



AMERICAN BENEFITS
COUNCIL

February 25, 2020

Submitted electronically at PrivacyRegualtions@doj.ca.gov

Attorney General Xavier Becerra
California Office of the Attorney General
300 South Spring Street, First Floor
Los Angeles, CA 90013

Attention: Lisa B. Kim, Privacy Regulations Coordinator

Re: Comments to Modifications to Proposed Rules on California Consumer Privacy Act

Dear Attorney General Becerra,

We write on behalf of the American Benefits Council (“the Council”) to provide comments in connection with the recently issued modification to the proposed regulations under the California Consumer Privacy Act (CCPA).

The Council is a Washington D.C.-based employee benefits public policy organization. The Council advocates for employers dedicated to the achievement of best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees and families. Council members include over 220 of the world's largest corporations and collectively either directly sponsor or support sponsors of health and retirement benefits for virtually all Americans covered by employer-provided plans. Many of our members are headquartered in California and they, together with companies headquartered elsewhere, have many employees who work in California or administer health and retirement plans for individuals working or retired in California.

The Council appreciates the opportunity to provide comments on the modifications to the CCPA proposed regulations. As both the California legislature and the Attorney General have recognized, “employment-related information,” particularly information related to employee benefits, is unique from personal information that is collected by a for-profit businesses in the marketplace.

The legislature passed, and the governor signed, an amendment allowing a one-year delay from the CCPA's requirements (except for the general notice requirement) with respect to information that is necessary for an employer to administer employee compensation and benefits. The Council supported that legislation and worked to make the bill's sponsor aware of concerns related specifically to employee benefits.¹ The bill summary explained that the legislature thought it was important to determine whether and how this benefits-related information should be subject to the CCPA.

To that end, the Council supports the Attorney General's modification to the proposed rules that specifically defines "employment-related information" as a separate category of personal information. The proposed definition includes employment-related information collected for the purpose of administering employment benefits and further defines "employment benefits."

These new proposed definitions will help employers differentiate the information they collect and use related to employee benefits from the consumer information they may collect in their "business" capacity. This employment-related information is used by the employer, the employee benefit plans they sponsor and the plans' service providers to provide medical, retirement, disability, life insurance, and other fringe benefits to employees and their dependents. This type of information should be recognized as separate and distinct from "marketplace" information.

More generally, we urge the legislature and Attorney General to make permanent the exception for information related to employee benefits. It is critical that information collected about current or former employees and their spouses and dependents within the context of the employee's employment not be treated as personal information within the meaning of the CCPA. Such an exemption is necessary to ensure that employees in California can continue to receive valuable health and retirement benefits offered through work. Employers and the vendors they hire to administer benefit plans must collect certain information in the ordinary course to properly administer the benefit plans; this includes information necessary to deliver those benefits to the employee, or the employee's spouse, dependent, or beneficiary. If ordinary information used to administer plans is subject to CCPA's rules, employers may decide to limit the scope of benefits to employees in California, and may be unable to properly collect and store contact information for spouses, dependents, and beneficiaries who are due benefits. Making permanent the exception provided for 2020 is an important step in preventing California employees from losing valuable benefits.

If it is not currently feasible to provide a permanent exception, an extended delay would be necessary to avoid adverse consequences for employee benefit plans were the CCPA to take effect with respect to employment-related information. In fact, the legislature recognized that employee benefits information is unique from consumer

¹ <https://www.americanbenefitscouncil.org/pub/2D218002-1866-DAAC-99FB-B5CBD256BF31>.

information collected by a for-profit business and that there needs to be more time to study how the CCPA should apply to employment-related information. For example, the Attorney General could issue non-enforcement guidance that provides that no enforcement will be brought with respect to employment-related information or benefits-related information until further guidance is issued with respect to this particular category of information.

As the trade association representing the employee benefit plans of over 220 of world's largest employers, the Council would be pleased to provide the California legislature or the Attorney General with more information about how employee benefit information is collected and used. We would be happy to work with the legislature or the Attorney General's office to provide research on privacy protections already in place with respect to this type of information or to provide input from an employer's perspective related to employee benefit plan information.

On behalf of the many Council members who employ or administer benefits to employees in California, we appreciate the opportunity to comment on this important matter. Please feel free to reach out to the Council at any time, and thank you for considering these comments. If you have any questions or would like to discuss these comments further, please contact us at (202) 289-6700.

Sincerely,



Jan Jacobson
Senior Counsel, Retirement Policy



Katy Johnson
Senior Counsel, Health Policy