

1 **CALIFORNIA PRIVACY PROTECTION AGENCY BOARD**

2
3 TRANSCRIPTION OF RECORDED PUBLIC MEETING

4
5 **JULY 14, 2023**

6 **SACRAMENTO, CALIFORNIA**

7
8 Present: JENNIFER URBAN, Chairperson
9 LYDIA DE LA TORRE, Board Member
10 VINHCENT LE, Board Member
11 ASHKAN SOLTANI, Executive Director
12 PHILIP LAIRD, General Counsel
13 VON CHITAMBIRA, Deputy Director of Administration
14 MAUREEN MAHONEY, Deputy Director of Policy and
15 Legislation
16 MICHAEL MACKO, Deputy Director of Enforcement
17 KRISTEN ANDERSON, Attorney
18 NEELOFER SHAIKH, Attorney
19 LIZ ALLEN, Special Advisor
20 KEVIN SABO, Moderator

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24 Transcribed by: **FOCUS INTERPRETING**

1 CALIFORNIA PRIVACY PROTECTION AGENCY

2 TRANSCRIBED RECORDED PUBLIC MEETING

3 JULY 14, 2023

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5 **MS. JENNIFER URBAN:** Wonderful. Thank you so much. Good
6 morning, everybody. Welcome to this meeting of the California
7 Privacy Protection Agency Board. It is July 14th, 2023, at 10:02 AM.
8 My name is Jennifer Urban, and I'm the Chairperson of the Board.
9 I'm very pleased to be here in person with the Board and maybe one
10 member of the public or two to welcome many of you via Zoom as
11 well. This is our first in-person meeting in some time. Before we
12 get started with the substance, I have some logistical
13 announcements as well as my usual reminders related to the Bagley-
14 Keene Open Meeting Act. First, I'd like to ask everyone to please
15 check your microphone is muted when you're not speaking. Second,
16 I'd like to ask everyone who is here in person to turn off or
17 silence their cell phones to avoid interruption. Thank you for
18 doing that for us. And third, importantly, this meeting is being
19 recorded. We are strongly encouraging everyone to wear masks if
20 you're attending in person. We're not requiring this, just
21 encouraging it. COVID-19 is, of course, still with us, and we want
22 to avoid exposing vulnerable members of the community or
23 inadvertently making our public meetings less accessible to them.
24 Our temporary ability to meet remotely and still comply with
25 Bagley-Keene has expired and thus far has not been renewed by the
26 Legislature. This could, unfortunately, pose some serious
27 logistical issues for the Board's work on behalf of the public. If
28 a Board member tests positive, there is no option for that person

1 to join remotely. And thus, that would mean that a COVID-19-
2 positive Board member cannot safely participate in a public
3 meeting. This is exacerbated by the fact that our meetings are
4 noticed 10 days in advance under Bagley-Keene, and we cannot easily
5 reschedule, particularly when we have these hybrid in-person
6 meetings, which require a lot of resources to orchestrate. That
7 brings me to my second request, which is everyone please bear with
8 us with regard to any kinks as we run the meeting. Those of you who
9 joined us last June will recall that there were kinks on and off.
10 We have a crackerjack staff helping us with logistics, but it is
11 simply complicated to do a hybrid in-person and remote meeting. And
12 we really want and value the ability for the members of the public
13 to join us remotely. So, we have decided that we will deal with the
14 complexity in order to increase accessibility. In return, we ask
15 that you please bear with us if we have any glitches. If that
16 happens-- if, for example, the remote audio cuts out, we will pause
17 to fix it, and I will let you know how to let us know if there's an
18 issue in a minute. I also ask that you bear with me, having to look
19 at my laptop screen and sort of hide my face in order to access
20 materials for the meeting today. This is, in order to accommodate
21 some physical limitations that currently require an immobilizing
22 neck brace. I realize this is not ideal. Zoom would be far better,
23 but here we are. I greatly appreciate everyone bearing with us.
24 Alright, let's talk about logistics and meeting participation.
25 Today's meeting will be run according to the Bagley-Keene Open
26 Meeting Act as required by law. We will proceed through the agenda,
27 which is available as a handout here in Oakland and also on the
28 CPPA website. Look under meetings, and you can find all our

