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marketplace sellers in a growing number of states, including Arkansas, California, and Oklahoma.

**Gail Cole** • Feb. 17, 2023



By *Gail Cole*.

Marketplace facilitators are being required to monitor and vet high-volume marketplace sellers in a growing number of states, including [Arkansas](#), [California](#),

and [Oklahoma](#). And with the December 2022 enactment of the [Consolidated](#)

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## **What do online marketplaces need to do under the INFORM Consumers Act?**

The INFORM Consumers Act is designed to reduce and ideally eliminate counterfeit sales. To that end, it requires online marketplaces to:

- Collect and verify certain information from high-volume third-party sellers
- Disclose certain high-volume seller information to buyers
- Provide “clear and conspicuous” consumer reporting options on high-volume seller pages
- Comply with data privacy and security requirements

### **Collect and verify information from high-volume sellers**

Online marketplaces must collect the following information from high-volume sellers:

- Bank account number (or the name of the payee if the seller has no bank account)
- Contact information
  - If the seller is a business, a copy of a valid, government-issued record or tax document that includes a business name and physical address
  - If the seller is an individual, the name of the individual seller
  - If an individual is acting on behalf of an individual seller, a copy of a valid government-issued identification for that individual
- Business tax identification number (or taxpayer identification number, if the seller is an individual)
- Up-to-date, working email address and phone number for the seller

This information must be verified at least once each year. If a high-volume seller doesn't respond to a request for verification or provide the necessary certification

within 10 days of receiving the request, the online marketplace must suspend future

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marketplace, and the marketplace must have processed the payment (directly or through its payment processor).

### **Disclose information to buyers**

Online marketplaces must comply with additional requirements for really big high-volume third-party sellers — marketplace sellers with an aggregate total of \$20,000 or more in annual gross revenues on the marketplace.

For these very high-volume sellers, the marketplace must:

- Provide the seller's full name, physical address, and contact information to consumers "in a clear and conspicuous manner," either on the product listing page, in the order confirmation message, or in another consumer communication
- Identify whether the seller used a different seller to supply the product to the consumer upon purchase

### **Exception for high-volume marketplace sellers working out of their residence**

The law provides an exception for high-volume sellers that don't have a business address, or have a combined business/residential address. These sellers must provide the country and state (if applicable) in which they reside, but they don't need to provide the street address. The marketplace will need to let consumers know that there's no business address available and provide a way for consumers to contact the seller, either by phone, email, or other electronic messaging means.

Should a marketplace determine that a high-volume third-party seller has made a false representation in order to partially disclose their address, and should the seller fail to respond to consumer questions within a reasonable period of time, the online marketplace can suspend sales on the seller's account. However, the marketplace

must give the seller notice of its intent, and allow the seller 10 days to respond to

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Online marketplaces must implement and maintain reasonable security measures to ensure the data they collect from high-volume sellers is safe.

Marketplaces currently required by certain states to collect information from high-volume sellers may need to [adjust their practices](#) to comply with the federal requirements. For example, if they rely on a third party, such as a third-party payment processor, to collect and store bank account information, they may need to develop capabilities to collect and store bank account information themselves. More details will be forthcoming.

### **What happens if a high-volume seller or marketplace doesn't comply with the new requirements?**

If a high-volume seller fails to comply with the new information and reporting requirements, the online marketplace can suspend sales activity on their account. The marketplace must alert the seller via written or electronic notice and give the seller up to 10 days to comply.

Online marketplaces that fail to institute and enforce new information and reporting requirements for high-volume sellers are subject to civil or criminal penalties under the Federal Trade Commission Act. Penalties could exceed [\\$46,000](#) per violation. Any state attorney general that has reason to believe an online marketplace has failed to comply with the new requirements can bring civil action against the marketplace.

Why make marketplaces do the heavy lifting? "The nature of our tax structure is such that every tax is almost completely reliant on a business for its collection/remittance," says Scott Peterson, VP of Government Relations at Avalara. "This legislation takes that concept one step further and turns businesses into law enforcement agents. You want to buy a firetruck? Make a business collect your sales

tax. You want to stop people from selling counterfeit goods? Impose an obligation on

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Furthermore, the FTC's Consumer Protection Act allows states to enforce complementary laws that may impose additional requirements on online marketplaces or high-volume marketplace sellers. Numerous states were moving in that direction in 2022, though they may wait to gauge the success of the federal requirements before implementing additional state-specific requirements.

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