

**Accountability Agent Application Materials and APEC Joint Oversight Panel
Recommendation Report**

On April 30, 2024, the Global CBPR Forum (Forum) announced the recognition of eight (8) Accountability Agents to issue Global CBPR and Global PRP certifications. Noting that the Accountability Agent Recognition Criteria under the Global Cross-Border Privacy Rules (CBPR) and Global Privacy Recognition for Processors (PRP) Systems are based on the Asia Pacific Economic Cooperation (APEC) Accountability Agent Recognition Criteria, the Forum recognized the APEC-endorsed Accountability Agents to operate in the following jurisdictions:

- Japan: Japan Institute for Promotion of Digital Economy and Community
- Korea: Korea Internet Security Agency
- Singapore: Infocomm Media Development Authority
- Chinese Taipei: Institute for Information Industry
- United States: BBB National Programs, NCC Group, Schellman, TRUSTe

The Forum recognized the Accountability Agents listed above for the duration of their current terms of APEC endorsement. Once their initial term expires, each Accountability Agent will be required to reapply to the Forum for recognition for another two-year term.

The Accountability Agent's application materials submitted to APEC and the APEC Joint Oversight Panel Recommendation Report recommending recognition under the APEC-CBPR System, having been deemed sufficient for the purpose of initial and concurrent recognition under Global CBPR System, are attached.

**CROSS-BORDER PRIVACY RULES SYSTEM AND PRIVACY RECOGNITION FOR
PROCESSORS SYSTEM JOINT OVERSIGHT PANEL**

RECOMMENDATION REPORT ON THE CONTINUED APEC RECOGNITION OF BBB
NATIONAL PROGRAMS, INC. AS AN ACCOUNTABILITY AGENT FOR THE CBPR
AND PRP SYSTEMS

Submitted To: Ekapong Rimcharone

Chair, Digital Economy Steering Group

May 12, 2024

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EXECUTIVE SUMMARY

In July 2012, the United States formally commenced participation in the Asia-Pacific Economic Cooperation (APEC) Cross-Border Privacy Rules (herein CBPR) System. Pursuant to Paragraph 5 of the *Protocols of the Joint Oversight Panel*, the United States was then eligible to accept applications for recognition by one or more Accountability Agents operating within its jurisdiction. At that time, the U.S. Department of Commerce invited those organizations interested in serving as an Accountability Agent in the United States to notify the Department of their intent to seek APEC recognition and submit a completed application for initial review to the Department of Commerce. In 2017, the United States formally commenced participation in the APEC Privacy Recognition for Processors (PRP) System. Pursuant to Paragraph 5 of the *Protocols of the PRP Joint Oversight Panel*, the United States was then eligible to nominate one or more Accountability Agents for APEC recognition.

On January 19, 2021, BBB National Programs, Inc. was recognized to serve as an Accountability Agent for the CBPR and PRP Systems for an initial one-year term, and on March 19, 2022, BBB National Programs was recognized for a two-year term.

On February 14, 2024, the United States Department of Commerce received a renewal application from BBB National Programs to continue to be recognized as an Accountability Agent in the United States for the CBPR and the PRP Systems. After having reviewed the completeness of this application, the United States Department of Commerce forwarded this submission to the Joint Oversight Panel (JOP) on February 20, 2024. The JOP found that BBB National Programs continues to meet the requirements to serve as an Accountability Agent in the United States. BBB National Program's continued recognition as an Accountability Agent will be valid for two years from the date of endorsement

SCOPE OF CONSULTATION PROCESS

Pursuant to Paragraph 7.2 of the *Charter of the Joint Oversight Panel*, members of the JOP began a consultative process with representatives from BBB National Programs and the United States Federal Trade Commission (a participant in the Cross-Border Privacy Enforcement Arrangement) to:

- Confirm the enforceability of an organization's CBPR and/or PRP obligations once certified as CBPR and/or PRP compliant by BBB National Programs;
- Confirm BBB National Programs' location or the relevant Enforcement Authority;
- Confirm that BBB National Programs meets the recognition criteria as identified in the *Accountability Agent Applications for APEC Recognition for the CBPR and PRP Systems*;

- Confirm BBB National Programs makes use of program requirements that meet the baseline established in the CBPR and PRP systems; and
- Confirm BBB National Programs has provided the necessary signature and contact information.

The following Recommendation Report was drafted by the JOP pursuant to paragraph 24 of the JOP Protocols and complies with the requirements set out in paragraph 16 of the JOP Protocols.

