



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

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## **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.”<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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 facilitated access to, storage, analysis, and sharing of this information.<sup>4</sup> Information that was previously public but required a trip to places such as a library or courthouse to retrieve can now be instantaneously

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<sup>1</sup> 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”).

<sup>2</sup> 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).

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

<sup>4</sup> See Kenneth Cukier and Viktor Mayer-Schönberger, *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>).

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.<sup>5</sup> 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<sup>6</sup> to online searches and mapping requests<sup>7</sup> to personal fitness monitoring through wearable devices<sup>8</sup> to stocking "smart" refrigerators that record food purchases and monitor expiration dates.<sup>9</sup>

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.<sup>10</sup> No comprehensive list of such companies currently exists, but estimates indicate the data broker industry consists of many hundreds of members.<sup>11</sup> 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.<sup>12</sup> 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.

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<sup>5</sup> 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% of American adults own a smartphone or some kind, compared with 70% who have broadband at home"); Pew Internet & American Life Project, *Cell Phone Activities 2012*.

<sup>6</sup> Salon.com, *How Netflix is Turning Viewers into Puppets* (Feb. 1, 2013).

<sup>7</sup> Time Magazine, *Data Mining: How Companies Now Know Everything About You* (Mar. 10, 2011).

<sup>8</sup> Entrepreneur, *How Fitbit Is Cashing In on the High-Tech Fitness Trend* (July 27, 2012).

<sup>9</sup> NPR, The Salt, *The 'Smart Fridge' Finds the Lost Lettuce, for A Price* (May 4, 2012).

<sup>10</sup> GAO Information Resellers Report, *supra* n.1, at 34.

<sup>11</sup> 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)").

<sup>12</sup> *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).



## **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.<sup>13</sup> 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<sup>14</sup> and that further, existing privacy laws have “limited scope” regarding the collection, use, and sale of consumer data for marketing purposes.<sup>15</sup>

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,<sup>16</sup> 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.<sup>17</sup>

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.”<sup>18</sup> 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,”<sup>19</sup> commonly referred to as credit reports, for use by issuers of credit and insurance, and by employers, landlords, and others in

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<sup>13</sup> 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 data broker industries, consumer and privacy groups, and others. *Id.*

<sup>14</sup> GAO Information Resellers Report, *supra* n.1, at 7.

<sup>15</sup> GAO Information Resellers Report, *supra* n.1, at 16.

<sup>16</sup> 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).

<sup>17</sup> GAO Information Resellers Report, *supra* n.1, at 16-19.

<sup>18</sup> GAO Information Resellers Report, *supra* n.1, at 7.

<sup>19</sup> 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).

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.<sup>20</sup>

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.<sup>21</sup>

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.<sup>22</sup> 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.<sup>23</sup> Privacy advocates, on the other hand, have argued that self-regulation does not adequately address concerns regarding the potential for consumer abuse in this arena.<sup>24</sup>

Industry trade associations that include data brokers have identified voluntary best practice guidelines for its members.<sup>25</sup> For example, the Direct Marketing Association (DMA) issued Guidelines for Ethical Business Practice that include principles of conduct, including

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<sup>20</sup> 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.

<sup>21</sup> GAO Information Resellers Report, *supra* n.1, at 19.

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

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Direct Marketing Association, *Direct Marketing Association Guidelines for Ethical Business Practice* (May 2011).

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 marketing methods,<sup>26</sup> as well as specific ways to handle health information.<sup>27</sup> 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.<sup>28</sup>

### **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.<sup>29</sup>

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.<sup>30</sup> 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

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<sup>26</sup> *Id.* at 18-19.

<sup>27</sup> *Id.* at 20 (Article #33: Collection, Use, and Transfer of Health-Related Data).

<sup>28</sup> See AdChoices website at <http://www.youradchoices.com/> (accessed Dec. 13, 2013).

<sup>29</sup> See FTC Privacy Report, *supra* n.1, at 61-69.

