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California Attorney General Takes a Fresh Look at Loyalty Programs

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On January 28, 2022, California Attorney General Rob Bonta sent notices to several businesses offering loyalty programs to California consumers, alleging noncompliance with the California Consumer Privacy Act (CCPA) for failure to provide adequate notice of their financial incentive programs. These businesses have 30 days from the date of notice to cure the alleged violation before the Attorney General may take enforcement action.

The CCPA's impact on loyalty programs has evolved over the past few years since the CCPA's enactment, and is still developing. Under the CCPA, a business providing any financial incentive (broadly defined to include discounts, free items, and other rewards) in exchange for consumers' personal information must describe the material terms of the financial incentive program to the consumer before the consumer can opt into the program. This notice must summarize the financial incentive, describe its material terms, provide instructions on how consumers can opt-in or opt-out, and, notably, requires businesses to provide "a good-faith estimate of the value of the consumer's data that forms the basis for offering the financial incentive." Although the CCPA regulations offer methods for calculating the value of consumer data, businesses have struggled with this data valuation requirement as there is no uniform standard of calculation.

Businesses offering loyalty programs to Californians must find a way to value consumers' data and otherwise provide adequate notice of their financial incentive programs, or face enforcement by the Attorney General. For further information about this data valuation requirement, the CCPA, or privacy laws in general, please contact John Landolfi, Christopher LaRocco, Gretchen Rutz, or your Vorys attorney.