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RMAi
RECEIVABLES MGMT. ASSOC. INTL.
SETTING THE GLOBAL STANDARD

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California Office of the Attorney General
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Los Angeles, CA 90013

Sent via email: PrivacyRegulations@doj.ca.gov

Re: RMAI Comments on Proposed Regulations Concerning the California Consumer Privacy Act of 2018

Dear Privacy Regulations Coordinator:

The Receivables Management Association International ("RMAI") appreciates this opportunity to submit the following rulemaking comments regarding the California Consumer Privacy Act of 2018 ("CCPA").

I. BACKGROUND

RMAI is the nonprofit trade association that represents more than 500 companies that purchase or support the purchase of performing and non-performing receivables on the secondary market. The existence of the secondary market is critical to the functioning of the primary market in which credit originators extend credit to consumers. An efficient secondary market lowers the cost of credit extended to consumers and increases the availability and diversity of such credit.

RMAI is an international leader in promoting strong and ethical business practices within the receivables management industry. RMAI requires all its member companies who are purchasing receivables on the secondary market to become certified through RMAI's Receivables Management Certification Program ("RMCP")[1] as a requisite for membership. The RMCP is a comprehensive and uniform source of industry standards that has been recognized by the collection industry's federal regulator, the Bureau of Consumer Financial Protection , as "best practices."[2]

In addition to requiring that certified companies comply with local, state and federal laws and regulations concerning collection activity,[3] the RMCP goes above and beyond the requirements of local, state and federal laws and regulations by requiring its member companies to comply with additional requirements not addressed by existing laws and regulations. The debt buying

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[1] RMAI, *RMAI Receivables Management Certification Program*, https://rmassociation.org/certification (last accessed March 2, 2019).

[2] Consumer Financial Protection Bureau, *Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking, Outline of Proposals Under Consideration*, July 28, 2016, p. 38, http://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf (last accessed March 2, 2019).

[3] The federal laws to which member companies are subject include but are not limited to the Fair Debt Collection Practices Act, Fair Credit Reporting Act, Gramm-Leach-Bliley Act, Electronic Funds Transfer Act, Telephone Consumer Protection Act, and the Health Insurance Portability and Accountability Act.

companies certified by the RMCP hold approximately 80 percent of all purchased receivables in the country, by RMAI's estimates.

RMCP certified companies are subject to vigorous and recurring independent third-party audits to demonstrate to RMAI their compliance with the RMAI Certification Program. This audit includes an onsite inspection of the certified companies to validate full integration of RMCP standards into the company's operations. Following a company's initial certification, review audits continue to be conducted every two to three years.

RMAI's Certification Program was recognized by a resolution of the Michigan State Senate as "exceed[ing] state and federal laws and regulations through a series of stringent requirements that stress responsible consumer protection through increased transparency and operational controls . . ."[4]

At the state level, since 2013, RMAI has worked with legislators and regulators in California, Connecticut, Colorado, Maine, Maryland, Minnesota, New York, Oregon, Washington and West Virginia toward the enactment of enhanced laws and regulations regarding the collection of purchased consumer debts.

II. COMMENTS

Article 1. General Provisions

§ 999.301. Definitions

Clarification is Needed with Respect to the CCPA Definitions of "Business" and "Sell," "Selling," "Sale," or "Sold"

Although the following terms were defined in the CCPA, RMAI urges the Attorney General to provide clarification as described below.

"Business."

To meet the definition of a "business" under the CCPA,[5] an entity must be one that "does business in the State of California" *and then* meets one of the three specified thresholds. In other words, it is a prerequisite that the entity be doing business in California. If that prerequisite is not met, it is irrelevant whether the entity also meets one or more of the thresholds.

However, the CCPA provides no definition for "does business in the State of California." This lack of clarity leaves foreign corporations without guidance as to whether their level of activity in California constitutes "doing business" in the state.

California has several statutes related to this question. The Revenue and Tax Code provides a specific definition for "doing business" with respect to potential franchise tax liability,[6] and the Corporations Code defines what it means to be "transacting intrastate business" for purposes of

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[4] Michigan Senate Resolution 33, adopted March 26, 2015. https://www.legislature.mi.gov/(S(c0l55hrzl15jmpuaxb4uv0gf))/mileg.aspx?page=getobject&objectname=2015-SR-0033&query=on (last accessed March 2, 2019).

[5] Cal. Civ. Code § 1798.140(c).

[6] Cal. Rev. & Tax Code § 23101.

requiring a certificate of qualification.[7] California's long-arm statute,[8] as interpreted by the courts, conceivably provides further guidance.

Because whether a business "does business in the State of California" is a threshold question, RMAI urges the Attorney General to provide guidance as to the interpretation of that phrase so the applicability of the CCPA is not a "guessing game" for foreign corporations.

"Sell," "selling," "sale," or "sold."

RMAI respectfully requests the Attorney General provide clarification that the CCPA's definition of "sell," "selling," "sale," or "sold"[9] applies only when the primary object of the "sale," (i.e., the thing of value for which "monetary or other valuable consideration" is received) is the personal information itself.

This clarification would address the common situation in which a consumer's contractual obligation is sold, typically as part of a portfolio, and it is the value of the obligation, rather than the consumer's incidental personal information, that is the object of the sale.