<sup>30</sup> Financial Times, *Companies Scramble for Consumer Data* (June 12, 2013).

analysts to examine without our knowledge or consent, and for anyone to buy if they are willing to pay the going price.”<sup>31</sup>

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.<sup>32</sup>

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.<sup>33</sup>

*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 web site 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.<sup>34</sup>

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

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

<sup>32</sup> See GAO Information Resellers Report, *supra* n.1, at 40-41 (summarizing industry arguments on benefits of information sharing for consumers).

<sup>33</sup> Charles Duhigg, *The Power of Habit*, Chapter 7.

<sup>34</sup> 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 *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).

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.<sup>35</sup> 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.<sup>36</sup> 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.<sup>37</sup>

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.<sup>38</sup>

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<sup>35</sup> Wall Street Journal, *Websites Vary Prices, Deals Based on Users' Information* (Dec. 24, 2012).

<sup>36</sup> Wall Street Journal, *On Orbitz, Mac Users Steered to Pricier Hotels* (Aug. 23, 2012).

<sup>37</sup> 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>).

<sup>38</sup> 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>).

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.<sup>39</sup>

*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.<sup>40</sup>

*Data Breaches.* Finally, a series of incidents over recent years have underscored that data brokers—like others who collect and maintain sensitive consumer data—are vulnerable to data breaches.<sup>41</sup> Privacy advocates emphasize the need to make sure appropriate protections against data breach are in place for consumer data.<sup>42</sup>

#### **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.<sup>43</sup>

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<sup>39</sup> *New York Times*, *Bilking the Elderly, with a Corporate Assist* (May 20, 2007).

<sup>40</sup> 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>).

<sup>41</sup> *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>).

<sup>42</sup> FTC Privacy Report, *supra* n.1, at 24-26.

<sup>43</sup> FTC Privacy Report, *supra* n.1.

The 2012 report identified the data broker industry as one of the Commission’s main focuses in implementing an enhanced privacy protection framework.<sup>44</sup> 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.<sup>45</sup>

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.<sup>46</sup> 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.<sup>47</sup>

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.<sup>48</sup> 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.”<sup>49</sup>

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<sup>44</sup> FTC Privacy Report, *supra* n. 1, at 68, 72-73.

<sup>45</sup> FTC Privacy Report, *supra* n.1.

<sup>46</sup> 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.

<sup>47</sup> *Id.*

<sup>48</sup> New York Times, *Congress to Examine Data Sellers* (July 24, 2012).

<sup>49</sup> AdWeek, *Lawmakers Come Up Short in Data Brokers Probe* (Nov. 8, 2012).

## **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.

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.<sup>50</sup> 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.<sup>51</sup> 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

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<sup>50</sup> Senate Committee on Commerce, Science, and Transportation, *Rockefeller Seeks Information About Data Brokers’ Practices* (Oct. 10, 2012).

<sup>51</sup> 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).



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,<sup>52</sup> 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.<sup>53</sup> 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.

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<sup>52</sup> Krebssecurity.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).

<sup>53</sup> 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).

### **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,”<sup>54</sup> and Datalogix asserts its data “includes almost every U.S. household.”<sup>55</sup> 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.<sup>56</sup> 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 respondent 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.<sup>57</sup>

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

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<sup>54</sup> Acxiom Corp., 2013 10-K Annual Report for the Period Ending March 31, 2013 (filed May 29, 2013).

<sup>55</sup> <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% of U.S. consumer e-mail addresses. <http://www.rapleaf.com/why-rapleaf/>.

<sup>56</sup> 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*.

<sup>57</sup> See *infra* Section III.B.2(a) discussing consumer protection issues relating to such lists.

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."<sup>58</sup>

#### **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;<sup>59</sup>
- **Consumers' available methods of payment**, including type of credit card and bankcard issuance date;<sup>60</sup>
- **Purchase of automobiles**, including makes and models of cars purchased or whether a consumer prefers new or used cars;<sup>61</sup>
- **Health conditions**. One company collects data on whether consumers suffer from particular ailments, including Attention Deficit Hyperactivity Disorder, anxiety,

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<sup>58</sup> Epsilon Targeting, *Data Intelligence* (EPS-COM-002026).

