

August 12, 2024

Members of California Privacy Protection Agency Board  
2101 Arena Boulevard  
Sacramento, CA 95834

**RE: CONCERNS WITH SCOPE AND TIMELINE OF PROPOSED RULEMAKING**

Dear Board Members:

Collectively, our business organizations represent tens of thousands of California businesses ranging from start-ups to some of the most successful California-grown companies, and others who depend on the technology and innovations developed by these companies. Our members include employers, entrepreneurs, innovators, and business leaders who contribute tens of billions of dollars to the California economy.

We understand the importance of having consumer protection guardrails in place as technology continues to rapidly develop and expand. California has taken the lead in consumer privacy protections in the absence of federal privacy legislation and our organizations have been active stakeholders throughout the legislative and regulatory process.

However, we are deeply concerned that the scope and impact of the recently proposed regulations go far beyond the realm of privacy rules as multiple board members have expressed. We believe that the Agency is developing a framework for broadly regulating artificial intelligence (AI) that fails to incorporate the considerable feedback it has received from stakeholders on all sides. The risk that this will have significant consequences for California, harming California's consumers and economy, particularly with respect to the Agency's proposed regulations for automated decision-making tools, is tremendous. Perhaps most alarming, is the Agency's timing, getting ahead of the Legislature and Governor on matters of such statewide importance that should be debated and determined by elected officials first. Equally alarming is the multi-billion-dollar price tag the Agency itself estimates<sup>1</sup> will be imposed on businesses if such regulations are adopted as is.

The importance of having California's elected officials lead the way in considering and weighing the numerous policy and legal implications of AI and AI regulation, cannot be overstated. We stand on the precipice of tremendous opportunity as AI technology represents not only the most transformative technology since the advent of the Internet, but also carries the potential to generate the greatest growth and economic activity since the last Industrial Revolution, with groundbreaking technological advances in the fields of health care, education and reducing climate change to name a few. California is already seeing billions of dollars of investment each year and the potential for hundreds of thousands of jobs to be created. We think that Governor Newsom's Executive Order at the beginning of the year properly balanced the needs of the

---

<sup>1</sup> See [https://cppa.ca.gov/meetings/materials/20240716\\_item8\\_economic\\_assessment\\_preliminary\\_estimates.pdf](https://cppa.ca.gov/meetings/materials/20240716_item8_economic_assessment_preliminary_estimates.pdf)

innovation economy while ensuring that consumers are properly protected, and that the legislative process provides the *entire* public the most meaningful opportunity to discuss and balance competing concerns and interests with policymakers.

Here are just a few examples of the problems we currently see:

- The proposed rules on automated decision-making technology are in direct conflict with pending legislation and overly broad. There are well over twenty bills currently being considered by the California legislature seeking to shape how businesses use artificial intelligence and automated decision-making tools. Yet, the CPPA has proposed sweeping regulations in this area that not only conflict with what the legislature is seeking to accomplish, but they also go far beyond the scope of what is commonly understood to be privacy law, clearly exceeding the statutory authority assigned to this Agency under the CCPA. Rushing regulations of this size and magnitude will only harm consumers, small start-ups and the innovation economy, while creating confusion among businesses seeking to comply, and inviting unnecessary litigation.
- The Agency's closed-door approach to formulating regulations stands in sharp contrast to how other regulators are handling these issues. For example, Colorado legislators have worked constructively with all stakeholders in a transparent manner to structure privacy regulations that are meaningful to consumers and that are targeted to meet their goals. Here, in California, we see the CPPA's most recent efforts to propose rules on automated decision-making tools, risk assessments, and cybersecurity audits as creating a maze of conflicting policy without coordinating meaningfully with the Governor's office, legislature, or the business community. The business community's opportunities to meet with and express concerns have been strictly limited to written comments or brief public comments at board meetings. The lack of transparency and limitations placed on how all stakeholders can discuss very complex and evolving issues and the nature of these advancing technologies is a significant problem that is then further exacerbated by the fact that the Legislature is also actively considering potentially conflicting policies on the same issues.
- The CPPA is a public agency, yet its opaque operations and unwillingness to engage with stakeholders, such as the industries that need to comply with its regulations, undermines the accountability the California voters and legislators expect of it. Meeting requests to board members have been repeatedly declined and industry feedback has been largely ignored or dismissed by agency staff during the preliminary rulemaking process. As a result, we are seeing significant public policy being shaped in a vacuum consisting only of CPPA staff and board members.

This is not an efficient or effective way to develop regulations, especially on such complex and nuanced policies. The result will likely be expansive regulations that are not tailored to helping Californians and that will hamstring businesses and stifle innovation in the state. There is agreement across much of the technology, business, and policy community in California, nationally, and around the world that preemptive efforts to regulate or restrict AI in the absence of clear information and risk-based use cases can damage economic competitiveness.

California currently has a strong lead in this field and stands to competitively gain more than any other state. The Governor's strategy for the use of generative AI inside state government, which is iterative and encourages agencies to establish guardrails but also to accelerate the adoption of AI, is a good example of California's forward-looking approach to regulation that still allows for technological growth and economic prosperity. We are concerned that the CPPA's current regulatory approach is inconsistent not only with the Governor's directives and pending actions by the Legislature, but also stands to undermine Californian's economic needs.

We understand that the CPPA's intent with the proposed regulations is to ensure that consumer privacy remains a primary focus as new technologies are developed. But California cannot afford to get this wrong. The Agency should not rush ahead while multiple board members have expressed concern as to whether the proposed rules exceed the Agency's authority for issuing regulations in these areas. Currently, the Legislature is considering many bills related to AI before the legislative session ends in August. Questions like how AI should be defined, what role the state should play in regulating AI, and which agencies are best positioned to enforce various AI laws, remain unanswered and require legislative determination, including the approval of the Governor. And that is just the tip of the iceberg for the policy and legal questions posed in nearly three dozen AI bills that are still moving through the legislative process.

Authorizing your staff to finalize draft proposed rules before the end of the session, will prejudice and undermine the Legislature's work, as well as the Governor's directives and vision for the future of AI in California. Prior to commencing the formal regulatory process and releasing draft comments for public comment, the Board should reevaluate the existing draft regulations only after the Legislature has done its work this session and the Governor time for signature or veto has expired. Again, we urge you to avoid getting ahead of the Legislature and Governor on matters of such statewide importance and that you provide meaningful opportunities to receive and better incorporate feedback from all stakeholders.

To that end, we ask that the Board review any draft rules being considered for publication for public comment only after the legislative session ends and the Governor has signed any relevant legislation into law, so that you can align with broader state priorities and the statutory framework created by the Legislature, as well as the Governor's directives. This will better serve not only our businesses, but Californians and our economy and help ensure that the CPPA does not exceed the authority and purview granted by voters. Doing so will hopefully also allow the Agency to engage in more open and transparent dialogue with the public.

Please know we stand ready to meet at any time with Board Members, staff and any other stakeholders to ensure we get these critical policies right for all Californians.

Sincerely,



CC: Ashkan Soltani, Executive Director of CPPA