California Consumer Privacy Agency
Notes on Economic Impact Estimates for Form 399

March 8, 2023

1 Summary

This regulatory package presents a unique challenge as it builds upon a variety of established regulations and statutes, including those created by initiative (Proposition 24). Specifically, the proposed draft regulations largely reiterate existing language from the California Consumer Privacy Act of 2018 (CCPA) and subsequent amendments, the existing CCPA regulations (Part 1 & Part 2) promulgated by the Department of Justice (DOJ), and the self-executing requirements of the CCPA as amended by the California Privacy Rights Act of 2020 (CPRA) (see Appendix 1 for more details on the evolution of the CCPA). We consider California's law, as well as other relevant privacy compliance obligations (such as the European Union's General Data Protection Regulation or GDPR), to comprise baseline conditions. Therefore, although the new proposed draft regulations initially appear significant in scope, an issue central to determining their impact is what economic impacts are attributable to the proposed regulations rather than existing laws.

The vast majority of language in the proposed regulations either comes directly from the existing CCPA regulations or from the CPRA amendments. Upon a close comparison of language in the proposed regulations against language in the baseline legal environment, we find only two elements of the proposed regulation that we assess could generate regulatory economic impacts (see Appendix 2 for details). We discuss them in greater detail below.

1 Statutory versus Regulatory

As a first step in assessing the regulatory impact of the proposed regulations we assessed whether each section created obligations that were not found in existing law. In many sections, we initially believed there could be a regulatory impact. However, upon further discussion with the CPPA and supporting staff, we determined that most of the potential regulatory "deltas" we had identified reiterated the existing CPRA amendments or existing regulations from the CCPA. We have included a summary of this assessment in Appendix 2.[1]

[1] Note the summary in Appendix 2 does not include every element of the proposed regulation but only the elements that, upon our preliminary review, were assessed to potentially generate regulatory differences from existing laws.

Ultimately, we identified two sections where a regulatory economic impact could occur.

These sections are:

- **§ 7023(d) –** introduces an additional documentation requirement for businesses that decide to delete instead of correct.

- **§ 7026(a)(4), (h)** – creates the new option for businesses to use existing GDPR compliant opt-out buttons to comply with the CCPA rather than requiring a second separate CCPA-specific opt-out button. Also clarifies that "cookie banners" are not by itself an acceptable solution to the pre-existing "opt-out" button requirement.

For each of these sections regulatory impacts are estimated below.

Elements of the proposed regulation that were assessed to not generate regulatory differences from existing law during our preliminary assessment are not listed.

2 Section A. Estimated Private Sector Cost Impacts

3a: *"Enter the total number of businesses impacted:"* **66,076**

Because the proposed regulations identified above amend processes established by the CCPA and amended by CPRA, all California businesses covered by the law are potentially impacted.

Businesses are required to comply if they meet any of the following three criteria:

1. Annual revenue exceeds $25M
2. Sell/share more than 100,000 pieces of personal information per year
3. Receive more than 50% revenue from personal information

We estimate the number of businesses subject to these criteria below.

Population of Impacted Businesses

We must evaluate impacts on "California business enterprises" (SRIA directive 11346.3a). There is no readily available database that tracks the number of California businesses subject to the CCPA, thus we estimate the number of impacted businesses based on the three criteria included in the CCPA. This presents challenges because outside of publicly traded companies, firm revenue is not reported, and there is no way to know for certain how many businesses would be captured by the personal information (PI) requirements.

To determine how many businesses meet at least one of these criteria, we created a decision-tree and implement a variety of estimation techniques (Figure 1).

Our main data comes from the Statistics of US Businesses.[2] For our main estimates we elect to use firms that are headquartered in California as our global population.[3] Firms, as opposed to establishments, is the relevant metric as we assume that the costs specific to the regulation will be incurred at the firm level as opposed to the establishment level. As we discuss below, the majority of costs are incurred by labor hours from software engineers which would be best captured at the firm level.

---

[2] Note that the SUSB does not include self-employment. Excluding self-employment is appropriate in this setting because the vast majority of self-employed people will not be subject to the CCPA because they will not meet the revenue requirements or sell/share a sufficiently large volume of personal information. In the rare case that a self-employed individual does share substantial amounts of personal information they are likely to be required to register as a data broker and thus they will still be included in our analysis.

[3] A firm is a business organization consisting of one or more domestic establishments in the same geographic area and industry that were specified under common ownership or control. The firm and the establishment are the same for single-establishment firms. For each multi-establishment firm, establishments in the same industry within a geographic area will be counted as one firm; the firm employment and annual payroll are summed from the associated establishments. Firms include proprietorships.

