

CCPA Update: Attorney General Releases Third Draft of Proposed CCPA Regulations

Alysa Z. Hutnik, Aaron J. Burstein, Alexander I. Schneider

March 11, 2020



On Wednesday, [the California Attorney General \(AG\) released a third draft of proposed CCPA regulations for public comment](#). The draft contains a series of technical corrections, along with a handful of substantive incremental modifications to the prior draft. The limited number of changes signals that the rulemaking process is reaching an end.

The following is a summary of key modifications the AG is proposing in the latest draft:

- **Service Providers** – The AG revised the exemptions to the general rule that service providers may not retain, use, or disclose personal information obtained in the course of providing services.

First, the AG removed an exemption allowing service providers to perform the services specified in the written contract with the business that provided the personal information. In its place, the AG added a new exemption: “to process or maintain personal information on behalf of the business that provided the personal information, or that directed the service provider to collect the personal information, and in compliance with the written contract for services required by the CCPA.” This new exemption significantly narrows the ability of a service provider to use personal information to perform services generally, now requiring that the service provider limit the use of personal information “on behalf of the business that provided the personal information.”

Second, the AG edited a clause that allowed a service provider to use personal information for internal purposes to build or improve the quality of its services. The AG clarified that the exemption does not allow a service provider to build or modify consumer profiles *to use in providing services to another business*; or *correcting* or augmenting data acquired from another source. These clarifications indicate that the AG seeks to limit a service provider from using personal information it obtains through providing a service to develop consumer profiles that it can resell.

- **Removal of Opt Out Button** – In the prior draft of the regulations, the AG proposed a standard opt out button and logo for the industry to adopt. But the opt out button came under scrutiny in comments submitted by Lorrie Cranor of Carnegie Mellon University, which

highlighted usability issues presented by the color and appearance of the AG's proposed button. Cranor's team noted that the icon looked deceptively like an actual toggle switch, and when combined with its red color, could be misinterpreted as indicating an off-state. "[A] consumer may misinterpret the [AG] toggle icon as an indication that they have already opted-out of the sale of their personal information," Cranor's team wrote. In the latest version, the AG removes all reference to the opt out button.

- **Exemption from Notice at Point of Collection** – A business that does not collect PI *directly* from a consumer is not required to provide a notice at the point of *collection if that business will not sell the consumer's personal information*.
- **Guidance on IP Addresses** – The AG abruptly removed guidance indicating that an IP address that does not link to a particular consumer or household would not be "personal information." The new draft does not include new guidance, however, leaving the prior guidance as the only interpretation issued by the AG on whether IP addresses are "personal information."
- **Privacy Policy Disclosures** – The AG restored language from the first draft of the regulations requiring a business to identify the categories of sources from which personal information is collected and the business/commercial purpose for collecting or selling personal information, both in a manner that provides consumers a meaningful understanding of the information disclosed. The new language does not require these disclosures "for each" category of personal information.
- **Sensitive Data Disclosures** – The AG proposes that even if a business withholds sensitive data in response to a request to know, the business must still provide a description of the information withheld. For example, a business should not provide an actual social security number, but should state that it holds the consumer's social security number.
- **Denial of Deletion Request** – When a business that sells personal information denies a deletion request, the business must ask the consumer if the consumer wants to opt out of the sale of their personal information.
- **Definition of a Financial Incentive** – The AG removed a confusing element of the definition of a financial incentive that had previously indicated that a program, benefit, or other offering, including payments to consumers, would be a "financial incentive" where a company compensated the *disclosure, deletion, or sale* of personal information. The AG clarified that a financial incentive relates instead to the *collection, retention, or sale* of personal information.
- **Annual Privacy Policy Disclosures** – The requirement to disclose metrics when a business buys, receives, sells, or shares personal information of more than 10 million consumers in a calendar year will now only apply to businesses that know or should reasonably know that they meet the threshold for such a disclosure.

The deadline to submit written comments to the proposed modifications is March 27, 2020. Our firm will continue to review the draft regulations as we work with clients to develop practical guidance on complying with the CCPA. If you have questions on how the regulations may impact your business, or if you would like assistance in submitting a written comment, please contact [Alysa Hutnik](#), [Aaron Burstein](#), or [Alex Schneider](#).

**THE NEW ADVERTISING AND
PRIVACY RESOURCE CENTER**

Advertising, Privacy and Consumer
Protection Answers. All in One Place.

[CLICK HERE FOR MORE INFORMATION](#)