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## Compliance Bulletins

### CCPA Update: CCPA Employee and B2B Exemptions Expiring Jan. 1, 2023; Same Day When CPRA Goes into Effect

January 1, 2023 will be an important day for consumer privacy regulations and the entities they cover in California. As a reminder, the California Consumer Privacy Rights Act (CPRA) will go into effect on January 1, 2023. Also, on January 1, 2023, important exemptions that were previously extended under the California Consumer Privacy Act (CCPA) will sunset. These temporary exemptions were extended to employee and business-to-business (B2B) data under CCPA, but soon employee and B2B data will be treated the same as consumer data.

Accordingly, credit unions subject to CCPA/CPRA should begin preparing now to meet the upcoming expanding statutory obligations to protect consumers' data privacy.

#### Background

The CCPA was signed into law on June 28, 2018, becoming effective on January 1, 2020. As a sweeping data privacy law, CCPA gives California consumers significant expanded rights as to the collection and use of their personal information by businesses.

In November 2020, California voters passed the CPRA, which affords California consumers heightened rights and control over their personal information beyond those contained in CCPA.

Currently, the exemptions relating to employment and B2B information includes:

- The personal information of job applicants, employees, independent contractors, directors, and officers in the context of the individual's employment or application for employment.
- The personal information collected and used by the business about a consumer acting as an employee, owner, director, officer, or independent contractor of another company, partnership, sole proprietorship, nonprofit, or government entity, but solely to the extent the business used this personal information in the context of conducting due diligence regarding or providing or receiving a product or service to such company, partnership, sole proprietorship, nonprofit, or government agency.

#### New Obligations for Covered Credit Unions in 2023 Under CCPA/CPRA

California employees of covered credit unions will have increased rights as of January 1, 2023, and accordingly, covered credit unions as employers will have increased compliance obligations. These new rights include, among other things:

1. **Right to Know.** Although the Cal. Labor Code has several laws affording employees the "right to know" certain types of employee information the employer has collected, CCPA, as amended by CPRA, may be broader than the current Cal. Labor Code, including the possible scope of personal information. Under CCPA/CPRA, employees will have the right to know (through a general privacy policy and with more specifics available upon request):
  - The categories of personal information collected.
  - Specific pieces of personal information collected.
  - The categories of sources from which the business collected personal information.

- What the personal information is being used for (the business purpose).
  - The categories of third parties with whom the business shares the personal information.
  - The categories of information that the business sells or discloses to third parties.
2. **Right to Correct.** The employee's right to correct or rectify the personal information that the employer maintains.
  3. **Right to Delete.** The employee's right to request that the employer delete the personal information that the employer has collected about them.
  4. **Right to Opt Out.** The employee's right to direct an employer that sells or shares (as defined in CPRA) not to sell or share information.
  5. **Right to Limit Use and Disclose Sensitive Personal Information.** The employee's right to request that their employer limit the use and disclose of "sensitive personal information" to certain defined activities.

For B2B personal information, a covered credit union would have to provide the same rights as the rights to a consumer under CCPA/CPRA, including, but not limited to the right to know, right to delete, right to opt out of sale or share, and right to limit use and disclosure of sensitive personal information.

### **What Covered Credit Unions Can Do to Prepare**

Covered credit unions should consider the following key measures in preparation for compliance:

- Application of CPRA. As a reminder, your credit union should determine if the CPRA applies to you, as the CPRA revises and expands the scope of a covered business. As of January 1, 2023, CCPA/CPRA applies to "for-profit businesses that do business in California and meet any of the following criteria:
  - Have a gross annual revenue of over \$25 million;
  - Buy, receive, or sell the personal information of 100,000 or more California residents, households, or devices; or
  - Derive 50% or more of their annual revenue from selling California residents' personal information."

If your credit union meets any of the above three thresholds, preparing for the effective date of the CPRA and the end of the exemptions will be essential for your credit union.

- **CPRA Lookback Period.** Under the CPRA lookback period, data collected during 2022 is subject to the terms of CPRA starting as of January 1, 2023. This means that covered credit unions will need to map out how personal information is collected, used, and disclosed since January 1, 2022.
- **Be prepared for CCPA/CPRA regulations.** On July 8, 2022, the California Consumer Privacy Agency (CPPA) began its formal rulemaking process to adopt [proposed CCPA regulations](#) implementing CPRA. Credit unions should be prepared for additional proposed modifications that may cover the employee and B2B data.
- **Data Inventory.** In addition to reviewing how your credit union is sharing and/or selling data, your credit union should also review how it is collecting employee and applicant data. Determine what personal information is collected and how this information is handled.
- **Review of Existing Practices and Notices.**

- Review and create new privacy notices for employees.
  - Review and update human resources policies around employee monitoring activities.
  - The credit union will need to disclose to employees which categories of personal information are being collected and why, how the information will be handled, and what rights the employee has.
  - Develop policies for accepting and responding to employee requests to access, correct, and delete personal information.
- **Vendor Assessment.** Review all service provider agreements and make updates to information sharing policies and procedures. Remember that this will require your credit union to account for a 12 month “look-back” period. Review and update data processing agreements for all transfers of personal information to other entities.
  - **Discuss with your legal counsel.** If necessary, consider consulting with your legal counsel to ensure your human resources policies satisfies CCPA/CPRA requirements.

**Additional Resources:**

- [Click here](#) to view the California and Nevada Credit Union Leagues’ summary of the proposed regulations.
- [Click here](#) to view the California Consumer Privacy Act DRAFT Regulation
- [Click here](#) CA Civil Code, §§ 1798.100 - 1798.199.100, California Consumer Privacy Act of 2018

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If you have any questions regarding this information, please contact the California and Nevada Credit Union Leagues’ compliance helpline, *powered by ViClarity*, at **844.731.6072** or [CANV@VICLARITYUS.COM](mailto:CANV@VICLARITYUS.COM).

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