RECOMMENDATION OF THE JOINT OVERSIGHT PANEL

Having verified the United States is a participant in the APEC Cross Border Privacy Rules (CBPR) and Privacy Recognition for Processors (PRP) Systems and has demonstrated the enforceability of the CBPR and PRP program requirements pursuant to the information provided in Annex B of the United States Notice of Intent to Participate in the CBPR and PRP Systems;

Having verified BBB National Programs is in the United States and is subject to the enforcement authority described in Annex A of the United States Notice of Intent to Participate in the CBPR and PRP Systems;

Having verified with the Administrators of the APEC Cross Border Privacy Enforcement Arrangement (CPEA) that the United States Federal Trade Commission, a Privacy Enforcement Authority in the United States, is a participant in the APEC CPEA;

Having determined, in the opinion of the members of the Joint Oversight Panel, that BBB National Programs has policies in place that meet the established recognition criteria and makes use of program requirements that meet those established in the CBPR and PRP Systems, and;

Having verified BBB National Programs has provided the required signature and contact information;

The JOP recommends APEC member economies consider the conditions established in 7.2 (ii) of the Charter of the Joint Oversight Panel to have been met by BBB National Programs and to grant BBB National Programs' request for APEC recognition to certify organizations within the United States and under the jurisdiction of the United States Federal Trade Commission as compliant with the CBPR and PRP Systems pursuant to the established guidelines governing the operation of the CBPR and PRP Systems.

Submitted by the Joint Oversight Panel:

Shannon Coe
Chair, Joint Oversight Panel
Department of Commerce, United States of America

Evelyn Goh
Member, Joint Oversight Panel
Infocomm Media Development Authority, Singapore

Makiko Tsuda
Member, Joint Oversight Panel
Ministry of Economy, Trade and Industry, Japan

REQUEST FOR CONSENSUS DETERMINATION

APEC member economies are asked to make a determination as to BBB National Programs' request for recognition, taking into account the JOP's recommendation. Any APEC member economy has the right to reject the request of an applicant Accountability Agent for recognition for failure to meet any of the recognition criteria required in the *APEC Accountability Agent Recognition Applications for the CBPR and PRP Systems*. When making this determination, any APEC member economy may request additional information or clarification from BBB National Programs or the JOP. If no objection is received within the deadline for consensus determination as established by the Digital Economy Steering Group (DESG) Chair, the request will be considered to be approved by the DESG. Should member economies determine that BBB National Programs has met the necessary criteria, APEC recognition will be for two years from the date of recognition, one month prior to which, BBB National Programs may re-apply for APEC recognition if it so wishes, following the same process described herein.

I. ENFORCEABILITY

Is the Applicant subject to the jurisdiction of the relevant enforcement authority in a CBPR and PRP participating economy?

Recommendation

The JOP is satisfied that BBB National Programs is subject to the jurisdiction of the United States Federal Trade Commission (FTC), a participant in the Cross-Border Privacy Enforcement Arrangement (CPEA).

Discussion

In its *Notice of Intent to Participate in the CBPR and PRP Systems*, the United States described its enforcement authority as follows:

To become a recognized APEC Accountability Agent, an applicant must complete and sign the Accountability Agent APEC Recognition Application...By publicly posting its Recognition Application, a recognized APEC Accountability Agent further represents that the answers contained in the document are true.

In addition, any organization that publicly displays a seal, trustmark or other symbol indicating its participation in the [CBPR and PRP] system or causes its name to appear on a list of recognized APEC Accountability Agent, is making an enforceable representation that it complies with the requirements applicable to a recognized APEC Accountability Agent.

If an APEC-recognized Accountability Agent subject to the jurisdiction of the Federal Trade Commission [FTC] fails to comply with any of these requirements, its representations of compliance may constitute unfair or deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45. The FTC has broad authority to take action against unfair and deceptive acts and practices.

Furthermore, if an APEC-recognized Accountability Agent authorizes the use of its certification mark, 15 U.S.C. §1127, to convey compliance with the CBPR [or 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.

