

California Consumer Privacy Act (CCPA)



FACT SHEET

NETTREE

The California Consumer Privacy Act (CCPA) was enacted in 2018 and takes effect on January 1, 2020. This landmark piece of legislation secures new privacy rights for California consumers. On October 10, 2019, Attorney General Xavier Becerra released draft regulations under the CCPA for public comment.

The CCPA grants new rights to California consumers

- The **right to know** what personal information is collected, used, shared or sold, both as to the categories and specific pieces of personal information;
- The **right to delete** personal information held by businesses and by extension, a business's service provider;
- The **right to opt-out** of sale of personal information. Consumers are able to direct a business that sells personal information to stop selling that information. Children under the age of 16 must provide opt in consent, with a parent or guardian consenting for children under 13.
- The **right to non-discrimination** in terms of price or service when a consumer exercises a privacy right under CCPA.

The CCPA applies to certain businesses

- Businesses are subject to the CCPA if one or more of the following are true:
 - Has gross annual revenues in excess of \$25 million;
 - Buys, receives, or sells the personal information of 50,000 or more consumers, households, or devices;
 - Derives 50 percent or more of annual revenues from selling consumers' personal information.
- As proposed by the draft regulations, businesses that handle the personal information of more than 4 million consumers will have additional obligations.

The CCPA imposes new business obligations

- Businesses subject to the CCPA must provide **notice** to consumers at or before data collection.
- Businesses must **create procedures** to respond to requests from consumers to opt-out, know, and delete.
 - For requests to opt-out, businesses must provide a "Do Not Sell My Info" link on their website or mobile app.
- Businesses must **respond** to requests from consumers to know, delete, and opt-out within specific timeframes.
 - As proposed by the draft regulations, businesses must treat user-enabled privacy settings that signal a consumer's choice to opt-out as a validly submitted opt-out request.
- Businesses must **verify** the identity of consumers who make requests to know and to delete, whether or not the consumer maintains a password-protected account with the business.

- As proposed by the draft regulations, if a business is unable to verify a request, it may deny the request, but must comply to the greatest extent it can. For example, it must treat a request to delete as a request to opt-out.
- As proposed by the draft regulations, businesses must **disclose** financial incentives offered in exchange for the retention or sale of a consumer’s personal information and explain how they calculate the value of the personal information. Businesses must also explain how the incentive is permitted under the CCPA.
- As proposed by the draft regulations, businesses must **maintain records** of requests and how they responded for 24 months in order to demonstrate their compliance.
 - In addition, businesses that collect, buy, or sell the personal information of more than 4 million consumers have additional record-keeping and training obligations.

Cost estimates for CCPA compliance

- According to estimates in the Standardized Regulatory Impact Assessment for the CCPA regulations, the CCPA will protect over \$12 billion worth of personal information that is used for advertising in California each year.¹
- Preliminary estimates suggest a total of \$467 million to \$16,454 million in costs to comply with the draft regulation, if finalized, during the period 2020-2030.²

CCPA and GDPR

The California Consumer Privacy Act (CCPA) and the European Union’s General Data Protection Regulation (GDPR) are separate legal frameworks with different scopes, definitions, and requirements. A business that complies with GDPR and is subject to CCPA may have additional obligations under CCPA.

- For example, under GDPR, companies must undertake a **data inventory and mapping of data flows** in furtherance of creating records to demonstrate compliance. Additional data mapping may be important to reflect the different requirements under CCPA.
- Under GDPR, companies must develop **processes and/or systems to respond to individual requests** for access to personal information and for erasure of personal information. These processes and/or systems may be applied to handling CCPA consumer requests, although businesses may need to review and reconcile the different definitions of personal information and applicable rules on verification of consumer requests.
- Under GDPR, companies must disclose **data privacy practices in a privacy policy**. CCPA also requires companies to disclose specific business practices in a comprehensive privacy policy. Many California companies that operate commercial websites and online services must post a privacy policy under the California Online Privacy Protection Policy, or CalOPPA, and will need to update this policy for CCPA.
- Under GDPR, companies must draft and execute **written contracts with its service providers** (“processors”). Companies may need to review these contracts to reflect requirements under CCPA.

¹ Berkeley Economic Advising and Research, LLC, Standardized Regulatory Impact Assessment: California Consumer Privacy Act of 2018 Regulations (August 2019).

² Berkeley Economic Advising and Research, LLC, Standardized Regulatory Impact Assessment: California Consumer Privacy Act of 2018 Regulations (August 2019). This number is specifically the cost associated with the regulations and not general compliance costs associated to the underlying CCPA law.

Next steps in the regulatory process

- The Attorney General is required to promulgate regulations to clarify and operationalize the CCPA.
- After holding seven statewide public forums and reviewing over 300 written comments during the preliminary rulemaking stage, the Attorney General released draft regulations on October 10, 2019.
- The Attorney General will consider all comments and may revise the regulations in response.
- Any revision to the proposed regulations will be subject to an additional 15 day public comment period.
- Following the comment period, the Attorney General will submit the final text of the regulations, the final Statement of Reasons responding to every comment submitted, and an updated informative digest to the Office of Administrative Law. OAL has 30 working days to review the regulations, and if approved, the rules will go into effect.

Submitting public comments

- The draft regulations are out for public comment until December 6, 2019 at 5 p.m. PST. The Attorney General will accept written comments by mail or email.
- Please visit our website at www.oag.ca.gov/privacy/ccpa for details on submitting comments. Please note that all submissions become part of the public rulemaking record.

Public meetings

- During the comment period, the Attorney General will hold the following public hearings:
 - December 2, 2019 – Sacramento
 - December 3, 2019 – Los Angeles
 - December 4, 2019 – San Francisco
 - December 5, 2019 – Fresno

Please visit the our website at www.oag.ca.gov/privacy/ccpa for details and to RSVP.