

2021-2022

# Procedure Report

Compliance Activities &  
Casework Conducted by  
BBB EU Privacy Shield

from August 1, 2021  
through July 31, 2022

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# Executive Summary

The period covered by this report, August 1, 2021 through July 31, 2022, constituted the fifth year of BBB EU Privacy Shield (BBB EUPS) operations.

The program was launched in 2016 as an Independent Recourse Mechanism supporting the Privacy Shield Frameworks. This program provides both independent dispute resolution and compliance assistance to participating businesses.

## Key program activities during this review period included:

- ◆ Continuing to assist participants and new applicants in aligning their privacy policies and self-certifications with the requirements of Privacy Shield
- ◆ Educating participants on the July 16, 2020 decision from the Court of Justice of the European Union (CJEU), known as Schrems II
- ◆ Handling eligible complaints received by the program under Privacy Shield

# Year in Review

## Participation

Despite ongoing uncertainty about EU-U.S. data transfers, more than 750 U.S. businesses have continued their commitment to uphold the standards of the Privacy Shield Framework by self-certifying during the review period and maintaining their enrollment in the independent dispute resolution services provided by BBB EUPS.

## Outreach

BBB National Programs publishes periodic participant newsletters and online Privacy Shield compliance guidance for program applicants and participating businesses. Our experts also speak and write routinely on privacy topics, including Privacy Shield and the APEC Cross-Border Privacy Rules system. BBB National Programs also produces podcasts for those in the business audience who prefer to receive compliance guidance in audio form.

Though BBB EUPS does not provide individualized compliance assistance beyond our Privacy Shield services, the program is making ongoing efforts to provide our applicants and participants with accurate information about the changes in EU privacy law brought about by GDPR. We post updated guidance at [bbbprograms.org/Data-Privacy](https://bbbprograms.org/Data-Privacy) along with links to external resources, and we continue to discuss GDPR and other privacy topics in ongoing blog posts and in our periodical newsletter for participants.

## Compliance Activities

BBB EUPS continues to provide all program applicants with privacy policy guidance and assists as needed with self-certification and recertification. The program also monitors participants' online privacy policies and Privacy Shield self-certifications on an ongoing basis for changes that may affect compliance and provides automatic reminders to businesses before their self-certifications are due for renewal.

## Complaint Handling

During this period of review, the program received 480 submissions from individual consumers worldwide, including 166 from the EU, the U.K., and Switzerland, through the BBB EUPS online complaint form. Following a review of each complaint by program staff, 479 complaints were determined to be ineligible for resolution by the program for one or more of the following reasons:

- ◆ They concerned businesses not enrolled in BBB EUPS
- ◆ They did not involve data collection in the EU, U.K., or Switzerland
- ◆ They were unrelated to privacy (i.e., product or service complaints)
- ◆ They failed to state a complaint

The single remaining complaint was dropped by the complainant before eligibility could be established.

750

self-certified participants as of  
July 31, 2022

480

complaints received from  
individuals worldwide

166

complaints received from  
individuals in the EU, U.K.,  
and Switzerland

1

potentially  
eligible complaint  
addressed

# About the Privacy Shield Frameworks

This co-regulatory program ensures that participating U.S. businesses embrace accountable data protection practices and that EU, U.K., & Swiss consumers receive expeditious and fair recourse for their privacy concerns.

On July 12, 2016, the U.S. Department of Commerce and the European Commission announced the launch of the EU-U.S. Privacy Shield Framework for transatlantic data flows to replace the U.S.-EU Safe Harbor, which had been invalidated by a decision of the European Court of Justice in October 2015. While retaining many elements of Safe Harbor, Privacy Shield includes enhanced consumer privacy protections for EU individuals, promotes greater transparency around data collection, use, and sharing, and helps U.S. businesses demonstrate that their privacy practices meet EU data protection requirements.

On January 12, 2017, the Swiss Government approved the Swiss-U.S. Privacy Shield Framework as a valid legal mechanism for U.S. organizations to comply with Swiss data protection requirements when transferring personal data from Switzerland to the United States. The U.S. Department of Commerce began accepting self-certifications for this Framework on April 12, 2017.