While we believe a firm-level analysis is most appropriate for characterizing compliance costs, it complicates the delineation of in-state and out-of-state businesses. For single-establishment firms there is no issue because a firm is equivalent to an establishment (76% of firms in the US are single-establishment firms). However, some multi-establishment firms with out-of-state headquarters will operate California business enterprises. While the data is not available to isolate the number of out-of-state headquartered firms with California business enterprises that are covered by the CCPA, we expect this group to represent a small subset of total impacted businesses (and of total economic impacts). Therefore, with the exception of registered data brokers (discussed below), we focus the analysis on California headquartered firms.

Data brokers[4] that operate in California are required by law to register with the California Attorney General (AG). Because this group of businesses is certain to be impacted by the CCPA and because those that are registered with the California AG are known to operate in California, we include all data brokers on the CA DOJ's registry in our analysis regardless of where they are headquartered.

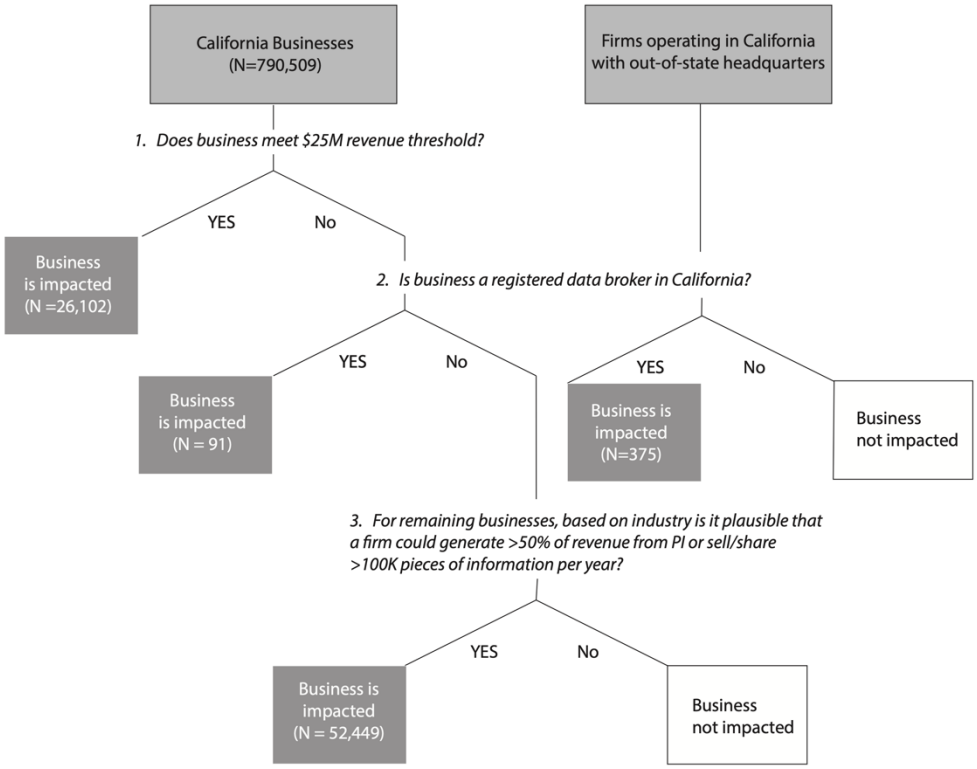
In general, our estimation technique likely overstates the number of affected businesses in California. For example, we likely include many businesses in our analysis that are not covered by the CCPA because they do not sell or share sufficiently high volumes of PI. Given that our cost estimation approach is an accounting-based approach, the number of businesses we include is a significant driver of costs. As we take a purposefully overinclusive approach to identifying impacted businesses, our estimates are likely overstating the real number of affected businesses and therefore costs.

Figure 1 illustrates the decision tree that was used to estimate for the number of impacted businesses. We use different approaches to identify firms that would meet each of the criteria for being covered by the CCPA focusing on California based firms but also including out-of-state data brokers known to operate in the state.

The following section describes each step of the decision tree in detail.

[4] https://oag.ca.gov/data-brokers

Figure 1: Decision tree for determining the number of businesses impacted



1. *Does the firm meet the $25M revenue threshold?*

To identify the number of firms that meet the revenue criteria, estimates of average firm revenue per employee were combined with data on the count of firms by number of firm employees.

A 2018 American Productivity & Quality Center (APQC) survey[5] of more than 20,000 U.S. firms found that median firm revenue per employee per year in the United States is $322,835.[6] This implies that (on average) firms with 77 employees exceed the $25M revenue threshold ($25M/$322,835 per employee = 77.4 employees).

