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Via: electronic transmission

Re. 2023 HB 2052 Data Broker Registry Rules Advisory Committee Comments #2

AARP is pleased to serve on the Rules Advisory Committee (RAC) for the 2023 HB 2052 data broker registry and to submit these comments on the second set of draft rules discussed at the September 19, 2023 RAC #2 meeting.

We appreciate the updates to the draft rules reflecting our first set of comments, specifically including the updates to 441-830-0020 (2) that identifies the information required to be included in an application.

As we discussed in the second meeting, we believe there are additional consumer-based protections and consumer accessibility issues that should be included in both the rules and the on-line data broker registry.

Accuracy of the Opt-Out Methods

Application Stage: If a data broker identifies specific opt-out methods in its application we recommend that prior to acceptance of the application, those methods be tested to make sure they work. It is possible that a link does not function or the information provided is inaccurate or inaccessible to the consumer. **This should be determined at the front-end during the application process with an opportunity by the data broker to cure, not leaving the consumer to identify the inoperability of an opt-out method.**

Completed Application Stage: We recognize that an opt-out option may stop working at any time and we appreciated hearing that the system will be built to allow the consumer to easily notify the department of this or any other system problem. However if the opt-out option does not work after a registration is accepted, **we request that the rules require the department to timely notify the data broker of this problem and give the department the authority to request the data broker cure within a reasonable amount of time and if no response, the**

authority to remove any inoperable opt-out option from the registry (or provide a note of its inoperability to the consumer).

We are not intending to make this onerous on the data broker or a deterrent to providing opt-out options. Our goal is to *avoid* the situation of consumers continually trying to access an opt-out method that is inoperable for months on end because there is no requirement or means to correct/remove. It would be our hope that if an opt-out method stops functioning the data broker would quickly update the system and provide the department with the correct information for the data registry or the department would remove that opt-out method.

Change “incomplete” to “deficient” in 441-830-0030

Tied to the recommendation above and as was briefly discussed at the second meeting, 441-830-0030 addresses the director’s authority to act if an application (or renewal or amendment) is “incomplete.” The use of incomplete has a potential limiting definition. We recommend using “deficient” instead, which matches terminology already used in this section:

441-830-0030 (1) If an applicant submits an application, renewal, filing, or amendment, which is ~~incomplete~~ **deficient** in any respect, the director shall notify the applicant or registrant of the deficiencies through email.

In the alternative to this recommendation, we would suggest adding “or inaccurate” after the term “incomplete.”

Expand 441-830-0090 to Provide Investigative Authority

441-830-0090 (1) & (3) allows the director to investigate any business required to be registered for violations of these rules, specifically, 441-830-0040, -0050, -0060 and -0070. To provide sufficient authority to the director to examine the opt out methods listed in the application, we recommend referencing 441-830-0020 and -0030 to the authority granted to the director to investigate. In the alternative, we recommend providing language elsewhere to give clear authority to the director to review, identify and require changes to any of the opt-out methods at *any time*.

Note: If not already corrected, subsection (1) currently reads “The director may investigate *an* any business required to be registered...”

Consumer Access & Use of Data Broker Registry & Opt-Out Features

We appreciate the opportunity in the second meeting to see the current online system that will be updated to include the data registry for consumers to use. The current system appears to contemplate the user having specific limiting information that they use to make a search on the database. We think it is fair to assume this is *not* how a consumer will use the data broker registry. We believe the consumer’s primary use of this database is to identify which data brokers do and do not allow a consumer to opt out and to exercise the opt-out feature of those that do.

We urge inclusion of the following features:

- Allow consumers to access the data broker list with the expectation that they do not have the name of a data broker or any specific identifier. The system should make it extremely easy for the consumers to access a list of all registered data brokers, ideally by default or by the click of one button instead of relying on a wildcard in the identifier section. If a wildcard entry is required, please make that option clearly identifiable in words and in application (use) so the consumer will understand (the term “wildcard” is a technical term).
- Allow consumers to easily identify all data brokers registered **who have at least one opt-out method**. It seems reasonable to assume that the primary reason consumers are accessing the registry is to find out which data brokers have opt-out methods and then to opt out. The system should be built with this expectation and make it easy for the consumer to identify only data brokers that provide the ability to opt out.
- Allow consumers to easily access and use the opt-out system for multiple requests at one time. If a consumer identifies tens or hundreds of data brokers that provide opt-out options, the system should allow a consumer to proceed in a manner that does not require going back to the entry point of the system to re-enter opt-out data brokers each time. Ideally, the system would allow a landing page of all data brokers that provide opt-out methods, from which the consumer can then take action (including following a link to the data broker’s website) and easily return to *that* landing page. **This should be *the* priority in building a system that is consumer facing and easily operable.**

Comments on Statement of Need and Fiscal Impact (SNIFI)

During our second meeting, there was initial discussion on the SNIFI and participants were asked to provide thoughts on the Statement Identifying How Adoption of Rule(s) Will Affect Equity in this State.

As we identified during that meeting, there may be potential challenges for some older Oregonians in accessing the registry through computers and the use of this technology, as well as lower income Oregonians or rural/frontier Oregonians who may have less access to Internet services because of costs or broadband reliability or connectivity.

We appreciate consideration of our recommendations above.

Regards,



Andrea Meyer
Director of Government Relations