

Highlights & Takeaways: California Attorney General Releases Proposed CCPA Regulations

October 15, 2019

On October 10, 2019, the Office of the Attorney General of California (Cal AG) issued a much anticipated notice of proposed rulemaking activity and related proposed regulations to provide guidance on the California Consumer Privacy Act (CCPA), California's data privacy and data security act that will take effect on January 1, 2020.

For the full text of the proposed regulations, click [here](#).

Highlights & Takeaways

While the Cal AG's office is likely to provide additional guidance as it finalizes its regulations following the period of public comment, businesses should consider the proposed regulations, and attendant statements from the Cal AG himself, as they prepare for the CCPA's effectiveness on January 1, 2020. Below are three key takeaways:

- **Enforcement.** Although the CCPA does not permit the Cal AG's office to bring enforcement actions until the earlier of six months after the publication of the final regulations or July 1, 2020, Attorney General Xavier Becerra stressed during his press availability attending the release of the proposed regulations that businesses should not consider the period between the CCPA's effectiveness on January 1, 2020 and the start of enforcement to be any type of safe harbor. "If that were [the case], then you could murder someone today and if we couldn't figure out who did it for a month, would that mean you get to go scot-free? I don't think so," he said. "The law's the law." In preparing for CCPA compliance, businesses should assume that, once enforcement actions are permitted, the Cal AG may go back and bring actions for violations starting from January 1, 2020.
- **Verification of Consumer Requests.** Under the CCPA, businesses may provide certain disclosures or delete personal information only upon the receipt of a verifiable consumer request. The Cal AG's proposed regulations provide general guidance on how a business may establish a reasonable method for verifying consumer requests and also distinguish between verification for consumers with password-protected accounts and those who do not. Notably for businesses, this guidance could serve as a model for the concept of reasonable verification under other privacy regimes, such as the EU's General Data Protection Regulation (GDPR), that provide for similar access requests but do not prescribe what constitutes the required "reasonable measures" to verify an individual's identity.
- **Calculating the Value of Consumer Data.** Under the CCPA, businesses may not discriminate against a consumer who has exercised their rights under the CCPA, including through differential pricing for goods or services for consumers who have opted out of the sale of their personal information. However, the CCPA provides an exception allowing businesses to charge different prices or rates, or provide different levels of quality, if such difference is reasonably related to the value of the consumer's personal information. The proposed regulations provide a list of eight factors or benchmarks that businesses may consider when determining a reasonable and good faith method for calculating the value of the consumer's personal information. The regulations also clarify that a business must disclose the use of financial incentives and price or service

differences to consumers, including an explanation of the business's good-faith estimate of the value of its consumers' personal information and the method used to calculate that value. Businesses should ensure that key personnel in charge of their pricing models are aware of this guidance.

For additional analysis of the CCPA and what businesses can do to prepare, please see our previous commentary:

[Impact of the California Consumer Privacy Act on M&A](#) (June 10, 2019)

[The Biggest Risk with CCPA May Be Cybersecurity, Not Privacy](#) (July 1, 2019)

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