The most recent available data from the Statistics of US Business SUSB (2019) indicates that there are 26,102 firms headquartered in California that have >75 employees.[7] This yields an estimate that 26,102 California based firms meet the CCPA revenue threshold.

---

[5] https://www.apqc.org/

[6] https://www.cfo.com/strategy/2018/12/metric-of-the-month-business-entity-revenue-per-employee/

[7] https://www.census.gov/data/tables/2019/econ/susb/2019-susb-annual.html. SUSB provides data on the number firms with 75-99 or >99 employees in CA. The data do not allow us to disaggregate the 75-99 employee category to

2. *Is the firm a registered data broker in CA?*

There are 483 data brokers registered in the official California Data Broker Registry.[8] Because they are data brokers registered in California, we assume all these businesses are impacted by the proposed regulation regardless of where they are headquartered.

In total we estimate 108 data brokers are based in California and 375 based in other states. Using revenue estimates from DUNS numbers from Dun & Bradstreet[9] we determined that 17 of the California based firms meet the CCPA's $25M revenue threshold (and thus were already counted in our previous step). For the firms with California addresses not identified in the DUNS system, we assumed they were below the revenue threshold since larger firms with revenue over $25M are likely to have a DUNS number.

Data brokers registered in California and headquartered in other states were included regardless of firm size. Since we don't include large firms from other states in our main estimates, there is no risk of double counting.

In total, this step adds 466 impacted businesses (91 from CA and 375 from other states).

3. *Based on characteristics of this industry, is it plausible that a firm could generate 50% of revenue from selling/sharing PI or that they could sell/share > 100K pieces of PI per year?*

Firms that meet the revenue threshold (i.e., firms >75 employees) and firms that are registered data brokers have already been addressed. Next, for each 6-digit NAICS code, the question is whether a firm with <=75 employees that is not a registered data broker could plausibly receive >50% of their revenue from selling/sharing PI or could sell/share > 100K pieces of PI per year. To set an upper bound for economic impact, we assume that 100% of CA businesses with less than 75 employees that are not registered data brokers from 16 different 6-digit NAICS codes meet these criteria. The selected NAICS codes and descriptions are included in Appendix 3.

The SUSB dataset[10] reports firm numbers by size of enterprise at the 2-digit NAICS code level. To estimate the number of firms at the 6-digit NAICS code level, it was assumed that within each 2-digit NAICS code the national distribution of firms across 6-digit NAICS codes is constant, applying these shares to the number of California firms in the relevant 2-digit NAICS. For example, nationally 5% of firms with the 2-digit NAICS category 54 - Professional, Scientific, and Technical Services correspond to the 6-digit NAICS code 541820 - Advertising Agencies

count the number of firms with >77 employees. We therefore include any firms with 75-77 employees in our calculation even though they would be slightly below the revenue threshold by our calculation.

[8] https://oag.ca.gov/data-brokers

[9] https://www.dnb.com/

[10] https://www.census.gov/data/tables/2019/econ/susb/2019-susb-annual.html

(Appendix 3). Thus it is assumed that 5% of all California firms in 2-digit NAICS 54 are advertising agencies.

Using this approach, 52,533 firms with <75 employees were estimated from the relevant 6-digit NAICS codes (Table 1). Finally, to avoid double counting with firms identified in step 2, the 91 registered data brokers based in CA which fall into the same firm size and NAICS code categories were subtracted in this step (data brokers are presumed to come from the Information Services sector). This leaves us with 52,442 firms in this category.

Table 1: Number of CA Firms by NAICS code

NAICS Category	Total # California Firms 1-75 employees[11]	Share national firms in 2-digit NAICS that come from identified 6-digit NAICS[12]	Estimated # of firms covered by CPRA
Professional, Scientific, and Technical Services	119,535	40.8%	48,770
Retail Trade	66,887	3.3%	2,234
Information Services	17,989	8.5%	1,529
Total	204,411	–	52,533
Subtracting off 91 CA data brokers identified in previous step:			52,442

Combining the calculations from each step of the decision tree yields the following total count of firms:

Table 2: Estimated total counts of firms covered by the proposed regulation

Group	Estimated businesses covered
Meet the revenue threshold	26,102
Do not meet the revenue threshold but do meet the share of revenue or volume PI sold/shared criteria	91 + 375 + 52,442 = 52,908
Total	79,010

[11] https://www.census.gov/data/tables/2019/econ/susb/2019-susb-annual.html

[12] See Appendix 3 for details

The approach used here to estimate the number of firms covered by the CCPA likely leads to an overestimate. The assumption that all 52,449 firms from the 6-digit NAICS code sectors described in Appendix 3 sell/share >100K pieces of PI per year or generate >50% of their revenue from selling/sharing PI is likely to substantially overstates the number of firms covered by the CCPA. Realistically, only a subset of these firms will sell/share sufficiently large volumes of PI to be covered by the CCPA. However, data that would allow us to estimate the share of firms that meet the criteria are not available, so we include all firms in relevant sectors in our counts.

