



**Comments of the World Privacy Forum  
Regarding Oregon HB 2052 RAC#2 Rulemaking**

*Sent via email*

Tewodros Badege  
Oregon Department of Consumer and Business Services  
Division of Financial Regulation  
350 Winter Street NE  
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28 September 2023

Dear Mr. Badege,

Thank you for the opportunity to submit comments regarding the HB 2052 RAC#2 Rulemaking, currently underway. The World Privacy Forum<sup>1</sup> (WPF) is a nonprofit, non-partisan 501(c)(3) public interest research group. We are based in Oregon, and we work nationally and internationally. WPF focuses on multiple aspects of privacy and data governance, with governance of complex data ecosystems being among our key areas of work. We have conducted and published extensive research for 20 years and counting, including original peer-reviewed research, and collaborative multi-stakeholder work at the national and multilateral level. In regards to data brokers, we have published substantive research and we have testified before Congress 5 times on this topic, including before the full Senate Judiciary Committee and the full Senate Banking Committee.<sup>2</sup>

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<sup>1</sup> World Privacy Forum, <https://www.worldprivacyforum.org/> .

<sup>2</sup> See WPF participation in White House Roundtable on Data Brokers, 16 August 2023 <https://www.worldprivacyforum.org/2023/08/wpf-participates-in-white-house-roundtable-on-data-brokers/>; See also: Pam Dixon and Robert Gellman, *The Scoring of America: How secret consumer scores threaten your privacy and your future*, World Privacy Forum, 2014. <https://www.worldprivacyforum.org/2014/04/wpf-report-the-scoring-of-america-how-secret-consumer-scores-threaten-your-privacy-and-your-future/> ; See also: Robert Gellman and Pam Dixon, *Data Brokers and the Federal Government: A new front in the battle for privacy opens*, 30 October 2013. <https://www.worldprivacyforum.org/2013/10/report-data-brokers-and-the-federal-government-a-new-front-in-the-battle-for-privacy-opens/> . See also: Testimony of Pam Dixon, Executive Director, World Privacy Forum, Before the US Senate Committee on Banking, Housing and Urban Affairs, *Data Brokers, Privacy, and the Fair Credit Reporting Act*, June 11, 2019. [https://www.banking.senate.gov/imo/media/doc/Dixon Testimony 6-11-19.pdf](https://www.banking.senate.gov/imo/media/doc/Dixon%20Testimony%206-11-19.pdf) .

The legislative history of HB 2052 makes it clear that this legislation seeks to address risks data brokers can pose for the safety and privacy of Oregonians.<sup>3</sup> WPF's analysis is that the absence of rules leaves Oregonians more vulnerable to the potential harms that can be caused by the brokering of their personal data.

For these reasons, and based on our long work in this issue area, WPF supports the Department's efforts to establish meaningful rules regarding HB 2052, including a public Data Broker Registry. In these comments, WPF endeavors to provide feedback that will be helpful to DCBS as it works through this process.

## **I. Specific Comments Regarding the Proposed Regulations**

### **A. Application Requirements § 441-830-0020**

We support the requirement in § 441-830-0020 (2) d. that allows third party opt-out. This is an essential feature for a data broker registry, and it is particularly helpful for vulnerable consumers and victims of crime who need ongoing assistance and monitoring of opt-outs.

For these reasons, we urge the Department to retain the proposed language as it is now, which currently requires data brokers, in their Registry application, to allow individuals to authorize another person or party to exercise opt-out choices on their behalf. The language as currently specified will also inform the practical steps one must take to facilitate third-party opt-out, which we also support.

Even though we have already noted this, we would like to reiterate that especially for victims of crimes, for law enforcement officials and public officials such as judges, the ability to authorize a third party to alleviate the burden of making multiple opt-out requests is an important feature.

### **B. Accessibility and ease of use**

While training shelter workers to assist victims of domestic violence in data broker opt out, WPF has learned first hand that opting out of data broker activity is profoundly time-consuming and challenging, and that is when an opt-out is offered at all. We have learned from shelter workers that it often takes up to a week for workers and victims of crime to opt out of just the top 20 or so data brokers on WPF opt-out lists. We have also learned that opting out is made much more complex when there are accessibility concerns. These same challenges relating to data broker opt out continue today, with primarily Vermont's data broker registry having solved problems in that state with their registry set-up. We are very hopeful that Oregon will also solve many of the issues facing consumers regarding data broker opt out.

Here, we would like to reference § (2) d. i, **Accessible Functionality**. Here, we have several suggestions and requests for possible improvements based on our experiences in the trenches working with people who are trying to opt out.

