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Date December 4, 2019

To: Privacy Regulations Coordinator  
California Office of the Attorney General  
300 South Spring Street, First Floor  
Los Angeles, CA 90013  
[PrivacyRegulations@doj.ca.gov](mailto:PrivacyRegulations@doj.ca.gov)

**SUBJECT:** Comments regarding Department of Justice (Attorney General) proposal to adopt § 999.300 through 999.341 of Title 11, Division 1, Chapter 20, of the California Code of Regulations (CCR) concerning the California Consumer Privacy Act (CCPA).

Dear Attorney General Becerra,

The Personal Insurance Federation of California (PIFC) is a statewide trade association that represents six of the nation's largest property and casualty insurance companies (State Farm, Liberty Mutual Insurance, Progressive, Mercury, Nationwide, and Farmers as well as associate member NAMIC) who write personal lines auto and home insurance in California.

PIFC respectfully submits the following comments and concerns regarding the proposed CCPA regulations first published on October 11, 2019 and set for public hearing beginning December 2, 2019.

First, we have a generalized concern that these regulations include significant new requirements, which impact processes that are already being designed to meet the January 1, 2020 effective date of the law. Many of the new regulatory proposals are causing insurers to alter their current compliance framework and communications protocol under an already tight implementation timeframe.

Given the complexity of the regulations, and the fact that certain provisions of the proposed regulations exceed the substantive and procedural scope of the statute, *we respectfully request that the effective date of the regulations be at least 18 months from final issuance of the regulation.* Companies must have reasonable time to come into compliance with these comprehensive rules, and the CCPA grants the Attorney General discretion to delay enforcement of the regulations.

In addition, below we have delineated specific concerns that fall into three broad categories: 1) Regulations that need clarification or modification to allow for improved implementation, 2) Regulations that should be removed because they exceed the bounds of the CCPA statute, and 3) Regulations that should be added to be consistent with CCPA statute.

## **Regulations that require modification or clarity for improved implementation**

### Proposed § 999.301. Definitions

The regulations do not describe what is required to occur when a notice needs to be given in a non-written communication (telephone conversation). A significant portion of professional communications occur via phone interaction, and although it would make sense that these communications would be analogous to those of in-person meeting, it is unclear in the proposed regulation. To provide clarity, we recommend that the proposed regulation be amended to account for an automated phone system directing the consumer to the web for notice or provide an option for the consumer to learn about the notice.

For example, prior to collecting any personal information on the phone, a company could provide a brief verbal overview and get consumer consent to proceed. This could include reference to a url/website if the consumer wants to see the whole notice or a "Press #" option. In this manner the consumer has an opportunity to see the "notice at collection" if they so choose.

(c): The definition of "authorized agent" is very ambiguous and needs to be clarified.

### Proposed §999.305 Notice at Collection of Personal Information

(a)(2)(b): The regulatory requirement to "Use a format that draws the consumer's attention to the notice..." is problematic because it is unclear, ambiguous and subject to interpretation.

Government Code section 11349(c) defines "clarity" as meaning "...written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them."

The clarity standard is further defined in section 16 of title 1 of the California Code of Regulations (CCR), which provides, among other things, that a regulation shall be presumed not to comply with the "clarity" standard if the regulation can, on its face, be reasonably and logically interpreted to have more than one meaning.

(a)(3): The proposed regulation specifies that "*A business shall not use a consumer's personal information for any purpose other than those disclosed in the notice at collection.*" If a business does use the information for any other purpose it must directly notify the consumer of the new use and obtain "explicit consent."

The practical implementation problem is that, in an effort to cover every possible scenario, this provision will force companies to make disclosures that are so broad that it defeats the purpose of any meaningful disclosure. We request the proposed regulation be modified such that a business only has to notify the consumer, and provide an opportunity to opt-out, if the use is not compatible with previously disclosed uses or would not have been reasonably anticipated based on the original disclosure to the consumer.

### Proposed § 999.306. Notice of Right to Opt-Out of Sale of Personal Information

(d)(2): This proposed regulation includes a statement that: "A consumer whose personal information is collected while a notice of right to opt-out notice is not posted shall be deemed to have validly submitted a request to opt-out."

This statement imposes an entirely new regulatory requirement. This suggests that, if a company is not currently selling data, it is allowed to not include a do not sell button. However, if it begins

selling information in 2021 for example, any data collected between now and 2021 would be deemed to have opted-out. A company would then have to notify each person and ask them to opt-in to selling data. This is the reverse of the burden in the CCPA statute. The regulations should instead provide that individuals whose data was collected before selling began would be notified by an updated privacy notice and then would have the opportunity to opt-out via the do not sell button as the statute intended.

#### Proposed §999.307 Notice of Financial Incentive

(a)(1): With regard to the notice of financial incentive, the proposed regulation adds a new element of “retention” of a consumer’s personal information.

Existing CCPA law speaks to “collection”, “sale” or “deletion”, but does not include “retention”. This regulation does not take into account that a business may be legally required to offer a different price or service level under existing law. Additional clarification is needed to provide that, where a business is legally required to offer a financial incentive based on risk or service, no notice is required. Alternatively, the word “retention” could be removed from the proposed regulation.