This concern was raised at the Sacramento and Riverside Public Hearings:

> Many financial institutions regularly sell portfolios within their business. So, for example, a credit card portfolio or a loan portfolio, another example would be like a delinquent account portfolio. In those cases, the personal information associated with those accounts is transferred with the commercial sale of that portfolio. The terms of that customers' contract don't change. It would really be helpful if the regulations would clarify that selling those types of portfolios -- portfolios of that nature and transferring the corresponding personal information to some commercial purchasers excluded from the definition of sale. These types of commercial sales are common in the financial industry, and they don't impact the customers directly.[10]

> As written, the act does not apply to personal information collected, sold, processed, or disclosed pursuant to GLBA. Many financial institutions regularly sell portfolios within their businesses, and in doing so, consumer personal information is transferred with the commercial sale of the portfolio. Although the individual transactions that are part of the portfolio are protected by GLBA, the sale of the portfolio itself, such as a credit card portfolio or a delinquent account portfolio, does not appear to technically fall within this exclusion. It would be helpful if the regulations excluded from the definition of sale the selling of these types of portfolios

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[7] Cal. Corp. Code § 191.
[8] Cal. Civ. Proc. Code § 410.10.
[9] Cal. Civ. Code § 1798.140(t).
[10] Transcript, *Public Hearing on the California Consumer Privacy Act (CCPA)*, Riverside, CA, January 24, 2019, p. 9. https://oag.ca.gov/sites/all/files/agweb/pdfs/privacy/ccpa-public-forum-riverside-012419.pdf? (last accessed November 20, 2019).

> and transferring of corresponding personal information to the commercial purchaser.[11]

> The CCPA defines sale to include any data transfer for monetary or other valuable consideration. It's not clear whether the monetary consideration must be received for the purchase of personal data as opposed to some other business arrangement where the data is not the subject of the exchange.[12]

The receivables secondary marketplace is where ownership of performing and nonperforming receivables (i.e. the asset) are purchased by companies that were not a party to the originating transaction. A common example "is when a bank sells the ownership of its defaulted credit card receivables to a debt buying company. As a result of the sale, the ownership of the receivables and all legal rights associated with that asset are now held by a company not a party to the original transaction."[13]

The secondary marketplace benefits original creditors by allowing them to monetize performing and nonperforming receivables, thereby allowing for business growth and the extension of new lines of credit. Consumers likewise benefit because the "receivables secondary market provides consumers who have defaulted on a debt the single most expedient, efficient, and cost-effective way to improve their credit rating," providing the greatest opportunity during the life of the debt to settle the account for the lowest amount.[14]

If a consumer's right to opt-out of the sale of their personal information under the CCPA is wrongly interpreted to disallow the transference of the consumer's personal information associated with the sale of their legal obligation, their de-identified legal obligation would be virtually unenforceable. This would disable the receivables secondary marketplace and potentially lead to the abandonment of portfolios. "This outcome would leave the consumer with no solution to resolve the contractual obligation on the account, make payments, repair their credit rating, dispute the debt, bring legal action, or even to protect their confidential information from falling into the wrong hands."[15]

For these reasons, RMAI respectfully requests clarification that a "sale" of personal information does not occur when it is the obligation with which it is associated that is the asset for which "monetary or other valuable consideration" is received.

Article 2. Notices to Consumers

§ 999.305. Notice at Collection of Personal Information

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[11] Transcript, *Public Hearing on the California Consumer Privacy Act (CCPA)*, Sacramento, CA, February 5, 2019, p. 52. https://oag.ca.gov/sites/all/files/agweb/pdfs/privacy/ccpa-public-forum-sac-020519.pdf? (last accessed November 20, 2019).

[12] *Id.* at p. 30.

[13] RMAI, *The Value of Resale on the Receivables Secondary Market*, April 2016, p. 3. https://rmaintl.org/wp-content/uploads/2017/04/RMA_White_Paper_Value_of_Resale.pdf (last accessed March 3, 2019).

[14] *Id.* at pp. 6-78.

[15] *Id.* at 9.

§ 999.305(a)(2)c.

Compliance with the CCPA Should Not Require Translation of Disclosures

A person in a trade or business, who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, orally or in writing, in the course of entering into a contract with a consumer, must give the consumer a written translation of the proposed contract in the language of the negotiations.[16] The translation must accurately translate every term and condition in the contract or agreement.

If the business that is required to provide a foreign language translation fails to do so, the consumer can rescind the contract.[17] The consumer can cancel the contract even if it has been sold and assigned to a financial institution.