Organizations participating in either Privacy Shield Framework must submit a self-certification application to the Department of Commerce, stating their adherence to the Privacy Shield Principles for personal data they receive from the EU or Switzerland. Participating businesses are required to maintain a current self-certification on the official EU-U.S. or Swiss-U.S. Privacy Shield Lists maintained by the U.S. Department of Commerce. Each participating business must also contribute to the Arbitral Fund, which supports the operation of the Annex I arbitration mechanism for residual complaints that remain unresolved by multiple redress mechanisms.

Participants must also verify on an annual basis that their public attestations regarding their Privacy Shield privacy practices are accurate, through self-assessment or outside compliance reviews, and must designate an independent dispute resolution option—also called an Independent Recourse Mechanism or IRM—to handle privacy complaints from EU and Swiss individuals whose personal data they process.

# About BBB EU Privacy Shield

In its sixth full year of operating under the Privacy Shield Frameworks, BBB National Programs provided services to more than 900 businesses and 450 consumers through its BBB EU Privacy Shield program.

BBB EU Privacy Shield (BBB EUPS) was established in 2016 as a successor program to the BBB EU Safe Harbor Program that had operated as an Independent Recourse Mechanism since 2000. The program provides compliance assistance for U.S. businesses preparing for self-certification under the EU-U.S. and Swiss-U.S. Privacy Shield Frameworks, as well as ongoing review of the Privacy Shield statements and certifications of the program's participating businesses and up-to-date guidance on privacy compliance. At its core, BBB EUPS operates an independent third-party dispute resolution mechanism enabling individuals in the European Union, Switzerland, and United Kingdom to resolve Privacy Shield complaints against participating businesses. The objectives of this co-regulatory program are to ensure that privacy concerns of individual complainants are addressed expeditiously and fairly and to promote privacy accountability among participating businesses.

During its sixth full year of operating under the Privacy Shield Frameworks, BBB EUPS provided its services to more than 900 businesses.

This annual report summarizes the ongoing compliance activities and casework of the BBB EUPS program spanning August 1, 2021 through July 31, 2022.

## **BBB EU Privacy Shield Core Requirements**

Each U.S. business that applies to join BBB EUPS provides the program with a draft copy of the consumer-facing Privacy Shield-compliant privacy policy that it will post on its public website once it is self-certified under Privacy Shield. BBB EUPS staff reviews the privacy policy for basic compliance with Privacy Shield Notice Principle requirements. Notably, BBB EUPS staff ensures that the draft privacy policy includes clear instructions for EU and Swiss individuals who wish to contact the business with Privacy Shield complaints and inquiries, as well as a hyperlink to the BBB EUPS consumer information webpage and online complaint form.

## Participation Requirements

Each BBB EUPS participant is required to:

- ◆ Upload the privacy policy approved by BBB EUPS to the U.S. Department of Commerce website during the self-certification process and, following approval, to post and maintain the privacy policy on all business websites to be covered by Privacy Shield;
- ◆ Notify BBB EUPS of all changes to the approved policy, including any changes required during the self-certification process, and provide BBB EUPS a copy of the updated and posted policy;
- ◆ Apply promptly for self-certification with the U.S. Department of Commerce following acceptance into the BBB EUPS program, and maintain a current self-certification for the duration of its participation in BBB EUPS;
- ◆ Cooperate with BBB EUPS staff to respond to privacy complaints in accordance with the BBB Procedure Rules;
- ◆ Accept the Panelist's final decision in cases sent to a Data Privacy Review before an independent Data Privacy Panelist; and
- ◆ Implement any corrective action agreed to as part of a settlement or mandated by a Panelist's decision.

Each participant executes a Participation Agreement that is renewable annually following a BBB EUPS staff review of the business's online Privacy Shield privacy policy and self-certification listing to ensure that the business remains in compliance with all program requirements.

## Review of Privacy Policies and Practices

BBB EUPS staff examines each applicant's draft public privacy policy for inclusion of all elements required by the Privacy Shield Notice Principle and for consistency with the rest of the Privacy Shield Frameworks. In addition, staff reviews any other relevant published policies or referenced terms and conditions for consistency.

Applicant businesses can access detailed resources about the Privacy Shield Principles and the self-certification process at [bbbprograms.org/EUPS](https://bbbprograms.org/EUPS). We provide additional privacy policy guidance and tips for our participating businesses during the application process.

