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THE Committee OF Annuity Insurers
www.annuity-insurers.org

February 19, 2025

California Consumer Privacy Protection Agency
Attn: Legal Division – Regulations Public Comment
2101 Arena Blvd
Sacramento, CA 95834

Email: regulations@cppa.ca.gov

Re: Comments on Proposed Regulations on CCPA Updates, Cybersecurity Audits, Risk Assessments, Automated Decisionmaking Technology (ADMT), and Insurance

Dear CPPA Board Members and Staff,

The Committee of Annuity Insurers (CAI or Committee)[1] appreciates the opportunity to submit the following comments in response to the California Consumer Privacy Protection Agency's (CPPA) Notice of Proposed Rulemaking released November 22, 2024 (the Proposed Regulations). We appreciate the CPPA's work on this important initiative and its recognition within the Proposed Regulations that the California Consumer Privacy Act (CCPA) and underlying regulations raise a range of insurance industry specific issues and challenges, which are deserving of attention. We are committed to continuing to work collaboratively with the CPPA and consumer and industry stakeholders to ensure the Proposed Regulations effectively and appropriately clarify how the CCPA and its underlying regulations apply to the insurance sector, including to issuers of annuities.

OVERVIEW

The Committee has focused its below comments on insurance and annuity specific issues raised by the Proposed Regulations. In addition to our own comments set forth below, we are aware of and fully support the thoughtful comments submitted jointly by the American Council of Life Insurance Companies (ACLI), the Association of California Life and Health Insurance Companies (ACLHIC), and the Insured Retirement Institute (IRI).

As currently drafted, the Proposed Regulations do not appropriately account for the complex web of existing insurance and securities laws that apply to our members as insurance companies that issue annuities. Instead of providing clarity on how the CCPA applies to insurers, the Proposed Regulations conflict with the CCPA itself by limiting the GLBA data-level exemption to only data governed by the Insurance Information and Privacy Protection Act (IIPPA) without regard to Gramm-Leach-Bliley Act (GLBA) implementing regulations under federal securities laws, the Fair Credit Reporting Act (FCRA), the Health Insurance Portability and Accountability Act (HIPPA), or even California's own California Financial Information Privacy Act (CFIPA). Similarly, the proposed provisions on automated decision-making technology (ADMT) do not anticipate and appropriately account for how they would interact with the GLBA, FCRA, and other CCPA data-level exemptions. The currently proposed ADMT requirements

[1] The Committee of Annuity Insurers is a coalition of life insurance companies that issue annuities. It was formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of public policy with respect to securities, state regulatory and tax issues affecting annuities. The CAI's current 33 member companies represent approximately 80% of the annuity business in the United States. More information is available at https://www.annuity-insurers.org/.

would create an unwieldy and confusing framework that would cause uncertainty and consternation for businesses and consumers alike.

We also recognize that the Proposed Regulations raise a number of significant additional issues and challenges for all California businesses and we strongly urge the CPPA to give serious consideration to the comments issued by other businesses and their representatives during the comment period. It is vitally important that the final regulations issued from this process are thoughtfully tailored to address consumer risks and enhance consumer safety and confidence while providing businesses with pragmatic and actionably guidance on how to meet their obligations. As currently drafted, the current Proposed Regulations miss the mark: they create more confusion and conflict than clarity and would lead to unwieldy and frustrating outcomes for both businesses and consumers.

COMMENTS

Article 12 – Insurance Companies

1. **Provisions defining when insurance companies must comply with the CCPA should be clarified and aligned with the CCPA statutory language.**

As currently drafted, Article 12 of the Proposed Regulations detailing how the CCPA applies to insurers conflicts with the terms of the CCPA itself in a material way. As currently drafted, the Proposed Regulations state that insurers "shall comply with the CCPA with regard to any personal information not subject to the Insurance Code and its regulations."[2] Under a plain language reading of the Proposed Regulations, then, any information that is not directly subject to the California Insurance Code would be subject to the CCPA, regardless of whether other data-level exemptions like FCRA or CFIPA (which is part of the California Financial Code) apply. This directly conflicts with the terms of the CCPA itself, which specifically provides data-level exemptions for data governed by several laws. In the context of issuers of annuities, relevant laws notably include GLBA-governed data broadly, which would include GLBA data collected for purposes of complying with federal securities laws, not just data governed under the California Insurance Code.