1 materials there. You may notice Board members accessing their
2 laptops, phones, or other devices during the meeting, as I am. We
3 are using those devices solely to access the Board meeting
4 materials if you see that. After each agenda item, there will be an
5 opportunity for questions and discussion by Board members. And I
6 will also ask for public comment on each agenda item. Each speaker
7 will be limited to three minutes per agenda item, and we also have
8 a designated time on the agenda for general public comment not tied
9 to a specific agenda item, and that's agenda item number 12. Today,
10 we have members attending online via Zoom and also in person. So
11 let me talk quickly about how to participate, and if you have any
12 questions, let us know and I'll be happy to repeat. If you're
13 attending via Zoom and you wish to speak on an item, please wait
14 till I call for public comments on that item and allow staff to
15 prepare for Zoom comment. Then, please use the 'Raise Your Hand'
16 function. It's in the reaction feature at the bottom of your Zoom
17 screen. If you wish to speak on an item and you're joining remotely
18 by phone, please press star 9 on your phone to show the moderator
19 that you are raising your hand. Our moderator will call your name
20 when it is your turn and request that you unmute yourself for
21 comment at that time. Those using the webinar can use the unmute
22 feature, and those dialing in by phone can press star 6 to unmute.
23 When your comment is completed, the moderator will mute you. Please
24 note, for those of you joining remotely, the Board will not be able
25 to see you, only hear your voice. Thus, it is helpful if you
26 identify yourself, but this is entirely voluntary, and you can
27 always use a pseudonym, including to input it into Zoom when you
28 log into the meeting. If you are attending in person and wish to

1 speak on an item, please wait for me to call for public comment and
2 then move towards the podium on my left here and form a line
3 keeping social distancing in place if you would. Please move to the
4 podium when you are called, speak in your turn. As with Zoom
5 attendees, of course it's helpful if you identify yourself when you
6 begin speaking, but of course, it is entirely voluntary, and you
7 are free to refer to yourself with a pseudonym or not to give a
8 name. Please speak into the microphone so that everyone
9 participating remotely can hear you, and your remarks can be
10 recorded in the meeting record. As I mentioned, the hybrid meeting
11 format is somewhat complex so in case we have technical
12 difficulties, I have some tips for everybody. First, I'd like to
13 thank the team managing all the technical aspects of this meeting
14 today. Ms. Trini Hurtado, welcome from LA, and Mr. Oscar Estrella
15 here in the Oakland office. Thank you so much, both of you. If you
16 are attending remotely and experience an issue with the remote
17 meeting, for example, the audio drops, please email
18 info@coppa.ca.gov. That's 'i', 'n' for Nancy, 'f' for Frank, 'o'
19 @coppa.ca.gov. This will be monitored throughout the meeting, and
20 if there's an issue that affects the remote meeting, we will pause
21 it to let our technical staff work on fixing the issue. The Board
22 welcomes public comment on every item on the agenda, and it is our
23 intent to ask for public comment prior to voting on any agenda
24 item. If, for some reason, I forget to ask for public comment and
25 you wish to speak on the item, please let us know by using the
26 'Raise Your Hand' function if you're on Zoom or coming to the
27 podium and raising your hand if you're here in person to let me
28 know that I forgot, and you will either be called on or called to

