

AG's Second Set of Modified CCPA Proposed Regulations: What You Need To Know

OneTrust DataGuidance Research



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What has happened?

The California Attorney General, Xavier Becerra, published, on 11 March 2020, the second set of modifications made to the proposed regulations ('the Proposed Regulations') under the California Consumer Privacy Act of 2018 ('CCPA') for public comment.

Definitions

The second set of the modified Proposed Regulations amends certain definitions, including the following:

- 'employment benefits' has been amended to include the **dependents** of consumers as those who may receive access to benefits through the consumer's employer;
- 'financial incentive' is now defined as 'a program, benefit, or other offering, including payments to consumers, **related to the collection, retention, or sale** of personal information';
- 'price or service difference' has been amended to implement the definition of a financial incentive, as the difference in the price or rate charged for any good or services or the difference in level or quality of any good or services offered to any consumers is **related to the collection, retention, or sale** of personal information.

The section on guidance regarding the interpretation of CCPA definitions, introduced by the previous version of the Proposed Regulations, has been removed completely.

Consumer notices

With respect to a **notice at collection of personal information**, it is now specifically provided that businesses that do not collect personal information from a consumer, **do not need to provide a notice at collection to consumers if they do not sell the consumer's personal information**.

In addition, the previous requirement that data brokers contact the consumer or the source of personal information before they sell a consumer's personal information has been removed. Businesses are also **not required to provide a link to their privacy policy** when they notify at collection of employment-related information.

The description and the icons for an opt-out button, also introduced by the previous version of the Proposed Regulations, **have been removed**.

For **privacy policies**, when businesses provide information on the right to know about personal information collected, disclosed, or sold, they **must identify the categories of sources** from which the personal information is collected as well as **the business or commercial purpose** for collecting or selling personal information, in a manner that provides consumers a **meaningful understanding** of

the collected information and why it is collected or sold. The Proposed Regulations also introduce a requirement to **include in a privacy policy the processes regarding minors**, if the business has actual knowledge that it sells the personal information of minors under 16 years of age.

Handling consumer requests

In responses to **requests to know** and related to the prohibition of disclosure of information such as a consumer's Social Security number, driver's licence number or government-issued identification number, businesses must inform consumers with **sufficient particularity that they have collected the type of information**. In particular, the Proposed Regulations include an example where a business might respond that it collects 'unique biometric data including a fingerprint' without disclosing the actual fingerprint scan data.

Furthermore, when a business **denies a request to delete** and the **consumer has not already requested to opt-out**, the business **must ask if the consumer would like to opt-out** of the sale of personal and include either the contents, of or a link to, the notice of right to opt-out.

Regarding **service providers**, it is stipulated that that they may retain, use or disclose information obtained in the course of providing services **to process or maintain such information on behalf of the business which provided information, in compliance with a written contract**. This exemption amends the slightly broader previous requirement, which allowed service providers to perform services specified in the contract with a business that provided the information. The exemption for internal use of information by a service provider has also been amended to **prohibit the use of information to provide services to another business or correct data acquired from another source**.

For **requests to opt-out**, the previous requirement that a consumer must affirmatively select their choice to opt-out and that privacy controls must be designed without any pre-selected settings **has been removed**.

Record-keeping

A clarification has been added to the prohibition to share information kept for record-keeping purposes with any third party, **which is allowed when it is necessary to comply with a legal obligation**.

In addition, the provision on obligations of businesses that buy, receive, sell or share personal information of more than 10 million consumers has been amended to also apply to businesses **that know or should reasonably know** that they meet such threshold.

What's next

The California Department of Justice is accepting written comments regarding the modified Proposed Regulations until **5:00 p.m. on 27 March 2020** by email to PrivacyRegulations@doj.ca.gov, or by mail to the following address:

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