- *Treatment of Third Parties*

A number of statutory elements in both CPRA and the proposed regulation implicate third parties to data transactions. It should be noted that third parties are counted in the third and largest category of 52,449 because they are included in the NAICS industries we included. We don't have precise information on how much PI companies traffic in, so to be conservative we included 100% of firms in select industries where companies are likely to handle a lot of data. We expect this to lead to an overestimate of the number of firms impacted.

Firms covered by the CCPA and GDPR

Finally, accounting for existing compliance with the GDPR requires identifying the subset of firms that are covered by both the CCPA and GDPR. Industry estimates indicate that 16.37% of CCPA-subjected firms are also subject to the GDPR.[13] Assuming such firms are uniformly distributed in size, this implies that 12,933 impacted businesses are already covered by (and presumed to be in compliance with) the GDPR (16.37% of 79,010 = 12,933).

Because businesses that are already in compliance with the GDPR will not incur additional compliance costs associated with the proposed regulation, our estimate for the number of businesses impacted by the proposed regulation is 79,010 – 12,933 = 66,077.

Summary

Combining the calculations from each step of the decision tree yields the following total count of firms:

Table 2: Estimated total counts of impacted businesses

Group	Impacted Businesses
Meet the revenue threshold	26,102
Do not meet the revenue threshold but do meet the share	91 + 375 + 52,442 = 52,908

[13] "State of CCPA & GDPR Privacy Rights Compliance Research Report - Q1 2022". 4/26/2022. CYTRIO, Inc. www.cytrio.com

of revenue or volume PI sold/shared criteria	
Total businesses subject to proposed regulations	79,010
Subset not already in compliance with the GDPR	**66,076**

The approach used here to estimate the number of firms covered by the CCPA likely leads to an overestimate. The assumption that all 52,449 firms from the 6-digit NAICS code sectors described in Appendix 3 sell/share >100K pieces of PI per year or generate >50% of their revenue from selling/sharing PI is likely to substantially overstates the number of firms covered by the CCPA. Realistically, only a subset of these firms will sell/share sufficiently large volumes of PI to be covered by the CCPA. However, data that would allow us to estimate the share of firms that meet the criteria are not available, so we include all firms in relevant sectors in our counts.

3b: ***"Enter the… percentage of… impacted… small businesses":*** **43,843 (66%)**

California small businesses are classified as companies with <100 employees that generate <$15M in revenue. For the purpose of this analysis, we utilize SUSB data which excludes self-employed individuals. These individuals represent a large fraction of California small businesses but are unlikely to meet the revenue or data selling/sharing requirements that would make them subject to the CCPA (see footnote 2 for more details). All of the impacted businesses that meet the CCPA revenue threshold exceed the revenue threshold for being considered a small business. All 52,533 of the (non data broker) impacted businesses identified above that don't meet the CCPA revenue threshold have <100 employees. To identify the subset of these firms that are small businesses therefore requires identification of which firms have revenues <$15M. Analogous to how we calculated the number of firms that exceed the CCPA revenue threshold, we divide the small business revenue threshold ($15M) by the average firm revenue per employee in the United States ($322,835) to estimate that all firms with 46 employees or less ($15M/$322,835 = 46.5) meet the revenue criteria for being a California small business. SUSB does not report the number of firms with <46 employees, so the nearest cutoff (50 employees) was used as an upper bound for this subset of firms. Of the 52,533 firms from the identified 6-digit NAICS codes 52,036 have <50 employees, henceforth assumed to be the number of small businesses form the identified NAICS codes covered by the CCPA.

Lastly, we used revenue estimates from DUNS data to estimate the number of registered data brokers that met the size and revenue thresholds for small businesses classification. Of the 108 data brokers based in California with DUNS numbers, 70 met the criteria for being classified as a small business. It was assumed that the 17 firms without DUNS numbers also qualify as small businesses, leaving 87 California based small business data brokers. These 87 businesses represent 81% of California based data-brokers. While revenue estimates were not collected for the 375 out-of-state data brokers registered with the California AG, we assume the share of data brokers that are small businesses to be the same outside of the state as it is within the state and thus estimate 302 out-of-state data brokers that operate in California to be small businesses (302 = 81% of 375).