1 the podium to provide your comment. Once again, speakers are
2 limited to three minutes per agenda item, and if you are speaking
3 on an agenda item, both Board members and members of the public
4 must contain their comments to that agenda item. Relatedly, I'd
5 like to remind everyone of some of the rules of the road under
6 Bagley-Keene. We can only speak about agenda items under each item
7 because we can discuss agendized items only so that the public has
8 proper notice of the topics of the meeting. The public only can
9 bring up additional topics when we bring up the agenda item for
10 that purpose, which I mentioned was item 12 today. But we won't be
11 able to, as Board members, respond. We can only listen. You can
12 also bring up items for future meetings when the Board takes up an
13 agenda item designated for that purpose, which is number 13 today.
14 Alright, we have quite a full agenda today, and I will be moving
15 the discussion along. We will take breaks as needed, including one
16 for lunch. I will announce each break and the earliest that we
17 could plan to return so that everybody can feel confident that they
18 can take a break as well and come back before we begin again.
19 Please note that agenda item number 14 today is a closed session
20 item. To most efficiently use everyone's time, I'm planning to take
21 that item out of order and discuss it during lunch. I'll keep an
22 eye on timing and take other items out of order if needed as well.
23 My thanks to our Board members for their service and all the people
24 working to make the meeting possible. In addition to the team of
25 technical and conference experts today, I'd like to thank Mr.
26 Philip Laird, who's our meeting counsel today, Mr. Ashkan Soltani,
27 who's here in our capacity as executive director, and other staff
28 members who will have prepared guidance for us today and you will

1 hear from as we go along. I'd also like to thank and welcome our
2 moderator, Mr. Kevin Sabo, and ask him to now please conduct the
3 roll call.

4 **MR. KEVIN SABO:** Board member de la Torre?

5 **MS. LYDIA DE LA TORRE:** De la Torre present.

6 **MR. SABO:** Board member Le?

7 **MR. VINHCENT LE:** Present.

8 **MR. SABO:** Le present. Board member Mactaggart? Chair Urban?

9 **MS. URBAN:** Present.

10 **MR. SABO:** Urban present. Madam Chair, you have three presents
11 and one absence.

12 **MS. URBAN:** Thank you very much, Mr. Sabo. The Board has
13 established a quorum. I'd like to let my other Board members know
14 that we will take a roll call vote on any action items. And with
15 that, let's move to agenda item number 2, which is an update from
16 the chairperson. I have one item to provide an update on, on the
17 Agency's strategic planning effort. Last meeting, I was delighted
18 to announce the contracting process had closed, and we would be
19 able to start the process, and it is underway as follows: the
20 contractor Sorello is currently undertaking the discovery phase of
21 the project, which includes collecting input from all levels of the
22 Agency and organization. Sorello team members met individually with
23 Board members and most of senior staff leadership in June and early
24 July. Thanks to everyone who took the time to provide their input
25 to the team. Sorello is now surveying staff more broadly and is on
26 track to complete the discovery phase by September. The next step
27 for our purposes, to my fellow Board members, will be for Sorello
28 to share preliminary themes from the discovery phase with us at our

1 September meeting. And after that, organizational goals and
2 objectives will be drafted for preliminary review with Board
3 members and senior staff by later in the fall. My many thanks to
4 Deputy Director of Administration Von Chitambira for putting this
5 together and shepherding the process so efficiently and capably.
6 Are there any questions or comments from Board members? Okay, thank
7 you. Is there any public comment? If you're here in person, walk up
8 to the podium. If you're on Zoom, please raise your hand.

9 **MR. SABO:** Item 2: if you'd like to make a comment at this
10 time, please raise your hand using Zoom's 'Raise Hand' feature by
11 pressing star 9 on your phone. Again, this is for agenda item 2,
12 Chairperson's Update. If you'd like to make a comment, please raise
13 your hand. Madam Chair, I'm not seeing any hands at this time.

14 **MS. URBAN:** Okay, thank you very much. We will now move then to
15 agenda item number 3. Please turn your attention to the materials
16 for this item. Executive Director Soltani and Deputy Director of
17 Administration Chitambira have prepared for us a budget update and
18 some planning for the next fiscal year. Thank you very much to both
19 of you for preparing this for us, and I will turn it over to you.

20 **MS. VON CHITAMBIRA:** We'll be providing an overview of the--
21 [inaudible]

22 **MS. CHITAMBIRA:** Okay, let's try again. I think it's better.

23 **MR. ASHKAN SOLTANI:** Yeah.

24 **MS. CHITAMBIRA:** Good morning, Executive Director Soltani and I
25 will be providing an overview of the fiscal year 22-23 budget and
26 spending. We'll discuss the current year budget for 23-24 and
27 present some future plans for 24-25, our prospective budget,
28 beginning with the 22-23 budget summary.