<sup>59</sup> Experian Narrative Response to Senate Commerce Committee (Dec. 14, 2013); Datalogix Narrative Response to Senate Commerce Committee (Nov. 16, 2013).

<sup>60</sup> 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).

<sup>61</sup> Acxiom, *The Power of Insight: Consumer Data Products Catalog* (ACXM 173-226); Lexis Nexis, *MarketView Demographic Data Dictionary* (REP001397-1403).

depression, diabetes, high blood pressure, insomnia, and osteoporosis, among others;<sup>62</sup> another keeps data on the weights of individuals in a household.<sup>63</sup> An additional company offers for sale lists of consumers under 44 different categories of health conditions, including obesity, Parkinson’s disease, Multiple Sclerosis, Alzheimer’s disease, and cancer, among others;<sup>64</sup>

- **Social media activity**, including the number of a consumer’s friends and followers, and whether they view YouTube videos.<sup>65</sup>

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.<sup>66</sup> 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,<sup>67</sup> uses laxatives or yeast infection products,<sup>68</sup> OB/GYN doctor visits within the last 12 months,<sup>69</sup> miles traveled in the last 4 weeks,<sup>70</sup> and the number of whiskey drinks consumed in the past 30 days.<sup>71</sup> 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,<sup>72</sup> donates to charitable

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<sup>62</sup> 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.

<sup>63</sup> Acxiom, *The Power of Insight: Consumer Data Products Catalog* (ACXM 184).

<sup>64</sup> 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>).

<sup>65</sup> 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).

<sup>66</sup> Letter from TransUnion to Chairman John D. Rockefeller IV (Dec. 14, 2012).

<sup>67</sup> 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.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Acxiom, *The Power of Insight: Consumer Data Products Catalog* (ACXM 173-226).

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.<sup>73</sup>

## **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.<sup>74</sup>

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.<sup>75</sup> 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, fishing, and pilot licenses.<sup>76</sup> License information can supply contact information and license issuance and expiration dates.<sup>77</sup>

### **b. Purchase or License**

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

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<sup>73</sup> Epsilon, *TotalSource Plus Data Enhancement Element Listing* (EPS-COM-5-25).

<sup>74</sup> 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>).

<sup>75</sup> E.g., Acxiom Narrative Response to Senate Commerce Committee (Feb. 15, 2013).

<sup>76</sup> *Id.* at 5.

<sup>77</sup> *Id.*

*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.<sup>78</sup> 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.<sup>79</sup>

*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<sup>80</sup> and used to create models and scoring products.<sup>81</sup>

*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.”<sup>82</sup>

### **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:

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<sup>78</sup> Datalogix Narrative Response to Senate Commerce Committee, at 1 (Nov. 2, 2012).

<sup>79</sup> 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).

<sup>80</sup> 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).

<sup>81</sup> See Section III.B for a discussion of modeling and scoring.

<sup>82</sup> Experian Narrative Response to Senate Commerce Committee (May 24, 2013).

- Epsilon operates a cooperative consisting of over 1,600 participating companies, which include catalog and retail companies, non-profits, and publishers.<sup>83</sup> 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.<sup>84</sup>
- 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.<sup>85</sup> 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.”<sup>86</sup> For example, “if a high-end retailer of men’s 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.”<sup>87</sup>
- 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;<sup>88</sup> 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.<sup>89</sup>

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<sup>83</sup> 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).

<sup>84</sup> Letter from Jeannette Fitzgerald, Senior Vice President and General Counsel, Epsilon, to Chairman John D. Rockefeller IV, at 5-6 (Nov. 2, 2012).

<sup>85</sup> Experian, *Z-24 Catalog Database File Information* (EXP001665).

<sup>86</sup> Experian Narrative Response to Senate Commerce Committee, at 5 (Dec. 14, 2012). Experian breaks purchase information into 64 different categories. Experian (EXP001667).

