

CSinsiderNewsletter

A U.S. Company Serving U.S. Financial Institutions

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California Consumer Privacy Act (CCPA) of 2018

Financial Institutions May Not Be Exempt From The CCPA's Breadth

California has recently adopted a new, broad privacy law, the California Consumer Privacy Act (CCPA) of 2018, which could have a substantial impact to the operations of financial institutions that collect California residents' personal information. While many financial institutions will not fall within the CCPA's breadth, those that do will have stricter compliance requirements for protecting consumers' privacy.

Financial Institutions Are Not Exempted

Pursuant to the CCPA, businesses that collect personal information from California resident consumers may be subject to the CCPA's compliance requirements. Unlike other state privacy legislation, such as Nevada Senate Bill 220, from which financial institutions are exempt, the CCPA does not provide a blanket exemption for financial institutions unless the consumer's personal information is covered by the Gramm-Leach-Bliley Act or the California Financial Information Privacy Act.¹ While a majority of the personal information about a consumer may relate to a financial institution's financial products or services covered under the Gramm-Leach-Bliley Act, the CCPA's definition of "personal information" is far more sweeping:

"Personal information" means information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.

This includes personal information such as: Internet Protocol (IP) addresses; biometric information; geolocation data; commercial information, such as purchasing or consuming histories or tendencies; internet or other electronic network activity information, for example, browsing history, search history, information regarding a consumer's interaction with a website, application, or advertisement; and inferences drawn from any of the information identified in the CCPA to create a profile about a consumer reflecting their preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes, among others.²

Further, the CCPA defines "collects" broadly as well:

Buying, renting, gathering, obtaining, receiving, or assessing any personal information pertaining to a consumer by any means. This includes receiving information from the consumer, either actively or passively, or by observing the consumer's behavior.³

Financial Institutions That Are Subject to the CCPA

If a financial institution is subject to the CCPA, the financial institution must disclose four consumer privacy rights:

1. A consumer has the right to request to delete personal information that has been collected from the consumer, subject to certain exceptions. This includes directing service providers to delete this information if a request has been made.⁴

2. A consumer has the right to request personal information, including the categories of personal information collected, personal information sold to third parties, personal information disclosed for a business or commercial purpose, the business or commercial purpose for which the personal information was collected and/or sold, the categories of sources from which the personal information was collected, the categories of third parties to whom the financial institution sold and/or disclosed for a business or commercial purpose, and the specific pieces of personal information the financial institution collected about the consumer.⁵
3. A consumer has the right to opt out of the sale of their personal information.⁶
4. A consumer has the right to be free from discrimination, subject to certain exceptions, by prohibiting financial institutions from charging different prices or rates, providing different services, or denying goods or services to consumers who exercise these rights.⁷

The financial institution must, at a minimum, make a phone number and website available to consumers where the consumer can submit a request to access or delete their personal information.⁸ If the request verifies the consumer’s identity and relationship to the requested information, then the financial institution must delete or provide the consumer with their personal information from the preceding 12 months.⁹ The financial institution must also maintain a link on its website titled “Do Not Sell My Personal Information” for a consumer to opt out of the sale of their personal information.¹⁰

What Financial Institutions Should Be Doing

As the January 1, 2020, effective date draw nears, financial institutions should consider taking the following actions:

- Talk to your IT department to determine what types of personal information it collects that would not be exempted by the Gramm-Leach-Bliley Act or the California Financial Information Privacy Act.
- Review its Privacy Policy disclosures and other documents that contain California-specific descriptions of consumers’ privacy rights. Financial institutions will be required to inform new and existing consumers of the categories of personal information collected and the purposes for which this information is to be used at or before it is collected from the consumer and financial institutions will not be able to collect additional categories or purposes without prior notice to the consumer.
- Implement the mandatory toll-free phone number and website, if applicable, to facilitate consumers’ requests and plan the appropriate operations for how consumers’ requests will be verified and processed, how the personal information from only the preceding 12 months will be sent to the consumer or deleted, and how service providers will be notified to delete the consumer’s personal information from their records.
- Financial institutions that maintain an online privacy policy should update its online privacy policies and its website’s homepage to include the mandatory link titled “Do Not Sell My Personal Information” for a consumer to opt-out of the sale of their personal information, as well as implement how a consumer’s request to opt-out will be facilitated.