#### Proposed § 999.308. Privacy Policy

The proposed privacy notice requirements are overly burdensome and will undermine the intent of CCPA by causing companies to write lengthy, confusing and unclear privacy notices that will not reveal meaningful information or benefit consumers. Specifically, the privacy notice must specify the categories of information collected, the source types, business purposes and third parties that may receive the information. The requirements outlined in the proposed regulations do not dovetail with the statutory language of CCPA, which is less prescriptive. We suggest that insurers be allowed to aggregate information and organize it in a more readable, consumer-friendly format.

(b)(1)(c) & (b)(2)(c): The proposed regulations require a business to describe the process it will use to verify a consumer request in its Privacy Policy. However, requiring businesses to disclose these internal privacy procedures provides a roadmap for bad actors to game the system and commit fraud. In order to protect consumers, we suggest these “verification disclosure provisions” be removed from the draft regulations.

Alternatively, the consumer would be better served if the process for verification is provided on the landing page when a consumer clicks the link to submit a request, or by phone or other method, as long as the business provides the information before the consumer is required to submit any identifying information. If the proposed regulations are not removed, we request that they be modified to allow a business the option of providing this information as part of the request transaction, rather than being set forth in the Privacy Policy.

(b)(3): We request that this section of the proposed regulations include a provision to clarify that the right to opt-out of the sale of personal information does not apply if the Privacy Policy elsewhere affirmatively states that the business does not and will not sell personal information.

(b)(5): The proposed regulation requires that a business explain how a consumer can designate an authorized agent to make CCPA requests on their behalf. We request a modification that simply indicates that a consumer “may” designate an authorized agent to make a request. Insurers are not in a position to explain how such a request may be done under the CCPA.

#### Proposed § 999.315. Requests to Opt-Out

In order to be technically consistent with the exemption in § 999.306(d), this section should be amended to clarify that it does not apply if the business does not sell information.

(e): The proposed regulation requires a business to act upon a request to opt-out no later than 15 days from date received. However, this timeframe is unreasonably short. Therefore, we request that it be changed to 30 days.

#### Proposed § 999.316. Requests to Opt-In After Opting Out of the Sale of Personal Information

In order to be technically consistent with the exemption in § 999.306(d), this section should be amended to clarify that it does not apply if the business does not sell information.

#### Proposed §999.325 Verification for Non-Accountholders

(c): This proposed regulation provides that a business's compliance with a request to know specific pieces of personal information be guided by a reasonably high degree of certainty. While the regulation attempts to provide guidance on how to achieve that "high degree" of certainty (i.e., matching at least three pieces of personal information "together with a signed declaration under penalty of perjury), it ends up being too prescriptive and not consumer friendly. This may delay the process and would require another mechanism to send and receive such declarations. We request that the regulation be modified to provide businesses flexibility to determine what provides them with a high degree of certainty.

### **Regulations that should be removed because they exceed CCPA statute**

#### Proposed §999.312 Methods for Submitting Requests to Know and Requests to Delete

(a): The proposed regulation requires a business that operates a website use an interactive webform accessible through the business's website or mobile application. However, the CCPA statute only required a webform. Since "Interactive" is not defined and subject to interpretation we request that the term be removed from the proposed regulation.

(d): The proposed new requirement for a business to use a "two-step process" for online requests to delete exceeds what is contemplated in the CCPA statute and poses serious implementation problems as it significantly complicates programming. We request the new requirement be removed from the proposed regulation.

#### Proposed §999.313 Responding to Requests to Know and Requests to Delete

(a): The proposed regulation imposes a variety of new requirements that a business must undertake upon receiving a request to know or delete as specified. These exceed the bounds of the CCPA statute and should be removed from the proposed regulations.

(c)(1): The proposed regulation requires that, if a business cannot verify the identity of the requestor seeking specific pieces of information, it must treat request as if seeking categories of personal information.

This new requirement exceeds the bounds of the CCPA statute and puts an undue burden on the business. Companies should not be expected to treat one type of request as if were another - this increases complexity and potential litigation exposure. If a consumers makes a request they should be verified for that specific request.

(c)(9): This proposed regulation requires an “individualized response” to a consumer requesting to know categories of personal information, but it is unclear what would constitute an “individualized response” that is not specific pieces of information. Because it is not readily understandable by persons directly affected and it exceeds the bounds of the CCPA statute this proposed regulation should be removed.

(d)(1) This proposed regulation requires a business, if unable to verify consumer, to treat any request to delete as a request to “opt out”. This provision exceeds the bounds of the CCPA statute and does not make sense. If a business is unable to verify the consumer then there is no way of knowing it is the consumer making the request – thus no action should be taken. The proposed regulation adds undue complexity and potential exposure to businesses who may opt-out wrong individuals that were not verified. Therefore, we request that it be removed from the proposed regulations.

(d)(4) This proposed regulation requires a business to specify the manner in which it has deleted the personal information. This exceeds the bounds of the CCPA statute and is unnecessary. The manner of deletion is immaterial as long as it is deleted.