This guidance helps each participating business to:

- ◆ Ensure that the Privacy Shield notice in its privacy policy is clearly written and is readily accessible on the business's public website.
- ◆ Ensure that the Privacy Shield notice clearly identifies the corporate entity or entities processing EU or Swiss personal data pursuant to Privacy Shield.
  - ◆ If a brand name or d/b/a is used on the business's public website(s), the business's legal name should also appear in the policy, in its self-certification, and in the BBB EUPS Participation Agreement. This information can facilitate a consumer's search for the appropriate business on the official U.S. Department of Commerce Privacy Shield List and in the BBB EUPS complaints system.
- ◆ Ensure that all covered websites include the approved Privacy Shield notice, including an active hyperlink to the BBB EUPS consumer pages and complaint system.

# Compliance Activities & Key Issues 2021-2022

Organizations maintaining enrollment in BBB EUPS during the period of review ranged from large multinational corporations to small and mid-sized businesses across multiple industry sectors. Those seeking self-certification assistance from BBB EUPS were closely engaged in adapting their privacy policies to align with Privacy Shield requirements and to resolve any conflicts with other EU, Swiss, or U.K. requirements, as applicable.

BBB EUPS continues to work closely with new program applicants to help them comply with all current requirements of the Privacy Shield self-certification process. Through our routine review process following self-certification, we alert our participating businesses about upcoming deadlines for re-certification, request clarification when inconsistencies are found, and follow up through all available means of communication when lapses occur. We routinely provide updated guidance about changes to the certification process to the business community on our program website and to our participants and applicants in newsletters, service messages, and one-on-one consultations.

## The *Schrems II* Decision

On July 16, 2020, in a decision known as *Schrems II*, the Court of Justice of the European Union invalidated the European Commission's Implementing Decision (EU) 2016/1250 on the adequacy of the protection provided by the EU-U.S. Privacy Shield. As a result of the *Schrems II* decision, throughout the 2021-2022 reporting period the EU-U.S. Privacy Shield Framework has not been recognized as a valid mechanism to comply with EU requirements when transferring personal data from the European Union to the United States. Similarly, after the September 8, 2020 opinion of the Federal Data Protection and Information Commissioner of Switzerland (FDPIC), organizations wishing to rely on the Swiss-U.S. Privacy Shield to transfer personal data from Switzerland to the United States should seek guidance from the FDPIC or legal counsel.

Nevertheless, as the U.S. Department of Commerce and the U.S. Federal Trade Commission have stated, the *Schrems II* decision does not relieve Privacy Shield participants of their obligations under the EU-U.S. Privacy Shield and Swiss-U.S. Privacy Shield Frameworks. Accordingly, throughout the review period, BBB EUPS has continued to deliver its services as an Independent Recourse Mechanism to participating businesses that self-certify their compliance with the Privacy Shield Principles.

As we await future developments related to lawful data transfers, BBB EUPS continues to assist our participating businesses with aligning their practices with data protection requirements in the European Union, Switzerland, and the United Kingdom. At the same time, we maintain our robust procedures for holding participating businesses to the high standards of the Privacy Shield Principles through our continuing operation of an independent dispute resolution mechanism, which, as this report demonstrates, provides responsive recourse for European data subjects with privacy complaints.



# Dispute Resolution & Enforcement

BBB EUPS' dispute resolution procedures are designed with two primary goals in mind. First, to ensure that the privacy concerns of individual complainants concerning data collected in the EU, U.K., or Switzerland are addressed speedily and impartially. Second, to promote privacy accountability among U.S. businesses participating in the program.

BBB National Programs provides a secure, accessible online mechanism for handling privacy complaints under the Privacy Shield Principles by individuals against participating U.S. businesses.

The service is provided free of charge to individual complainants, who can readily access the BBB EUPS online complaint form through a live hyperlink each participating business must include in the privacy policy posted on its public website.

The dedicated link first takes the site visitor to BBB EUPS' consumer-facing web page entitled "For EU, U.K., and Swiss Consumers: BBB EUPS Dispute Resolution Process" which describes the program's role as an IRM and our complaint process.<sup>1</sup> From this page, the site visitor clicks a prominent "File a Complaint" button to gain direct access to the BBB EUPS complaint form. On a second page linked from the main consumer-facing page, entitled "How to File a Complaint with BBB EU Privacy Shield," visitors can find a mailing address to communicate with the program by postal mail.

