taken to a company-sponsored website that provides detail about the product or service in an analogous way to a catalog. Websites have replaced or augmented catalogues as a preferred method of consumer shopping in the last decade.

Letter from Eric Roza, Chief Executive Officer, Datalogix, to Chairman John D. Rockefeller IV (Nov. 16, 2012).

[150] A cookie is a text file that a website's server places on a consumer's web browser. Cookies can be used to transmit information back to the website's server about the browsing activities on the site as well as be used to track a computer across different sites. *See* Federal Trade Commission, *FTC Staff Report: Self-Regulatory Principles for Online Behavioral Advertising* (Feb. 2009).

[151] Cookie syncing is the process of mapping user id's from one system to another. *See* AdMonsters, Cookie Syncing (Apr. 20, 2010) (online at *http://www.admonsters.com/blog/cookie-synching*).

[152] Gartner, *Acxiom's Audience Operating System Could Reinvent Data-Driven Marketing* (Sep. 26, 2013).

[153] Committee staff conversation with Jennifer Barrett Glasgow, Chief Privacy Officer, Acxiom (Dec. 10, 2013).

[154] For use online, the Ability to Pay Index assigns consumers a score from one to four. A score of one represents consumers with the highest likelihood of being able to pay. Equifax, *Ability to Pay Digital* (EFX SUPP 164); Equifax, *Aggregated FICO Digital Targeting Segments* (EFX PROD3 0294).

[155] Experian Narrative Response to Senate Commerce Committee, at 10–11 (Feb. 26, 2013). The marketing materials suggest that customers can identify and track consumer groups based upon a variety of elements, including visits to specific websites; online searches for specific terms; demographics, including age, income, gender, race, and ethnicity; summarized credit scores; presence of children; hobbies; ailments and prescriptions; and life events, such as new parents, movers, or new homeowners. Experian, *AudienceView* (EXP002472–2473).

[156] Letter from Eric Roza, Chief Executive Officer, Datalogix, to Chairman John D. Rockefeller IV (Nov. 16, 2013).

be used with such data,"[157] and questioned whether data that identifies specific computers and devices can truly be considered "anonymous." As marketing scholar Joseph Turow wrote:

> Industry claims of *anonymity* surrounding all these data may soften the impact of the sorting and labeling processes. But in doing so, it seriously undermines the traditional meaning of the word. If a company can follow and interact with you in the digital environment—and that potentially includes the mobile phone and your television set—its claim that you are anonymous is meaningless, particularly when firms intermittently add offline information to the online data and then simply strip the name and address to make it "anonymous."[158]

D. Data Broker Transparency and Privacy Practices

Data brokers generally are not consumer facing, therefore, most consumers have no way of knowing that data brokers may be collecting their data. Further, a number of companies have contracts with their customers that limit customer disclosures regarding their data sources. And since consumers generally do not have Federal statutory rights of access, correction, or control with respect to the information data brokers maintain on them for marketing, companies can establish privacy protections for this data largely at their own discretion.

Industry representatives continue to support self-regulation as the best approach for protecting the privacy of consumer data used for marketing, and many of the data broker responses to the Committee highlighted the importance of self-regulation. In fact, Acxiom cited a company philosophy—"just because you can doesn't mean you should"[159]—as a guiding principle for how to handle the mass quantities of consumer data available to them.

Most company responses indicated they have incorporated many of the best practices set forth in the Guidelines for Ethical Business Practices issued in 2009 by the Direct Marketing Association.[160] These guidelines provide "generally accepted principles of conduct" for "database compilers" that cover subjects including consumer choice and privacy notices, handling sensitive and specifically health-related information, oversight of customer data use, and information security. The guidelines also provide for a consumer right to opt out of the marketing process but do not provide for consumer access and correction rights with respect to their own data.[161]

This section discusses respondent company practices relevant to transparency and privacy.

1. Disclosure Limitations

Although DMA Guidelines recommend that members "not prohibit an end-user marketer from divulging the database compiler as the source of the marketer's information,"[162] a number of the companies have contracts with customers that place restrictions on customer disclosure of their data source. For example, one company's contract language provides: "All marketing communications used in connection with any list or data element provided to client shall . . . be devoid of any reference to . . . the source of the recipient's name and address."[163] Similarly, another company's contracts provide that the company "may not be advertised, or otherwise disclosed to any third party, as the source of the Licensed Data unless Client first obtains the express, written permission" of the company."[164]

The contracts reviewed by the Committee do, however, provide exceptions to such restrictions where a consumer makes a direct inquiry to the data broker's customer.[165]

2. Consumer Access and Control Rights

The respondent data brokers varied widely with respect to access and correction rights. For example, Experian and Equifax provide consumers no right to view their own data or correct it. Rapleaf provides consumers access to their data, and allows

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[157] *See How Anonymous Is Your Data? So, Should You Be Worried That We're on a Fast Track to Mass Privacy Invasions?,* Advertising Age (Mar. 18, 2013) (discussing the re-identification of online data that has been anonymized).

[158] Joseph Turow, *The Daily You, supra* n. 146, at 190; *see also* Paul Ohm, *Broken Promises of Privacy,* 57 UCLA Law Review 1701, 1704 (2010) ("Data can either be useful or perfectly anonymous, but never both.").

[159] Acxiom Narrative Response to Senate Commerce Committee, at 3 (Apr, 15, 2013).

[160] For discussion of these guidelines *see* Part I.B.

[161] DMA Guidelines, *supra* n.25, Article 31.

[162] DMA Guidelines, *supra* n.25, Article 36.

[163] Sample contract provided to the Senate Commerce Committee.

[164] Sample contract provided to the Senate Commerce Committee.

[165] *E.g.,* Sample Contract provided to the Senate Commerce Committee.

them to correct data that Rapleaf originates, but the company does not provide correction rights to data originating from others.

Equifax states that a large percentage of the products it offers are aggregated or modeled scores that are then attributed to every household or individual sharing a particular ZIP+4 Code. Equifax asserts that because the consumer data obtained is de-identified and therefore not about a particular consumer, Equifax does not provide an opportunity for consumer notice, access, or correction.[166] Similarly, Experian does not provide consumers the ability to access or correct the data maintained because the company "does not maintain sufficient personal information to allow adequate authentication of an individual who requests access,"[167] and much of the information is modeled or inferred or provides general information, such as income ranges, rather than details, such as exact income, making correction rights unnecessary.[168]

Acxiom in September 2013 unveiled a new website—Aboutthedata.com—that allows consumers to see and correct certain information that Acxiom has collected about them. In order to access information, consumers must enter their full name, address, date of birth, last four digits of their social security number, and e-mail address. Once a consumer's information has been authenticated, the consumer can view, and correct or delete broad categories of what Acxiom calls "core" data.

While the new Acxiom database marks a step forward in promoting transparency, it does not provide consumers a complete view of the data the company holds on consumers for marketing purposes. First, consumers do not have access to data to which Acxiom has applied analytics. For example, a consumer could see data points showing their occupation and that they have children, but if Acxiom inferred from those two data points that the consumer is a "working parent," the consumer would not have access to that inferred element. Second, the database includes only those data points that are currently incorporated into Acxiom's digital—as opposed to offline—products. According to Acxiom representatives, as of early December, about 47 percent of Acxiom's offline data was included in the digital products, and the company is aiming to have complete overlap of the two data sets within a few years.[169]

3. Opt-Out Rights

Several companies reported that they provide an avenue for consumers to opt out of having their information shared for marketing purposes. The companies that provide these options typically give notice to consumers of this option via their privacy policies and company websites. They can also entirely opt out of having any of their data collected.

Acxiom's policy is to permanently delete the records of consumers who choose to opt out. However, a number of other respondent companies provide that, when a consumer opts out of having their information shared, the companies do not delete the consumer's information. Rather, as Epsilon describes:

> When a consumer opts-out with Epsilon, Epsilon marks the consumer's information as "Do Not Share," rather than deleting the information. Epsilon does this to preserve the consumer's preference; if the consumer's information is deleted, in the future, Epsilon would have no way to know that the consumer requested that their information not be shared. When a consumer is marked as "Do Not Share," Epsilon will know that the consumer did not want their information shared in case the consumer's information is later resubmitted. Epsilon adheres to this policy to ensure that consumers' opt-out requests are persistent and honored.[170]

Similarly, when a consumer requests that Experian suppress the use of their information for marketing purposes, "Experian does not completely eliminate data in response to a suppression request. [Experian] must continue to internally maintain

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[166] Response Letter from Robert W. Kamerschen, U.S. Chief Counsel and Senior Vice President, Equifax to Chairman John D. Rockefeller IV, at 5 (Nov. 2, 2012).

[167] Experian Narrative Response to Senate Commerce Committee, at 16 (Nov. 2, 2013).

[168] *Id.*

[169] *See* Section III.C.2. According to documents provided to the Committee, as of June 2012, Acxiom had 160 elements available in the digital products. The 160 elements include some modeled data that would not be available for access and correction. This is out of Acxiom's over 1,500 data elements currently listed as available in their data catalog. Acxiom Narrative Response to Senate Commerce Committee (Mar. 1, 2013). Conversations with Acxiom suggest that this number may now be as high as 47 percent of the available 1,500 data elements. Committee staff conversation with Jennifer Barrett Glasgow, Chief Privacy Officer, Acxiom (Dec. 10, 2013).

[170] Epsilon Narrative Response to Senate Commerce Committee (Nov. 2, 2012).

a record pertaining to the suppressed household in order to properly manage consumer records, such as the consumer's choice for suppression."[171]

It is worth noting that since consumers are often not aware that data brokers hold their information, it is not clear how they would be aware that they have opt-out rights, or how to exercise them.

IV. Conclusion

The responses the Committee received in its inquiry into the data broker industry provide a snapshot of how data brokers collect, use, and share consumer data for marketing purposes. This information makes clear that consumers going about their daily activities—from making purchases online and at brick-and-mortar stores, to using social media, to answering surveys to obtain coupons or prizes, to filing for a professional license—should expect that they are generating data that may well end up in the hands of data brokers. They should expect that this data may well be amassed with many other details about them data brokers already have compiled. And they should expect that data brokers will draw on this data without their permission to construct detailed profiles on them reflecting judgments about their characteristics and predicted behaviors.

The responses also underscore that consumers have minimal means of learning—or providing input—about how data brokers collect, analyze, and sell their information. The wide variety of consumer access and control policies provided by the representative companies show that consumer rights in this arena are offered virtually entirely at the companies' discretion. The contractual limitations imposed by companies regarding customer disclosures of their data sources place additional barriers to consumer transparency. And the refusal by several major data broker companies to provide the Committee complete responses regarding data sources and customers only reinforces the aura of secrecy surrounding the industry.

This Committee inquiry has been conducted at a time when sources of consumer data and technological capabilities for storage and speedy analysis of data continue to expand. As data brokers are creating increasingly detailed dossiers on millions of consumers, it is important for policymakers to continue vigorous oversight to assess the potential harms and benefits of evolving industry practices and to make sure appropriate consumer protections are in place.

APPENDIX I

FEDERAL LAWS THAT MAY BE APPLICABLE TO INFORMATION COLLECTED BY DATA BROKERS

In its September 2013 Information Resellers Report, GAO found that no single comprehensive Federal privacy law governs the collection, use, and sale of personal information maintained and sold by data brokers.[1] Instead, a "more narrowly tailored" set of laws concerning private sector use of consumer information exists which "apply for specific purposes, in certain situations, to certain sectors, or to certain types of entities."[2] The Fair Credit Reporting Act (FCRA), the Gramm-Leach-Bliley Act (GLBA), Section 5 of the Federal Trade Commission Act (FTC Act), and to some extent the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Children's Online Privacy Protection Act (COPPA) are the primary laws that govern the collection and use of consumer information. A brief summary of the applicable portions of each of these laws follows below.

I. Fair Credit Reporting Act

The Fair Credit Reporting Act (FCRA)[3] imposes a number of obligations on consumer reporting agencies (CRAs), which are entities that assemble consumer information into "consumer reports" for use by issuers of credit and insurance, and by employers, landlords, and others in making eligibility decisions affecting consumers.[4] Whether the obligations and protections of the FCRA apply to consumer data depends largely on the purpose for which the information is collected, and the intended and actual use of the information, rather than the origin or nature of the

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[171] Experian Narrative Response to Senate Commerce Committee, at 16 (Nov. 2, 2012).

[1] Government Accountability Office, *Information Resellers: Consumer Privacy Framework Needs to Reflect Changes in Technology and the Marketplace,* GAO–13–663 (Sept. 2013) (hereafter "GAO Information Reseller Report").

[2] *Id.*.

[3] Pub. L. No. 91–508, Tit. VI, 84 Stat. 1114, 1128 (1970) (codified as amended at 15 U.S.C. §§ 1681–1681x).

[4] 15 U.S.C. § 1681a.

information itself. The FCRA does not apply to the collection and use of information for the purpose of marketing, except it allows marketing of pre-screened offers of credit and insurance where consumers are provided the opportunity to opt out of future such offers.[5]

The FCRA requires that CRAs make reasonable efforts to assure the "maximum possible accuracy"[6] of the information they provide to data users, and further requires they maintain procedures through which consumers can dispute and correct inaccurate information in their consumer reports.[7] CRAs also must take reasonable measures to ensure that they provide credit reports only to those entities that have a statutorily-specified "permissible purpose" to receive them.[8] The FTC has recently taken actions against a number of companies for allegedly violating the FCRA.[9]

II. Gramm Leach Bliley Act

The Gramm Leach Bliley Act (GLBA)[10], also known as the Financial Services Modernization Act of 1999, imposes privacy and security obligations on nonpublic personal information that consumers provide to "financial institutions," which GLBA defines as businesses that are engaged in "financial activities," including traditional banking, lending, and insurance functions, as well as other activities such as providing investment advice, brokering loans, credit reporting, and real estate settlement services.[11] Financial institutions subject to GLBA must comply with two key provisions of the Act—the "Financial Privacy Rule," and "Safeguards Rule." The Financial Privacy Rule governs the collection and disclosure of consumers' personal information.[12] The "Safeguards Rule," requires that financial institutions design, implement and maintain safeguards to protect consumers' nonpublic information.[13]

The GLBA Privacy Rule generally prohibits covered financial institutions from disclosing nonpublic personal information about consumers to non-affiliated third parties without first providing consumers with notice and the opportunity to opt out of the disclosure.[14] However, the GLBA provides a number of statutory exceptions under which disclosure is permitted without specific notice to the consumer, including consumer reporting (pursuant to the FCRA), fraud prevention, law enforcement and regulatory or self-regulatory purposes, compliance with judicial process, and public safety investigations.[15]

Entities that receive information under an exception to the GLBA are subject to reuse and re-disclosure restrictions, even if those entities are not themselves financial institutions.[16] In particular, the recipients may only use and disclose the information "in the ordinary course of business to carry out the activity covered by the exception under which . . . the information [was received]."[17] Thus, for example, if a data broker obtains "credit header information"—which includes a consumer's name, address, and social security number—from a financial institution pursuant to

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[5] 15 U.S.C. § 1681b(e). Pre-screened offers of credit or insurance—sometimes called "pre-approved" offers—are sent to consumers unsolicited, usually by mail. They are based on information in consumers' credit reports that indicates that the individuals receiving the offer meet the criteria set by the company making the offer. The FCRA limits the circumstances in which consumer reports can be used to make pre-screened offers, and provides that all such offers must include a notice of consumers' right to stop receiving future pre-screened offers.

[6] 15 U.S.C. § 1681e(b).

[7] 15 U.S.C. § 1681i(a)–(d)

[8] 15 U.S.C. § 1681b(a), (c). Permissible purposes under the FCRA include, but are not limited to, the use of a consumer report in connection with a determination of eligibility for credit, insurance, or a license; in connection with the review of an existing account; and for certain employment purposes. Other typical uses that are subject to FCRA protections include tenant screening, and check cashing services.

[9] See, *e.g.,* Press Release, *"Certegy Check Services to Pay $3.5 Million for Alleged Violations of the Fair Credit Reporting Act and Furnisher Rule,"* Federal Trade Commission (Aug. 15, 2013) (available at *www.ftc.gov/news-events/press-releases/2013/08/certegy-check-services-pay-35-million-alleged-violations-fair);* Press Release *"Marketers of Criminal Background Screening Reports To Settle FTC Charges They Violated Fair Credit Reporting Act"* Federal Trade Commission, (Jan. 10, 2013) (available at *www.ftc.gov/news-events/press-releases/2013/01/marketers-criminal-background-screening-reportsto-settle-ftc);* Press Release,*"Spokeo to Pay $800,000 to Settle FTC Charges Company Allegedly Marketed Information to Employers and Recruiters in Violation of FCRA,"* Federal Trade Commission,(June 7, 2012) (available at *www.ftc.gov/news-events/press-releases/2012/06/spokeo-pay-800000-settle-ftc-charges-company-allegedly-marketed*).

[10] Pub. L. No. 106–102, 113 Stat. 1338 (1999) (codified as amended in scattered sections of 12 and 15 U.S.C.).

[11] 15 U.S.C. § 6809(3)(A).

[12] 15 U.S.C. § 6801(a).

[13] 15 U.S.C. § 6801(b).

[14] 15 U.S.C. § 6802(b).

[15] 15 U.S.C. § 6802(e).

[16] 16 C.F.R. Part 313.

[17] 16 C.F.R. Part 313.11(a).

the GLBA exception "to protect against or prevent actual or potential fraud," then that data broker may not reuse and re-disclose that information for marketing purposes.

III. Federal Trade Commission Act

Section 5 of the Federal Trade Commission (FTC) Act provides the Commission with broad jurisdiction to regulate unfair or deceptive practices in competition and consumer protection.[18] Section 5 forms the basis of the FTC's substantial body of law that covers advertising, marketing, certain financial practices, and privacy, among other areas. In the privacy space, section 5 applies to both deceptions and violations of written privacy policies and statements made to consumers about how they will safeguard or use consumer information.[19] The Commission's Section 5 authority extends to the sale of data for marketing purposes.[20]

IV. Health Insurance Portability and Accountability Act

The Health Insurance Portability and Accountability Act (HIPAA)[21] protects certain personal health information from use and disclosure. HIPAA applies to individually identifiable health information[22] held by "covered entities," which include health insurers, health care providers—if they transmit any information in an electronic form for certain covered transactions—and health care clearinghouses, as well as their vendors, subcontractors, and business associates.[23] The HIPPA Privacy Rule governs the use and disclosure of personal health information and, with some exceptions, requires an individual's written authorization prior to using consumers' protected health information for marketing and sale.[24] However, HIPPA affords fairly narrow protections and its restrictions on sharing do not apply to health information held by non-covered entities, including data brokers.

V. Children's Online Privacy Protection Act

The Children's Online Privacy Protection Act[25] (COPPA) applies to the online collection and use of personal information from children under age 13. Websites and online services, including mobile apps, covered by COPPA are required to post privacy policies, provide parents with direct notice of their information practices, and get verifiable consent from a parent or guardian before collecting personal information from children. Personal information is defined as information that would allow someone to identify or contact a child. It includes, among other things, name, physical or e-mail address, geolocation, and "persistent identifier" which can be used to

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[18] 15 U.S.C. § 45. Banks, savings and loans, credit unions, common carriers, and air carriers are exempt from the FTC's Section 5 jurisdiction.

[19] *See, e.g,* Press Release, *Google Will Pay $22.5 Million to Settle FTC Charges it Misrepresented Privacy Assurances to Users of Apple's Safari Internet Browser,* Federal Trade Commission (Aug.9, 2012) (available at *www.ftc.gov/news-events/press-releases/2012/08/google-will-pay-225-million-settle-ftc-charges-it-misrepresented*); Press Release, *Online Data Broker Settles FTC Charges Privacy Policies were Deceptive,* (Sept. 22, 2010) (available at *http://www.ftc.gov/news-events/press-releases/2010/09/online-data-broker-settles-ftc-charges-privacy-pledges-were*) (charging that U.S. Search, Inc.'s promises that they would prevent consumers' personal information from appearing in their reverse lookup database in exchange for a $10 fee were false); Press Release, *Agency Announces Settlement of Separate Actions Against Retailer TJX, and Data Brokers Reed Elsevier and Seisint for Failing to Provide Adequate Security for Consumers Data,* Federal Trade Commission (Mar. 27, 2008) (available at *http://www.ftc.gov/news-events/press-releases/2008/03/agency-announces-settlement-separate-actions-against-retailer-tjx*).

[20] In October of 2012, the FTC alleged that the credit reporting division of Equifax improperly sold more than 17,000 "prescreened" lists of consumers who were late on their mortgage payments to Direct Lending Source, Inc. and its affiliate companies. Direct Lending subsequently resold some of these lists to third parties, who used the lists to pitch loan modification and debt relief services to people in financial distress, including to companies that had been the subject of prior law enforcement investigations. *See* Press Release, *FTC Settlements Require Equifax to Forfeit Money Made by Allegedly Improperly Selling Information about Millions of Consumers Who Were Late on Their Mortgages,* Federal Trade Commission (Oct. 10, 2012) (available at *http://www.ftc.gov/news-events/press-releases/2012/10/ftc-settlements-require-equifax-forfeit-money-made-allegedly*).

[21] Pub. L. No. 104–191, 110 Stat. 1936 (1996) (codified as amended in scattered sections of 18, 26, 29, and 42 U.S.C.).

[22] 45 C.F.R. Part 160.103. Individually identifiable health information is information which can be linked to a particular person. This information can relate to the individual's past, present or future physical or mental health or condition, or, the past, present, or future payment for the provision of health care to the individual.

[23] 45 C.F.R. Part160.103.

[24] Exceptions include refill reminders or otherwise communicate about a drug or biologic that is currently being prescribed for the individual, only if any financial remuneration received by the covered entity in exchange for making the communication is reasonably related to the covered entity's cost of making the communication. 45 CFR 164.501

[25] 15 U.S.C. §§ 6501–6506 (Pub.L. 105–277, 112 Stat. 2581–728, enacted October 21, 1998).

recognize a user over time and across different websites or online services.[26] The law specifies what information must be included in the notice provided to parents and how and when to acquire parental consent.[27]

COPPA's restrictions and protections could apply to this investigation because websites have been identified as one of the sources from which data brokers obtain consumer information. COPPA does not restrict the collection of a child's information from the child's parent or other adult.

Sample List of Targeting Products Identifying Financially Vulnerable Populations

APPENDIX II

"Burdened by Debt: Singles"	"Struggling Elders: Singles"	"Meager Metro Means"	"Very Elderly"
"Mid-Life Strugglers: Families"	"Retiring on Empty: Singles"	"Relying on Aid: Retired Singles"	"Rolling the Dice"
"Resilient Renters"	"Tough Start: Young Single Parents"	"Rough Retirement: Small Town and Rural Seniors"	"Fragile Families"
"Very Spartan"	"Living on Loans: Young Urban Single Parents"	"Financial Challenges"	"Small Town Shallow Pockets"
"X-tra Needy"	"Credit Crunched: City Families"	"Credit Reliant"	"Ethnic Second-City Strugglers"
"Zero Mobility"		"Rocky Road"	"Rural and Barely Making It"
"Hard Times"			
"Enduring Hardships"			
"Humble Beginnings"			

Sample List of Offline Elements Available for Online Advertising

APPENDIX III

Race Code	Age in Two-Year Range – Head of Household	Home Loan – Date, Amount Range, Type, Interest Rate Type, Transaction Type
Gender	Working Women	Home Purchase Year
Dwelling Type	Presence of Children	Home Property Type Detail
Method of Payment – Amex, MasterCard, Visa, Discover, Retail Card, House Charge, Other, Cash	Adult Age Ranges Present in Household	Home Market Value – Premier Ranges
Recent Home Buyer (6 Months)	Occupation, Head of Household, 2nd Person in Household	Length of Residence – Ranges
Recent Mortgage Borrower	Number of Adults	Home Total Loan – Ranges
New Parent	Estimated Household Income	Home Lot Square Footage – Range
Vehicle – Intend to Purchase	Generations in Household	Home Year Built – Range
Pet Owner – Cat, Dog, Other	Senior Adult in Household	Home Square Footage – Range
Marital Status	Child Nearing High School Graduation in Household	Home Assessed Value – Range
Credit Card User	Reading – Religious/Inspirational Interest	Home Purchase Amount – Range
Number of Lines of Credit	Frequent Shoppers /Heavy Transactor	Recent Home Buyer
Net Worth		Received New Credit Card Recently
Education		Gambling - Casino
Dieting / Weight Loss		

[26] 16 C.F.R. Part 312.2.
[27] 16 C.F.R. Part 312.5.

U.S. Senate Commerce Committee

Exhibit A

SHOPPER'S voice® CONSUMER RESEARCH CENTER

CONSUMER PRODUCT SURVEY OF AMERICA

Please have this questionnaire filled out by the main grocery shopper in your household.

Number 088

Instructions

1. **Read questions** and answer for all household members
2. **Skip questions that don't apply** to your household
3. **Mark a dark "X"** in all applicable boxes

Our Privacy Promise: This is a voluntary survey sponsored by Shopper's Voice®, a leading provider of consumer marketing information. Shopper's Voice® is dedicated to ensuring that all your information you have chosen to provide us is managed responsibly with respect for your personal privacy. We use appropriate physical, technical and administrative procedures to safeguard the information we collect and maintain. Shopper's Voice® may share the information you provide us with our partner companies for marketing and research purposes. If you choose to participate, you must be legally an adult and 18 years of age or older. We encourage you to review our full privacy policy at www.shoppers-voice.com/privacy.html. If you have any privacy-related questions, email us at contactus@Shoppers-Voice.com.

Section 1: Household Purchases

1 Storage Bags

☐ WE DO NOT BUY (Skip to next category)

	3 or More Times Per Month	1 or 2 Times Per Month
Glad	☐	☐
Hefty	☐	☐
Ziploc	☐	☐
Store brand	☐	☐
Other brand	☐	☐

2 Air Care

☐ WE DO NOT USE (Skip to next category)

1) How many of the following types of air fresheners have household members bought in the past year?

	1 to 4	5 to 9	10 or more
Aerosols/sprays	☐	☐	☐
Automatic spray	☐	☐	☐
Diffuser/flameless	☐	☐	☐
Electric scented oils	☐	☐	☐
Fabric refreshers	☐	☐	☐
Motion activated	☐	☐	☐
Scented candles	☐	☐	☐
Solids/gels/beads	☐	☐	☐
Other	☐	☐	☐

2) Does your household buy these air care brands?

	Used Most Often	Tried in Past 12 Months
Air Wick	☐	☐
Bath & Body Works	☐	☐
Febreze	☐	☐
Glade	☐	☐
Renuzit	☐	☐
Yankee	☐	☐
Other	☐	☐

3 Pets and Pet Products

☐ WE DO NOT HAVE (Skip to next category)

1) How many cats or dogs does your household have?

	One	2 or More
Cat(s)	☐	☐
Dog(s)	☐	☐

2) How many dogs do you have in the following weight ranges?

	One	2 or More
Small - less than 25 lbs	☐	☐
Medium - 25 to 50 lbs	☐	☐
Large - more than 50 lbs	☐	☐

3) What type of pet products do you buy?

	Cat	Dog
Eukanuba	☐	☐
Iams	☐	☐
Natural Choice	☐	☐
Purina	☐	☐
Science Diet	☐	☐
Treats	☐	☐
Vitamins or supplements	☐	☐
Other brands	☐	☐

4 Purchase Decisions

Which of the following are you willing to pay more for when choosing products? (Please "X" all that apply)

- Brand name ☐
- Environmentally friendly ☐
- Organic ☐
- Recommended products ☐

5 Coupon Use

1) How often does your household use "cents off" store coupons?

- More than once per week ☐
- Once per week ☐
- Less than once per week ☐

2) How would you like to receive coupons?

- Email/internet ☐
- In-store ☐
- Mail ☐
- Mobile phone ☐
- Newspaper ☐
- No preference ☐

6 Mail Order or Catalogs

1) Has your household bought any of the following products by catalog or through the mail in the past 5 months?

	3 Times or More	1 or 2 Times
Apparel or clothing	☐	☐
Books	☐	☐
Children's products	☐	☐
Collectibles	☐	☐
Cosmetics	☐	☐
Food gifts or products	☐	☐
Gifts	☐	☐
Home furnishings	☐	☐
Jewelry	☐	☐
Magazines	☐	☐
Shoes	☐	☐
Videos or DVDs	☐	☐
Women's apparel size 22+	☐	☐
Other products	☐	☐

2) Does your household buy infomercial products?

Yes ☐ No ☐

3) Does your household shop online?

Yes ☐ No ☐

7 Wireless

☐ WE DO NOT USE (Skip to next category)

PROVIDER

AT&T ☐ T-Mobile ☐
CellularOne ☐ Verizon ☐
Clearwire ☐ Other ☐
Sprint ☐ Prepaid service ☐

CELL PHONE

Android ☐ iPhone ☐
BlackBerry ☐ Other ☐

280

8 Do you buy these products?

How often does your household buy the products listed below?

	3 or More Times Per Year	1 or 2 Times Per Year
Benefiber	☐	☐
Metamucil	☐	☐
GoodNites	☐	☐
Pull-Ups	☐	☐
UnderJams	☐	☐
Disposable plastic containers	☐	☐
John Frieda hair care products	☐	☐
Septic Tank Treatment	☐	☐

9 Shopping

Which stores do household members usually shop at?

Target	☐	Walmart	☐
CVS	☐	Walgreens	☐
Costco	☐	Sam's Club	☐
Dollar Store	☐	Lowe's	☐
Home Depot	☐	PETCO	☐
PetSmart	☐	Other	☐

10 Housekeeping Products

☐ WE DO NOT USE (Skip to next category)

1) When cleaning your home, how often are cleaning products (e.g. liquids, sprays, wipes) used?

- Daily ☐
- Several times per week ☐
- Once per week ☐
- Once per month or less often ☐

2) Does your household use these cleaning products?

	Used Most Often	Tried in Past 12 Months
Clorox	☐	☐
Lysol	☐	☐
Mr. Clean	☐	☐
Pledge	☐	☐
Scrubbing Bubbles	☐	☐
Swiffer	☐	☐
Other	☐	☐

11 Home Electronics

What does your household own or plan to buy in the next 12 months?

	Currently Own	Plan to Buy
Blu-ray player	☐	☐
Cellular phone	☐	☐
Compact disc player (CD)	☐	☐
DVD player	☐	☐
- high definition	☐	☐
High definition TV (HDTV)	☐	☐
Keurig coffee maker	☐	☐
Tassimo coffee maker	☐	☐
Printer for home computer	☐	☐
Internet service	☐	☐

12 Food Products

1) Does your household buy the following?

	Used Most Often	Tried in Past 12 Months
Boost	☐	☐
Ensure	☐	☐
Coffee-mate	☐	☐
International Delight Creamer	☐	☐
Taster's Choice	☐	☐
Splenda	☐	☐

2) How many times per month does your household buy the following?

	3 or More Times Per Month	1 or 2 Times Per Month
Boboli pizza crust	☐	☐
Boca burgers	☐	☐
MorningStar Farms	☐	☐
BREAKFAST		
Cheerios	☐	☐
Cinnamon Toast Crunch	☐	☐
Eggo waffles or pancakes	☐	☐
Froot Loops	☐	☐
Frosted Flakes	☐	☐
Frosted Mini-Wheats	☐	☐
Kashi	☐	☐
Lucky Charms	☐	☐
Pop-Tarts	☐	☐
Rice Krispies	☐	☐
Special K	☐	☐
Toaster Strudel	☐	☐
COOKIES AND BARS		
Chips Ahoy cookies	☐	☐
Keebler cookies	☐	☐
Nilla wafers	☐	☐
Nutri-Grain bars	☐	☐
Oreo cookies	☐	☐
CRACKERS		
Cheez-It	☐	☐
Goldfish	☐	☐
Keebler Town House	☐	☐
Ritz	☐	☐

13 Grocery Products

1) How many times per month does your household buy the following?

	3 or More Times Per Month	1 or 2 Times Per Month
Artificial sweeteners	☐	☐
Bottled iced tea	☐	☐
Cheese slices	☐	☐
Frozen fish (e.g. breaded, grilled)	☐	☐
Frozen meat substitutes	☐	☐
Gourmet coffee	☐	☐
Nutritional supplement drinks	☐	☐
Snack or energy bars	☐	☐

2) How many boxes of cereal does your household buy per week?

5 or more ☐ 1 or 2 ☐
3 or 4 ☐ None ☐

Please turn to the next page →

U.S. Senate Commerce Committee Exhibit A

Section 2: Health & Wellness

1 Nutrition & Diet

Do any household members plan their diet for any of the following reasons?

Calcium ☐ Lose weight ☐
Cholesterol ☐ Natural fiber ☐
Diabetes ☐ Probiotics ☐
Gain weight ☐ Sodium ☐
Reduce meat consumption ☐
Natural and organic foods ☐

SUPPLEMENTS

Calcium ☐
Omega-3's or fish oil ☐
Fiber ☐ Protein ☐
Herbal remedies ☐ Vitamins ☐

2 Hair Care

☐ **WE DO NOT USE (Skip to next category)**

1) Do any household members color their hair at home?
Yes ☐ No ☐

2) Do any household members use hair care products to straighten, smooth or treat frizzy hair two or more times per week?
Yes ☐ No ☐

3) If yes, are they willing to spend $6 or more on a hair care product to straighten or treat frizzy hair?
Yes ☐ No ☐

3 Feminine Hygiene Products

☐ WE DO NOT USE (Skip to next category)	Used Most Often	Tried in Past 12 Months
FEMININE PADS		
Always	☐	☐
Kotex	☐	☐
Stayfree	☐	☐
Other feminine pads	☐	☐
TAMPONS		
Kotex	☐	☐
o.b.	☐	☐
Playtex	☐	☐
Tampax	☐	☐
Other tampons	☐	☐
FEMININE PANTILINERS		
Always	☐	☐
Carefree	☐	☐
Kotex	☐	☐
Other pantiliners	☐	☐

4 Health Products

Does your household use the following?

	You	Others in Household
Actos	☐	☐
Blood thinners - Pradaxa	☐	☐
- Coumadin or Warfarin	☐	☐
Brilinta	☐	☐
Celebrex	☐	☐
Dentures	☐	☐
Dulcolax	☐	☐
Hearing aids	☐	☐
Lantus	☐	☐
Laxatives	☐	☐
Miralax	☐	☐
Mirapex	☐	☐
Requip	☐	☐
Spiriva	☐	☐
Welchol	☐	☐

5 Adult Cold & Sinus Decongestant

☐ **WE DO NOT BUY (Skip to next category)**

1) How many packages of the following does your household buy in one year?

	2 or More Packages	1 Package
NASAL SPRAYS		
Afrin	☐	☐
Mucinex - Full Force	☐	☐
- Moisture Smart	☐	☐
Vicks Sinex	☐	☐
Store brand	☐	☐
Other non-prescription	☐	☐
Other prescription	☐	☐
ORAL DECONGESTANTS		
Mucinex D	☐	☐
Sudafed or Sudafed PE	☐	☐
Vicks DayQuil/NyQuil - Cold	☐	☐
- Sinex	☐	☐
Other non-prescription	☐	☐
Other prescription	☐	☐

2) Has your household purchased any of the following nasal sprays in 2008 - 2009?

	Yes	No
Afrin	☐	☐
Store brand	☐	☐
Other	☐	☐

6 Adult Pain Relievers

☐ WE DO NOT BUY (Skip to next category)	Used Most Often	Tried in Past 12 Months
Advil	☐	☐
Aleve	☐	☐
Bayer Aspirin	☐	☐
Excedrin	☐	☐
Motrin	☐	☐
Tylenol	☐	☐
Store brand pain relievers	☐	☐
Topical pain relievers	☐	☐
Other	☐	☐

Are pain relievers used for the following?

Back pain ☐ Joint pain ☐
Body pain ☐ Headaches ☐

7 Adult & Child Allergy Remedies

☐ **WE DO NOT BUY (Skip to next category)**

How many packages of the following does your household buy in one year?

	3 or More Packages	1 or 2 Packages
ADULT REMEDIES		
Allegra or Generic Allegra	☐	☐
Claritin	☐	☐
Other non-prescription	☐	☐
Other prescription	☐	☐
CHILDREN'S REMEDIES		
Allegra or Generic Allegra	☐	☐
Children's Claritin	☐	☐
Other non-prescription	☐	☐
Other prescription	☐	☐

8 Rheumatoid Arthritis

☐ WE DO NOT HAVE (Skip to next category)	Currently Use	Previously Used
Actemra	☐	☐
Cimzia	☐	☐
Enbrel or Humira	☐	☐
Methotrexate	☐	☐
Orencia or Rituxan	☐	☐
Remicade or Simponi	☐	☐
Other treatment or method	☐	☐

9 Heartburn

☐ WE DO NOT HAVE (Skip to next category)	Used Most Often	Tried in Past 12 Months
Pepcid	☐	☐
Pepto-Bismol or Mylanta	☐	☐
Prevacid or Prilosec	☐	☐
Rolaids or Tums	☐	☐
Zantac	☐	☐
Other non-prescription	☐	☐
Other prescription	☐	☐

10 Diabetes

☐ **WE DO NOT HAVE (Skip to next category)**

Do any household members have diabetes? If so, what type and how is it treated?

	You	Others in Household
Type 1	☐	☐
Type 2	☐	☐
Not certain	☐	☐
TREATMENT METHODS		
Glucose monitor	☐	☐
Insulin - injection	☐	☐
- pump	☐	☐
Oral medication	☐	☐
Diet or exercise	☐	☐

11 Heart Health

1) Do any members of your household have the following?

	You	Others in Household
Angina	☐	☐
Atrial fibrillation	☐	☐
Family history of heart disease	☐	☐
Heart attack	☐	☐
High blood pressure	☐	☐
- treat with prescription	☐	☐
High cholesterol	☐	☐
- treat with prescription	☐	☐
Irregular heart rhythm	☐	☐
Mini stroke or TIA	☐	☐
Stroke	☐	☐

2) Does your household use the following?

	You	Others in Household
Omega-3's or fish oil	☐	☐
Bayer 81mg (low dose) Aspirin	☐	☐
St. Joseph Aspirin	☐	☐
Other Aspirin	☐	☐
Aggrenox	☐	☐
Micardis	☐	☐
Plavix	☐	☐
Crestor	☐	☐
Lipitor	☐	☐

12 Bladder Leakage

☐ WE DO NOT HAVE (Skip to next category)	Used Most Often	Tried in Past 12 Months
Depend	☐	☐
Poise	☐	☐
Tena/Serenity	☐	☐
Store or other brand	☐	☐
Feminine pads or pantiliners	☐	☐

13 Smoking

☐ **WE DO NOT SMOKE (Skip to next category)**

Is anyone in your household interested in quitting smoking in the next 12 months?
Yes ☐ No ☐

14 Nighttime Sleeplessness

☐ WE DO NOT HAVE (Skip to next category)	Used Most Often	Tried in Past 12 Months
Advil PM	☐	☐
Excedrin PM	☐	☐
Tylenol PM	☐	☐
Other non-prescription	☐	☐
Ambien	☐	☐
Lunesta	☐	☐
Other prescription	☐	☐
Do not treat	☐	☐

15 Family Health

Do any members of your household have the following?

	You	Others in Household
Acne	☐	☐
Allergies	☐	☐
Alzheimer's	☐	☐
Anxiety	☐	☐
Arthritis - common (osteo)	☐	☐
- rheumatoid	☐	☐
Asthma	☐	☐
Back pain	☐	☐
Bladder leakage - light	☐	☐
- heavy	☐	☐
Overactive bladder	☐	☐
Breast cancer	☐	☐
COPD or Emphysema	☐	☐
- treat with prescription	☐	☐
Constipation	☐	☐
Crohn's	☐	☐
Depression	☐	☐
Bipolar disorder	☐	☐
Major depressive disorder (MDD)	☐	☐
Diabetes	☐	☐
Diabetic nerve pain	☐	☐
Difficulty walking	☐	☐
- require mobility aid	☐	☐
- require wheelchair	☐	☐
Enlarged prostate (BPH)	☐	☐
Fibromyalgia	☐	☐
GERD	☐	☐
Hearing loss	☐	☐
Hypothyroidism	☐	☐
Insomnia	☐	☐
Kidney disorder	☐	☐
- treat with dialysis	☐	☐
Lou Gehrig's disease or ALS	☐	☐
Lupus	☐	☐
Macular degeneration - wet	☐	☐
- dry	☐	☐
Menopause or pre-menopause	☐	☐
Migraines	☐	☐
Multiple sclerosis	☐	☐
Nasal allergies	☐	☐
Osteoporosis	☐	☐
Parkinson's disease	☐	☐
- diagnosed in the last 5 years	☐	☐
Prostate cancer	☐	☐
Psoriasis or Eczema	☐	☐
Severe allergies/anaphylaxis	☐	☐
Ulcerative colitis	☐	☐

As a reminder, responses may be used to provide you with information regarding health conditions and products that might be of interest.

U.S. Senate Commerce Committee — Exhibit A

Section 3: Preferences & Interests

1 Oral Care

For your toothpaste, what benefits are important to you?

Fresh breath ☐ Sensitivity ☐
Healthy gums ☐ Other ☐

2 Reading

1) What types of books or magazines do your household members read?

Best selling fiction ☐
Bible or devotional ☐
Cooking or culinary ☐
Country lifestyle ☐
Interior decorating ☐
Medical or health ☐
Natural health remedies ☐
People or entertainment ☐
Science or technology ☐
World news or politics ☐
Astrology ☐ Military ☐
Children's ☐ Mystery ☐
Computer ☐ Romance ☐
Fashion ☐ Science fiction ☐
History ☐ Sports ☐

2) How many magazines does your household subscribe to?

5 or more ☐ 1 or 2 ☐
3 or 4 ☐ None ☐

3) Do you own an electronic reading device? (e.g. iPad, Kindle)

Own ☐ Plan to buy ☐

3 Hobbies & Interests

1) What activities are pursued by members of your household?

Bird watching ☐
Bird feeding ☐
Car repair ☐
Cigar smoking ☐
Educational courses - Car repair ☐
- Career advancement ☐
- Computer technology ☐
- Home study ☐
- Nursing ☐
Environment friendly lifestyle ☐
Home improvement ☐
Motorcycle riding ☐
Self improvement ☐
Sweepstakes or lotteries ☐
Theater or performing arts ☐
Wine appreciation ☐

2) Are any adults in your household planning to enroll in an educational course in the next 12 months?

0 - 6 months ☐ 7 - 12 months ☐

4 Sports

1) What sports do your household members participate in?

Baseball ☐ Golf ☐
Basketball ☐ Hunting ☐
Camping/hiking ☐ Hunting-big game ☐
Fishing ☐ Running ☐
Fitness ☐ Walking ☐
Football ☐ Yoga or Pilates ☐

2) What sports do your household members watch?

Baseball ☐ Golf ☐
Basketball ☐ Hockey ☐
Football ☐ NASCAR ☐

5 Travel

1) What types of travel do your household members enjoy taking?

Canada travel ☐ Leisure travel ☐
Casino gambling ☐ RV ☐
Cruise ship ☐ Theme park ☐
Family travel ☐ Timeshare ☐
Foreign travel ☐ US travel ☐

2) Do any household members belong to a frequent flyer program?

Yes ☐ No ☐

6 Leisure Activities

1) What activities are pursued by members of your household?

Baking ☐ Crafts ☐
Crochet ☐ Cross stitch ☐
Cooking - homestyle ☐
- low fat ☐
- gourmet ☐
Gardening - organic ☐
- flowers ☐
Knitting or needlework ☐
Papercrafts ☐ Quilting ☐
Scrapbooking ☐ Woodworking ☐

2) What does your household own or plan to buy in the next 12 months?

	Currently Have	Plan to Buy
Boat	☐	☐
Horse	☐	☐
Motorcycle	☐	☐
Swimming pool	☐	☐
Vacation home	☐	☐

7 Collectibles

What does your household collect?

Christmas items ☐ Plates ☐
Coins ☐ Sports items ☐
Dolls ☐ Stamps ☐
Figurines ☐ Villages ☐
Ornaments ☐ Other ☐

8 Music Preferences

What types of music do members of your household enjoy?

Christian or gospel ☐
Classical ☐ R&B ☐
Country ☐ Rock 'n roll ☐
Jazz ☐ Other ☐

9 Charitable Causes

1) What types of causes do members of your household support?

Alzheimer's ☐ Cancer ☐
Heart disease ☐ Other health ☐
Catholic ☐ Other religious ☐
Native American ☐ Children's ☐
Veteran's ☐ Conservative ☐
Liberal ☐ Humanitarian ☐
Hunger relief ☐ World relief ☐
Active Military ☐ Animal welfare ☐
Environment ☐ Wildlife ☐

2) How many times have household members donated to charitable causes in the past year?

5 or more ☐ 1 or 2 ☐
3 or 4 ☐ Do not donate ☐

280

Section 4: Other Information

1 Email

You can receive valuable offers, information, coupons and research online by printing your email address below.

We work with a selected number of partner companies to find and send offers or information that are of interest to our panel members. If you change your mind about participating in these programs, you can cancel at any time — but I don't think you will want to.