The law requiring translation of contracts negotiated in a language other than English applies to (1) credit sale contracts involving consumer goods and services of all kinds, including automobile purchases and leases; (2) virtually all loans or other extensions of credit for use primarily for personal, family or household purposes, except loans secured by real property; (3) consumer loans secured by real property, if arranged by a real estate loan broker, or made by a personal finance company; (4) contracts for the rental, lease or sublease of apartments or other dwellings (including mobile homes) for a period longer than one month (month-to-month and week-to-week rental contracts are not covered); (5) contracts involving the payment of fees or charges for legal services furnished by lawyers; (6) reverse mortgages; and (7) mortgage foreclosure consulting contracts.[18]

The foreign language translation requirements do not apply to home improvement contracts, contracts involving a seller who is not engaged in a trade or business, and contracts in which the consumer negotiated the contract through his or her own interpreter subject to certain limitations.[19]

The business must give the consumer a foreign language translation of the original contract *and any subsequent documents that modify the original contract*[20] *or substantially change the rights and obligations of the parties*.[21] For example, a borrower is entitled to a Spanish translation of deficiency or repossession notices, based on California's foreign language disclosure law, where the borrower did not speak English and the auto loan was negotiated primarily in Spanish.[22]

However, the law does not require a foreign language translation for any later documents authorized or expected to be made under the original contract or its modification.[23] Examples of those documents which need not be translated include "periodic statements, sales slips or

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[16] Cal. Civil Code § 1632(b).
[17] Cal. Civil Code § 1632(k); *see also* Cal. Civil Code § 1688, *et seq.* (cancellation of contracts).
[18] Cal. Civil Code § 1632(b)(1)-(7).
[19] Cal. Civil Code § 1632(g), (h).
[20] SB 1201 now requires a supervised financial organization that negotiates a loan modification on a residential mortgage loan in Spanish, Chinese, Tagalog, Vietnamese, or Korean to deliver a specified form at the time the final loan modification offer is made. *See* Cal Civil Code § 1632.5.
[21] Cal. Civil Code § 1632(g); *see also* Cal Civil Code § 2923.3 (translation of foreclosure notices).
[22] *Reyes v. Superior Court* (1981) 118 Cal. App. 3d 159.
[23] Cal. Civil Code § 1632(g).

invoices representing purchases made pursuant to a credit card agreement, a retail installment contract or account or other revolving sales or loan account, memoranda of purchases in an add-on sale, or refinancing of a purchase as provided by, or pursuant to, the original document."

RMAI does not believe that the CCPA's requirements would be considered a substantial change to the parties' rights and obligations to warrant the translation of disclosures. Business must safeguard customer information or risk exposing themselves to liability.[24] The information debt buyers and debt collectors use to service and collect the debt is not subject to deletion.[25] Nor are these companies engaged in the business of selling personal information. Thus, RMAI expects the benefits of providing disclosures translated in the languages in § 1632 will be minor.

RMAI acknowledges that the marketing, negotiating, and making of certain disclosures at origination in a language other than English could reasonably lead consumers to expect that post-closing documents will also be in the non-English language. However, providing accurate disclosures in the languages in § 1632 would add significant costs to the collection of a debt.

RMAI requests that the Attorney General clarify that compliance with the CCPA would not require businesses to translate the disclosures. In the event that any notices must be translated, RMAI encourages the approval of disclosure forms in acceptable language translations.[26]

§ 999.305(a)(2)d.

Consumers Deserve Uniform Compliance with ADA Accessibility Standards and Alternative Formats

Section 999.305(a)(2)d states that the notice at collection must "[b]e accessible to consumers with disabilities." RMAI believes it would be helpful for the Attorney General to provide guidance as to what the accessibility standards should be when the notice at collection is presented via: 1) website; 2) "printed forms" or "paper versions"; and 3) "signage."[27]

Section 999.305(a)(2)d also requires that the notice should "provide information on how a consumer with a disability may access the notice in an alternative format." RMAI urges the Attorney General to provide examples of the types of alternative formats that would be compliant with the CCPA when the notice at collection is presented via: 1) website; 2) "printed forms" or "paper versions"; and 3) "signage."[28]

§ 999.305(a)(2)e.

Guidance is Needed Regarding Provision of the Notice at Collection

Section 999.305(a)(2)e states that a website link to the notice at collection must be "posted conspicuously" or be on "prominent signage." RMAI seeks guidance on whether it would be allowable, with respect to paper versions of the notice, to include the notice on the reverse side of a letter provided there is language on the front directing the consumer to the notice, such as "SEE REVERSE SIDE FOR IMPORTANT INFORMATION."

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[24] Cal. Civil Code §§ 1798.84, 1798.150.
[25] Cal. Civil Code § 1798.145(a), (e).
[26] Cal. Civil Code § 1632.5(i).
[27] Section 999.305(a)(2)e.
[28] Section 999.305(a)(2)e.

Additionally, some businesses may collect information directly from the consumer over the telephone prior to the consumer visiting a website with a link to the notice at collection or prior to receiving a paper version in the mail. RMAI seeks guidance on how the notice at collection can be provided in those situations.

Finally, RMAI suggests it would be helpful for the Attorney General to provide a sample notice at collection so businesses have a standard template to follow and consumers will not be confused by varying formats of the notice that will otherwise be developed.

§ 999.305(a)(3).

Consumers Deserve Uniformity with Respect to How They Are "Directly Notified" and How They Must Provide "Explicit Consent"

Section 999.305(a)(3) provides that "[i]f the business intends to use a consumer's personal information for any purpose other than those disclosed in the notice at collection, the business shall *directly notify* the consumer of this new use and obtain *explicit consent* from the consumer to use it for this new purpose." (emphasis added). RMAI requests clarification and examples of the various ways a business may "directly notify" the consumer and "obtain explicit consent."

