

# The INFORM Act Takes Effect Today-What that Means for Retailers

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Today, the hotly-debated and highly-anticipated Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers Act (“INFORM Act”) finally takes effect. Although the INFORM Act’s requirements are geared towards the marketplaces themselves-which have unfortunately become a playground for criminals selling stolen, counterfeit, or potentially dangerous merchandise-its data collection, disclosure, and verification obligations will necessarily impact every company selling on these platforms. Below, we outline what retailers need to know.

## Overview of the INFORM Act

The INFORM Act applies to e-commerce websites that qualify as “online marketplaces”-broadly defined as “any person or entity that operates a consumer-directed electronically-based or electronically-accessed platform that is used by third-party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of consumer products in the US.”

Under the Act, online marketplaces are required to ensure their third-party vendors are legitimate. This due diligence includes collecting information from high-volume third-party sellers (“HVTPS”)-i.e., any third-party seller with at least 200 discrete sales of new or unused consumer products in the marketplace and an aggregate of at least \$5,000 in gross revenue in a one-year period in the marketplace. Established retailers selling *directly* to customers through marketplaces very likely fall within this definition.

Critically, the fact that a company’s products are available on a website with a marketplace is not enough to make the company an HVTPS. For example, when Amazon is doing the selling or fulfillment (i.e., as a wholesale customer) on its online marketplace, the INFORM Act does not come into play.

## Reporting Requirements

Within 10 days of qualifying as a HVTPS on a given platform, HVTPSs must report the following information to the platform:

- Bank account numbers, or if the HVTPS does not have a bank account, the name of the payee to whom payments are issued by the online marketplace;
- Contact information (including working email address and telephone number);[1]
- Valid government-issued record or tax documents that include the HVTPS’s business name and physical address; and,
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Business tax identification numbers, or, if a HVTPS does not have a business tax identification number, a taxpayer identification number.

The Act requires online marketplaces to suspend the accounts of any HVTPSs that fail to report this information, until they do so.

The online marketplace must then verify the reported information within 10 days, such as by: (i) running information through a third-party identification verification solution; (ii) using taxpayer identification matching tools; (iii) requesting copies of supporting records; and/or (iv) searching publicly available information.

The INFORM Act also includes other requirements to ensure that data reported by HVTPSs is not misused. Specifically, marketplaces must maintain reasonable security procedures and practices including administrative, physical, and technical safeguards to protect the data, and may not use the reported data for any other purpose unless required by law.

### **Certain Sellers Must Disclose Information Directly to Buyers**

HVTPSs with an aggregate total of \$20,000 or more in annual gross revenues from any given online marketplace must explicitly disclose the following details directly to customers:

- Full name (including company name and d/b/a's);
- Physical address; and
- Contact information (including working email address and telephone number).

These details should be disclosed clearly and conspicuously, either on the product listing page (via hyperlink), or in the order confirmation message.

### **Enforcement by FTC and State Attorneys General**

The INFORM Act gives authority to both the Federal Trade Commission ("FTC") and the State Attorneys General to bring civil enforcement actions against online marketplaces that fail to collect and disclose the required information. Enforcers may seek civil penalties of up to \$50,120 per violation, in addition to injunctive relief. The Act does not create a private right of action.

The Act does not explicitly provide for public enforcement against HVTPSs - merely the ability of the marketplace to freeze their accounts until they comply.

### **Conclusion**

The INFORM Act stands to benefit many retailers, by helping stymie retail crime that is often carried out through online marketplaces. However, retailers who fail to comply with the reporting and disclosure requirements may become caught up in enforcement mechanisms meant to deter intentionally elusive actors. It is therefore crucial that companies evaluate their obligations and take steps to promptly comply.

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[1] HVTPSs who are individuals must provide their real name. Businesses are required to provide either: (i) a copy of a valid government-issued identification for an individual acting on behalf of a seller that includes the individual's name; or (ii) a copy of a valid government-issued record or tax document that includes the business name and physical address of such seller.