Combining these groups we estimate a total of 52,036 + 87 + 302 = 52,425 impacted small businesses. However, businesses already in compliance with the GDPR are estimated to have 0 compliance costs. Since 16.37% of businesses subject to the CCPA are estimated to be subject to the GDPR, our final estimates for the number of small businesses impacted is 43,843 (83.63% of 52,425).

Table 3: Estimated total counts of small businesses impacted

Group	Impacted Small Businesses
Meet the revenue threshold	0
Do not meet the revenue threshold but do meet the	87 + 302 + 52,036 = 52,425

share of revenue or volume PI sold/shared criteria	
Total businesses subject to proposed regulations	52,425
Subset not already in compliance with the GDPR	**43,843**

Our final estimate for the number of total businesses impacted is 66,076 (83,63% of 79,010) and our final estimate for the total number of small businesses impacted is 43,843 (83.63% of 52,425).

This implies 66.4% of all impacted businesses are small businesses (43,843 /66,076 = 66.4%).

6. *"Enter the number of jobs created and eliminated"*: 15.9 FTE eliminated

As discussed in "Section B. Estimated Costs" below, we estimate compliance with the proposed regulation will require an additional 0.5 hours of work per impacted business with a total of 66,076 businesses incurring compliance costs. This results in a total of (66,076 businesses)*(0.5 hour/business)/(2,080 hours/FTE)=15.9 FTE.

3 Section B. Estimated Costs.

B1: *"What are the total statewide costs…":* $2,808,230

The following section estimates the costs and benefits for each regulatory delta.

§ 7023(d)

Section 7023(d) adds potential complexity for businesses who receive a request to correct personal information and choose to delete the contested personal information instead of correcting. Although, in some instances, the ability to delete instead of correct exists under the CPRA statute (and is therefore statutory opposed to regulatory), there is an additional documentation requirement introduced in the proposed regulation. Specifically, the draft regulation requires a documentation process for businesses that decide to delete instead of correct. This documentation requirement might incur processing and record keeping costs from evaluating the request. Furthermore, businesses that request additional personal information and conduct an analysis pursuant to correction or deletion are now tasked with documenting this in a secure manner.

To estimate the cost of this regulation requires data on how many businesses receive requests to correct but instead choose to delete, as well as the individual cost of documenting this decision. For the first estimate, there is no reliable information to identify how many businesses receive requests to correct, nor among these how many will choose to delete instead of correct. However, there is a similar provision in the GDPR that already requires documentation for requests to correct that are then deleted. We therefore again assume GDPR compliant firms do not incur costs as a result of this regulatory delta (and we again relax this assumption in the high-cost scenario).
In summary, while all businesses subject to the CCPA are eligible to incur this cost, we include only the subset of potentially impacted firms that are not GDPR compliant (N=66,076).

Costs incurred in response to 7023(d) would depend on a variety of factors that are difficult to reliably estimate. The decision to delete instead of correct will be made by each individual firm and depend on the nature of the correction requested by the consumer. However, even though many companies might be affected by this regulation, we expect total costs to be negligible. First, as profit maximizing entities, firms will choose the least expensive option. Firms will only choose to delete if it is more cost-effective than correcting. This means that firms are unlikely to conduct a complicated and costly analysis process comparing deleting and correcting that would require documentation.

Second, the specific regulatory impact in question applies only to the documentation process for firms that choose to delete rather than correct. Firms will already have established a documentation process for correction requests under the baseline from the CPRA statute. Therefore, the documentation process firms must undertake for deletion will go through an existing system rather than be created from the ground up, making it the least cost option by default. In many cases, we would anticipate this process to be automated and thus any additional costs could be as small as adding an additional line of code. For other processes that would not be automated additional costs

might be incurred, but as the system of documentation is already established under the existing law, any delta would be built upon this process and would be incrementally small.