Example : marysmith@cyber.com

@

2 Facebook

☐ **WE DO NOT USE (Skip to next category)**

	Daily	Weekly	Monthly
Post updates	☐	☐	☐
Read updates	☐	☐	☐
Send email	☐	☐	☐

3 Vehicle Ownership

☐ **WE DO NOT HAVE (Skip to next category)**

1) Please tell us about the newest vehicle in your household:

Year: (e.g. 2006)

Make: (e.g. Ford, Honda, Volkswagen)

Model: (e.g. Focus, Civic, Jetta)

2) When do household members plan to buy or lease a vehicle?

0 to 6 months ☐ 7 to 12 months ☐

4 Insurance

1) What does your household have or plan to get in the next 12 months?

	Currently Have	Plan to Get
Burial insurance	☐	☐
Dental insurance	☐	☐
Juvenile life insurance	☐	☐
Life insurance	☐	☐
Medicare coverage	☐	☐
Prescription drug plan	☐	☐
Supplemental health insurance	☐	☐

2) When do you plan to obtain a new quote for home or vehicle insurance?

0-6 months ☐ 7-12 months ☐

3) Do you purchase insurance online?

Yes ☐ No ☐

4) When do household members plan to renew home and vehicle policies?

	Home	Vehicle
January	☐	☐
February	☐	☐
March	☐	☐
April	☐	☐
May	☐	☐
June	☐	☐
July	☐	☐
August	☐	☐
September	☐	☐
October	☐	☐
November	☐	☐
December	☐	☐

5 Beauty Enhancement

Have you had or are you considering any of the following?

	Have Had	Are Considering
Cosmetic surgery (e.g. facelift)	☐	☐
Laser - Eye surgery (e.g. Lasik)	☐	☐
- Hair removal	☐	☐
- Skin peels	☐	☐
Teeth whitening	☐	☐
Wrinkle reduction (e.g. botox)	☐	☐
Other anti-aging procedures	☐	☐

6 Credit Cards

☐ **WE DO NOT USE (Skip to next category)**

1) What credit card(s) does your household regularly use?

	Premium	Regular
American Express	☐	☐
MasterCard	☐	☐
VISA	☐	☐
Other credit card(s)	☐	☐

2) For your household, which credit card features are important?

	Important	Not Important
Cash back	☐	☐
Higher credit limit	☐	☐
Lower interest rate	☐	☐
No fee	☐	☐
Travel rewards	☐	☐
Other points programs	☐	☐

7 Occupation

1) Which employment categories apply to the heads of your household?

	Male	Female
Active or Retired Military	☐	☐
Full-time homemaker	☐	☐
Home business	☐	☐
Management	☐	☐
Professional services	☐	☐
Retired	☐	☐
Sales or marketing	☐	☐
Self-employed	☐	☐
Technical professional	☐	☐
Tradesman or laborer	☐	☐
Other	☐	☐

2) Do you or anyone in your household plan to retire in the next 6-12 months?

Yes ☐ No ☐

8 Household Finances

1) What does your household have or plan to get in the next 12 months?

	Currently Have	Plan to Get
Annuities	☐	☐
Education savings plan	☐	☐
Mutual funds	☐	☐
Stocks or bonds	☐	☐
Other investment(s)	☐	☐

2) Does your household regularly use a debit card for everyday purchases?

Yes ☐ No ☐

3) Does your household currently use?

PayPal ☐
An online - brokerage ☐
- savings account ☐
An investment broker ☐

Please turn to the next page →

U.S. Senate Commerce Committee

Exhibit A

Section 5: Tobacco Products (Adults Only - 21 or older)

1st Adult

Please check if you use the following:
Cigarettes
Smokeless tobacco
Cigars

CIGARETTES

Is your usual brand: (check one in each section)
Flavor: Non-Menthol
Menthol
Length: Regular
Long / 100s
Extra Long / 120s

How do you usually purchase cigarettes? (check only one)
By the pack ... By the carton

Name of your usual brand of cigarettes?

Out of your last 10 purchases, how many were for your usual brand?
Enter a number from 0 to 10

What is your 2nd choice brand (if any)?
(If no second choice brand, write "NONE" below)

If your usual brand was unavailable at a store, would you: (check only one)
Go to another store to buy your usual brand
Buy another type or length of your usual brand
Buy a different brand entirely

SMOKELESS TOBACCO

Name of your regular brand of moist snuff, dip, chewing tobacco or snus?

What is the style of your regular brand?
Loose/Long Cut ... Loose/Fine Cut
Pouch/Packet ... Leaf
Plug ... Snus

What flavor is your regular brand?
Regular, natural or original
Wintergreen ... Mint
Straight ... Fruit/Other

CIGARS

Name of your usual brand of cigars?

2nd Adult

Please check if you use the following:
Cigarettes
Smokeless tobacco
Cigars

CIGARETTES

Is your usual brand: (check one in each section)
Flavor: Non-Menthol
Menthol
Length: Regular
Long / 100s
Extra Long / 120s

How do you usually purchase cigarettes? (check only one)
By the pack ... By the carton

Name of your usual brand of cigarettes?

Out of your last 10 purchases, how many were for your usual brand?
Enter a number from 0 to 10

What is your 2nd choice brand (if any)?
(If no second choice brand, write "NONE" below)

If your usual brand was unavailable at a store, would you: (check only one)
Go to another store to buy your usual brand
Buy another type or length of your usual brand
Buy a different brand entirely

SMOKELESS TOBACCO

Name of your regular brand of moist snuff, dip, chewing tobacco or snus?

What is the style of your regular brand?
Loose/Long Cut ... Loose/Fine Cut
Pouch/Packet ... Leaf
Plug ... Snus

What flavor is your regular brand?
Regular, natural or original
Wintergreen ... Mint
Straight ... Fruit/Other

CIGARS

Name of your usual brand of cigars?

By signing below, I certify that I am 21 years of age or older; and that all the information I provided in this survey is correct. I further certify that I use tobacco products, as I indicated above, and would like to receive promotional or other communication by US mail and/or email from companies that market tobacco products.

PLEASE PRINT
First Name
Last Name
Gender Male ... Female
Birth date required
Month Day Year
Email
@
Signature - 1st Adult
x
(First and last name required)

PLEASE PRINT
First Name
Last Name
Gender Male ... Female
Birth date required
Month Day Year
Email
@
Signature - 2nd Adult
x
(First and last name required)

About Your Household

In order for companies to truly understand what consumers want, it is important for them to know more than simply how much of a product is sold. They need to have a clear picture of who is buying and why they are buying.
This survey can help.
The following questions are being asked as a means to place you and your family into sub-groups. This makes it easier for us to understand your preferences and attitudes.

1) How many people, including yourself, are in your household?
One ... Three
Two ... Four
Five or more

2) What are the ages of members of your household? Please "X" all that apply.
Male Female

INFANTS
0 - 2 months
3 - 6 months
7 - 9 months
10 - 12 months
13 - 24 months

CHILDREN
2 - 4 years
5 - 8 years
9 - 12 years
13 - 15 years
16 - 17 years

ADULTS
18 - 20 years
21 - 24 years
25 - 34 years
35 - 44 years
45 - 49 years
50 - 54 years
55 - 59 years
60 - 64 years
65 - 69 years
70 - 74 years
75 years or over

3) If you have grandchildren age 12 or under, how old are they?
0 - 4 years ... 5 - 12 years

4) Are any members of your household currently a caregiver for the elderly?
Yes ... No

5) What type of dwelling do you live in?
Own Rent
Apartment or condo
House - single family
Other type

6) How long have you lived in your current home?
Under 1 year ... 1 to 10 years
Over 10 years

7) Do you plan to move in the next:
0 to 6 months ... 7 to 12 months

8) Does your home have a septic tank?
Yes ... No

9) Do you have a child that will be away at college in 2011?
Yes ... No

10) What is the highest level of education completed by the heads of your household?
Male Female
Completed high school
Some college
Completed 4 year degree
Advanced degree

11) What is your marital status?
Married or equivalent
Single or equivalent

12) Is anyone in your household expecting a baby?
Yes ... No

13) What was the combined income for all members of your household in 2010 (before tax)?
Prefer not to answer
Less than $25,000
$25,000 to $34,999
$35,000 to $49,999
$50,000 to $74,999
$75,000 to $99,999
$100,000 to $149,999
$150,000 or over

14) What political party are you affiliated with?
Prefer not to answer
Democrat ... Republican
Independent ... Other

Please write your full name and make any address corrections below...including any changes to your address in the next 12 weeks. Be sure to mail back your survey by **March 14, 2011**. Thank you for participating!

NO PURCHASE OR PAYMENT OF ANY KIND IS NECESSARY TO ENTER OR WIN SWEEPSTAKES. A PURCHASE WILL NOT INCREASE YOUR CHANCES OF WINNING.

Best Regards
Laura

Entry Form
Mr ... Mrs ... Miss ... Ms

Name: First Name Last Name
Address: House # Street Name
Apt. # City State
280 ZIP: www.shoppersvoice.com - (Optional)
EMAIL:

© Shopper's Voice, 1200 William Street, Box 1382, Buffalo, New York 14240-1382

U.S. Senate Commerce Committee

Exhibit A

SHOPPER'S|voice®
CONSUMER RESEARCH CENTER

CONSUMER PRODUCT SURVEY OF AMERICA

Please have this questionnaire filled out by the main grocery shopper in your household.

Number 088

Instructions

1. **Read questions** and answer for all household members
2. **Skip questions that don't apply** to your household
3. **Mark a dark "X"** in all applicable boxes

Our Privacy Promise: This is a voluntary survey sponsored by Shopper's Voice®, a leading provider of consumer marketing information. Shopper's Voice® is dedicated to ensuring that all your information you have chosen to provide us is managed responsibly with respect for your personal privacy. We use appropriate physical, technical and administrative procedures to safeguard the information we collect and maintain. Shopper's Voice® may share the information you provide us with our partner companies for marketing and research purposes. If you choose to participate, you must be legally an adult and 18 years of age or older. We encourage you to review our full privacy policy at www.shoppers-voice.com/privacy.html. If you have any privacy-related questions, email us at contactus@Shoppers-Voice.com.

Home Cleaning

☐ WE DO NOT USE (Skip to next category)

1) Does your household use the following cleaning products?

	Used Most Often	Tried in Past 12 Months
Clorox	☐	☐
Lysol	☐	☐
Mr. Clean	☐	☐
Pledge	☐	☐
Scrubbing Bubbles	☐	☐
Swiffer	☐	☐
Windex	☐	☐
Store brand or other	☐	☐

2) How often does your household clean the following?

	More Than Once Per Week	Once Per Week or Less
Bathroom	☐	☐
Kitchen	☐	☐
Counters or other surfaces	☐	☐
Floors	☐	☐
Furniture	☐	☐
Laundry	☐	☐

3) Are household members willing to try new products to make cleaning easier?

Yes ☐ No ☐

FOLD HERE

Cooking

1) Do any household members do the following?

- Baking - from scratch ☐
  - from mixes ☐
- Cooking - homestyle ☐
  - low fat ☐
  - gourmet ☐
- Prepare ahead and freeze meals ☐
- Prepare lunches ☐
- Research recipes online ☐
- Use recipes ☐

2) What is important to your household when planning a meal?

	Breakfast	Dinner
Quick and easy	☐	☐
Cost effective	☐	☐
Healthy	☐	☐
Prepared from scratch	☐	☐

Food Products

How many times per month does your household buy the following?

	3 or More Times Per Month	1 or 2 Times Per Month
Boost or Ensure	☐	☐
Chef Boyardee	☐	☐
Green Mountain coffee	☐	☐
Tester's Choice	☐	☐
Goldfish crackers	☐	☐
Ritz crackers	☐	☐
Pop-Tarts	☐	☐
Splenda	☐	☐

Pets & Pet Products

☐ WE DO NOT HAVE (Skip to next category)

1) How many cats or dogs does your household have?

	One	2 or More
Cat	☐	☐
Dog	☐	☐

2) What type of pet products do you buy?

	Cat	Dog
Blue Buffalo	☐	☐
Eukanuba	☐	☐
Iams	☐	☐
Natural Balance	☐	☐
Nutro	☐	☐
Purina Pro Plan	☐	☐
Science Diet	☐	☐
Wellness	☐	☐
Other pet food brands	☐	☐
Milk Bone	☐	☐
Other biscuits/treats	☐	☐
Flea and tick prevention	☐	☐
Pet supplements	☐	☐

3) What types of pet food do you buy?

	Cat	Dog
Dry	☐	☐
Wet	☐	☐

Grocery Products

1) How many times per month does your household buy the following?

	3 or More Times Per Month	1 or 2 Times Per Month
Artificial sweeteners	☐	☐
Coffee creamers - dairy	☐	☐
- non-dairy	☐	☐
Soy milk	☐	☐
Cereal - cold	☐	☐
- hot	☐	☐
Toaster pastries	☐	☐
Yogurt	☐	☐
Egg substitutes	☐	☐
Meat substitutes	☐	☐
Heat and serve - entrées	☐	☐
- kids meals	☐	☐
- side dishes	☐	☐
Frozen - dinners	☐	☐
- pizza	☐	☐
- snacks	☐	☐
- waffles or pancakes	☐	☐
Cookies	☐	☐
Crackers	☐	☐
Salty snacks	☐	☐
Microwave popcorn	☐	☐
Beer	☐	☐
Wine	☐	☐
Liquor or spirits	☐	☐

2) How many boxes of cereal does your household buy per week?

5 or more ☐ 3 or 4 ☐
1 or 2 ☐ None ☐

3380

Purchase Decisions

Which of the following are you willing to pay more for when choosing products (Please "X" all that apply)?

- Brand name ☐
- Environmentally friendly ☐
- Organic ☐
- Recommended products ☐

Do you buy these products?

1) How often does your household buy the products listed below?

	3 or More Times Per Year	1 or 2 Times Per Year
GoodNites or UnderJams	☐	☐
Pull Ups	☐	☐
Fabric softeners	☐	☐
Shout	☐	☐
Spray 'n Wash	☐	☐
Reynold's Wrap foil	☐	☐
Other aluminum foil	☐	☐
Insect repellents - personal	☐	☐
- outdoor area	☐	☐

2) Does anyone in your household use feminine pads or liners for bladder leakage protection?

Yes ☐ No ☐

Air Care

☐ WE DO NOT USE (Skip to next category)

1) How many of the following types of air fresheners have household members bought in the past year?

	1 to 4	5 to 9	10 or more
Aerosols/sprays	☐	☐	☐
Automatic spray	☐	☐	☐
Diffuser/flameless	☐	☐	☐
Electric scented oils	☐	☐	☐
Fabric refreshers	☐	☐	☐
Motion activated	☐	☐	☐
Scented candles	☐	☐	☐
Solids/gels/beads	☐	☐	☐
Other	☐	☐	☐

2) Does your household use these air care products?

	Used Most Often	Tried in Past 12 Months
Air Wick	☐	☐
Bath & Body Works	☐	☐
Febreze	☐	☐
Glade	☐	☐
Renuzit	☐	☐
Yankee	☐	☐
Other	☐	☐

Coupon Use

How often does your household use "cents off" store coupons?

- More than once per week ☐
- Once per week ☐
- Less than once per week ☐

Shopping

1) Which stores do household members usually shop at?

Target	Walmart
CVS	Walgreens
Costco	Sam's Club
Kroger	Safeway
Lowe's	Home Depot
PETCO	PetSmart
Dollar Store	Other
Gourmet food stores	
Grocery home delivery	

2) How does your household prefer to purchase merchandise?

	Usually	Prefer
At the store	☐	☐
By mail	☐	☐
By phone	☐	☐
Online	☐	☐

Nutrition & Diet

1) Do any household members plan their diet for any of the following reasons?

Lose weight	Gain weight
Reduce gluten	Add probiotics
Lower cholesterol	
Manage diabetes	
Include organic or all-natural foods	
Reduce meat consumption	

2) Do any household members take the following supplements?

Calcium	Multivitamins
Fiber	Herbal remedies
Vitamins	Protein
Omega-3's or fish oil	

3) Does your household use or plan to use supplements for any of the following?

- To increase energy ☐
- To lose weight ☐
- To relieve muscle or joint pain ☐
- To maintain overall health ☐
- To maintain prostate health ☐

Skin Care

☐ WE DO NOT USE (Skip to next category)

1) When purchasing skin care products, what features are important to household members?

	Body	Face
Anti-aging	☐	☐
Moisturizing	☐	☐
Minimize sensitivity	☐	☐
Relieving extremely dry skin	☐	☐
Treat adult acne	☐	☐
Other	☐	☐

2) Do any household members normally spend more than $14 per product?

Yes ☐ No ☐

3) Do any household members use facial cleansing products other than bar soap?

Yes ☐ No ☐

FOLD HERE

Please turn to the next page →

EPS-COM-003756

U.S. Senate Commerce Committee

Exhibit A

Hair Care

WE DO NOT USE (Skip to next category) — Used Most Often — Tried in Past 12 Months

SHAMPOO, CONDITIONER & STYLING AIDS

- Garnier Fructis
- Herbal Essences
- John Frieda - Frizz Ease
  - Full Repair
  - Brilliant Brunette
  - Radiant Red
  - Sheer Blonde
  - other John Frieda
- L'Oréal
- TRESemmé
- Other

HAIR COLOR

- Clairol
- Garnier
- John Frieda Precision Foam Colour
- L'Oréal
- Other

1) What hair care benefits are important to household members?

- Color protection
- Define curl or reduce frizz
- Repair dry or damaged hair
- Straighter and smoother hair
- Use sulfate free products

2) Do any household members usually spend more than $8 per product on the following? — Yes — No

- Shampoo or conditioner
- Hair styling products

3) Do any household members use permanent hair coloring products?

At home — At the salon

Oral Care

For your oral care, what benefits are important to your household members?

Fresh breath — Healthy gums
Prevent cavities — Sensitivity
Teeth whitening — Other

Adult Allergy Remedies

WE DO NOT BUY (Skip to next category)

How many packages of Claritin D did your household purchase in the years below? — 1 Package — 2 or More Packages

- Purchased in 2011
- Purchased in 2010
- Purchased in 2009

Nasal Congestion

WE DO NOT HAVE (Skip to next category)

1) How often do household members experience difficulty breathing through the nose?

- More than once per week
- Once per week
- Less than once per week

2) Do any household members experience trouble sleeping due to difficulty breathing through the nose?

Yes — No

3380

Adult Pain

WE DO NOT BUY (Skip to next category)

1) Do any members of your household have the following? — You — Others in Household

- Back pain
- Migraines
- Muscle and joint pain

2) How often are pain relievers used for the following? — 2 or More Times Per Week — 1 or Fewer Times Per Week

- Headaches
- Back pain
- Body pain
- Joint pain

Rheumatoid Arthritis

WE DO NOT HAVE (Skip to next category) — Currently Use — Previously Used

- Actemra
- Enbrel or Humira
- Methotrexate
- Orencia, Rituxan or Simponi
- Remicade or Cimzia
- Other treatment or method

Health Products

1) Do you or household members use the following? — You — Others in Household

- Aspirin for heart health
- Contact lenses
- Dentures
- Hearing aids
- Laxatives
- Stool softener

2) Do you or household members use the following remedies? — You — Others in Household

- Nasacort
- Nasonex
- Singulair
- Prevacid
- Prilosec
- Zantac
- Zyrtec

Diabetes Care

WE DO NOT USE (Skip to next category)

1) Do any household members have diabetes? If yes, what type? — You — Others in Household

- Type 1
- Type 2
- Not certain

2) Do household members use any of the following to manage diabetes?

- Insulin - injection
  - pump
- Oral medication
- Diet and exercise

GLUCOMETER

- Accu-Chek/Aviva
- Freestyle/Lite
- OneTouch
- Other glucometer or strips

Family Health

1) Do any members of your household have the following? — You — Others in Household

- Acne
- Allergies
- Alzheimer's
- Anemia
- Anxiety
- Arthritis - common (osteo)
  - rheumatoid
- Asthma
- Bedwetting
- Bladder leakage - light
  - heavy
- Overactive bladder
- COPD or Emphysema
  - treat with prescription
- Depression
- Major depressive disorder (MDD)
- Bipolar disorder
- Colitis
- Ulcerative colitis
- Constipation
- Crohn's
- Diabetes
- Diabetic nerve pain
- Difficulty walking
  - require mobility aid
  - require wheelchair
- Eczema or Psoriasis
- Epilepsy
- Fibromyalgia
- GERD
- Hearing loss
- Heartburn
- Lactose intolerance
- Lou Gehrig's disease or ALS
- Macular degeneration - wet
  - dry
- Menopause or Pre-menopause
- Multiple sclerosis
- Nighttime sleeplessness
- Osteoporosis
- Parkinson's
- Sensitive skin
- Severe food allergies

2) Are any household members interested in preventative health screenings?

Yes — No

As a reminder, responses may be used to provide you with information regarding health conditions and products that might be of interest.

Heart Health

Do any members of your household have the following? — You — Others in Household

- Angina
- Atrial fibrillation
- Family history of heart disease
- Heart attack
- High blood pressure
  - treat with prescription
- High cholesterol
  - treat with prescription
- Irregular heart rhythm
- Stroke
- Mini stroke or TIA

Bladder Leakage

WE DO NOT HAVE (Skip to next category) — Used Most Often — Tried in Past 12 Months

- Depend
- Poise
- Tena or Serenity
- Store brand or other
- Home delivery products

Home Technology

1) What does your household own or plan to buy in the next 12 months? — Currently Owns — Plan to Buy

- Cellular phone
- Smartphone
- Compact disc player (CD)
- DVD player
  - high definition
- Blu-ray player
- High definition TV (HDTV)
- Internet service
- Printer for home computer
- eBook reader (e.g. Kindle, Nook)
- Tablet (e.g. iPad, Galaxy)
- Keurig coffee maker
- Tassimo coffee maker
- Other pod coffee maker

2) Which services does your household purchase from the same provider?

Cable TV — Home internet
Home phone — Satellite TV
Wireless phone — Does not apply

Leisure Activities

1) What activities are pursued by members of your household?

Crafts — Crochet
Cross stitch — Models
Papercrafts — Quilting
Scrapbooking — Woodworking
Gardening - flowers
  - organic
Knitting or needlework

2) What does your household own or plan to buy in the next 12 months? — Currently Owns — Plan to Buy

- Boat
- Fitness machines
- Gym membership
- Motorcycle
- RV
- Swimming pool

Hobbies & Interests

What activities are pursued by members of your household?

- Bird watching
- Bird feeding
- Car repair
- Cigar smoking
- Home improvement
- Motorcycle riding
- Self improvement
- Sharing photos online
- Theater or performing arts
- Wine appreciation
- Casino gambling
- Lotteries
- Sweepstakes

EPS-COM-003757

U.S. Senate Commerce Committee — Exhibit A

Sports

1) What sports do your household members participate in?

Baseball ☐ Basketball ☐
Camping/hiking ☐ Climbing ☐
Cycling ☐ Fishing ☐
Fly fishing ☐ Fitness ☐
Football ☐ Golf ☐
Hunting ☐ Hunting - big game ☐
Running ☐ Martial arts ☐
Skiing ☐ Snowboarding ☐
Walking ☐ Yoga or Pilates ☐

2) What sports do your household members watch?

Baseball ☐ Basketball ☐
Football ☐ Golf ☐
Hockey ☐ NASCAR ☐

3) How many sports games do household members watch in an average week?

6 or more ☐ 3 to 5 ☐
1 or 2 ☐ None ☐

4) Are any household members a fan of local college or pro sports teams?

Yes ☐ No ☐

Travel

1) What types of travel do your household members enjoy?

All-Inclusives ☐ Backpacking ☐
Casino gambling ☐ Cruise ship ☐
Family travel ☐ Foreign travel ☐
Leisure travel ☐ RV ☐
Theme park ☐ Timeshare ☐

2) Where do household members enjoy traveling?

Asia-Pacific ☐ Australia ☐
Canada ☐ Europe ☐
US ☐ Other ☐

3) How many days per year do household members travel?

	Business	Personal
26 or more	☐	☐
11 to 25	☐	☐
1 to 10	☐	☐
None	☐	☐

Charitable Causes

1) What types of causes do members of your household support?

Alzheimer's ☐ Cancer ☐
Heart disease ☐ Other health ☐
Catholic ☐ Other religious ☐
Native American ☐ Children's ☐
Veteran's ☐ Conservative ☐
Liberal ☐ Humanitarian ☐
Hunger relief ☐ World relief ☐
Active military ☐ Animal welfare ☐
Environment ☐ Wildlife ☐
Cultural ☐ Food bank ☐
Gay/Lesbian ☐ Senior's ☐

2) How many times have household members donated to charitable causes in the past year?

5 or more ☐ 3 or 4 ☐
1 or 2 ☐ Do not donate ☐

Smoking

☐ **WE DO NOT SMOKE (Skip to next category)**

Is anyone in your household interested in quitting smoking in the next 12 months?

Yes ☐ No ☐

Mail Order or Catalogs

1) Has your household bought any of the following products by catalog or through the mail in the past 6 months?

	3 Times or More	1 or 2 Times
Apparel or clothing	☐	☐
Books	☐	☐
Children's products	☐	☐
Collectibles	☐	☐
Cosmetics	☐	☐
Food gifts or products	☐	☐
Gifts	☐	☐
Home furnishings	☐	☐
Jewelry	☐	☐
Magazines	☐	☐
Men's big and tall clothing	☐	☐
Shoes	☐	☐
Videos or DVDs	☐	☐
Women's petite apparel	☐	☐
Women's plus size apparel	☐	☐
Other products	☐	☐

2) Does your household buy infomercial products?

Yes ☐ No ☐

3) Does your household shop online?

Yes ☐ No ☐

Reading

1) What types of books or magazines do your household members read?

Best selling fiction ☐
Bible or devotional ☐
Classic novels ☐
Cooking or culinary ☐
Country lifestyle ☐
Interior decorating ☐
Medical or health ☐
Natural health remedies ☐
People or entertainment ☐
Science or technology ☐
World news or politics ☐
Astrology ☐ Children's ☐
Computer ☐ Fashion ☐
History ☐ Military ☐
Mystery ☐ Romance ☐
Science fiction ☐ Sports ☐

2) How many books or magazines does your household read in a month?

	Books	Magazines
5 or more	☐	☐
3 or 4	☐	☐
1 or 2	☐	☐
None	☐	☐

3) Do you like to read about hints and tips on any topic?

Yes ☐ No ☐

4) Do any household members have a paid subscription(s) to online magazines or newspapers?

Yes ☐ No ☐

5) Would any household members be interested in subscribing to a food magazine with simple, delicious easy to make recipes?

Yes ☐ No ☐

Facebook

☐ **WE DO NOT USE (Skip to next category)**

	Daily	Weekly	Monthly
Post updates	☐	☐	☐
Read updates	☐	☐	☐
Send messages	☐	☐	☐

Email

You can receive valuable offers, information, coupons and research online by printing your email address below. We work with a selected number of partner companies to find and send offers or information that are of interest to our panel members. If you change your mind about participating in these programs, you can cancel at any time — but I don't think you will want to. Example: maryamith@cyber.com

_____

Household Finances

1) What does your household have or plan to get in the next 12 months?

	Currently Have	Plan to Get
401k	☐	☐
Non-401k - mutual funds	☐	☐
- stocks or bonds	☐	☐
Annuities	☐	☐
Education savings plan	☐	☐
Student loan	☐	☐
Other investments	☐	☐

2) Where does your household conduct most of your banking transactions?

ATM ☐ Branch ☐
Mobile ☐ Online ☐

3) Do you plan on changing your primary bank in the next 12 months?

Yes ☐ No ☐

4) What does your household currently use?

An investment broker ☐
An online brokerage ☐
An online savings account ☐
Debit card ☐
PayPal ☐

Credit Cards

☐ **WE DO NOT USE (Skip to next category)**

1) What credit card(s) does your household regularly use?

	Premium	Regular
American Express	☐	☐
Discover	☐	☐
MasterCard	☐	☐
VISA	☐	☐
Other credit card(s)	☐	☐

2) For your household, which credit card features are important?

	Important	Not Important
Cash back	☐	☐
Higher credit limit	☐	☐
Lower interest rate	☐	☐
No fee	☐	☐
Travel rewards	☐	☐
Other points programs	☐	☐

Music Preferences

What types of music do members of your household enjoy?

Christian or gospel ☐
Classical ☐ Country ☐
Jazz ☐ R&B ☐
Rock 'n roll ☐ Other ☐

Collectibles

What does your household collect?

Christmas items ☐ Other holiday ☐
Coins ☐ Dolls ☐
Figurines ☐ Jewelry ☐
Ornaments ☐ Plates ☐
Sports items ☐ Stamps ☐
Villages ☐ Other ☐

3380

Personal Insurance

What does your household have or plan to get in the next 12 months?

	Currently Have	Plan to Get
Burial insurance	☐	☐
Dental insurance	☐	☐
Juvenile life insurance	☐	☐
Life insurance - term life	☐	☐
- whole life	☐	☐
Long term care	☐	☐
Health or Disability supplement	☐	☐
Medicare supplement	☐	☐
Pet insurance	☐	☐
Prescription drug plan	☐	☐

Home & Vehicle

1) When does your household plan to obtain a new insurance quote for any of the following?

	Home	Vehicle
0 to 6 months	☐	☐
7 to 12 months	☐	☐

2) When do household members plan to renew home and vehicle policies?

	Home	Vehicle
January	☐	☐
February	☐	☐
March	☐	☐
April	☐	☐
May	☐	☐
June	☐	☐
July	☐	☐
August	☐	☐
September	☐	☐
October	☐	☐
November	☐	☐
December	☐	☐

3) Does your household have home and vehicle insurance with the same provider?

Yes ☐ No ☐

4) Does your household purchase insurance online?

Yes ☐ No ☐

Education

What educational courses are pursued by members of your household?

Car repair ☐
Career advancement ☐
Computer technology ☐
Home study ☐
Nursing ☐

Wireless

☐ **WE DO NOT USE (Skip to next category)**

1) Which wireless providers do household members use?

AT&T ☐ Prepaid service ☐
Sprint ☐ T-Mobile ☐
Verizon ☐ Other ☐

2) Is a cell phone used as the household's home phone?

Yes ☐ No ☐

Please turn to the next page →

EPS-COM-003758

U.S. Senate Commerce Committee

Exhibit A

Occupation

Which employment categories apply to the heads of your household? Male Female

Active or Retired Military
Full-time homemaker
Home business
Management
Professional services
Retired
Sales or marketing
Self-employed
Technical professional
Tradesman or laborer
Other

Vehicle Ownership

WE DO NOT USE (Skip to next category)

1) Please tell us about the newest vehicle in your household.

Year: (e.g. 2005)

Make: (e.g. Ford, Honda, Volkswagen)

Model: (e.g. Focus, Civic, Jetta)

2) When do household members plan to buy or lease a vehicle?

0 to 6 months 7 to 12 months

Tobacco Products (Adults Only - 21 or older)

1st Adult

CIGARETTES

Name of your usual brand of cigarettes

Is your usual brand?

Non-Menthol Menthol
Full Flavor Medium
Light/Mild Ultra Light

Do you usually purchase by the pack or carton?

Pack Carton

What is your 2nd choice brand (if any)?

SMOKELESS TOBACCO

Name of your regular brand of moist snuff, dip, chewing tobacco or snus

What is the style of your regular brand?

Loose/Long cut Loose/Fine cut
Pouch/Packet Leaf
Plug Snus

What flavor is your regular brand?

Regular, natural or original
Wintergreen Mint
Straight Fruit/Other

CIGARS

Name your usual brand of cigars

2nd Adult

CIGARETTES

Name of your usual brand of cigarettes

Is your usual brand?

Non-Menthol Menthol
Full Flavor Medium
Light/Mild Ultra Light

Do you usually purchase by the pack or carton?

Pack Carton

What is your 2nd choice brand (if any)?

SMOKELESS TOBACCO

Name of your regular brand of moist snuff, dip, chewing tobacco or snus

What is the style of your regular brand?

Loose/Long cut Loose/Fine cut
Pouch/Packet Leaf
Plug Snus

What flavor is your regular brand?

Regular, natural or original
Wintergreen Mint
Straight Fruit/Other

CIGARS

Name your usual brand of cigars

By signing below, I certify that I am 21 years of age or older; and that all the information I provided in this survey is correct. I further certify that I use tobacco products, as I indicated above, and would like to receive promotional or other communication by US mail and/or email from companies that market tobacco products.

PLEASE PRINT

First Name

Last Name

Gender Male Female

Birth date required

Month Day Year

Email

@

Signature - 1st Adult

×

(First and last name required)

PLEASE PRINT

First Name

Last Name

Gender Male Female

Birth date required

Month Day Year

Email

@

Signature - 2nd Adult

×

(First and last name required)

About Your Household

In order for companies to truly understand what consumers want, it is important for them to know more than simply how much of a product is sold. They need to have a clear picture of who is buying and why they are buying. This survey can help.

The following questions are being asked as a means to place you and your family into sub-groups. This makes it easier for us to understand your preferences and attitudes.

1) How many people, including yourself, are in your household?

One Two
Three Four
Five or more

2) What are the ages of members of your household? Please "X" all that apply Male Female

INFANTS

0 - 2 months
3 - 6 months
7 - 9 months
10 - 12 months
13 - 24 months

CHILDREN

2 - 4 years
5 - 8 years
9 - 12 years
13 - 15 years
16 - 17 years

ADULTS

18 - 20 years
21 - 24 years
25 - 34 years
35 - 44 years
45 - 49 years
50 - 54 years
55 - 59 years
60 - 64 years
65 - 69 years
70 - 74 years
75 years or over

3) If you have grandchildren age 12 or under, how old are they?

0 - 4 years 5 - 12 years

4) Are any members of your household currently a caregiver for the elderly?

Yes No

5) What type of dwelling do you live in? Own Rent

Apartment or condo
House - single family
Other type

6) How long have you lived in your current home?

Under 1 year 1 to 10 years
Over 10 years

7) Do you plan to move in the next:

0 to 6 months 7 to 12 months

8) What is the highest level of education completed by the heads of your household? Male Female

Completed high school
Some college
Completed 4 year degree
Advanced degree

9) Do you have a child that will be away at college in 2012?

Yes No

10) What is your marital status?

Married or equivalent
Single or equivalent

11) Is anyone in your household expecting a baby?

Yes No

12) What was the combined income for all members of your household in 2011 (before tax)?

Prefer not to answer
Less than $25,000
$25,000 to $34,999
$35,000 to $49,999
$50,000 to $74,999
$75,000 to $99,999
$100,000 to $149,999
$150,000 or over

13) What political party are you affiliated with?

Prefer not to answer
Democrat Republican
Independent Other

14) Do you or anyone in your household plan to retire in the next 6 to 12 months?

Yes No

Please write your full name and make any address corrections below...including any changes to your address in the next 12 weeks. Be sure to mail back your survey by **January 2, 2013**. Thank you for participating!

NO PURCHASE OR PAYMENT OF ANY KIND IS NECESSARY TO ENTER OR WIN SWEEPSTAKES. A PURCHASE WILL NOT INCREASE YOUR CHANCES OF WINNING.

Best Regards

Laura

Entry Form

Mr. Mrs. Miss. Ms.

Name: First Name Last Name

Address: House # Street Name

Apt. # City State

3380

Zip: - (Optional)

www.shoppersvoice.com

EMAIL:

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Mosaic USA

Group S Struggling Societies

Segment S71: Hard Times

Older, down-scale and ethnically-diverse singles typically concentrated in inner-city apartments

Overview

Hard Times are the most economic-challenged consumers in the US. In these diverse households found in aging city neighborhoods, some 40 percent are African-American and disproportionate numbers are Hispanic and Asian. Most of the adults are between 50 and 75 years old, and they're living on their own as single, divorced or widowed individuals. With their low educational achievement - only 10 percent have a college degree - they earn minimum wages as service-sector workers. One-quarter of households contain a retiree, increasing the number of residents getting by on fixed incomes. In Hard Times, a majority of householders report incomes of less than $15,000 a year, nearly a fifth of the national average.

The neighborhoods of Hard Times are typically filled with high- and low-rise apartment projects. Found mostly in cities east of the Mississippi, many of these complexes were built in the urban renewal of the 1960s to 1980s, when tenement row houses in downtown ghettos were bulldozed to create new housing for the poor and disadvantaged. Today, however, these buildings are often dilapidated and the communities are no place to sink in roots and raise a family. Indeed, a majority of segment residents have lived at the same address for fewer than three years.

While Hard Times may be financially-challenged, these unattached singles still take advantage of city amenities. They regularly go out to local establishments and casinos. A relatively high number of segment members work in education and have a passion for the arts; they go to plays, dance performances and classical music concerts. At home, these multi-ethnic households like to listen to salsa and soul, read books and magazines and work out on treadmills and rowing machines. However, they're unlikely to engage in outdoor sports like fishing and hunting. These are city folks who prefer billiards to backpacking.

In the marketplace, these households cannot escape their meager budgets. They often juggle credit cards to stay afloat, rarely paying off their balances each month. Because two-thirds do not own a car, Hard Times tend to patronize local stores within walking distance of their home. They do enjoy shopping and keeping up with the latest styles, however. A big excursion for these price-sensitive folks is a trip to Macy's or Marshalls; they're more likely to pick up necessities at a Kmart or Family Dollar store. With money tight, they rarely eat out, not even at fast-food restaurants. Many would prefer to buy fresh foods at neighborhood markets for home cooking, though they typically settle for what they can afford at the local grocery store.

Limited means in Hard Times results in a selective media market. They lack the cars to make a drive-time audience. Few afford to have a newspaper delivered to their apartments. However, they enjoy TV, especially news programs, movies, dramas and sitcoms. They do read a wide range of magazines - from *Men's Health* and *Popular Mechanics* to *Ebony* and the *National Enquirer*. While few go online, their interests are similarly eclectic in the digital world: social networking, health, fantasy sports.

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Hard Times members refuse to be defined by their economic circumstances. They sign up for adult education courses, they're constantly looking for better jobs, and they're trying to pursue meaningful lives that don't require a lot of money. Politically, they tend to be moderates who support the Democratic Party. Despite being single, transient and downscale, many are involved in their communities. They support local arts groups, advocate recycling and are willing to volunteer for a good cause. Given their optimism in the face of hardship, their lifestyle seems destined to improve.

Demographics and behavior

Who we are

This is the bottom of the socioeconomic ladder, the poorest lifestyle segment in the nation. Hard Times are older singles in poor city neighborhoods. Nearly three-quarters of the adults are between the ages of 50 and 75; this is an underclass of the working poor and destitute seniors without family support. Two-thirds are single, divorced or widowed. This is a diverse community, with about 40 percent of households African-American, four times the national average, along with solid concentrations of Hispanics and Asians. Poorly-educated, nearly half of household heads never graduated from high school. They typically hold jobs as service-sector workers in education and public administration. One-quarter of the households have at least one resident who's retired.

Where we live

Located primarily in aging cities in the eastern half of the country in places like Detroit, Mich., Saint Louis., Mo., Harrisburg, Pa., and Washington, D.C., Hard Times is a world of worn housing projects and tenement row houses. Home values, at roughly $135,000, are about a third below the U.S. average. With many earning only minimum wages, few own a home; more than 90 percent are renters. While more than a third live in high-rise buildings, most reside in low-rise rental units. In this bleak world, residents rarely stay more than a few years, so intent are they to find better jobs and safer accommodations. Nearly half have lived at the same address for fewer than three years and two-thirds for fewer than five years.

How we live our lives

Despite the low-income economics, the lifestyle in Hard Times can appear lively. Many try to take advantage of their city's amenities. They go to bars, casinos, museums, outdoor concerts, zoos and aquariums. More than a few have a cultural side, as seen in their occasional trip to a theater, classical music concert or dance performance; an above-average percentage belong to arts groups. At home, they tend to spend their time listening to music - salsa, soul and easy listening are popular - reading books, watching TV and doing hobbies like needlework or collecting crystal figures. They still find time to exercise indoors on treadmills, rowing machines and mats for aerobics. Most shy away from rugged outdoor activities like fishing, hunting, ice skating or water skiing.

Hard Times like to travel, especially those who are foreign-born; they regularly visit their home countries in the Caribbean, Central America and South America. They hardly travel in luxury: domestically, they're more likely to travel by bus or train rather than plane. They stay at discount hotels like Motel 6, Howard Johnson and Travelodge.

While economically-challenged, these downscale consumers still find joy in consumption. They have a need for status recognition, and they look for clothes that will make an affordable fashion statement. Their top-rated retailers tend to be discount chains such as Kmart, Family Dollar Store, Marshalls and Ross Dress for Less. With only a third of householders owning a car, many adults prefer the convenience of shopping at local stores over the national chains, but they always wait for sales.

Hard Times have average interest in selected media. They're only a modest audience for radio and few subscribe to a newspaper. Most rely on TV to stay informed, and they like watching movies, sitcoms, reality shows, newscasts and crime dramas. They also watch cable channels like FX, Hallmark Channel, BET, TNT and Spike. These residents are big fans of mainstream and ethnic-targeted magazines like *Glamour, Architectural Digest, Ebony, Popular Mechanics* and *O*. These households are not big on the Internet, but those that do have online access tend to visit sites that feature health information, gambling and classifieds.

How we view the world

They may live in poverty-stricken environments, but Hard Times are still ambitious, motivated and aspire to improve their standard of living. Even in middle age, they're 40 percent more likely than average to sign up for adult education courses. They support the reprioritizing of money, saying that how they spend their time is more important than how much money they make. Nevertheless, they'd like to land a better job. At this stage of their lives, long time friends are more important than family members, and they want to earn the respect of their peers. They insist that doing one's duty is more important than enjoying life.

With the majority of members unmarried, more than half say it's important to be attractive, triple the national average. They make an effort to keep healthy, by exercising regularly, avoiding fast food and watching their calories. When they cook, they like to buy fresh, natural foods and avoid artificial additives.

Political moderates, a majority align themselves with the Democratic Party, and an above-average concentration claim to be Independents. These individualists swing between liberal and conservative stances. Religion plays a major role in their life, and they like watching religious programs on TV. While they're not joiners, they do have a cultural streak and belong to arts groups. They care about their community, claiming that people have a duty to recycle; they also will volunteer their time for a good cause.

How we get by

As the segment with the lowest income – under $24,000 - Hard Times earn less than a third of the national average. Most have few income-producing assets and possess no investments other than some tax-sheltered annuities and cash management accounts. They're able to get by, they say, because they're good at managing the money that they have. Many juggle several credit cards: they carry both debit and credit cards, and they have a number of bank, charge and retail credit cards, particularly from Sears and JCPenney. However, few pay off their cards each month - more than 70 percent below average. Where they especially stand out is in insurance - they carry life, health and renter's insurance.

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Digital behavior

Hard Times are not very Internet-active. They do visit some Websites frequently, though, especially those that deal with the arts, health, gambling, dating and religion. However, they rarely go online for shopping, banking or making travel arrangements. While relatively few access the Internet through computers at home, they will go online using a mobile phone. Unlike many online users, they're perfectly happy with receiving, and responding to, email ads.

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Group S Struggling Societies

Segment S70: Enduring Hardships

Middle-aged, down-scale singles and divorced individuals in transitional small town and exurban apartments

Overview

Money is tight in Enduring Hardships, a segment of middle-aged singles and divorced individuals with one of the lowest average incomes in the country. Centered in Southern and Midwestern towns and small cities, these predominantly white households in their 30s and 40s often struggle to support even a simple lifestyle. Intact families are a rarity. A majority of households contain single or divorced individuals without children, and nearly a quarter are single parents raising children. Most of the adults have low educations - nearly two-thirds failed to finish high school - and they hold minimum-wage jobs as laborers and service-sector workers.

With their low incomes, few can afford to own a home. Over 95 percent of the householders are renters, living in low-rise projects and duplexes often located in tired and worn neighborhoods. They express concerns about crime, drugs and pollution. Many are also rootless and must deal with the challenges of a transient existence; only a small percentage belongs to a church, PTA or civic group. In this segment, two-thirds of the householders have lived at the same address for fewer than three years.

When they're not at work, Enduring Hardships are unable to afford many leisure activities. They tend to spend their evenings at home, watching TV or listening to music. They'll occasionally splurge on a ticket to a concert or a gambling junket to a casino. These folks don't have the discretionary spending to regularly go to movies, plays, comedy clubs or even bars. If they want to get outdoor exercise, they'll consider a fishing and camping trip. When they want to go out to dinner, it's typically to a fast-food chain like Dairy Queen and Church's Fried Chicken or to Golden Corral for a sit-down dinner.

As consumers, these price-sensitive shoppers worry about living beyond their means. With few investments and savings, they get by with occasional loans and paying only with cash or money orders. They patronize discount department stores like Kmart and Dollar General; anywhere else, they head right for the clearance racks. They shy away from a lot of new technology, but will buy electronics that enhance their TV viewing experience. When it comes to cars, they would like to buy a great-looking sports car with a lot of horsepower under the hood. However, nearly two-thirds cannot afford to own a car. Those who can typically settle for a used economy car or sedan that's made in Detroit and won't break down too often.

