

# CCPA Enforcement Area No. 6

## California Privacy Rights Act (CCPA 2.0)

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### CCPA 2.0: A Refresher

Just as the dust from the CCPA began to settle, on June 24, 2020, the California Secretary of State released a memorandum (available [here](#)) stating that the California Privacy Rights Act (the “CPRA”), also known as the CCPA 2.0, passed the threshold of signatures to be on the November ballot for California’s General Election. The CPRA, which was introduced by Californians for Consumer Privacy, the group behind the CCPA, would expand upon the CCPA’s consumer privacy rights and move California privacy law closer in the direction of the EU General Data Protection Regulation (“GDPR”).

If the CPRA passes, it will go into effect January 1, 2023 and create new privacy rights in connection with certain types of information. Such rights may include, for example, a right to correct inaccurate personal information and a new right for consumers to opt out of the use or disclosure of “sensitive personal information” for advertising and marketing purposes. The law would also establish a “California Privacy Protection Agency” to enforce the CPRA.

The new obligations and requirements imposed by the CPRA will also likely require additional rulemaking from the California Office of the Attorney General (“OAG”). As demonstrated by the CCPA rulemaking process, this is certainly no easy task. As we previously reported [here](#), the final proposed regulations implementing the CCPA have not even been approved yet, leaving many businesses and industry groups wondering how the OAG may react to the CCPA 2.0 referendum.

### What to Expect from the OAG

It is no mystery that Attorney General Becerra aggressively supports the implementation and enforcement of CCPA 1.0. He has long demonstrated his commitment to having California “[lead the way \[in\] putting people first in the Age of the Internet.](#)” AG Becerra himself announced the title and summary of CCPA 2.0, and—if the referendum is successful—entities should expect him to pursue its implementation and enforcement with the same gusto he has demonstrated for its original counterpart.

It is daunting to consider CCPA 2.0 while CCPA 1.0’s dawn over California is just beginning. However, CCPA 2.0’s looming presence should not be a cause for panic:

- First, the OAG has its hands full navigating the very new landscape of CCPA 1.0 which is in effect. The Office will need to strategize and reallocate its efforts to undertake CCPA 2.0 which is years down the road. If CCPA 2.0 is successful, the OAG will likely handle the implementation process carefully in an effort not to make mistakes or suffer from any oversights.
- Second, the OAG knows it cannot force compliance or threaten enforcement overnight. Just as it gave covered entities time to prepare for CCPA 1.0, similar time will be required for CCPA 2.0. The OAG has no interest in watching covered entities struggle to draft and implement rushed and haphazard compliance policies and procedures.
- Third, if the referendum is successful, it will require immense legislative and budgetary efforts to get off the ground. While it is currently set to go into effect in 2023, that date is not set in stone and may be delayed. Some pundits believe this long timeframe may allow for national privacy legislation—an assumption made more likely if Kamala Harris, former California Attorney General and champion of privacy rights, is elected as Vice President.

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## Troutman Pepper tips

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- **Don't Get Distracted from CCPA 1.0:** Keep a good thing going. Entities have worked very hard to achieve and maintain compliance with CCPA 1.0—this requirement is not going to change or go away. CCPA 2.0 has not even passed the referendum stage yet, so while it is important to be aware of it, covered entities should not let compliance with CCPA 1.0. Put differently, CCPA 1.0 is real, while CCPA 2.0 has not yet materialized.
- **Stay “In the Know”:** While covered entities should not become distracted by CCPA 2.0, they should closely monitor its developments to prevent being blindsided if and/or when the referendum passes.
- **Ask Questions Now, Not Later:** Covered entities should raise key compliance questions and concerns now, not later. It is better to have peace of mind and a plan now, than to panic and be subject to regulatory scrutiny later.

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## CCPA: The Enforcement Series

Enforcement of the California Consumer Privacy Act (“CCPA”) began July 1, 2020. Our privacy team at Troutman Pepper includes several attorneys who worked in an attorneys general office. This privacy regulatory team has identified six areas of enforcement likely to catch the California Office of the Attorney General’s (OAG) attention, which arguably holds sole regulatory enforcement authority under the Act. This six-part series will focus on those areas of the law. Building on the experience of advising clients on the CCPA since its passage, our privacy compliance team will then discuss discrete strategies to minimize enforcement risk and bolster compliance efforts.

### Key Enforcement Issues to Note:

- Prior to initiating an enforcement action for an alleged violation of the CCPA, the OAG must provide businesses with a notice of alleged noncompliance and a 30-day opportunity to cure (“Notice and Cure Letter”).
- As of July 1, 2020, certain businesses have received Notice and Cure Letters. Given the 30-day window to cure, it is likely that nothing will be made public about these early enforcement targets until August 1st (i.e., once the cure period elapses), at the earliest.
- The OAG may be selecting early targets for enforcement actions in various ways including, for example, based on consumer complaints submitted directly to the OAG or those made public on social media platforms (e.g., Twitter), or simply by scanning business’ websites for noncompliance.
- Because the proposed regulations implementing the CCPA have not been finalized, the OAG can only bring an action based on an alleged violation of the CCPA (i.e., the statute) or a data breach, which went into effect January 1, 2020. It would not be surprising to see, however, the OAG argue a violation of the CCPA and seek remedial measures based on its interpretation as stated in the draft regulations. For additional information on the status of the proposed regulations, click [here](#).
- If a company receives a Notice and Cure Letter from the OAG, we advise seeking legal counsel on how to respond to the OAG’s request in a manner that minimizes business disruption but demonstrates a willingness to comply. Early and frequent communication and transparency will be key.

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