(d)(6) This proposed regulation requires, under specified circumstances, the partial deletion and limited use of retained personal information. A business may have multiple exceptions for use. (e.g. if it refuses to delete based on a legal reason, such as market conduct requirements, does this mean you cannot use for internal use only purposes - which in and of itself is another exception to deletion). This new regulation is confusing and problematic to implement. In addition, it exceeds the bounds of the CCPA statute and we request that it be removed.

#### Proposed §999.315 Requests to Opt Out

(c): The proposed regulation requires that a business treat user-enabled privacy controls, such as a browser plug in or privacy setting as an “opt out”. This will be challenging to implement and shifts the CCPA, which was intentionally drafted as an opt-out regime, to a de facto opt-in regime. Since there are other clear opt-out methods mandated by CCPA, this is not a significant erosion of consumers’ ability to opt-out. Similarly, the requirement that companies treat unverified deletion requests as opt-out requests moves toward a de facto opt-in regime not contemplated by the CCPA. This proposed regulation exceeds the bounds of the CCPA statute and may not even be implementable subject to technological limitations. Therefore, we request that it be removed from the regulations.

#### Proposed §999.317 Training; Record Keeping

(g): The proposed regulation requires a Business with 4,000,000 or more consumers to compile metrics and disclose them in their privacy policy or on website. This exceeds the bounds of the CCPA statute, and will impose an unnecessary and costly new burden. It is unclear how adopting a new record keeping metric is necessary to further the purposes of the CCPA. Therefore, we request that it be removed from the regulations.

## **Regulations that should be added to be consistent with CCPA statute**

### Protect Intellectual Property

In Subdivision (a)(3) of Section 1798.185 of the California Civil Code, the CCPA grants the Attorney General authority to establish “any exceptions necessary to comply with state or federal law, including, but not limited to, those relating to trade secrets and intellectual property rights, within one year of passage of this title and as needed thereafter.”

In this regard, we request the Attorney General, through rule making, to establish an exception from the Act for intellectual property or for data. The CCPA clearly should not apply to information that is the protected intellectual property of a business, including information subject to copyright, patent, service mark and/or trade secret protections.

### Unstructured Data

The regulations should specify that businesses are not required to include “unstructured data” when responding to data subject requests for access or deletion of information. Such data is not the type of marketable data that the CCPA intended to target and requiring businesses to search documents and emails on all systems and repositories for unstructured sources of data would be costly and excessive.

Further, the regulations should provide a non-exhaustive list of situations in which requests from a consumer could be considered manifestly unfounded or excessive, allowing businesses to charge a reasonable fee or refuse to act on the request, under Civil Code § 1798.145. Such examples should include requests that would require the business to expend a disproportionate amount of time, effort, and cost to ascertain the information that the consumer has requested or to provide the information to the consumer in a format that does not inadvertently reveal the personal information of another consumer in the process. In particular, the regulations should clarify that businesses are allowed to charge a reasonable fee or refuse to act on requests for hard copies or unstructured data. Providing clarity on this point would further the goal of protecting reasonable requests and would help protect consumer information from incidental exposure by a business.

## **Conclusion**

In closing we note that, per the “Notice of Proposed Rulemaking Action”, Government Code section 11346.5, subdivision (a)(3)(D) requires the Attorney General to evaluate whether the proposed regulations are inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Attorney General concluded that these are the only regulations that concern the CCPA. “The Attorney General has determined these proposed regulations are not inconsistent or incompatible with any existing state regulations, because there are no existing regulations that address the specific subject matter of the proposed regulations.”

We believe this assertion is factually inaccurate. For insurers, the California Department of Insurance (CDI) is charged with protecting insurance consumers and currently and fully regulates the insurance business, specifically including the implementation and enforcement of the Insurance Information and Privacy Act [CA Insurance Code Section 791] and the market conduct practices of insurers doing business in California.

The challenge with multiple regulators promulgating regulations, examining conduct and taking enforcement action is significant. A more effective and efficient solution is to charge regulators that already oversee industries with the enforcement of the rules relating to that industry, in this case the

CDI over the insurance industry. The CDI has staff expertise in insurance and privacy, and procedures for examining insurer conduct and handling consumer complaints in place. Therefore, we strongly recommend that the Attorney General defer to the CDI regarding investigation (market conduct) and/or enforcement of the CCPA.

It is clear that adoption of these regulations will have a significant, statewide adverse economic impact directly affecting 400,000 business, including the ability of California businesses to compete with businesses in other states. As the Attorney General acknowledges, the proposed regulations impose a number of significant reporting, recordkeeping and other compliance requirements on companies doing business in California. The Standardized Regulatory Impact Analysis (SRIA) provided by the Attorney General estimates that the total cost of initial compliance with the CCPA, is approximately \$55 billion. This enormous cost is equivalent to approximately 1.8% of California Gross State Product in 2018, and will assuredly impact hard working Californians and their families.

We appreciate the Attorney General's willingness to work with stakeholders to develop fair regulations that can be implemented in a manner that best serves Californians as intended, and preferably without imposing undue burdens and costs. We look forward to continued work on these important regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Seren Taylor", written in a cursive style.

Seren Taylor  
Senior Legislative Advocate