With nightlife out of the question, TV is the chief form of entertainment in this segment. Members watch movies, reality shows and sitcoms, and their favorite cable channels include Oxygen, TNT and CMT. With their low educational achievement, Enduring Hardships read few newspapers and magazines. They're starting to become more comfortable with the Internet, but they go online infrequently. Social media sites are beginning to attract them to the virtual world, though.

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These are stressed-out Americans. They dislike their low standard of living but aren't sure if they can do much to improve it. Many would like to start their own business or try a new line of work. Though they've typically only lived in their neighborhood for a short time, they're willing to join a protest march to help rid the streets of drugs and crime. Worried about the future, they seek out ways to improve their present lives.

Demographics and behavior

Who we are

Enduring Hardships are predominantly white and downscale, with most members single or divorced, though some are older single parents with dependent children. A majority of household heads are between the ages of 35 and 50, about 50 percent above average. The educational levels for the adults are low, with fewer than 5 percent having a college degree; 60 percent never finished high school. As a result, nearly two-thirds of the adults work at low-level sales or service-sector jobs, mostly in health care, food services or tech support, about twice the national average.

Where we live

Located in exurban towns and small cities throughout the Midwest and South, Enduring Hardships tend to live in low-rise apartments and duplexes. Almost all the segment members are renters, restricted from home ownership by their low incomes. The neighborhoods are rarely luxurious; residents worry about crime and violence in the area. In these transitional neighborhoods, few have deep roots in the community. Enduring Hardships do not often belong to churches or civic groups. More than 40 percent have lived at the same address for less than a year, two-thirds for fewer than three years.

How we live our lives

Enduring Hardships have quiet lifestyles. After long days at work, they're happy to spend their evenings at home watching TV, listening to music or cooking. An above-average number also likes to collect sports memorabilia. These middle-aged singles will occasionally go out to a concert or go on a gambling trip. They're three times as likely as the general population to gamble in Atlantic City. Otherwise, they don't pursue nightlife or cultural activities. A modest market for athletic pursuits, they play no organized sports or take classes at health clubs. Among households with children, ice skating, water skiing and in-line skating are popular activities.

Enduring Hardships have little discretionary income for travel. However, some have taken a Bahamas cruise in the last three years, and they like to go on overnight camping trips. They rarely go to white-tablecloth restaurants, but these households do enjoy fast food, patronizing chains like Dairy Queen, Panera Bread and Church's Fried Chicken. These patrons are open-minded enough to try to new foods and drinks, often responding to ads they see on TV.

Enduring Hardships like to shop, but they're value-conscious consumers who shop at Kmart, Dollar General, T.J. Maxx and Ross Dress for Less. They're late adopters when it comes to technology, but these self-described TV addicts buy DVD players, DVRs and big-screen TVs. Transporting such purchases home is another matter because nearly 60 percent of households

don't own a car. Those who do tend to drive a small economy car or standard sedan, and nine out of ten purchase used cars. In this "buy American" segment, most cars are made in Detroit.

In Enduring Hardships, TV is the main source of entertainment and a constant companion. They can't afford premium channels, but they watch cable networks such as CMT, Bravo, Soapnet, Oxygen and TNT, and their favorite programming includes movies, history programs, reality shows and anything related to auto racing. Their tendency to listen to the radio is low, and they show little interest in subscribing to newspapers and most magazines.

How we view the world

Enduring Hardships may have low educations and limited skills, but they still express a need for personal achievement and a desire to be respected by their peers. They would like to start their own business and are willing to take risks to improve their standard of living. They admit that owning good-quality things gives them joy, but that often requires more money than they have.

In their neighborhoods threatened by crime, the men and women of this segment worry about what the future holds for them. Some say they feel alone in the world and helpless to change their lives. To combat this feeling, they try to control as much of their lives as possible, even if it just means keeping a neat house.

Politically, these Americans aren't very active; they register to vote less than the average. About half of adults are Democrats, and they tend to be liberal to moderate on most issues. They tend to have a global perspective, and respect the customs of others and want to stay well informed about international issues. However, they are more concerned about improving things locally than globally.

How we get by

With their minimum wages (less than $26,000), the segment's household income is only a third of the national average. Enduring Hardships barely get by. They have few savings and fewer income-producing assets. The only investment they tend to have is savings bonds, and even then the total value is typically less than $5,000. Many admit that they know little about finance, distrust banks and worry that carrying credit cards will result in identity theft. As a result, they conduct most of their financial transactions with cash, debit cards and money orders. Some live beyond their means, borrowing from loan companies to make ends meet. Though few use insurance, an above-average percentage has taken out life insurance, though the amount is generally less than $20,000.

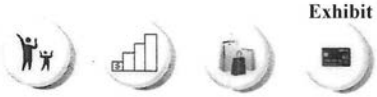
Digital behavior

Enduring Hardships are among the least Internet-active, but they are gradually becoming more active online. They're fond of sites that offer social networking, games, auctions, shopping coupons, sports scores and dating connections. Among their favorite sites: myspace.com, datehookup.com, iwin.com and pogo.com. They're responsive to Internet ads; they click on email promotions and sponsored Websites. However, because many can't afford to buy computer equipment and modems, they're twice as likely as average Americans to go online through school and library computers.

U.S. Senate Commerce Committee

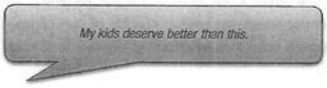
Exhibit B

Tough Start:
Young Single Parents
Group A - Cluster 1



INCOME: LOW

% of U.S. Households: 0.6%
Number of Households: 749,413



Cluster Description

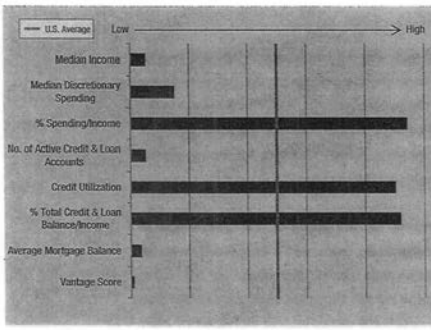
These young single parents often struggle to make ends meet, as their discretionary spending nearly outpaces their very modest incomes. They are likely have poor credit histories, may have difficulty obtaining credit, and tend to rely heavily on the few cards they do have. However, they find the ups and downs of the financial markets exciting. Easily swayed, these shopaholics like to dress in the latest fashions and strive to achieve a higher social status. These struggling singles frequently turn to advertising to get information about bargains, but their children tend to have a large impact on the brands they end up buying. They spend most of their free time with their kids, primarily at home so they can catch up on housework, and they prefer picking up quick meals at fast food restaurants to cooking meals.

Demographic Summary

Income Tier: Low (Under $50k)
Age Tier: Young (Under 35)
Median Age: 29

% Married: 37%
% with Children: 100%

Economic Summary



	Cluster 1	U.S. Average
Median Income	$19,043	$64,594
Median Discretionary Spending	$17,378	$33,750
% Spending/Income	96%	57%
No. of Active Credit & Loan Accounts	5.0	7.2
Credit Utilization	63%	46%
% Total Credit & Loan Balance/Income	80%	30%
Average Mortgage Balance	$13,326	$73,660

EconomicCohorts

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Exhibit B

Relying On Aid:

Retired Singles

Group D - Cluster 18

INCOME: LOW

% of U.S. Households: 1.8%
Number of Households: 2,127,412

I've never had it easy. Never have, never will.

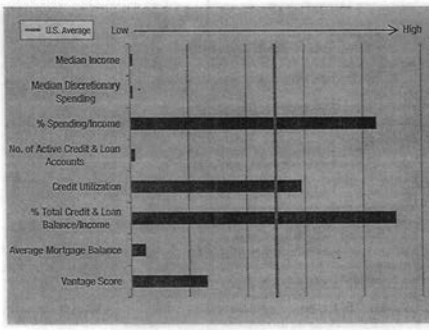
Cluster Description

These single retirees of limited means and meager retirement savings are just barely able to make ends meet. While they try to curtail expenses, their discretionary spending accounts for a large portion of their modest incomes. They rely on a small number of credit accounts and loans, but their credit utilization is still moderate. With only a high school education at best, it has been hard to get ahead. Poorly insured and Medicare/Medicaid-dependent, they are generally pessimistic about their economic situation. They try to cut back and save whenever possible, but it is hard given their limited means. Preferring to stay close to home, their lives are pretty much the same from week to week. In fact, many have lived in the same home for over 20 years. Fairly sedentary, they spend their time working on their coin collections, watching TV, and playing bingo.

Demographic Summary

Income Tier: Low (Under $50k)
Age Tier: Retired (65+)
Median Age: 75
% Married: 22%
% with Children: 3%

Economic Summary



	Cluster 18	U.S. Average
Median Income	$14,617	$64,594
Median Discretionary Spending	$10,753	$33,750
% Spending/Income	88%	57%
No. of Active Credit & Loan Accounts	4.8	7.2
Credit Utilization	50%	46%
% Total Credit & Loan Balance/Income	79%	30%
Average Mortgage Balance	$15,239	$73,660

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X-tra Needy

This Niche is headed by an older person, generally in their mid-60's. There are no children present in these households, but there is a great interest in grandchildren. About three-quarters of this Niche own their homes, which are valued at about $110,800. They have lived in them for nearly 13 years on average. The majority of X-tra Needy households have slightly more than a high school education and most are employed in blue collar occupations; many of the households in this Niche are retired.

Nearly 20% percent of X-tra Needy households are known credit card owners. They have modest incomes and are not very economically active with only $1,000 in recent discretionary spending occurring in catalogs, online and retail. Catalog is the strongest purchase medium for this Niche. And, when they do shop, they purchase automotive accessories, home décor, books, magazines, and low-ticket male and female apparel.

They take a great interest in improving their health, nutrition/dieting, and donating when possible to medical causes. Grandchildren are a major interest in their lives, as are sweepstakes, bible reading, music, books, hobbies, and collectibles. They also enjoy fishing and other outdoor activities.

AVERAGE HOUSEHOLD INCOME
$24,630

AVERAGE AGE OF HEAD
67

AVERAGE LENGTH OF RESIDENCE
13

PERCENT WITH KIDS
53%

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[redacted]

Very Spartan

This Niche is composed of households who do not have children; about half live in rented units. The average home value for those that do own their homes is about $105,500. The households in this Niche are highly mobile and have very short length of residences, usually less than 5 years. These are mostly blue collar workers that have a high school diploma or some college education.

Very Spartan households have few credit cards, and make few purchases, with only $600 in recent discretionary spend recently. When they do spend, the households in this Niche purchase automotive accessories, home décor, beauty supplies, hunting/fishing equipment, magazines, and low-ticket apparel.

Their interests include book reading, contests/sweeps, music, sports, fishing, automotive work, and collectibles. Other outdoor interests include camping and hiking. In addition, they are concerned with their health and like receiving health related information in the mail.

AVERAGE HOUSEHOLD INCOME
$26,949

AVERAGE AGE OF HEAD
39

AVERAGE LENGTH OF RESIDENCE
5

PERCENT WITH KIDS
2%

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Experian
A world of insight

ChoiceScore[SM]

Improve targeting and customer acquisition in the untapped under-banked population

ChoiceScore, a new scoring tool from Experian, helps marketers identify and more effectively market to under-banked consumers using the most comprehensive array of non-credit data available from Experian, including consumer, demographic, behavioral and geo-demographic information. Increase responses and approval rates for greater profitability by reaching the fastest-growing demographic segment in the U.S., including thin file populations, emerging consumers and non-bureau matches, with your invitation to apply (ITA) direct marketing campaigns

Target under-marketed new prospect segments eager to accept direct marketing offers

Having access to fresh leads is the lifeblood of direct marketing. Under-banked and emerging consumers offer marketers a largely untapped pool as an alternative to often saturated primary markets. Each year, under-banked consumers alone spend nearly $11 billion on non-traditional financial transactions like payday loans and check-cashing services, and conduct more than 340 non-bank transactions.

ChoiceScore helps you identify under-banked and emerging consumers likely to be the most responsive to targeted campaigns, such as invitations to apply credit offers, including:

- New legal immigrants
- Recent graduates
- Widows
- Those with a generation bias against the use of credit
- Followers of religions that historically have discouraged credit
- Consumers with transitory lifestyles, such as military personnel

In total, this largely untapped demographic segment represents more than 30 million households and 77 million consumers – more than one-third of the entire U.S. population.

Apply two ChoiceScore models to confidently guide decisioning

ChoiceScore was built using a combination of Experian databases, modeled data and public and proprietary data sources. Using ChoiceScore's two custom models, you can select and test different confidence levels and target specific consumers based on potential risk.

The first model identifies and assigns a confidence score determining the propensity for a consumer to be in the under-banked population. The second model applies a score to identify the most and least desirable consumers within the ChoiceScore population that can be included within an invitation to apply (direct marketing campaign).

Specifically, the models were:

- Built using a defined universe of records identified as under-banked as the baseline analysis file
- Designed to be applied in unison or independently
- Built and scored in demi-deciles (5% breaks) for added granularity with scores appended at the individual level, but aggregated at the household level

Make the appropriate product or service offer to profitably penetrate under-banked consumers

Marketing the wrong product to consumers can cost millions of dollars. Often under-banked consumers are unknowingly marketed to only to be declined upon responding due to lack of credit history, or discouraged from applying because the product offer is beyond their means.

Instead, ChoiceScore helps you strategically segment groups based on your campaign objectives and goals so that you have the greatest chance for success by making the right offer to the right audience. Build trust and gain acceptance by leading with products and services often used by this target audience like check cashing, savings accounts and auto loans. Later, you can increase your profits by cross selling other products to your new base of qualified consumers.

Depend on the information industry leader

Experian is rich in the currency of marketing – customer and market information. Using our unparalleled depth and breadth of information, ChoiceScore helps you manage acquisition lists, achieve higher response rates and develop profitable campaigns.

To find out more about ChoiceScore, contact your Experian Sales representative, call 800 520 1221, or visit our Web site at www.experian.com.

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The CHAIRMAN. One of the things that we have learned in this investigation is that data brokers engage in many unobjectionable activities. They do what marketers have always done: They help businesses find potential customers.

But we have also found some practices that raise some serious consumer protection concerns. In particular, I am disturbed by the evidence showing that the data brokers segment Americans, categorize them into categories, name those categories, based on their incomes, and then they sort economically vulnerable customers into groups with names like "rural and barely making it"—not making it up, that is one of their categories—"tough start: young single parents"; "rough retirement: small-town and rural seniors"; and "zero mobility."

I want to know how and why data brokers are putting American consumers into categories like these, and I want to know which companies are buying these lists to target their marketing to these groups. Maybe it is totally innocuous and benign. I don't start out accepting that, but maybe it is. That is why we are doing this investigation.

Some companies in the data broker industry have responded positively to our oversight efforts.

When I became Chairman here several years ago, we went over to Henry Waxman and stole a couple of his best people and set up an investigations unit, which for some reason we had never had. And we gave ourselves subpoena power; for some reason, we had never done that. It is a powerful tool when you are doing investigations, which is what we tend to do in here.

I want to know which companies are buying these lists to target their marketing to those groups.

Some companies in the data broker industry have responded very positively to our oversight efforts. Over the past year, they have provided complete answers to my questions, even the tough ones.

But several of the largest data brokers—specifically, Acxiom, Epsilon, and Experian—are continuing to resist oversight, just resist it. To date, they have not given me complete answers about where they get their customer data on consumers and to whom they sell it.

I am putting these three companies on notice today that I am not satisfied with their responses and I am considering further steps—and I have steps that I can use—that I can take to get this information. We have oversight over this activity in American commerce. And if you do oversight, whether it is over intelligence or whether it is over this, you do it seriously and you do it with a purpose and you want to get the truth.

So I am putting these companies on notice that I am not satisfied and I have further steps that I can take to get this information. And I want to assure them that the oversight efforts in this committee that we have started will continue.

I call now on my distinguished friend from a similar urban state——

Senator THUNE. That is right.

[Laughter.]

The CHAIRMAN.—Senator John Thune.

STATEMENT OF HON. JOHN THUNE,
U.S. SENATOR FROM SOUTH DAKOTA

Senator THUNE. Well, thank you, Mr. Chairman, for holding this hearing.

And thank you also to the witnesses for coming here today.

Our economy is increasingly data-driven, and data brokers play a growing role in facilitating the provision of goods and services to consumers. Data or information brokers are companies that collect data, including personal information, about consumers from a wide variety of sources, such as public records, websites, and retailers, and then resell such information for purposes that range from verifying an individual's identity to preventing fraud to marketing products.

As the Chairman noted in his initial letters to several data brokers in 2012, the purpose of his inquiry has been to better understand the industry and I look forward to today's hearing as we focus on how the information collected by data brokers is used for marketing purposes.

Without question, data-driven marketing can provide benefits and greater convenience to consumers. It can lower the cost of products and services because businesses can target marketing more precisely. It also can help businesses create and sell products that consumers actually want, lowering start-up costs for new businesses.

Data-driven marketing is one important reason that many of us are able to use search engines and our e-mail accounts for free. It also allows consumers to receive frequent-shopper benefits and coupons. And it promotes the targeting of resources to reduce the amount of junk mail and catalogs that aren't tailored to a consumer's particular interests—at least, that is the goal.

Put simply, this industry is at the center of something the Commerce Committee cares about: commerce. In today's economy, data-driven marketing is widely used across all sectors of the economy: financial, insurance, automotive, retail, technology, health care. It is even used by nonprofits, governments, and political campaigns. In fact, many media outlets have noted how the use of commercial data resources helped the president's reelection campaign in 2012.

As we will hear from the Direct Marketing Association, the marketing data industry is also helping to fuel job creation and technical innovation in our slowly recovering economy.

While the industry creates many benefits, this hearing will also explore important questions about the privacy implications of data brokers' activities, including issues of transparency, profiling, and concerns about allegations of differential pricing.

Questions have also been raised about whether consumers are aware of the instances in which their personal information may be collected, bought, and sold, resulting in calls for more transparency into data broker practices.

Advocates have also raised concerns that data brokers create profiles of individual consumers based on the aggregation of sensitive and sometimes personal data, including health conditions.

These are important issues, and I look forward to the discussion today.

In a rapidly changing marketplace, the Federal Trade Commission has done important work concerning data brokers and related privacy issues, including developing educational efforts. They have also brought enforcement actions under the FTC Act and the Fair Credit Reporting Act. The FTC is also completing a study about practices in the data broker industry and will provide recommendations to Congress based on their findings next year. I look forward to their testimony.

The Government Accountability Office has recently produced a report on the data broker industry, which I understand will be submitted as part of the record for this hearing as well as to help inform this committee.

[The report follows:]

GAO Highlights

Why GAO Did This Study

Members of Congress and others have raised privacy concerns about information resellers (data brokers) and consumer information. In part, their concerns stem from consumers not always knowing the nature and extent of the information collected and how it is used. Growing use of the Internet, social media, and mobile applications has intensified privacy concerns because these media greatly facilitate gathering of personal information, tracking of online behavior, and monitoring of individuals' locations and activities. This statement for the record discusses: (1) existing Federal laws and regulations on the privacy of consumer information held by information resellers, (2) any gaps that may exist in this legal framework, and (3) views on approaches for improving consumer data privacy.

This statement draws from a September 2013 report (GAO–13–663), which focuses on information used for marketing. GAO analyzed relevant laws and regulations; interviewed representatives of Federal agencies, trade associations, consumer and privacy groups, and resellers; and identified and reviewed approaches for improving consumer data privacy.

What GAO Recommends

In September 2013, GAO suggested that Congress should consider strengthening the consumer privacy framework and review issues such as the adequacy of consumers' ability to access, correct, and control their personal information; and privacy controls related to new technologies such as web tracking and mobile devices.

Information Resellers

Consumer Privacy Framework Needs to Reflect Changes in Technology and the Marketplace

What GAO Found

No overarching Federal privacy law governs the collection and sale of personal information among private-sector companies, including information resellers. Instead, laws tailored to specific purposes, situations, or entities govern the use, sharing, and protection of personal information. For example, the Fair Credit Reporting Act limits the use and distribution of personal information collected or used to help determine eligibility for such things as credit or employment, but does not apply to information used for marketing. Other laws apply specifically to health care providers, financial institutions, or to the online collection of information about children.

The current statutory framework for consumer privacy does not fully address new technologies—such as tracking of online behavior or mobile devices—and the vastly increased marketplace for personal information, including the proliferation of information sharing among third parties. No Federal statute provides consumers the right to learn what information is held about them for marketing and who holds it. In many circumstances, consumers also do not have the legal right to control the collection or sharing with third parties of sensitive personal information (such as health information) for marketing purposes. As a result, although some industry participants have stated that current privacy laws are adequate, GAO found that gaps exist in the current statutory framework for information privacy. The framework also does not fully reflect the Fair Information Practice Principles, widely accepted principles for protecting the privacy and security of personal information that

have served as a basis for many privacy recommendations Federal agencies have made.

Views differ on the approach that any new privacy legislation or regulation should take. Some privacy advocates have argued that a comprehensive privacy law would provide greater consistency and address gaps in law left by the current sector-specific approach. Others have stated that a comprehensive, one-size-fits-all approach would be burdensome and inflexible. Some privacy advocates also cited the need to provide consumers with greater ability to access, control the use of, and correct information about themselves, particularly for data being used for purposes different than those for which they originally were provided. Industry representatives have asserted that restrictions on the collection and use of personal data would impose compliance costs, inhibit innovation, and reduce consumer benefits. Nonetheless, the rapid increase in the amount and type of personal information that is collected and resold warrants reconsideration of how well the current privacy framework protects personal information. The challenge will be providing appropriate privacy protections without unduly inhibiting the benefits to consumers, commerce, and innovation that data sharing can accord.

PREPARED STATEMENT OF ALICIA PUENTE CACKLEY, DIRECTOR FINANCIAL MARKETS AND COMMUNITY INVESTMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Chairman Rockefeller, Ranking Member Thune, and Members of the Committee:

I am pleased to submit this statement on our recent work on privacy, personal information, and information resellers.[1] As you know, information resellers (also known as data brokers) offer several types of products to customers that include retailers, advertisers, individuals, nonprofit organizations, law enforcement, and government agencies. This statement is based on a report we issued this September in response to a request from this committee to review privacy issues related to the consumer data that information resellers collect, use, and sell. Others also have raised privacy concerns about resellers and consumer information. In part, their concerns stem from consumers not always knowing the nature and extent of the information collected and how it is used. Moreover, growing use of the Internet, social media, and mobile applications has intensified privacy concerns because these media greatly facilitate the gathering of personal information, tracking of online behavior, and monitoring of individuals' locations and activities.

Our September report examined: (1) existing Federal laws and regulations related to the privacy of consumer information held by information resellers, (2) any gaps that may exist in this legal framework, and (3) views on approaches for improving consumer data privacy. We focused on privacy issues related to information used for marketing and individual reference services (look-up or people-search); we did not focus on information used for other purposes such as determining credit or employment eligibility.[2]

For our September 2013 report, we reviewed and analyzed relevant laws, regulations, and enforcement actions. We interviewed representatives of Federal agencies, trade associations, consumer and privacy groups, and resellers to obtain their views on data privacy laws related to resellers. We identified and reviewed approaches (legislative, regulatory, or self-regulatory) for improving consumer data privacy that Federal entities—such as the White House, Federal Trade Commission (FTC), and Department of Commerce (Commerce)—or representatives of industry, consumer, and privacy groups advocated. We interviewed representatives of these entities and reviewed relevant studies, hearings, position papers, public comments, and other sources. Further details of our scope and methodology can be found in our published report.

We conducted the performance audit on which this statement is based from August 2012 through September 2013, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence

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[1] GAO, *Information Resellers: Consumer Privacy Framework Needs to Reflect Changes in Technology and the Marketplace,* GAO–13–663 (Washington, D.C.: Sep. 25, 2013).

[2] In a 2006 report, we examined financial institutions' use of information resellers, focusing on consumer information used for eligibility determinations, compliance with legal requirements, and fraud prevention. GAO, *Personal Information: Key Federal Privacy Laws Do Not Require Information Resellers to Safeguard All Sensitive Data,* GAO–06–674 (Washington, D.C.: June 26, 2006).

obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Resellers maintain large, sophisticated databases with consumer information that can include credit histories, insurance claims, criminal records, employment histories, incomes, ethnicities, purchase histories, and interests. Resellers largely obtain their information from public records, publicly available information (such as directories and newspapers), and nonpublic information (such as from retail loyalty cards, warranty registrations, contests, and web browsing). Characterizing the precise size and nature of the reseller industry can be difficult because of limited publicly known information about the industry.

In 1972, a U.S. government advisory committee first proposed the Fair Information Practice Principles (FIPP) for protecting the privacy and security of personal information. While FIPPs are not legal requirements, they provide a framework for balancing privacy with other interests. The Organisation for Economic Co-operation and Development (OECD) developed a revised version of the FIPPs that has been widely adopted (see table 1).[3]

Table 1.—Fair Information Practice Principles

Principle	Description
Collection limitation	The collection of personal information should be limited, obtained by lawful and fair means, and, where appropriate, with the knowledge or consent of the individual.
Data quality	Personal information should be relevant to the purpose for which it is collected, and should be accurate, complete, and current as needed for that purpose.
Purpose specification	The purposes for the collection of personal information should be disclosed before collection and upon any change to those purposes, and the use of the information should be limited to those purposes and compatible purposes.
Use limitation	Personal information should not be disclosed or otherwise used for purposes other than a specified purpose without consent of the individual or legal authority.
Security safeguards	Personal information should be protected with reasonable security safeguards against risks such as loss or unauthorized access, destruction, use, modification, or disclosure.
Openness	The public should be informed about privacy policies and practices, and individuals should have ready means of learning about the use of personal information.
Individual participation	Individuals should have the following rights: to know about the collection of personal information, to access that information, to request correction, and to challenge the denial of those rights.
Accountability	Individuals controlling the collection or use of personal information should be accountable for taking steps to ensure the implementation of these principles.

Source: OECD.

FIPPs served as the basis for the Privacy Act of 1974—which governs the collection, maintenance, use, and dissemination of personal information by Federal agencies.[4] The principles also were the basis for many FTC and Commerce privacy rec-

[3] Organisation for Economic Co-operation and Development, *Guidelines on the Protection of Privacy and Transborder Flow of Personal Data* (Paris, France: Sept. 23, 1980). OECD's 30 member countries include the United States. OECD has been considering whether to revise or update its privacy guidelines to account for changes in the role of personal data in the economy and society.

[4] Pub. L. No. 93–579, 88 Stat. 1896 (1974) (codified as amended at 5 U.S.C. § 552a). The act generally prohibits (with a number of exceptions) the disclosure by Federal entities of records about an individual without the individual's written consent and provides U.S. persons with a means to seek access to and amend their records.

ommendations and for a framework for consumer data privacy the White House issued in 2012.[5]

Several Laws Apply in Specific Circumstances to Consumer Data That Resellers Hold

No comprehensive Federal privacy law governs the collection, use, and sale of personal information by private-sector companies. More narrowly tailored laws govern the use, sharing, and protection of personal information—they apply for specific purposes, in certain situations, to certain sectors, or to certain types of entities. The primary laws include the following:

Fair Credit Reporting Act (FCRA).[6] FCRA protects the security and confidentiality of personal information collected or used to help make decisions about individuals' eligibility for credit, insurance, or employment.[7] It applies to "consumer reporting agencies" (such as credit bureaus) that provide "consumer reports."[8]

Gramm-Leach-Bliley Act (GLBA).[9] GLBA protects nonpublic personal information that individuals provide to "financial institutions" or that such institutions maintain.[10] GLBA sharing and disclosure restrictions apply to financial institutions or entities that receive nonpublic personal information from such a financial institutions.[11] For example, a third party that receives nonpublic personal information from a financial institution to process consumers' account transactions may not use the information or resell it for marketing purposes.

Health Insurance Portability and Accountability Act (HIPAA).[12] HIPAA establishes a set of national standards to protect certain health information. The HIPAA privacy rule governs the use and disclosure of an individual's health information for purposes including marketing.[13] With some exceptions, the rule requires an individual's written authorization before a covered entity—a health care provider that transmits health information electronically in connection with covered transactions, health care clearinghouse, or health plan—may use or disclose the information for marketing.[14] The act does not directly restrict the use, disclosure, or resale of protected health information by resellers or others not considered covered entities under the act.

Children's Online Privacy Protection Act (COPPA).[15] COPPA and its implementing regulations apply to the collection of information—such as name, e-mail, or location—that would allow someone to identify or contact a child under 13.[16] Covered website and online service operators must obtain verifiable parental consent before collecting such information. COPPA may not directly affect information resellers, but the covered entities are potential sources of information for resellers.

Electronic Communications Privacy Act (ECPA).[17] ECPA prohibits the interception and disclosure of electronic communications by third parties unless an exception applies (such as one party to the communication consenting to disclosure). For example, the act would prevent an Internet service provider from

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[5] The framework includes a consumer privacy bill of rights and encourages Congress to provide FTC with enforcement authorities for the bill of rights. The White House, *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy* (Washington, D.C.: Feb. 23, 2012).

[6] Pub. L. No. 91–508, Tit. VI, 84 Stat. 1114, 1128 (1970) (codified as amended at 15 U.S.C. §§ 1681–1681x).

[7] *See* 15 U.S.C. § 1681.

[8] For the definition of "consumer reporting agency", see 15 U.S.C. § 1681a(f). For the definition of "consumer report", see 15 U.S.C. § 1681a(d).

[9] Pub. L. No. 106–102, 113 Stat. 1338 (1999) (codified as amended in scattered sections of 12 and 15 U.S.C.).

[10] See 15 U.S.C. §§ 6801–6802. Subtitle A of Title V of the act contains the privacy provisions relating to the disclosure of nonpublic personal information. 15 U.S.C. §§ 6801–6809.

[11] 15 U.S.C. § 6802. A "financial institution" is any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act (12 U.S.C. § 1843(k)). 15 U.S.C. § 6809(3)(a).

[12] Pub. L. No. 104–191, 110 Stat. 1936 (1996) (codified as amended in scattered sections of 18, 26, 29, and 42 U.S.C.).

[13] 45 C.F.R. Parts 160, 164.

[14] For the definition of "marketing", including exceptions, see. 45 C.F.R. § 164.501.

[15] Pub. L. No. 105–277, Div. C, Tit. XIII, 112 Stat. 2681–728 (1998) (codified at 15 U.S.C. §§ 6501–6506).

[16] FTC issued regulations implementing COPPA, 16 C.F.R. Part 312.

[17] Pub. L. No. 99–508, 100 Stat. 1848 (1986) (codified as amended in scattered sections of 18 U.S.C.).

selling the content of its customers' e-mails to a reseller for marketing purposes, unless the customers had consented to disclosure. However, ECPA provides more limited protection for information considered to be "non-content," such as a customer's name and address.

Federal Trade Commission Act (FTC Act), Section 5.[18] The FTC Act prohibits unfair or deceptive acts or practices in or affecting commerce. Although the act does not explicitly grant FTC the specific authority to protect privacy, it has been interpreted to apply to deceptions or violations of written privacy policies. For example, if a retailer's written privacy policy stated customers' personal information would not be shared with resellers and the retailer later sold information to such parties, FTC could bring an enforcement action against the retailer for unfair and deceptive practices.

As they relate to specific types of consumer services or records, other Federal privacy laws also may apply to information resellers' practices and products. For instance, while not specifically a privacy law, the *Computer Fraud and Abuse Act (CFAA)* can restrict a third party from collecting personal information from a website when the collection would violate the site's terms of service.[19] The *Telecommunications Act* requires telecommunications carriers to protect the confidentiality of proprietary information of customers.[20]

Laws Have Limited Scope over Personal Data Used for Marketing

Privacy protections under Federal law have been limited for consumer data used for marketing. The scope of protections is narrow in relation to individuals' ability to access, control, and correct their personal data; collection methods and sources and types of information collected; and new technologies.

Laws Provide Individuals Limited Ability to Access, Control, and Correct Their Personal Data

No Federal statute that we examined generally requires resellers to allow individuals to review personal information (intended for marketing purposes), control its use, or correct it. The FIPPs (for collection limitation and openness) state that individuals should be able to know about and consent to the collection of their information, while the individual participation principle states they should have the right to access the information, request correction, and challenge the denial of those rights.

No Federal statute provides consumers the right to learn what information is held about them and who holds it for marketing or look-up purposes. FCRA provides individuals with certain access rights, but only when information is used for credit eligibility purposes.. And GLBA's provisions allowing consumers to opt out of having their personal information shared with third parties apply only in specific circumstances. Otherwise, individuals cannot require that their personal information not be collected, used, and shared. Also, no Federal law provides correction rights (the ability to have resellers and others correct or delete inaccurate, incomplete, or unverifiable information).

Laws Largely Do Not Address Data Collection Methods, Sources, and Types

Federal privacy laws are limited in addressing the methods by which, or the sources from which, resellers collect and aggregate personal information, or the types of information collected for marketing or look-up purposes. FIPPs (for data quality, purpose specification, and collection limitation) state that personal information should be relevant, limited to the purpose for which it was collected, and collected with the individual's knowledge or consent.

Federal laws generally do not govern the methods resellers may use to collect personal information. An example of such a method is "web scraping," in which resellers, advertisers, and others use software to search the web for information about individuals and extract and download bulk information from websites with con-

[18] 15 U.S.C. § 45. Section 5 of the FTC Act, as originally enacted, only related to "unfair methods of competition." The Wheeler-Lea Act, passed in 1938, expanded the Commission's jurisdiction to include "unfair or deceptive acts or practices." Wheeler-Lea Amendments of 1938, Pub. L. No. 75–447, 52 Stat. 111.

[19] Pub. L. No. 99–474, 100 Stat. 1213 (1986) (codified as amended at 18 U.S.C. § 1030). Courts have held that CFAA prohibits access to websites when that access exceeds the sites' terms of use or end-user license agreements. See, *e.g., Snap-On Bus. Solutions Inc.* v. *O'Neil & Assoc., Inc.,* 708 F.Supp. 2d 669 (N.D. Ohio 2010); *Southwest Airlines Co.* v. *Farechase, Inc.,* 318 F.Supp. 2d 435 (N.D. Tex. 2004); *America Online, Inc.* v. *LCGM, Inc.,* 46 F.Supp. 2d 444 (E.D. Va. 1998).

[20] Pub. L. No. 104–104, 110 Stat. 56 (1996) (codified as amended in scattered sections of 15 and 47 U.S.C.).

sumer information. Resellers or retailers also may collect information indirectly (by combining information from transactions).

Current law generally allows resellers to collect personal information from sources including warranty registration cards, surveys, and online sources such as discussion boards, social media sites, blogs, and web browsing histories and searches. Current law does not require disclosure to consumers when their information is collected from these sources.

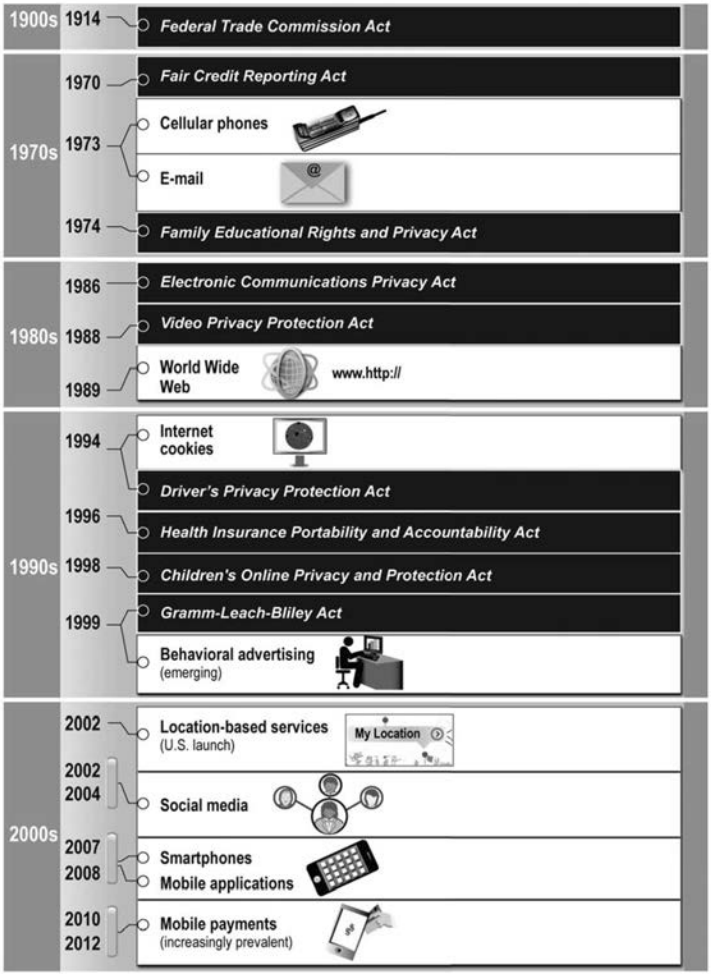
The Federal laws that address the types of consumer information that can be collected and shared are not comprehensive. Under most circumstances, information that many people may consider very personal or sensitive can be collected, shared, and used for marketing. This can include information about physical and mental health, income and assets, political affiliations, and sexual habits and orientation. For health information, HIPAA provisions apply only to covered entities.

Current Law Does Not Directly Address Some Privacy Issues New Technology Raises

The current privacy framework does not fully address new technologies such as social media, web tracking, and mobile devices. In a 2013 report, FTC noted that mobile technologies present unique privacy challenges (for instance, mobile devices identify a user's geographical location).[21] As shown in figure 1, the original enactment of several Federal privacy laws predates these trends and technologies.

[21] Federal Trade Commission, *Mobile Privacy Disclosures: Building Trust through Transparency* (Washington, D.C.: February 2013).

Figure 1: Dates of Enactment of Key Federal Privacy Laws and the Introduction of New Technologies



Source: GAO.

Note: The most recent amendments to the Federal laws referenced in figure 2 are as follows:

- Federal Trade Commission Act of 1914: last amended July 21, 2010 (Pub. L. 111–203).
- Fair Credit Reporting Act of 1970: last amended Dec. 18, 2010 (Pub. L. No. 111–319).
- Family Educational Rights and Privacy Act of 1974: last amended Jan. 14, 2013 (Pub. L. No. 112–278).
- Electronic Communications Privacy Act of 1986: last amended Oct. 19, 2009 (Pub. L. No. 111–79).
- Video Privacy Protection Act of 1988: last amended Jan. 10, 2013 (Pub. L. No. 112–258).
- Driver's Privacy Protection Act of 1994: last amended Oct. 23, 2000 (Pub. L. No. 106–346).
- Health Insurance Portability and Accountability Act of 1996: last amended Mar. 23, 2010 (Pub. L. No. 111–148).
- Children's Online Privacy Protection Act of 1998: has not been amended.
- Gramm-Leach-Bliley Act of 1999: last amended July 21, 2010 (Pub. L. No. 111–203).

Because these laws were enacted to protect the privacy of information involving specific sectors rather than to address specific technologies, some have been inter-

preted to apply to new technologies. For example, FTC has taken enforcement actions under COPPA and revised the statute's implementing regulations to account for smartphones and mobile applications.

Online Tracking

No Federal privacy law explicitly addresses the full range of practices to track or collect data from consumers' online activity. Cookies—text files placed on a computer by the website that the computer user visits—allow website operators to recall information such as user name and address, credit card number, and purchases in a shopping cart. Resellers can match information in cookies and their databases to augment consumer profiles. Third parties also can synchronize their cookie files with resellers' files. Advertisers can use third-party cookies—placed on a computer by a domain other than the site being visited—to track visits to the websites on which they advertise. Consumers' ability to prevent such tracking can be restricted. For example, flash cookies—cookies which do not expire at the end of a browsing session—cannot be erased.[22]

While current law does not explicitly address web tracking, FTC has taken enforcement actions related to web tracking under its authority to enforce the prohibition on unfair or deceptive acts. For example, in 2011, FTC settled charges with Google for $22.5 million after alleging that Google violated an earlier privacy settlement with FTC when it misrepresented to users of Apple's Safari web browser that it would not track and serve targeted advertisements to Safari users.[23] Google agreed to disable its advertising tracking cookies.

Federal law also does not expressly prohibit "history sniffing," which uses code on a webpage to record visitors' browsing history. However, in 2012, FTC took an enforcement action against Epic Marketplace, a large online advertising network, for deceptively failing to disclose its use of history-sniffing technology.[24] Epic Marketplace used the data it collected to target advertising.

Mobile Technologies

In relation to collection and use of consumer data for marketing, no Federal privacy laws that we identified specifically govern mobile applications and technologies.

> *Mobile applications.* No Federal law specifically governs mobile applications—software downloaded onto mobile devices for uses such as providing information and online banking and shopping.[25] Application developers, mobile carriers, advertisers, and others may collect an individual's information through services provided on a mobile device. However, FTC has taken enforcement action against companies for use of mobile applications that violate COPPA and FCRA.[26] The agency also has taken action under the FTC Act.[27] And CFAA, which bans unauthorized access to computers, has been found to apply to mobile phones.[28]

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[22] Shannon Canty, Chris Jay Hoofnagle, *et al.,* "Flash Cookies and Privacy" (Aug. 10, 2009), available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1446862.*

[23] *United States* v. *Google Inc.,* No. CV 12–04177–SI, 2012 WL 5833994 (N.D. Cal. Nov. 16, 2012).

[24] FTC alleged that Epic Marketplace's use of history-sniffing was deceptive because it collected data about sites outside of its network that consumers had visited, contrary to Epic's privacy policy, which represented that it would collect information only about consumers' visits to websites in its network. *In the Matter of Epic Marketplace, Inc., and Epic Media Group, LLC,* FTC File No. 112 3182, decision and order (Mar. 13, 2013).

[25] On July 25, 2013, Commerce released a draft of a voluntary code of conduct for mobile applications, including guidelines for notices to consumers about collection and sharing of information with third parties. See Department of Commerce, National Telecommunications and Information Administration, *Short Form Notice Code of Conduct to Promote Transparency in Mobile App Practices,* redline draft (July 25, 2013), available at *http://www.ntia.doc.gov/files/ntia/publications/july_25_code_draft.pdf.*

[26] FTC settled charges that a social networking service deceived consumers when it collected information from children under 13 through its mobile application in violation of COPPA. See *United States* v. *Path, Inc.,* No. C13–0448 (N.D. Cal. Jan. 31, 2013). FTC also settled charges that a company compiled and sold criminal record reports through its mobile application and operated as a consumer reporting agency in violation of FCRA. See *In the Matter of Filiquarian Publishing, LLC,* FTC File No. 112 3195 (Apr. 30, 2013).

[27] For example, in addition to the alleged COPPA violation, Path allegedly deceived users by collecting personal information from their mobile address books without their knowledge and consent. See *United States* v. *Path, Inc.,* No. C13–0448 (N.D. Cal. Jan. 31, 2013).

[28] In 2011, the U.S. Court of Appeals for the Eighth Circuit held that a basic cellular telephone—used only to place calls and send text messages—was a computer for CFAA purposes.

Location tracking. No Federal privacy laws, except COPPA, expressly address location data, location-based technology, and consumer privacy. We and others have reported that the capability of mobile devices to provide consumer's location engenders privacy risks, particularly if companies use or share location data without consumers' knowledge.[29] ECPA might not apply if location data were not deemed content and would not govern entities such as developers of location-based applications that are not covered by ECPA. But FTC could pursue enforcement action if a company's collection or use of the information violated COPPA.

Mobile payments. No Federal privacy laws expressly address mobile payments (for example, by smartphone). An FTC report noted that although mobile payment can be an easy way for individuals to pay for goods and services, privacy concerns have arisen because of the number of companies in the mobile payment marketplace and the large amount of detailed personal and purchase information collected and consolidated.[30]

Stakeholders Diverge on Adequacy of Legal Framework and Need for Legislation

Stakeholder views diverge on whether significant gaps in the legal framework for privacy exist, whether more legislation is needed, or whether self-regulation can suffice. The marketing and information reseller industries generally have argued that the current framework of sector-specific laws and regulations has not left significant gaps in consumer privacy protections. Privacy advocates and others stated that the current privacy scheme leaves significant gaps. Industry and privacy advocates also disagreed on the need for more legislation or regulation and the efficacy of self-regulatory approaches to protect privacy. Industry representatives acknowledged the importance of consumer privacy protections, but argued that voluntary industry measures and self-regulation mitigated the need for additional legislation. Some privacy advocates and others argued that voluntary compliance or self-regulation was not sufficient to uniformly protect consumer privacy rights.

Views Differ on Approaches to Privacy Law and Consumer Interests

Debate also has focused on appropriate approaches for new privacy legislation or regulation. This debate can be framed around three sets of issues: a comprehensive versus sector-specific approach to privacy legislation; how to address consumers' interests in accessing, controlling, and correcting their data; and the potential impact of new regulation on consumers and commerce.

