



National Programs

VIA EMAIL

September 3, 2020

James Sullivan, Deputy Assistant Secretary for Services
International Trade Administration
U.S. Department of Commerce
1401 Constitution Ave. NW
Room 4324
Washington, DC 20230

Re: Submission of APEC Accountability Agent Application for the CBPR and PRP Systems: BBB National Programs

Dear Mr. Sullivan:

Please accept this application by BBB National Programs, Inc., a Delaware nonprofit nonstock corporation, to serve as an Accountability Agent for the Asia Pacific Economic Cooperation's ("APEC") Cross Border Privacy Rules ("CBPR") and Privacy Recognition for Processors ("PRP") systems.

BBB National Programs is where businesses turn to enhance consumer trust and consumers are heard. The non-profit organization creates a fairer playing field for businesses and a better experience for consumers through the development and delivery of effective third-party accountability and dispute resolution programs. Embracing its role as an independent organization since the restructuring of the Council of Better Business Bureaus in June 2019, BBB National Programs today oversees more than a dozen leading national industry self-regulation programs, and continues to evolve its work and grow its impact by providing business guidance and fostering best practices in arenas such as advertising, child-directed marketing, and privacy.

The United States is an active participant in both the APEC CBPR and PRP systems and has identified the Federal Trade Commission ("FTC") as its regulatory enforcement authority. As a US-based 501(c)(6) entity that provides membership benefits to its for-profit members, BBB National Programs is subject to the FTC's regulatory oversight and enforcement authority.

The following identifies how BBB National Programs proposes to meet each of Recognition Criteria as developed and approved by APEC member Economies. Should you have any questions about this application, please feel free to contact our Director, Global Privacy Initiatives, Josh Harris at JHarris@bbbnp.org.

Best Regards,

A handwritten signature in black ink, appearing to read 'Eric D. Reicin'.

Eric D. Reicin
President and Chief Executive Officer
BBB National Programs

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CONFLICTS OF INTEREST

1. Applicant Accountability Agent should describe how requirements 1(a) and (b) in Annex A have been met and submit all applicable written policies and documentation.

Conflicts of interest are prohibited under law at the Board of Directors level. BBB National Programs is a Delaware incorporated 501(c)(6) nonprofit nonstock corporation. As such BBB National Programs' Board of Directors are subject to Delaware's General Corporation Law which imposes the fiduciary duties of care, loyalty and the subsidiary duties of good faith, oversight and disclosure. In particular, the duty of loyalty requires BBB National Programs Board Members to act (or not to act) on a disinterested and independent basis.

Upon approval of this application, BBB National Programs intends to register trademarks with the United States Patent and Trademark Office for CBPR and PRP certification icons. These icons will serve as service marks and will only be used upon the granting or extending of a CBPR and/or PRP certification. The FTC may request that the U.S. Patent and Trademark Office cancel this trademark on the grounds that the holder of the mark "discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies." (See U.S. Notice of Intent to Participate, Annex A, "[I]f an APEC-recognized Accountability Agent authorizes the use of its certification mark, 15 U.S.C. §1127, to convey compliance with the CBPR and PRP program requirements, under Section 14(5) of the Lanham Act, 15 U.S.C. § 1064(5), the U.S. Patent and Trademark Office may cancel the certification mark if the Accountability Agent (a) does not control, or is not able legitimately to exercise control over, the use of such mark, including by failing to monitor the activities of those who use the mark, (b) engages in the production or marketing of any goods or services to which the certification mark is applied, (c) permits the use of the certification mark for purposes other than to certify, or (d) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies.")

These prohibitions are extended to employee conduct through BBB National Programs' Employee Conflict of Interest Policy (Appendix A) and BBB National Programs' Employee Conflict of Interest CBPR and PRP Supplement (Appendix B). Outside of the functions described in paragraphs 5-14 of the Accountability Agent APEC Recognition Application, this policy supplement prohibits any employee that certifies or performs certification-related activities for an applicant or participant organization under the CBPR and/or PRP systems from engaging in:

- consulting or technical services related to the development or implementation of participant organization's or applicant organization's data privacy practices and procedures;
 - consulting or technical services related to the development of participant organization's or applicant organization's privacy policy or statement;
 - consulting or technical services related to participant organization's or applicant organization's security safeguards.
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It also prohibits such employees from engaging in sales activities related to a participant organization or applicant organization.

- 2. Applicant Accountability Agent should submit an overview of the internal structural and procedural safeguards to address any of the potential or actual conflicts of interest identified in 2(b) of Annex A.**

Please see Appendices A and B for BBB National Programs' relevant Conflict of Interest Policies. If any activities arising from BBB National Programs' approved certification program conflicts with the foregoing legal or employee policy obligations, BBB National Programs will notify the Joint Oversight Panel along with an explanation of the specific mitigation procedures used to ensure that it remains free of actual or potential conflicts of interest.