Although the compliance date is in January, the CCPA’s enforcement date is on or before July 1, 2020. The California Attorney General has until this date to establish rules and procedures to facilitate and govern compliance and to adopt additional regulations that carry out the purposes of the CCPA.¹¹

1 §1798.145(e)	2 §178.140(o)(1)	3 §178.140(e)	4 §1789.110	5 §1789.115
6 §1789.120	7 §1789.125	8 §1789.130(1)	9 §1789.130(2)	10 §1789.135
11 §1789.185(a)				

California Small Business Disclosure Regulations

The California Department of Business Oversight recently issued proposed regulations to implement Division 9.5 of the California Financial Code, which requires “truth in lending” style disclosures for certain non-bank small business transactions under \$500,000. The new requirements will apply to lending companies that are funded by depository institutions, such as some online lenders, while the depository institutions themselves,

along with lenders who are governed by the Farm Credit Act, are exempt. Some types of transactions are also exempt from providing the new disclosures, such as commercial transactions secured by real property or certain transactions involving automobile dealers or vehicle rental companies.

The proposed regulations will apply to a variety of commercial financing offers, including commercial loans, factoring, asset-backed lending, commercial open-end credit plans, and lease financing. They also may be applicable to a variety of lenders who provide alternative forms of financing in addition to lenders licensed under the California Financing Law.

The proposed regulations provide general disclosure requirements, specific instructions, and draft disclosures for six types of transactions.

A sample of the disclosure for a closed-end transaction is shown below:

This disclosure is provided in accordance with California law to help you understand the cost of your small business financing.

Amount of Funds Provided	\$[---]	This is your loan amount of \$[---] minus the \$[---] origination fee.
Annual Percentage Rate (APR)	[---]%	This is the cost of your financing – including interest and other fees – expressed as a yearly rate. APR incorporates the amount and timing of the funding you receive, fees you pay, and the periodic payments you make. APR may be used to compare products with different interest rates and finance charges. Your APR is not an interest rate. Your interest rate is [---]%. Your APR may be higher than your interest rate because APR incorporates interest costs and other finance charges.
Finance Charge	\$[---]	This is the total amount you will pay in interest or other fees. \$[---] in interest + \$[---] origination fee = \$[---]
Payment Amount/Frequency	\$[---]/month	This is how much you will pay each month. Your monthly payments are due on the [---] of every month.
Term	[---]	This is how long you will make payments under the contract.
Prepayment	If you pay off the financing before the end of the Term, will you be required to pay finance charges other than interest since your last payment? <u> </u>	
	The total finance charge other than interest could be as high as \$ <u> </u> . Does paying off the financing before the end of the term result in any additional fees or charges not already included in the Finance Charge? <u> </u>	

By signing, you are confirming that you have received this form.

Applicant Signature _____ Date _____

Under the regulations, the lender is required to calculate and disclose the annualized percentage rate (APR) based on specific guidelines in covered small business transactions, as well as the loan amount, interest rate, finance charge, payment information, and a prepayment penalty notice. The lender would also need to provide estimates for required figures that are not determinable at the time of closing.

While the law became effective January 1, 2019, compliance is not required until the regulations are final.

When this law is fully implemented, California will be the first state to require consumer-like disclosures in the small business context and may serve as a model for other states seeking to similarly regulate this industry. Compliance Systems is closely watching the development of these regulations in California and monitoring for similar developments throughout the country.

LIBOR Replacement in Consumer Lending

As discussed in the [June 2019 edition of the CSinsider](#), the London Interbank Overnight Rate (“LIBOR”) benchmark will no longer be supported after December 31, 2021. Although derivatives transactions represent most transactions that reference the benchmark, it is estimated that \$1.3 trillion of consumer loans are tied to U.S. Dollar LIBOR. As this date nears, a plan tailored for consumer lending transactions is in motion.

Preferred Replacement Index

The Alternate Reference Rate Committee (“ARRC”) was convened by the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of New York to identify and recommend a LIBOR replacement. The Secured Overnight Financing Rate (“SOFR”) was selected by ARRC as the replacement in the U.S. After choosing the rate, the ARRC focused on the creation of an implementation plan and working groups were created to focus on specific replacement issues.