Comprehensive versus Sector-Specific Approaches

Ongoing debate centers on what kind of legislative approach—sectoral or comprehensive—would best effect enhanced consumer privacy protections. Industry stakeholders have argued a comprehensive privacy law would amount to a one-size-fits-all approach and could be overly burdensome. Stakeholders also said that the current sector-specific system was flexible and well-suited to addressing any gaps. In contrast, some consumer and privacy groups and academic experts cited advantages to comprehensive privacy legislation such as filling gaps in existing privacy protections and providing comprehensive and consistent protections. Privacy advocates and some business representatives also argued that comprehensive legislation would benefit businesses internationally and help reduce compliance costs.

While not recommending a comprehensive Federal privacy statute as such, in 2010 Commerce's Internet Policy Task Force recommended the adoption of a baseline commercial data privacy framework built on an expanded FIPPs. The 2012 White House privacy framework called for enacting baseline legislation while preserving existing sector-specific laws. The Administration supported exempting companies from consumer data privacy legislation to the extent their activities were subject to existing data privacy laws.

The judicial decision did not address more advanced devices such as smartphones in the CFAA context. See *U.S.* v. *Kramer,* 631 F.3d 900 (8th Cir. 2011).

[29] Risks included disclosure to third parties for unspecified uses, tracking of consumer behavior, and identity theft. See GAO, *Mobile Device Location ID: Additional Federal Actions Could Help Protect Consumer Privacy,* GAO–12–903 (Washington, D.C.: Sept. 11, 2012). A Federal Communications Commission report also noted privacy risks. See Federal Communications Commission, *Location-Based Services: An Overview of Opportunities and Other Considerations* (Washington, D.C.: May 2012).

[30] Federal Trade Commission, *Paper, Plastic or Mobile? An FTC Workshop on Mobile Payments* (Washington, D.C.: March 2013).

Views on How to Address Consumers' Interests in Use and Control of Their Data

Other debate on privacy protections has focused on the third-party market for and usage of consumer data, whether or how consumers can access and control such usage or correct data, and how or if limits should apply to web tracking.

Use of Consumer Data

Consumer and privacy advocates have noted that consumers often were not aware of, and had not always consented to, personal information being repurposed for marketing and other uses. Changes in the marketplace for consumer data include a vast increase in recent years in the number and types of companies that collect and share such data with third parties. The Administration noted that consumers have a right to expect that companies will collect, use, and disclose their information in ways consistent with the context in which the information was provided.[31] FTC articulated a "context of the interaction" standard for determining when a practice required consumer choice.[32]

Representatives of information resellers, marketers, and other industries that use consumer data have argued that repurposing generally is not inappropriate or harmful. One reseller argued that personal information on unrestricted websites—such as blogs—becomes publicly available and can be used by a third party, without legal or ethical limitations on its use.

Access and Correction

Stakeholders' views differed on the extent to which consumers should be able to access data held about them. FTC said that companies should provide reasonable access to consumer data they maintain, a position many privacy groups echoed. FTC called on information resellers that compile data for marketing purposes to explore creating a centralized website on which resellers would identify themselves, describe how they collect and use the data, and consumers' access rights and choices.

Debate also developed on consumers' right to correct information held about them. Some privacy advocates and members of Congress have argued that consumers should have the right to correct inaccurate information. One advocate noted that data not covered by FCRA also can be used for fraud prevention and identity verification, and that inaccuracies in this context could harm a consumer. Another advocate noted that companies may base some individual product pricing on a consumer's profile, so inaccurate data could affect the price offered. But FTC and the Direct Marketing Association said that special measures were not needed to ensure the accuracy of data maintained and used for marketing.[33] The Administration expressed a similar view in its privacy framework. Some resellers also said that because they acquire information from many sources, giving consumers the opportunity to correct information would not be effective unless consumers also could have information corrected at the sources from which it had been drawn.

Web Tracking

Some of the most publicized debate on privacy and new technologies has centered on consumers' ability to control tracking of their web activity. Areas of disagreement include the effectiveness of voluntary initiatives that allow consumers to exert some control over tracking and the use of information collected during tracking. For example, the Digital Advertising Alliance developed an icon to let web page users know that their visit was being tracked and their actions used to infer their interests and target future advertising. Users can click on the icon to learn more about behavioral advertising and control whether they receive such advertising and from which companies.[34] Some privacy advocates have pointed to limitations to this mechanism (for example, the opt-out option only applies to companies in the Digital Advertising Alliance).

Debate also has developed about the implementation of "do not track." Under this approach, consumers would be able to choose whether to allow the collection and use of data about their online searching and browsing. FTC supported the concept

[31] The White House, *A Framework for Protecting Privacy* (2012).

[32] Federal Trade Commission, *Protecting Consumer Privacy in an Era of Rapid Change,* pp. 38–39.

[33] Federal Trade Commission, *Protecting Consumer Privacy in an Era of Rapid Change,* pp. 38–39; and letter from Direct Marketing Association to members of Congress on August 13, 2012, available at http://the-dma.org/news/August-13–2012–DMALetter.pdf.

[34] According to the Digital Advertising Alliance, in 2012 more than 5.2 million unique users accessed the resources at www.aboutads.info, and nearly 1 million exercised a choice using the site's opt-out mechanism.

of a universal do-not-track mechanism in its 2010 and 2012 privacy reports.[35] On the self-regulatory side, some Internet browsers, including Mozilla Firefox, have introduced do-not-track features. The World Wide Web Consortium has been developing a universal web protocol for do not track.[36] But disagreements on different issues (such as scope and technological specifications) have delayed widespread adoption or standardization of do not track.[37]

Proposals in Congress and elsewhere would require FTC to promulgate regulations for a do-not-track mechanism.[38] Proponents of such proposals noted that the use of third-party cookies greatly increased in recent years—for example, the *Wall Street Journal* identified more than 3,000 tracking files the top 50 websites placed on a test computer.[39] Advocacy organizations argued that Internet users may not be fully aware of the extent of third-party tracking and that users should affirmatively consent to tracking. Some members of Congress raised concerns about flash cookies and whether the FTC Act's prohibition of unfair or deceptive acts or practices would cover them. Representatives of the advertising and other industries have cautioned against many of the proposals.

Views on Potential Impacts of New Regulation on Consumers and Commerce

Representatives of the marketing and reseller industries argued that regulatory restrictions on using consumer data could reduce the benefits consumers get. Advertising representatives noted that targeted marketing and advertising helps underwrite applications and services available free to consumers. Some resellers said that targeted behavioral advertising gives consumers information relevant to their specific interests, needs, or preferences. However, some privacy advocates believe that consumer benefits have been overstated. Some advocates also raised concerns that the profiling and scoring techniques used to deliver specific advertisements to specific consumers might have discriminatory effects because they present information, sales, or opportunities only to consumers with certain characteristics.

Stakeholder views also diverged on the potential economic effects of strengthened privacy regulations. Industry representatives said that new restrictions on the use of consumer information could inhibit innovation and increase compliance costs for businesses. Privacy and consumer groups said that the industry's claims that increased privacy protections would be too burdensome and stifle innovation have not been accompanied by convincing evidence. And in public comments solicited by Commerce in 2010 on information privacy and innovation in the Internet economy, online businesses and advertisers noted the importance of respecting customers' privacy if they wanted to retain their business or encourage individuals to adopt new devices and services.[40]

Views vary on the economic effects of greater harmonization of U.S. and foreign privacy rules. Commerce's Internet Policy Task Force noted that a significant number of comments they received concerned difficulties and costs in complying with foreign data protection rules and regulations. For example, the European Union's 1995 Data Protection Directive states that personal information of European Union citizens may not be transmitted to nations not deemed to have "adequate" data protection laws.[41] The United States does not have an adequacy finding from the European Commission.[42]

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[35] Federal Trade Commission, *Protecting Consumer Privacy in an Era of Rapid Change (2012)* and *Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers;* preliminary staff report (Washington, D.C.: December 2010).

[36] In the World Wide Web Consortium, member organizations and the public work together to develop web protocols and standards. The consortium's Tracking Protection Working Group proposes recommendations and technologies to improve user privacy and control. See http://w3.org/2011/tracking-protection/.

[37] Senate Committee on Commerce, Science, and Transportation, *A Status Update on the Development of Voluntary Do-Not-Track Standards,* 113th Cong., 1st sess., April 24, 2013; see testimony of Justin Brookman, Director, Consumer Privacy, Center for Democracy and Technology.

[38] For example, see *Do-Not-Track Online Act of 2013,* S. 418, 113th Cong.

[39] Julia Angwin, "The Web's New Gold Mine: Your Secrets," *Wall Street Journal,* July 30, 2010.

[40] Department of Commerce, Notice of Inquiry, Information Privacy and Innovation in the Internet Economy (Privacy and Innovation NOI), 75 Fed. Reg. 21226, Apr. 23, 2010, available at *http://ntia.doc.gov/frnotices/2010/FR_PrivacyNOI_04232010.pdf.*

[41] European Union, *Directive 95/46/EC of the European Parliament and of the Council on the Protection of Individuals with Regard to the Processing of Personal Data and the Free Movement of Such Data* (Oct. 24, 1995).

[42] However, companies participating in the U.S.-EU Safe Harbor Framework are deemed to provide adequate data protections and may transfer personal data from the European Union.

Continued

The task force recommended the U.S. government work toward mutual recognition of other commercial data privacy frameworks.[43] Many commenters also advocated for greater harmonization of privacy rules. In contrast, some industry observers warned against enacting a stricter privacy regime like the European Union's. A reseller representative said moving to a stricter regime would hinder commerce and innovation.

New technologies have enormously changed the amount of personal information private companies collect and how they use it. But our current privacy framework does not fully address these changes. Laws protecting privacy interests are tailored to specific sectors and uses. And, consumers have little control over how their information is collected, used, and shared with third parties for marketing purposes. As a result, current privacy law is not always aligned with the Fair Information Practice Principles, which Commerce and others have said should serve as the foundation for commercial data privacy. Thus, the privacy framework warrants reconsideration in relation to consumer interests, new technologies, and other issues. In our September report, we suggested that Congress consider strengthening it and review issues such as the adequacy of consumers' ability to access, correct, and control their personal information; and privacy controls related to new technologies. The challenge will be providing appropriate protections without unduly inhibiting the benefits to consumers, commerce, and innovation that data sharing can accord.

This concludes my statement for the record.

Senator THUNE. I will be asking our witnesses how data broker practices for marketing purposes may impact consumers, both positively and negatively. I am also interested in hearing from our witnesses how the industry can work to balance the privacy concerns of individuals with the information needs of businesses and our economy.

Finally, Mr. Chairman, while I have expressed my thanks to all of our witnesses being here today, I do want to add a special note of thanks to Tony Hadley from Experian. This inquiry began with letters sent to nine companies, and over time it has also included letters to several consumer-facing websites. Having only one of those companies testify is a good way to keep the number of witness manageable in light of the busy Senate schedule.

Mr. Hadley, I am sure that many of the other companies are also grateful for your willingness to testify and help advance our understanding——

[Laughter.]

Senator THUNE.—of the data broker industry. I know I certainly am.

So I want to thank you again, Mr. Chairman, for having this hearing, and I do look forward to hearing from our witnesses.

The CHAIRMAN. Thank you, Senator Thune, very much.

We have—well, I will just do one by one—Jessica Rich. Ms. Rich is the Director of the Bureau of Consumer Protection at the Federal Trade Commission. And I will go down the line.

Could you give your testimony, please?

STATEMENT OF JESSICA RICH, DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION

Ms. RICH. Chairman Rockefeller, Ranking Member Thune, and members of the Committee——

The CHAIRMAN. You have to push a little button.

FTC has the authority to enforce the substantive privacy requirements of the U.S.-EU Safe Harbor Framework.

[43] Department of Commerce, Internet Policy Task Force, *Commercial Data Privacy and Innovation in the Internet Economy: A Dynamic Policy Framework* (Washington, D.C.: 2010).

Ms. RICH. That would be a good start.

The CHAIRMAN. It is called "technology."

Ms. RICH. Yes.

[Laughter.]

Ms. RICH. I assure you I know something about technology.

I am Jessica Rich, director of the Bureau of Consumer Protection at the Federal Trade Commission. And I really appreciate this opportunity to present the Commission's testimony on data brokers.

This is a highly opportune time to examine the practices of data brokers, as technological developments have allowed for the dramatic increase in the collection and use of consumers' information.

Data brokers collect consumers' personal information from a wide variety of sources and resell it for a variety of purposes without most consumers ever knowing of their existence, much less the variety of practices in which they engage. And many of these practices, as you noted, fall outside of the scope of existing laws.

I know this committee is well aware of the lack of transparency of data broker practices. Chairman Rockefeller, we commend you for your leadership on this issue and stand ready to work with the Committee and with Congress on ways to improve the transparency of data broker practices. The report you released today is a key initiative in this effort, as is the study you requested from GAO.

At the FTC, our work on data broker practices goes back to the 1970s. For decades, policymakers have expressed concerns about the transparency of companies that buy and sell consumer data. Indeed, the existence of companies selling consumer data for credit and other eligibility determinations, invisibly and behind the scenes, led to the enactment in 1970 of the Fair Credit Reporting Act.

Since then, the Commission has been active in examining the practices of data brokers. We have used three primary tools in this effort.

First, we bring enforcement actions when company practices violate the law. Perhaps our most well-known data broker case involved ChoicePoint, in which we obtained $10 million in civil penalties and $5 million in redress for consumers. We alleged that ChoicePoint implemented lax privacy and security procedures, resulting in sensitive consumer report information ending up in the hands of known identity thieves.

More recently, we entered into a consent decree with online data broker Spokeo. According to our complaint, Spokeo collected personal information from hundreds of online and offline sources, including social networks, and combined that data into detailed personal profiles. We allege that Spokeo marketed these profiles for use by human resource departments in hiring, which made it a consumer reporting agency subject to the Fair Credit Reporting Act, but that it failed to abide by the FCRA's accuracy and privacy requirements. The order contains strong injunctive relief and an $800,000 civil penalty.

Second, the Commission conducts research and issues reports addressing data broker issues. For example, our 2012 privacy report made best practices and legislative recommendations for consumer privacy, including specific recommendations regarding data bro-

kers. Among other things, the report reiterated a longstanding Commission recommendation that data brokers provide consumers with access to the data they maintain and, depending on how the data is used, the ability to correct it.

More recently, in order to shine a light on the industry, we issued orders requiring nine data brokers to provide us with information regarding how they collect and use consumer data. The Commission is close to completing a report based on this information and expects to release it in the coming months.

And in the spring of next year, we plan to host a series of privacy workshops, including a seminar on what is called "alternative scoring products" offered by data brokers—that is, products that companies use to predict consumer behavior and shape how they market to particular consumers.

Our final tool is educating businesses and consumers on privacy issues in the practices of data brokers. For example, we recently sent letters to multiple data brokers that provide tenant and background screening services, warning them about their duty to comply with the Fair Credit Reporting Act. And for consumers, we recently produced a video on data brokers and have published frequent blog posts and updates on issues related to the data broker industry.

In closing, as the collection and use of consumer data continues to explode, we share the Committee's commitment to continue to examine data brokers, and we stand ready to work with the Committee on this critical issue.

Thank you.

[The prepared statement of Ms. Rich follows:]

PREPARED STATEMENT OF THE FEDERAL TRADE COMMISSION

I. Introduction

Chairman Rockefeller, Ranking Member Thune, and members of the Committee, I am Jessica Rich, Director of the Bureau of Consumer Protection of the Federal Trade Commission ("FTC" or "Commission").[1] I appreciate the opportunity to present the Commission's testimony on data brokers.

Data brokers collect and aggregate consumers' personal information from a wide range of sources and resell it for an array of purposes, such as marketing, verifying an individual's identity, and preventing financial fraud. Because data brokers generally never interact directly with consumers, consumers are typically unaware of their existence, much less the variety of ways they collect, analyze, and sell consumer data.

This Committee, by investigating the privacy practices of data brokers, has helped call attention to the lack of transparency surrounding data broker privacy practices. We look forward to reviewing the Committee's report on its examination of the data broker industry. We commend Chairman Rockefeller's leadership on this issue and stand ready to work with this Committee and Congress on ways to improve the transparency of data broker practices. As the Committee is aware, the Commission is developing its own report on the data broker industry (discussed further below), which the Commission expects to release in the coming months.

This testimony begins by describing the Commission's longstanding work in this area. It then lays out our strategy for addressing the privacy practices of the data broker industry through enforcement, research and reports, and business and consumer education.

[1] This written statement presents the views of the Federal Trade Commission. My oral statements and responses to questions are my own and do not necessarily reflect the views of the Commission or any Commissioner.

II. Background on FTC Initiatives Concerning Data Broker Privacy Practices

Concerns about the privacy practices of companies that buy and sell consumer data are not new. Indeed, in 1970, the existence of companies selling consumer data with little transparency for credit and other eligibility determinations led Congress to enact the Fair Credit Reporting Act (FCRA)[2], which it gave the Commission authority to enforce.

In the late 1990s, the Commission began to examine the privacy practices of data brokers that fall outside the FCRA.[3] Notably, in 1997, the Commission held a workshop to examine database services used to locate, identify, or verify the identity of individuals, referred to at the time as "individual reference services." The workshop prompted industry members to form the self-regulatory Individual Reference Services Group (IRSG).[4] The Commission subsequently issued a report on the workshop and the IRSG. The report commended the progress made by the industry's self-regulatory programs, but one of the report's conclusions was that the industry's efforts did not adequately address the lack of transparency of data broker practices. Although industry ultimately terminated the IRSG, a series of public breaches—including one involving ChoicePoint—led to renewed scrutiny of the practices of data brokers.[5]

Most recently, in its 2012 report *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Consumers* (Privacy Report),[6] the Commission specifically addressed the privacy practices of data brokers. The Commission described three different categories of data brokers: (1) entities subject to the FCRA; (2) entities that maintain data for marketing purposes; and (3) non-FCRA covered entities that maintain data for non-marketing purposes that fall outside of the FCRA, such as to detect fraud or locate people.[7] The report noted that, while the FCRA gives consumers a variety of rights with regard to companies that sell data for credit, employment, and insurance purposes, data brokers within the other two categories operate without much transparency.

Building on the agency's prior work, the Commission's Privacy Report made recommendations to improve the transparency of the practices of data brokers and to give consumers greater control over how their information is used. Among other things, the Report proposed that data brokers provide consumers with reasonable access to the data they maintain. The Report also noted that the Commission had long supported legislation that would give access rights to consumers for information held by data brokers.[8] The Report stated that the Commission continues to support legislation in this area to improve the transparency of industry practices.[9]

III. The Commission's Ongoing Initiatives Regarding Data Brokers

The Commission's ongoing initiatives to address the privacy practices of the data broker industry build on this body of prior work. The Commission is pursuing a three-pronged strategy to ensure consumer interests are protected in the data broker context. First, the Commission takes aggressive enforcement action to ensure that data brokers comply with the FCRA where it applies. Second, as data broker business models expand beyond traditional credit reporting, the FTC continues to

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[2] 15 U.S.C. § 1681 et seq.

[3] *See, e.g.,* FTC Workshop, *The Information Marketplace: Merging & Exchanging Consumer Data* (Mar. 13, 2001), available at *http://www.ftc.gov/bcp/workshops/infomktplace/index.shtml;* Prepared Statement of the FTC, *Identity Theft: Recent Developments Involving the Security of Sensitive Consumer Information: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs,* 109th Cong. (Mar. 10, 2005), available at *http://www.ftc.gov/public-statements/2005/03/prepared-statement-federal-trade-commission-identity-theft-recent; see also* FTC Workshop, *Information Flows: The Costs and Benefits to Consumers and Businesses of the Collection and Use of Consumer Information* (June 18, 2003), available at *http://www.ftc.gov/news-events/events-calendar/2003/06/information-flows-costs-and-benefits-related-collection-and-use.*

[4] *See* FTC, *Individual Reference Services, A Report to Congress* (1997), available at *http://www.ftc.gov/reports/individual-reference-services-report-congress.*

[5] This scrutiny included an FTC investigation that resulted in the FTC's largest FCRA civil penalty to date. *See United States* v. *ChoicePoint, Inc.,* No. 1:06–cv–00198 (N.D. Ga. Feb. 15, 2006) (stipulated final order imposing $10 million fine and $5 million in consumer redress), available at *http://www.ftc.gov/sites/default/files/documents/cases/2006/01/stipfinaljudgment.pdf.*

[6] FTC, *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers* (Mar. 2012), available at *http://ftc.gov/os/2012/03/120326privacyreport.pdf.* Commissioner Wright's term as Commissioner began in January 2013 and he was not at the Commission when the Privacy Report was issued. While he may not necessarily endorse all the views in that Report, he agrees with the substance of this testimony.

[7] *Id.* at 65.

[8] *Id.* at 69.

[9] *Id.*

conduct research and issue reports examining the practices of the data broker industry. Third, the Commission educates businesses about their legal responsibilities, especially small data brokers that may be unaware of their legal obligations, and consumers regarding how their data is disseminated. These three initiatives are discussed below.

A. Enforcement

The Commission maintains an aggressive FCRA enforcement program. To date, it has brought almost 100 cases and obtained in excess of $30 million in civil penalties. FCRA enforcement is a vital priority for the agency, particularly as companies that are not traditional credit reporting agencies venture into territory covered by the FCRA.[10]

For example, last year the Commission entered into a consent decree with online data broker Spokeo to resolve allegations that the company violated the FCRA.[11] As set forth in the Commission's complaint, Spokeo assembled personal information from hundreds of online and offline data sources, including social networks, and merged that data to create detailed personal profiles, including name, address, age range, hobbies, ethnicity, and religion. Spokeo marketed these profiles for use by human resources departments in hiring decisions. The FTC alleged that Spokeo, which marketed profiles for employment purposes, was a consumer reporting agency subject to the FCRA. The Commission charged Spokeo with violating the FCRA by, among other things, failing to (1) take reasonable steps to ensure the accuracy of information; and (2) tell its clients about their obligations under the FCRA, including the requirement to send adverse action notices to people denied employment on the basis of information obtained from Spokeo. The order contained strong injunctive relief and an $800,000 civil penalty.

The Commission also recently took action against a mobile application developer that compiled and sold criminal record reports without complying with the FCRA.[12] The app developer, Filiquarian, claimed that consumers could use its mobile apps to access hundreds of thousands of criminal records and conduct searches on potential employees. The FTC charged that Filiquarian failed to take reasonable steps to ensure that the information it sold was accurate and would be used solely for permissible purposes, as required by the FCRA. In addition, Filiquarian failed to inform users of its reports of their obligations under the FCRA, including the requirement to notify consumers if an adverse action was taken against them based on a report. In both the Spokeo and Filiquarian cases, the companies' terms of service included disclaimers stating that the information they provided should not be used for FCRA purposes. Despite these disclaimers, the companies specifically advertised that their reports could be used for employment purposes.

Most recently, the Commission entered into a consent decree with Certegy Check Services, one of the Nation's largest check authorization service companies.[13] Certegy compiles consumers' personal information and uses it to help retail merchants determine whether to accept consumers' checks. The Commission's complaint alleged that, among other things, when a merchant denied a consumer's check, and the consumer contacted Certegy to dispute the denial, the company failed to follow proper dispute procedures, as required by the FCRA. As a result, Certegy's denials may have been in error, and consumers may not have been able to pay for essential

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[10] The FCRA provides basic consumer protections when consumer reporting data is used to make eligibility determinations for credit, insurance, employment and similar purposes.

[11] *United States* v. *Spokeo, Inc.,* No. CV12–05001 (C.D. Cal. June 12, 2012), available at *http://www.ftc.gov/enforcement/cases-and-proceedings/cases/2012/06/spokeo-inc-united-states-america-federal-trade; see also* Press Release, FTC, *Spokeo to Pay $800,000 to Settle FTC Charges Company Allegedly Marketed Information to Employers and Recruiters in Violation of FCRA* (June 12, 2012), available at *http://www.ftc.gov/news-events/press-releases/2012/06/spokeo-pay-800000-settle-ftc-charges-company-allegedly-marketed.*

[12] Decision and Order, *Filiquarian Publishing, LLC,* FTC File No. 112–3195 (May 1, 2013), available at *http://www.ftc.gov/enforcement/cases-and-proceedings/cases/2013/05/filiquarian-publishing-llc-choice-level-llc-and; see also* Press Release, FTC, *FTC Approves Final Order Settling Charges Against Marketers of Criminal Background Screening Reports* (May 1, 2013), available at *http://www.ftc.gov/news-events/press-releases/2013/05/ftc-approves-final-order-settling-charges-against-marketers.*

[13] *U.S.* v. *Certegy Check Servs., Inc.,* No. 1:13–cv–01247 (D.D.C. Aug. 15, 2013), available at *http://www.ftc.gov/enforcement/cases-and-proceedings/cases/2013/08/certegy-check-services-inc; ; see also* Press Release, FTC, *Certegy Check Services to Pay $3.5 Million for Alleged Violations of the Fair Credit Reporting Act and Furnisher Rule* (Aug. 15, 2013), available at *http://www.ftc.gov/news-events/press-releases/2013/08/certegy-check-services-pay-35-million-alleged-violations-fair.*

goods and services. Certegy agreed to pay $3.5 million, the agency's second largest FCRA fine, to resolve the Commission's allegations.

B. Research and Reports

The Commission is devoting significant resources to research and reports addressing the privacy practices of data brokers. As described above, the Commission's Privacy Report discussed the data broker industry specifically and recommended steps data brokers should take to improve the transparency of data broker practices and give consumers greater control over their information.[14]

To undertake a more detailed examination of the data broker industry, the Commission issued orders requiring nine data brokers to provide the agency with information regarding how they collect and use consumer data. The orders, issued pursuant to the Commission's authority under Section 6(b) of the FTC Act, mandated production of detailed information regarding company practices, including the nature and sources of consumer data the companies collect, how they use, maintain, and disseminate the information, and the extent to which the data brokers allow consumers to access and correct their information or to opt out of having their personal information sold. These orders were directed to companies providing three basic non-FCRA services—marketing services, risk mitigation services, including identity verification and fraud detection, and people search or look-up services. The Commission is expects to release a report on this examination of the data broker industry in the coming months.

We also continue to examine emerging practices in the data broker industry. Just this month, we announced a series of seminars for early 2014 that will address a number of consumer privacy issues, including alternative scoring products offered by data brokers. Many data brokers offer companies scores to predict trends and the behavior of their customers. Companies are using predictive scores for a variety of purposes, ranging from identity verification and fraud prevention to marketing and advertising. Consumers are largely unaware of these scores and have little to no access to the underlying data from which they are derived. The program will explore a number of issues, including what scores are currently available, how companies are using them, how accurate the scores and underlying data are, privacy concerns surrounding the use of predictive scoring, how consumers can benefit from use of these scores, and what sort of consumer protections should exist for them.[15]

C. Education

In addition to its enforcement and policy work on data broker issues, the agency also focuses on educating businesses and consumers about these issues. An important method for educating businesses is to publicize Commission complaints and orders and issue public letters warning companies of legal requirements and/or potential violations. In this vein, the Commission sent staff warning letters to a number of data brokers that provided tenant-screening services, and to marketers of six mobile apps that provide employment background screening services.[16] The FTC warned the companies and app developers that, if they have reason to believe the reports they provide are being used for employment screening, housing, credit, or other similar purposes, they must comply with the FCRA.[17]

More recently, Commission staff conducted an undercover effort to determine if data brokers that disclaimed FCRA liability were willing to sell information for credit, insurance, employment, or housing decisions. As a result of this "test shopping" operation, Commission staff found ten data brokers who appeared to offer data for these purposes. Commission staff then sent warning letters to these companies, advising them that their practices could violate the FCRA.[18]

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[14] *Protecting Consumer Privacy in an Era of Rapid Change, supra* note 6, at 68–70.

[15] Press Release, FTC, *Spring Privacy Series: Alternative Scoring Products* (Mar. 19, 2014), available at *http://www.ftc.gov/news-events/events-calendar/2014/03/spring-privacy-series-alternative-scoring-products.*

[16] Press Release, FTC, *FTC Warns Data Brokers That Provide Tenant Rental Histories They May Be Subject to Fair Credit Reporting Act* (Apr. 3, 2013), available at *http://www.ftc.gov/opa/2013/04/tenant.shtm;* Press Release, FTC, *FTC Warns Marketers that Mobile Apps May Violate Fair Credit Reporting Act* (Feb. 7, 2012), available at *http://www.ftc.gov/opa/2012/02/mobileapps.shtm.*

[17] The Commission made no determination as to whether the companies were violating the FCRA, but encouraged them to review their apps and their policies and procedures to ensure they comply with the Act.

[18] Press Release, FTC, *FTC Warns Data Broker Operations of Possible Privacy Violations* (May 7, 2013), available at *http://www.ftc.gov/opa/2013/05/databroker.shtm.*

The FTC also hosts a Business Center blog,[19] which frequently includes consumer privacy and data security topics; currently, approximately 3,500 attorneys and business executives subscribe to these e-mail blog updates. The Business Center blog consistently features the Commission's enforcement actions and warning letters.

Finally, the FTC has developed materials designed to educate consumers about the ways in which their data may be disseminated to companies with which they do not interact. For example, the FTC produced a video called *Sharing Information: A Day in Your Life,* that describes how everyday activities by consumers—shopping in retail stores with loyalty cards, buying good online, and using social networking services—can lead to wide dissemination of personal information.[20]

IV. Conclusion

These enforcement, policy, and education efforts demonstrate the Commission's continued commitment to understanding and addressing consumer privacy issues posed by the data broker industry. We appreciate the leadership of Chairman Rockefeller and this Committee on these issues and look forward to continuing to work with Congress, industry, and other critical stakeholders on these issues in the future.

The CHAIRMAN. Thank you very much, Ms. Rich.

Pam Dixon. Ms. Dixon is the Executive Director at the World Privacy Forum.

You are on.

STATEMENT OF PAM DIXON, EXECUTIVE DIRECTOR, WORLD PRIVACY FORUM

Ms. DIXON. Chairman Rockefeller, members of the Committee, thank you for the opportunity to share what I have learned about the data broker industry today. I appreciate it very much.

As a moderate in the privacy debate and in the privacy world, I have come to a troubling conclusion: The data broker industry, as it is today, does not have constraints and does not have shame. It will sell any information about any person, regardless of sensitivity, for 7.9 cents a name, which is the price of a list of rape sufferers which was recently sold.

Lists of rape sufferers, victims of domestic violence, police officers' home addresses, people who suffer from genetic illnesses, complete with names, home addresses, ethnicity, gender, and many other factors—this is what is being sold and circulated today. It is a far cry from visiting a website and seeing an ad. What it is is the sale of the personally identifiable information and highly sensitive information of Americans.

So, Senators, I would like to make three points.

First, scoring. There are now pseudo scores which are comprised of factors that are non-financial or, I should say, non-credit-report-based. These pseudo credit scores are used in lieu of actual credit scores because they completely circumvent the Fair Credit Reporting Act. So a business or an employer or an insurer can purchase these scores and use them with no ill consequence or any consequence at all. This needs to change.

Second, health. There are lists of millions of people that are categorized by the diseases that they have, ranging from cancer to bedwetting, Alzheimer's—terrible diseases, some of them benign, some of them relating to mental illness. There are lists of millions

[19] *See generally http://business.ftc.gov/blog.*

[20] FTC, *Sharing Information: A Day in Your Life,* available at *http://www.consumer.ftc.gov/media/video-0022-sharing-information-day-your-life.*

of people and what prescription drugs they take. And these lists exist entirely outside of HIPAA.

The CHAIRMAN. Outside of what?

Ms. DIXON. HIPAA.

The CHAIRMAN. OK.

Ms. DIXON. The——

The CHAIRMAN. I understand.

Ms. DIXON. Any kind of Federal—yes—health protection. Unless the data is held by a provider or, you know, a covered entity under HIPAA, forget it, HIPAA doesn't apply.

This industry that is selling these lists—there has been a lot of mention made of marketing purposes for these lists. These lists are being sold without constraint. We don't know if employers are buying them, if insurers are buying them. We don't know who is buying them. But the lists are being sold for apparently billions of dollars, which suggests to me that we need to find out who is buying these lists.

In terms of solutions, my third and final point, we need to expand the Fair Credit Reporting Act so that when there are consumer scores that are pseudo credit scores that this is brought under the Fair Credit Reporting Act so that consumers can exercise the same rights they would have if a credit score had been pulled. If the information is statistically as accurate and has the same effect as a credit score, then why isn't it regulated under the Fair Credit Reporting Act? This should be a bright line here, and I don't think that that is too terribly difficult to draw.

There needs to be, and actually there is an urgent need for, a national data broker requirement for an opt-out. We favor an opt-out that is highly granular so that consumers don't always have to take the nuclear option and get entirely off of every list. We favor consumers having the ability to make their own choices. Maybe a consumer wants her name and phone number on a list but nothing else, certainly nothing about her weight, certainly nothing about the number of children she has, or maybe she does, but the point is consumers need to know when they are on a list and need to make choices about what appears on those lists.

We need to reexamine HIPAA and decide if health information that is not held by healthcare providers deservers healthcare protections in privacy. I believe they do.

This is going to be the beginning of an important public dialog that is going to be incredibly important for all of us to engage in. Because if we have an industry that has not curtailed the sale of names of anyone with highly sensitive information for 7.9 cents a name, then we haven't done enough.

Thank you for this opportunity, and I look forward to your questions.

[The prepared statement of Ms. Dixon follows:]

PREPARED STATEMENT OF PAM DIXON, EXECUTIVE DIRECTOR, WORLD PRIVACY FORUM

Chairman Rockefeller and Members of the Committee, thank you for the opportunity to testify today about data brokers, an industry that is often hidden from public view, and the impact of data brokers on consumers' lives. My name is Pam

Dixon, and I am the founder and Executive Director of the World Privacy Forum.[1] The World Privacy Forum is a 501(c)(3) non-partisan public interest research group based in California. We focus on conducting in-depth research on emerging and contemporary privacy issues as well as on consumer education.

I have been conducting privacy-related research for more than since 1998, first as a Research Fellow at the Denver University School of Law's Privacy Foundation where I researched privacy in the workplace and employment environment, as well as technology-related privacy issues such as online privacy. While a Fellow, I wrote the first longitudinal research study benchmarking data flows in employment online and offline, and how those flows impacted consumers.

After founding the World Privacy Forum, I wrote numerous privacy studies and commented on numerous regulatory proposals impacting privacy as well as creating useful, practical education materials for consumers on a variety of privacy topics. A few months ago, we published a report on data brokers and the Federal Government, Data Brokers and the Government, which examined current law and practices in regards to the eligibility use of data brokers in particular. I have published many additional studies. Previously, in 2005 I discovered previously undocumented consumer harms related to identity theft in the medical sector. I coined a termed for this activity: medical identity theft. In 2006 I published a groundbreaking report introducing and documenting the topic of medical identity theft, and the report remains the definitive work in the area.[1] In 2010 I also published the first report on digital and retail privacy, The One Way Mirror Society: Privacy Implications of Digital Signage Networks. I have also written several well-known reports on self-regulation, and in 2012–2013, was a lead drafter in the NTIA MultiStakeholder Process for Mobile App Short Form Notices.

Beyond my research work, I have published widely, including a reference book on privacy, *Online Privacy,* and seven books on technology issues with Random House, Peterson's and other large publishers, as well as more than one hundred articles in newspapers, journals, and magazines.

I appreciate the dedication and work of Senator Rockefeller in bringing much-needed attention to the issue of data brokers, which prior to his attention, was languishing on legislative backburners.

Introduction & Summary

What do a retired librarian in Wisconsin in the early stages of Alzheimer's, a police officer, and a mother in Texas have in common? The answer is that all were victims of consumer data brokers. Data brokers collect, compile, buy and sell personally identifiable information about who we are, what we do, and much of our "digital exhaust."

We are their business models. The police officer was "uncovered" by a data broker who revealed his family information online, jeopardizing his safety. The mother was a victim of domestic violence who was deeply concerned about people finder websites that published and sold her home address online. The librarian lost her life savings and retirement because a data broker put her on an eager elderly buyer and frequent donor list. She was deluged with predatory offers.

These people—and 320 million others in the United States—are not able to escape from the activities of data brokers. Our research shows that only a small percentage of known consumer data brokers offer a voluntary opt out. These opt outs can be incomplete, extremely difficult, and must typically be done one-by-one, site-by-site. Often, third parties are not allowed to opt individual consumers out of data brokers.

This state of affairs exists because no legal framework requires data broker to offer opt out or suppression of consumer data. Few people know that data brokers exist, and beyond that, few know what they do. There are about 4,000 data brokers. Despite the large and growing size of the industry, until this Committee started its work, this entire industry largely escaped public scrutiny.

Privacy laws apply to credit bureaus and health care providers, but data broker activity generally falls outside these laws. Even a knowledgeable consumer lacks the tools to exercise any control over his or her data held by a data broker. It doesn't matter that the data is about the consumer. The data broker has all the rights, and the consumer has none.

Consumers have no effective rights because there is no legal framework that requires data brokers to offer consumers an opt out or any other rights. Privacy laws apply to credit bureaus and health care providers, but data broker activity generally falls outside these laws. Even a knowledgeable consumer lacks the tools to exercise any control over his or her data held by a data broker. It doesn't matter that the

[1] For more information and to read many of the research studies and publications, see *http://www.worldprivacyforum.org.*

data is about the consumer. The data broker has all the rights, and the consumer has none.

In my testimony, I will discuss consumer data brokers, businesses that traffic in consumer data. The data broker industry is complex, and I can only focus on a few aspects of it.

There are consumer list brokers that sell lists of individually identifiable consumers grouped by characteristics. To our knowledge, it is not practically possible for an individual to find out if he or she is on these lists. If a consumer learns that he or she is on a list, there is usually no way to get off the list. Some exceptions exist, but the rule is that the lists are circulated far from consumers' eyes.

Lists reveal information that would surprise most people. Data brokers sell lists of people suffering from mental health diseases, cancer, HIV/AIDS, and hundreds of other illnesses. Data brokers sell lists of people who live in or near trailer parks so that these undesirable consumers can be targeted for suppression. Data brokers sell lists of people who are late on payments, often to those who make predatory offers to those in financial trouble. Data brokers sell lists of people who are impulse buyers or "eager senior buyers." All in all, there are millions of lists.

In addition to list brokers, there are people finder services that sell consumer demographic information online. The hundreds of "people finder" websites online are also part of the data broker industry. Statistically, few of these sites give individuals a meaningful opportunity to have their information removed from their databases. A handful do offer a partial or complete opt out or suppression, but to exercise the opt out, consumers have to first find the site, then go through what can be an incredibly frustrating series of hoops. Scanning drivers' licenses, sending the opt-out through postal mail, and sometimes paying as much as $1,000.00 to opt out. A consumer who successfully negotiates an opt-out at one data broker faces the challenge of doing the same thing at dozens or hundreds of other data brokers. There is always the risk that a name removed today will be added back tomorrow.

I will also discuss consumer scores, a growing area of data broker activity. Consumer scores are not well-known yet, but their influence on consumers is profound. One important example is the modeled consumer credit score. The modeled consumer credit score consists entirely of non-credit elements. Why? Because this allows the consumer data broker industry to avoid giving consumers the rights that the Fair Credit Reporting Act provides.

I will offer some solutions focused on addressing the problems identified in my testimony. The solutions I propose are practical and possible. The solutions are designed to bring fairness and rights to consumers. The data broker industry has not shown restraint. Nothing is out of bounds. No list is too obnoxious to sell. Data brokers sell lists that allow for the use of racial, ethnic and other factors that would be illegal or unacceptable in other circumstances. These lists and scores are used everyday to make decisions about how consumers can participate in the economic marketplace. Their information determines who gets in and who gets shut out. All of this must change. I urge you to take action.

The Structure of the Data Broker Industry and Why it Matters

The data broker industry is complex, layered and multi-faceted, and it is evolving rapidly. The industry cannot readily be described as just consumer information being sold on flat lists. There is much, much more than that.

A way to start approaching an understanding is to look at some key aspects of the industry.

Size: The data broker industry, by its own estimation, numbers in the neighborhood of 3,500 to 4,000 companies. Most data brokers engage in multiple activities and have a range of core expertise.

Scope: Data brokers range in scope from multi-national corporations with revenues in the billions to small sole proprietors operating locally. Some data brokers operate offshore.

Shape of the long tail: This industry has a relatively small number of very large name brand companies, and many more small to mid-size companies. The tail of this industry is very long, and the end of the tail works its way down from large companies to small affiliates selling data online.

Activities: These include list brokering, data analytics, predictive analytics and modeling, scoring, CRM, online, offline, APIs, cross channel, mailing preparation, campaigns, and database cleansing.

Data flows: Some data brokers host their own data and are significant purchasers of original data. Acxiom is an example of this kind of company. Some primarily analyze data and come up with scoring and Return on Investments proofs. Datalogix is an example of this kind of company. Some sell or resell con-

sumer information online. Intelius is an example of this kind of company. There are many other models in addition. Some data moves from online to offline and back; some through social media and back. The point is that the business models and data flows are complex, use many sources, and differ between types of data brokers.

Affiliate Storms: One common model results in the flow of information from the largest name-brand companies to the smaller companies, who then turn around and resell the data to a third tier of "affiliates" who then market the information themselves, or to another downstream affiliate. The term I use for this is "affiliate storm." A consumer at the end of all of the data reselling has difficulty finding the original compiler and seller of the data.

Regulation: The 2013 GAO report on data resellers outlined the lack of regulatory oversight regarding data brokers.[2] There are additional concerns that some existing regulations are being circumvented in some cases.

My comments today address the consumer-focused aspects of data brokers. Some activities of data brokers do not affect consumers in a negative or unfair way. Some list cleansing or compliance activities to bring the data broker in line with the Do Not Call list are unobjectionable. My testimony is about the other consequences of the data broker business today.

Sources for Data Broker Data

The sources for data broker data have become more complex as the industry has grown, and as the information systems have become more digitized. Consumers sometimes have a choice about whether they give data; other times, they do not. Even if a consumer paid mainly cash and lived very quietly, using shredders for their mail and records and keeping their SSN to themselves, the likelihood that the consumer could totally avoid landing on a data broker list is quite small. Most people in the U.S. are in many data bases and on many lists.

Some of the most common sources of consumer data include: (marketing, not credit data)

- Retailers and merchants via Cooperative Databases and Transactional data sales & customer lists
- Financial sector non-credit information (PayDay loan, etc.)
- MultiChannel direct response
- Survey data, especially online
- Catalog/phone order/Online order
- Warranty card registrations
- Internet sweepstakes
- Kiosks
- Social media interactions (dependent on data broker interactions/agreements)
- Loyalty card data (retailers)
- Public record information
- Website interactions, including specialty or knowledge-based websites
- Lifestyle information: Fitness, health, wellness centers, etc.
- Non-profit organizations' member or donor lists
- Subscriptions (online or offline content)

Following are some source examples from data broker cards, these examples are not surprising or out of the ordinary.

On a Baby Boomers data card, Adrea Rubin gave this source data:

Source: Multichannel Direct Response, Survey Data, and Public Record Information[3]

On a data card for a Transaction Database, the company listed the source as:

Source: 79 percent catalog/phone order/Online, 21 percent retail.[4]

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[2] *Information Resellers: Consumer Privacy Framework Needs to Reflect Changes in Technology and the Marketplace, http://www.gao.gov/products/GAO–13–663.* Sept. 25, 2013.

[3] DEFINING MOMENTS REACTIVE BABY BOOMERS Data Card, *http://datacardhub.adrearubin.com/market?page=research/datacard&id=255914.* Last accessed Dec. 17, 2013.

[4] Adrea Rubin, Action Network Transaction Database, *http://datacardhub.adrearubin.com/market?page=research/datacard&id=257898,* last accessed Dec. 15, 2013.

On a data card describing extreme mail order buyers, the source for gender, age, income, number of purchases, and number of credit cards was cited as

> Source: Multi-source, consolidated from a variety of sources, overlaid with co-op/transactional data[1]

A data card listing seniors listed the source as warrantee cards.

> Source: Warrantee card registrations [5]

Of the sources, a disturbing source is retail purchases both online and off. Cooperative databases allow retailers to append copious data about consumers to retail transaction files. This is the basis of the Pineda vs. Williams Sonoma case in California which Williams Sonoma took a consumer's e-mail and added home address information. Below is an example of the use of retail transactional/cooperative databases, this one from KBM Group.[6]

Where do we get our data?

We compile and manage data in our AmeriLINK® national consumer database. This data includes demographic, lifestyle, attitudinal and recent transaction data. We collect and compile data from public records and publicly available sources in accordance with local, state and federal laws. We also build predictive models from consumer supplied data and score our database resulting in "modeled" data suitable for marketing decisions. This modeled data indicates a consumer's propensity towards certain buying behavior.

Providing information for marketing purposes is only one facet of our business. We also process and manage data for our clients. In this instance, the data is the property of our client and is supplied to us by them. Client data is only accessible by the client who supplied it, and information is NEVER shared among clients or across functional areas of KBM Group.

With the acquisition of I-Behavior, the premier provider of consumer transaction data through its I-Behavior Cooperative Database, KBM Group also compiles consumer purchase transaction data provided directly by member merchants.

To learn more about the I-Behavior Privacy Policy, CLICK HERE.