- 3. Applicant Accountability Agent should describe the disclosure/withdrawal mechanisms to be used in the event of any actual conflict of interest identified.**

As described in Appendix B, if an actual or potential conflict of interest is identified that cannot be otherwise mitigated, the employee must recuse themselves from any involvement in the certification process of the identified applicant or participant at which time the employee's work will be reassigned to another team member. Further, as described under Recognition Criterion 1, above, members of BBB National Programs' Board of Directors are required to disclose any actual or potential conflicts of interest and to recuse themselves accordingly. All mitigated conflicts will be reported to the Joint Oversight Panel along with an explanation of the specific mitigation procedures (e.g. employee recusal and reassignment) used to ensure that BBB National Programs remains free of actual or potential conflicts of interest arising from the engagement.

PROGRAM REQUIREMENTS

- 4. Applicant Accountability Agent should indicate whether it intends to use the relevant template documentation developed by APEC or make use of Annex C to map its existing intake procedures program requirements.**

Upon approval of this application, BBB National Programs will make use of the APEC-endorsed CBPR and PRP Program Requirements, posted at <http://cbprs.org/documents>.

CERTIFICATION PROCESS

- 5. Applicant Accountability Agent should submit a description of how the requirements as identified in 5 (a) – (d) of Annex A have been met.**

Upon approval of this application, BBB National Programs will conduct an initial assessment of compliance for all applicant organizations. This process will include verifying the contents of the self-assessment forms completed by the applicant organization against the relevant program requirements. As described above,

for purposes of CBPR and PRP certification, BBB National Programs will use the approved CBPR and PRP Intake Questionnaires and associated program requirements.

An applicant organization's completion of the approved intake form(s) will start an iterative process between BBB National Programs and the applicant organization to document and catalogue compliance with each of the associated program requirements. Where nonfulfillment of any of the program requirements is found, BBB National Programs will communicate the required changes the applicant organization must complete to obtain certification for the CBPR and/or PRP systems. Upon successful completion of this process, BBB National Programs will deliver an outcomes report describing how each of the relevant program requirements have been met. The accuracy of this report will then be attested to by the applicant organization.

At completion of this stage of the certification process, the applicant organization will be awarded a Certification Icon identifying their participation in the CBPR and/or PRP Programs. CBPR participants may only display the Certification Icon on Privacy Statements approved by BBB National Programs as part of this certification while PRP participants may display the Certification Icon on those Privacy Statements governed by the privacy policies within scope of the certification. When a consumer clicks on this Certification Icon the consumer will be brought to a confirmation page that states whether the organization is 1) in good standing in the program; 2) the scope of the organization's participation and 3) instructions on how to file a complaint using BBB National Programs' Dispute Resolution Procedure (see Appendix C). Once a certification has been awarded the applicant organization will be referred to herein as a "Participant" in the CBPR and/or PRP Systems.

BBB National Programs will provide the relevant details of the Participant's certification for the compliance directory, which will include:

- the name of the certified organization;
- a website for the certified organization and a link to the organization's privacy policy
- contact information;
- the Accountability Agent that certified the participant and can handle consumer disputes;
- the relevant Privacy Enforcement Authority; and
- the scope of the certification, the organization's original certification date, and the date that the current certification expires.

ON-GOING MONITORING AND COMPLIANCE REVIEW PROCESSES

6. **Applicant Accountability Agent should submit a description of the written procedures to ensure the integrity of the certification process and to monitor the participant's compliance with the program requirements described in 5 (a)-(d).**

Participants will be monitored throughout the certification period to ensure compliance with the program in the following ways:

- **Self-Reporting:** All Participants will be required to notify BBB National Programs of any changes to the policies and practices within the scope of the CBPR and/or PRP certification prior to implementation for review against the relevant program requirements.
- **Realtime website change monitoring:** All reviewed and approved privacy notices within scope of a CBPR certification will be monitored to detect and track changes.
- **Third party reporting:** BBB National Programs will receive and investigate all complaints against Participants using BBB National Programs' dispute resolution process (detailed below).

If, through any of these methods, BBB National Programs discovers reasonable grounds to believe that a Participant has engaged in a practice that may constitute a breach of the relevant program requirements, an immediate review process will be conducted (as described below).

7. Applicant Accountability Agent should describe the review process to be used in the event of a suspected breach of the program requirements described in 5(a)-(d) of Annex A.

The scope of a review of a Participant will depend on specific circumstances surrounding the potential breach of a program requirement(s). If, through this review, BBB National Programs identifies an actual breach of one or more program requirements, the participant will be sent a warning letter followed by a 10-business day notice to cure any non-compliance, as per the program's Agreement (described below). If the Participant fails to correct the identified non-compliance within this period, they will be suspended from the program until such time as the changes required to bring them back into compliance have been made. During this time, the use of the BBB National Programs Certification Icon will be revoked and the compliance directory will be updated to reflect that they are no longer an active participant.

RE-CERTIFICATION AND ANNUAL ATTESTATION

8. Applicant Accountability Agent should describe their re-certification and review process as identified in 8 (a)-(d) of Annex A.

