

With the Consumer Financial Protection Bureau (CFPB) withdrawing a rule to regulate data brokers, states have an important opportunity to protect their residents from the risks that these companies pose when they collect and sell sensitive information.

## Data Broker Abuses: Growing and Supercharged by Artificial Intelligence

Data brokers collect and sell a wide range of information about consumers, often without their knowledge and consent. The industry was valued at [nearly \\$289 billion in 2024](#) and is projected to reach [over \\$512 billion by 2033](#). Data brokers often [sell highly sensitive information](#), including geolocation, health data, buying habits, political affiliation, property records, criminal history, and financial assets. Their customers might be large multinational corporations, foreign governments, and even malicious actors, such as identity thieves, financial predators, and domestic violence abusers. The lack of transparency surrounding data brokers – combined with how artificial intelligence can supercharge their ability to exploit and weaponize the data they sell – poses risks to consumer privacy, financial health, and personal safety.



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## Regulating Data Brokers as "Consumer Reporting Agencies"

The Fair Credit Reporting Act (FCRA) has an expansive definition of what it regulates as a [“consumer reporting agency”](#) (CRA). Data brokers may qualify as CRAs if they “assemble or evaluate” information from others and sell that information, so long as that information constitutes a “consumer report.” [The definition of a “consumer report”](#) is similarly expansive, covering information that:

- bears on seven categories of information: consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; and
- is used or expected to be used or collected in whole or in part as a factor in establishing the consumer’s eligibility for credit, insurance, employment, government benefits, or other purpose listed in the FCRA as a permissible purpose.

For more on the expansive scope of the CRA’s definition, see [Data Gatherers Evading the FCRA May Find Themselves Still in Hot Water](#).

The Biden-era Consumer Financial Protection Bureau (CFPB) started a rulemaking to clarify which data brokers are CRAs and thus regulated by the FCRA. In December 2024, the CFPB issued a [proposed rule](#) that would have made clear that data brokers are CRAs if they sell data that is then used for credit, employment, insurance, or any of the other permissible purposes listed in the FCRA, regardless of the original stated purpose of the request for the data. The proposed rule also categorized four types of information as generally constituting a consumer report regardless of the purpose for which it is sold: credit history, credit score, debt payments, and income or financial tier.

Clarifying that certain data brokers are CRAs regulated by the FCRA would have made clear that data brokers are required to:

- Limit the sale of data to the FCRA's permissible purposes, which do not include marketing.
- Maintain reasonable procedures for maximum possible accuracy.
- Allow consumers to access the information about themselves on file at the data broker.
- Conduct reasonable investigations when a consumer disputes the inaccuracy of information about themselves.

Users of information would then be required to provide notices when they took an adverse action on the basis of information sold by a data broker CRA.

In May 2025, the Trump Administration's CFPB [withdrew this proposed rule](#). However, states could regulate data brokers, either by regulation or guidance under their own FCRA analogs or adopting a law similar to [California's DELETE Act](#). Also, state Attorneys General could bring enforcement action against data brokers that fit within the definition of "consumer reporting agency" under the FCRA or their own state laws.

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## States Can Regulate Data Brokers Using State FCRA Analogs

About [half of the states](#) have enacted their own "mini-FCRA" credit reporting or consumer reporting laws. These laws vary in their scope. States that have laws as expansive as the federal FCRA in their [definition of "consumer report"](#) could adopt regulations or guidance covering data brokers similar to the Biden-era CFPB rule.

State mini-FCRA laws vary in the type of protections that they contain. A summary of state mini-FCRA laws is available in [Appendix H](#) of NCLC's Fair Credit Reporting treatise [contact Chi Chi Wu ([cwu@nclc.org](mailto:cwu@nclc.org)) for access].

## Federal FCRA Preemption and State Carve-Outs: A Double-Edged Sword

States adopting mini-FCRA laws or regulations must always grapple with preemption, the ability of federal laws to override state laws. The FCRA has a [messy and complicated](#) preemption scheme. However, the FCRA likely would not preempt clarifying the scope of coverage of a state mini-FCRA law through regulation or guidance. For more on FCRA preemption, see NCLC's article [What the CFPB's Recent FCRA Preemption Guidance Gets Wrong](#).

Also, the federal FCRA provides CRAs with [qualified immunity](#) against state common law claims such as defamation, libel, or invasion of privacy. If a data broker claims they are not a CRA, they cannot benefit from this immunity and would be subject to common law claims, as well as state laws prohibiting unfair or deceptive acts and practices.

A number of state consumer privacy laws have [exemptions for FCRA-covered entities](#); data brokers who claim they are not CRAs cannot take advantage of these carve-outs, meaning that they must comply with those state privacy laws. These state laws include the [California Consumer Privacy Act](#) and [similar laws in 20 states](#), the [Oregon Data Broker Registration Law](#), and the [California DELETE Act](#).