1 **MR. SOLTANI:** The clicker's not working, Kevin. Mr. Sabo, could
2 you all tab to the-- I think perhaps the clicker doesn't work from
3 here. So, we'll just ask you to advance. So, can you go to the next
4 slide, please?

5 **MS. CHITAMBIRA:** And the next one. Thank you. Our total budget
6 authority for fiscal year 22-23 was \$10,852,000. This was
7 comprised of our \$10 million annual appropriation per statute. We
8 had
9 \$616,000 continuing appropriation from Fund 501 and \$236,000 from
10 Department of Finance drills. These are routine employee drills,
11 which included salaries, benefits, and retirement adjustments. In
12 alignment with our statute, we pursued a contract for media and
13 outreach services, but due to delay in contracting processes, we
14 sought to appropriate those funds for fiscal year 23-24. Mr.
15 Soltani will go into more detail to outline when he presents the
16 current budget for 23-24 fiscal year, and that summarizes our
17 budget for 22-23. Moving on to the expenditures: personal costs
18 are usually the biggest expense, and this is true for CPPA. The
19 majority of our expenditures were spent on salaries and benefits
20 for a total of 67 percent. It was 46 percent in salaries and 21
21 percent in benefits. Personnel costs are followed by
22 interdepartmental costs, which came up at 22 percent of our total
23 expenditures. As you may know, we are continuing to leverage our
24 contracts with DCA and DGS for services in IT, HR, fiscal
25 services, and procurement, and these fees also include Attorney
26 General fees. Five percent was spent in external contracts. Some
27 of the contracts included economic analysis, transcription
28 services, as well as strategic planning, and general expense items
are miscellaneous costs associated with everyday operations of
CPPA. Now, I'll hand

1 over to Mr. Soltani to present the current year budget.

2 **MR. SOLTANI:** Thank you, Ms. Chitambira. Great, next slide,
3 please. Thank you all. As I outlined in March in our March meeting,
4 there are multiple places where the budget is created throughout
5 the year. In the March meeting, we outlined that in our fall BCP
6 request, we requested approval for position authority for our
7 Enforcement team, for IT team, but did not request any increase in
8 appropriation beyond our standard fiscal drills that Ms. Chitambira
9 outlined. At that time, Department of Finance approved position
10 authority for seven positions, including five positions in our
11 Enforcement Divisions and two positions in our IT Division to
12 support both the Agency's IT operations as well as the complaint
13 system and enforcement-related IT needs. Next slide, please.
14 Following that meeting, the Board directed the Agency to pursue a
15 one-time cost-of-living adjustment as well as a true-up or past
16 year cost-of-living adjustments in order to reflect the intent of
17 the statute. As such, the Agency requested that cost-of-living
18 adjustment, including past years, and I can outline what those
19 percentages were if the Board wants to delve into deeper. In
20 addition, we requested additional staffing for both enforcement and
21 auditing to best utilize those funds and undertake the Agency's
22 enforcement and auditing functions. As such, we requested and were
23 granted additional position authority for a Chief Counsel in
24 Enforcement, Staff Services Manager I in the enforcement and
25 complaint system, and then a Legal Analyst or legal support to
26 support enforcement efforts as well. We also requested two IT Spec
27 II, or-- sorry-- IT Spec III-- ITS III, which we found to be the
28 closest in classification to what we consider technologists to help