Later in this testimony, I include this company as an exemplar of good opt out practices.

Sensitive Information and Lists That Should Not Exist

One of the key characteristics of modern data brokers is a lack of restraint. The degree to which no piece of data is sacred is evident in the reams of sensitive consumer data compiled, scored, circulated, and sold.

I do not oppose the selling of lists entirely. There is a reasonable center to be found. I agree that some lists are probably always going to exist that one or another person deems sensitive. Selling lists of doctors, nurses, teachers, and so forth are not among my favorite business models. But I understand the need for these lists and how they can be used in an unobjectionable way. I think of these lists as the center of the bell curve. These lists are of professional people.

However, some lists should not exist at all. This is where I urge Congress to take action. Highly sensitive data are the frayed and ugly ends of the bell curve of lists, far from the center. This is where lawmakers can work to remove unsafe, unfair, and overall just deplorable lists from circulation. There is no good policy reason why unsafe or unfair lists should exist.

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[5] Warranty IT Seniors, Adrea Rubin, *http://datacardhub.adrearubin.com/market?page=research/datacard&id=123434,* last accessed Dec. 15, 2013.

[6] *http://www.kbmg.com/privacy-policy/.*

I give you some examples: police officers home addresses, rape sufferers, domestic violence shelters, genetic disease sufferers, among others, below:

- *A list of police officers at home addresses.* This list can threaten the safety of police officers and their families.

POLICE OFFICERS AND TROOPERS AT HOME Mailing List 12/15/13 2:52 PM

1 Start 2 Results 3 Data Card 4 Request 5 Finished

Exact Data CONSUMERBASE
POSTAL, EMAIL AND TELEPHONE LISTS
Click Here To Fill Out A Form And Receive A Free Quote

POLICE OFFICERS AND TROOPERS AT HOME Mailing List

Police Officers and Troopers at Home from Professional Solutions allows you to reach the men and women who risk their lives to keep us safe. Police Officers and State Troopers are responsible for apprehending criminals, prevention and detection of crime, and maintenance of public order, along with community interaction. Police officers are generally sworn to an oath, and are granted the power to arrest and imprison suspects, among other procedures. Some police officers are also trained in special duties, such as counter-terrorism, surveillance, child protection, royalty or diplomatic protection, and investigating major crimes, such as fraud, rape, murder and drug trafficking. Police officers and troopers work outdoors in all kinds of weather. Some take very big risks when they chase criminals in cars or when they make an arrest, and often, the job can be very stressful or dangerous. Good training, teamwork and equipment reduce the number of injuries and deaths among police officers and troopers each year. Working together, they do their best to protect civilians each and every day.

Exact Data CONSUMERBASE
CONSUMERBASE MAKES IT EASY TO FIND YOUR TARGET AUDIENCE
FILTER YOUR LISTS WITH UNIQUE SELECTS AND FIND YOUR TARGET MARKET
GET A FREE QUOTE

Get Count | Get Pricing | Get More Information

SEGMENTS	COUNTS THROUGH 03/12/2013
33,648 TOTAL UNIVERSE / BASE RATE	$85.00/M
33,648 POLICE OFFICERS/TROOPERS	$85.00/M

POPULARITY:	***** 95
MARKET:	BUSINESS
CHANNELS:	
SOURCE:	COMPILED LISTS, STATE LICENSE INFORMATION
PRIVACY:	UNKNOWN
DMA?:	YES - MEMBER
STATUS:	PREFERRED PROVIDER
GEO:	USA
GENDER:	15% FEMALE 85% MALE

DESCRIPTION

Police Officers and Troopers at Home from Professional Solutions allows you to reach the men and women who risk their lives to keep us safe. Police Officers and State Troopers are responsible for apprehending criminals, prevention and detection of crime, and maintenance of public order, along with community interaction.

Police officers are generally sworn to an oath, and are granted the power to arrest and imprison suspects, among other procedures. Some police officers are also trained in special duties, such as counter-terrorism, surveillance, child protection, royalty or diplomatic protection, and investigating major crimes, such as fraud, rape, murder and drug trafficking.

SELECTS	
AGE	$8.00/M
CHILDS AGE	$10.00/M
CREDIT CARDS	$10.00/M
DATE OF BIRTH	$15.00/M
ETHNIC/ETHNICITY	$20.00/M
GENDER/SEX	$5.00/M
GEO/GEOGRAPHICAL	$5.00/M
HOME OWNER	$10.00/M
HOME VALUE	$10.00/M
HOUSEHOLD INCOME	$10.00/M
LENGTH OF RESIDENCE	$5.00/M
LIFESTYLE	$10.00/M
MAIL ORDER BUYERS	$10.00/M
MARITAL STATUS	$5.00/M
PRESENCE OF CHILD	$10.00/M

ADDRESSING

http://lists.nextmark.com/market?page=order/online/datacard&id=253325&trk=y&aid=1622 Page 1 of 2

- *A list of rape sufferers.* This is an unjustifiable outrage that sacrifices a rape victim's privacy for 7.9 cents per name.

MEDbase 200

About ▾ Our Lists

List Categories ▾

Contact

MEDbase200
Integrated Business Services Incorporated
736 N. Western Ave., #125
Lake Forest, IL 60045
1-800-451-5478
info@medbase200.com

i.e. Registered Nurses and... Search

Rape Sufferers List

Mailing List / Email List File owned by: MEDbase200	Medical List Database ID:677
Rape Sufferers List	98/100 on Nextmark.com
Base Price Per Thousand: $79.00	Total Universe: Inquire for a Current Total Universe Count

- A list of domestic violence shelters. Existing laws allow domestic violence shelters to keep their location secret so that abusers cannot find their victims. The commercial sale of lists of these shelters is unjustifiable.

FIRSTMARK Domestic Violence Programs & Shelters Mailing List 12/13/13 1:34 AM

1 Start 2 Results 3 Data Card 4 Request 5 Finished

Exact Data CONSUMERBASE
POSTAL, EMAIL AND TELEPHONE LISTS
Click Here To Fill Out A Form And Receive A Free Quote

FIRSTMARK Domestic Violence Programs & Shelters Mailing List

Programs and facilities which help battered women and men and their children who are affected by domestic violence.

Get Count | Get Pricing | Get More Information

SEGMENTS *COUNTS THROUGH 06/25/2013*

1,750 TOTAL UNIVERSE / BASE RATE $595.00/F

DESCRIPTION

Programs and facilities which help battered woman and men and their children who are affected by domestic violence. These programs provide services such as safe houses/shelters, counseling, legal and other advocacy, and support groups for both female and male victims of domestic violence and sexual assault. These programs are also involved in increasing community awareness and changing societal attitudes toward the issue of domestic violence. Contacts in these programs are good prospects for office and computer supplies, professional development, seminars, professional publications and journals, business and marketing services, consumer outreach, and more.

Each record includes the shelter name, full address, contact name where available, and phone.

Pricing

Multi-use with phone: $595 flat

Variables: $200/1,000 ($200 min)

ORDERING INSTRUCTIONS

- To order this list, contact your List Broker and ask for NextMark List ID #307573 or click here to place your request.
- $595.00 MINIMUM PAYMENT
- NET NAME IS ALLOWED
- EXCHANGE IS NOT AVAILABLE
- REUSE IS AVAILABLE

POPULARITY:	72
MARKET:	BUSINESS
CHANNELS:	
SOURCE:	COMPILED LISTS
PRIVACY:	UNKNOWN
DMA?:	NO
STATUS:	PREFERRED PROVIDER
GEO:	USA

SELECTS

COMPANY SIZE	NO CHARGE
FORMAT	
GEO SELECT	NO CHARGE
JOB FUNCTION SELECT	NO CHARGE
JOB FUNCTION/TITLE	NO CHARGE
JOB TITLE SELECT	NO CHARGE
OCCUPATION	NO CHARGE
REGIONAL	NO CHARGE
SCF	NO CHARGE
SIC CODE	NO CHARGE
STATE	NO CHARGE

ADDRESSING

KEY CODING	$0.00/
4-UP CHESHIRE LABELS	$5.00/M
4-UP PRESSURE-SENSITIVE LABELS	$10.00/M
EMAIL DELIVERY	$50.00/F

RELATED LISTS

- FIRSTMARK RED CROSS CHAPTERS
- PUBLIC HEALTH ADMINISTRATION DATABASE
- BEHAVIORAL HEALTHCARE MAGAZINE - VENDOME GROUP
- ALCOHOL & DRUG EDUCATION RESOURCES
- PRESCRIBERS OF HIV MEDICATIONS FROM PHYSICIAN TRENDS
- ASAE THE CENTER FOR ASSOCIATION LEADERSHIP
- NONPROFIT SECTOR LEADERSHIP LIST
- PUBLIC SERVICES, LOCAL & FEDERAL GOVERNMENT AGENCIES
- COUNSELING PROFESSIONALS

Exact Data CONSUMERBASE
CONSUMERBASE MAKES IT EASY TO FIND YOUR TARGET AUDIENCE
FILTER YOUR LISTS WITH UNIQUE SELECTS AND FIND YOUR TARGET MARKET
GET A FREE QUOTE

http://lists.nextmark.com/market?page=order/online/datacard&id=307573 Page 1 of 2

- *A list of genetic disease sufferers.* This list identifies people suffering from genetic diseases. This information will apply to these people—and their progeny—for their lifetime. Congress and the States have passed laws to protect the privacy of genetic information, but these laws do not stop data brokers from selling genetic information to anyone for any purpose.

Mailing List | Genetic Diseases Sufferers List 12/15/13 2:44 PM

MEDbase 200

About Our Lists

List Categories

Contact

MEDbase200
Integrated Business Services Incorporated
736 N. Western Ave., #125
Lake Forest, IL 60045
1-800-451-5478
info@medbase200.com

i.e. Registered Nurses and... Search

Genetic Diseases Sufferers List

Mailing List / Email List File owned by: MEDbase200	Medical List Database ID:469
Genetic Diseases Sufferers List	98/100 on Nextmark.com
Base Price Per Thousand: $79.00	Total Universe: Inquire for a Current Total Universe Count

http://www.medbase200.com/lists/GeneticDiseasesSufferers.html Page 1 of 4

- *A list of seniors who are currently suffering from dementia.* These unfortunate people are often targeted for highly predatory offers. A list of caregivers would not have the same potential for deleterious consequences.

MEDbase 200

About Our Lists

List Categories

Contact

MEDbase200
Integrated Business Services Incorporated
736 N. Western Ave., #125
Lake Forest, IL 60045
1-800-451-5478
info@medbase200.com

i.e. Registered Nurses and... Search

Dementia Sufferers List

Mailing List / Email List File owned by: MEDbase200	Medical List Database ID:414
Dementia Sufferers List	98/100 on Nextmark.com
Base Price Per Thousand: $79.00	Total Universe: Inquire for a Current Total Universe Count

- A list of HIV/AIDs sufferers.

MEDbase 200

About Our Lists

List Categories

Contact

MEDbase200
Integrated Business Services Incorporated
736 N. Western Ave., #125
Lake Forest, IL 60045
1-800-451-5478
info@medbase200.com

i.e. Registered Nurses and... Search

Aids And Hiv Infection Sufferers List

Mailing List / Email List File owned by: MEDbase200	Medical List Database ID:276
Aids And Hiv Infection Sufferers List	98/100 on Nextmark.com
Base Price Per Thousand: $79.00	Total Universe: Inquire for a Current

- *A list of people with addictive behavior, alcohol and drugs.* Alcohol and drug treatment information about patients is the subject of extra protections under existing law, but no law stops data brokers from profiting by selling the information.

Addictive Behaviors, Alcohol And Drugs Mailing List 12/15/13 2:30 PM

Exact Data 877-440-3282 LiveChat (online 24/7) Log In Search

BUSINESS LISTS CONSUMER LISTS EMAIL MARKETING DO-IT-YOURSELF CONTACT FREE QUOTE

CONSUMER MAILING LISTS

Home » Consumer Mailing Lists » Alcohol Mailing Lists » Addictive Behaviors, Alcohol And Drugs Mailing List

ADDICTIVE BEHAVIORS, ALCOHOL AND DRUGS MAILING LIST CONSUMER

Available Channels: Postal, Email, Phone

17,523	Postal Records (Universe)	$195.00/M	Get Count
1,598	Email Records	+ $145.00/M	Get Pricing
1,110	Phone Records	+ $130.00/M	Get More Information

LIST DESCRIPTION

Exact Data Addictive Behaviors, Alcohol And Drugs mailing list brings forth reliable, cost-effective consumer contactsfor all of your prospecting needs. The records in this this are frequently hygiened through NCOA processing to ensure maximum accuracy. Containing consumer demographic information, this specific mailing list of Addictive Behaviors, Alcohol And Drugs enables media buyers to build new long-term customer relationships.

AVAILABLE CONSUMER SELECTS

No Charge

Any Specific Geography	State
City	ZIP Code
County	Area Code
SCF Code	

$5.00/M

Charitable Donor	Child's Age
Age	Dwelling Size / Type
Gender / Sex	Income
Marital Status	Pet Owner

$15.00/M

Interest Categories	Occupation
Ethnicty	Length of Residence

List ID: C00000201
Source: Internet/Online
Privacy: Opt-in
Date Added: 09/19/2013
Last Update: 09/19/2013

COSTS INCLUDE SETUP/TESTING, DEPLOYMENT AND TRACKING REPORTS AT 3 AND 8 DAYS.

ORDERING INSTRUCTIONS

To receive more information on the **Addictive Behaviors, Alcohol And Drugs Mailing List**, fill out the form on the right to place your request. A specialist will reach out to you to answer and questions about the **Addictive Behaviors, Alcohol And**

CUSTOMERS WHO VIEWED THIS LIST ALSO VIEWED.

CUSTOMER SUPPORT

ONLINE LIVE CHAT Questions answered fast!

Call 877.440.3282 or Request a Quote

Having trouble? See Video

GET MORE INFORMATION

First Name:
Last Name:
Company Name:
E-mail Address:
Phone Number: +1(___)___-____
Alternate or Mobile Number: +1(___)___-____
Your Needs:

Get Info »

CLIENT TESTIMONIALS

http://www.consumerbase.com/mailing-lists/addictive-behaviors-alcohol-and-drugs-mailing-list.html Page 1 of 2

- *A massive list of people identified by disease and prescription taken.* Diseases include everything from A to Z, from cancer to mental illness, to bedwetting to gambling and much more.

AILMENTS MAILING LISTS / EMAIL LISTS

AILMENT / MEDICATIONS DATA SOURCE: Surveys and/or Data Contributions

IMPORTANT: *When using the below ailments to create your new patient mailing list – be sure to use demographics to qualify your patients. Two patients with same medical ailment are not the same since they may have different demographics (age, income, education level, etc) … and these demographics can influence the willingness to use your product/service.*

CLICK HERE ***to review demographics for qualifying your ailment list.***

CLICK HERE *and receive a free count for any ailment mailing list or email list … with a pricing quote.*

CATEOGRY	TYPE	DETAIL
AILMENT	ADDICTION	Alcoholism
AILMENT	ADDICTION	Drugs
AILMENT	ADDICTION	Food
AILMENT	ADDICTION	Gambling
AILMENT	ADDICTION	Sexual
AILMENT	ADDICTION	Specificity Not Available
AILMENT	ADDICTION	Tobacco
AILMENT	-	Acid reflux
AILMENT	-	Acne
AILMENT	-	Actinic Keratosis
AILMENT	-	Aging
AILMENT	-	Alzheimer's
AILMENT	-	Anemia
AILMENT	-	Arteriosclerosis
AILMENT	-	Arthritis
AILMENT	-	Arthritis-Rheumatoid
AILMENT	-	Asthma
AILMENT	-	Asthma-child
AILMENT	-	Athletes foot
AILMENT	-	Bad breath
AILMENT	-	Back Pain
AILMENT	-	Bladder control
AILMENT	-	Bedwetting
AILMENT	-	Blindness/visual impairment
AILMENT	-	Blood clots
AILMENT	-	Blood disorder
AILMENT	-	Body odor
AILMENT	-	Bowel problems
AILMENT	-	Calcium deficiency

FREE MARKET COUNT
MASTER CONSUMER DATABASE
CONSUMER LIST QUALIFIERS
NEW HOMEOWNERS
CONSUMER EMAIL ADDRESSES
CONSUMERS BY LIFESTYLE
TOP EXECUTIVES AT HOME ADDRESS
REAL ESTATE LEADS
INTERNATIONAL CONSUMERLIST
CONSUMER CREDIT DATA
NEIGHBORHOOD PROFILE
SPECIALTY NICHE / LISTS

These lists speak for themselves. Can we agree that some lists should not be circulated? Can we agree that the people named and pinpointed and targeted by these lists should be protected from the harm that can come from simply the inclusion on the list? I hope this is the case.

I also would put derogatory credit lists on the firing line for if not removal, then special treatment. These lists abound,

- *Hispanic payday loan responders*

Hispanic Pay Day Loan Responders Mailing List 12/15/13 2:23 PM

1 Start 2 Results 3 Data Card 4 Request 5 Finished

Exact Data CONSUMERBASE POSTAL, EMAIL AND TELEPHONE LISTS Click Here To Fill Out A Form And Receive A Free Quote

Hispanic Pay Day Loan Responders Mailing List

These Hispanic Cash Advance/Payday loan seekers need cash quickly to pay monthly bills such as car payments, utility bills, credit card payments, etc., before they receive penalties for late payment.

Get Count | Get Pricing | Get More Information

SEGMENTS	COUNTS THROUGH 12/10/2013
750,900 TOTAL UNIVERSE / BASE RATE	$95.00/M
PHONE NUMBERS	$200.00/M

DESCRIPTION

These Hispanic consumers reached out to secure a loan quickly and easily in order to :

• Avoid bounced check fees.

• Pay monthly bills before they become penalized.

These Hispanic Cash Advance/Payday loan seekers need cash quickly to pay monthly bills such as car payments, utility bills, credit card payments, etc., before they receive penalties for late payment.

In order to qualify, a consumer needs to have a checking account, be currently employed, have a working telephone number, be at least 18 years old, and a U.S. resident. A poor credit rating will not necessarily inhibit consumers from qualifying for a loan.

These proven direct response applicants are great prospects for secured and unsecured credit offers, pay day loan offers, instant financing programs, debt consolidation, seminars, money making opportunities, sweepstakes, at home educational programs, distance learning, and career oriented offers.

MARKET:	CONSUMER
CHANNELS:	
SOURCE:	COMPILED LISTS, DIRECT RESPONSE
PRIVACY:	UNKNOWN
DMA?:	YES - MEMBER
STATUS:	PREFERRED PROVIDER
GEO:	USA
GENDER:	45% FEMALE 45% MALE
SELECTS	
AGE	$10.00/M
GEO/GEOGRAPHICAL	$7.00/M
SCF	$7.00/M
ADDRESSING	
KEY CODING	$3.00/M
E-MAIL/FTP	$50.00/F

RELATED LISTS

- DOWN ON THEIR LUCK
- CREDIT CARD TRANSACTION SOURCE
- DEBT CRUNCH FROM NVP
- HOT TREND DRTV PRODUCT BUYERS
- HISPANIC CONSUMERS WHO ARE UNDERBANKED
- SEASONS GREETINGS CHRISTMAS SHOPPERS
- CREDIT REPAIR SOLUTIONS
- ELECTRONICS - NEW GADGET AND ELECTRONICS BUYERS
- MANAGE MY DEBT
- AMERICAN CONSUMERS SHOPPING FOR COOKING PRODUCTS

Exact Data CONSUMERBASE
CONSUMERBASE MAKES IT EASY TO FIND YOUR TARGET AUDIENCE
FILTER YOUR LISTS WITH UNIQUE SELECTS AND FIND YOUR TARGET MARKET
GET A FREE QUOTE

http://lists.nextmark.com/market?page=order/online/datacard&id=370282 Page 1 of 2

- *Derogatory credit consumers.* These millions of consumers fall into a low credit category.

Derogatory Credit Consumers Mailing List 12/13/13 1:39 AM

1 Start 2 Results 3 Data Card 4 Request 5 Finished

Exact Data CONSUMERBASE
POSTAL, EMAIL AND TELEPHONE LISTS
Click Here To Fill Out A Form And Receive A Free Quote

Derogatory Credit Consumers Mailing List

Derogatory Credit Consumers are in the lower credit category. These consumers have all either made life decisions or been victims of circumstance that have caused their credit to be sub-par.

Get Count | Get Pricing | Get More Information

SEGMENTS

3,907,811 TOTAL UNIVERSE / BASE RATE
276,098 AVAILABLE PHONE NUMBERS
70,000 MONTHLY HOTLINE

DESCRIPTION

Derogatory Credit Consumers are in the lower credit category. These consumers have all either made life decisions or been victims of circumstan
to be sub-par.

These individuals are in need of help and also in need of some form of credit to help them rebuild their lives.

This file is ideal for a wide variety of different marketing campaigns and can be more specifically targeted using the available selections.

ORDERING INSTRUCTIONS

- To order this list, contact your List Broker and ask for NextMark List ID #370359 or click here to place your request.
- 5,000 NAME MINIMUM ORDER $600.00 MINIMUM PAYMENT
- 85% NET NAME AVAILABLE ON ORDERS OF 75,000 OR MORE ($7.00/M RUN CHARGE)
- EXCHANGE IS NOT AVAILABLE
- REUSE IS NOT AVAILABLE
- CANCELLATION FEE AT $20.00/M

Exact Data CONSUMERBASE
CONSUMERBASE MAKES IT EASY TO FIND YOUR TARGET AUDIENCE
FILTER YOUR LISTS WITH UNIQUE SELECTS AND FIND YOUR TARGET MARKET
GET A FREE QUOTE

Get Count | Get Pricing | Get More Information

http://lists.nextmark.com/market?page=order/online/datacard&id=370359 Page 1 of 1

In the Solutions section of this testimony I discussion ways that this negative list situation can be improved. It is important to note that the lists are just the obvious outgrowth of other data broker activity, such as scoring.

Geography is Destiny: Trailer Parks and Zip+4

Where a person lives counts. A lot. Unfortunately, or fortunately, depending on where you live, geography is marketing destiny. And marketing destiny can now affect what opportunities come your way by virtue of savings, discounts, or receiving financial offers.

For example, people who either live in a trailer park or within a certain radius, usually a couple of miles of a trailer park, are often candidates for list suppression. They will not receive opportunities that their neighbors do solely because of their type of shelter. Or conversely, people who are in a trailer park may be specifically targeted for ads for low-income products or services. Is this trailer park redlining?

DMDatabases offers, for example, a suppression list that includes trailer parks as an option, among others:

OTHER SUPPRESSION OPTIONS
NURSING HOMES
TRAILER PARKS
MILITARY BASES
COLLEGE DORMORTORIES
BANKRUPTCIES, TAX LIENS, JUDGEMENTS [7]

It can be reasonable and fair or a local business to use Zip+4 to target a geographical area nearby. This makes a lot of sense. But I am not persuaded that it is fair to use detailed census tract data and Zip+4 to unfairly exclude people who may be living in or near the edge of poverty.

Inferences and Categorization

Data brokers categorize consumers into tightly defined boxes sourced by retail transactions, number of credit cards, ethnicity, marital status, gender, education, and many other factors, including neighborhood. There are a number of products sold by data brokers that accomplish this. One product in this category is Personix, sold by Acxiom. There are 70 Personix Clusters, each one identifying a type of consumer. Another product is Prizm, sold by Claritas.[8] "P$ycle" by Dataman Group [9] is another product. However, I do not know of a single company that allows consumers to view the clusters they are put in. I do not know of a single data broker that will allow consumers to permanently opt out of the cluster definitions attached to them.

At Acxiom's It's About The Data Portal, entering various zipcodes, salaries, and characteristics such as presence of child, marriage, and so forth allows one to explore the clusters.

Here are two sample Acxiom clusters:

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[7] DMDatabases, Suppression, *http://dmdatabases.com/data-processing/suppression,* last accessed Dec. 17, 2013. Screen shot available.

[8] *http://www.claritas.com/MyBestSegments/Default.jsp.*

[9] *http://www.datamangroup.net/PycleFinancialMarkets.php.*

My Cluster

Working & Studying: Cluster #70

This cluster represents the lowest for net worth and is secon to last in terms of income. It is made up of single, high-schoo educated renters (with a mean age of 39) living in a mix of single-family houses and apartments. The group, ranked lowest for working women, is employed mostly in the lower echelon white-collar jobs and is three times as likely to include students. Leisure activities consist of a mix of active and less-active, including playing Frisbee, softball, and volleyball; following the NBA, collecting sports trading cards; and going to movies and listening to concerts on the radio. Shopping favors cost-saving discounters, such as Aldi and Wal-Mart, and quick pick-ups at convenience stores such as 7-Eleven.

Acxiom respects your privacy. The data entered on the previous screen will not be retained or used for any other purpose than producing the demo results. To review our full Privacy statement, please click here.

Your self-reported data assigned you to the above Cluster. The InfoBase database may carry a different PersonicX assignment for your household based on the data we have available on the InfoBase Consumer Database.

My Cluster

Affluent Households: Cluster #4

This cluster represents established, wealthy families, often with teens, living in the lap of suburban luxury. With top rankings for education, income and net worth, Cluster 4 contains married executives and professionals who earn absolute top- dollar incomes, focus on their investments and indulge in an expensive array of activities. Reflecting their devotion to kids, they play board games and go to the museum, the beach and the zoo. They play tennis and golf, and they attend professional sporting events, usually in a luxury mini-van or SUV. They are frequent shoppers, buying clothes for themselves and their kids and furnishing their houses.

Acxiom respects your privacy. The data entered on the previous screen will not be retained or used for any other purpose than producing the demo results. To review our full Privacy statement, please click here.

Your self-reported data assigned you to the above Cluster. The InfoBase database may carry a different PersonicX assignment for your household based on the data we have available on the InfoBase Consumer Database.

These clusters come attached to average ages and proximal information to guide marketers. The clusters are purchased by other data brokers and are used to overlay other data they already have. In many ways, the clusters shape the ads we see online, the deals we get in the mail, and in some cases, unwanted targeting both at the high and low end of the clusters.

Take for example the following data card, which is described as Low End Credit Prospects. The source for the data is multi-source, and includes Acxiom data. The data card specifically identifies low-end credit prospects by their inclusion in the Acxiom Personixs clusters. In this case, these consumers were not described by

being assigned a modeled credit score, rather, the cluster does the work of characterization. The category profiles are then combined with recent transactions, which in turn landed these consumers on this data broker list.[10]

Datacard Hub

Refine search | New Search Print | Email

ACTIVITYTRACKER LOW-END CREDIT PROSPECTS

ACTIVITYTRACKER LOW-END CREDIT PROSPECTS combines the best of ACTIVITYTRACKER'S recent transactions with focused PERSONICX clusters that identify this desirable audience. Segments include: New Market Singles Cash and Carry Urbanites Rural Security Getting Started ACTIVITYTRACKER identifies consumers that have recently taken an action in the last 30 days, indicating increased direct mail responsiveness. These activities include, but are not limited to: Credit card issuance, credit card use, new moves, mortgage refinances, mail order purchases, and more (not selectable in the month).

SEGMENTS		PRICE
1,385,660	TOTAL UNIVERSE / BASE RATE	$85.00/M
1,385,660	Total 1 Month	$85.00/M
	Email Addresses	$130.00/M
	Phone Number	+ $25.00/M

DESCRIPTION

ACTIVITYTRACKER LOW-END CREDIT PROSPECTS combines the best of ACTIVITYTRACKER'S recent transactions with focused PERSONICX clusters that identify this desirable audience. Segments include: ;

- New Market Singles: three-quarters of this group is under age 45 and is split between homeowners and renters. Many have upper-middle incomes and are starting to accumulate net worth as they are investing and paying off student loans. Many use online banking services;
- Cash and Carry Urbanites: a mix of single and married couples. This population generally has low-to-middle incomes and low net worth. They tend to save for a specific purpose and typically do not know their bank balance at any one time;
- Rural Security: typically empty nesters, some single. These individuals tend to have lower incomes and limited net worth. More rurally-based and typically risk averse, this population tends to steer clear of online banking;
- Getting Started: mostly under age 35, this group is in a transitional life phase: starting good jobs/buying homes with others struggling to establish themselves. Many are likely to take risks in investing, although many many not have much to invest.

In addition to credit, these individuals should be excellent prospects for general merchandise, sweepstakes, self-improvement and health/wellness offers.

ID NUMBER	
NextMark	310015
Manager	148012

UNIVERSE

1,385,660

LIST TYPE

Consumer email mail phone

SOURCE

MULTI-SOURCED, POWERED BY ACXIOM

LIST MAINTENANCE	
Counts through	10/31/2013
Last update	11/14/2013
Next update	12/06/2013

SELECTS	
Age	$7.00/M
Childs Age Range	$12.00/M
Date of Birth	$12.00/M
Dwelling Size/Type	$3.50/M
Education	$12.00/M
Ethnic/Ethnicity	$25.00/M
Gender/Sex	$7.00/M
Geo/Geographical	$7.00/M
Home Owner	$12.00/M
Income Select	$7.00/M

What is most objectionable is that many products like Acxiom's exist without consumers having any rights with respect to the data about themselves that is being compiled, bought, and sold. Errors may significantly alter the cluster a person is in, therefore altering the quality and type of offers a consumer receives. Life looks very different for cluster 1 and cluster 70.

Consumers need more rights over the use of their personal information by data brokers.

Modern Eligibility

Eligibility has expanded and, with it, the uses of marketing data for eligibility purposes and for suppression purposes. In the traditional credit world, the FCRA still regulates the use of credit in strictly-defined eligibility situations, such as employment and insurance. The Equal Credit Opportunity Act also places limits on data use. So does the Health Insurance Portability and Accountability Act's (HIPAA) health privacy rule.

Modern eligibility has evaded, avoided, and overrun these laws, creating an unfair situation for consumers. When health data is held by a covered entity, HIPAA protections and rights apply. However, the exact same data, used for purposes outside of strictly-defined FCRA, ECOA or HIPAA limits and when not held by a health care provider, escape the bounds of regulation. The definition of eligibility needs to be expanded to encompass how data is now used. Consumers need more rights with respect to these activities:

- Authentication: using public and behavioral data to authenticate consumers to use a service.
- Anti-fraud: using transactional and behavioral data to determine whether fraud is occurring.

[10] Adrea Rubin, Activity Tracker Low End Credit Prospects Data Card, Card ID 310015, *http://datacardhub.adrearubin.com/market?page=research/datacard&id=310015* last accessed Dec. 15, 2013.

- Identity verification: Running quasi-background checks to verify aspects of a consumer's identity.
- Lifestyle: Background checks for dating websites, for schools, for clubs.
- Offers or suppression based on proxy credit scores: data broker-generated financial offers based on non-credit information, but just as accurate as a traditional credit score. Or the inverse: people are excluded from a list based on this information, but without associated FCRA or ECOA rights.
- Offers or suppressions based on medical data: Consumer health information that has escaped from the boundaries of HIPAA—a significant amount—needs new rules that data brokers must follow. Health-related analytics that have an impact on consumer's health care prices, health care, credit, or employment need controls To protect consumers. Certain lists should not exist, and certain data should not be used in lists, in analytics, or anywhere. Even lists that data brokers deem non-sensitive such as lifestyle lists identifying smokers or other patterns need controls.

Consumers who fail authentication tests, ID verification, or get identified as a fraud risk will show up with different scores, will wind up on different consumer data broker lists, and may have difficulty conducting their daily business. Consumers who are painted as fraudsters may find themselves locked out of their own bank, credit cards, and even phones. Consumers who are identified as having very low or derogatory credit by non-traditional analysis and scoring may find themselves deluged with predatory offers. Consumers who are marked by a data broker as having cancer, previous trauma, a chronic disease, including genetic diseases, and even lifestyle markers, can have that data sold to the wrong party and find themselves on the short end of the health care stick and deeply stigmatized in many areas.

Circumventing the FCRA

While my testimony is not focused on the FCRA, it is important to state for the public record that many data brokers are engaging in behaviors that circumvent of the FCRA. I leave it to the Committee to decide if these activities are already illegal or if they should be brought within the FCRA and regulated in the same way as traditional credit records.

Proxy credit scores relate to circumventing the FCRA.[11] There is another issue related to circumventing the FCRA. Many of the websites selling consumer background check data and other data state in a disclaimer that they are not a consumer reporting agency and therefore are not regulated under the FCRA. They adjure their customers to not violate the terms. The restrictions are not meaningful, and we suspect the violations of terms are routine.

There need to be meaningful checks and balances to keep improper uses from occurring. Given the sheer numbers of affiliate websites selling consumer data, this will require some affiliate oversight and reform. We found some affiliates without a privacy policy, much less an opt out.

From *http://www.peoplesearchnow.com/default.aspx:*

PeopleSearchNow.com helps you find people in the United States. We are not a consumer reporting agency, as defined by the Fair Credit Reporting Act (FCRA) .
This site cannot be used for employment, credit or tenant screening, or any related purpose. To learn more, please visit our Terms of Service and Privacy Policy .

Just because there is a paragraph stating that a website is not operating as a consumer reporting agency doesn't make it so. We strongly suspect that the disclaimed is offered with a wink, safe in the knowledge that no regulatory agency will be able to look at hundreds of small sites for violations of the law.

Data Broker Opt Out: The Grim Choices Consumers Face

Consumers face bad options and scant choice when it comes to data broker opt out. Leaving aside rights conferred under the FCRA for strict FCRA-defined eligibility purposes for the moment, consumers are in fact left largely to fend for themselves with few tools and no clear rights. Some opt outs exist, but the landscape is difficult—so much so that it is improbable that consumers can wend their way through the opt out process successfully

How many allow opt out?

The World Privacy Forum compiled a list of 352 consumer-focused data broker sites and lists. Our list is available at *http://www.worldprivacyforum.org/2013/12/*

[11] Selling Consumers Not Lists: The New World of Digital Decision-Making and the Role of the Fair Credit Reporting Act, Ed Mierzwinski and Jeff Chester. November, 2013.

data-brokers-opt-out/. A study of the data broker industry conducted by Dr. John Deighton for the Direct Marketing Association in 2013 found that the universe of data brokers was approximately 3,500.[12] Our data broker list, then, comprises at ten-percent rough sample of this universe. Included on the list are various people finder websites, data brokers that this Committee or the FTC has sent letters of inquiry to, consumer list brokers, and others. Of 352, 128 offered a data opt out. Some of those were full opt outs, some partial or unclear, some of them cost as much as $1,799.00, and one opt out promised that the site reserved the right to "publish the request" if someone decided to opt out.

Opting out of Data Broker Scores and Lists

To remove a consumer's name and information from all data broker lists appears to be an almost impossible task right now. If a mailing list is held by a DMA member, the DMA opt out can be effective. However, not every data broker is a DMA member, which poses an immediate problem. For scores, there is no known score opt out. After a consumer is assigned a score by a data broker, a consumer will find it nearly impossible to find that score or to opt-out of its use to describe or characterize the consumer.

In our research, we have found one exemplar company that is allowing an opt out of their databases and lists, KBM Group. A screen shot of the relevant portion of the policy is below; note that the policy allows for internal database opt out as well as linking to the DMA opt out. The policy is located at *http://www.kbmg.com/privacy-policy/*. This is a best practice, and is seldom seen.

What can an individual do to be removed from KBM Group's marketing lists?

To be removed from our house lists, simply e-mail or write to us. Just state your request to be removed from our marketing lists and supply your name and address. Mail requests to:

Privacy Preference Department
KBM Group
2050 N. Greenville Ave.
Richardson, TX 75082-4322
Or E-mail your request to: consumerassistance@kbmg.com
To be removed from the I-Behavior Cooperative Database, CLICK HERE.

We can only remove information from our internal lists. To remove a name from as many lists as possible, send your exact name and address with signature and $1.00 processing fee to the Direct Marketing Association at:

DMAchoice
Direct Marketing Association
P.O. Box 643
Carmel, NY 10512

Suppression vs opt out

It is important to note that when consumers opt out of data broker websites or lists, most often what is happening is that their information is being suppressed. The information remains, but it is removed from circulation. Delete is not a word that is used very often in data broker opt out.

[12] Panel comments by Dr. John Deighton, National Press Club, The Value of Data: Consequences for Insight, Innovation and Efficiency in the U.S. Economy, A Symposium Hosted by DMA's Data-Driven Marketing Institute, October 29, 2013. Dr. Deighton was commenting on his sampling for the study, *The Value of Data: Consequences for Insight, Innovation and Efficiency in the U.S. Economy,* John Deighton and Peter Johnson, DDMI, 2013.

For consumers who want to get off of data brokers marketing lists, the primary mechanism for removal is to use the DMA Choice opt-out mechanism. This will put the consumer on a suppression list, which means the data brokers will still have the consumer information, but no further sales or marketing will occur within a given time frame via the lists that allow opt out or suppression.

When data brokers allow for a DMA Choice opt out to influence all of their list and brokering activity, this is a good thing. But this is not nearly as common as it needs to be. Only some lists adhere to the DMA Choice program. One significant problem is that not all data brokers are DMA members, and thus escape the self-regulatory program. For those that are DMA members, we do not know how effective the DMA Choice program is.

Policy Issues in Current Opt Out/Suppression Practices

Of data brokers that allow opt out, additional policy issues include the following:

- *Incomplete:* Most opt outs are incomplete, and often require consumers to have a safety reason for the opt out.
- *Suppression not deletion.* Many opt outs are suppression-based. This may be difficult to change.
- *No Third Parties:* Consumers are usually required to ask for the opt out directly on their own. Requests through third parties are not allowed. This makes opt out an impossible proposition for consumers, who have to go to each individual site to effectuate the opt outs that are available to them. It is clear that the policy deliberately seeks to make it as hard as possible for consumers to exercise the ability to opt-out.
- *No Guarantee:* An opt out is not guaranteed, no matter why the consumer is conducting the opt out. Thus, the opt out may not work or may only be effective for a short period of time.
- *Fees:* Some data brokers charge fees ranging from annoying (less than $30) to exorbitant (in excess of $1,000).
- *Hunting for the opt out:* Finding the opt outs on many consumer data broker sites is an exercise in extreme patience and persistence. Opt outs are seldom indicated by a prominent opt out button labeled as such. While some data brokers do play nicely with consumers and provide this, fair play is the exception, not the rule. Typically, opt outs are buried deep within a privacy policy, terms of use, or FAQ.
- *Opt out requirements non-standardized:* Opt out requirements non-standardized: A bewildering array of choices face the person who wants to opt out of data broker lists. Some opt outs are fair. DMA Choice is a reasonable opt out. But many are not reasonable or fair. Some require a privacy-concerned consumer to send a scanned copy of a driver's license or to jump through other hoops. We would be reluctant to recommend that a consumer share a copy of a driver's license. Many consumers do not have a driver's license or other government-issued form of identification, and these consumers may find it impossible to opt out.
- *Marketing use of opt -out information:* No regulation stops data brokers from selling or otherwise using the information given in an opt out application.
- *Negotiating the opt out:* There is no controlling legal standard for data broker opt out. As a result, consumers have to dig through complex privacy policies and language and figure out each opt out.
- *Partial Opt Outs Only:* Some data brokers allow for partial opt outs, meaning that it is available only if there is a safety issue, or if an individual is a member of law enforcement. However, there are concerns even with this. There are no rules that say that information about the request to opt out will not be sold or shared.
- *No opt out:* Many data brokers do not allow any opt out. Consumers are left with no recourse.

Examples of challenging opt outs

Here is an example of a privacy policy with an opt out notice, this is from a consumer-facing data broker site called SortedbyName.com. Note the last sentence, where consumers who opt out may be treated punitively for doing so (*emphasis in yellow is mine*).:

- This webmaster reviews stats, including IP addresses of site visitors from time to time.

- Third party vendors, including Google, use cookies and web beacons to serve ads based on a user's prior visits to the website.
- Google's use of the DART cookie enables it and its partners to serve ads to users based on their visit to the site and/or other sites on the Internet.
- Users may opt out of the use of the DART cookie by visiting the *advertising opt-out page.* (You can opt out of a third-party vendor's use of cookies by visiting the Network Advertising Initiative *opt-out page.*)
- *With the Firefox browser,* use Ctrl+Shift+P for private browsing. Use Tools—Options—Privacy to set preferences. Use Shift+Ctrl+Delete to clear your history so remote servers cannot access it.
- By sending a request for removal of names from the site, you give us permission to publish the request, including your e-mail address and all headers.[13]

Here is an example of a complicated opt out, this at from *waatp.com:*

> *How do I remove or update my data on waatp.com?* waatp.com investigates for live data reached by public on a regular basis. Because this information is not contented on our hosting, we cannot give any guarantees these data will be removed until the change has been occurred at the source of the data. To update or remove this information, we advise: Our site will provide the certain source for the information the applier would have changed or removed. Approval that applier is the individual specified in the Public Profile is an obligatory condition, therefore we may ask that appliers faxes or e-mails it:
>
> 1—a written application asking for the database source or a change application;
>
> 2—a screenshot of a page, with marked information that you ask to change or to search in the source;
>
> 3—a legal proof of ID like State/Federal ID card that points your name, full address, date of birth (you can remove your personal photo an/or ID#);
> 4—any pseudonyms;
>
> 5—ex-addresses, including str.name, town, zip.
>
> You should fax this information to 800 861 9713 (please attach an e-mail so that we are able to contact you regarding any questions) or e-mail to Profile-Remove/at/waatp.com.com. Changes might take up to 6 weeks to come into effect and are only constant if the info has been previously edited or removed at the original source. Without a constant change at the original source, the process of deletion of any info stored in a Public Profile is NOT guaranteed.[14]

An example of the No third Party policy can be found at People Smart, *http://www.peoplesmart.com:*

> PeopleSearchNow.com helps you find people in the United States. We are not a consumer reporting agency, as defined by the Fair Credit Reporting Act (FCRA) .
>
> This site cannot be used for employment, credit or tenant screening, or any related purpose. To learn more, please visit our Terms of Service and Privacy Policy .

The Scoring of Americans

Americans face a future that is increasingly being shaped in significant ways by their consumer scores. A consumer score provides a way of evaluating an individual or a household. The best-known consumer scoring activity is credit scoring. Credit scores date back to the 1950s, and replaced human judgment about credit granting by relying on standardized criteria. While most people are familiar with credit scoring, consumer scoring encompasses a broader category of activities that uses scores to assess consumers for one or more purposes.

The World Privacy Forum offers *consumer scoring* as a generic term for these scoring methods. A consumer score derives from an algorithm that typically employs objective criteria. The score relies on demographic, health, consumption, transactional data, marketing, credit, or other personal characteristics. Companies and governments use the resulting score to make a decision about an individual or household.

By itself, consumer scoring is not necessarily good or bad. Scoring orders a population along a mathematically defined scale. However, scoring has the prospect of being used to affect individuals in significant ways that may not be fair. If a score becomes the way that consumers are treated, then the results may not be acceptable to the American public. The quality and relevance of the data used, the trans-

[13] *http://sortedbyname.com/privacy.html,* last accessed Dec. 17, 2013. Screen shot available.
[14] *http://waatp.com/faq.html.* Last accessed Dec 17, 2013. Screen shot available.

parency of the methodology, and the reasonableness of the application are the major factors that determine the fairness of any scoring activity. These issues are likely to be the central focus on the policy debate about consumer scoring.

Consumer scoring is already more widespread than most people realize. A significant segment of the data broker industry already focuses on scoring and predictive analytics, and as such, is intricately interwoven into the scoring business.[15] Known consumer scoring activities include assessments and predictions relating to insurance, bankruptcy, identity, fraud, consumption, health, propensity to purchase, "consumer value estimation," and more. A dozen categories of consumer scoring have been identified so far, each containing numerous scores. There may be hundreds or thousands of consumer scores already in use. The Federal Government uses scoring for some purposes, an activity beyond the scope of this testimony but something that may be worthy of more attention by the Congress. It might be useful, for example, to ask the Government Accountability Office to identify all of the consumer scoring used by Federal agencies.

The use of consumer scoring is expanding rapidly because scores provide an easy analytics shorthand for measuring consumer behavior, risk, and potential for future success or spending. Companies and government will use scores to make more decisions about a consumer's access to markets, price for goods and services, ability to travel, and other social and economic opportunities. Schools will use scores beyond academic measurement scores to determine the viability of candidates.

Policy issues around consumer scoring

Secrecy

Most consumer scores today are secret—consumers cannot see most scores even if they know about them. Beyond the numeric value of the scores themselves, a complete lack of transparency surrounds consumer scores. Citing proprietary claims, the factors that make up consumer scores are secret. The procedures and algorithms are secret. Often, even the full numeric range and context are secret.

Credit scores were unknown to most consumers through the 50s, 60s, 70s, and 80s. Trickles of a score that was not disclosed to consumers but that could be used to deny a person credit began to leak out slowly to some policymakers, particularly around the time ECOA passed. In May 1990, the Federal Trade Commission wrote commentary indicating that risk scores (credit scores) did not have to be made available to consumers. But when scoring began to be used for mortgage lending in the mid 90s,[16] many consumers finally began hearing about a "credit score," most of them for the first time, and mostly when they were being turned down for a loan.[17] A slow roar over the secrecy and opacity of the credit score began to build.