The JOP has confirmed that BBB National Programs is subject to the regulatory oversight and enforcement authority of the United States FTC since it is a 501(c)(6) entity that provides membership benefits to its for-profit members. The JOP has further confirmed that the FTC is a participant in the CPEA and that the United States is a recognized participant in the APEC CBPR

and PRP System. BBB National Programs agrees that should it receive APEC renewal of its recognition, it will publicly indicate its participation in the CBPR and PRP Systems including allowing its name to appear on a list of recognized APEC Accountability Agents. BBB National Programs agrees to post all CBPR and PRP certified companies online as well as the applicable CBPR and PRP program requirements. The BBB National Programs certification service logo (“Certification Icon”) is a service mark of BBB National Programs that should only be used on the granting or extending of a CBPR and PRP certification.

II. RECOGNITION CRITERIA

The *Accountability Agent Application for APEC Recognition for the CBPR and PRP Systems* requires applicants to describe how each of the fifteen (15) Accountability Agent Recognition Criteria have been met using the Accountability Agent Recognition Criteria Checklist. Following is an overview of each listed requirement and recommendation of the continuing sufficiency of each based on the information submitted to the JOP by BBB National Programs.

Conflicts of Interest (Recognition Criteria 1-3)

1. *Applicant Accountability Agent should describe how requirements 1(a) and (b) in Annex A of the Accountability Agent Applications for APEC Recognition for the CBPR and PRP Systems have been met and submit all applicable written policies and documentation.*
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 of the Accountability Agent Applications for APEC Recognition for the CBPR and PRP Systems.*
3. *Applicant Accountability Agent should describe the disclosure/withdrawal mechanisms to be used in the event of any actual conflict of interest identified.*

Recommendation

The JOP is satisfied that BBB National Programs meets Recognition Criteria 1-3.

Discussion

BBB National Programs submitted information about how it is free of actual or potential conflicts of interest and about internal structural and procedural safeguards in place to address potential and actual conflicts of interest. As noted in BBB National Programs' *Accountability Agent Application for APEC Recognition for the CBPR and PRP Systems*, BBB National Programs is a Delaware incorporated 501(c)(6) nonprofit non-stock corporation. Under Delaware's General Corporation Law, the Board of Directors are subject to the fiduciary duties of care, loyalty and the subsidiary duties of good faith, oversight and disclosure, which includes the duty to act (or not to act) on a disinterested and independent basis. Employee conduct is addressed in the BBB National Programs' Employee Conflict of Interest Policy ([Appendix A](#) of BBB's 2024 Accountability Agent Renewal Application) and BBB National Programs' Employee Conflict of Interest CBPR and PRP Supplement ([Appendix B](#) of BBB's 2024 Accountability Agent Renewal Application). The JOP has confirmed that these written policies and procedures satisfy Recognition Criteria 1-3.

The JOP has confirmed that BBB National Programs is required to apply its certification standards in an impartial manner pursuant to the terms of its registered certification mark. The JOP has confirmed that the Certification Icon is a services mark of BBB National Programs and may not be used in connection with any product or services that is not within the scope of the CBPR or PRP certification. Title 15, Chapter 22, Subchapter I, § 1064 of the United States Code permits the Federal Trade Commission to request that the United States Patent and Trademark Office cancel this service mark 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.”

Program Requirements (Recognition Criterion 4)

Applicant Accountability Agent should indicate whether it intends to use the relevant template documentation developed by APEC or make use of Annex C of the Accountability Agent Application[s] for APEC Recognition for the CBPR and PRP Systems to map its existing intake procedures to CBPR and PRP program requirements.

Recommendation

The JOP is satisfied that BBB National Programs meets Recognition Criterion 4.

Discussion

BBB National Programs has committed to use the APEC-endorsed CBPR and PRP Program Requirements found in Annex C of the Accountability Agent Applications for the CBPR and PRP Systems.

Certification Process (Recognition Criterion 5)

Applicant Accountability Agent should submit a description of how the requirements as identified in 5 (a) – (d) of Annex A of the Accountability Agent Applications for APEC Recognition for the CBPR and PRP Systems have been met.

Recommendation

The JOP is satisfied that BBB National Programs meets Recognition Criterion 5.

Discussion

BBB National Programs submitted information describing the certification process, starting with how it will use the APEC-approved CBPR and PRP Intake Questionnaires and associated Program Requirements to conduct an initial assessment of compliance for all applicant organizations. BBB National Programs will undertake an iterative process with the applicant organization to document and catalogue compliance with each of the associated program requirements. BBB National Programs will award an applicant organization a Certification Icon identifying their participation in the CBPR and/or PRP programs only after it delivers an outcomes report describing how each of the relevant program requirements have been met, and the applicant organization has attested to the accuracy of the report. Consumers can click on the Certification Icon to 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 of BBB’s 2024 Accountability Agent Renewal Application). 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

confirmed that it will provide all relevant details of the Participant's certification for the compliance directory.