<sup>87</sup> Experian Narrative Response to Senate Commerce Committee, at 5 (Dec. 14, 2012).

<sup>88</sup> Equifax, *Member Data Submissions* (EFX PROD3 0143).

<sup>89</sup> 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).

- 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.<sup>90</sup>

#### **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.<sup>91</sup> 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.<sup>92</sup> 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.<sup>93</sup> 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.<sup>94</sup> 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.<sup>95</sup> Consumers are encouraged to respond to the survey by being offered an opportunity

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<sup>90</sup> Datalogix Narrative Responses to Senate Commerce Committee (Nov. 2, 2012) and (Nov. 16, 2012).

<sup>91</sup> 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).

<sup>92</sup> Epsilon, *Shopper's Voice Consumer Product Survey of America* (2012) (EPS-COM-000001 – 000004).

<sup>93</sup> *Id.* at 2.

<sup>94</sup> Epsilon, *Shopper's Voice Survey* (EPS-COM-003757).

<sup>95</sup> Epsilon, *TargetSource Survey Data*, at 3 (EPS-COM-003150).



for savings via coupons and a chance to win \$10,000.<sup>96</sup> 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.<sup>97</sup> Questions cover subjects including demographic, hobbies and interests, military experience, participation in the lottery, and product preferences.<sup>98</sup> 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.<sup>99</sup> Adults may be paid \$25 for their participation in the survey and teens receive \$14 in addition to a keychain.<sup>100</sup>

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.<sup>101</sup>

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.<sup>102</sup>

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

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<sup>96</sup> Epsilon, *TargetSource Survey Data*, at 5 (EPS-COM-003152).

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

<sup>98</sup> Experian, *Simmons National Consumer Survey* (EXP001785-1923).

<sup>99</sup> Experian Narrative Response to Senate Commerce Committee (Feb. 8 2013).

<sup>100</sup> Sample letters that accompany *Simmons National Consumer Survey* (EXP002099) and (EXP002100).

<sup>101</sup> Experian Narrative Responses to Senate Commerce Committee (May 24, 2013) (July 26, 2013); and Acxiom Narrative Response to Senate Commerce Committee (Apr. 5, 2013).

<sup>102</sup> Experian Narrative Response to Senate Commerce Committee, at 2-3 (May 24, 2013).

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.”<sup>103</sup>

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.<sup>104</sup> Acxiom represented that this website data source was provided by one of Acxiom’s data aggregators.<sup>105</sup>

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.<sup>106</sup>

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<sup>103</sup> Acxiom Narrative Response to Senate Commerce Committee (Apr. 5, 2013).

<sup>104</sup> Committee staff interview with website general counsel (Dec. 3, 2013).

<sup>105</sup> 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.

<sup>106</sup> 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."<sup>107</sup>

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.<sup>108</sup> 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.<sup>109</sup>

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

### **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.

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<sup>107</sup> 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).

<sup>108</sup> 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).

<sup>109</sup> Rapleaf, *Report Data Dictionary*, (RAP-SEN-001-00121 – RAP-SEN-001-00125).

<sup>110</sup> 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.*

<sup>111</sup> 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).

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;<sup>112</sup> 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.<sup>113</sup>

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 Cleveland and have an interest in cooking.<sup>114</sup> Typically, customers purchase this information in large quantities, hundreds or thousands of names at a time.<sup>115</sup>

“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

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<sup>112</sup> Axiom Narrative Response to Senate Commerce Committee (Feb. 15, 2013).

<sup>113</sup> *Id.*

<sup>114</sup> 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).

<sup>115</sup> Committee staff conversations with respondent companies; several companies reported that segments are priced and sold by the thousand.

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.<sup>116</sup> *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.”<sup>117</sup> 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.”<sup>118</sup>

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<sup>116</sup> Wall Street Journal, *Placing Products: Marketing Firm Slices U.S. into 240,000 Parts to Spur Clients’ Sales* (Nov. 3, 1986).

<sup>117</sup> Nielsen, *My Best Segments* (online at <http://www.claritas.com/MyBestSegments/Default.jsp?ID=70&pageName=Learn%2BMore&menuOption=learnmore>).

