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# CCPA is the Law in California – What you need to know now to comply with new privacy laws



# Speakers

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# Common Questions

## Is it acceptable under the CCPA to tell a customer that a business does not comply with CCPA?

- It is acceptable if the business does not meet one of the three criteria called out under the CCPA
- **Either:**
  - Has annual gross revenues in excess of \$25 million
  - Alone or in combination, annually buys, receives for the business's commercial purposes, sells, or shares for commercial purposes, alone or in combination, the personal information of 50,000 or more consumers, households, or devices
  - Derives 50 percent or more of its annual revenues from selling consumers' personal information
- **And:**
  - Collects consumers' personal information or on behalf of which that information is collected
  - Alone, or jointly with others, determines the purposes and means of the processing of consumers' personal information
  - Does business in California
- If no personal information is collected
- When the business does not have the personal information of any California residents

## Does the Health Information Portability and Accountability Act (HIPAA) play a role in CCPA?

- HIPAA continues to cover personal health information just like it did prior to the CCPA
- Secondary uses of that personal health information may very well trigger applicability of the CCPA

## Is the CCPA enforceable against financial institutions that are already subject to the GLBA or California's Privacy Act?

- The GLBA, FCRA and other similar laws cover the primary use of personal information
- Financial institutions are exempt from applying the CCPA to primary uses of that personal information
  - Processing Transactions
  - Evaluating a customer's credit worthiness for a loan
  - Sharing information with affiliates for everyday business purposes
- Secondary Uses are NOT exempt such as
  - Collecting personal information for establishing a customer's or consumer's credit rating

# Common Questions (continued)

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## **What is required under the CCPA as it regards marketing and other services?**

- Privacy notice on your website
- Appropriate cookie notices
- Ability to provide California residents with their rights under the law
  - Share categories of information your business collects
  - Be prepared to share 12 months worth of information, if asked
  - Be able to stop sharing the resident's personal information with third parties, if asked



## **What is the applicability of CCPA for credit unions?**

- Credit Unions are subject to the CCPA obligations regardless of their not for profit status
  - Industry guidance (based on an analysis of the CCPA) indicates that CCPA does apply to credit unions
  - Applicability in spite of not quite meeting the definition of a business under the law






## **What should a financial institution who is NOT in California but who has customers that reside in California do?**

- The CCPA applies to businesses depending on where the customers live, not where a business is located
- If the business holds the following personal information, the CCPA applies to them regardless of where the business is based or whether the business has offices in California:
  - More than 25 million in annual revenue, or
  - Holds data on 50,000 or more California residents, or
  - If the business has personal information on individuals who live in California



# Common Questions (continued)

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-  **Do email lists provided to a wholly owned affiliate constitute a sale under the CCPA?**
  - Yes, and under the GLBA customers are able to opt out of sharing information with others including affiliates for marketing purposes.
  
-  **Are there any particular obligations that a community and internet-based bank has that doesn't fall underneath the exemptions relating to the GLBA?**
  - The secondary use of the personal information will trigger obligations under the CCPA
  
-  **What's the potential for the business to business and employee related exclusions which are currently outside of the CCPA but become effective January 1, 2021 to be removed? Will those exclusions continue beyond 2021?**
  - There is lobbying occurring regarding these issues; however, we believe it is unlikely that the exclusions will continue beyond 2021 because of pressures coming from the authors of CCPA II.



# Common Questions (continued)

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**➤ What if an organization believes they are exempt from the CCPA? Do they still need to set up a means to receive and track requests from California consumers?**

- Include a privacy notice on your website that specifies your position, making sure that it's clear and that it aligns to your business practices
- Confirm that you are exempt if you use California consumer information for some secondary purpose (i.e. marketing)
- Be sure to address cookies on your website
- Even if CCPA does not apply to your business it is a good practice to regularly review and update your privacy notice!!!

**➤ What if you are working with a business that is located outside of California that does not sell personal information, but they do use cookies. They collect browser histories and collect IP addresses for remarketing purposes using Google and Facebook. Does a business like this who has the potential to interact with California consumers need to provide an opt out provision to users of its website?**

- Yes. An opt out provision is needed on the website.

**➤ Does a business that has a handful of customers who are residents of California and does not do business in the state (e.g. doesn't target CA-based consumers) and doesn't sell consumer information? Does the CCPAA still apply to that business?**

- Yes., the CCPA applies specifically for those residents of California if one of the three “CCPA applies if” conditions are met. Beyond that, each institution is going to need to take a risk-based approach and determine how that would impact them individually.



# Implications of Other State Laws Impacting Privacy

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Compliance with the CCPA is clearly important, but that effort may not put a business in a position to automatically comply with other state laws because at this point state laws, both those in existence and those under debate in various state legislative groups, are different.

State data breach requirements is an example of the potential differences that that we may see today.

All 50 US States have data breach notification requirements, and specifically for those residents of California.

Requirements are unique to each state, which means that a business that experiences a data breach must analyze the requirements of each state to understand what they are expected to do in response.

**A risk-based approach is needed to determine how that would impact them individually.**

*VLPLawgroup.com offers a great resource [Article](#) written by Melissa Krasnow, that describes the state data security laws as well as the types of personal information addressed in 11 state specific privacy laws.*

## Common Questions (continued)

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- ➔ **Can a business with current California based consumers decide to stop doing business in California?**
  - There isn't anything within CCPA to specifically preclude a business from stop collecting personal information from California residents.
  - But, if they do, they must do so in a way that is both appropriate from a privacy and data protection standpoint, AND Is also lawful under their existing contracts.
  
- ➔ **Can a business ask California customers to waive their rights under the CCPA before conducting a business transaction?**
  - The organization should go to a legal advisor to seek counsel.





# Compliance List with CCPA – Overview

Draft or review an update externally facing privacy notices.

Prepare to provide a California based consumer their rights as described within the CCPA including:

- the right to have personal information erased
- the right to access personal information
- the right to receive an explanation about additional information that a business might hold on them
- the right to request information about sales or disclosures of their personal information
- the right to not be discriminated against for exercising any of these other rights

Determine a method for consumers to request their rights and must develop procedures for responding to consumers who make requests under the CCPA and respond to consumer requests within 45 days.

Businesses need to develop processes allowing consumers to opt out of the sale of their information, which includes the use of the 'do not sell my personal information' button on a consumer facing website.



Have other questions, let us know.

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