CCPA/CPRA Compliance: Consumer Right to Opt-Out of the Sale or Sharing of Personal Information and Limit the Use or Disclosure of Sensitive Personal Information Checklist

This checklist identifies key issues and questions to consider for providing consumers with the ability to opt-out of the sale or sharing of their personal information in compliance with the California Consumer Privacy Act of 2018 (CCPA), as amended by the California Privacy Rights Act of 2020 (CPRA). Under the CCPA/CPRA, consumers have a statutory right, at any time, to direct a business that sells or shares personal information about the consumer to third parties not to sell or share the consumer's personal information. *Cal. Civ. Code §1798.120(a)*.

For additional content related to the CCPA and CPRA, see *California Consumer Privacy Resource Kit (CCPA and CPRA)*; *Data Privacy and Cybersecurity State Law Compliance Resource Kit (CA)*.

The CCPA was signed into law on June 28, 2018. Its substantive privacy requirements took effect starting January 1, 2020 and became fully enforceable on July 1, 2020. The CCPA introduced substantial amendments to consumer privacy and data protection law in California. On November 3, 2020, California voters approved Proposition 24, which enacted the California Privacy Rights Act of 2020 (CPRA). The CPRA amended and expanded the CCPA, and went into effect on January 1, 2023. For more information on the requirements of the CCPA/CPRA, see *Consumer Data Privacy (CA)* and *California Consumer Privacy Compliance (CCPA and CPRA)*.

Notice to Consumers

Opt-Out of Sale or Sharing

Any business that sells consumers' personal information to, or shares it with, third parties must provide notice to consumers that this information may be sold or shared and that consumers have the "right to opt-out" of the sale or sharing of their personal information. *Cal. Civ. Code §1798.120(b)*.

When consumers exercise their right to opt-out of the sale or sharing of their personal information, a business must refrain from selling or sharing personal information collected by the business about the consumer, unless the consumer subsequently provides express authorization for the sale or sharing of the consumer's personal information. *Cal. Civ. Code §1798.120(d)* and *§1798.135(a)(4)*.

Limiting Use of Sensitive Personal Information

A consumer shall have the right, at any time, to direct a business that collects sensitive personal information about the consumer to limit its use of the consumer's sensitive personal information. *Cal. Civ. Code §1798.121(a)* If a consumer exercises this right, the business must limit its use to that which is necessary to perform the services or provide the goods reasonably expected by an average consumer who requests those goods or services, to perform services authorized by implementing regulations, and to perform services for the following business purposes:

- Helping ensure security and integrity to the extent the use of the consumer's personal information is reasonably necessary and proportionate for these purposes
- Short-term, transient use, including nonpersonalized advertising shown as part of a consumer's current interaction with the business, provided that the consumer's personal information is not disclosed to another third party and is not used to build a profile about the consumer
- Performing services on behalf of the business, such as providing customer service or processing payments
- Maintaining the quality or safety of a service or device, or improving or upgrading a service or device

Cal. Civ. Code §1798.121(a) and *Cal. Civ. Code §1798.140(e)*. A business that uses or discloses a consumer's sensitive personal information for purposes other than those referenced above must provide notice to consumers that this information may be used, or disclosed to a service provider or contractor, for additional, specified

purposes, and that consumers have the right to limit the use or disclosure of their sensitive personal information. *Cal. Civ. Code §1798.121(a)*.

When consumers exercise the right to limit the use of their sensitive personal information, a business must refrain from using or disclosing consumers' sensitive personal information for additional purposes, unless consumers subsequently provide express authorization for the use or disclosure of consumers' sensitive personal information. *Cal. Civ. Code §1798.121(b)*.

Sensitive personal information that is collected or processed without the purpose of inferring characteristics about a consumer is treated as personal information and is not subject to requirements related to limiting the use of sensitive personal information. *Cal. Civ. Code §1798.121(d)*.

Method of Notice

In a form that is reasonably accessible to consumers, businesses must provide notice to consumers as follows:

- **Opt-out link.** A business must:
    - ○ Include a clear and conspicuous link on its Internet homepages, titled "Do Not Sell or Share My Personal Information," to an Internet Web page that enables a consumer, or a person authorized by the consumer, to opt-out of the sale or sharing of the consumer's personal information and provide a clear and conspicuous link on its Internet homepages, titled "Limit the Use of My Sensitive Personal Information," to an Internet Web page that enables a consumer, or a person authorized by the consumer, to limit the use or disclosure of the consumer's sensitive personal information to those uses authorized by Section 1798.121(a).
    - ○ Use a single, clearly labeled link on its Internet homepage that easily allows consumers to opt out of the sale or sharing of consumers' personal information and limit the use or disclosure of consumers' sensitive personal information -or-
    - ○ Enable consumers to use an opt out preference signal sent with consumers' consent by a platform, technology, or mechanism based on technical specifications identified in implementing regulations that allows consumers to opt out of the sale or sharing of their personal information and to limit the use or disclosure of their sensitive personal information. *Cal. Civ. Code § 1798.135(a)*.
- **No account sign-up.** A business cannot require a consumer to create an account or provide additional information beyond what is necessary in order to direct the business not to sell or share the consumer's personal information and to limit the use or disclosure of the consumer's sensitive personal information. *Cal. Civ. Code §1798.135(c)(1)*.
- **Description of rights.** A business must also make available to consumers a description of a consumer's right to opt-out, along with a separate link to the "Do Not Sell or Share My Personal Information" web page and a separate link to the "Limit the Use of My Sensitive Personal Information" web page, if applicable, or a single link to both choices, or a statement that the business responds to and abides by opt-out preference signals sent by a platform, technology, or mechanism in:
    - ○ Its online privacy policy or policies if the business has an online privacy policy or policies -and-
    - ○ Any California-specific description of consumers' privacy rights. *Cal. Civ. Code §1798.135(c)(2)*.