On-going Monitoring and Compliance Review Processes (Recognition Criteria 6, 7)

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) of Annex A in the Accountability Agent Applications for APEC Recognition for the CBPR and PRP Systems.

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 in the Accountability Agent Applications for APEC Recognition for the CBPR and PRP Systems.

Recommendation

The JOP is satisfied that BBB National Programs meets Recognition Criteria 6, 7.

Discussion

BBB National Programs submitted documentation of its internal procedures to ensure integrity of its certification process and to monitor compliance of certified organizations. As BBB National Programs explains in the application documents, it has established monitoring and compliance review mechanisms, which include the following:

- 1) 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.
- 2) Real-time website monitoring: All reviewed and approved privacy notices within scope of a CBPR certification and/or PRP system will be monitored to detect and track changes.
- 3) Third party reporting: BBB National Programs will receive and investigate all complaints against Participants using BBB National Programs' dispute resolution process.

Participants are monitored throughout the certification period to ensure compliance with the program. Where there are reasonable grounds to believe that a Participant has engaged in a practice that may constitute a breach of the program requirements, an immediate review process will be triggered whereby verification of compliance will be carried out.

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. 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 (Recognition Criterion 8)

Applicant Accountability Agent should describe their re-certification and review process as identified in 8 (a)-(d) of Annex A in the Accountability Agent Applications for APEC Recognition for the CBPR and PRP Systems.

Recommendation

The JOP is satisfied that BBB National Programs meets Recognition Criterion 8.

Discussion

The JOP has confirmed that a Participant must complete BBB National Programs' recertification process within 12 months of the Participant's previous certification date to maintain good standing in the CBPR and/or PRP Systems. The recertification process follows the certification process described in response to Recognition Criterion 5. In addition, if the Participant notifies BBB National Programs of a change, the change will be verified by BBB immediately. If during the annual re-certification cycle, 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 (Recognition Criteria 9, 10)

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.

Applicant Accountability Agent should describe how the dispute resolution process meets the requirements identified in 10 (a) – (h) of Annex A in the Accountability Agent Applications for APEC Recognition for the CBPR and the requirements identified in 10 (a) – (d) of Annex A in the Accountability Agent Applications for PRP Systems, 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 on complaints.

Recommendation

The JOP is satisfied that BBB National Programs meets Recognition Criteria 9, 10

Discussion

The JOP has confirmed that BBB National Programs has an existing, in-house customer dispute resolution program to receive and investigate complaints that is accessible through the BBB National Programs website.¹

BBB National Programs' dispute resolution process is described in the APEC CBPR and PRP Dispute Resolution Procedure Rules (Appendix C of BBB's 2024 Accountability Agent Renewal Application), which provides that first BBB National Programs will collect information to determine eligibility of a complaint, including to verify the identity of the complainant, that the complaint is against a Participant and that the complaint alleges that a Participant failed to comply with the CBPR and/or PRP Program Requirements in relation to complainant's covered personal information. BBB National Programs notifies the complainant within ten (10) days of the receipt of a complaint of whether the complaint is eligible, ineligible or requires further information.

For eligible complaints, BBB National Programs makes commercially reasonable efforts to provide a written decision to the parties within ten (10) days after receipt of all information as provided by the parties. The decision states whether and why corrective action is or is not necessary and if it is, provides a commercially reasonable time frame for such action to be implemented. If BBB National Programs determines that changes to the Participant's privacy policies or practices are necessary to correct any noncompliance with the CBPR and/or PRP Program Requirements, the Participant must submit a statement to BBB National Programs indicating whether and how it will comply with the Decision within five (5) days of its receipt of the decision. BBB National Programs will notify the parties once the required changes have been made and close the case.

The JOP has confirmed that BBB National Programs will obtain an individual's consent before sharing that individual's personal information with the relevant enforcement authority in connection with a request for assistance and will maintain confidentiality of all deliberations, meetings, proceedings, and documentation except in the case of a referral to appropriate government agencies. The JOP has confirmed that BBB National Programs will annually report complaint statistics and anonymous case notes to the JOP and publish them on their website. BBB has not received any complaints to date, and therefore has not submitted such information to the JOP.