The example provided at the end of Subsection 7271(a) is similarly confusing and misleading. The example specifically states that "insurance companies shall comply with the CCPA for personal information that is collected for purposes not in connection with an insurance transaction . . . ."[3] This example fails to acknowledge the many circumstances in which an insurer may collect personal information outside of the California Insurance Code but within the bounds of another exemption provided by the CCPA. For example, an insurer may collect background check information on a prospective employee subject to the protections and requirements of FCRA, which is not information collected in connection with an insurance transaction but is specifically exempt from the CCPA.

Based on the CPPA's own Initial Statement of Reasons to the Proposed Regulations, we understand this confusion is not the intended outcome of proposed Section 7271. Rather, the Initial Statement of Reasons appropriately notes that the intent of proposed Section 7271 is to clarify that insurers are generally required to comply with the CCPA with respect to personal information that is not governed by the California Insurance Code or "other laws exempt from the CCPA."[4] In other words, it is intended to clarify that the CCPA applies to insurance companies to the extent exemptions from the CCPA, like the GLBA and FCRA exemptions, do not apply. To do so and to avoid conflicting with the CCPA itself, proposed Section 7271 must be revised to expressly acknowledge that data is **not** subject to CCPA requirements if it is t subject to the California Insurance Code or is otherwise subject to one of the CCPA's data-level exemptions.

For issuers of annuities, it is particularly important that the Proposed Regulations account for the fact that consumer data may be covered by federal GLBA protections under Regulation S-P and the

[2] Proposed Regulations § 7271(a).
[3] Proposed Regulations § 7271(a).
[4] Proposed Regulations, Initial Statement of Reasons at P.98

securities laws, even if not directly subject to the California Insurance Code or CFIPA. Issuers of annuities are often simultaneously subject to both state enacted GLBA requirements applicable to insurers as well as federal GLBA requirements under the SEC's Regulation S-P, all of which provide key privacy protections for consumers tailored to financial services companies. There are likely instances where personal information collected about a California consumer is done under the securities laws without simultaneously implicating the California Insurance Code. The CCPA appropriately exempts all GLBA data from the CCPA, not just data covered by California state law, and the Proposed Regulations should reflect that.

CAI Recommendation. Article 12, including proposed Section 7271, must be revised and clarified to align with the full range of exemptions provided under the CCPA. The Initial Statement of Reasons indicates the purpose of Article 12 is solely to ?? clarify how the existing CCPA requirements apply to insurance companies.[5] We suggest that clarification would be better made through guidance than formal rulemaking. If this issue is addressed through the Proposed Regulations, care must be taken to account for the full range of exemptions applicable to insurers under the CCPA.

Article 11 – Automated Decisionmaking Technology

2. Insurers Should be Exempted from Article 11

Article 11 similarly fails to appropriately account for the various data-level exemptions provided in the CCPA for insurance company data when it expressly applies the ADMT requirements to insurers. The result is confusing and contradictory. In practice, most consumer information collected and processed by insurers, including issuers of annuities, is covered by either the CCPA's GLBA, FCRA, or HIPAA data-level exceptions. By definition, this CCPA exempted data includes any information that is used to determine whether to provide or deny (or otherwise administer) an insurance or other financial services product, the very information that Article 11 expressly anticipates would be subject to the proposed ADMT rules.

By way of example, under CFIPA, California's own law implementing the GLBA Privacy Rule, "Nonpublic Personal Information" subject to the GLBA requirements is defined as follows:

> "Nonpublic personal information" means personally identifiable financial information (1) provided by a consumer to a financial institution, (2) resulting from any transaction with the consumer or any service performed for the consumer, or (3) otherwise obtained by the financial institution.[6]

Equivalent definitions of "nonpublic personal information" are included in other state statutes implementing the GLBA Privacy Rule outside of California, as well as in the SEC's Regulation S-P.[7] Under the definition of "nonpublic personal information" in all of these statutes, any information obtained by an insurance company in connection with providing a financial product or service to a consumer is subject to GLBA requirements and therefore is exempt from the CCPA. That "nonpublic personal information" subject to GLBA necessarily includes the information Section 7200 currently anticipates would be subject to the CCPA because it is personal data used to make a decision "that results in access to, or the provision or denial of, . . . insurance . . . ."[8] Accordingly, as drafted, Section 7200 of the Proposed Regulations is inherently contradictory in that it excludes information that falls within the CCPA's GLBA exemption while simultaneously contemplating that the same information would be subject to the CCPA's ADMT requirements.

It is also unclear how the various ADMT related requirements of Article 11 would apply where only some of the information used in making a "significant decision" is subject to a data-level exemption under the

[5] Proposed Regulations, Initial Statement of Reasons at P.98
[6] Cal. Fin. Code § 4052(a).
[7] See NAIC Model Law 672, §4(V) (this model law formed the basis of most state adoptions of GLBA for insurance); 17 C.F.R § 248.3(u) (Regulation S-P).
[8] Proposed Regulations § 7200(a)(1).