§ 999.305(b)(1).

Consumers Deserve Uniformity with Respect to How Categories of Personal Information are Defined

Section 999.305(b)(1) requires that the notice at collection include "[a] list of the categories of personal information about consumers to be collected." However, no clarification is provided as to how narrowly or broadly the categories should be defined.

The CCPA states "[t]he categories of personal information required to be disclosed pursuant to Sections 1798.110 and 1798.115 shall follow the definition of personal information in Section 1798.140."[29] However, the definition of "personal information"[30] contains a non-exhaustive list of specific pieces of information, rather than a list of categories. The definition also includes "[a]ny categories of personal information described in subdivision (e) of Section 1798.80."[31] Again, however, that section of the Civil Code also lists specific pieces of information rather than categories.[32]

For these reasons, RMAI requests that the Attorney General provide clarification with respect to "categories of personal information" and examples, including examples that demonstrate "meaningful understanding of the information being provided."

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[29] Cal. Civ. Code § 1798.130(c).
[30] Cal. Civ. Code § 1798.140(o).
[31] Cal. Civ. Code § 1798.140(o)(1)(B).
[32] "'Personal information' means any information that identifies, relates to, describes, or is capable of being associated with, a particular individual, including, but not limited to, his or her name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information. . . ." Cal Civ Code § 1798.80(e).

§ 999.305(b)(4).

Provision Should be Made for Businesses That Do Not Maintain Websites

Section 999.305(b)(4) requires the notice at collection to include "[a] link to the business's privacy policy, or in the case of offline notices, the web address of the business's privacy policy." Thus, while § 999.305(a)(2)e appears to accommodate businesses that do not have a website, this section appears to mandate that every business subject to the CCPA have a website. RMAI seeks clarification as to how a "brick and mortar" business that has no website, and does not have consumers physically visiting its building, should provide consumers direction to its privacy policy.

§ 999.306. Notice of Right to Opt-Out of Sale of Personal Information

§ 999.306(a)(2)c.

Please see comment to § 999.305(a)(2)c.

§ 999.307. Notice of Financial Incentive

§ 999.307(a)(2)c.

Please see comment to § 999.305(a)(2)c.

§ 999.308. Privacy Policy

§ 999.308(a)(2)d.

Please see comment to § 999.305(a)(2)d, above.

§ 999.308(a)(2)e.

Please see comment to § 999.305(a)(2)e, above.

§ 999.308(a)(3).

Provision Should be Made for Businesses That Do Not Maintain Websites

Section 999.308(a)(3) requires that "[a] business that does not operate a website shall make the privacy policy conspicuously available to consumers." RMAI seeks clarification as to how a "brick and mortar" business that has no website, and does not have consumers physically visiting its building, should provide consumers its privacy policy.

§ 999.308(b)(1)d.1.

Please see comment to § 999.305(b)(1), above.

§ 999.308(b)(1)d.2.

Requiring Information be Provided for Each Category of Personal Information Will Overwhelm Consumers

Section 999.308(b)(1)d.2 requires the privacy policy to include, "*[f]or each category of personal information collected*, [] the categories of sources from which that information was collected, the

business or commercial purpose(s) for which the information was collected, and the categories of third parties with whom the business shares personal information." (emphasis added).

In contrast, the CCPA *does not* require that the "categories of sources," "business or commercial purpose," or "categories of third parties" be provided for each separate category of personal information.[33]

Thus, the proposed regulation would not only impose upon businesses a more complicated requirement than what is authorized by statute, it would require more information than is reasonably necessary for consumers to understand the collection and use of their personal information. As with any consumer notice, there comes a point at which the amount of information can overwhelm, rather than educate, the consumer.[34]

§ 999.308(b)(2).

Consumers Will Be Confused by the Notice of the Right to Deletion When the Business Is Not Required to Delete

Section 999.308(b)(2) requires that the privacy policy include an explanation of the consumer's right to request deletion of her or his personal information. However, businesses do not have to comply with a request to delete certain information.[35] Including an explanation of a right that the consumer does not or may not have will undoubtedly result in consumer confusion and frustration. RMAI encourages that this provision not be mandated when it is inapplicable (i.e., all of the personal information possessed by the business is exempt from the requirement to delete upon request) or, alternatively, that businesses be permitted to inform the consumer that the right to deletion may not be applicable in all circumstances.

§ 999.308(b)(3).

Consumers Will Be Confused by the Notice of the Right to opt-out When the Business Does Not Sell their Personal Information

Section 999.308(b)(3) requires that the privacy policy include an explanation of the consumer's right to opt-out of the sale of her or his information. On the other hand, Section 999.306(d) exempts a business from providing a notice of the right to opt-out if it "does not and will not sell personal information" and "[i]t states in its privacy policy that that it does not and will not sell personal information."

RMAI respectfully suggests that § 999.308(b)(3) be amended to clarify that if a business falls within the exemption provided by § 999.306(d), it need not include an explanation of the right to opt-out within its privacy policy.

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[33] Cal. Civ. Code § 1798.110.