<sup>118</sup> Acxiom, *Precision Targeting and Messaging in Social Networks: Acxiom Predictive Scores for Social Media* (ACXM 473-474).

**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.”<sup>119</sup>

Understanding the financial circumstances of consumers is important for assessing how to best reach those most likely to purchase particular goods or products. 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*<sup>120</sup>

<sup>119</sup> Experian, *Mosaic USA New Segment and Group Names* (EXP002634-002678).

<sup>120</sup> 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*:

The product descriptions that data brokers provide to potential customers further elaborate on such vulnerability.<sup>121</sup> For example, “Hard Times” is described by Experian as, “Older, down-scale and ethnically-diverse singles typically concentrated in inner-city apartments.”<sup>122</sup> 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.”<sup>123</sup>

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.”<sup>124</sup> 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.”<sup>125</sup> These consumers include “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 personnel.”<sup>126</sup>

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.”<sup>127</sup> 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.”<sup>128</sup>

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*Economic-based Household Segmentation* (EFX Prod4 0002-0292); Equifax, *Financial Cohorts: Direct-Measured Asset-Based Household Segmentation* (EFX PROD4 0293-0543). See Appendix II.

<sup>121</sup> See Exhibit B for sample product descriptions.

<sup>122</sup> Experian, *Mosaic USA Segment Descriptors* (EXP002946).

<sup>123</sup> 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 Personix Classic (Mar. 1, 2013).

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

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> Experian, *List Services Catalog: ChoiceScore* (EXP002601).

<sup>128</sup> *Id.*

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.<sup>129</sup> 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.<sup>130</sup> 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"<sup>131</sup> and one specifically prohibits resale for "payday or short-term lending."<sup>132</sup> 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.<sup>133</sup> 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

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<sup>129</sup> The New York Times, *Bilking the Elderly, with Corporate Assist* (May 20, 2007).

<sup>130</sup> 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).

<sup>131</sup> Acxiom Narrative Response to Senate Commerce Committee (Feb. 15, 2013).

<sup>132</sup> Sample Equifax Contract (EFX SUPP 008).

<sup>133</sup> The New York Times, *Bilking the Elderly, with Corporate Assist* (May 20, 2007).



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.<sup>134</sup> 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.<sup>135</sup>

Experian’s response acknowledged that a person possibly engaged in criminal activity had been a Court Ventures customer before and after Experian’s acquisition 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.<sup>136</sup>

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.”<sup>137</sup>

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<sup>134</sup> *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).

<sup>135</sup> Letter from Chairman John D. Rockefeller to Mr. Don Robert, Chief Executive Officer, Experian (Oct. 23, 2013).

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

<sup>137</sup> 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,

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].”<sup>138</sup> The company further explains that “for the first time, marketers now have access to an aggregated, non-FCRA measure derived from the FICO Score.”<sup>139</sup>

This Committee inquiry did not focus on FCRA compliance issues.<sup>140</sup> 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.<sup>141</sup>

### **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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- 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.*

<sup>138</sup> Equifax, *Aggregated FICO Scores: Utilize Aggregated FICO for Marketing Applications* (EFX PROD3 0258-0260).

<sup>139</sup> Equifax, *Aggregated FICO Scores from IXI Services* (EFX SUPP 168-169).

<sup>140</sup> 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.

<sup>141</sup> 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."<sup>142</sup>

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."<sup>143</sup>

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."<sup>144</sup> 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."<sup>145</sup>

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<sup>142</sup> 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).

<sup>143</sup> Experian Narrative Response to Senate Commerce Committee, at 19 (Nov. 2, 2012).

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

<sup>145</sup> 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 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

## 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.<sup>146</sup>

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,<sup>147</sup> 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.<sup>148</sup>

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.<sup>149</sup>

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publicly identified clients. Epsilon Response to Senate Commerce Committee, (Feb. 13, 2013) (EPS-COM-003612-003650).