CCPA. The Proposed Regulations do not currently provide a workable approach to address these partial exemption scenarios. Indeed, neither the Proposed Regulations nor the Initial Statement of Reasons appear to contemplate this scenario at all; a decision is either based on exempt data or it isn't. There is no indication of whether the entire decision-making process is exempted because of the inclusion of some exempt data, or if only the exempt data itself is excluded from the Article 11 requirements.

For example, if an employment related decision was made using ADMT based on both internally generated experience and performance data subject to CCPA and background check data subject to FCRA, would the Article 11 requirements apply only to the non-FCRA data? Such an approach would result in disjointed and confusing outcomes for consumers, such as receiving a pre-use notice required by proposed Section 7220 that would include a description of the CCPA information used by the ADMT but not the FCRA data. Similarly, the data-level exemptions for GLBA, FCRA or other exempted data would at times likely conflict with aspects of the Right to Access ADMT under proposed Section 7222. For example, if some ADMT output is itself subject to the GLBA exemption, then the consumer would in practice have no right or only a partial right to access the ADMT output. This would create a confusing and frustrating experience for the consumer and an unwieldy and burdensome process for the business.

Accordingly, the Proposed Regulations do not currently provide sufficient clarity or a workable approach to allow insurers or other businesses to navigate compliance with Article 11, which would result in a consumer experience more frustrating than helpful. These challenges are further exacerbated by the overly broad definition of ADMT, which encompasses a vast array of technologies and tools beyond what would generally be understood to be covered under a plain English reading of the term including many technologies like computer software and risk-rating tools that have been commonly and successfully used for years under existing regulatory frameworks.

Not only are the Proposed Regulations unclear and unwieldy, but we believe they are unnecessary and duplicative when applied to insurance companies. Insurers are already subject to robust and industry tailored frameworks addressing automated decision-making. As CDI Bulletin 2022-5 states, insurers must already avoid bias and discrimination in marketing, rate-setting, underwriting, and claims handling regardless of the technology used. Additionally, the National Association of Insurance Commissioners (NAIC) has several ongoing initiatives to address the use of artificial intelligence (AI) systems by insurers, including: (i) development of a model AI bulletin, so far adopted in 21 states, that requires insurers to maintain written programs for the responsible use of AI Systems meeting certain requirements;[9] and (ii) ongoing work to consider updates to the insurance regulatory framework for the oversight of the use of AI by insurers.[10]

CAI Recommendation. Insurance Companies should be explicitly excluded from the one-size-fits-all ADMT requirements proposed in Article 11. Information used to make a decision "that results in access to, or the provision or denial of, . . . insurance" to California consumers is, by definition, already protected by GLBA and excluded from the CCPA. Additionally, insurance companies are already subject to robust regulations and consumer protections that govern the use of ADMT, and additional protections specifically tailored to the insurance sector are in development. The current Proposed Regulations do not appropriately account for the complexities of insurance or how existing CCPA data-level exemptions would function in practice under Article 11. This would result in an unwieldy and confusing framework for businesses and consumers alike.

[9] *See* NAIC Model Bulletin: Use of Artificial Intelligence Systems by Insurers, available at https://content.naic.org/sites/default/files/inline-files/2023-12-4%20Model%20Bulletin_Adopted_0.pdf. A total of 25 states have so far adopted insurance specific regulation or guidance on the use of artificial intelligence systems.
[10] *See* 2025 Charges of the NAIC Big Data and Artificial Intelligence (H) Working Group, available at https://content.naic.org/committees/h/big-data-artificial-intelligence-wg.

We want to express our appreciation for the opportunity to comment on these proposed revisions to the CCPA regulations and for your time and consideration. Please do not hesitate to contact us if you have any questions.

