



## Modifications to CCPA Proposed Regulations Released by California Attorney General

February 2020

On February 7, 2020, and again on February 10, 2020, California Attorney General Xavier Becerra released modified proposed regulations (“Modified Proposed Regulations”) to the California Consumer Privacy Act of 2018, Cal. Civ. Code §§ 1798.100-1798.199 (“CCPA”).

The modifications were made in response to comments received by the California Department of Justice about proposed regulations to the CCPA issued on October 11, 2019, 11 CCR §§ 999.300-999.341 (“Original Proposed Regulations”) and to clarify and conform the Original Proposed Regulations to existing law.

Below, we have highlighted some of the major changes to the Original Proposed Regulations. The full redlined version of the Modified Proposed Regulations is available [here](#). The California Attorney General has set a deadline of February 25, 2020 to submit comments to the Modified Proposed Regulations.

### Responding to Requests to Know and Requests to Delete

One of the most significant changes to the Original Proposed Regulations involves a business’s obligation to respond to a consumer’s request to know and a consumer’s request to delete under section 999.313 of the proposed regulations.

#### Responding to Requests to Know

Section 1798.100 of the CCPA grants a consumer the right to request that a business disclose to the consumer the categories and specific pieces of information that the business has collected about the consumer. The Modified Proposed Regulations provide additional guidance on how a business must comply with such a request to know.

First, the Modified Proposed Regulations clarify that a business is not required to search for certain personal information upon a consumer request to know if all of the following conditions are met:

- The business does not maintain the personal information in a searchable or reasonably accessible format.
- The business maintains the personal information solely for legal or compliance purposes.
- The business does not sell or use the personal information for commercial purposes.
- In its response to the consumer, the business describes the categories of records it did not search that may contain the consumer’s personal information because of the foregoing conditions.

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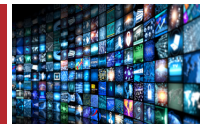
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Businesses should begin identifying the categories of personal information that meet this exception and prepare language that they can include in their responses to consumer requests to know.

Second, the Modified Proposed Regulations expand the scope of information that a business must provide to a consumer's request to know. Under the Modified Proposed Regulations, a business must provide the following information:

- The categories of personal information the business has collected about the consumer in the preceding 12 months (new under the Modified Proposed Regulations);
- The categories of sources from which the personal information was collected (unchanged from the Original Proposed Regulation).
- The business or commercial purpose for which it collected or sold the personal information (modified by the Modified Proposed Regulations).
- The categories of third parties with which the business shares personal information (modified by the Modified Proposed Regulations).
- The categories of personal information that the business sold in the preceding 12 months, and for each category identified, the categories of third parties to which it sold that particular category of personal information (new under the Modified Proposed Regulations).

- The categories of personal information that the business disclosed for a business purpose in the preceding 12 months, and for each category identified, the categories of third parties to whom it disclosed that particular category of personal information (new under the Modified Proposed Regulations).

The Modified Proposed Regulations require more granularity in a business's disclosure to a consumer than under the Original Proposed Regulations. For example, the Modified Proposed Regulations require a business to distinguish between the third parties to which the business sells a consumer's personal information, and the third parties to which the business disclosed the consumer's personal information for a business purpose.

### Responding to Request to Delete

Section 1798.105 of the CCPA grants a consumer the right to request that a business delete the personal information that the business collects about the consumer. The Modified Proposed Regulations provide additional guidance on how a business must comply with such a request to delete.

First, the Modified Proposed Regulations provide that if a business that sells personal information cannot verify the identity of a requestor, rather than treating the request as a request to opt-out of sale (as required under the Original Proposed Regulations), the business must instead ask the consumer if it would like to opt out of the sale and include either the contents of, or a link to, the notice of right to opt-out.

Second, the Modified Proposed Regulations broaden a business's right to deny deletion of personal information where such deletion would "conflict with federal or state law." Although the CCPA elsewhere provides that its provisions will not apply if it is in conflict with federal law, this explicit reference to conflict, and specifically with respect to a consumer's right to deletion, may provide comfort to entities required by federal law to maintain consumer personal information.

### **Employment-Related Information**

Another major change under the Modified Proposed Regulations involves "employment-related information." First, the Modified Proposed Regulations introduce the term "employment-related information," which refers to information collected about a job applicant, employee, or other similar person as identified in section 1798.145(h)(1). The Modified Proposed Regulations go on to provide that the collection of such "employment-related information" constitutes a "business purpose." The Modified Proposed Regulations then later go on to provide that the business's notice at collection of "employment-related information" need not include the "Do Not Sell My Info" link, but instead can include a link or paper copy of the business's privacy policy for job applicants, employees or contractors. Like the CCPA section 1798.145(h) exemption (which covers certain other personal information of job applicants, employees, and other similar persons), this exception for "employment-related information" becomes inoperative on January 1, 2021.



Therefore, businesses should continue to monitor for additional changes and guidance from the California Attorney General on this issue.

### Service Providers

Significant changes were also made to what personal information a service provider may retain, use or disclose with regard to personal information the service provider obtains in the course of providing services to a business. Under the Modified Proposed Regulations, a service provider may use such personal information internally to build or improve the quality of its services, provided that the use does not include building or modifying household or consumer profiles or cleaning or augmenting data acquired from another source. Unfortunately, the Modified Proposed Regulations do not provide definitions for these terms, so we will have to wait for additional guidance on the precise meaning of this new language. Under the Modified Proposed Regulations, a service provider may also retain, use or disclose personal information obtained from a business to (i) detect data security incidents, (ii) protect against fraudulent or illegal activities or (iii) comply with law or exercise or defend legal claims.

The Modified Proposed Regulations further provide that a service provider cannot sell data on behalf of a business when a consumer has opted-out of the sale of personal information with the business. Therefore, it will be important for service providers and businesses to be able to communicate with each other regarding which consumers have opted-out of the

sale of their personal information in order to comply with this provision.

Finally, if a service provider receives a request to know or a request to delete from a consumer, the service provider must either act on behalf of the business in responding to the request or inform the consumer that the request cannot be acted upon because the request has been sent to a service provider.

### Clarifying the Definition of Personal Information

The Modified Proposed Regulations introduce a new section to the proposed regulations which provides additional clarity to the meaning of “personal information” by way of an illustrative example: “if a business collects the IP addresses of visitors to its website but does not link the IP address to any particular consumer or household, and could not reasonably link the IP address with a particular consumer or household, then the IP address would not be ‘personal information.’” Under this new section and illustrative example, the California Attorney General appears to be taking a relatively conservative view of what it means for a business to *reasonably* link a consumer with a consumer’s personal information. The language suggests that even if a business could *theoretically* link a consumer’s personal information with the identity of the consumer based on information the business collects about the consumer (e.g., a consumer’s IP address), that information alone may not be sufficient to constitute a consumer’s personal information.

### Threshold for Recordkeeping Requirements Increased

As an advantage for smaller businesses, the Modified Proposed Regulations significantly increase a threshold requirement for the types of businesses that must report certain information to the California Attorney General. Under the Modified Proposed Regulations, only businesses that buy, sell or share the personal information of **10 million** or more consumers **in a calendar year** must meet the reporting requirements under 11 CCR § 999.317(g)(1)-(5). This represents a significant increase from the four million consumer threshold indicated in the Original Proposed Regulations.

The modifications to the CCPA proposed regulations described above represent only a few of the many changes made by the California Attorney General. For specific questions regarding anything in this updates, or for a more general overview of the Modified Proposed Regulations, please contact your regular Polsinelli attorney.

For more information see our previous CCPA Regulations update, [here](#).

