

COLUMNS

## What online marketplaces need to know before INFORM Act imposes new due diligence rules

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*The INFORM Act imposes new and rather hefty due diligence and disclosure requirements on all online marketplaces. Image credit: Morgan Lewis*

By A LUXURY DAILY COLUMNIST

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The INFORM ACT, which was signed into law late last year, represents a legislative effort to protect consumers from unknowingly purchasing stolen, counterfeit or unsafe consumer products from online sellers.

With a June 27, 2023 compliance deadline, operators of online marketplaces should start taking steps to comply with its mandates.

The Integrity, Notification and Fairness in Online Market Retail Marketplaces for Consumers Act (INFORM Act) became law on Dec. 29 as part of the Consolidated Appropriations Act of 2023.

U.S. legislators believed that consumers suffered considerably from fraudulent online sales during the COVID-19 pandemic, prompting Senators Dick Durbin (D-IL) and Bill Cassidy (R-LA) to introduce the bill in March 2021.

The INFORM Act mandates are intended to establish a baseline level of transparency to make it easier for consumers to identify exactly who they are buying from while making it harder for deceitful sellers to avoid identification.

The INFORM Act has a June 27, 2023, compliance deadline for online marketplace operators and sellers to comply.

### Requirements

The INFORM Act imposes new and rather hefty due diligence and disclosure requirements on all online marketplaces: the electronically based, "consumer-directed" platforms that "facilitate or enable third party sellers to engage in the sale, purchase, payment, storage, shipping or delivery of a consumer product."

High-volume third-party sellers defined as vendors with more than 20 transactions and \$5,000 in sales revenue within a 12-month period will be required to provide verifiable authenticating information to eliminate the anonymity

that they sometimes enjoyed on some platforms.

The marketplaces will be responsible for collecting and verifying that information.

Practical implementation steps

This legislation has support from consumer groups, law enforcement and many other advocates.

However, the new rules could be difficult for some online marketplaces to fully implement before the June 27, 2023, deadline as they may require new or more reliable internal policies, controls and procedures.

Specifically, in less than 180 days, all online marketplaces must do the following:

- Collect bank account information, tax ID numbers and verifiable contact information, including a working email and phone number, from all "high-volume third-party" sellers. For those sellers who are not yet within this category, they must provide this information within 10 days of qualifying as a high-volume third-party seller.
- Verify all of such information received from high-volume third-party sellers within 10 days of receipt.
- Require those sellers with \$20,000 or more in annual gross revenues to disclose, in a clear and conspicuous manner to buyers, identification information including the seller's full name, physical address, and working contact information.

In addition, marketplaces must take the following steps:

- Implement and maintain reasonable data security measures and practices to protect the seller information collected.
- Create a reporting tool to embed on high-volume third-party seller listing pages that will allow consumers to report suspicious marketplace activity electronically or by telephone.
- Suspend seller accounts when the necessary information, certifications or disclosures are not provided within 10 days of a request.
- The Federal Trade Commission (FTC) is charged with enforcing the INFORM Act's requirements, and violations by an online marketplace will be treated as an unfair or deceptive act or practice under 15 U.S.C. 18. The INFORM Act also authorizes state attorneys general to bring civil actions for any violation affecting residents of their state.

SOME MARKETPLACES already comply with the INFORM Act or are in the process of implementing compliance procedures to meet the impending effective date. But others should quickly make changes to be in compliance before this summer's compliance deadline.

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