

# Memorandum

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## CCPA Alert: California Revises Proposed Regulations

February 13, 2020

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The first round of updates to the regulations to the California Consumer Privacy Act (“CCPA”) [were released](#) on Friday, February 7, 2020.<sup>1</sup> Final regulations are expected to be issued after public comment on this most recent draft, and the regulations will become binding on July 1, 2020.

As a reminder, as of January 1, 2020, the CCPA requires companies doing business in California and meeting certain thresholds to make certain disclosures and take certain actions with respect to the personal information of California residents. See [earlier memorandum](#) on the CCPA.

### What Is New in the Updated CCPA Regulations?

The revised regulations are essentially incremental comments and clarifications of the CCPA—not sweeping or significant changes. Notable highlights include:<sup>2</sup>

- *Clarification on “personal information”*: The CCPA’s broad definition of “personal information”—all information “that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household” (Cal. Civil Code § 1798.140(o)(1))—has not changed. The revised regulations clarify that information—such as an IP address of a website visitor—is not deemed “personal information” if it is not linked (and could not be reasonably linked) to any particular consumer or household.
- *Mobile devices*: The revised regulations expressly address mobile devices: (i) where to place the required notice about data collection and opt-out rights (*see* Regulations § 999.305(a)(3)(b) and 306(b)(1)); and (ii) if data is collected “for a purpose that the consumer would not reasonably expect” (§ 999.305(a)(4)), consumers must receive a “just-in-time” notice (e.g., a pop-up window when the app is first opened) with a plain-language summary of the data collection and link to the full privacy policy.
- *Opt-out of data sales*: The revised regulations clarify that a business that does not currently sell personal information (and states as such in its privacy policy) does not need to provide consumers with a notice of their opt-out rights. However, a business omits the notice at its own risk—the updated regulations clarify

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<sup>1</sup> The Office of the Attorney General of the California Department of Justice (“CA DOJ”) released the initial updated regulations on February 7, 2020. On February 10, 2020, the CA DOJ made an additional revision to Section 999.317 (*see* bullet on “Businesses’ obligations”).

<sup>2</sup> For clarity, this is not an exhaustive list of all changes in the revised regulations or a detailed description of the changes that are listed. Please consult one of the memorandum authors with any additional questions.

that a business cannot sell any personal information collected before it provides an opt-out notice, absent the consumer's affirmative consent (§ 999.306(e)). Additionally, the updated regulations make clear that a consumer's opt-out request should be easy to execute and require minimal steps (§ 999.315(c)). Further, the updated regulations advise businesses on how to respond to user-enabled global privacy controls that communicate their opt-out intentions (§ 999.315(d) & (e)).

- *Businesses' obligations:* The initial regulations did not require businesses to respond to consumer requests to know about their personal data if this would pose undue security risks. The revised regulations replace this language with specific conditions for when businesses can avoid such response (§ 999.313(c)(3)). If a consumer requests deletion of its personal data, businesses must answer whether (but not how) the deletion was done (§ 999.313(d)(4)). The revised regulations also cover requests to know or delete information submitted on behalf of a household with multiple members (§ 999.318). Businesses selling the personal information of 10 million (up from 4 million) California residents have certain record-keeping obligations with respect to data requests (§ 999.317(g)), and authorized agents used by consumers to make data requests have certain data use and security obligations (§ 999.326(d) & (e)).
- *Service providers:* The revised regulations make clear that service providers (businesses that process information on behalf of clients and not for their own use) may use and disclose personal information solely: (i) to perform contracted services, (ii) to employ subcontractors, (iii) for internal quality improvement purposes (with exceptions), (iv) to detect data breaches or fraud prevention or (v) for legal compliance and enforcement purposes. Service providers also may not sell the personal information provided by their clients if the clients' consumers have opted out of such sale. If a customer sends a data request to a service provider, it shall either act on behalf of its client or notify the consumer that it cannot respond because it is not the client (§ 999.314(e)).
- *Financial incentives to share consumer data:* The CCPA and its regulations allow businesses to offer customers financial incentives reasonably related to the value of their data. The revised regulations provide that a business must be able to calculate and demonstrate such valuation, which may include the value of the data of all people (not just California residents) (§ 999.337(b)).

## Reminder—What the CCPA Already Requires

As a reminder, companies should already be taking certain actions:

- Notify California residents as to what personal information categories are being collected and how the data will be used, at or before the point of collection. *This applies to all California residents interacting with a CCPA-covered business, including website visitors, offline customers, and potential or actual employees, independent contractors and board directors.*
- Display required provisions in website privacy policies and other documents.
- Respond to qualifying user requests about their personal information.

- Not discriminate against any California resident for exercising their CCPA rights.
- Not sell the personal information of California residents, except in compliance with the CCPA.
- Maintain reasonable data security procedures. Note that the CCPA's data breach provision is the only one with a private right of action. A recent complaint regarding a data breach claimed a violation of the CCPA (see *Barnes v. Hanna Andersson, LLC*, N.D. Cal., No. 20-cv-00812 (complaint filed February 3, 2020)).

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