ARRC Consumer Products Working Group

To focus on consumer products, the ARRC created a working group comprised of key players in the consumer lending industry. The group, which included Fannie Mae and Freddie Mac, devised guiding principles to ensure that index replacement for consumer products will be aligned with IOSCO Principles for Financial Benchmarks. In July a white paper was published by the working group regarding the use of SOFR in closed-end, residential adjustable rate mortgages. Fannie Mae and Freddie Mac both provided notices of support regarding the paper. The consumer working group’s analysis outlines key concerns and solutions for using SOFR in consumer lending transactions.

Consumer Products Working Group White Paper

As outlined in the paper, the key difference between LIBOR and SOFR is that SOFR is inherently a look-back term rate while LIBOR was a forward-looking term rate. For consumer loans this is a concern because advance certainty of payment due from the borrower to the lender is critical for consumers. Any changes in interest rate need to be communicated to the borrower in advance of any change per current regulations. The paper explains that the forward-looking SOFR rate is the only rate that can be used for consumer loans. This rate is expected to be published by the Federal Reserve by 2021. The Federal Reserve is posting an indicative forward-looking SOFR term rate on its website right now. The paper also explains proposed models for SOFR-indexed adjustable-rate mortgages that will be attractive to both borrowers and investors.

Actions for Financial Institutions

The LIBOR index replacement presents financial institutions with many decisions, including methods for notifying their customers, updating existing agreements, and refreshing the language for any new agreements. The guidance given by the ARRC stresses the importance of proper fallback language in existing and new contracts so that financial institutions have the flexibility to change an index. The white paper outlines suggested language for financial institutions to use in its consumer loan contracts. Compliance Systems is actively engaged in this topic and welcomes any feedback from its clients regarding their concerns or potential plans as the transition nears.

The Amended-Revised URLA and the Timeline for its Implementation

Since the Federal Housing Finance Agency (FHFA) and Fannie Mae and Freddie Mac (GSEs) announced the creation of a new Uniform Residential Loan Application (ULRA) in latter part of 2016, players in the mortgage industry have worked diligently to develop the necessary processes and technical infrastructure to support the new document and associated requirements. Monthly “ULAD” (Uniform Loan Application Dataset) calls were held by the GSEs to get industry feedback about the new URLA and promulgate expectations regarding use of the new document. Mortgage lenders engaged their origination platforms, origination platforms engaged their supporting vendors and documents providers, and all worked to ensure readiness for voluntary effective date of July 1, 2019. However, those efforts stalled on June 12 of this year when, at the direction of the FHFA, the GSEs announced that the revised URLA was undergoing changes and that the voluntary effective date had been postponed. The GSEs also announced that the newly revised URLA and effective use date would be announced at some point in the future.

More recently, the GSEs announced that the FHFA directed them to make specific changes to the revised URLA. In order to give the mortgage industry the requisite time to respond to the changes, the required effective date of February 1, 2020 would be postponed. While the FHFA and GSEs haven’t released the updated URLA or provided a new effective date, a summary of the pending changes has been provided.

Those changes are summarized below:

- The following questions will be removed from the redesigned URLA form. Instead, a voluntary consumer information form, which will not be part of the URLA form, will be developed to collect this information.
 - The Language Preference question (Borrower Information, Section 1a.)
 - The Homeownership Education and Housing Counseling question (Lender Loan Information, Section L5.)
- In the Borrower Information, Section 6: Acknowledgments and Agreements, the statement on “Use and Sharing of Information” will be revised to address specific uses of borrower data.
- The Military Service question (Borrower Information, Section 1a.) will be moved to a new section adjacent to Section 7: Demographic Information.
- Minor edits for consistency and usability will be made throughout the URLA form.

While the FHFA and the GSEs finalize a new set of changes for the revised URLA, the collective mortgage industry will wait in rapt anticipation for both the new document and effective date.

Compliance Systems Sustainability Team

Compliance Systems’ alignment with CUNA Mutual Group’s values continues to grow. The Grand Rapids Employee Sustainability team has recently been formed. The team is focused on reducing waste and encouraging a more sustainable, environmentally friendly workplace. We encourage other businesses to take on the initiative too! Below are a couple of links with information to help your organization plan its own sustainability goals:


<https://www.epa.gov/lead/getcertified>

<https://www.osha.gov/sustainability/>



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