<sup>146</sup> Committee staff telephone interview with retail bank purchaser of segmenting buckets (Nov. 21, 2013).

<sup>147</sup> Joseph Turow, *The Daily You*, at 185 (2011) (citing a 2005 survey that showed 80% of respondents “believed that ‘companies today have the ability to follow my activity across many sites on the web.’”)

<sup>148</sup> See Appendix III for a sampling of some of the data elements one company reported offering for online targeting.

<sup>149</sup> 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. Web sites have replaced or augmented catalogues as a preferred method of consumer shopping in the last decade.

The primary method for achieving online data sharing described by respondent companies is through the use of “cookies,”<sup>150</sup> and other technical means, such as “cookie syncing,” or “cookie matching.”<sup>151</sup> 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.<sup>152</sup>

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% of its 1,500 data elements to help marketers target consumers online by personalizing websites for individual consumers or serving advertisements.<sup>153</sup> Similarly, Equifax offers many of its products digitally, including modeled FICO scores and the Ability to Pay Index.<sup>154</sup> 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.<sup>155</sup>

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

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

<sup>150</sup> 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).

<sup>151</sup> 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-syncing>).

<sup>152</sup> Gartner, *Acxiom’s Audience Operating System Could Reinvent Data-Driven Marketing* (Sep. 26, 2013).

<sup>153</sup> Committee staff conversation with Jennifer Barrett Glasgow, Chief Privacy Officer, Acxiom (Dec. 10, 2013).

<sup>154</sup> 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).

<sup>155</sup> 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).

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.<sup>156</sup> However, some privacy and information experts have expressed concerns that re-identification techniques may be used with such data,<sup>157</sup> 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.”<sup>158</sup>

#### **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”<sup>159</sup> – 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

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<sup>156</sup> Letter from Eric Roza, Chief Executive Officer, Datalogix, to Chairman John D. Rockefeller IV (Nov. 16, 2013).

<sup>157</sup> *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).

<sup>158</sup> 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.”).

<sup>159</sup> Acxiom Narrative Response to Senate Commerce Committee, at 3 (Apr. 15, 2013).

Association.<sup>160</sup> 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.<sup>161</sup>

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,”<sup>162</sup> 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.”<sup>163</sup> 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.”<sup>164</sup>

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.<sup>165</sup>

### **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. Rappleaf provides consumers access to their data, and allows them to correct data that Rappleaf 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

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<sup>160</sup> For discussion of these guidelines *see* Part I.B.

<sup>161</sup> DMA Guidelines, *supra* n.25, Article 31.

<sup>162</sup> DMA Guidelines, *supra* n.25, Article 36.

<sup>163</sup> Sample contract provided to the Senate Commerce Committee.

<sup>164</sup> Sample contract provided to the Senate Commerce Committee.

<sup>165</sup> *E.g.*, Sample Contract provided to the Senate Commerce Committee.

particular consumer, Equifax does not provide an opportunity for consumer notice, access, or correction.<sup>166</sup> 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,”<sup>167</sup> 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.<sup>168</sup>

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% 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.<sup>169</sup>

### **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.

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<sup>166</sup> Response Letter from Robert W. Kamerschen, US Chief Counsel and Senior Vice President, Equifax to Chairman John D. Rockefeller IV, at 5 (Nov. 2, 2012).

<sup>167</sup> Experian Narrative Response to Senate Commerce Committee, at 16 (Nov. 2, 2013).

<sup>168</sup> *Id.*

<sup>169</sup> *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% of the available 1,500 data elements. Committee staff conversation with Jennifer Barrett Glasgow, Chief Privacy Officer, Acxiom (Dec. 10, 2013).



Axiom’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.<sup>170</sup>

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 a record pertaining to the suppressed household in order to properly manage consumer records, such as the consumer’s choice for suppression.”<sup>171</sup>

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.

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<sup>170</sup> Epsilon Narrative Response to Senate Commerce Committee (Nov. 2, 2012).

<sup>171</sup> Experian Narrative Response to Senate Commerce Committee, at 16 (Nov. 2, 2012).

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.