- **Request to segregate data brokers that allow consumers to opt out:** Can there be a single prominent button within the registry that allows consumers to see a list of just the data brokers that allow an opt out? This single feature will assist many vulnerable users of the registry and will speed the process for consumers who have an immediate safety need for opting out.

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<sup>3</sup> OR HB 2052, legislative history. Oregon State Legislature, 2023 Regular Session. <https://olis.oregonlegislature.gov/liz/2023R1/Measures/Testimony/HB2052> .

- **Request that data brokers provide a stable URL for opt out:** We propose that when the data brokers submit their registrations, that they provide an opt-out URL that will last for at least one year, or until their registration renewal. We make this request because in our experience, data brokers can change their opt out URL, sometimes frequently. It makes keeping opt-out lists up to-date nearly impossible. This is a problem that the data brokers can, and should, solve in the Oregon registry.
- **Request for local language adaptation:** We encourage DCBS to make the registry as accessible to local communities as possible by making it available in the core languages found in our region.
- **Request cooperation with Oregon Office of Tribal Affairs:** Thus far, there has not been a discussion of bringing awareness of the Data Broker Registry to the Oregon Office of Tribal Affairs. This would be a helpful and important cooperative effort, and could help bridge linguistic accessibility divides, and also bring crucial awareness of the resource to the National Indigenous Women’s Resource Center, who are actively working on reducing gender-based violence. Their feedback on the Data Broker Registry is essential, and the registry could potentially become part of their toolkit. <https://www.niwrc.org/restoration-magazine/february-2023/advocacy-action-6-point-action-plan> .

### **C. Rules for Use of an Assumed Business Name § 441-830-0060**

WPF supports the Department’s proposed changes in the text regarding assumed business names. It has been our experience that when business is conducted under an assumed business name or a name other than what is registered with the state, it can cause confusion for consumers and make it difficult to ensure they’ve established their opt-out choices with all the data broker entities desired.

Clearly stated and consistent business names are important to people with safety considerations so they know where and how to opt out in a timely manner.

### **D. Disclosure of Significant Developments § 441-830-0070**

WPF supports the proposed requirements regarding disclosure of significant developments. Thirty days is sufficient time for a data broker to disclose breaches of data security, changes in the information required on the data broker registration application form, and changes in assumed business names.

We do not support a longer disclosure period, given the sensitivity of the people who most urgently need to opt out of data broker activity.

### **E. Data Broker Duty to Protect Personal Information § 441-830-0080**

WPF supports the inclusion of the Oregon Consumer Information Privacy Act (OCIPA ) in this provision as stated. We specifically support full inclusion of the OCIPA in its whole and complete form.

### **F. Investigation by Director § 441-830-0090**

WPF supports the right of the Director to investigate potential violations by businesses that are required to be registered under the statute. We oppose weakening the currently proposed language and urge that all of the currently proposed provisions in § 441-830-0090 (1), (2), (3),

and (4) are included in the final text.

WPF suggests the following additions for consideration:

- An investigation under this statute should be initiated if a data broker violates its duty to protect personal information as defined in § 441-830-0080 of this statute, **Data Broker Duty to Protect Personal Information**.
- An investigation should also be initiated if a data broker is not in compliance with the statute's **opt-out provisions**. For example, if a business required to be registered under the statute does one or more of the following:
  - Lists broken opt-out links in registry applications,
  - Uses inoperable opt-out mechanisms,
  - Does not disclose significant developments such as changes to opt-out mechanisms or opt-out links,
  - Fails to implement requested opt-outs,
  - Fails to maintain a steady opt-out link.

As mentioned earlier in these comments, a meaningful challenge consumers can experience regarding data broker opt outs is the presence of broken opt-out links. Keeping opt-out links stable and up to date will be a positive step forward for Oregon consumers.

## II. Conclusion

We look forward to the implementation of HB 2052, which will set requirements allowing Oregon consumers to access relevant information about how data brokers handle their information. We are hopeful that Oregonians will be able to have more transparency and make more choices regarding data brokers' use of their data with this registry in place.

We note that when the regulation is finalized, WPF would be very pleased to help run a free half-day clinic to teach other NGOs, shelter workers, and Tribal leaders how to walk people who may be traumatized or in a safety emergency through an opt-out process. In our experience, a good opt-out training takes about 3 hours when training from a registry. We would be happy to help.

Thank you again for your important work. We remain attentive to assist in any way we can.

Respectfully submitted,

Pam Dixon, Founder and Executive Director, World Privacy Forum

Kate Kaye, Deputy Director, World Privacy Forum