To maintain good standing in the CBPR and/or PRP systems, a Participant must complete BBB National Programs' recertification process within 12 months of Participant's previous certification date. This re-certification mirrors the process described above. If the Participant proposes to make changes to their practices at this time, those practices will be evaluated against the relevant program requirements to ensure that full compliance with the relevant program is maintained. If during this process, BBB National Programs discovers any previously un-reported non-compliance, the non-compliant practice will be treated as a breach of the program requirements, triggering the 10-business day cure timeline described above. Failure to cure within that time will likewise result in a suspension.

DISPUTE RESOLUTION PROCESS

9. **Applicant Accountability Agent should describe the mechanism to receive and investigate complaints and describe the mechanism for cooperation with other APEC recognized Accountability Agents that may be used when appropriate.**

See Appendix C for a description of BBB National Programs' Dispute Resolution Procedure.

10. **Applicant Accountability Agent should describe how the dispute resolution process meets the requirements identified in 10 (a) – (h) of Annex A, whether supplied directly by itself or by a third party under contract (and identify the third party supplier of such services if applicable and how it meets the conflict of interest requirements identified in sections 1-3 of Annex A) as well as its process to submit the required information in Annexes D and E.**

See Appendix C for a description of BBB National Programs' Dispute Resolution Procedure.

MECHANISM FOR ENFORCING PROGRAM REQUIREMENTS

11. **Applicant Accountability Agent should provide an explanation of its authority to enforce its program requirements against participants.**

BBB National Programs will require all applicant organizations to sign a participation agreement detailing the terms of participation, including termination (see Appendices D and E). Section 6 of this agreement stipulates that “[i]f BBB National Programs determines that PARTICIPANT has failed to comply with the Agreement, BBB National Programs may terminate this Agreement unless PARTICIPANT cures such non-compliance within fifteen (15) business days of its receipt of written notice from BBB National Programs as provided by electronic mail to PARTICIPANT’s primary contact listed in BBB National Programs records pursuant to section 14 of this Agreement. Pursuant to this notice, BBB National Programs shall advise PARTICIPANT of the terms of this Agreement with which it believes PARTICIPANT is no longer in compliance. BBB National Programs reserves the right to report PARTICIPANT’s non-compliance to the Federal Trade Commission (“FTC”) or other appropriate government agency.

Upon notice from BBB National Programs, Participant will immediately remove Certification Icons from any Privacy Statement out of scope of the Participant’s certification.”

12. **Applicant Accountability Agent should describe the policies and procedures for notifying a participant of non-compliance with Applicant’s program requirements and provide a description of the processes in place to ensure the participant remedies the non-compliance.**
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As described in Appendix C (Dispute Resolution Procedure Rules), BBB National Programs has a process in place to notify a Participant of non-compliance and suspend participation arising from a complaint filed through the dispute resolution process. A Participant's obligation to follow this process is stipulated in Sections 4 and 5 of Appendices D and E and all other terms of participation in Section 6.

13. Applicant Accountability Agent should describe the policies and procedures to impose any of the penalties identified in 13 (a) – (e) of Annex A.

Section 5 (*Participation in the Dispute Resolution Procedure*) of Appendices D and E states that “[i]f PARTICIPANT is the subject of a complaint submitted by any party to BBB National Programs alleging a violation of the [CBPR Program Requirements in Appendix D, PRP Program Requirements in Appendix E], PARTICIPANT agrees to participate in the Procedure in accordance with the Procedure Rules. PARTICIPANT further agrees that in the event of PARTICIPANT’s non-compliance with the Procedure Rules, or with BBB National Programs’ final determination of a complaint, BBB National Programs may take enforcement action, which may include reporting PARTICIPANT’s non-compliance to the Federal Trade Commission (“FTC”) or other appropriate government agency.”

Section 6 (*Termination*) of Appendices D and E states that “[i]f BBB National Programs determines that PARTICIPANT has failed to comply with the Agreement, BBB National Programs may terminate this Agreement unless PARTICIPANT cures such non-compliance within fifteen (15) business days of its receipt of written notice from BBB National Programs as provided by electronic mail to PARTICIPANT’s primary contact listed in BBB National Programs records pursuant to section 14 of this Agreement. Pursuant to this notice, BBB National Programs shall advise PARTICIPANT of the terms of this Agreement with which it believes PARTICIPANT is no longer in compliance. BBB National Programs reserves the right to report PARTICIPANT’s non-compliance to the Federal Trade Commission (“FTC”) or other appropriate government agency.

Upon notice from BBB National Programs, Participant will immediately remove Certification Icons from any Privacy Statement out of scope of the Participant’s certification.”

14. Applicant Accountability Agent should describe its policies and procedures for referring matters to the appropriate public authority or enforcement agency for review and possible law enforcement action. [NOTE: immediate notification of violations may be appropriate in some instances].

See above.

15. Applicant Accountability Agent should describe its policies and procedures to respond to requests from enforcement entities in APEC Economies where possible.

BBB National Programs will respond to requests from enforcement entities in APEC Economies that reasonably relate to the Economy and to the CBPR or PRP-related activities of BBB National Programs, where possible.