

California Privacy Protection Agency
915 Capitol Mall, Suite 350-A
Sacramento CA 95814

VIA EMAIL

May 6, 2022

Re: Preliminary Comments on Proposed Rule-making

Thank you to the members of the California Privacy Protection Agency for your work and giving consumers and stakeholders an opportunity to provide input.

In addition to my oral comment regarding consumer experience exercising CCPA rights, I would like to give comments on a couple more items:

Agency Collaboration

Please consider collaborating with other agencies such as the CFPB and the FTC to develop a robust and complimentary privacy program.

Financial Regulations Fall Short

For example, there were several financial institutions that highlighted that they are a very highly regulated industry. While that may be true, there are privacy-related matters that fall outside the scope of current regulations. There are currently in existence financial companies that utilize facial recognition for applying for a bank account. PopID¹ is a fintech that makes it possible to pay with your face. There is currently no regulations or recourse for consumers who are denied a bank account because they cannot pass the facial recognition enrollment process. And it disproportionately impacts people of color. This is happening today.

In addition, there were several representatives of small business chambers who voiced their concerns about the burdens privacy regulations would impose, however they fail to acknowledge that they too are impacted by lack of privacy regulation. Minority-owned small business are less likely to be able to access credit² and may have to turn to alternative financing.

¹<https://www.prnewswire.com/news-releases/restaurants--retailers-in-pasadena-establish-nations-first-pay-by-face-network-301112552.html>

²<https://www.cnbc.com/2022/03/18/what-minority-business-owners-need-to-know-about-getting-bank-loans.html>

One idea that is floating at the CFPB is exploring access to credit using alternative data.³ If that option was to become available today, small businesses owners would definitely want to have a say - just as consumers would - into what data is used in determining this alternative credit score. They would want to have a say in the algorithms used in making decisions that have time and time again been proven to be discriminatory against marginalized populations.⁴ Put simply, small business owners can be impacted by data collected by data brokers and algorithmic decision making that is not currently regulated by other agencies. Contrary to what representatives of financial institutions said today, the CCPA does not have to wait on federal or other financial regulatory bodies to develop a privacy program that protects Californians.

Other Loopholes Like M&A

This may be beyond the scope or the timeframe for initial rulemaking, but I would like to flag for the agency that consumers privacy falls through the cracks in the mergers and acquisitions process. In addition to buying out complimentary businesses or competitors, M&A is also used for acquiring data. Acquiring consumer data. And consumers are not a part of the process early enough to decide what to do with their data or who has access to it. Take Google acquisition of Fitbit. There were a lot of consumers who would not allow Google to have their health information but being a Fitbit customer they had no choice until it was too late. Or Facebook's acquisition of What'sApp and Instagram. Or Blackstone acquiring Ancestry.com⁵. There goes their DNA.

CCPA has no time to lose. Privacy can't wait. Privacy now.

Yadi

³<https://www.consumerfinance.gov/about-us/newsroom/federal-regulators-issue-joint-statement-use-alternative-data-credit-underwriting/>

⁴ <https://therealdeal.com/2022/04/29/redfin-settles-redlining-lawsuit-for-4m/>

⁵<https://www.blackstone.com/news/press/blackstone-completes-acquisition-of-ancestry-leading-online-family-history-business-for-4-7-billion/>