By the late 90s, the secrecy of credit scores and the fact that people could not see the underlying methodology or factors that went into the score or the range of the score to determine how the number should be interpreted was a full-blown policy issue. Beginning in 2000, a rapid-fire series of events—particularly the passage of legislation in California that required disclosure of credit scores—eventually dismantled credit score secrecy and non-disclosure. Now, credit scores must be disclosed to consumers, and the context, range, and key factors are now known.[18]

Credit scores are no longer secret, and this was and still is the right policy decision. Why are other scores secret, when they are being used for important decisions about consumers? Why are other score factors and numeric ranges secret, when the risk of marketing data comprising the score of a factor used in modern eligibility practices is very high?

There should be no secret scores, and no hidden factors.

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[15] The Direct Marketing Association's publicly searchable Vendor Database contained 377 companies stating an expertise specifically in scoring as of Dec. 15, 2013. Some examples of companies listed include Datalogix, Analytics IQ, FICO, iKnowtion, and others.

[16] In 1995 Freddie Mac and Fannie Mae endorsed the use of credit scores as part of the mortgage underwriting process. This had a substantial impact on the use of credit scores in the mortgage loan industry. See for example Kenneth Harney, *The Nation's Housing Lenders might rely more on credit scores,* The Patriot Ledger, July 21 1995.

[17] See for example, comments of Peter L. McCorkell, Senior Counsel to Wells Fargo, to the Federal Trade Commission, August 16, 2004 in response to FACT Act Scores Study.

[18] As of December 2004, the Fair Credit Reporting Act as modified by the Fair and Accurate Credit Transactions Act, or FACTA, ended score secrecy formally, and required consumer reporting agencies to provide consumers with more extensive credit score information, upon request. Also made available to the public was the context of the score (its numeric range), the date the score was created, some of the key factors that adversely affected the score, and some other items.

Unfairness

Of significant concern regarding scoring are the factors that go into the creation of a score. A single score is often created from the admixture of more than 600 to 1,000 individual factors. These factors can include race, religion, age, gender, household income, zip code, presence of medical conditions, zip code + 4, transactional data from retailers, and hundreds more. Therefore, one individual score can contain hidden factors that range from non-sensitive to quite sensitive. A score that is designed to assess or assign consumer value to a business could also include factors that would be entirely unacceptable or that, in the context of either the Equal Credit Opportunity Act (ECOA) or the Fair Credit Reporting Act, would be flatly illegal.

In a description of its sets of scores that can be purchased, one company described how it creates its scores:

> Aspects Life Choices system
>
> Our Database at the Core
>
> Our proprietary set of data that allows us to produce powerful scored solutions. It is created from over 100 sources, updated quarterly, and contains 1,500 proprietary demographic, psychographic, attitudinal, econometric and summarized credit attributes.
>
> Clear Benefits to Users

- Can be used to enhance any list • Applied at the Zip+4 level
- Data can be custom modeled [19]

This particular company, like most companies selling consumer scores, does not publish its 100 sources nor its 1,500 attributes that it is using to develop the score for consumers' perusal, nor does it summarize even the categories of information used for consumers. It is unlikely that consumers can purchase or see these scores for themselves,[20] and like other consumer scores, this score is opaque. If ECOA factors are present, no one but the company employees would know.

Notably, the ECOA requires that credit scoring systems may not use race, sex, marital status, religion, or national origin as factors comprising the score. The law provides the opportunity for creditors to use age, however, also requires that seniors are treated equally.[21] Marital status is commonly used as a consumer score factor, as are other factors either directly or inferentially connected to factors that would be protected under ECOA but are not in broader consumer scores, even if those scores are being used for other eligibility decisions.

Lack of Rights in Consumer Scoring

After a consumer has been scored, the factors (behaviors, characteristics, etc.) that went into the score do not typically disappear. After the score have been recorded into a data broker's host database, there is not a way for consumers to remove themselves from this activity. A discussion of how this impacts proxy credit scores is below.

Exemplar: Modeled Credit Scores

The privilege of marketing information based on credit report data comes with the requirement that consumers can opt out of that marketing. Marketing targeted to credit reports is strictly limited to credit and insurance.[22] *But analytics are at such a sophisticated level now that accurate "modeled credit scores" are being created and used as a proxy for traditional credit scores.* These modeled scores are made of consumer information drawn from beyond the traditional credit bureau score to create

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[19] AnalyticsIQ, *http://analytics-iq.com/download/Aspects.pdf,* last accessed Dec. 16, 2013.

[20] One exception to this is ID Analytics' Identity Score, which consumers are able to see.

[21] For more information, see *http://www.consumer.ftc.gov/articles/0152-how-credit-scores-affect-price-credit-and-insurance.*

[22] A significant lawsuit on this issue is FTC v. Transunion which is definitive. From the press release: "The Federal Trade Commission has ordered the Trans Union Corporation to stop selling consumer reports in the form of target marketing lists to marketers who lack an authorized purpose for receiving them under the Fair Credit Reporting Act ("FCRA"). In a unanimous opinion authored by Commissioner Mozelle W. Thompson, the FTC determined that "Trans Union's target marketing lists are . . . consumer reports under the FCRA" and concluded that Trans Union is violating the FCRA by selling this information to target marketers who lack one of the "permissible purposes" enumerated under the Act. The Commission's decision applies to a number of Trans Union's target marketing list products including its Master File/Selects products, its modeled products and its TransLink/reverse append products." *http://www.ftc.gov/news-events/press-releases/2000/03/trans-unions-sale-personal-credit-information-violates-fair.* Full case: *http://www.ftc.gov/enforcement/cases-and-proceedings/cases/2000/03/trans-union-corporation-matter.*

an entirely new score. Because these scores contain no direct credit information, they are seen by some as outside of either ECOA or the FCRA. Therefore, information closely mimicking credit data is now being used for broad marketing purposes, and there is no requirement for opt out.

A good modeled credit score predicts financial risk comparable to the traditional credit score. Fair Isaac's Expansion Score draws consumer information from non-traditional sources, that is, sources other than the big three credit bureaus. Although Fair Isaac does not disclose its data sources except directly to the individual consumer being scored, industry publications state that Fair Isaac is using deposit account records and pay-day loan cashing as predictive factors in its Expansion Score.[23] The Expansion Score is regulated, so consumers who have an Expansion Score are entitled to knowing certain information about that score, including the factors. Fair Isaac is playing by the rules, but data broker data cards indicate that not all companies (or data brokers) are when it comes to inferred credit data or scores.

Companies can now build score cards with very little or even no data by taking advantage of the new generic credit bureau scores to create a baseline of information. In these cases, the score card is typically monitored and evaluated closely to see if it is viable.[24] *In this way, the equivalent of consumer credit scores that would be otherwise regulated under the FCRA end up being used for all sorts of purposes that would not be allowed had they been traditional credit scores.* The end score could be something like a churn score, or customer loyalty score. In other situations, behavioral clues allow people to be targeted just as precisely as if their scores were known.

People, for example, who have a low Beacon score (an Equifax credit score) and are subsequently turned down for the purchase of a phone, show up on a data broker mailing list called "Cell Phone Turndowns."[25] The data card says: "These consumers are ready and eager to receive offers and opportunities in the following categories: secured and sub-prime credit, Internet, legal and financial service, health insurance offers, home equity loans, money making opportunities, and pre-approved credit with a catalog purchase." The Beacon score is not given—it does not need to be in order for data brokers to infer the credit score of these individuals. If a generalized credit score is known with certainty, as it is in this case, then why is it OK to then sell this information without limiting the data to FCRA constraints?

The use of the modeled credit score is well understood by data brokers. DMDatabases wrote this on its website, discussing its modeled credit score:

> **IMPORTANT NOTE:** The Fair Credit Reporting Act (FCRA) does NOT allow the release of actual credit data to any party that lacks a permissible purpose, such as the evaluation of an application for a loan, credit, service, or employment. Before requesting information on a credit score mailing list or credit score e-mail list, make sure your offer is in compliance with FCRA guidelines. For details on FCRA compliance requirements—CLICK HERE.
>
> **GOOD NEWS/BAD NEWS:** The bad news is that 90+ percent of offers do not meet the strict FCRA compliance requirements for using actual credit score data. The good news is that marketers have a very effective alternative . . . *The Premier Modeled Credit Score Database.*-CLICK HERE and read more.[26]

Experian sells ChoiceScore, a financial risk score built entirely of non-credit factors.[27] Experian explains in its description of the score that it is created from consumer demographic, behavioral, and geo-demographic information. One data broker selling a list of consumers who had been segmented by the ChoiceScore said this in its data card description, which can be seen in the screen shot below:[28]

ChoiceScore by Experian UnderBanked and Emerging Consumers

ChoiceScore helps marketers identify and effectively target under-banked and emerging consumers. Using the most comprehensive array of non-credit data avail-

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[23] Ann McDonald, High Points for Credit Scoring: With generic scores becoming antiquated, credit-scoring providers are focusing on new offerings. Collections and Credit Risk, April 1 2006, 46 Vol. 10, No.4.

[24] LC Thomas, RW Oliver, DJ Hand, *A Survey of Issues in Consumer Credit Modeling Research,* The Journal of the Operational Research Society, Sept. 2005, Vol. 56, Iss. 9.

[25] Cell Phone Turndowns Mailing List, NextMark List ID #188161. *http://lists.nextmark.com/market?page=order/online/datacard&id=188161,* last accessed Dec. 12, 2013.

[26] http://dmdatabases.com/databases/consumer-mailing-lists/consumer-lists-by-credit-score. More information about the DMDatabases modeled credit score is at *http://dmdatabases.com/databases/specialty-lists/modeled-credit-score-direct-mail-e-mail-list.*

[27] Experian ChoiceScore, *http://www.experian.com/marketing-services/data-digest-choicescore.html.*

[28] *http://datacardhub.adrearubin.com/market?page=research/datacard&id=268601.*

able from Experian. A financial risk score (indicating the potential risk of future nonpayment) provides marketers with an additional tool for more precise targeting.[29] The data card also indicated that the ChoiceScore could be used to suppress some consumers from getting information.

Datacard Hub

Refine search | New Search Print | Email

CHOICESCORE BY EXPERIAN UNDER BANKED AND EMERGING CONSUMERS

Under-banked consumers are identified as consumers that may or may not have a checking and savings account and use alternate financial services. These alternate services include check cashing services, money orders, and payday loans. Emerging consumers are identified as consumers who are new to credit, either by age/lifestyle events or cultural/generational bias. These individuals are typically undermarketed due to their lack of credit history and use of non-traditional payment methods.

SEGMENTS		PRICE
31,822,315	TOTAL UNIVERSE / BASE RATE	$65.00/M
18,835,246	Under-Banked Households	$65.00/M
31,822,315	Under-Banked Individuals	$65.00/M

DESCRIPTION

According to a joint KeyBank and CFSI underbanked study, respondents indicated strong interest in acquiring mainstream financial products, such as checking and savings accounts, loans and investments, and that they had clear financial goals, such as getting out of unproductive debt, rebuilding credit, starting to save, and learning how to use loans to build productive assets.

Statistics about the underbanked:
- The unbanked and underbanked spend over $10 billion on alternate financial services products
- Approximately 20% of all African-American and Hispanic households are underbanked
- Prepaid card use rose 18% in 2011, and usage is projected to jump to 44% in 2013

ChoiceScore helps marketers identify and effectively target under-banked and emerging consumers. Using the most comprehensive array of non-credit data available from Experian. A financial risk score (indicating the potential risk of future nonpayment) provides marketers with an additional tool for more precise targeting.

These individuals are also typically under-marketed, and represent an excellent opportunity to access previously untapped parts of the population, either for selection or suppression. Use the ChoiceScore custom models to target:
- Undermarketed new prospect segments that have not been exposed to direct-mail offers;
- ITA, secured credit. prepaid, debit, and non-traditional financial service offerings.

Using the highest confidence levels/lowest risk scores, the ChoiceScore models can also be used to target:
- High-end, premium credit offers;
- High-end investment opportunities.

Confidence Level Universe Hispanic

ID NUMBER	
NextMark	268601
Manager	142947

UNIVERSE

31,822,315

LIST TYPE

Consumer mail phone

SOURCE

LIST MAINTENANCE	
Counts through	10/31/2013
Last update	11/14/2013
Next update	12/06/2013

SELECTS	
1-Mo Mail Order Buyers	20.00/M
12-Mo Mail Order Buyers	5.00/M
3-Mo Mail Order Buyers	15.00/M
6-Mo Mail Order Buyers	10.00/M
Age	10.00/M
Childs Age Range	15.00/M
Confidence Level	
Date of Birth	10.00/M
Dwelling Size/Type	5.00/M
Education	10.00/M
Ethnic/Ethnicity	10.00/M
Gender/Sex	5.00/M
Geo/Geographical	2.50/M
Good vs Bad Score	
Home Owner	10.00/M
Income Select	5.00/M
Length of Residence	3.50/M
Marital Status	5.00/M
Occupation	10.00/M
Phone Number	10.00/M
Presence of Child	12.00/M
Religion/Religious	10.00/M

Based on Experian's website, it appears that the ChoiceScore is apparently not available for sale to consumers. The score appears to be available for non-FCRA uses.[30] What factors go into these and other scores? How is ChoiceScore used in eligibility decisions? The score's factors are not defined, so it is difficult to know what kind of marketing data is included, if at all, in the score. It is also difficult if not impossible to determine how or if or when the score is being used in modern eligibility decisions.

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[29] CHOICESCORE BY EXPERIAN UNDER BANKED AND EMERGING CONSUMERS, *http://datacardhub.adrearubin.com/market?page=research/datacard&id=268601.*

[30] According to the data broker's data card, two entities purchased this data: Achievecard, and Figi's Incorporated. Figi's Incorporated appears to be a food gift retailer. (*http://www.fbsgifts.com/about.html#figis*).

Are credit factors bundled into any base scores? Are credit factors used for non-credit marketing? Are any ECOA factors in the scores? How are credit and ECOA factors weighted in the algorithms? We do not know.

Modern data analytics have made child's play of mimicking traditional credit scores and unearthing people who are in various credit score brackets. Congress acted to protect the use of this information with good reason. *The change in technologies that give us new modeled scores of great accuracy does not change the underlying principles that still need to be at work here: fairness, accuracy, transparency, and some reasonable limits in use.*

My question is this: *if a modeled credit score is as good as a traditional credit score, shouldn't it come under the FCRA*? I believe the answer to this is yes. Congress needs to draw a bright line around this issue in particular and ensure that for fairness reasons it does not get entrenched any further. I predict that when consumers learn of data broker activity in the scoring area, they will not be happy.

Exemplar: Heath Scores

Another category to consider is the area of health. Health scores are now in circulation, which brings concerns, not the least of which is that consumers care deeply about their health privacy and decisions made about them regarding their health, insurance policy pricing, and prescription pricing. The same questions raised above about transparency, secrecy, factors, and use are relevant here. Other questions come into play as well. For example: can employers purchase health scores? Are health scores shared with debt collectors? Of note in the area of health and in other areas is the issue that companies increasingly either

Frailty Scores

Regarding the Frailty Score, in 2011, a rather spectacular medical data breach revealed that a company called Accretive was collecting detailed and sensitive health information about hospital patients in Minnesota via contract with those hospitals, and then using that data to develop scores. A lawsuit revealed the extent of the information gathering by this company. The company was collecting the following information and developing the following scores:

- Patient's full name
- Gender
- Number of dependents
- Date of birth
- Social Security number
- Clinic and doctor
- A numeric score to predict the "complexity" of the patient
- A numeric score to predict the probability of an inpatient hospital stay
- The dollar amount "allowed" to the provider
- Whether the patient is in "frail condition"
- Number of "chronic conditions" the patient has
- Fields to denote whether the patient has:
  - Macular degeneration
  - Bipolar disorder
  - Depression
  - Diabetes
  - Glaucoma
  - HIV
  - Metabolism disorder
  - Hypertension
  - Hypothyroidism
  - Immune suppression disorder
  - Ischemic heart disease
  - Osteoporosis
  - Parkinson's Disease
  - Asthma
  - Arthritis
  - Schizophrenia

- Seizure disorder
- Renal failure
- Low back pain

The screenshot below is a screenshot of a patient's data that had been revealed in the breach, redacted for the lawsuit.

First Name	Last Name	MID. Initial	HMO ID	Patient ID	Group Number	Subscriber Number	Dependent Code	Gender	Date of Birth
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	0	[redacted]	[redacted]

Age	Months Enrolled	Active Last Day	Address 1	Address 2	City	State	Zip Code	Phone Number	Attributed TIN
[redacted]	12	Yes	[redacted]		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Attributed Clinic	Attributed Provider	Provider (Short)	Predicted Complexity	Total Provider Allowed	Probability of IP Stay	Frail Condition	# Hospital Dominant Conditions	# Chronic Conditions	Macular Degeneration
FAIRVIEW [redacted]	[redacted]	[redacted]	2.287	$4,984.90	0.06	No	0	4	0

Bipolar Disorder	CHF	Depression	Diabetes	Glaucoma	HIV	Lipid Metabolism Disorder	Hypertension	Hypothyroidism	Immune Suppression / Transplant
1	0		1	0	0	1	0	1	0

Ischemic Heart Disease	Osteo-porosis	Parkinsons	Asthma	Arthritis	Schizo-phrenia	Seizure Disorder	COPD	Renal Failure	Low Back Pain
0	0	0	0	0	0	1	0	0	0

Bipolar Disorder	CHF	Depression	Diabetes	Glaucoma	HIV	Lipid Metabolism Disorder	Hypertension	Hypothyroidism	Immune Suppression / Transplant
–	–		Good	–	–	Good	–	Good	–

Ischemic Heart Disease	Osteo-porosis	Parkinsons	Asthma	Arthritis	Schizo-phrenia	Seizure Disorder	Predicted Complexity (SORTED)	Total Provider Allowed	Probability of IP Stay
–	–	–	–	–	–	–	1600	2136	1206

# Hospital Dominant Conditions	# Chronic Conditions	Top - Complexity	Top - Allowed Amt	Top - Both Complexity & Allowed Amount	Top - Either Complexity & Allowed Amount
243	366	0	0	0	0

One of the complaints in the lawsuit was that patients had no knowledge of this scoring activity.

> "Upon information and belief, the hospitals' patient admission and medical authorization forms do not identify Accretive by name or disclose the scope and breadth of information that is shared with it. Upon information and belief, patients are not aware that Accretive is developing analytical scores to rate the complexity of their medical condition, the likelihood they will be admitted to a hospital, their "frailty," or the likelihood that they will be able to pay for services, among other things."[31]

This was a complex case that illustrates the complex nature of what constitutes data broker activities. The company, Accretive, wore many hats, from debt collector to data analytics. Data analytics such as complex scoring is one form of data broker activity. However, Accretive in this case did not fit the traditional mold of data broker as list seller. No outsider can tell if the company is internally violating restrictions in existing law.

FICO's Medication Adherence Score

FICO's Medication Adherence Score was launched in June, 2011, According to FICO, it is using variables from the marketing world: ". . . those variables include age, gender, family size and asset information—such as the likelihood of car ownership—data also used by direct marketing companies. FICO says that with only a patient's name and address, it can pull the remainder of the necessary information from publicly available sources."[32] FICO states that the score is used to determine reminder mailings for consumers. It is unknown if the uses for the score have expanded since its introduction. Historically, prescription reminder activity has been controversial. Those chosen for reminders have not always not been very happy

[31] United States District Court, District of Minnesta. State of Minnesota vs. Accetive Health, Inc.

[32] Jeremy M. Simon, New medical FICO score sparks controversy, questions, Yahoo Finance, July 28, 2011. *http://finance.yahoo.com/news/New-medical-FICO-score-sparks-creditcards-1400615100.html?x=0.*

about it.[33] We suspect that prescription reminders are sent only to patients who have high-quality health plans and then only for high-priced, patent-protected drugs. That may be the type of information included in a score.

General Conclusions about Consumer Scoring and Data Brokers

I have mentioned above that the data business is changing and is becoming much more sophisticated. Consumer scores are a significant contributor to the change. Consumer scoring has substantial potential to become a major policy issue as scores with unknown factors and unknown uses and unknown legal constraints move into broader and broader use.

Secrecy, fairness of the factors, accuracy of the models, the inclusion of sensitive information—these are some of the key issues that must be handled. It is exquisitely unlikely that self-regulation will solve the dilemmas consumer scoring introduces. However, the path for what could constitute fair regulation in this area is already established via the history of the credit score.

Solutions

To bring fairness, accuracy, and transparency to consumers regarding data broker activities, a multi-prong approach which addresses multiple aspects of the problems needs to be pursued.

National data broker list

The Federal Trade Commission or the Consumer Finance Protection Bureau should require the industry to maintain a current list of all data brokers, with full identification, description, and contact information. If industry cannot provide the needed transparency, the agencies should create the list on their own.

National consumer data broker opt out requirement

There is an urgent need for a national consumer data broker opt-out requirement. Consumers should be able to opt out at a central portal. Data brokers should be allowed to download the list of those who have opted out. Data brokers would then be responsible for scrubbing their lists.

The opt out needs to be standardized, and could operate like Prescreen Opt Out. Consumers would opt out at a central portal, consumer data brokers would be able to download the list of those who had opted out, then data brokers would be responsible for using this dated list to scrub their lists.

National opt out standards:

- No use of opt out data for marketing purposes
- Standardized language around opt out
- Prominent placement on home page of a button or link that says opt out
- Notice to consumers that an opt-out request has been received and acted upon
- Due process rights for consumers denied an opt out
- Consequences for data brokers that do not comply
- Opt outs for all without cost or prerequisites and with simple procedures

Reform and oversight of affiliate marketing of consumers' personally identifiable data. Affiliate marketing of consumer information creates very significant challenges for consumers. The businesses selling the data should exercise appropriate and reasonable oversight.

List brokers who are selling PII of consumers must allow consumers to see the lists they are on and opt out. If a consumer is on a list, why can't the consumer be made aware of that? The list could be incorrect, and could have consequences if sold to an insurer or employer.

The sale of lists that endanger lives or safety or wellness should be stopped. There are lists all of us should be able to agree should not exist. The lines can be drawn by regulatory agencies after consulting with consumers and industry

No secret consumer scores, no unfair factors. There should full publication of data elements (but not weights) used in consumer scores, and all data elements used must be reasonable.

The expansion of the FCRA to include modern eligibility options. Eligiblity uses of data have expanded. The law may need to be expanded so that proxy credit scoring or modeled credit scoring clearly fall under the law. There should also be limits on the use of sensitive information in scoring and on the sale of health data in all contexts. In addition, data brokers should be subject to strict disposal requirements

[33] *Weld* v. *CVS Pharmacy Inc.,* No. CIV. A. 98–0897, 1999 WL 1565175 (Mass. Super. Nov. 19, 1999), aff'd, *Weld* v. *Glaxo Wellcome, Inc.,* 746 N.E.2d 522 (Mass. 2001).

and time limits for all data held. Fair Information Practices should be applied to consumer data broker practices and lists.

Better Enforcement: Civil and in some cases criminal penalties when there is a breach of the law. Private rights of action for aggrieved consumers should be allowed, togegther with *effective enforcement and oversight* by the FTC and CFPB.

Conclusion

I agree that the data broker industry is complex, as is our digital world, as are the lives of all of us who live in this world. But that is no excuse for avoiding the necessary discussions that will need to take place between all stakeholders.

In this testimony, I have said many things. It can be summed up in this way:

> Individuals should have the right to stop harmful collection and categorization activity and to force the permanent and immediate expungement of all data that is factually incorrect, data that arrives at an incorrect conclusion about them, or data that influences decisions about a consumer in a negative way.

This was the idea behind the Fair Credit Reporting Act of 1974. It was a good idea then, and the fundamental values remain the same today.

Thank you for your attention to these matters. I welcome your questions, and will be happy to provide further research or input.

The CHAIRMAN. Thank you, Ms. Dixon. And you are exactly right; this is the beginning of a dialog. And we need to probe deeply, without fear of consequence, and then we need to do something about it. That will be a judgment that we will have to make, but you have already suggested a change in HIPAA, which is, you know, it used to be very sacred and still is but not in all cases. So I thank you for your testimony.

Professor Joseph Turow. Now, Dr. Turow is the Associate Dean for Graduate Studies, the Annenberg School for Communications at the University of Pennsylvania.

STATEMENT OF JOSEPH TUROW, ROBERT LEWIS SHAYON PROFESSOR OF COMMUNICATION, ASSOCIATE DEAN FOR GRADUATE STUDIES, ANNENBERG SCHOOL FOR COMMUNICATION, UNIVERSITY OF PENNSYLVANIA

Mr. TUROW. Thank you, Chairman Rockefeller, members of the Committee.

In a bit of a different tack, I would like to address two key questions about data brokers and their collection of information about Americans for marketing purposes.

First, if we take sensitive topics like health and employment out of the equation, what possible harm can come from using people's data for marketing purposes? After all, what we are talking about is simply targeting for product advertising.

Second, haven't data brokers and their lists been around for over a century? And if so, what makes them today any different from the past?

Let's start with the history question. It is true that marketers compiled and bought lists of prospects way back into the 19th century. These lists became more detailed in the 20th century. But the differences between the lists of even 35 years ago and those of today is extreme. The biggest distinction is the amount of information brokers have now and how they deal with it.

Lists of the old days were pretty static. The numbers of data points companies had about us was rather small. It was difficult to interconnect pieces of data, and the data didn't change all that quickly. Today, data brokers can collect huge amounts of information about tens of millions, even hundreds of millions of people.

They update that information frequently. And they use high-speed computers and advanced statistics to draw conclusions in ways previous generations of data brokers could hardly imagine.

Consider Acxiom's recent data catalog. It contains 41 pages of information about individual Americans that Acxiom sells to marketers. That information ranges from the amount of money people make to the kinds of vacations they take, to the number of friends they have on social media, to the value of neighborhoods they live in, to diseases they have an interest in, to how tall they are, to whether they gamble, to their media uses and much more. Axiom sells any number of these items about individuals, as well as packages of these data, tailored to marketers from different industries.

In addition, through its Acxiom Operating System, the data broker has created a kind of universal cookie to find and follow people across desktops, laptops, mobile phones, and tablets, as well as to collect yet more information about them from these media.

Like Acxiom, other data brokers continually run programs that connect our dots for marketers and then attach them to other ideas the marketers have about us. The brokers often bring together pieces of information that people did not expect would be merged when they disclosed them separately to various online and offline entities. The results are buckets of descriptions and interpretations, stories of our lives, our economic value, and our potential that we don't know exist and may not agree with.

The consequences of their use in marketing can be profound and disturbing. For example, merchants can charge you more than others for products based on features they tag you with that you don't even know you have shared. Say a data broker's knowledge you regularly buy antacids blends into a complex algorithm to predict that you are inclined to accept higher prices for recreation than most people. That is great news to travel companies searching online for those types of people.

Using apps and personalized coupons, physical and virtual stores can change their prices based on what they know about you. Data brokers can add information about your lifetime value to retailers' understanding of you from receipts. The results can dictate the kinds of items you see at discount and how much that discount will be.

Negative data broker signals about you can mean having to wait longer than others for customer service, being rejected as a valued customer, and being offered coupons for non-nutritious foods.

Based on predictions of your engagement with the digital or addressable ads, media firms can change the news and entertainment offerings you receive compared to news and entertainment offerings your neighbor or coworkers get. The result: you systematically see different worlds from your friends or work colleagues because of the stories brokers tell about you.

Now, many of these examples already are taking place. All of them are quite plausible. Data brokers trumpet that they often make the individuals they sell to marketers for ads anonymous so there is no problem. But anonymity of this sort is not reassuring. If I am followed online and offline by buckets of data that tell particular stories about me, it doesn't matter if my name is Joe Turow or 2588704.

Anonymously and with our full personal information, data brokers are encouraging a world of data-driven social discrimination that is becoming widespread precisely because it comes with all sorts of advertising.

Surveys I have conducted since 1999 consistently suggest Americans worry about what firms learn and think about them. Poignantly, I have heard people say they will change their activities or how they talk about themselves online to be treated better by marketers. The difficulty, of course, is that it is often impossible to know whether and how that is going to work.

We are only at the beginning of a data-driven century. Data brokers will be central to how we think of ourselves and lead our lives. For the sake of democratic ideals and relationships, let's limit what and how much data brokers can collect and share until, as a society, we know how to create regimes of data respect, where people have control over the most important elements of their identity.

Thank you.

[The prepared statement of Mr. Turow follows:]

PREPARED STATEMENT OF JOSEPH TUROW, ROBERT LEWIS SHAYON PROFESSOR OF COMMUNICATION, ANNENBERG SCHOOL FOR COMMUNICATION, UNIVERSITY OF PENNSYLVANIA

I would like to address two key questions about data brokers and their collection of information about Americans for marketing purposes:

First, haven't data brokers and their lists been around for over a century and if so what makes today any different from the past? Second, if we take sensitive topics like health treatments and employment issues out of the equation—which many agree should be done—what possible harm can come by using people's data for marketing purposes? After all, what we're talking about is simply targeting for product advertising.

Let's start with the history question. It is true that marketers compiled and bought lists of prospects way back into the 19th century. These lists became more detailed into the 20th century. But the difference between list of even 35 years ago and those of today is extreme. The biggest distinction is the amount of information brokers have and how they deal with it. Lists of the old days were pretty static. The numbers of data points companies had about us was rather small, it was difficult to interconnect pieces of data, and the data did not change all that quickly. Today's data brokers can collect huge amounts of information about tens of millions, even hundreds of millions, of people. They update that information frequently, and they use high-speed computers and advanced statistics to draw conclusions in ways previous generation of data brokers could hardly imagine.

Consider Acxiom's recent data catalog, which was available online until the company abruptly took it off a number of months ago. It contains 41 pages of information about individual Americans that Acxiom sells to marketers. That information ranges from the amount of money the people make, to the kinds of vacations they take, to the number of friends they have on social media, to the value of the neighborhoods they live in, to diseases they have an interest in, to how tall they are, to whether they gamble, to their media usage, and much more. Axiom sells any number of these items about individuals as well as packages of these data tailored to marketers from different industries. In addition, through its Axiom Operating System the data broker has created a kind of universal cookie to find and follow people across desktops, laptops, mobile phones, and tablets as well as to collect yet more information about them from these media.

Like Acxiom, other data brokers continually run programs that connect our dots for marketers—and then attach them to other ideas the marketers have about us. The brokers often bring together pieces of information that people did not expect would be merged when they disclosed them separately to various online and offline entities. The results are buckets of descriptions and interpretations—stories—of our lives, our economic value, and our potential that we don't know exist and may not agree with. The consequences of their use in marketing can be profound and disturbing. For example:

- Merchants can charge you more than others for products based on features they tag you with that you don't even know you've shared. Say a data broker's knowledge you regularly buy antacids blends into a complex algorithm to predict that you are inclined to accept higher prices for recreation than most people. That's great news to travel companies searching online for those types of people.
- Using apps and personalized coupons, physical and virtual stores can change their prices based on what they know about you. Data brokers can add information about your "lifetime value" to retailers' understanding of you from receipts. The result can dictate the kinds of items you will see at discount and how much that discount will be.
- Negative data broker signals about you can mean having to wait longer than others for customer service, being rejected as a valued customer, and being offered coupons for non-nutritious foods.
- Based on predictions of your "engagement" with the digital or "addressable" ads, media firms can change the news and entertainment offerings that you receive compared to the news and entertainment neighbors or coworkers get. The result: you systematically see different worlds from your friends or work colleagues because of the stories brokers tell about you.

Many of these examples are already taking place. All of them are quite plausible. Data brokers trumpet that they often make the individuals they sell marketers for ads anonymous, so there is no problem. But anonymity of this sort is not reassuring. If I am followed online and offline by buckets of data that tell particular stories about me, it doesn't matter if my name is Joe Turow or 2588704. Anonymously and with our full personal information, data brokers are encouraging a world of data-driven social discrimination that is becoming widespread *precisely* because it comes with all sorts of advertising. Surveys I have conducted since 1999 consistently suggest Americans worry about what firms learn and think of them. Poignantly, I have heard people say they will change their activities or how they talk about themselves online to be treated better by marketers. The difficulty, of course, is that it's often impossible to know what will work.

We're only at the beginning of a data-driven century. Data-brokers will be central to how we think of ourselves and lead our lives. For the sake of democratic ideals and relationships, let's limit what and how much data brokers can collect and share until as a society we know how to create regime of data respect where people have control over the most important elements of their identity.

The CHAIRMAN. Thank you very much.

Mr. Hadley, Tony Hadley, is Experian's Senior Vice President of Government Affairs and Public Policy.

Please. We welcome you.

STATEMENT OF TONY HADLEY, SENIOR VICE PRESIDENT OF GOVERNMENT AFFAIRS AND PUBLIC POLICY, EXPERIAN

Mr. HADLEY. Thank you, and good afternoon, Chairman Rockefeller and members of the Committee. My name is Tony Hadley, and I am Experian's Vice President of Government Affairs and Public Policy.

Experian is a leading provider of data and information services that bring significant value to consumers and the economy. We welcome the Committee's interest and dialog in the marketing data industry and this opportunity to describe how Experian collects and uses data.

I have submitted a fuller statement, but I am going to summarize just a couple points.

First, Experian truly believes that responsible information-sharing significantly enhances economic productivity in the United States and provides many benefits to consumers. Economists have called the manner in which U.S. companies collect and share consumer information among affiliated companies and third parties

the secret ingredient to our productivity, innovation, and ability to compete in the global marketplace.

Experian shares data to help make consumers and small-business lending more efficient. We share to help facilitate access to fair and affordable credit; to help protect consumers from fraud, including identity theft; to help consumers gain greater financial literacy; and to help companies reach consumers with timely and relevant communications and marketing offers. Marketing data, in particular, brings lowers prices and greater convenience to consumers by strengthening competition.

Nonprofit organizations and government agencies also depend upon consumer data to efficiently serve the needs of people and citizens. And just as important, Experian's data allows small companies, including many in the state of West Virginia and the other states around the nation, to compete with larger companies who maintain very sizable customer data bases. So Experian provides small businesses with the same data sets that their larger competitors have so that they can compete and grow their companies.

A significant point I would like to make also is that the operations of Experian Marketing Services and the data it collects and uses and shares is completely separate from Experian's operations as a consumer credit bureau. No eligibility determinations relating to credit, insurance, employment, housing, or any other decision under the FCRA is ever made with Experian marketing data. Experian has in place strict policies as well as technological, management, and procedural controls to ensure there is complete separation.

Experian shares data responsibly by carefully safeguarding compliance with all privacy and consumer protection laws and industry self-regulatory standards. We even promote new industry self-regulatory standards and best business practices.

The Committee has also sought specific information about our clients and our data sources. Experian provides marketing data to a wide variety of client organizations in the private, government, and nonprofit sectors that market to consumers through multiple channels, both online and offline. The largest sectors we serve are retail, media, and financial services, but our products are used by nearly all sectors of the economy.

Experian uses include the sources for specific products in which the Committee has expressed interest. Most of our data comes from public records and publicly available information such as ZIP-code-level census information, local property records, and telephone directories. Added to this, many people voluntarily provide data to Experian by filling out surveys and questionnaires.

These multiple sources of data are aggregated at the household level, then analyzed and modeled to predict household preferences and propensities. Such methods result in a group of consumers receiving messages and advertising that they are more likely interested in responding to. When all is said and done, we help marketers make the best guess about what messages and marketing solicitations a group of consumers may be most interested in responding to.

Finally, I want to emphasize that Experian has made every effort to be forthcoming and cooperative throughout the inquiry launched

by the Committee this year. We have spent considerable time and resources to ensure that the information and documents we have provided are helpful to the Committee's work in understanding the marketplace. To date, Experian has provided the Committee with eight submissions, totaling over 3,000 pages. And we believe this provides a full description of our products, services, and consumer protections.

We are here today as the only corporate representative in that spirit of cooperation to help the Committee better understand our role in data services and the role we play in the economy and the lives of consumers.

We thank you for your attention and for inviting us to appear here, and we look forward to continuing to work with you. And I will answer any questions the Committee might have. Thank you.

[The prepared statement of Mr. Hadley follows:]

PREPARED STATEMENT OF TONY HADLEY, SENIOR VICE PRESIDENT OF GOVERNMENT AFFAIRS AND PUBLIC POLICY, EXPERIAN

Good afternoon, Chairman Rockefeller, Ranking Member Thune, and members of the Committee. My name is Tony Hadley and I am Experian's Senior Vice President of Government Affairs and Public Policy. Experian is a leading provider of data and information services that bring significant benefits to individual consumers, the economy and society as a whole. We welcome the Committee's interest in the marketing data industry and this opportunity to describe to the Committee how Experian obtains and uses data. I would like to raise a few key points at the outset of my testimony today.

First, Experian believes *responsible* information sharing significantly enhances economic productivity in the United States and provides many benefits to consumers. Economists have called the manner in which U.S. companies collect and share consumer information among affiliated entities and third parties the "secret ingredient" to our productivity, innovation and ability to compete in the global marketplace. One needs only to look at data-intensive industries like telecommunications, information technology, online services, financial services, retail and health care to see this innovation at work. Indeed, Experian data products and services are central to countless transactions within these vital business sectors.

Experian also shares data to help make consumer and small business lending more efficient; to help facilitate access to fair and affordable credit; to help protect consumers from fraud, including identity theft; to help facilitate greater financial literacy among consumers; and to help companies reach consumers with timely and relevant communications and marketing offers.

A second significant point I would like to make is that the operations of Experian Marketing Services and the data that it collects, uses and shares are completely separate from Experian's operations as a consumer credit bureau. No eligibility determinations relating to credit, insurance, employment, housing or other decisions covered by the Fair Credit Reporting Act are made with Experian marketing data. Experian has in place strict policies, as well as technological and procedural controls, to ensure this complete separation.

At the Committee's request, and in recognition that credit data differs from marketing data, Experian's responses to the Committee's inquiry have focused on our operations involving data for marketing purposes. That is what I will speak to for the remainder of my testimony.

Marketing data, in particular, brings lower prices and greater convenience to consumers by strengthening competition. Both large and small businesses rely on data to make their marketing efforts more efficient and to identify new customers. Nonprofit organizations and government agencies also depend upon consumer data to efficiently serve the needs of people and citizens and to enable e-government. For the Internet, this has meant providing more and improved content to consumers. Consumers also benefit from receiving relevant advertising offers that they are more likely to value and use. Marketing data is a critical driver behind the growth and efficiency of e-commerce.

Importantly, Experian's data allows small companies, including many in the state of West Virginia and throughout the country, to compete with larger companies that maintain sizeable customer data assets of their own. Experian Marketing Services

helps small businesses to successfully identify new customers, thereby establishing and fueling successful businesses.

Experian shares data responsibly—by carefully safeguarding compliance with all privacy and consumer protection laws and industry self-regulatory standards, advancing and observing industry best practices, and establishing and monitoring adherence to our own corporate policies and practices. These "best practices" help balance the benefits to consumers that result from information sharing while responding to legitimate concerns consumers may have about how information about them is collected, shared, used and protected.

Marketing data differs in important ways from consumer credit data. Experian's marketing data is drawn primarily from public records and other publicly available sources and includes data that is "modeled" or predicted rather than actual, raw data from consumers. In addition, we strive for the highest standards of data quality. It is also important to recognize that the only negative consequence to consumers of inaccurate marketing information would be the possibility of uninteresting advertising and marketing. For this and other reasons, the Federal Trade Commission has recommended that it is not necessary to require consumer disclosure and correction for consumer data used only for marketing purposes.

As described in our materials provided to the Committee, Experian has a robust internal compliance program designed to ensure that marketing data is only used for marketing purposes. Experian's marketing data assets are regulated under many different authorities such as Section 5 of the Federal Trade Commission Act, the Controlling the Assault of Non-Solicited Pornography and Advertising (CAN–SPAM) Act, the National Do Not Call Registry, the Children's Online Privacy Protection Act (COPPA), and comparable state laws and regulations. The Direct Marketing Association's *Guidelines for Ethical Business Practice* provide an additional foundation for our compliance approach to marketing data. Further, Experian's global corporate information values—balance, accuracy, security, integrity and communication—formally guide our data collection and use practices. Our global information values align with the fair information practices and principles embraced by the FTC and other international organizations, including the OECD, the European Union and APEC.

Finally, I want to emphasize that Experian has made every effort to be forthcoming and cooperative throughout the inquiry launched by the Committee over a year ago. We have consistently been assured that this inquiry aims to build a general understanding within the Committee of the marketing data ecosystem. We have also been active in policy dialogues promoting effective data security and privacy principles for all data. We have spent considerable time and resources to ensure that the information and documents we have provided are helpful to the Committee's work in understanding the marketplace. To date, Experian has provided the Committee with eight submissions totaling over three thousand pages, which we believe should provide a full description of our products, services and consumer protections. We have also met with the offices of the Senators on the Committee to describe our practices and respond to any questions about our company, products and services. We are here today, in the spirit of cooperation, to help the Committee better understand the role our data services play in the economy and in the lives of consumers.

The Committee has also sought specific information about our clients and our data sources, so I would like to provide a few details about the categories and nature of each. As I just mentioned, Experian has already provided a great deal of information and internal documents, some of which we regard as competitively sensitive, to explain the types and categories of clients we serve.

These include client organizations in the private, government and non-profit sectors that communicate and market to consumers through multiple channels including direct mail, catalog, telephone, e-mail, mobile, Internet display ads, social media, highway billboards, newspapers and other publications. The largest sectors we serve are retail, media and financial services. We also provide marketing services to clients involved in automotive, professional services, telecommunications, consumer goods, healthcare, travel, insurance, utilities, education and politics. In total, Experian's data and services are used by all sectors of the economy.

We have also provided to the Committee details on the categories of data sources we use, including the sources for specific products in which the Committee has expressed interest. As I previously stated, a good deal of our data comes from public records and publicly available information such as ZIP-code level Census information that does not identify specific individuals, local property records, and telephone and similar directories. Added to this, many people voluntarily provide data to Experian by filling out surveys and questionnaires, both online and offline, which contain clear disclosures of the fact that information that the individual provides

will be used for marketing purposes. Some selected business partners also provide Experian consumer information after they have gained appropriate consent from the consumer or have de-identified or modeled customer data at the ZIP-code level.

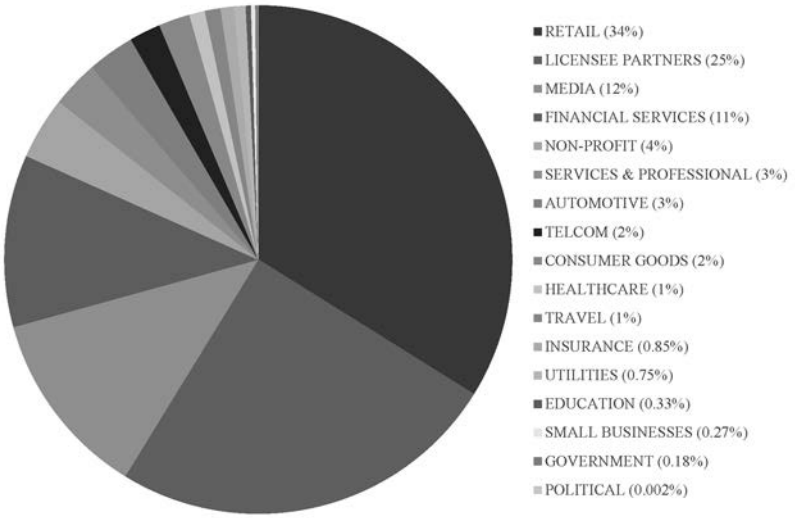
These multiple sources of data are often aggregated at the household level, then analyzed and modeled to predict household preferences and propensities. The analysis is aimed largely at helping marketers understand key segmentation factors such as approximate age, gender, education level, family size and estimated family income. Marketers can then use these key demographic segments and propensity models in combination with their own customer data to tailor relevant messages to existing or potential customers. Such age-old methods result in a group of consumers receiving messages and advertising that they are more likely interested in and will respond to—benefiting the consumer and the business. When all is said and done, we help marketers make the "best guess" about what messages and marketing solicitations a group of consumer may be most interested in responding to at the time they are interested.

Finally, Experian has shared materials on our range of marketing products and services, on how we assure the quality and integrity of our data, and on numerous other topics. In particular, we have informed the Committee about the robust privacy framework that Experian has in place to ensure that regulated data is used only for permissible purposes, while marketing data is used only for marketing purposes. To maintain this strict division, Experian uses a combination of measures such as dedicated compliance teams, employee training, and contractual restrictions including audit rights. With respect to marketing products in particular, Experian's compliance team uses auditing steps such as mail piece review and list "seeding" to monitor how data is used by clients.

We have also shared with the Committee information about the consumer protections we provide for marketing data, including offering consumers transparency about our practices through privacy statements and the option to suppress the use of their data for various types of marketing solicitations.

Thank you for your attention, and for inviting me to appear before the Committee. I look forward to answering any questions the Committee may have.

Experian Marketing Services – Major Client Categories



The CHAIRMAN. Thank you, Mr. Hadley, very much.