To provide a rough estimate of these costs we assume the process will be automated and built by providing a simple user link to existing documentation. Expert opinion from industry sources suggests this would take a computer engineer who created the system of documentation 0.5 hours to implement. The total cost of labor hours per firm is therefore estimated to be $85*0.5 hours = $42.50 cost of labor hours per firm. This results in the total estimated cost below:

66,076*$42.50 = **$2,808,230**

NOTES**:**

- This approach does not account for any non-automated processes, but still reliably represents an upper bound as we assume every single company that is subject to the CCPA who is not GDPR compliant will incorporate documentation in the case they choose to delete instead of correct. Many firms will of course choose to correct instead of deleting, so these costs represent an extreme upper bound.
- We expect this process to be automated and thus the majority of costs will be statutory in nature as they are incurred when creating the documentation system. Thus, we find no on-going costs associated with this regulation.
- For consumers, we find no costs or benefits as a result of this regulation. The process of documentation is regulatory in nature and of primary value to the enforcing agency. Consumers will likely never see this process or even be aware of it. Furthermore, the statute requires the choice to delete instead of correct to not affect any services offered to consumers, and thus there will be no adverse impacts in the event of deletion. The value of consumer personal information, and the volume of information collected, is not affected.

§ 7026(a)(4), (h)

Section 7026(h) allows firms in responding to a request to opt-out of sale/sharing, to give the consumer the option to opt-out of the sale or sharing of personal information for certain uses as long as a single option to opt-out of the sale or sharing of all personal information is also offered. Although the “opt-out” button is a requirement of the CCPA and thus statutory in nature, the option of having a single button presents a potentially regulatory impact for firms that are GDPR compliant but not CCPA compliant. However, assuming 100% compliance with the CCPA there are 0 costs associated with this regulatory delta. This is because if every business is in compliance then every business will already have implemented a CCPA-specific opt-out button and there will therefore be no cost savings associated with avoided labor from non-implementation of the CCPA specific opt-out button. Those firms using separate buttons to comply with the CCPA and GDPR could choose to eliminate the CCPA-specific button and remain in compliance with the CCPA. However, this would be the business’s discretion and is not a requirement of the proposed regulation to remain in compliance so associated costs remain 0 even in this scenario.

Section 7026(a)(4) also includes language clarifying that a notification regarding cookies, such as a cookie banners or cookie controls, is not by itself an unacceptable method for submitting requests to opt-out of sale/sharing. However, because the CCPA already required "opt-out" buttons, assuming 100% compliance with the CCPA there are no additional costs to businesses for replacing "cookie banners" with opt-out buttons because every business will already have an opt-out button in order to be in compliance with the CCPA.

As is the case with costs to businesses, we find no quantifiable benefit to consumers associated with 7026(h). While the presence of a single option could potentially benefit consumers who wish to opt-out as it might simplify and therefore increase the ease of opting-out, we assume that consumers who wish to opt-out will do so regardless of the number of buttons because the baseline conditions already required opt-out buttons to be offered.

Summary

The proposed regulations are likely to generate regulatory impacts through increased compliance costs associated with section 7023(d).

Our best estimate for total impacts is $2,808,230 broken down in Table 4.

Table 4: Estimated Costs

Section	Costs
§ 7023(d)	$2,808,230
§ 7026(h)	$0
Total	$2,808,230

4 Section C. Estimated Benefits.

Benefits = $0

As we have discussed, while the CPPA as amended by the CPRA offers substantial benefits to consumers, we do not expect any additional regulatory impacts on consumers associated with the proposed regulation. This is due to the extremely high baseline and the limited scope of new requirements generated. The proposed regulations do not induce changes in the volume or types of personal information collection. Instead they require additional documentation and disclosures for businesses much of which consumers will never see.

5 Section D. Alternatives to the Regulation

D1. The attached Addendum describes several alternative versions of the proposed regulations that were considered by CPPA.

D2. Because total direct costs are estimated to be <$10M we do not quantify the costs and benefits of the regulatory alternatives.

D3. As discussed in Section B, there is significant uncertainty around both the number of impacted businesses (because we do not observe which businesses are subject to the CCPA) and the cost of compliance per business (particularly § 7023(d)). In light of this uncertainty we err on the side of overcounting impacted businesses and overstating compliance cost per firm that collectively leads to a likely overestimation of total costs.

6 Fiscal Impact Statement

There are no fiscal impacts anticipated for the CPPA or the Department of Justice (DOJ). The CPPA and DOJ's enforcement responsibilities are a result of the statute, and the proposed regulations do not create additional responsibilities or workload for the CPPA or DOJ in carrying out their enforcement functions.