[34] The Consumer Financial Protection Bureau, in its Notice of Proposed Rulemaking, noted the potential for such confusion by seeking comment on whether certain "content requirements risk overwhelming consumers and decreasing their understanding, thereby making the proposed disclosures less effective." *Notice of Proposed Rulemaking, Debt Collection Practices (Regulation F)*, Docket No. CFPB-2019-0022, May 6, 2019, p. 236. See: https://files.consumerfinance.gov/f/documents/cfpb_debt-collection-NPRM.pdf (last accessed Nov. 21, 2019).

[35] For example, if retention of the personal information is necessary for any of the reasons listed in Cal. Civ. Code § 1798.145, or if the personal information is necessary for the reasons stated in Cal. Civ. Code § 1798.105(d).

Article 3. Business Practices for Handling Consumer Disputes

§ 999.312. Methods for Submitting Requests to Know and Requests to Delete

Businesses that Operate only Informational Websites Should Not Be Required to Accept Requests Using a Webform.

A survey conducted of RMAI members revealed that twenty percent (20%) operate websites that are not designed to collect information from or otherwise interact with consumers. These websites are designed as online brochures and are primarily used to advertise to the credit and collection industry. They do not engage consumers. Because the proposed regulation would apply to any business that "operates a website," regardless of whether the website collects information of consumers, it imposes an unnecessary burden. The proposed subpart (c) contemplates this very situation, noting that "[a] business shall consider the methods by which it interacts with consumers when determining which methods to provide for submitting requests to know and requests to delete." Thus, where a business does not use a website to interact with consumers, it should not be required to provide a webform to receive requests.

Requiring Requests to Know or Requests to Delete through Webforms or 1-800 Numbers Will Confuse Consumers Who Have a Validation Rights under the Federal FDCPA.

Requiring RMAI members to allow consumers to submit requests to know or requests to delete using a toll-free number or through a website could lead to consumer confusion.

RMAI members that are subject to the federal Fair Debt Collection Practices Act (FDCPA), 15 USC § 1692, *et seq*, are required to notify consumers of the right to obtain "verification" of a debt. 15 USC § 1692g(a). A consumer can obtain verification by contacting the debt collector "in writing." RMAI believes that a "request to know" under the CCPA is very similar to a request for verification under the FDCPA, as both are requests for information the debt collector has concerning the consumer.[36] It is likely that a consumer will believe that by submitting a "request to know" using a 1-800 telephone number or a webform, the consumer has exercised her validation rights under the federal FDCPA. This would not be the case since neither communication was made "in writing."[37]

RMAI believes that flexibility is needed in determining the best means to allow consumers to make the requests in a manner that does not lead to confusing consumers of their rights under other law. Therefore, RMAI requests that the final rule reflect that a business may choose two methods which are reflective of their usual interaction with consumers.

§ 999.313. Responding to Request to Know and Requests to Delete

A Request to Delete under the CCPA Will Conflict with a Debt Collector's Responsibility to Provide Verification to Consumers under the FDCPA

As pointed out in the comment to § 999.312, RMAI members that are subject to the federal Fair Debt Collection Practices Act (FDCPA) 15 USC § 1692, *et seq*, are required to provide consumers with the opportunity to obtain "verification" of a debt. 15 USC 1692g(a). A "request

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[36] See, 15 U.S.C. § 1692g.

[37] See, *Mahon v. Credit Bureau, Inc.*, 171 F.3d 1197, 1202 (9th Cir. 1999) ("If no written demand is made, 'the collector may assume the debt to be valid,'" citing *Avila v. Rubin*, 84 F.3d 222, 226 (7th Cir. 1996); 15 U.S.C. § 1692g(a)(3)).

to know" under the CCPA is very similar to a request for verification under the FDCPA as both are requests for information the debt collector has concerning the consumer.[38] A natural conflict arises for businesses to comply with the requirements of consumer protection statutes related to debt collection as such company cannot delete information. Accordingly, RMAI respectfully requests clarification that businesses regulated under the FDCPA are exempt from responding to request to delete information.

Guidance is Required for Businesses that Only Collect Personal Information Covered by GLBA

RMAI respectfully requests the Attorney General provide guidance regarding the applicability of § 999.313 to a business that holds only personal information collected, processed, sold, or disclosed pursuant to the federal Gramm-Leach-Bliley Act ("GLBA Information"). The only information that could be provided by that business in response to a request for information or deletion is GLBA Information, which is not covered by the CCPA.[39] As proposed, § 999.313 does not provide that business with an option to respond to the request without going through the burdensome and unnecessary process required by § 999.313(a) and (b). Requiring the business that holds only GLBA Information to comply with § 999.313(a) and (b) will cause substantial increases in operation cost as well as confusion to a consumer because the business will have to deny that request pursuant to § 999.313(c)(5). Furthermore, although § 999.313(c)(9) permits the business to refer to its general practices outlined in its privacy policy if those are the same for all consumers, the regulations do not provide a streamlined method for responding pursuant to § 999.313(c)(5) or (9) at the time that a request for information or deletion is received.

Finally, RMAI suggests it would be helpful for the Attorney General to provide a samples or exemplars related to various communications falling under this section so businesses have a standard template to follow and consumers will not be confused by varying formats of the notice that will otherwise be developed.