Consent to Ignore Opt-Out Preference Signal

A business that allows consumers to exercise their rights through a platform that enables the sending of an opt-out preference signal may provide a link to a web page that enables the consumer to consent to the business ignoring the opt-out preference signal with respect to that business' sale or sharing of the consumer's personal information or the use of the consumer's sensitive personal information for additional purposes provided that:

- The consent web page also allows the consumer or a person authorized by the consumer to revoke the consent as easily as it is affirmatively provided.
- The link to the web page does not degrade the consumer's experience on the web page the consumer intends to visit and has a similar look, feel, and size relative to other links on the same web page.
- The consent web page complies with technical specifications set forth in implementing regulations.

Cal. Civ. Code §1798.135(b)(2).

Internal Obligations

- **Training.** Businesses must ensure that all individuals responsible for handling consumer inquiries about the business's privacy practices or the business's compliance with the CCPA/CPRA are informed of all opt-out requirements set out in the CCPA/CPRA and how to direct consumers to exercise their rights under those provisions. *Cal. Civ. Code §1798.135(c)(3)*.
- **Cooling off period.** For a consumer who has opted-out of the sale or sharing of the consumer's personal information or limited the use or disclosure of their sensitive personal information, businesses must respect the consumer's decision for at least 12 months before requesting that the consumer authorize the sale or sharing of the consumer's personal information or the use and disclosure of the consumer's sensitive personal information for additional purposes, or as authorized by regulations. *Cal. Civ. Code §1798.135(c)(4)*.
- **Limited use of personal information.** A business can use any personal information collected from the consumer in connection with the submission of the consumer's opt-out request solely for the purposes of complying with the opt-out request. *Cal. Civ. Code §1798.135(c)(6)*.
- **Delegation of authority.** A consumer may authorize another person to opt-out of the sale or sharing of the consumer's personal information and to limit the use of consumer's sensitive personal information on the consumer's behalf, including through an opt-out preference signal, and a business must comply with an opt-out request received from a person authorized by the consumer to act on the consumer's behalf. *Cal. Civ. Code §1798.135(e)*.

Communicating Opt-Out Requests to Other Persons

If a business communicates a consumer's opt-out request to any person authorized by the business to collect personal information, the person must only use that consumer's personal information for a business purpose specified by the business, or as otherwise permitted by the CCPA/CPRA, and shall be prohibited from:

- Selling or sharing the personal information
- Retaining, using, or disclosing that consumer's personal information:
    - o For any purpose other than for the specific purpose of performing the services offered to the business
    - o Outside of the direct business relationship between the person and the business
    - o For a commercial purpose other than providing the services to the business

Cal. Civ. Code §1798.135(f). A business that communicates a consumer's opt-out request to another person will not be liable if the person receiving the opt-out request violates the CCPA/CPRA, provided that, at the time of communicating the opt-out request, the business does not have actual knowledge, or reason to believe, that the person intends to violate the CCPA/CPRA. *Cal. Civ. Code §1798.135(g)*. Any provision of a contract or agreement of any kind that purports to waive or limit this requirement will be void and unenforceable. *Cal. Civ. Code §1798.135(g)*.

Restrictions Regarding Children

General Rule

A business cannot sell or share the personal information of minors under the age of 16 if the business has actual knowledge that the consumer is less than 16 years of age. A business that willfully disregards the consumer's age shall be deemed to have had actual knowledge of the consumer's age. *Cal. Civ. Code § 1798.120(c)*.

Opt-In Exception

- **Minors between the age of 13 and 16 years.** A business can sell or share the personal information of a minor at least 13 years of age and less than 16 years of age if that minor has affirmatively authorized the sale or sharing of his or her personal information.
- **Minors under the age of 13 years.** A business can sell or share the personal information of a minor under 13 years of age if that minor's parent or guardian has affirmatively authorized the sale or sharing of his or her personal information.

Cal. Civ. Code §1798.120(c).

Cooling Off Period

For consumers under 16 years of age who do not consent to the sale or sharing of their personal information, a business must not sell or share the personal information of the consumer under 16 years of age and wait for at least 12 months before requesting the consumer's consent again or until the consumer attains 16 years of age. *Cal. Civ. Code §1798.135(c)(5)*. The business may also request consent as authorized by regulations. *Cal. Civ. Code §1798.135(c)(5)*.

Separate Homepage for California Consumers

A business does not need to include the required opt-out notice and links on its homepage that the business makes available to the public generally, if the business:

- Maintains a separate and additional homepage that is dedicated to California consumers and that includes the required links and text -and-
- Takes reasonable steps to ensure that California consumers are directed to the homepage for California consumers and not the homepage made available to the public generally

Cal. Civ. Code §1798.135(d).

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