7 Appendix 1 - History of CCPA Legislation

- CCPA 2018 (original - 2018): https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1121
- CCPA amendments 2019-2021: https://iapp.org/resources/article/ccpa-cpra-related-legislation-tracker/
- CCPA regulations (current/active promulgated by DOJ): https://oag.ca.gov/sites/all/files/agweb/pdfs/privacy/oal-sub-final-text-of-regs.pdf
- CCPA regulations part 2 - additional amendments (current/active promulgated by DOJ): https://oag.ca.gov/sites/all/files/agweb/pdfs/privacy/ccpa-add-adm.pdf
- CCPA as amended by CPRA: https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=3.&part=4.&lawCode=CIV&title=1.81.5
- CCPA regulations May 6, 2022 non-substantive / renumbering change to under CPPA: https://cppa.ca.gov/regulations/pdf/sec100_explanatory_statement.pdf
- CCPA regulations (current/active, as renumbered on May 6 2022 to under CPPA): https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=ICC08834C10A54B1691C18AAF3C49937A
- CCPA draft proposed regulations (by CPPA, required by CPRA): https://cppa.ca.gov/meetings/materials/20220608_item3.pdf
- CCPA draft proposed regulations ISOR (by CPPA, required by CPRA): https://cppa.ca.gov/meetings/materials/20220608_item3_isr.pdf

2 Appendix 2 - Statutory versus Regulatory Initial Assessment

Assessment of Regulatory "Deltas"

What follows is a review of selected sections of the California Privacy Protection Agency (CPPA)'s proposed regulation where we initially assessed there may be regulatory deltas (all other elements of the proposed regulations were deemed during our preliminary evaluation not to generate any regulatory difference from existing laws). Upon further discussion with CPPA, two candidate elements of the proposed were ultimately assessed to generate regulatory deltas while all other elements were determined to be included in the regulatory baseline.

Sections assessed to generate regulatory impacts:

§ 7023 – Requests to Correct

> Relevant Baseline: CPRA 1798.145 establishes business obligations to process requests to correct inaccurate information.
>
> Regulatory Delta: § 7023(d) introduces an additional documentation requirement for businesses that decide to delete instead of correct.

§ 7026 – Requests to Opt-Out of Sale/Sharing

> Relevant Baseline**:** CPRA establishes requirement that businesses accept requests to opt-out.
>
> Regulatory Delta: § 7026(h) creates the new option for businesses to use existing GDPR compliant opt-out buttons to comply with the CCPA rather than requiring a second separate CCPA-specific opt-out button. § 7026(a)(4) also clarifies that "cookie banners" by themselves are not an acceptable solution to the pre-existing "opt-out" button requirement.

Sections considered to have potential regulatory impacts but assessed not to:

§ 7003(c) – Conspicuous link appearance

> Specifies that the conspicuous link required under the CCPA shall appear "in a similar manner as other similarly-posted links used by the business on its Homepage(s)". The CCPA requires a conspicuous link which is part of the regulatory baseline. The regulation here only clarifies that these links should look "similar" to other similarly-posted links on the site which is already in line with the CPPA requirements. Thus, there are no substantive requirements beyond the baseline.

§ 7003(d) – Disclosure requirements and mobile application links

Links may be made accessible through mobile applications but it is not required, and thus, no additional requirements are established.

§ 7004(a)(2) – Symmetry in choice

Regulation clarifies that "the path for a consumer to exercise a more privacy-protective option" shall not be longer/more difficult/more time-consuming than less privacy-protective option because "that would impair or interfere with the consumer's ability to make a choice". The requirement to not interfere with the consumer's ability to make a choice is part of the CPPA baseline, and thus, there are no additional regulatory costs associated with the regulation.

§ 7004(a)(4)(B) – Bundling of consent

Reiterates that bundling choices must comply with existing requirements regarding deceptive practices. Because interfering with consumer's ability to make a choice is part of the baseline, there are no new regulatory impacts associated with the regulation.

§ 7012(g) – Notice at collection of personal information and third parties.

Reiterates existing requirements established by CCPA 1798.100(b). Those requirements are part of the baseline, and thus, there are no new requirements established. Accordingly, there are no regulatory impacts associated with the regulation.

§ 7021(a) – Timelines for responding to requests to delete, correct, or know

Reiterates that requests to correct follow the same process as requests to delete and requests to know and must be responded to within 10 business days of receipt. This requirement is already established under existing "right to know" obligations, and thus, there are no regulatory costs associated with compliance.

§ 7022 – **Requests to delete**

Reiterates statutory requirements. For example, the requirement to notify all third parties to whom the businesses sold or shared personal information after a request to delete (7022(b)(3)) is already required by the CCPA (1798.105(c)(1)).

§ 7023 (f)(3) – Request to correct documentation requirements

Reiterates the requirement to be willing to receive up to 250 word statements describing inaccurate health personal information that the consumer would like to have corrected. This requirement was already established in the CCPA (1798.185(a)(8)(D)) and thus does not generate new regulatory impacts.