I want to get this right: Jerry Cerasale. Did I do it right?

Mr. CERASALE. You did it correctly. Thank you. I appreciate it.

The CHAIRMAN. I am thrilled.

You are the Senior Vice President of Government Affairs for the Direct Marketing Association, DMA. We welcome your testimony.

STATEMENT OF JERRY CERASALE, SENIOR VICE PRESIDENT OF GOVERNMENT AFFAIRS, DIRECT MARKETING ASSOCATION

Mr. CERASALE. Thank you. Senator Rockefeller, members of the Committee, DMA appreciates the opportunity to be here today and to talk about this important subject.

On a personal note, I want to say that I have testified before this committee many times, I have testified before other committees before Congress, and today, on my last day of work before I retire, I want to thank Congress for the opportunities they have given me to participate in dialog here before the Congress. And I appreciate it.

Senator Rockefeller, I will not be here when you retire at the end of this Congress, so I want to say personally we thank you for your service to the United States.

Now back to why I am here today, talking about data. Data——

The CHAIRMAN. Are we allowed to ask you questions, or is your——

[Laughter.]

Mr. CERASALE. Yes, you can ask questions. Sadly, they know where to find me to get the questions to me. They say I am a phone call away, and I have promised that they can call me. I didn't promise I would answer the phone, but that is beside the point.

[Laughter.]

Mr. CERASALE. Anyway, data. Every consumer-facing business in the United States uses data today. It is important, it drives our economy, it is driving our current recovery. And it is very, very important to us and to our members.

And in that light, DMA has created the Data-Driven Marketing Institute, and it has commissioned a study to take a look at the value of data and the uses of data in the American economy. And we used a professor from Harvard Business School and a professor from Columbia University, and they conducted this value-of-data study and found that data is worth $156 billion a year to the American economy, 675,000 jobs, and 70 percent of that influence is related to sharing of data by companies.

But even more importantly, this data-sharing helps small businesses. It helps break down the barriers to entry so small businesses can come in and compete with the big boys. And it keeps them, once they get a foothold, it keeps them on a level playing field.

But this is not new. This has been happening for a long time. I will give you a couple of examples. L.L. Bean started with a list of nonresident Maine hunters, and that is how that started. The Discover card, which is one of the first credit cards that was a reward credit card, began with a list of Sears credit holders. Without those lists, those companies wouldn't have started, those benefits from those two companies would not have been realized. So it is important.

It is personal information that is used. And the United States has some strong privacy laws: Fair Credit Reporting Act, Children's Online Privacy Protection Act, CAN–SPAM, HIPAA, GLB, Data

Pass, and so forth. And those laws are complemented by self-regulation by the industry.

And I can speak only for DMA here. DMA has a peer ethics committee that meets monthly, handles complaints from consumers and other businesses that are brought to it against members and non-members. Most of them comply with our guidelines. Those that don't, we publicize them on the webpage. If there is a violation of law, we turn it over to the state AGs, to the Federal Trade Commission, to the Postal Inspection Service, to law enforcement.

And as we have looked at this, the Federal Trade Commission has said that they support this complementary effort by self-regulation, and we want to continue that. And we continually at DMA update these guidelines so that they are alive and meet today's real-world efforts.

One of the things that we can talk about, however, that all of this is, in fact, working. The American consumers are voting with their pocketbooks and their feet, and e-commerce is growing, growing multiple times the rest of the economy, because they have trust in this process. And think about it; they need trust. They are purchasing something without having it on hand and paying for it before they receive it. They need to have that trust. And this economy, this data-driven economy is, in fact, working.

Think about the great American success story, and I mean really great American success story, Amazon. On Cyber Monday, it sold 300 items per second. That shows that Americans have confidence in this. Their needs as American consumers are being met in this data-driven economy.

There are clearly concerns. There are concerns about what is happening. You have heard them; it is in the report and others. We have heard them today. We should focus on the improper use of data and figure out how to prevent the improper use of data.

But one of the things we can't do is pull away and stop responsible uses of data that are driving this economy. That is something that we have to be very careful of as part of this dialog we are having today. The American economy, small businesses, American workers, and American consumers rely on and benefit from responsible data use. And America leads the world in that category, and we hope to keep it that way.

Thank you very much for this opportunity. I look forward to answering any of your questions.

[The prepared statement of Mr. Cerasale follows:]

PREPARED STATEMENT OF JERRY CERASALE, SENIOR VICE PRESIDENT OF GOVERNMENT AFFAIRS, DIRECT MARKETING ASSOCIATION

I. Introduction

Chairman Rockefeller, Ranking Member Thune, and members of the Committee, good afternoon and thank you for the opportunity to testify before you today.

My name is Jerry Cerasale. I am the Senior Vice President of Government Affairs for the Direct Marketing Association ("DMA"), the world's largest trade association dedicated to advancing and protecting responsible data-driven marketing. Today, I am pleased to testify on behalf of the DMA and to discuss with the Committee the important role that marketing data and database compilers play in aiding consumers and fueling the United States economy.

Founded in 1917, the DMA (www.thedma.org) represents thousands of companies and nonprofit organizations that use and support data-driven marketing practices and techniques. On behalf of its member companies, the DMA advocates industry

standards for responsible marketing; promotes relevance as the key to reaching consumers with desirable offers; and provides cutting-edge research, education, and networking opportunities to improve results throughout the end-to-end direct marketing process.

My testimony today will describe the value that marketing data has across the U.S. economy and affords to consumers. I will also explain how marketing data is collected and how DMA members, including data compilers, responsibly use and share this data to serve consumers. Lastly, I will explain how DMA and its member companies are subject to our longstanding and enforceable self-regulatory framework, the *DMA Guidelines for Ethical Business Practice* ("DMA Guidelines").

II. The Value of Data

Responsible collection and sharing of marketing data is critical to today's information economy. When data is used to fuel data-driven marketing, these practices provide many benefits for job growth, entrepreneurship and innovation, as well as to individual consumers.

A. The Value of Data to the U.S. Economy and American Workforce

A recent study entitled, *The Value of Data: Consequences for Insight, Innovation & Efficiency in the U.S. Economy* ("*Value of Data*"), quantifies the critical role that the use and sharing of marketing data plays in fueling economic growth.[1] Commissioned by DMA's Data-Driven Marketing Institute and conducted independently by Professors John Deighton of Harvard Business School and Peter Johnson of Columbia University, the study revealed that the Data Driven Marketing Economy ("DDME") generated $156 billion in revenue to the United States economy and fueled more than 675,000 jobs in 2012 alone. Further, the study found that an additional 1,038,000 people owe their employment to these DDME jobs.[2] The study estimated that 70 percent of the value of the DDME—$110 billion in revenue and 475,000 jobs nationwide—depends on the ability of firms to share data across the DDME. If this ability to share data were curtailed, those jobs and revenue would be impacted and the U.S. economy would be much less efficient.

The DDME is a uniquely American creation, and today data-driven marketing is an important U.S. export. Just as the United States led the world when Montgomery Ward developed the first mail order catalog in 1872, and created digital market-making media by commercializing the Internet browser in the 1990s, today the United States is at the forefront of data-driven market growth. The *Value of Data* study found that the United States leads the world in data science applied to the marketplace, with DDME firms deriving up to 15 percent of their revenue overseas, while employing nearly all of their workers inside the United States.[3]

The *Value of Data* study also found that database compilers are an important piece of the DDME. For instance, list services and database marketing input providers added $7 billion and 31,000 jobs to the United States economy.[4] They were able to do this by combining data that they receive from various sources to create marketing opportunities. Database compilers derive most of their economic effect from their ability to share this data with marketers that, in turn, can provide consumers with more relevant advertisements.

B. The Value of Data to Entrepreneurship and Innovation

The use of data inspires new technological designs and fosters entrepreneurship in the process. According to the *Value of Data* study, the bridge between an idea and its implementation at scale is considerably shorter in an information economy than in an industrial economy.[5]

The DDME, and the services offered by database compilers, are essential to the success of start-up companies and other small businesses. The *Value of Data* study found that the sharing of data across the DDME enables small and innovative businesses to compete effectively with big players, launching innovative offerings using data. Data gives all companies, and especially small businesses, the ability to effectively match products to customers both online and offline, thereby lowering barriers to market entry for specialized or niche offerings that previously could not have succeeded.

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[1] Deighton and Johnson, *The Value of Data: Consequences for Insight, Innovation & Efficiency in the U.S. Economy* (2013), available at *http://ddminstitute.thedma.org/#valueofdata* (hereinafter "*The Value of Data*").

[2] *The Value of Data* at 74.

[3] *The Value of Data* at 21.

[4] *The Value of Data* at 53–54.

[5] *The Value of Data* at 78.

C. The Value of Data to Individual Consumers and Companies

Consumers demand personalization, and enterprises that know their customers better can also serve them better. Data-driven marketing is about discerning what customers want and need and engineering the company to provide it. Consumers benefit from companies' responsible collection and analysis of user data by receiving timely and relevant offerings through the marketplace and products designed to meet their needs. In this way, consumers enjoy a more informed and effective shopping experience, which saves them both time and money.

According to the *Value of Data* study, the efficiency that data brings to the practice of marketing also bears directly on consumer welfare. Marketing absorbs a significant percentage of manufacturer revenues, meaning that marketing costs can increase the price that consumers pay for food and household products by up to $25 in every $100 spent. When marketing is informed by data, it is more efficient and some of this value flows back to consumers in the form of lower prices.[6]

In short, the flow of data throughout the DDME is creating consumer-driven companies. Data sharing promotes competition and entrepreneurship. In the process, jobs are created across the United States and consumers are exposed to an array of new products and services that would be unavailable or unknown to them absent data-driven marketing.

III. The Responsible Collection and Use of Consumer Data

Marketing data comes through a variety of sources. It is analyzed by marketers to make predictions about likely consumer preferences to guide marketing campaigns.

A. Marketing Data Collected Directly from Consumers

A common source of marketing data is data obtained by businesses from direct interaction with customers. When a customer purchases goods in a local store or shops online, data about that purchase is gathered by the marketer. Marketers use data from other sources, including information from public records and other publicly-available sources, such as U.S. Census data. Marketing data may also include self-reported information that consumers choose to provide through surveys. Marketing data does not include the types of information that create a risk of identity theft or fraud to consumers, such as financial account numbers or social security numbers.

B. Responsible Uses of Marketing Data

Marketers use marketing data to understand their existing customers better or to identify prospective new customers, in order to predict what types of offers are most likely to be valued by them. For example, a local hardware store would want to send a coupon for a discount on a lawnmower to a new home buyer with a lawn and a different coupon for paint to a condominium buyer. Data will help this small business to be more efficient in its advertising and provide more value to consumers. Marketers may also use data to make other decisions related to their businesses, such as what products to develop and offer in the future or where to locate new retail outlets.

Data used for marketing is also "modeled" or inferred information that represents a statistical prediction about consumers and does not necessarily reflect the actual characteristics of one consumer or household. For example, based on public property records and U.S. Census data that is aggregated at the Zip Code or census tract level, database compilers may estimate the average age of a dwelling in a certain ZIP code. Marketers, such as a local roofing company, can then use this information to make offers that are more likely to be valuable to households in that ZIP code.

C. Marketing Data is Not Used for Eligibility Purposes

It is important to note that there is a difference between using data for marketing purposes and using data for eligibility purposes. The use of data for eligibility decisions related to credit, insurance, and employment is regulated by the Fair Credit Reporting Act ("FCRA"). The FCRA requires companies that make such decisions to offer consumers certain disclosures about, and access to, the data used to make those decisions.

In contrast, the use of data for marketing purposes is not used to make decisions that impact whether a consumer can obtain credit. The Federal Trade Commission ("FTC") agrees that entities that maintain data for marketing purposes do not need to provide consumers with individualized access to marketing data, unlike consumer

[6] *The Value of Data* at 75.

report data.[7] Instead of determining a consumer's ability to receive a loan or get a job, the use data for marketing purposes determines which coupon or advertisement he or she receives. The FCRA recognizes the difference in these uses, which is why marketing is not included in the types of activity that require increased levels of disclosure and access.

In addition, some policymakers have raised concerns that data collected for advertising purposes could be used as a basis for employment, credit, health care treatment, or insurance eligibility decisions. In fact, these are hypothetical concerns that do not reflect actual business practices. Nevertheless, industry has stepped forward to address these concerns by expanding its codes of conduct to clarify and ensure that such practices are prohibited and will never occur.[8] This prohibition will help to ensure that consumers' browsing histories will not be used against them when applying for a mortgage, job, or insurance, or when seeking health care.

IV. The Value of Self-Regulation in the Data-Driven Marketing Economy

The DMA and its members are firmly committed to advancing responsible data practices across the DDME. Our members deeply value consumer trust and understand that responsible data practices are critical to building and maintaining customer relationships. To that end, the DMA believes that self-regulation and education are important components for addressing consumer privacy while ensuring that data flows continue to benefit consumers and the economy.

A. The DMA Guidelines for Ethical Business Practice

The DMA has a longstanding and enforceable self-regulatory framework. The DMA, working with its members, implements and enforces a set of best practices known as the *Guidelines for Ethical Business Practice* ("DMA Guidelines"). The *DMA Guidelines,* which have been in place for more than four decades and are a condition of membership in the DMA, provide DMA member companies with standards for responsible marketing practices by explaining how companies should provide transparency, choices, and other protections to consumers. The DMA regularly updates its guidelines to adapt to new technologies and marketing practices.

There are more than 50 code sections in the *DMA Guidelines* that regulate marketing data practices. I would like to focus on a few key examples relevant to the subject of this hearing, and to database compilers in particular.

1. Transparency

Transparency around data practices is a core principle of the *DMA Guidelines.* For example, privacy policies are the primary way that companies provide consumers with information about their data practices. These polices typically provide consumers with detailed information regarding what data is collected, how it is used, and the choices that may be available to consumers. The *DMA Guidelines* require that these policies be made accessible via online and offline channels, and be easy to read and understand. The *DMA Guidelines* also require members to periodically keep existing customers aware of the nature of the use of their data, and how that use may have changed.

2. Choice

DMA members have long offered consumers the ability to opt out of marketing. The *DMA Guidelines* require data-driven marketers to honor within 30 days any request by a consumer to opt out of any use or sharing of their data for marketing purposes.

In addition to the choices available from individual member companies, the DMA offers a centralized choice tool for consumers at *DMAchoice.org.* This service allows consumers to opt out of direct mailings and to refine what categories of mail they receive. Also at this website, consumers can remove their e-mail address from national mailing lists. Through these programs, the DMA provides consumers with an easy way to make informed choices about the marketing they wish to receive.

The DMA's commitment to consumer choice also extends to online interest-based advertising. The *DMA Guidelines* require third party data collectors to provide consumers with the ability to exercise choice with respect to the collection, use and transfer of information for online interest-based advertising purposes. This choice must be provided online and made available to consumers as specified in the *DMA Guidelines.*

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[7] *Protecting Consumer Privacy* at 65–66.

[8] *See* Digital Advertising Alliance's *Self-Regulatory Principles for Multi-Site Data* (2011), available at *http://www.aboutads.info/resource/download/Multi-Site-Data-Principles.pdf.*

3. Access

Consistent with the FTC's views on individualized access to marketing databases, the *DMA Guidelines* do not require members to allow consumers to access individual records within marketing databases. The DMA agrees with the FTC that the costs of providing such access would outweigh the consumer benefits. The DMA is also concerned that in order to allow consumers the ability to access and correct data, marketers would have to collect and store additional personally identifying data needed to authenticate consumers prior to access. In addition, as noted, much marketing data is actually modeled or predicted data that would not be meaningful to consumers. The DMA therefore believes that its current guidelines around transparency and choice strike the correct balance between consumer control and marketing needs to encourage the continued growth and success of the DDME.

4. Guidelines Specific to Database Compliers

The *DMA Guidelines* include a section outlining specific requirements for database compilers that assemble and share personally identifiable information about consumers but do not have direct relationships with those consumers.[9] For example, these compilers must, when requested by a consumer, suppress that consumer's data from marketing databases. They must also disclose the nature and sources of a consumer's data upon request, and they must allow their marketing customers to divulge the compiler as the source of their marketing data. The database compiler must additionally monitor the use of their databases to assure compliance with the law and the *DMA Guidelines.* A database compiler that discovers a violation of the law or the *DMA Guidelines* may not "turn a blind eye" but should stop providing data to that customer and either require compliance and/or refer the matter to the DMA or law enforcement.

B. Enforcement

The DMA has a long history of proactive and robust enforcement. The *DMA Guidelines* have been applied to hundreds of direct marketing cases concerning deception, unfair business practices, personal information protection, and other ethics issues. The DMA enforces compliance with the *DMA Guidelines* upon both DMA member and nonmember organizations across the DDME. In addition, companies that represent to the public that they are DMA members but fail to comply with the *DMA Guidelines* may be liable for deceptive advertising under Section 5 of the FTC Act and comparable state laws.

The DMA receives matters for review in a number of ways: from consumers, member companies, non-members, and consumer protection agencies. Complaints referred to the DMA's Ethics Operating Committee are reviewed against the *DMA Guidelines* and if a potential violation is found to exist, the company will be contacted, investigated, and advised on how it can come into full compliance. Most companies work with the Ethics Operating Committee voluntarily to cease or change the questioned practice.

However, if a member company does not cooperate and the Ethics Operating Committee believes there are ongoing violations of the *DMA Guidelines,* it can recommend that action be taken by the Board of Directors and can make case results public. For example, in the period spanning February 2012 through June 2013, the DMA Corporate & Social Responsibility Committee reviewed 55 cases and 12 of these were made public. Additional Board actions could include public censure, suspension or expulsion from DMA membership. The DMA also refers cases to Federal and state law enforcement authorities for review when appropriate.

C. Business and Consumer Education

To help educate marketing professionals, regulators, and other interested parties about the *DMA Guidelines,* the DMA regularly issues a case report that summarizes questioned direct marketing promotions and how enforcement cases were administered.[10] The DMA also provides member education regarding the *DMA Guidelines* through webinars, in-person seminars, and regular written communications to members.

In addition to educating member companies about their responsibilities under the *DMA Guidelines,* the DMA frequently offers conferences, webinars, courses, seminars, and written materials to keep companies up to date about new legal and policy

[9] Direct Marketing Association, *DMA Guidelines for Ethical Business Practice* at Article 36, available at *http://thedma.org/compliance/*.

[10] Direct Marketing Association, *DMA Annual Ethics Compliance Report 2012–2013* (2013), available at *http://thedma.org/compliance/*.

developments. These efforts help companies, especially small businesses, to comply with the host of restrictions that govern data-driven marketing.

Finally, the DMA commits resources to educating consumers directly about marketing practices and the choices available to consumers. A section of our website is dedicated to "Consumer Help" and provides consumers with access to the centralized DMAChoice.org tool for managing their direct mail and e-mail preferences as well as a wealth of information about how marketing works.

The *Value of Data* has helped us to quantify what marketers have long known—the use and sharing of data for marketing provides tremendous benefits for the U.S. economy and the American workforce, for small and large businesses, and for individual consumers and society as a whole.

Thank you again for inviting me to testify today, and I look forward to answering questions from the Committee.

The CHAIRMAN. Thank you very much, sir.

I will start out the questioning, and then we will do it according to order of arrival.

Mr. Hadley, one of the products that your company sells to marketers is called "ChoiceScore." This product targets what you call "underbanked" consumers. Let me read your description of the underbanked consumers: new legal immigrants, recent graduates, widows, those with a generation bias against the use of credit, followers of religions that historically have discouraged credit, and consumers with transitory lifestyles, such as military folks.

Mr. Hadley, the populations in this group are very vulnerable to financial scams. We have experienced that in this committee because we have done hearings about that, particularly near military bases, where people take—you know, these are relatively young people, they are overseas, they are back for a while, and they are very vulnerable because they need cash, and people could come in and really clean their clocks, and do, and we have the testimony to prove that.

Last month in this committee, we held a hearing about companies that target fraudulent financial products to our military servicemembers. And military personnel are unfortunately vulnerable to scams because of their financial inexperience and their steady paychecks.

So, Mr. Hadley, why does your company single out and sell lists of economically vulnerable groups like immigrants, widows, and military personnel?

That is a very important question to me, because if you set the probable response to whom your questions are aimed, your marketing is aimed at, you can fairly well predict the type of product they are going to get. I mean, you will be offering them a nicer vacation, a less nice vacation, et cetera. But when you put people in categories and they are vulnerable, that is not called the L.L. Bean model.

So I would like you to respond to that question.

Mr. HADLEY. Thank you, Senator.

We would be very concerned if lenders were using that information for scamming purposes too. And we have processes and procedures in place to ensure that nobody gains access to that score for that purpose. Now——

The CHAIRMAN. And how does that work?

Mr. HADLEY. We have an onboarding system by which we take on a client that gets our information to know who they are. And we also have a mail-piece review process to know what they are

going to offer the consumer. And if it is anything that looks discriminatory or predatory, we will not provide our list to them.

Now——

The CHAIRMAN. And this is your self-regulation?

Mr. HADLEY. This is our self-regulation under DMA standards. So if we were to violate that, we would be in violation of our self-regulatory standards as well as our contractual standards with our clients.

Now, what is important here is that there are somewhere between 45 million and 50 million Americans who are outside the mainstream of the credit markets in the United States. These are underbanked, underserved consumers who financial institutions cannot reach through credit scoring and credit report. They don't have financial identities or a big enough or even the presence of a credit file in order to bring them into the mainstream of financial markets.

But that doesn't mean that they don't need access to financial services. So banks use this data to try to reach out to consumers who they can help to empower them, not to scam them. We don't want to do business with financial institutions who are trying to scam people, only to empower them.

And this is their best way to find those individuals who are outside the mainstream—immigrants; new to credit, like recent college graduates, exactly what we are talking about here—to give them an offer, an invitation to apply, so that then they can make an eligibility determination regarding that application under the Fair Credit Reporting Act.

But this is marketing literature, not eligibility determination.

The CHAIRMAN. Who——

Mr. HADLEY. Did I add to that for you?

The CHAIRMAN. Not entirely. Can you tell me, which are the companies that buy this ChoiceScore product from you? We have asked you that.

Mr. HADLEY. Yes, they would be banks and financial institutions and members of the financial community.

The CHAIRMAN. That is what is called a general answer.

Mr. HADLEY. Yes. I can't tell you who our clients are. That is a proprietary list of ours. It is like our secret ingredient; the ones who would want that most are our competitors.

And our counsel has informed me that they don't believe that our ability to give that to you can be shielded from disclosure through the rules of the Senate. If we thought they could be—for example, under a law enforcement action, where it could be shielded and protected from FOIA or other disclosures, we could do that, but not under the rules of the Senate. And we are very sorry about that, but we just simply can't do that. Our counsel won't let us.

The CHAIRMAN. Oh. Well, there are a lot of counsels out there looking for work.

[Laughter.]

The CHAIRMAN. My point is that—you have to keep up with your competitors, and my point to you would be I am not necessarily approving of what your competitors are doing. I mean, maybe you want to keep up with them, but maybe they are doing exactly what you are doing but on a larger scale. And——

Mr. HADLEY. We don't want to keep up with most of our competitors.

The CHAIRMAN.—a lot of those other companies, incidentally, gave us the precise information which I want from you.

Mr. HADLEY. I would hope that the focus of the Committee and FTC and others interested in these types of uses of data would focus on those data brokers, because it is not Experian that is doing that. We wouldn't have that within our business model.

The CHAIRMAN. All right. Can you please provide the names of the companies that buy lists of economically vulnerable consumers from Experian?

Mr. HADLEY. I can tell you the types of categories. And there is a really good story——

The CHAIRMAN. But don't you understand how that doesn't work up here?

Mr. HADLEY. Yes.

The CHAIRMAN. The types of categories?

Mr. HADLEY. But let me tell you——

The CHAIRMAN. It is very hard to pass the Tax Code with——

Mr. HADLEY. Yes, let me tell you who buys them, and I can name a few because they are public, right?

Our Mosaic segmentation system, it reflects the entirety of the economic range of our economy. We don't leave out low-income individuals. They exist within the economy and need products and services, too. But the most frequent users of that segmentation, the economically disadvantaged, Senator, are typically government agencies and public policymakers who are trying to get a view into them so that they can deliver them messages and marketing materials about public services they are eligible for.

Among the users of those are the West Virginia Department of Health and Human Services, the Massachusetts Department of Health and Human Services, the New Jersey Department of Health and Human Services. They want to reach those people, let them know what benefits they are eligible for so that they can come and get them. They also use this data to update address lists for their clients.

The CHAIRMAN. You will admit, won't you, that if a state HHS, so to speak, will use that information, that is quite a different kettle of fish from a for-profit, bottom-line-oriented company?

Mr. HADLEY. And we would put the departments of HHS through the same review of who they are and what they want that information for, because we wouldn't want them to use our information to disadvantage those consumers, only to empower them. So they would go through the same review.

The CHAIRMAN. All right. My time has expired. And you happily engaged in an interesting process; you selectively named some of your clients. If you can selectively do it, you can broadly do it.

Mr. HADLEY. Those are a matter of public record.

The CHAIRMAN. Well, that is the point.

Mr. HADLEY. Right.

The CHAIRMAN. What should be a matter of public record is what you do. This is an oversight committee. This is a serious subject. We have the feeling people are getting scammed or screwed by this feeling. It is up to you to talk us out of that.

Mr. HADLEY. But not by Experian. And I can assure you, Mr. Rockefeller, the Experian executives are watching this right now and they are hearing what you are saying. We respect your point of view.

The CHAIRMAN. You think they are all glued to their TV sets?

Mr. HADLEY. No, to their monitors——

The CHAIRMAN. Oh, OK.

Mr. HADLEY.—right? And so we want to be responsive to you, seriously. And so we look forward to the dialog.

The CHAIRMAN. All right. Well, anyway, my time has expired.

And Senator Booker—it is going to be Senator Booker, then Senator Johnson, then Senator Blumenthal, then Senator Markey. That is just so I can hold everybody here.

STATEMENT OF HON. CORY BOOKER, U.S. SENATOR FROM NEW JERSEY

Senator BOOKER. Good afternoon, and thank you very much for your rich testimony.

You know, the Internet now—the ability for big data to be used is actually a service to many consumers. It serves me every time I go online, every time I am shopping.

And I love the fact that I can use this little device and things will be pushed to me that are very valuable. And that is how data-sharing helps to fuel our economy, is a service to customers. There are so many great advantages of it.

I do have worries on the back end of that, which I think my chairman, Senator Rockefeller, is making a point, and those are the concerns of consumers.

And so, just one quick question about, you know, what frustrates me when I am—you know, that I know my browser history, these cookies are on my computer that are sort of tracking and tracing what I am doing, and I understand the upside and the benefit of it, but that is a little problematic to me.

Could you—Mr. Cerasale?

Mr. CERASALE. Sure, Senator Booker.

There is a group that DMA is part of and started, the Digital Advertising Alliance, on the online—following where people are. And we have created an icon and a process to allow consumers to opt out, totally or selectively, for any cookies that are used to track their surfing, their browsing activity, across unaffiliated websites. And that icon is a little triangle with an——

Senator BOOKER. So you are saying—I am sorry to interrupt you, just because I have so little time.

Mr. CERASALE. No problem.

Senator BOOKER. So you are saying that the industry is trying to self-regulate——

Mr. CERASALE. Yes.

Senator BOOKER.—and find a way because you recognize that this is a problem.

Mr. CERASALE. Yes. And approximately a little over a million people have opted out. Over 10 million people have gone to the website——

Senator BOOKER. I am a pretty tech-savvy, X-Gen guy; I never heard of this. So——

Mr. CERASALE. OK.

Senator BOOKER.—that is problematic to me, just because I am very engaged in the world of tech. So I didn't know there was even an opt-out function. And I am concerned about my—so the industry is trying to correct what they know is a problem, true?

Mr. CERASALE. Right, to give consumers a choice, absolutely.

Senator BOOKER. OK.

So, Ms. Rich, I am just curious, there is so much positive here. I mean, the opportunity for big data to enrich our lives gets me excited about what the future is. And so these businesses, in some ways, have a wonderful public purpose. But I do worry about the darker side in the way that my Chairman is discussing.

And I really want to know—it is not as simple as saying more transparency or—it is difficult to create a regulatory framework that is nimble. I mean, this is such a changing environment.

So, really, I just want to know for you, like, how are you planning on using your 6(b) authority under the FTC Act to study and stay abreast of this industry and see if there are needs or opportunities, like in this one, where the industry is not correcting or self-regulating, where we can get them to the point where we are balancing all of these incredible positives of big data with the obvious downsides?

Ms. RICH. We think about this every day, balancing the positive but also protecting consumers. In this case, though, I think the first step is pretty simple, as there is really very little transparency about data brokers. And providing that transparency is pretty basic. It is not a technological issue.

In more complex circumstances, the way we balance is we engage in a constant learning process. We do workshops, we are always learning about industry, we meet with consumer groups, we meet with business groups. And we also, in everything we do, we are always trying to develop flexible standards. We are thinking about, you know, what about 20 years from now especially in the orders we get, will this last, will this be able to grow with innovation? And we make a lot of effort in that regard.

But I do want to bring it back to—you know, we have some basic steps here to bring about some transparency that shouldn't undermine the data-driven economy. And, in fact, there is nothing in that study that DMA did that addresses how privacy would undermine the data-driven economy.

Senator BOOKER. Right. And because so much of what I am doing for free on the Internet is made free because folks are shooting ads at me that are targeted to my interests or needs or what have you. But you are saying that there is just a tremendous larger degree of transparency that needs to be given to the public.

Ms. RICH. And we think that transparency—and we were talking about this a few minutes ago—is completely consistent with the growing economy. I mean, consumers are increasingly demanding more information about how their data is being used. When you give them information, they often develop more trust in the businesses they are engaging with. And we think it is in both consumers' interests and businesses' interests to provide more information.

Senator BOOKER. I would love to hear what Mr. Hadley or Mr. Cerasale have, if they have any resistance to that increased transparency, but I am trying to stay on the good side of the Chairman. I am the new kid on the block. So I will yield.

The CHAIRMAN. Senator Booker, you are always on the good side of the Chairman so you can charge right ahead, but you have blown that opportunity.

[Laughter.]

The CHAIRMAN. And so we are going to go to Senator Johnson, to be followed by Senator Blumenthal, Senator Markey, and the invincible Senator McCaskill.

Senator MCCASKILL. Did you say invisible?

The CHAIRMAN. Invincible.

STATEMENT OF HON. RON JOHNSON, U.S. SENATOR FROM WISCONSIN

Senator JOHNSON. Invincible.

Well, thank you, Mr. Chairman.

By the way, this is an excellent discussion, this is a very good hearing. I appreciate Senator Booker's good questioning. I kind of want to pick up where he left off, talking a little bit about transparency, because it is a great term.

I want to know exactly what the FTC wants to do in terms of, what is your fix? What is transparency to you?

Ms. RICH. Well, in this context, what we have recommended is that data brokers allow consumers access to the kind of information that they maintain about consumers.

Senator JOHNSON. How?

Ms. RICH. Either through some sort of centralized—what we recommended in a privacy report we did last year was either through—possibly through some centralized website where consumers can go. DMA has something like that for opt-out. DAA has developed a centralized website for online tracking. And so we have recommended that for data brokers.

Senator JOHNSON. So what would be on this centralized information thing? What would be on there?

Ms. RICH. The names of data brokers, and then you would be able to find out what kind of information they collect, and you would be able to potentially opt out of the use of their data.

Senator JOHNSON. Mr. Hadley, can you tell me what that sounds like to you and what problems the industry would have with that and how restrictive that would be?

Mr. HADLEY. Well, first, we want to be responsive and be more transparent, although we, too, are trying to figure out what that means in a meaningful way to consumers.

Regarding an opt-out website, here is the problem as I see it: I don't know how to define "data broker." I have never seen a definition of "data broker" that wouldn't sweep in tens of thousands of companies, because everyone exchanges data and shares data and sells data within the Internet ecosystem. That is how the business model of the Internet is.

So would we have a website with an entire industry on it? And how would that really be meaningful to a consumer if you throw that many companies up? Of course Experian would be on that, but

so would 10,000 other companies. That is not a meaningful way of providing transparency.

Instead, what we are trying to explore is how can we make the exchange and sharing of information responsibly more meaningful to consumers. And we think one of the steps could be working with the users of data brokers——

Senator JOHNSON. OK. Well, let me stop you, because I have limited time.

With mailing lists, for example, you get a one-time use. And I was trying to follow what you are talking about, because it sounds like you have a system where you are making sure that this material is not misused, because that is the real problem. The violation is the misuse, the improper use of the information.

For every time you sell data, is that restricted to a one-time use that you already have determined is not a misuse?

Mr. HADLEY. It is——

Senator JOHNSON. Or do you sell the data and they can use it for years?

Mr. HADLEY. No. It is sold pursuant to a contract, in some cases one time, in some cases as a license over numerous times. But we always have audit procedures in all of those situations to know how they are using that data and what they are using it for. And it is strictly limited to marketing purposes.

Senator JOHNSON. The information, you are saying it is, you know, from public records, sometimes surveys. But is it also from those cookies, and are you also getting it from all the other Internet applications? And do you have agreements with different people that gather all these cookies? I mean, is it a much larger data-gathering than what we were kind of talking about earlier?

Mr. HADLEY. We do collect information online in that realm, but it is all aggregated, anonymized data. There is no personally identifiable information attached to it.

So, for example, we might be able to know what type of consumer is visiting X website versus another website so that we can share that in competitive intelligence for the industry. So Macy's might want to know what Nordstrom shoppers look like, in the aggregate, de-identified, so they can compete against one another and vice versa.

Senator JOHNSON. Mr. Cerasale, again, as Senator Booker talked about, there are incredible benefits by people using the Internet, and of course we always take a look at, do you agree to use this website? And I would say most people just say, yes, I want to use this website, hit "agree"; they don't really read the, what, 300 pages of all the information saying, hey, we are going to share this information. If you want to use this phenomenal, free application, you are subjecting yourself to a certain lack of privacy.

How do you get—is there any way of getting around that?

Mr. CERASALE. There is. I think that icon I was expressing to Senator Booker is an easy—it says "AdChoices," and I can click on it; it tells you about what is happening of following your web browsing across websites. And then there is a link right to *AboutAds.info,* a website where you can opt out. That type of—is how we are looking at it.

We have worked with NTIA in looking at mobile apps and the small screen, and how do you let people know what type of information you are collecting. So we need quick links from——

Senator JOHNSON. So, like, on a do-not-call list, can it be one time and you are covered? Or is this application after application after application?

Mr. CERASALE. On the DAA, it is one time and you are covered, and it probably affects about 96 percent of the targeted ads and so forth. That many people have signed up for it, so it is pretty close.

Senator JOHNSON. And that icon is located where?

Mr. CERASALE. That icon is usually located right around the ad that is targeted. And we have contracts with Canada, with EU. We are working on Australia, starting with Latin America, to try to make that icon worldwide.

Senator JOHNSON. OK. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. And that was good questioning.

Senator Blumenthal?

STATEMENT OF HON. RICHARD BLUMENTHAL, U.S. SENATOR FROM CONNECTICUT

Senator BLUMENTHAL. Thank you, Mr. Chairman. And thank you for having this hearing. Thank you for pursuing this profoundly important issue with such far-ranging consequences for both good and ill in our society.

And thank you to the staff for this truly remarkable study. For anyone who doubts how to define a data broker, I recommend the report, "A Review of the Data Broker Industry: Collection, Use, and Sale of Consumer Data for Marketing Purposes." There is now an industry involved in this very far-reaching and far-ranging collection, use, and marketing of data.

And one of the ironies is that almost every day in the headlines and in the news we read about what the NSA is doing in the collection and use of data about citizens in this country who are protected by the Fourth Amendment. One of our justices once defined the right of privacy as the right to be left alone. Obviously, consumers do not have that same right against this industry because it is not the government. And yet their privacy interests may be just as much at risk and abused as they are by the government.

And that is really what brings us here today, not only the vast potential for good but also the downsides and the dark side and the danger of the collection and use.

And I, quite honestly, did not expect anybody to come here today and say, we are using this data to exploit people. You know, I am not the naive. But I think you need to recognize that others could use it for that purpose. And all you need to do is turn to page 24 of this report and see the categories that are sometimes used for marketing purposes.

And let me give you two very concrete examples of why I think that people ought not to be compelled to surrender personal privacy as the price of admission for the use of the Internet. And that is really what we are talking about, the sacrifice of privacy as the price of admission to the Internet.

In December 2012, the *Wall Street Journal* ran a story entitled, "Websites Vary Prices, Deals Based on Users' Information." And it stated, in part, quoting, "Websites are adopting techniques to glean information about visitors to their sites in real-time and then deliver different versions of the web to different people. Prices change, products get swapped, wording is modified, and there is little way for the typical website user to spot it when it happens."

So if you prefer Hilton hotels over Marriott hotels and the wrong company gets its hands on that information, you could be charged more for staying at one hotel or another than a person just walking in off the street.

Now, I assume, Mr. Hadley, that you would join me in feeling that such marketing practices and pricing practices would be offensive and should be made illegal, perhaps.

Mr. HADLEY. I would agree with you that that shouldn't be happening. And Experian is not involved in dynamic——

Senator BLUMENTHAL. I am not asking you about Experian. I am not expecting that you will tell us that Experian is involved in these kinds of——

Mr. HADLEY. But dynamic pricing does exist. All you have to do is look at the hotel and airline industry, and they have variable pricing.

We don't provide products and services to allow them to undertake that dynamic pricing. That is their choice, because they are marketing their product or service.

Senator BLUMENTHAL. Do you think it is fair to the consumer?

Mr. HADLEY. I wouldn't want it to happen to me, but I know that it does. If I go to Las Vegas and there is a——

Senator BLUMENTHAL. Well, the fact that it does is why we are here today, right?

Mr. HADLEY. I am not sure that it is illegal. It is just a factor of——

Senator BLUMENTHAL. Let me ask you, Mr. Cerasale——

Mr. HADLEY.—the economics, right?

Senator BLUMENTHAL. I am not asking you for your legal opinion.

Mr. Cerasale, what do you think about that practice?

Mr. CERASALE. Dynamic pricing and changes in pricing are there all the time, and you have—frequent flyers get different prices. Grocery stores, people who have the card have different prices. It is part of where we are today.

I think if it is discriminatory and so forth, you look at it. It goes back to what I said. You want to look at use, not the data itself or the collection of it, but use. If there is an improper use——

Senator BLUMENTHAL. Well, you would agree with me that discriminatory pricing that charges people more because they are regarded as more vulnerable, and without their knowing it, would be, at best, unethical?

Mr. CERASALE. Yes—I—yes. And I believe there are laws——

Senator BLUMENTHAL. Let me ask you another question.

Mr. CERASALE.—on that, as well.

Senator BLUMENTHAL. And I am rushed for time. I am going to use my last 4 seconds to ask you a question——

Mr. CERASALE. Sure.

Senator BLUMENTHAL.—about a second area where I think discrimination, the prospect of discrimination and exploitation is raised. And that is in terms of job postings and screening of job applicants.

I don't need to tell anybody in this building about the devastating impact of long-term unemployment in this country. And I have joined Senator Warren in a bill that would prohibit the use of credit scores of job seekers in a discriminatory way during the hiring process.

Let me ask you whether an employer could buy information from your company, Mr. Hadley, for example, and use it to target job postings in a way that discriminates against certain job applicants, using the information that might be obtainable from your company.

Mr. HADLEY. Marketing data cannot be used for employment screening and job eligibility. That is a case under the Fair Credit Reporting Act. So they would have to obtain a credit report, and all of the consumer rights would accrue to that marketing——

Senator BLUMENTHAL. Well, let me ask you, what would prevent an employer from asking for information from your company and then, on its own, using it in a discriminatory way?

Mr. HADLEY. We would know who that company is and why they were asking us for marketing information.

Senator BLUMENTHAL. And you would——

Mr. HADLEY. And we would know what——

Senator BLUMENTHAL.—refuse to sell to them?

Mr. HADLEY.—they were going to use it for, and we would forbid them in our contract with them from using it for any purpose under the Fair Credit Reporting Act, including employment purposes.

Senator BLUMENTHAL. If it is a violation of the Fair Credit Reporting Act. What if they said to you it is not a violation?

Mr. HADLEY. We would disagree with them, and we wouldn't give them the——

Senator BLUMENTHAL. Is that true of other companies in your industry?

Mr. HADLEY. I think it is a pretty standard practice among those that belong to DMA and practice good standards.

I can't vouch for all of them, but it certainly is with Experian. We know the bright line between those.

Mr. CERASALE. It would violate our——

Senator BLUMENTHAL. Your company does, but from the information that has been provided to my office, not all companies do. Do you——

Mr. HADLEY. Then it is a violation of law, and the FTC should take action against those companies.

Mr. CERASALE. It is unethical, it violates our guidelines to use marketing data——

Senator BLUMENTHAL. It is unethical, it violates your guidelines, but maybe the law——

Mr. CERASALE. That is correct.

Senator BLUMENTHAL.—ought to be clarified so that everybody understands it is illegal.

Mr. Chairman, I apologize for exceeding my time. I tried to move as quickly—I want to apologize to the witnesses for perhaps interrupting you.

Unlike Senator Booker, although I am still a new guy on the block, I didn't say at the outset I was going to stop when I should have. So——

The CHAIRMAN. Well——

Senator BLUMENTHAL.—I know I am on your bad side now.

The CHAIRMAN. No, you are not on my bad side, but, you know, you are clearly just sort of settling into this role of being a licensed lawyer.

[Laughter.]

The CHAIRMAN. He was attorney general for 29 years.

Senator BLUMENTHAL. I am a recovering lawyer.

[Laughter.]

The CHAIRMAN. Yes.

Senator BLUMENTHAL. I apologize, Mr. Chairman, and——

The CHAIRMAN. No.

Senator BLUMENTHAL.—thank you.

The CHAIRMAN. Senator Booker will learn from you.

[Laughter.]

The CHAIRMAN. Senator Markey?

STATEMENT OF HON. EDWARD MARKEY, U.S. SENATOR FROM MASSACHUSETTS

Senator MARKEY. Thank you, Mr. Chairman, very much.

So the bottom line is that there are digital dossiers being collected on every American right now by the companies represented at this table. And there is a lot of promise from that: services that can be provided. There is a lot of peril from that: the compromise of the privacy and the most intimate secrets of families that can go out and on sale across the country and across the world.

And the bottom line is no company should be allowed to do that. If the individual doesn't want that information compromised, they should have a right to be able to control that data. And no company should be allowed to play fast and loose with the information which they have gathered about Americans.

So I had a caucus meeting over on the House side last year, and we had some of the gentlemen here today over there for that. And we began to talk about propensity scores—propensity scores. And that is a practice of attaching a propensity score to individuals, hundreds of thousands, millions of Americans. And the scores are created without the consumers' knowledge, without the consumers' consent.

And then they become the basis for targeting offers, benefits, products to certain consumers. And as a result of these e-scores, high-value prospects may receive marketing details and discounts regularly, but others may not. They may be dismissed as low-value people, characterized as "waste" in industry slang.

So, Ms. Dixon, what are the dangers attached to an industry that engages in those kinds of practices, in terms of its impact upon tens of millions of Americans?

Ms. DIXON. The real problem with the propensity scores and the propensity values that are attached to consumers is that, unlike a

credit score that would be pulled, that would be covered under the Fair Credit Reporting Act, but these scores are not covered under the Fair Credit Reporting Act.

If they are health scores, they are not covered under HIPAA, they are not being held by a healthcare provider.

So, therefore, you can be tagged with these characteristics, and these characteristics are not under any regulation. There is no law that says that an employer cannot use these to determine job eligibility. There is no law that says that an insurer cannot use these scores to determine rates, because these are not regulated scores. So the propensity scores are of great concern.

And, of course, consumers do not have the opportunity to learn about these scores. These are secret scores. And consumers do not have the opportunity to opt out of this, as they would if the scores were covered under the Fair Credit Reporting Act.

Senator MARKEY. Great.

So we have to do something about that, Mr. Chairman. You know, we are hearing language about, well, that might not be illegal, so we can actually pass a law and make it illegal. So that is what this committee is all about.

And now let me go back to you again, Ms. Dixon. Thank you for that.

We know that data brokers categorize people into market segments, so-called "suffering seniors," "burdened by debt," singles," "credit crunch," "city families." And these are the real labels that actual data brokers use to describe all these different segments out there as they are trying to decide who they are going to be talking to.

But that categorization can cause real economic harm, including profiling, redlining, and racial discrimination. And, in fact, there is actually a term for it: not redlining, but "web-lining." We are just going to use the web to kind of segment people out. They are in the wrong income group, the wrong racial group, the wrong sex, the wrong whatever. And they just can do it. And there probably aren't enough laws on the books to protect people against that.

Ms. Dixon, can you talk about that and what the need is to fill in that vacuum, as well?

Ms. DIXON. There is an interesting situation that is going on. And, interestingly enough, the DMA report came to the conclusion that offline information and online information are now thoroughly merged. And as a result, web-lining is real-life-lining, as well, so what happens on the web now happens in real life.

