Credit Union National Association
CUNA

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December 6, 2019

Privacy Regulations Coordinator
California Office of the Attorney General
300 South Spring Street, First Floor
Los Angeles, CA 90013

Email: PrivacyRegulations@doj.ca.gov

Re: Comments on Proposed Regulations Concerning the California Consumer Privacy Act (CCPA)

Dear Sir or Madam:

The Credit Union National Association (CUNA) appreciates the opportunity to submit comments to the California Office of the Attorney General in response to the request for comment regarding proposed regulations for the California Consumer Privacy Act (CCPA). CUNA is a national trade association representing America's credit unions and their 115 million members.

Credit unions are cooperatively owned and democratically controlled financial institutions focused on serving members and their community. All federally-insured state-chartered and federally-chartered credit unions are subject to the the Gramm-Leach-Bliley Act (GLBA) of 1999's privacy and data security requirements. For credit unions, implementing regulations for GLBA have been issued by the Consumer Financial Protection Bureau for privacy and the National Credit Union Administration for data security. GLBA has provided Americans with robust privacy and data security protections for their information held at credit unions and banks.

CUNA supports robust privacy and data security protections for all Americans, and we support the protections that CCPA provides California residents. Nonetheless, we seek clarity in these rules so credit unions across the country can properly comply with the requirements, even when they do not operate in California and/or have very few members in California.

Definition of a "Business"

The definition of business needs further clarification. California Civil Code section 1798.140, subdivision (c)(1) defines business as a "sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners, that collects consumers' personal information, or on the behalf of which such information is collected and that alone, or jointly with others, determines the purposes and means of the processing of consumers' personal information, that does business in the State of California….."

Not-for-profit organizations operate under 501(c) of the Internal Revenue Code. Federal credit unions are tax exempt under section 501(c)(1) and state credit unions are tax exempt under section 501(c)(14) of the Internal Revenue Code. Because of credit unions' not-for-profit status, there has been confusion whether they meet the definition of a business. Although not-for-profit, credit unions operate for the "financial benefit of [their] shareholders or other owners," credit unions' unique organization and tax status make additional clarity in the definition of a business necessary.

Credit unions also seek additional guidance on the "doing business in California" requirements. The vast majority of credit unions are located outside of California and likely do not seek to serve California residents. As a way to avoid doing business in California, a credit union could choose not to open an account for a California resident but cannot close the account of a member that subsequently moves to California. Some businesses with few customers in California may elect not to serve customers who live in the state, but credit unions cannot easily do this as they, by law, cannot close member share accounts without a vote of the membership of the credit union – a process that is involved and impractical for this purpose.

A company should be allowed to serve a de minimis number of California residents without meeting the "doing business in California" requirements to allow for isolated instances where a business, such as a credit union, must provide services to California residents by law, yet does not seek to market itself in California or open accounts for California residents.

GLBA Exemptions

There is significant confusion regarding the exemption for personal information collected, processed, sold, or disclosed pursuant to the federal GLBA or the California Financial Information Privacy Act (CFIPA). The confusion arises because the CCPA uses terms that are inconsistent with the GLBA and CFIPA. The GLBA and CFIPA both use the term "nonpublic personal information" and define that term to mean "personally identifiable financial information." The CCPA uses the term "personal information," which is defined in Calif. Civil Code 1798.145(o) and is broader than the GLBA's definition of "nonpublic personal information."

GLBA personally identifiable financial information is information collected in the course of a transaction or providing a financial product or service, while the CCPA pertains to personal information collected through every channel for nearly every reason. The result of these inconsistent definitions is that the financial services industry must segregate data and treat information differently. The Attorney General should clarify the GLBA exemption and the treatment of data in the regulations.