§ 7023(i) – Request to correct documentation requirements

Clarifies that if information is inaccurate but was collected by a separate party the business *may* refer the consumer to the source of inaccurate information. However, providing the source of the inaccurate information is not required, and thus, there are no new requirements generated and no regulatory impacts.

§ 7023(j) – Request to correct documentation requirements

Clarifies that businesses may disclose additional information collected to allow the consumer the opportunity to verify its veracity. However, because businesses will already have systems in place for the consumer's right to know, this would not generate regulatory impacts.

§ 7025(b), (c) – Opt-out preference signals

Primarily reiterates processing requirements that were established in the CCPA and existing regulations. All deviations from existing requirements are optional, and thus, have no regulatory impacts (*e.g.*, 7025(c)(4) and 7025(c)(6)).

§ 7026(g) – Requests to opt-out of sale/sharing

Clarifies that a business *may* provide a means by which the consumer can confirm their request to opt-out of sale/sharing has been processed by the business but it does not require it, and thus, there are no regulatory impacts.

§ 7027 – Requests to Limit Use and Disclosure of Sensitive Personal Information

The regulation operationalizes the requirement of Civil Code § 1798.121, which requires notice of the right to limit and prohibits the unauthorized use or disclosure of sensitive personal information if the consumer exercises that right. The proposed regulation does not generate new requirements beyond what is already in the statute.

§ 7051 – Contract Requirements for Service Providers and Contractors

The CPRA requires service providers and contractors to assist businesses in complying with consumer requests. The proposed regulation does not generate new requirements beyond what is already in the statute.

§ 7052 – Third Parties

CCPA 1798.100(d) sets forth the requirements implemented in this regulation. Accordingly, the proposed regulation does not generate new requirements beyond what is already in the statute.

§ 7053 – Contract Requirements for Third Parties

CCPA 1798.100(d) lists several provisions for "agreements" between businesses and third parties, service providers, or contractors. The proposed regulation does not generate new requirements beyond what is already in the statute.

§ 7060 – General Rules Regarding Verification

The majority of regulations carryover from the CCPA but modifications have been made to apply the regulation to the new right to correct added by the CPRA. The proposed regulation does not generate new requirements beyond what is already in the statute.

§ 7063 – Authorized Agents

Language reflects the new right to correct added by the CPRA. Clause prevents businesses from requiring a power of attorney as the only way to be an authorized agent. The proposed regulation does not generate new requirements beyond what is already in the statute.

§ 7304 – Agency Audits.

The regulation implements Civil Code §§ 1798.185(a)(18), 1798.199.40(f), 1798.199.65 and Government Code § 11180. 7304(c) allows for announced or unannounced audits but this does not induce any compliance costs. The proposed regulation therefore does not generate new requirements beyond what is already in the statute.

All sections not explicitly listed here reiterate existing statutory requirements, and thus, they do not have regulatory impacts because they did not create new impactful requirements beyond the statutory baseline.

8 Appendix 3 – NAICS Coded Sectors Evaluated

NAICS codes for which, in our assessment, firms (that are not registered data brokers and have <75 employees) may meet the second or third criteria for CPRA coverage:

44-45-Retail Trade

Total Businesses in US: 1,818,112

NAICS	Description	# Firms in US	% 2-digit NAICS
454110	Electronic Shopping and Mail-Order Houses	32,866	1.81%
454390	Other Direct Selling Establishments	27,770	1.53%
		Total	**3.34%**

51-Information Services

Total Businesses in US: 370,887

NAICS	Description	# Firms in US	% 2-digit NAICS
519130	Internet Publishing and Broadcasting and Web Search Portals	1,967	0.53%
519190	All Other Information Services	5,259	1.42%
511140	Directory and Mailing List Publishers	498	0.13%
518210	Data Processing, Hosting, and Related Services	21,861	5.89%
519130	Internet Publishing and Broadcasting and Web Search Portals	1,967	0.53%
		Total	**8.50%**

54-Professional, Scientific, and Technical Services

Total Businesses in US: 2,412,470

NAICS	Description	# Firms in US	% 2-digit NAICS
541613	Marketing Consulting Services	71,353	22.02%
541810	Advertising Agencies	24,163	7.46%
541830	Media Buying Agencies	854	0.26%
541840	Media Representatives	3,381	1.04%
541850	Outdoor Advertising	2,425	0.75%
541860	Direct Mail Advertising	4,667	1.44%
541870	Advertising Material Distribution Services	977	0.30%
541890	Other Services Related to Advertising	11,569	3.57%

541910	Marketing Research and Public Opinion Polling	12,671	3.91%
		Total	**40.8%**