So if there is a discriminatory problem there, we are going to be experiencing it elsewhere. It is a circular process now. We can't just go online and block our cookies.

Any reasonable consumer who is shredding their Social Security number, blocking cookies, and surfing the web responsibly, they can still not evade being put on a list of data brokers according to their health condition.

Senator MARKEY. So let's go to that line, that kind of blurry line that has been allowed to be created, and what the consequences are for consumers, kind of that line between credit reporting agencies and data brokers that market financial products. That is an at-

mosphere of ambiguity, and some fraudsters could do some real harm to people, huh?

So if you could talk about that a little bit, Ms. Dixon.

Ms. DIXON. So the pseudo credit scores, or pseudo scores, they are made up of about 1,500 factors. They are all non-credit-file factors, so they don't fall under the Reporting Act. They can include factors that would be prohibited under the Equal Credit Opportunity Act. This is troubling, deeply troubling.

So we don't know everything that goes into these scores. We need to. We need to know how the scores are being used, and we certainly don't want these scores being used to target underserved Americans with predatory offers.

Senator MARKEY. And let's just move on to the next category. You know, we can talk about the sale of lists of people with particular diseases, huh? And just kind of circulate those lists around to people, just so that, you know, marketers know who not to even get anywhere near, huh? I am going to get all the people with these different diseases that we have been able to compile and just make a list of it and make sure they are over here and they are walled off.

Talk a little bit about that and what that means for our country.

Ms. DIXON. I was stunned, in doing my research, when I found lists of people who were rape sufferers, people who were genetic disease sufferers, people who were victims of domestic violence. This was deeply troubling to me, and I was just shocked.

So what is happening is that through survey instruments that are operated online and through other methods that are typically consumer-generated, people will volunteer this information to websites, thinking they are getting help, you know, from a website, and they will volunteer. And they have no idea that this information is going to be attached to not just a cookie but their name, their home address, their phone number.

Senator MARKEY. And I am a lawyer but I have never had any clients, so I am going to be careful in how I rule here. But it just seems to me that it is kind of, on its face, a violation of Section 5 of the Federal Trade Commission Act, violation of unfair and deceptive practices.

So, Ms. Rich, back over there at that Federal Trade Commission, what can you do about this?

Ms. RICH. I think—well, for all of these scenarios that you described, especially the particularly disturbing ones involving discrimination, we would obviously, if we had specific targets we were looking at, take a close look to see if it did violate the Fair Credit Reporting Act or the FTC Act. We wouldn't give up on that.

But one thing I want to say about—you know, our laws are limited, as I mentioned in my opening statement. For the Fair Credit Reporting Act to apply, the data has to be collected and used for certain purposes. And the FTC Act allows us to go after deceptive practices, meaning affirmative false statements or omissions need to be made, or unfair practices, and we have a lot of hoops to jump through to prove those.

But there is nothing in our laws that would require the entities amassing those lists to tell consumers about it or to allow them ac-

cess to the data they have on them. Those are the limitations of our laws.

Senator MARKEY. Yes. Thank you. And, again, there is nothing like a little Section 5 action, you know? But when you are saying it is even beyond the penumbra of that, then we have a real issue here.

And it is a real invitation for us to act, Mr. Chairman, so that, you know, we put on the books the——

The CHAIRMAN. I am going to act——

Senator MARKEY.—actual specific language. Excuse me?

The CHAIRMAN.—since you have just gone through your second round of questions.

[Laughter.]

Senator MARKEY. No, I know that, Mr. Chairman. I have now taken your graciousness, your beneficence, and I have stretched it, you know, to a point that——

The CHAIRMAN. Claire McCaskill is very unhappy. But she is going to be even more——

Senator MCCASKILL. No, I am not.

The CHAIRMAN.—even more unhappy when I call on Senator Thune, who——

Senator MCCASKILL. I am not unhappy at all.

The CHAIRMAN.—he and I were the first two to come.

And then you.

STATEMENT OF HON. CLAIRE MCCASKILL, U.S. SENATOR FROM MISSOURI

Senator MCCASKILL. No, I think it is terrific to have Senator Markey on this committee. And he obviously has worked on this issue in the House, and I think we will all benefit from the amount of time and effort he has spent at it.

I want to try to home in on a couple of things.

The case, Mr. Hadley, of Experian and Superget. You purchased the company Court Ventures in 2012, in the spring of 2012. For more than a year after the time you purchased this company that had all this data, you were taking monthly wire transfers from Singapore, and your company did nothing. And as it turns out, those wire transfers were coming from a man in Vietnam who specialized in identity theft and was marketing the information that you owned to criminals to ruin people's lives.

So my first question to you is, you were quoted as saying, "We would know who was buying this." You were getting wire transfers from Singapore on a monthly basis, and no one bothered to check to see who that was?

Mr. HADLEY. Now, I want to be clear that this was not Experian marketing data; this was Experian authentication data. So it is under a different company, a different use. So I just want you to know that it is not part——

Senator MCCASKILL. I don't understand the distinction.

The CHAIRMAN. Nor do I.

Senator MCCASKILL. I think it is a distinction without a difference. I believe it was data that you owned, Experian owned. You had purchased this data from Court Ventures, and they had, in fact——

Mr. HADLEY. No. Let me clarify.

Senator MCCASKILL.—sold it to someone else.

Mr. HADLEY. Yes, let me clarify that for you, because we have provided a full response to that question to the Committee, and it is part of the eight submissions that we have given.

And I do have to say that it is an unfortunate situation. And the incident is still under investigation by law enforcement agencies, so I am really extremely limited in what I can say publicly about it, but I do want to say this.

The suspect in the case obtained data controlled by a third party—that was U.S. Info Search, that was not an Experian company—through a company we bought, Court Ventures——

Senator MCCASKILL. OK. Let me——

Mr. HADLEY.—prior to the time that we acquired that company. And to be clear, no Experian data was ever accessed in that deal.

Senator MCCASKILL. I understand what you are saying. Here is what happened. You had U.S. Info Search——

Mr. HADLEY. No, we did not——

Senator MCCASKILL. No, no, I am—U.S. Info Search existed, and Court Ventures existed. They decided——

Mr. HADLEY. And they had a partnership.

Senator MCCASKILL.—for commercial reasons, to make more money, to combine their information. And so they had a sharing agreement, those two companies, correct?

Mr. HADLEY. Right.

Senator MCCASKILL. OK. So these two companies had a sharing agreement. Then you bought one of those companies.

Mr. HADLEY. Court Ventures.

Senator MCCASKILL. Correct. So now you owned it. Now you stood in their place. Are you a lawyer?

Mr. HADLEY. I am not a lawyer, but I understand we stood in their place, right.

Senator MCCASKILL. Are there any lawyers on the panel?

OK. She will back me up.

[Laughter.]

Senator MCCASKILL. You stand in their place when you buy this. So now you are there.

Now, you said in your earlier testimony, we would know who was buying this. So you now are part of their transactions.

Mr. HADLEY. During——

Senator MCCASKILL. And you were receiving the benefit of these monthly wires.

Mr. HADLEY. So, during the due diligence process, we didn't have total access to all the information we needed in order to completely vet that. And by the time we learned about the malfeasance, I think 9 months had expired. The Secret Service came to us, told us of the incident, and we immediately began cooperating with the Secret Service to bring this person to justice.

Senator MCCASKILL. OK.

Mr. HADLEY. And we are continuing to cooperate with law enforcement in that realm. This was—we were a victim and scammed by this person.

Senator MCCASKILL. Well, I would say the people who had all their identity stolen were the——

Mr. HADLEY. And we know who they are, and we are going to make sure that they are protected. There has been no allegation that any harm has come, thankfully, in this scam.

[The Committee received the following letter regarding Mr. Hadley's previous statement. The author of the letter requested that the statement be removed from this hearing record.]

VENABLE LLP
Washington, DC, March 18, 2014

Via e-mail:

Peter Curtin
U.S. Senate Committee on Commerce, Science, and Transportation
254 Russell Senate Office Building
Washington, DC.

Re: Correction to Transcript on Hearing Titled, "What Information Do Data Brokers Have on Consumers, and How Do They Use It?"

Dear Mr. Curtin,

Lines 12–14 in the attached document are crossed out. In reviewing the testimony, we checked with the Experian lawyers that are directly involved in handling this matter, and they have indicated that these lines are not accurate. In actuality, Experian does not know the identities of the individuals as the data was owned and controlled by U.S. Infosearch.

Sincerely,

STUART INGIS,
Venable LLP.

Senator MCCASKILL. OK.

Mr. HADLEY. And we have closed that down, and——

The CHAIRMAN. Let Senator McCaskill——

Mr. HADLEY.—we have modified our process——

The CHAIRMAN. Let Senator McCaskill continue.

Senator MCCASKILL. OK. So let's talk about that process. This person who got this man who they lured to Guam to arrest and who is now facing criminal charges in New Hampshire, they posed as an American-based private investigator.

What is your vetting process when people want to buy your stuff?

Mr. HADLEY. That would have been Court Ventures who would have vetted that prior to our——

Senator MCCASKILL. OK, but I am talking about now, you. What is your vetting process?

Mr. HADLEY. Right now, before we would allow access—first, let me say that that person would have not gained access to Experian or this data if they had gone through our vetting processes prior to the acquisition.

Senator MCCASKILL. And what would have stopped him?

Mr. HADLEY. We would have known who that company is. We would have had a physical onsite inspection of that company. We would have known who that business is and what that business's record is. We would have known exactly why they wanted that data and for what purposes. And that would have been enshrined in our contract. And we would have known the kinds of systems they have in place to protect the data that they gained.

Those are all incumbent upon us under the Gramm-Leach-Bliley Act and the FCRA.

Senator MCCASKILL. Well, listen, I understand that this was not a crime that began under your watch.

Mr. HADLEY. Thank you.

Senator MCCASKILL. But you did buy the company, and you did keep getting the wire transfers from Singapore. And the only reason you ever questioned them is because the Secret Service knocked on your door. I don't know how long those wire transfers from Singapore would have gone on until you caught them. I don't have confidence that it would have stopped at all.

So I guess what my point is here, I maybe do not feel as strongly as others on this panel that behavioral marketing is evil. I believe behavioral marketing is a reality, and, frankly, the only reason we have everything we have on the Internet for free is because of behavioral marketing. So I don't see behavioral marketing as an evil unto itself.

What I do see is some desperate need for Congress to look at how consumers can get this information, what kind of transparency is there, and whether or not companies that allow monthly wire transfers into their coffers from Singapore from a criminal who is trying to rip off identity theft, whether or not they should be held liable for no due diligence on checking those wire transfers from Singapore until the Secret Service knocked on their door.

And that is what I think we need to be looking at. And I don't think there is enough—I mean, I know that some of my friends on the other side of the aisle, you say trial lawyers, and they break out in a sweat. But the truth is that if there were some liability in this area, it would be amazing how fast people could clean up their act. And, unfortunately, in too many instances there is not clear liability because we haven't set the rules of the road.

So I didn't mean to pick on you, Mr. Hadley, but this is a great example. And you are not a fly-by-night company.

Mr. HADLEY. No, we are not.

Senator MCCASKILL. If this is happening under your watch, can you imagine what is going on with companies that are not as established as yours? I think it is——

Mr. HADLEY. Cybersecurity is a huge problem.

Senator MCCASKILL. It is serious and significant, and we need to look at it.

Thank you all very much.

The CHAIRMAN. Thank you, Senator McCaskill.

Senator Thune, to be followed by Senator Fischer.

Senator THUNE. Thank you, Mr. Chairman.

Mr. Hadley, one of the big users of your service is the Federal Government, correct?

Mr. HADLEY. Yes.

Senator THUNE. OK. Are there some areas in which you can identify how the Federal Government uses your services?

Mr. HADLEY. Certainly.

The biggest users of Experian data in the Government are the Department of Health and Human Services. Right now, we operate on *HealthCare.gov* to authenticate the identities of individuals signing up for health care to make sure that fraud is eliminated on that, to make sure that Tony is getting an account, establishing the account, and not an imposter in his name.

We also have a contract with the Social Security Administration as they move persons for online accounts from paper-based accounts. We all get our Social Security statement in the mail; they

want people to move online to get those. So we authenticate individuals to have online accounts with the Social Security Administration.

We, too, believe that HHS could be a good user of our marketing data, particularly in the lower economic echelons, to reach out to people to see if they are eligible for health care and try to determine how to market that process to them. They haven't done that yet, but the state agencies are far ahead of them in that way, of using these economic segments to reach out and inform consumers of benefits that are available to them.

Senator THUNE. So for purposes of Obamacare implementation, they are using you to authenticate people who are applying but not, at this moment, to market, the Federal Government. The state——

Mr. HADLEY. That is exactly right.

Senator THUNE.—exchanges are.

Mr. HADLEY. Right.

Senator THUNE. OK.

Some have concerns about the profiles that data brokers compile on consumers, that they will have a long-lasting impact and put these consumers at a disadvantage, especially if that information is incorrect. And I would like to have you respond to that incorrect-information issue or concern.

Mr. HADLEY. Yes. Our data is highly accurate. It comes from very reputable sources. We know what sources they are, and we check those sources to make sure of the integrity of that data.

Marketing profiles are not static. This is very important. They change. When I was a young man with young children, I used to get a lot of ads for diapers. Then my sons grew up, and I got solicitations and they got solicitations for college. Soon, I got solicitations for home equity loans because they knew that I might want to finance my sons' college education. Now I am getting solicitations for retirement planning and for vacations. So my marketing profile has changed with my age and my family status and my interests that I have expressed to data brokers.

I want to make one point that is very clear here, with health information. Experian has health information from consumers, but only—only—on an opt-in basis, if they have said and clearly opted into telling us what their ailments are and saying, I am an arthritis sufferer, I want to know about new products and services coming onto the market to help me; or I suffer from migraines.

These are not used, though, never used, for healthcare eligibility. They are used so that consumer product companies can offer solicitations and coupons for over-the-counter drugs, for the most part.

Senator THUNE. Yes.

Mr. HADLEY. So it is always opt-in with health for Experian, clear and conspicuous opt-in.

Senator THUNE. Mr. Cerasale, there have also been concerns raised that consumers should not only have the ability to see what information is collected about them for marketing purposes but also have the ability to correct it. And I am wondering what your thoughts are on that.

Mr. CERASALE. On first look, that sounds like a great idea. However, as you delve deeper into it, as you look at access and then

correction for marketing data—this is data that, as Mr. Hadley has said, is not used for eligibility purposes. But as you look into access to marketing data, it requires you to authenticate who is coming in. In other words, is it Jerry Cerasale or is it an imposter? And in order to have that data, in order to be able to authenticate, you need more data.

So in the essence of access and then correction, it is going to require more data, more accurate data, because you can have inaccuracies in marketing data. Tony says that it is great, but it is not as precise as Fair Credit Reporting data because it is not for eligibility; it determines what ad I will receive, what type of offer I will receive. And if a marketer is off, it is 95 percent correct, that is OK because it is not worth the expense to go to 100 percent, whereas in Fair Credit Reporting you need it.

So having access and correction requires more data. And, of course, it is, therefore, more expensive, as well. So, I mean, let's be truthful here. But I think it goes against the idea you are worried about with data because you are going to create more data on the marketing side and requiring it to be more precise, and therefore that is an issue. You need to have one bit of information more than the imposter in order to prevent that kind of fraud in that area. So it raises that problem.

Senator THUNE. Ms. Rich, the FTC released a report on consumer privacy in 2012 that recommended, and I quote, "companies should provide reasonable access to the consumer data they maintain; the extent of access should be proportionate to the sensitivity of the data and the nature of its use," end quote.

The report continued that, for marketing data, the commission believes that the cost of providing individualized access to consumers would likely outweigh the benefits.

Can you comment on that statement, expand on what the costs and benefits would be to have individualized access to marketing data?

Ms. RICH. What we said in the report was that, you know—and, obviously, the report was a prelude to further discussion and potentially Congress acting, because at the time we were recommending legislation.

But what we said in the report is that we saw a difference between marketing data and, for example, fraud mitigation and identity verification products, and that for marketing data it might be appropriate to not only give consumers access to the categories of data that is collected about them but to allow them to suppress use of the data, but not necessarily to give them individualized access.

But we didn't say there shouldn't be access at all. We said there should be access to the categories of data and an ability to suppress use of the data. And then, for other products, it may be appropriate to give individualized information about the data.

Senator THUNE. OK. But the calculation you made, according to this at least, is that the individualized access to consumers would likely outweigh the benefits for marketing purposes.

Ms. RICH. Yes. Yes. But for further consideration also by Congress. But, yes, we did see a difference, we did see a distinction between marketing uses and other uses.

Senator THUNE. OK.

Mr. Chairman, thank you.

The CHAIRMAN. Thank you.

Senator Fischer?

STATEMENT OF HON. DEB FISCHER, U.S. SENATOR FROM NEBRASKA

Senator FISCHER. Thank you, Mr. Chairman and Ranking Member.

Ms. Rich, in your testimony, you referenced the commission's activities with regard to enforcement. Can you describe to me what you think the focus of the enforcement activity should be?

Ms. RICH. Well, we always, in our enforcement, focus on uses of data that have the potential to harm consumers. And most of our enforcement actions have been in the area of the Fair Credit Reporting Act because that is where we have our strongest tools. And when data is used for purposes covered by the FCRA, it can be used to deny consumers important benefits like employment or credit.

Senator FISCHER. Do you think that the FTC has done a good job with its existing authority to address what has been the number-one consumer complaint for the past 13 years running, and that is fighting identity theft?

Ms. RICH. We are trying our hardest. We don't have the authority to go after the perpetrators of identity theft, but one of the main reasons we are so strong in our data security enforcement is that we do believe that it is the responsibility of companies to protect sensitive information, and to maintain and protect it from getting in the hands of identity thieves.

Senator FISCHER. Are you able to identify the thieves themselves? And what happens then? How does that all work?

Ms. RICH. Well, you know, many of the thieves are overseas. We do work with criminal authorities, and sometimes they are investigating the thieves while we are investigating the companies that failed to maintain reasonable procedures to protect the data.

Often, the thieves are never caught because they are in Russia or China. But if a company does not maintain reasonable procedures to protect data, we have some good tools to hold them liable. Although, we continue to recommend passage of a strong data security law that would give us civil penalty authority and strengthen those tools.

Senator FISCHER. Have you brought those forward before this committee? I am a new member on the Committee. Has the FTC suggested those in the past?

Ms. RICH. Yes. Senator Rockefeller would be very—Chairman Rockefeller would be very familiar with our advocacy for data security and data breach legislation.

Senator FISCHER. OK. Thank you very much.

Mr. Turow, when we talk about the data broker—and you had a definition of a data broker as somebody who connects the dots for marketers, is that correct, in your testimony?

Mr. TUROW. That is not my only definition, but certainly that is what they do. They can do that.

One thing I would like to point out—may I go on?

Senator FISCHER. Yes.

Mr. TUROW. One thing I would like to point out that I don't know if we have had enough discussion about today, which is, it is not just discrete bits of information that is going on more and more and that are sold, and it is not just the aggregation of these. Really, what is happening is the industry and so much of our world is turning into an actuarial activity. It really is the predictive analytics that are changing the ballgame.

And so a person can be giving out the most benign-sounding piece of data, and that can turn against him or her in an instant if it gets put into an algorithm that comes up with an either accurate or inaccurate sense of who that person is.

And we have no way to deal with this at this point and no way—even to where I have been told in the ad industry that the word "soccer mom"—that I have had people tell me they don't know, necessarily, how a person is tagged as a soccer mom. The number of data points—seriously told me this—the number of data points that are involved in designating a soccer mom, the person said in the ad agency to me, was such that they couldn't tell me where that got that designation from.

Now, if it is true, that is very complicated. And if it is not true, that is a problem in itself. And I was trying to figure out why it is that ad companies can't tell people where particular labels on them come from. And now I am being told more and more it is the algorithm, it is the predictability.

Senator FISCHER. With your definition or an expanded definition, then, how many private companies do you think can be classified as this, just in the United States? How many private companies are we talking about?

Mr. TUROW. I haven't seen a definition, but I would agree that more and more we are dealing with companies of all sorts connecting lots——

Senator FISCHER. It would be like any small business?

Mr. TUROW. I wouldn't worry——

Senator FISCHER. The big box retailers? Who?

Mr. TUROW.—so much about a small business, but I would worry about big supermarkets.

Senator FISCHER. Big box retailers?

Mr. TUROW. I would worry about, yes, big box stores. I would worry about a whole lot of companies that on a daily—we haven't talked about retail outlets and the fact that the Internet inside a store and the connecting of online and offline is taking place increasingly as people walk through looking at products, the so-called moment of truth, and how that relates to the algorithms I have been discussing. What does it mean to have predictive analytics stare you in the face while you are deciding diapers, OK, or something even more important?

And, in fact, the notion—it may be that Experian doesn't deal with over-the-counter drugs, but there are companies that, in one way or another, take what people purchase over the counter and solicit opinions through sweepstakes about their health activities and purchases and sell them, very clearly.

Senator FISCHER. So what I hear you saying is what I believe, that really almost any retailer could be classified then——

Mr. TUROW. If they share data, and I have——

Senator FISCHER. And how, then, do you believe the government should become involved in private business in this country, when you have that expanded definition?

Mr. TUROW. It obviously makes it much more complicated. And that is what I have begun to believe that, at least as a start, there may be some useful public discussion in asking how many data points firms are allowed to buy and sell about us at a time and how they can be merged to other data points, so that we won't have continual flows of data being appended to our lives.

It is really an interesting difficulty that you bring up——

Senator FISCHER. OK. Thank you.

Mr. TUROW.—aside from the fact that, for example, if you go to Kroger's website and look at their privacy policy, I couldn't figure out head nor tail whether they sell that stuff, because they use words like "affiliates" and "subsidiaries," and it is done in such a way that it is extremely difficult to tell.

And I know of one company that sells bracelets for health where I looked at their website, and basically at one point after they say what data they can get out of the bracelet, they say, some of this data might indicate poor health on your part. And then the issue is, what do they do with it?

Senator FISCHER. Right.

Mr. TUROW. And we don't know. You can't tell.

Senator FISCHER. Right. Thank you.

Mr. Chairman, could I ask Ms. Rich if she wanted to say something? She is eager——

Ms. RICH. I am going like this.

Senator FISCHER. And I was trying to stay within my time limit, seriously. Thank you, Mr. Chairman.

Ms. Rich?

Ms. RICH. I just wanted to add something to the point you were making about the number of data brokers. One of the things that we—the way we think about it at the FTC, to make it a more manageable issue and problem, is to focus on the non-consumer-facing data brokers, because, after all, if the issue is really about transparency, at least that is where the concerns are the greatest, that consumers don't even know who those invisible, behind-the-scenes companies are.

And although I think that there has been a lot of discussion about how the definition is so broad we can work on that. But I think it is kind of proof of the problem, not that there isn't a solution. Because the fact that Pam says there are thousands of data brokers and the Committee report says hundreds and the industry says hundreds, I mean, I think that is part of the problem. We don't know who all these entities are and we don't have a handle on it. And that is part of the proof that there really isn't transparency in this industry.

Senator FISCHER. So would you say that just about any website that a person goes to, they are in danger of having information gathered that they may not want to have either private companies or the government know about?

Ms. RICH. Well, I mean, as I was saying, if we are talking about the data broker issue, we would prefer to focus on the non-consumer-facing sites, where they are truly not transparent.

You know, we have other recommendations for consumer-facing websites. We think there should be choices and opt-outs there so that consumers have some ability to prevent sales to third parties if they so choose.

But for this data broker problem, we at the FTC would really like to focus on the non-consumer-facing sites.

Senator FISCHER. OK. Thank you very much.

Thank you, Mr. Chair.

The CHAIRMAN. Thank you, Senator Fischer.

We have a vote at 4:30. I would like to ask one more question.

And this is coming right at you, Dr. Turow. You have been taking all kinds of notes.

Mr. TUROW. I have.

The CHAIRMAN. So you are ready. I would like to further explore the notion that data brokers are selling products to help marketers target pitches to the specific interests and needs of consumers.

Let's take a product called "Relying on Aid." This is a grouping of consumers that the data broker defines as follows: "These single retirees of limited means and meager retirement savings are just barely able to make ends meet."

The description goes on to say, "With only a high school education at best, it has been hard to get ahead. Poorly insured and Medicare/Medicaid-dependent, they are generally pessimistic about their economic situation," and, incidentally, about themselves.

My question to you, Professor Turow: In your testimony, you highlight some other ways companies may be using such consumer lists that don't necessarily involve product pitches, such as deciding who should have to wait longer for customer service, who should be rejected as a valued customer, or who should be offered coupons for only non-nutritious foods.

What thoughts come to your mind when you hear data brokers are marketing descriptions like "Relying on Aid" to potential consumers?

Mr. TUROW. It is not unpredictable. It has been going on for years. It is a problem, I agree, and it is going to get worse as the baby boomers get older. I think we are only beginning to see the tip of the iceberg here.

But I think one of the issues is also that, as we get more individualized——

The CHAIRMAN. What do you mean, tip of the iceberg?

Mr. TUROW. I think we are going to have this huge generation of older people in 15 years that are going to be——

Senator THUNE. Not you.

[Laughter.]

Mr. TUROW.—divebombed with these kinds of offers. And I was beginning to say, it is going to be more particularized.

The thing about that category, Chairman Rockefeller, is that it is a category. More and more, that is going to become anachronistic. And what it is going to be is a particular person who can be maybe even more persuaded because of other characteristics that predict that. So that category will be broken up——

The CHAIRMAN. Including low self-esteem.

Mr. TUROW. Yes, and a lot of other things: what kind of car they drive that leads them to be this, that, and the other thing. So that

you won't even be able to point to the category in a catalog anymore; it will be something that you won't be able to easily track down. And yet those people will be targeted increasingly because of the situations they are under. The same category, only divided up into millions and millions of people and personalized.

The CHAIRMAN. So what would you do about it?

Mr. TUROW. As I said, I think—well, these are social questions. And I believe that we have to worry about the kinds and the amounts of data that get combined. I don't have an answer for that. I think it is a very important social discussion. At this point in time, we haven't had that social discussion.

People don't even know this stuff is going on. Our studies have shown that people know they are being tracked. But when you ask people basic questions of how this stuff works and how they think it works—we did a 2005 study in which Americans said, a majority, a clear majority of Americans said that they think that price discrimination is illegal. OK?

We continually find that people see the word "privacy policy" on a website, they think it means—and we have done this five times in national surveys—they think the words "privacy policy" means that the site can't share information about you without your permission.

The ad icon is a great idea, but it doesn't work. You know, the studies have shown, including one that we did a couple of years ago, that Americans, like Senator Booker, have no clue that it exists most of the time.

I suggest—and that is how I got into the algorithm thing. The idea for an icon that I had originally, before this one came out, was that when you clicked on an ad that was tailored to you, you could find out who gave you the ad, what were the elements of the ad, why did you get that particular ad just at that moment.

But those data are considered too proprietary, and then people tell me the algorithm doesn't help. And so, at this point in time, there is nobody who wants to volunteer to give that information.

The CHAIRMAN. And people use barcoding, don't they——

Mr. TUROW. Well, I——

The CHAIRMAN.—to find out names and addresses and other stuff?

Mr. TUROW. Oh, yes. And even if you are anonymous—a very short example that happened to me. It is not quite a big data company, but it shows the direction.

I was at O'Hare, and I had to switch planes when one of my planes was canceled. So I went to the customer service place of the affiliated airline. They asked me to put my barcode in, and they gave me a number. On the side of me, on the screen, it said, the amount of time it will take to serve you will be based on your priority in terms of your status with our loyalty program.

The CHAIRMAN. Interesting.

Mr. TUROW. And so I, fortunately, had a lot of points, I got served pretty quickly, but I noticed there were people who were just sitting there. And that meant that they didn't get the flights that they could have gotten.

The CHAIRMAN. This is segmenting Americans. It is pre-predicting what will happen to them by virtue of the circumstances into which they fall.

Mr. TUROW. And who is valued——

The CHAIRMAN. And all the research has been done to put them in that situation so they can control how they market and maximize their profit and maybe end up absolutely giving a horrible experience to that consumer.

Mr. TUROW. I agree.

The CHAIRMAN. Senator Thune, I have something I want to say, but you are important around here. Do you want——

Senator THUNE. No, go ahead. I am fine.

The CHAIRMAN. OK.

I want to come back—since before 9/11, I have been on the Intelligence Committee, and every day I wake up to seven newspapers with nothing but NSA headlines. And I am here to tell you, as one of the authors of FISA and the PATRIOT Act and all the rest of it, that the NSA is so secure in its protection of privacy as compared to this group that we are talking to, these data brokers, it is not even close.

This affects, as was pointed out, anybody, everybody. Who knows? NSA knows. They are only likely to interact at a .000001 percent of people that they conclude need, you know, further observation. This is everybody, anybody, but more than that, divided into race, economic activities, education.

And there is something—I can't prove it is wrong, but there is something lethal about it. There is something unfair about it. It is something like—you know, if somebody is poor or less educated—and this is what I have spent my life—I come from West Virginia, where a lot of people face these problems. They are stigmatized. They have to live with it. The system is stacked against them. And a lot of people are making a lot of money out of it, and one are the data brokers.

I am not asking for an argument because the bell just went off. But I am here to say that this is a very serious situation. I think everybody here agrees this has not been talked about. We have done an investigation of it, FTC has looked at it, you all have looked at it, you certainly have. And we have to continue on this thing.

You know, the slogan of one of the companies that the Committee reviewed in this investigation, the company says it lives by the following words: "Just because you can doesn't mean you should." Unfortunately, I have been thinking about this because today's testimony and the Committee's inquiry shows the industry as a whole is falling far short of that standard—appears to be falling far short of that standard. In fact, it seems to me the motto of data brokers is: "We can, and indeed we will." Full of optimism.

We heard from Ms. Dixon about the lists generated by data brokers from genetic disease sufferers and dementia sufferers to payday-loan responders, products that seem tailor-made for businesses seeking to take advantage of consumers. I hate that. I personally am revolted by that. I have seen it in the treatment of coal miners and their safety. I have seen it in every aspect of life in the state that I come from and elsewhere, living abroad. I don't like it.

I think it is our job as a government to minimize that possibility and to bring out into sunlight what is going on. If Senator Booker doesn't know that this is happening to him—he does now, and he doesn't like it. Senator McCaskill really nailed something that could not be responded to.

And so we are going to continue on this track. I think it is serious, and I think it is a dark underside of American life on which people make a lot of money and cause a lot of people to suffer even more and, therefore, have even lower self-esteem, which is not the America we want.

This hearing is adjourned.

[Whereupon, at 4:30 p.m., the hearing was adjourned.]

A P P E N D I X

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. JOHN D. ROCKEFELLER IV TO JESSICA RICH

Question. Ms. Rich, the Commission currently has authority under the Fair Credit Reporting Act to seek enforcement actions against data brokers that provide information that is used to make eligibility decisions about consumers. Furthermore, the Commission has its broad organic authority under the FTC Act to enforce against unfair or deceptive acts or practices. However, the Commission lacks authority to mandate the type of transparency that all of the hearing's witnesses apparently agree is important for the industry. In this context, does the FTC have authority to require data brokers to allow consumers to:

- Access the information data brokers possess on them?
- Correct any inaccuracies?
- Affirmatively "opt out" and prevent the data broker from selling their information?

Answer. Although the FTC has used its authority under the Fair Credit Reporting Act (FCRA) and the FTC Act to take action against unlawful practices by data brokers, the FTC does not have the authority to impose the requirements you identify. The FTC has consistently treated the Fair Credit Reporting Act (FCRA) as an enforcement priority. It has brought almost 100 cases alleging violations of the FCRA, obtaining in excess of $30 million in civil penalties. However, as we explained in our March 2012 report *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers* (Privacy Report), the FCRA covers only some data broker activities. The FCRA generally does not cover data brokers that maintain data for marketing purposes and for other non-marketing purposes, such as to locate people or detect fraud. Thus, consumers do not have, for all data broker activities, the access, correction, or consumer control rights the FCRA provides for data brokers engaged in certain eligibility determinations.

In addition, the FTC has used its authority under the FTC Act to address unfair or deceptive practices in the data broker industry. *See, e.g.,* United States v. *ChoicePoint, Inc.,* No. 1:06-cv-00198 (N.D. Ga. Feb. 15, 2006) (FTC alleged, among other things, that a data broker engaged in unfair practices by failing to properly screen or monitor purchasers of sensitive consumer data) ; *In re U.S. Search, Inc.,* FTC Docket No. C–4317 (Mar. 25, 2011) (FTC alleged that a data broker deceived consumers by offering an opt out that was ineffective). Unless they are implemented as remedies to a violation of the FTC Act, however, we do not currently have the authority to require data brokers to provide consumers with access or correction rights, or to allow consumers to suppress or opt out of the sale or use of data held by data brokers.

In recognition of these gaps, the agency recommended legislation, in its March 2012 Privacy Report, that would offer the consumer rights you have identified.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KELLY AYOTTE TO JESSICA RICH

Question 1. Earlier this year, FTC Commissioner Julie Brill called upon state AGs to take a more active role in investigating and holding accountable data brokers for violations of the Fair Credit Reporting Act. Can you talk about the role of state law enforcement officials in this field? Does your agency work closely with your state law enforcement counterparts on pursing privacy and marketing complaints?

Answer. The FTC has consistently treated the Fair Credit Reporting Act (FCRA) as an enforcement priority. It has brought almost 100 cases alleging violations of the FCRA, obtaining in excess of $30 million in civil penalties. State attorneys general (AG) also have a role to play in enforcing the FCRA. Under section 621 of the

FCRA, state AGs can bring an FCRA enforcement action, so long as they provide the FTC and the Consumer Financial Protection Bureau with advance notice; the FTC has the right to intervene in such matters. This provision ensures that states coordinate their FCRA enforcement efforts with the appropriate Federal regulators. In addition, we work very closely with the states to educate identity theft victims of their rights under the FCRA. Our Tax Identity Theft Awareness week, involving multiple outreach events across the country, is a good example of our collaborative efforts with states to protect consumers in this area. *See ftc.gov/taxidtheft.*

Outside the FCRA, the FTC and state AGs cooperate often on privacy and security and related marketing investigations. One notable example is the action the FTC brought with 35 state AGs against LifeLock for deceptive claims about the effectiveness of LifeLock's identity theft services and its security measures. This 2010 action is one of the largest FTC-state coordinated privacy-related settlements on record. The FTC has also pursued several Do Not Call privacy cases with state AGs serving as co-plaintiffs, including enforcement actions brought against Dish Network, LLC, United States Benefits, LLC and Worldwide Info Services, Inc. In addition, the FTC participates in monthly telephone conferences with members of the National Association of Attorneys General's Do Not Call working group. The FTC continues to coordinate with state AGs on a variety of law enforcement investigations involving privacy and security in order to avoid duplication of efforts and ensure appropriate and responsible allocation of enforcement resources.

Question 2. When we look at current Federal law governing data brokers, we have Fair Credit Reporting Act, Graham-Leach-Bliley, HIPPA, Children's Online Privacy Protection Act, and Electronic Communications Privacy Act. Plus there are 50 AGs policing behavior and activity. In addition to that, we have brokers touting their aggressive self-regulatory policies. Can you address specifically what more legislation, mandates or regulations you think we need? Some have argued that before we add more laws and/or regulations to the books, we should enforce the ones we have.

Answer. While these statutes all provide important protections for consumer data, they have limitations. Gramm-Leach-Bliley, for example, applies only to financial institutions; HIPAA covers only medical records maintained by specifically defined medical providers; the Children's Online Privacy Protection Act does not cover data collection or use for individuals age 13 and over; and the Electronic Communications Privacy Act is focused on government access to electronic data. Similarly, as we explained in our March 2012 report *Protecting Consumer Privacy in an Era of Rapid Change; Recommendations for Businesses and Policymakers* (Privacy Report), the Fair Credit Reporting Act covers only some data broker activities. The FCRA generally does not cover brokers that maintain data for marketing purposes and for other non-marketing purposes, such as to locate people or detect fraud.

The Commission agrees that self-regulation can be an effective way to protect consumer interests while promoting innovation. The Commission has long supported robust, enforceable self-regulatory mechanisms established by industry to protect consumers. As we noted in our Privacy Report, however, self-regulatory efforts by the data broker industry have lagged. The Commission has monitored data brokers since the 1990s. In 1997, the Commission held a workshop to examine database services used to locate, identify, or verify the identity of individuals, referred to at the time as "individual reference services." The workshop prompted industry members to form the self-regulatory Individual Reference Services Group (IRSG). The Commission subsequently issued a report on the workshop and the IRSG in which it commended the progress made by the industry's self-regulatory programs, but noted that the industry's efforts did not adequately address the lack of transparency of data broker practices. Although industry ultimately terminated the IRSG, a series of public breaches—including one involving ChoicePoint—led to renewed scrutiny of the practices of data brokers. The Privacy Report noted that the industry has continued to operate since then with a lack of transparency. To address this concern, the Privacy Report expressed support for legislation that would give consumers access to information held by data brokers.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. AMY KLOBUCHAR TO JERRY CERASALE

Question. Most consumers would like to believe that any of their personal information held by companies is private, secure, and accurate. However, with rapidly changing marketing strategies and technology platforms, consumers are no longer sure that this is the case.

Mr. Cerasale: How do your members, both large and small marketers, work to promote consumer trust in your services? How can a lack of consumer trust in private data storage and use policies impact the broader economy?

Answer. Consumer trust forms the bedrock of the Data-Driven Marketing Economy—and the American economy as a whole. Consumer trust is critical to a company's success, regardless of the size of the business. This is especially true for remote sellers that rely on customers to purchase goods sight unseen. Businesses have every incentive to protect and promote consumer trust in the goods and services they deliver.

While businesses are already incentivized to promote consumer trust, DMA supports this incentive with a robust ethics and compliance program that calls on its members to adhere to its *Guidelines on Ethical Business Practice.* For more than four decades, DMA has administered its *Guidelines* and promoted accountability for its members, setting a high bar for responsible marketing. The DMA Ethics Policy and Ethics Operating Committees develop, update and enforce DMA's *Guidelines* as part of DMA's public trust with regulators and consumers. The accountability program is flexible enough to address ongoing changes in technology, markets, consumer interest and new business practices.

Data security is a prime example of DMA's commitment to maintaining consumer trust, having long served as a core principle of the DMA's *Guidelines.* Like many elements in the *Guidelines,* the DMA's data security standards have remained far from static. In January 2014, the DMA approved updated Business Ethical Guidelines on data security, calling on every data-driven marketer to take proactive measures to further enhance data security across the data-driven marketing industry.

In addition to data security, DMA members are committed to offering consumers' choice, and to using marketing data for marketing purposes, not for eligibility such as employment and financial transactions. These and other consumer-friendly practices help build and maintain trust in the data-driven marketplace.

When it comes to assessing whether businesses have gained consumers' trust and confidence, the proof is in the numbers. Remote selling, including through ecommerce, is a fast growing segment of our economy. More broadly, the data-driven marketing economy ("DDME") added $156 billion in revenue to the U.S. economy and fueled more than 675,000 jobs in 2012 alone.

$110 billion and 46,000 jobs depend on the ability of firms to exchange data across the DDME.[1] Indeed, responsible use of data by marketers has revolutionized one of the most costly aspects of doing business in any industry. As businesses of all sizes innovate to deliver more efficient, convenient, and secure marketing and transactional solutions, consumers are responding with a vote of confidence with their feet and with their pocketbooks.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KELLY AYOTTE TO JERRY CERASALE

Question 1. Do self-regulatory programs, such as the DMA's Guidelines for Ethical Business Practice, and other industry codes of conduct based on these and other guidelines, promote responsible use and sharing of data in the marketplace? How widespread is adoption of these programs in the marketing industry? How do governing organizations enforce the rules of these programs against bad actors?

Answer. Yes. Self-regulatory programs, like the one administered by the DMA, not only promote, but also require companies to engage in the responsible use and sharing of data in the data driven marketing economy ("DDME"). The DMA believes that self-regulation and education are important components for addressing consumer privacy while ensuring that data flows continue to benefit consumers and the economy.

DMA Reach & Scope. The DMA has established an enforceable framework of industry best practices that focus on providing transparency, choice, and other protections to consumers. At the foundation of this framework are the DMA Guidelines

[1] Deighton and Johnson, *The Value of Data: Consequences for Insight, Innovation & Efficiency in the U.S. Economy* (2013), available at *http://ddminstitute.thedma.org/#valueofdata*

for Ethical Business Practice ("DMA Guidelines"), which have been adopted by all DMA members, representing every segment of the marketing industry. In addition, the DMA enforces its guidelines against both members and non-members covering thousands of companies, making the *DMA Guidelines* the standard for the industry.

DMA members deeply value consumer trust and understand that responsible data practices are critical to building and maintaining customer relationships. To that end, the DMA and its members have developed and implemented more than 50 code sections in the *DMA Guidelines* that regulate marketing data practices, which are regularly updated to adapt to new technologies and business practices. The *DMA Guidelines* address a wide variety of marketing practices including, the conduct of data brokers, sweepstakes, mobile marketing, internet-based marketing, and texting.

Enforcement. The DMA has a long history of enforcing these guidelines. The *DMA Guidelines* have been applied to hundreds of cases concerning a wide range of issues including deception, unfair business practices and personal information protection. In addition, companies that represent to the public that they are DMA members, but fail to comply with the *DMA Guidelines,* may be liable for deceptive advertising under Section 5 of the FTC Act and comparable state laws.

Compliance Process. The DMA receives complaints from consumers, members, nonmembers, and consumer protection agencies. These complaints are reviewed by the DMA's Ethics Operating Committee and if a potential violation is found to exist, the company will be contacted, investigated, and advised on how it can cure the violation. Most companies work with the Ethics Operating Committee voluntarily to cease or change the questioned practice. However, if a company does not cooperate with the Ethics Operating Committee, action can be taken by the Board of Directors and the results of the investigation may be made public. For example, from February 2012 to June 2013, the DMA Corporate & Social Responsibility Committee reviewed 55 cases and 12 of these were made public.[1] Additional Board actions could include public censure, suspension or expulsion from the DMA. The DMA also refers cases to Federal and state law enforcement authorities for review when appropriate.

Education. Beyond enforcement of the *DMA* Guidelines, the DMA also provides education to both businesses and consumers about responsible data collection and use. Through the regular publishing of case reports that summarize questioned marketing promotions, webinars, in-person seminars, and regular communication with its members, the DMA helps to promote best practices in the industry. This communication and education is a great benefit to small businesses as they begin to market their products and services to consumers. The DMA also maintains a section of our website focused on consumers entitled "Consumer Help," and offers consumers a centralized tool to help manage their direct mail and e-mail preferences at DMAChoice.org.

Question 2. In large part, New Hampshire's economy depends on small businesses and start-up companies. My husband is the owner of a small business. Does the use and sharing of data across all sectors of the economy help or hurt the ability of small businesses to compete with larger entities in the marketplace? Does the use and sharing of data increase or decrease barriers to entry in the marketplace? How do these trends impact job creation?

Answer. Small businesses benefit significantly from the use and sharing of data. A recent study entitled, *The Value of Data: Consequences for Insight, Innovation & Efficiency in the U.S. Economy* ("Value of Data"), quantified the important role that the use and sharing of data plays in fueling economic growth.[2] This study, which was conducted independently by Professors John Deighton of Harvard Business School and Peter Johnson of Columbia University, revealed that the Data Driven Marketing Economy ("DDME") was a major asset to small businesses and start-ups.

The *Value of Data* study found that the sharing of data across the DDME enables small businesses to compete effectively with larger competitors. Data gives all companies, and especially small businesses, the ability to effectively match products to customers both on and offline, lowering barriers to market entry for specialized or niche offerings. Thanks to the responsible use and sharing of data across the economy, small business have access to data they would not otherwise have available to them, enabling them to more efficiently and effectively market their products and better compete in the marketplace. Data sharing also allows small businesses to in-

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[1] Direct Marketing Association, *DMA Annual Ethics Compliance Report 2012–2013* (2013), available at *http://thedma.org/compliance/*.

[2] Deighton and Johnson, *The Value of Data: Consequences for Insight, Innovation & Efficiency in the U.S. Economy* (2013), available at *http://ddminstitute.thedma.org/#valueofdata* (hereinafter "The Value of Data").

crementally build their customer base, and grow their product in ways never before available to companies of their size.

The *Value of Data* study also found that the DDME generated $156 billion in revenue to the United States economy and fueled more than 675,000 jobs in 2012 alone. Further, the study found that an additional 1,038,000 people owe their employment to these DDME jobs.[3] The study also found that in New Hampshire, the DDME was responsible for $1 billion in revenue and 3,000 jobs in the state's economy.[4] The study estimated that 70 percent of the value of the DDME—$110 billion in revenue and 475,000 jobs nationwide—depends on the ability of firms to share data across the DDME. If this ability to share data were curtailed, those jobs and revenue would be impacted and the U.S. economy would be much less efficient.

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[3] *The Value of Data* at 74.
[4] *The Value of Data* at 96–98.