## Complaint Handling Rules and Procedures

As provided in the program's Procedure Rules,<sup>2</sup> BBB EUPS engages in a multi-step process through which we determine complaint eligibility and then resolve complaints against participating businesses through our dispute resolution procedures. Language translation services are available as needed to facilitate any or all stages of the complaint review and dispute resolution process.

1. See <https://bbbprograms.org/programs/all-programs/bbb-privacy-shield/eu-dispute-resolution>. While the program welcomes complaints from individuals in the U.S. or in other countries who claim that their data was collected in the EU, U.K., or Switzerland and received in the United States by a Privacy Shield business, we pay particular attention to ensuring access by EU, U.K., and Swiss data subjects.

2. <https://bbbprograms.org/programs/all-programs/bbb-privacy-shield/rules-and-policies>.

## Primary Dispute Resolution Goals

1

Ensure that the privacy concerns of individual complainants concerning data collected in the EU, U.K., or Switzerland are addressed speedily and impartially.

2

Promote privacy accountability among U.S. businesses participating in the program.

## **Initial Eligibility Review**

BBB EUPS staff reviews each incoming complaint to determine whether, on its face, the complaint is eligible for resolution under the program. During this step of the process, complaints are closed if they (A) do not identify a BBB EUPS participating business or (B) do not originate from an individual in the EU, U.K., or Switzerland and do not otherwise allege data collection in the EU, U.K., or Switzerland. When a complaint is closed for one of these reasons, the complainant is provided with instructions to pursue relevant alternative redress options. If the complaint concerns an organization self-certified under Privacy Shield, we provide a link to the organization's public certification page. If the complaint concerns a U.S. business not participating in Privacy Shield, we direct the complainant to the appropriate local BBB. If the complaint concerns an organization in the EU, U.K., or Switzerland, we provide the complainant with information on contacting the appropriate Data Protection Authorities.

In addition, complaints are closed at this stage if they (C) do not state a complaint of any kind (e.g., unintelligible submissions) or (D) are entirely unrelated to data protection concerns (e.g., product or service complaints). When a complaint is closed for one of these reasons, the complainant is encouraged to contact BBB EUPS with additional information if they believe their complaint is in fact eligible for resolution.

## **Verifying Eligibility**

When a complaint appears to be potentially eligible for the program, but lacks important information, BBB EUPS contacts the complainant to confirm that the complaint meets Privacy Shield eligibility criteria before opening a case. This process may entail requesting information from the complainant such as the location of the data collection, the complainant's identity, the nature of the personal data at issue, or the nature of the complaint itself. It also may be necessary to confirm that the complainant has made a good faith effort to contact the relevant participating business about their complaint.

## **Conciliation**

When a complaint is found eligible, BBB EUPS opens a formal case and works with the complainant and the participating business to develop the facts and to facilitate a mutually agreeable settlement of the complaint in a process known as conciliation. BBB EUPS and its predecessor privacy programs have resolved many of the privacy complaints received through conciliation and settlement by the parties.

## **Data Privacy Review**

If conciliation efforts are unsuccessful, either the complainant or the participating business may request a Data Privacy Review, which takes the form of a decision by an independent panelist on EUPS' Data Privacy Board based on a review of the Case Record, including position statements submitted by each of the parties regarding the complaint. The panelist has discretion to seek additional written information from the parties and to convene a telephone hearing, if necessary, before issuing a final decision.<sup>3</sup>

3. See Part 4 of the Procedure Rules at <https://bbbprograms.org/programs/all-programs/bbb-privacy-shield/rules-and-policies>

Participating businesses that fail to comply with BBB EUPS Data Privacy Review procedures, including failing to take agreed upon action following a conciliated settlement, or failing to implement mandated corrective action following the final decision of the independent Data Privacy Board panelist, may be referred to the appropriate federal government agency—generally the Federal Trade Commission—and the referral will be reported to the Department of Commerce.