§ 999.313(c)(1) and (c)(2).

Guidance is Required to Prevent a Security Risk to Consumers

Section 999.313(c)(1) and (c)(2) state that if the request is denied in whole or in part because the business is unable to verify the consumer's identity, the business shall "inform the consumer that it cannot verify their identity." RMAI requests guidance on the method by which a business is to inform the unverified consumer. Communication with a non-verified consumer, even without disclosure of the information can by itself create risk to the security of the information.

§ 999.313(c)(5).

Examples and Sample Notices Will Promote Uniformity

RMAI requests that the Attorney General give examples of when it is appropriate to deny a request under § 999.313(c)(5) and provide a sample of a denial notice to illustrate the meaning of "explain" as used in this subsection.

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[38] See, 15 U.S.C. § 1692g.
[39] Cal. Civil Code § 1798.145(e).

§ 999.315. Requests to Opt-Out

Businesses that Operate only Informational Websites Should Not Be Required to Accept Requests to Opt-Out Using a Webform.

As pointed out in the comment to § 999.312, a survey conducted by RMAI revealed that twenty percent (20%) of responding members operate websites that are not designed to collect information from or otherwise interact with consumers. These websites are online brochures that advertise the business' services to the credit and collection industry. They do not engage consumers. Because the proposed regulation would apply to any business that "operates a website," regardless of whether the website collects information of consumers, it imposes an unnecessary burden. The proposed subparts (b) and (c) contemplate this very situation, as subpart (b) provides that "[a] business shall consider the methods by which it interacts with consumers when determining which methods consumers may use to submit requests to opt-out…" Subpart (c) would apply only if "a business collects personal information from consumers online." Thus, where a business does not use a website to interact with consumers or collect information from consumers, it should not be required to provide a webform to receive such requests.

Businesses that Collect Information Whose Sale is Authorized by Federal or State Law or Excepted by the CCPA, should be Permitted to Deny Opt-Out Requests Concerning Such Information.

A consumer cannot opt-out of the sale of personal information collected, processed, sold, or disclosed pursuant to the federal Gramm-Leach-Bliley Act Gramm-Leach-Bliley Act (GLBA) (15 U.S.C. §§ 6801, *et seq*). As proposed, §999.315, and particularly subpart (d), does not provide the business with an option to advise consumers of this exception in response to a request to opt-out. In the case of requests to know, the proposed § 999.313(c)(5) allows a business to provide a response indicating that the information will not be provided "because of a conflict with federal or state law, or an exception to the CCPA." Likewise, in response to a request to delete, proposed § 999.313(d)(6), provides the business with the ability to respond with a denial analogous to that of proposed §999.313(c)(5). RMAI requests clarification that a business may similarly deny an opt-out request when the request conflicts with federal or state law or an exception to the CCPA.

§ 999.317. Training; Record-Keeping

§ 999.317(a).

A Plain-Language Guide for Business will Promote Compliance

To ensure consistent training and application of the CCPA, RMAI requests that the Attorney General distribute a plain-language guide for businesses that businesses can then provide to the individuals responsible for handling consumer inquiries or a business's compliance with the CCPA.[40]

[40] For example, see https://www.ftc.gov/tips-advice/business-center/guidance/how-comply-privacy-consumer-financial-information-rule-gramm

§ 999.317(g).

Clarification of "Sell," "Selling," "Sale," or "Sold" is Needed

As discussed in RMAI's comment to § 999.301, RMAI respectfully requests the Attorney General clarify that the sale of a consumer's contractual obligation is not considered to be the sale of that consumer's incidental personal information for purposes of the CCPA. This clarification will confirm RMAI's understanding that the additional compilation, disclosure, documentation, and compliance requirements contained in § 999.317(g) do not apply to RMAI members that do not buy, receive, sell, or share personal information except as incidental to the contractual obligation that is the object of the sale or transfer.

§ 999.318. Requests to Access or Delete Household Information

§ 999.318(b).

This Section is Confusing to Businesses and Consumers and Will Produce Harmful Results

Proposed § 999.318(b) requires a business to comply with a request to know or delete, if "all consumers of the household jointly" make the request. Proposed section 301(h) defines a household as a person or group of people occupying a single dwelling. RMAI understands this definition to include unrelated persons who happen to be present in the same dwelling at any moment, even if it they do not reside at the "single dwelling." This is because the definition of "household" proposed in § 999.301(h) uses the word "occupying" rather than "residing." The use of "occupying" is significant. Merriam-Webster provides a definition of "occupy" to mean "to take up (a place or extent in space) or "to take or fill (an extent in time)."[41] By using "occupying" rather than "residing," the proposed rule can be interpreted to include persons who are merely present at a "single dwelling," no matter how brief their presence. Thus, a person can occupy a single dwelling without being a resident of that dwelling, regardless of the occupation being only transitory or momentary. In contrast, Merriam-Webster provides a definition of "reside" as "to dwell permanently or continuously: occupy a place as one's legal domicile."[42]

Although the occupation of the single dwelling may only be momentary or transitory, proposed 318(b) requires a business to comply with a request to know or delete, if "all consumers of the household jointly" make the request. In the first instance, because of the momentary and transitory nature of "occupying" a "single dwelling" (as opposed to a person residing at a "single dwelling"), a business can never be certain whether "*all* consumers" (emphasis added) who *occupy* a single dwelling have jointly made the request. RMAI members likely will not have information concerning the persons who *occupy* a particular single dwelling when the request is made. This is because consumers can cease occupying a single dwelling quite easily, as opposed to establishing residence. Furthermore, it is possible for multiple consumers to occupy a single dwelling, even though one or more of those consumers reside at a different place. The difference is significant because a consumer can occupy a "single dwelling" simply by being present at such a place for a few hours.