Sincerely,

For The Committee of Annuity Insurers

Eversheds Sutherland (US) LLP

By:



Stephen E. Roth
Mary Jane Wilson-Bilik
Alexander F. L. Sand
Eversheds Sutherland (US) LLP

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From: Sand, Alexander <alexanderf.l.sand@eversheds-sutherland.com>
Sent: Friday, February 7, 2025 10:29 PM
To: Sand, Alexander <alexanderf.l.sand@eversheds-sutherland.com>
Cc: Sand, Alexander <alexanderf.l.sand@eversheds-sutherland.com>; Mary Jane Wilson-Bilik (mjwilson-bilik@eversheds-sutherland.com) <mjwilson-bilik@eversheds-sutherland.com>; Roth, Stephen <steveroth@eversheds-sutherland.com>
Subject: Draft CAI Comment Letter on Proposed CCPA Regulations

Good evening everyone,

Following up on our January 16th note below, attached is a draft comment letter on behalf of the Committee regarding the proposed amendments to the CCPA regulations. As you will see, the letter focuses on insurance-specific issues we have identified in the proposed regulations, including emphasizing annuity insurer specific issues. It also specifically notes our support for the joint comment letter that will be submitted by ACLI, ACLHIC, and the IRI. The most recent draft of that joint letter is also attached for your reference.

Comment letters for the current comment period are due February 19, 2025. To that end, please let us know if you have any questions or comments regarding the draft letter **by next Friday, February 14.**

You can respond by replying to this e-mail or by contacting me (Al Sand - 512-721-2721) or Mary Jane Wilson-Bilik (202-383-0660) or Steve Roth (202.383.0158) at your earliest convenience with your thoughts.

Have a great weekend,

Al

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From: Roth, Stephen <steveroth@eversheds-sutherland.com>
Sent: Thursday, January 16, 2025 4:23 PM
To: CAI-Cyber & Privacy Working Group <cai-cyber&privacyworkinggroup@eversheds-sutherland.com>
Cc: Sand, Alexander <alexanderf.l.sand@eversheds-sutherland.com>; Mary Jane Wilson-Bilik (mjwilson-bilik@eversheds-sutherland.com) <mjwilson-bilik@eversheds-sutherland.com>
Subject: Update on CCPA Rulemaking and NAIC PPWG Call for Comments on Article IV of Chair's Draft
Importance: High

Good afternoon everyone,

We are writing to provide an update on both the CCPA rulemaking process and the NAIC PPWG's ongoing efforts to update Model 672.

CCPA Rulemaking

Following our January 8 note, appended below, we heard from a number of Working Group members indicating that they would support the Committee of Annuity Insurers submitting a comment letter on the proposed rules amending CCPA regulations addressing certain insurance and annuity specific issues as outlined in our January 8 note. We therefore have been working on that comment letter. However, on January 10, due to the tragic fires in LA, the CPPA extended the deadline for submitting comments on the proposed rules amending CCPA regulations until **February 19, 2025**. Therefore, we are now planning to circulate a draft letter for your review no later than next week.

NAIC PPWG – Call for Comments on Article IV, Sections 9-15

On January 9, the PPWG issued a call for comments on Article IV, Sections 9-15 of Model 672 as most recently revised by the PPWG (Revised Article IV). Revised Article IV, which is attached, includes provisions addressing the notice requirements under Model 672, including content, timing, and mode of delivery. Any comments are due by **January 23, 2025**.

Revised Article IV makes only minor tweaks to the existing requirements established under Model 672. The only substantive change proposed is to Section 11 addressing notice content requirements, which adds a requirement to include "[a] description of the consumer's ability to request to access, correct, or delete Nonpublic Personal Information about the consumer as established under this Act and the instructions for exercising such options." We view this as an expected and uncontroversial addition.

There is a possibility that as other new requirements proposed in the Chair's Draft solidify, including Sections 7 (Sale of NPI) and 8 (Use and Disclosure of SPI) which include new notification requirements, there will be new issues that need to be addressed in this Article IV. However, we do not believe those issues are ripe for comment at this time because Sections 7 and 8 are currently unclear in their requirements and were subject to heavy commenting in the previous comment period. Additionally, we believe that making any premature comments on these issues could undercut our previous criticisms of Sections 7 and 8. Instead, we think it would be better to continue to monitor development of a revised Model 672 and revisit any additional notification issues when a full revised version of the Chair's Draft is exposed for comment. Our previous comment letter addressing Sections 7 and 8 (among others) is attached for your reference.

Accordingly, we do not believe there is a need for the Committee to submit a comment in response to the current call for comments on Revised Article IV. (We do understand

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that other insurance trades may be submitting short comment letters.) Please let us know if you disagree with our recommendation at your earliest convenience.

You can respond by replying to this e-mail or by contacting Al Sand (512-721-2721), Mary Jane Wilson-Bilik (202-383-0660) or me at your earliest convenience with your thoughts.