In such a case, BBB EUPS is required to publish in its next Annual Procedure Report the name of the participating business and the fact of the referral, along with a summary report of the facts of the case and the Procedure’s action in the matter.<sup>4</sup>

### **Compliance Verification and Additional Redress Options**

BBB EUPS verifies each business’s performance of corrective actions agreed to in a conciliated settlement or mandated by a Data Privacy Review, as applicable. This is a multi-step process that may add significant time to the full resolution of the case, depending on the nature of the corrective actions. Performance is verified through independent means, when possible, and through a formal certification by the business. Following verification, BBB EUPS seeks confirmation from the complainant that the matter has been resolved to their satisfaction. The case is then closed. However, each complainant is also advised that they are not bound by the outcome of the BBB EUPS dispute resolution procedure, and that they are free to pursue all additional redress options available under Privacy Shield, up to and including the binding arbitration procedures provided for in Annex 1.

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4. See Section 8.8 of the Procedure Rules at <https://bbbprograms.org/programs/all-programs/bbb-privacy-shield/rules-and-policies>.

# 2021-2022 BBB EU Privacy Shield Casework

During the period of review, BBB EUPS received 166 complaints from individuals in the European Union, United Kingdom, and Switzerland.

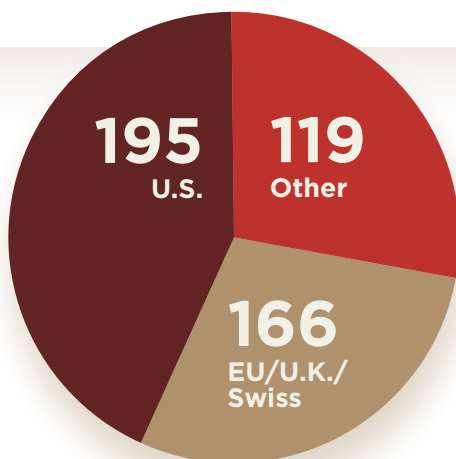
The report addresses only complaints submitted directly to the program by mail or through the dedicated Privacy Shield [online complaint form](#). Complaints are funneled to this form in most cases through a dedicated link in participating business privacy policies, through the “[File a Complaint](#)” link on our dedicated consumer-facing webpages.

During this review period, BBB EUPS received a total of 480 complaints.

## Origin of All Complaints Received 2021-2022

The BBB EUPS dispute resolution service was accessed during the review period by complainants from a diverse group of countries, including the EU and Switzerland. Of 480 complaint submissions reviewed, 166 were submitted by individuals claiming to be in 25 EU countries plus the United Kingdom and Switzerland, 195 were submitted by individuals who provided a U.S. address, and 119 were received from individuals who appeared to be in other countries outside the EU.

The figure below shows the geographic distribution of complaints received.



## Complaints Received by Geographic Region

- 195 Individuals in the U.S.
- 166 Individuals in the EU, U.K., & Switzerland
- 119 Individuals in Other Countries

## Breakdown of EU, U.K., and Swiss Complaints Received by Country

<b>Austria</b>	<b>4</b>	<b>Finland</b>	<b>1</b>	<b>Latvia</b>	<b>2</b>	<b>Portugal</b>	<b>6</b>
<b>Belgium</b>	<b>3</b>	<b>France</b>	<b>6</b>	<b>Liechtenstein</b>	<b>0</b>	<b>Romania</b>	<b>2</b>
<b>Bulgaria</b>	<b>3</b>	<b>Germany</b>	<b>6</b>	<b>Lithuania</b>	<b>0</b>	<b>Slovakia</b>	<b>1</b>
<b>Croatia</b>	<b>1</b>	<b>Greece</b>	<b>5</b>	<b>Luxembourg</b>	<b>2</b>	<b>Slovenia</b>	<b>2</b>
<b>Cyprus</b>	<b>2</b>	<b>Hungary</b>	<b>3</b>	<b>Malta</b>	<b>0</b>	<b>Spain</b>	<b>1</b>
<b>Czech Republic</b>	<b>1</b>	<b>Iceland</b>	<b>1</b>	<b>Netherlands</b>	<b>3</b>	<b>Sweden</b>	<b>4</b>
<b>Denmark</b>	<b>0</b>	<b>Ireland</b>	<b>6</b>	<b>Norway</b>	<b>6</b>	<b>Switzerland</b>	<b>2</b>
<b>Estonia</b>	<b>0</b>	<b>Italy</b>	<b>11</b>	<b>Poland</b>	<b>4</b>	<b>United Kingdom</b>	<b>78</b>

Fewer Complaints    More Complaints

## Statistics and Analysis of Complaints Received 2021-2022

BBB EUPS received a total of 480 complaint submissions during the 2021-2022 reporting period.