The verification guidance proposed by Article 4 is of no assistance in resolving this dilemma. A business may ask the consumers to provide verification that they all occupy the single dwelling, but it is likely that the evidence provided to demonstrate occupation will instead be indicative of

[41] See, https://www.merriam-webster.com/dictionary/occupy last accessed November 22, 2019.
[42] See, https://www.merriam-webster.com/dictionary/reside last accessed November 22, 2019.

consumers *residing* at the single dwelling, such as copies of utility bills, driver's licenses or the like. But this information does not encompass the broader definition of "occupying" the single dwelling, which can be satisfied by a person's mere presence in the single dwelling for any period of time.

RMAI urges use of the word "reside" in place of occupying to avoid such confusion.

§ 999.318(b).

This Section Risks Disclosure of the Consumer's Information in Violation of the FDCPA

RMAI also understands the proposed definition to included unrelated persons "occupying a single dwelling." Thus, RMAI understands a household to include persons who have no familial or legal relationship (i.e., it includes persons who are not spouses, parents, children, or legal guardians).

In the context of a request under proposed § 999.318(b), the request can come from unrelated persons. In the case of a request-to-know sent to an RMAI member subject to the Federal Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. §§ 1692, *et seq.*) the information revealed in response would necessarily include a consumers' financial information. However, 15 U.S.C. § 1692(c)(b) prohibits a debt collector from communicating with any person in connection with collection of a debt, absent the debtor's "prior consent" with few exceptions, none of which are applicable here.[43] It is thus likely that a request under proposed § 999.318(b) would cause the disclosure of information protected from disclosure by 15 U.S.C. § 1692(c)(b).

RMAI does not believe that the proposed Article 4 verification is consistent with the "prior consent" requirement of 15 U.S.C. § 1692c(b), which permits a debt collector to communicate about the debt with third parties with the "prior consent of the consumer given directly to the debt collector." This is because proposed § 999.323(a) provides that the purpose of Article 4 is for a business to "establish, document, and comply with a reasonable method for verifying that the person making a request to know or a request to delete is the consumer about whom the business has collected information." The stated purpose is not to assure a consumer has provided prior consent to the disclosure of information to the person making the request.

As RMAI commented with respect to proposed § 999.312 and § 999.315, RMAI proposes to remedy this conflict by including in proposed § 999.318(b) a provision allowing businesses to respond to requests to delete or know by denying the consumer's request to the extent it would conflict with federal or state law or fall within an exception to the CCPA.

Article 4. Verification of Requests

§ 999.323. General Rules Regarding Verification

Additional Guidance is Required to Ensure Consumers' Identities are Accurately Verified in Compliance with the CCPA

Section 999.323(a) requires that a business "establish, document, and comply with a reasonable method for verifying that the person making a request to know or request to delete is the consumer about whom the business has collected information." Although Section 999.323(b)(3)

[43] See 15 U.S.C. § 1692c(b).

provides factors for a business to consider in establishing its verification method, RMAI requests that the Attorney General provide guidance and examples of what would constitute a "reasonable method" of verification as well as how the factors listed should be weighed.

Additionally, and in comparison, Section 999.325(b), related to verification of non-account holders, requires that a business "match[] at least two data points" in verifying a consumer's identity in relation to a request to know "categories of personal information" maintained or collected, while Section 999.325(c) requires a business to "match[] at least three pieces of personal information" in verifying a consumer's identity in relation to a request to know "specific pieces of personal information" maintained or collected. It would be helpful for the Attorney General to provide guidance regarding how the requirement to establish a "reasonable method" for verification pursuant to Section 999.323 is to be applied and interpreted in consideration of Section 999.325(b) & (c) which contain specific methods of verification[44].

Section 999.323(a) also requires that a business "document" its compliance with the method of verification it establishes. The Proposed Regulations-Purpose, Necessity, and Benefits explain that the documentation requirement "provides transparency into the process and an easy way to confirm that the business has set up a method and is following it." However, subsection (b)(2) requires that a business "avoid collecting the types of personal information identified in Civil Code section 1798.81.5(d), unless necessary for the purpose of verifying the consumer" and subsection (c) requires that any new "personal information" collected for purposes of verifying the consumer's identity be deleted after processing the consumer's request. It would be helpful for the Attorney General to provide guidance regarding the interplay between these sections of the Regulation and how businesses can achieve compliance both with its requirement to "document" verifications as well as to "avoid" and "delete" personal information collected during the verification process.

Section 999.323(b)(1) uses the term "avoid" when discussing a business's collection of personal information. It would be helpful for the Attorney General to provide guidance regarding how the term "avoid" is to be interpreted when considering a business's compliance with this Regulation as well as examples of permissible collection and retention of such personal information.