Thanks,

Steve

From: Roth, Stephen
Sent: Wednesday, January 8, 2025 11:58 AM
To: CAI-Cyber & Privacy Working Group <CAI-Cyber&PrivacyWorkingGroup@eversheds-sutherland.us>
Cc: Sand, Alexander <AlexanderF.L.Sand@eversheds-sutherland.us>; Mary Jane Wilson-Bilik (mjwilson-bilik@eversheds-sutherland.com) <mjwilson-bilik@eversheds-sutherland.com>
Subject: Possible CAI Comment Letter on CCPA Proposal - INPUT REQUESTED ASAP
Importance: High

Dear Working Group Members,

Happy New Year! As you are likely aware, on November 22, 2024, the California Privacy Protection Agency (**CPPA**) recently proposed significant new additions to its regulations promulgated under the California Consumer Privacy Act of 2018 (**CCPA**), including broad new requirements addressing risk assessment , cybersecurity audit, use of automated decision-making technology (ADMT) and insurance. These new proposed regulations include several sections that expressly apply to insurance and raise insurance and annuity specific concerns, particularly the new ADMT requirements and a new Article 12 specifically addressing how the CCPA applies to insurers. These proposed revisions are currently open for comment, with **comments due by Tuesday January 14th**.

We anticipate that many of the broader (non-insurance/annuity specific) issues and challenges raised by these proposed regulations will be robustly addressed by other groups and stakeholders through the public comment process. We are also aware that ACLI and ACLHIC are developing a joint comment letter commenting on insurance specific issues, particularly focused on the new Article 12. (A draft we received through ACLHIC is attached for your reference.)

In the interest of supporting the ACLI and ACLHIC's efforts and raising annuity specific issues, we are soliciting CAI Working Group feedback on submitting a brief comment letter on behalf of the Committee. ***While time is short to develop an additional comment letter, we suggest it would be worthwhile to submit a brief Committee comment letter supporting the ACLI/ACLHIC letter but also expanding on their letter in certain respects.***

Specifically, the Committee's comment letter could address the following issues:

- Express support and endorsement of the ACLI/ACLHIC letter, adding another voice to the choir encouraging the CPPA to give appropriate attention and consideration to insurance-specific issues.

- As currently drafted, Article 12 detailing how the CCPA applies to insurers is unnecessary and conflicts with the actual terms of the CCPA itself.
    - The intent of the proposed language appears to be to clarify that insurers are generally required to comply with the CCPA to the extent exemptions from the CCPA, like the data-level GLBA exemption, do not apply.
    - However, what it actually states is that insurers "shall comply with the CCPA with regard to any personal information not subject to the Insurance Code and its regulations." This

formulation fails to account for information processed by insurers subject to other laws exempt under the CCPA, including FCRA data, HIPAA data, and CalFIPA.
- With respect to annuities, it also entirely fails to recognize that insurers that issue annuities subject to SEC registration requirements process data subject to SEC and state-specific GLBA rules as opposed to state insurance rules.
- Accordingly, the proposed regulations are inconsistent with the CCPA itself and are more confusing than helpful.
- Clarification of how insurers are subject to the CCPA when no other exemptions apply would be better made through guidance than formal rulemaking.

- Similarly, the proposed ADMT provisions expressly apply to insurers using ADMT (as broadly defined) to make insurance decisions, such as through underwriting or claims management, but the provisions do not anticipate and do not deal with how the GLBA, FCRA, and other exemptions would interact with the new ADMT requirements.
    - For example, an ADMT system used by an insurer may still be subject to system-level requirements under the proposed regulations (such as providing a pre-use notice), but would appear to be exempt from the data-level requirements, such as disclosing what types of sensitive personal information are processed in the pre-use notice since all such data would generally be exempt GLBA data. This creates a very confusing and disjointed set of requirements when applied to insurers, that would confuse consumers and be burdensome to insurers, while also not meeting regulatory goals.
    - Similarly, the CCPA, GLBA and FCRA exemptions may conflict with the Right to Access ADMT to the extent ADMT output is also GLBA data or other exempted data, which it will often be for insurers.
    - We would recommend that insurers be excluded from being included in a one-size-fits-all approach that fails to appropriately account for the exemptions provided in the CCPA itself and allow insurance regulators space to regulate ADMT with an insurance-specific approach.

Given the short timeframe for submitting a comment letter, please let us know ASAP if you think pursuing this approach would be worthwhile. If we hear from Working Group members today or tomorrow that they support moving forward, we will circulate a draft letter by Monday morning for review and comment, and then submit on Tuesday by 6pm PT.

You can respond by replying to this e-mail or by contacting Al Sand (512-721-2721), Mary Jane Wilson-Bilik (202-383-0660) or me at your earliest convenience with your thoughts.

Thanks,

Steve