Model Notices

The Attorney General should adopt model notices that satisfy the notice requirements of the CCPA and proposed regulations. These notices include the "Notice at or Before Collection," "Right to Opt-Out," "Notice of Financial Incentives," and updated Privacy Notices. Included in these model notices should be model responses to "Requests to Know" and "Requests to Delete." Model notices are provided by federal regulators to meet GLBA's notification requirements and they have worked well by ensuring consumers receive clear and consistent notices from financial institutions. Furthermore, financial institutions can rely on the proper use of model notices to ensure they are satisfying the requirements of the regulations.

The Attorney General should propose model notices for public comment and provide a safe harbor in the final regulations for the use of notices substantially similar to the model notices.

Notice at Collection

Proposed section 999.305(a)(3) requires the business to directly notify the consumer of a new use and obtain "explicit consent" from the consumer to use their personal information for this new purpose. The statute does not require an opt-in. We recommend replacing this requirement with a new notice to the consumer along with a 30-day opportunity to opt-out.

Privacy Policy

The proposed regulations require that additional information be provided in the privacy policy that is not required by the statute. The proposed regulations require the business to describe the process it will use to verify the consumer's request, including any information the consumer must provide in the "Right to Know" and the "Right to Request Delete" disclosure. Describing the process the business will use to verify the consumer's request adds an additional burden, adds little value to the consumer, and complicates the disclosure. The regulations should only require disclosure of the information consumers must provide for the business to verify their request.

Responses to "Request to Delete" and "Requests to Opt-In After Opting Out"

The two-step process for responding to proposed section 999.312(d) Request to Delete and proposed section 999.316(a) Requests to Opt-In After Opting Out is unnecessary and needlessly complex. The regulation's requirement that a consumer must clearly submit the "Request to Delete" and then separately confirm that the consumer wants her personal information deleted are unnecessary. A one step process should be sufficient to ascertain intent and eliminate mistakes by both parties that could come from a two-step process.

Responding to "Requests to Know" and "Requests to Delete"

Upon receiving a section 999.313(a) "Request to Know" or a "Request to Delete," the proposed regulations require a business to:

- Confirm receipt of the request within 10 days;
- Provide information about how the business will process the request;

- Describe the business's verification process; and
- Provide when the consumer should expect a response, except in instances where the business has already granted or denied the request.

This response is not required by statute and is not necessary. The response required by statute is sufficient.

Response Time

Proposed section 999.313(b) requires a business to respond to "Requests to Know" and "Requests to Delete" within 45 days. The proposed regulations permit an additional 45 days to respond, for a maximum of 90 days. The statute allows up to 90 additional days where necessary, taking into account the complexity and number of the requests, Calif. Civil Code 1798.145(g)(1). We recommend the regulations allow the 90-day extension.

Requests to Opt-Out

The proposed regulation 999.315(e) requires a business to act upon a request to opt-out as soon as feasibly possible, but no later than 15 days from the date the business receives the request. This adds a response timing obligation that is not specified in the original statute and is more prescriptive than the federal GLBA requirements. CUNA, for consistency purposes, requests that the regulations follow the GLBA regulations at 12 CFR 1016.7(g) which state, "You must comply with a consumer's opt out direction as soon as reasonably practicable after you receive it."

Effective Date

The effective date of the CCPA should be extended to a reasonable date after the Attorney General publishes the final regulations. The CCPA is effective January 1, 2020; however, the proposed implementing regulations were not issued until October 11, 2019, and comments are not due until December 6, 2020. We believe extending the effective date is reasonable to comply with a complex and entirely new privacy regulations that requires businesses to implement many new processes. CUNA recommends the Attorney General and Governor delay the effective date by two years, until Jan. 1, 2022.

Enforcement

The CCPA provides that the Attorney General can bring enforcement actions six months after publication of the final regulations or July 1, 2020, whichever is sooner. Enforcement by the Attorney General, along with the effective date, should be delayed a reasonable amount of time so that businesses have enough time to comply with the regulations.

Should you have any questions about CUNA's comments, please feel free to contact me at 202.508.6705.

Sincerely,

Lance Noggle
Senior Director of Advocacy and Counsel Senior Counsel for Payments and Cybersecurity