Section 999.323(b)(1)'s requirement that businesses avoid collection of personal information during the verification process is also inconsistent with Section 999.317(b) which requires that "[a] business shall maintain records of consumer requests made pursuant to the CCPA and how the business responded to said requests for at least 24 months." It would be helpful for the Attorney General to provide guidance regarding how Section 999.317(b)'s requirement to maintain records of a consumer request may be interpreted consistent with Section 999.323(b)(1)'s requirement that a business avoid collecting personal information related to verifying any such consumer request.

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[44] While Section 999.325 is specific to "non-account holders", this scenario is defined as instances where a "consumer does not have or cannot access a password-protected account with the business". *Id., at (a).* However, where a business does not provide for an individual to access his/her account via a password-protected portal or otherwise, but the individual still is an "account holder" with the business, the Regulations are ambiguous as to what method for verification would be required.

Section 999.323(c) requires that a business that collects additional consumer information during the verification process shall delete such new information collected "as soon as practical." RMAI requests that the Attorney General provide guidance regarding how the term "as soon as practical" is to be interpreted when considering a business's compliance with this Regulation as well as examples of when it may become "practical" to delete such information as this Regulation anticipates.

Section 999.323(d) requires that a business "implement reasonable security measures to detect fraudulent identity-verification activity and prevent the unauthorized access to or deletion of a consumer's personal information." RMAI requests that the Attorney General provide guidance and examples of what would constitute a "reasonable security measure" in compliance with this Regulation.

§ 999.325. Verification for Non-Accountholders

Proposed § 999.325 Harms Consumers who Seek Verification of Debts Under Section 1692g(b) of the federal FDCPA

As explained in RMAI's comments to proposed § 999.312, § 1692g(b) of the federal Fair Debt Collection Practices Act requires a debt collector to provide verification of a debt upon receiving a written request in accordance with the requirements of that section. As explained in that comment, a "request to know" under the CCPA is very similar to a request for verification under the FDCPA as both are requests seeking information the debt collector has concerning the consumer. It is quite likely that a consumer may believe that by submitting a "request to know" the consumer has exercised the validation rights provided by section 1692g of the federal FDCPA.

The purpose of validation under § 1692g is to "eliminate the . . . problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid."[45] In providing verification under 1692g, RMAI members indicated in survey responses that they provide one or more of the following concerning the debt being collected:

- account number;
- name of the original creditor;
- name of the creditor at charge-off;
- balance at charge-off;
- current balance due;
- the debtor's social security number (or a portion of it, such as the last four digits);
- the debtor's last known address;
- the debtor's last known phone number; and,
- account level documents.[46]

The degree to which RMAI members provide verification information can depend on the facts and circumstances of each consumer request. For example, a consumer who simply disputes a

[45] *Chaudhry v. Gallerizzo*, 174 F.3d 394, 406 (4th Cir. 1998). See also, *Dunham v. Portfolio Recovery Assocs., LLC*, 663 F.3d 997, 1003 (8th Cir. 2011); *Clark v. Capital Credit & Collection Servs.*, 460 F.3d 1162, 1173 (9th Cir. 2006).

[46] "Account level documents," could include billing statements, loan agreements or loan applications.

debt and requests validation may receive only minimal information. While a consumer who acknowledges the debt, but disputes the amount, may receive more detailed information.

There is nothing in section 1692g which allows a debt collector to condition the provision of verification information on the consumer first establishing they are the correct debtor or providing any information to the debt collector to verify their identity. And courts liberally construe the FDCPA "to effectuate its stated purpose[s]."[47]

Proposed § 999.325 subparts (b) and (c) conflict with the requirements of § 1692g and frustrate their intended consumer protections. The proposed regulation requires a business subject to the CCPA and the FDCPA to condition the disclosure of personal information in response to a § 1692g(b) verification request on two or three "data points provided by the consumer." However, consumers subject to debt collection activity are often unwilling to provide *any* information to a debt collector, let alone the "personal information" contemplated by proposed 325 subparts (b) and (c). After all, a purpose of § 1692g validation is to "eliminate the . . . problem of debt collectors dunning the wrong person . . ."[48] Proposed § 999.325 frustrates this purpose by prohibiting a business from providing § 1692g verification absent "data points provided by the consumer."

Therefore, RMAI proposes to remedy this conflict by including a provision excepting businesses from proposed § 999.325 when providing consumers with personal information consistent with a business' obligations under federal or state law.

III. CONCLUSION

RMAI thanks the California Office of the Attorney General for its consideration of these comments and looks forward to issuance of the final regulations.

Please let me know if you have questions or if I can be of any assistance.

Sincerely,

Jan Stieger

Jan Stieger, Executive Director

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[47] *Taylor v. Fin. Recovery Servs., Inc.,* 886 F.3d 212, 214 (2d Cir. 2018). See also, *Vien-Phuong Thi Ho v. Recontrust Co., NA*, 858 F.3d 568, 579 (9th Cir. 2017) ("the FDCPA must be liberally construed in favor of the consumer.").

[48] Chaudhry v. Gallerizzo, 174 F.3d at 406.