Mechanism for Enforcing Program Requirements (Recognition Criteria 11-15)

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

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

¹ [https://bbbprograms.org/programs/all-programs/GlobalPrivacyDivision/CrossBorderPrivacyRules/CBPR-Complaint#:~:text=For%20Consumers%3A%20Dispute%20Resolution%20Process%20for%20CBPR%20Programs&text=We%20help%20individual%20consumers%20resolve,Processors%20\(PR\)%20certification%20programs.](https://bbbprograms.org/programs/all-programs/GlobalPrivacyDivision/CrossBorderPrivacyRules/CBPR-Complaint#:~:text=For%20Consumers%3A%20Dispute%20Resolution%20Process%20for%20CBPR%20Programs&text=We%20help%20individual%20consumers%20resolve,Processors%20(PR)%20certification%20programs.)

of the processes in place to ensure the participant remedy the non-compliance.

Applicant Accountability Agent should describe the policies and procedures to impose any of the penalties identified in 13 (a) – (e) of Annex A in the Accountability Agent Applications for APEC Recognition for the CBPR and PRP Systems.

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].

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

Recommendation

The JOP is satisfied that BBB National Programs meets Recognition Criteria 11-15.

Discussion

The JOP has confirmed that BBB National Programs enforces its program requirements through contract (see Participation Appendices D and E of BBB's 2024 Accountability Agent Renewal Application). Specifically, the contract provides that BBB National Programs may terminate an organization's participation in the CBPR or PRP System if the organization fails to cure a non-compliance within fifteen (15) business days of notice. The contract further provides that the Participant must immediately remove Certification Icons from any privacy statement upon notice.

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. The Participant must remedy the non-compliance within fifteen (15) business days or its participation will be terminated. The contract further stipulates that BBB National Programs reserves the right to refer any non-compliance to the Federal Trade Commission ("FTC") or other appropriate government agency. The JOP has confirmed that BBB National Programs will respond to requests from enforcement entities in Member Economies that reasonably relate to the Economy and to the CBPR or PRP-related activities of BBB National Programs, where possible.

III. CASE NOTES AND STATISTICS

Will the Applicant provide relevant information on case notes and statistics as outlined in Annexes D and E of the Accountability Agent Application for APEC Recognition for the CBPR and PRP Systems?

Recommendation

The JOP is satisfied that BBB National Programs meets the Case Notes and Statistics requirements as stipulated in Annexes D and E of the *Accountability Agent Applications for APEC Recognition for the CBPR and PRP Systems*.

Discussion

For the CBPR and PRP Systems, the Accountability Agent Recognition Criterion 10 requires applicants to have a process for making publicly available statistics on the types of complaints and the outcomes of such complaints (*Accountability Agent Applications for APEC Recognition for the CBPR* Annex E and *Accountability Agent Applications for APEC Recognition for the PRP* Annex D). For the CBPR System, the Accountability Agent Recognition Criterion 10(h) requires applicants to have a process for releasing, in anonymized form, case notes on a selection of resolved complaints illustrating typical or significant interpretations and notable outcomes (see Annex D). The JOP has confirmed that BBB National Programs will make publicly available information on the number of complaints and outcomes of such complaints and release case notes on a selection of important complaints. The JOP has confirmed that BBB National Programs will annually send anonymized case notes pursuant to the requirements of Annex D of the *Accountability Agent Application for APEC recognition for the CBPR System* to APEC member economies as a condition of their recognition. BBB National Programs has confirmed that they have not received any complaints to date and therefore, has not submitted any Case Notes or Statistics.

SIGNATURE AND CONTACT INFORMATION

By signing this document, the signing party attests to the truth of the answers given.

_____  _____ 8/12/24 _____

[Signature of person who has authority

[Date]

to commit party to the agreement]

[Typed name]: Dona J. Fraser

[Typed title]: Senior Vice President, Privacy Initiatives

[Typed name of organization]: BBB National Programs

[Address of organization]: 1676 International Dr Suite 550, McLean, VA 22102

[Email address]: dfraser@bbbnnp.org

[Telephone number]: 703-247-7790

APEC recognition is limited to two years from the date of recognition. One month prior to the anniversary of the date of recognition, the Accountability Agent must resubmit this form and any associated documentation to the appropriate government agency or public authority or as soon as practicable in the event of a material change (e.g. ownership, structure, policies).

NOTE: Failure to comply with any of the requirements outlined in this document may result in appropriate sanctions under applicable domestic law.