

CCPA Compliance: Financial Incentives Requirements

The California Consumer Privacy Act of 2018 (CCPA) regulates a company's offerings of financial incentives and price or service differences related to the collection, retention, or sale of personal information. Cal. Civ. Code Section 1798.125(a)(2); Final Text of CCPA Regulations, 999.301(j), 999.307, 999.336. Although the CCPA became effective on January 1, 2020, the regulations were not issued in final form until June 1, 2020. As a result, many companies are still in the process of developing their approach to complying with the CCPA's requirements--particularly those that relate to financial incentives. If your company offers programs that may fall within the definition of "financial incentives" or "price or service differences," you should be aware of the CCPA's requirements related to those types of offerings, including the requirement to provide notice of the financial incentive and disclose a good faith estimate of the value of the consumer's data that forms the basis of the offering. The California Attorney General is expected to begin enforcing the CCPA on July 1, 2020.

Key Considerations

As companies develop their approach to financial incentives, including valuation requirements, we recommend that companies consider the following:

- **Attorney Client Privilege.** Communications regarding compliance and legal risk should be protected as privileged to the greatest extent possible. The CCPA and the regulations are ambiguous, best practices have not yet developed, and strategy regarding compliance implicates many other legal areas. For these reasons, taking steps to ensure that companies do not waive the protections of the attorney client privilege is important.
- **Value "to the business" vs. "to the consumer."** The CCPA and the regulations make clear through amendment that companies' valuations should focus on the value of the consumer's data "to the business," not to the consumer. Cal. Civ Code Section 1798.125(a)(2); 1798.125(b)(1); Cal. Final Regs, 999.307, 999.336, 999.337. Some companies are still focused on the value "to the consumer" (which mirrors language found in early drafts of the proposed regulations), which could create unwanted risks to a company. We recommend that companies take care in their analyses to focus on the value of data to the business.
- **The AG's Office Use of Experts.** The AG's office has been working with accountants to develop the criteria and methodologies for valuing consumer data, which are set forth in the final regulations. Similarly, companies should consider working with accounting experts, as well as counsel, to conduct their data valuations.

CCPA Data Valuation - How Perkins Coie and RSM Can Help

Perkins Coie helps clients evaluate whether they offer CCPA financial incentives or price or service differences and, if so, to address their compliance obligations under the CCPA and regulations. We do this by providing legal guidance and overseeing the work of third-party accountants who conduct data valuations. We offer a 30-minute free call with Perkins Coie and our financial consulting partners at RSM US LLP, followed by 12-16 hours of more in-depth strategic counseling for a fixed fee. For more information, please contact your Perkins Coie privacy lawyer. The global legal environment is changing. Today, companies must comprehend the laws of all states, countries, and regions in which they operate, including those related to privacy and data security, labor and employment, real estate, finance and electronic payments, and insurance coverage. The current pandemic

has amplified many legal issues, creating unforeseen challenges for in-house counsel and C-suite executives. What this means, in terms of legal services, is that companies are finding it increasingly challenging to match their in-house legal capabilities and limited resources with their changing legal needs. We routinely partner with our clients through secondments and other flexible relationships that allow us to help meet clients' staffing needs while simultaneously learning more about our clients' businesses. Through our Trusted Advisor Secondment Program, our clients get the guidance needed to navigate complex legal obstacles while avoiding issues that can derail operations. With more than 1,100 attorneys in 20 offices around the world, our firm has the size and breadth to provide clients with experienced personnel when and as needed.

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