A state that does not have a mini-FCRA or has a more limited definition of "consumer reporting agency" [could instead adopt a version of the California DELETE Act](#), which was specifically designed to regulate data brokers operating in that state. Ideally, the state law would cover all data brokers, whether or not they are not CRAs.

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**For more information**, contact National Consumer Law Center Director of Consumer Reporting and Data Advocacy Chi Chi Wu ([cwu@nclc.org](mailto:cwu@nclc.org)). Thanks to Ariel Nelson, Diane Thompson and Michelle Deakin of NCLC, and Caroline Kraczon and Caitriona Fitzgerald of the Electronic Privacy and Information Center for feedback, and Ella Halpine for design layout.

## Appendix: Scope of Consumer Report and Consumer Reporting Agency in State Mini-FCRA Laws

| State  | Consumer Report Definition   | Consumer Reporting Agency Definition                              | Cite                                     |
|--|--|---|--|
| AZ   | Similar to FCRA  | Similar to FCRA   | Ariz. Rev. Stat. Ann. § 44-1691          |
| AR   | Same   | Same  | Ark. Code Ann. § 4-93-102                |
| CA Consumer Credit Reporting Agency Act        | Only covers credit info  | Similar to FCRA but "consumer report" only covers credit info     | Cal. Civ. Code § 1785.3                  |
| CA Investigative Consumer Reporting Agency Act | Only character, general reputation, personal characteristics, and mode of living | Similar to FCRA but "consumer report" only covers non-credit info | CA Civ Code § 1786.2                     |
| CO   | Similar to FCRA  | Similar to FCRA   | Colo. Rev. Stat. § 5-18-103              |
| CT   | Only covers credit info used for eligibility for consumer credit                 | Assembles or evaluates credit info only                           | Conn. Gen. Stat. § 36a-695               |
| GA   | Credit info only used for credit, employment                                     | Similar to FCRA but "consumer report" only covers credit info     | Ga. Code Ann. § 10-1-392                 |
| KS   | Similar to FCRA  | Similar to FCRA   | Kan. Stat. Ann. § 50-702                 |
| LA   | Only covers credit info  | Similar to FCRA but "consumer report" only covers credit info     | La. Stat. Ann. § 9:3571.1                |
| ME   | None?  | Similar to FCRA   | Me. Stat. tit. 10, § 1308                |
| MD   | Similar to FCRA  | Similar to FCRA   | Md. Code Ann. Com. Law § 14-1201         |
| MA   | Only covers credit info  | Similar to FCRA but "consumer report" only covers credit info     | Mass. Gen. Laws ch. 93 § 50              |
| MT   | Similar to FCRA  | Similar to FCRA   | Mont. Code Ann. §§31-3-102               |
| NE   | not defined  | not defined   | Neb. Rev. Stat. § 20-149                 |
| NV   | payment or credit info only  | Similar to FCRA but "consumer report" only covers credit info     | Nev. Rev. Stat. §§ 598C.060 and 598C.100 |
| NH   | Similar to FCRA  | Similar to FCRA   | N.H. Rev. Stat. Ann. § 359-B:3           |
| NJ   | Similar to FCRA  | Similar to FCRA   | N.J. Stat. Ann. §§ 56:11-30              |

| State | Consumer Report Definition   | Consumer Reporting Agency Definition  | Cite                          |
|-------|--|---|-------------------------------|
| NM    | no definition  | any business furnishing credit info about consumers                                   | N.M. Stat. Ann. § 56-3-1      |
| NY    | Similar to FCRA  | Similar to FCRA   | N.Y. Gen. Bus. Law § 380-A    |
| OH    | Only covers information used for insurance   | Only covers information used for insurance  | Ohio Rev. Code Ann. § 3904.01 |
| OK    | same as FCRA   | same as FCRA  | Okla. Stat. tit. 24 § 147     |
| PR    | "capacity, reputation and/or credit worthiness and personal information ...to establish the consumer's eligibility for, among other things, obtaining credit." | Appears to use FCRA definition but unclear  | P.R. Laws Ann. tit. 7 § 2031  |
| RI    | Only covers credit info  | Called "credit bureau": similar to FCRA but "consumer report" only covers credit info | R.I. Gen. Laws § 6-13.1-20    |
| SC    | Similar to FCRA  | Similar to FCRA   | S.C. Code Ann. § 37-20-110    |
| TX    | None   | Only covers persons who disseminate credit info                                       | Tex. Fin. Code Ann. § 391.001 |
| UT    | Only covers negative credit info   | Only covers dissemination of info for creditworthiness                                | Utah Code Ann. § 70C-7-107    |
| VT    | Similar to FCRA but no purpose requirement   | Similar to FCRA   | 9 VT Stats § 2480a            |
| WA    | Similar to FCRA but exclusion for marketing list   |   | Wash. Rev. Code § 19.182.010  |

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