A total of 166 complaints reviewed during this period originated in the EU, the U.K., and Switzerland. 142 of these complaints concerned businesses not currently participating in the BBB EUPS program.

Following an eligibility review of each complaint, which included requesting additional information from the complainant wherever appropriate, the total complaints received ultimately resulted in a single case that BBB EUPS processed during the review period.

### Ineligible Complaints

Although most complaints received were found ineligible for resolution, BBB EUPS reviewed each complaint carefully, as described in the section titled “Initial Eligibility Review.” For complaints closed as ineligible, BBB EUPS sought to direct complainants to an alternative dispute resolution mechanism, where appropriate.

The table below represents the 165 complaints received during the reporting period that were closed after the initial eligibility review. 142 of these were found ineligible because they did not identify a business participating in the BBB EUPS program. BBB EUPS completed the initial eligibility review and responded to these complaints within an average of five days.

On average, BBB EUPS closed each ineligible complaint that identified a participating business within five days.

The remaining single complaint was considered facially eligible for review through the BBB EUPS procedure.

### Breakdown of Ineligible Complaints, 2021-2022

	Region/Country of Origin				Total
	EU	Switzerland	U.S.	Other	
Not a Participating Business	142	0	148	42	<b>332</b>
Participating Business but non-complaint (e.g., comment, empty, spam)	18	1	39	77	<b>135</b>
Complaint, but not a privacy complaint (e.g., service issue)	3	1	0	0	<b>4</b>
Privacy complaint, but not subject to Privacy Shield			8	0	<b>8</b>

#### Eligible Complaints

Complaints that appeared on their face to be eligible for resolution by BBB EUPS remained open after the initial eligibility review. At this stage, BBB EUPS reached out to the complainant for additional information needed to open a case, as described in the “Verifying Eligibility” section of this report. The single complaint potentially eligible for resolution by BBB EUPS was closed after 45 days when the complainant did not respond to staff requests for additional information required to proceed with the case.

# Observations

Privacy Shield provides EU, U.K., and Swiss consumers who wish to exercise data protection rights with U.S. businesses a unique tool: expedient and effective third-party dispute resolution.

The Privacy Shield Frameworks have been unique among international data transfer mechanisms authorized under European data protection law. Not only do the Privacy Shield Principles require participating U.S. businesses to publicly commit to align their practices with European standards, but they also provide for free, transparent, and expedited alternative dispute resolution for individual privacy inquiries and complaints. This mechanism has enabled EU, U.K., and Swiss data subjects to readily exercise their data protection rights with respect to the commercial use of their personal data in the United States. Since its launch on July 12, 2016, BBB EUPS has seen a sustained demand for its dispute resolution services from EU, U.K., and Swiss individuals seeking to resolve privacy concerns raised by transatlantic transfers of their personal data. Nothing has diminished the demand from data subjects for responsive and effective redress related to the commercial processing of their personal data. In fact, during the current period of review, BBB EUPS saw sustained global demand for resolution of privacy complaints. This year, the number of complaints originating in the EU, U.K., and Switzerland exceeded the prior year's total, just as it has done for every year of program operation.

While a majority of the European complaints received have been directed against companies not enrolled in BBB EUPS or not self-certified to Privacy Shield, the ongoing engagement of EU, U.K., and Swiss individuals with our program suggests a continued desire for expedient and effective alternative dispute resolution options for commercial privacy concerns that transcend jurisdictional lines. As data continues to flow globally, multi-layered mechanisms of accountability like Privacy Shield will continue to be an essential ingredient for ensuring that businesses of all sizes maintain best practices when engaging with international consumers.

## **About BBB EU Privacy Shield**

BBB EU Privacy Shield, a division of BBB National Programs, is a vital component of the co-regulatory Privacy Shield Frameworks, enabling U.S. businesses to demonstrate that their privacy practices are aligned with European data protection standards. As a trusted Independent Recourse Mechanism, BBB EU Privacy Shield assists consumers with resolving privacy complaints against participating businesses through a free, accessible, and transparent dispute resolution process.

## **About BBB National Programs**

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. To learn more, visit [bbbprograms.org](http://bbbprograms.org).