1 investigate and support enforcement activities. In addition, we
2 requested an IT Spec III and a Senior Management Auditor in our
3 Audits Division to also support auditing and the audit function
4 similarly. Next slide, please. As I mentioned, we requested in our
5 May Revise a cost-of-living adjustment under section 1798.199.95.
6 Per the Board's direction, we requested to increase the Agency's
7 budget by cumulative COLA for fiscal years 21-22, 22-23, and 23-24,
8 and a one-time true-up for previously unrequested years. In return,
9 we received \$1,215,000 for cumulative COLA and \$600,000 for the
10 one-time true-up COLA. Next slide, please. In summary, the proposed
11 23-24 budget appropriation was \$12,060,000. In addition, as Ms.
12 Chitambira mentioned, we've received a re-appropriation of 22-23
13 funds for our media and outreach contract, which we hope to have a
14 resolution on in the next coming months. In summary, next slide,
15 please. We have now position authority created for 14 additional
16 positions for 23-24. This includes approximately 10 positions in
17 our Enforcement Division, two positions in our IT Division, and two
18 positions in our Audits Division. Moving on, looking forward for
19 our 23-24 prospective budget request, as we've outlined in previous
20 meetings, staff will prepare and propose BCP requests, or budget
21 requests, to the governor as part of the fall BCP process. This
22 process typically begins in August, and then the governor publishes
23 the budget in January of the following year, at which point the
24 Board will revisit and review the approved budget request. Our
25 Agency's position is that we will maintain the same general
26 staffing levels as we expect in this current year to fulfill and
27 expediently fill the open positions. As I mentioned, we have around
28 14 open positions, a number of them currently active in

1 recruitment. We do expect and to consider moving contracting
2 services in-house potentially next year or the year after. As the
3 Board may know, we currently rely on DGS OBAS, or the Office of
4 Business and Acquisition Services, for our procurement. And we've
5 have-- we've experienced that as our Agency grows, the number of
6 contracts and the speed with which our contracts can get approved
7 has caused some delays in our contracting process, including our
8 media and outreach. Staff is currently evaluating what it would
9 take to bring contracting services in-house and at least achieve
10 tier-one purchase authority for the Agency. We are also evaluating
11 increased costs in litigation that we may incur and with an eye
12 towards requesting additional funds if necessary. Lastly, as I
13 mentioned, we did receive the COLA adjustments for both past years
14 as well as the current year COLA adjustment. Yet that process for
15 the COLA adjustment still requires that we request it through our
16 BCP. Staff will, at the Board's direction, potentially pursue
17 trailer bill language to memorialize the automatic COLA adjustments
18 so that it's not necessary to request it each year but that it's
19 automatically adjusted as the statute intended. As the Board knows,
20 we plan to do this in the fall some or all of these requests per
21 the Board's direction. We expect the January budget to be
22 published, and then we'll have an opportunity in the spring and May
23 to revise should any unforeseen adjustments be needed. And with
24 that, I'll leave it to the Board. Thank you.

25 **MS. URBAN:** Thank you very much, Mr. Soltani and Ms.
26 Chitambira, both for the presentation, which I appreciate. I think
27 it hit a nice level of detail to give us the information we needed
28 without burying us in the detail and for all the work that I can

1 only imagine must have gone into this year's budget process. You
2 know, as a new agency needing to ask for the true-up and the catch-
3 up COLA and all of that, I realize it's outside of the standard
4 practice and process. And I can imagine that there was just a
5 tremendous amount of work behind the scenes to do that for the
6 Agency so I really appreciate that, and I appreciate all the
7 efforts with our partners in the Department of Finance and
8 everybody I'm leaving out because, you know, you have made this
9 thankfully fairly invisible to us in terms of the work that goes
10 into it. So, thank you very much for that and also for maintaining
11 the budget for our public awareness contract, which we've all, you
12 know, reiterated in multiple Board meetings, and I know staff
13 shares, that we think this is a big priority so being able to deal
14 with the contracting issues, which were not your fault, and
15 maintain that budget, I think is really important. So, thank you
16 very much for all of that. Comments, questions from Mr. Le or Ms.
17 de la Torre? Yes, Mr. Le?

18 **MR. LE:** Yeah. I just wanted to add that, you know, good job on
19 getting the cost-of-living adjustment. I would support getting that
20 memorialized in budget trailer bill language so you don't have to
21 do it through the BCP every year. I had a quick question on the IT
22 positions. You know, I think it's exciting that we're pursuing
23 that, and I'm curious if you have any more details on what kind of
24 role they would be playing in enforcement and audits.

25 **MR. SOLTANI:** Is this on? Great. And as I said, there's kind of
26 two categories-- three categories of IT positions. One are the what
27 we requested as part of the original fall BCP. Those are to support
28 the complaint system. You all will be getting a brief presentation

1 of the in-house complaint system, kind of our VI complaint system,
2 and then we plan to grow that out and grow out that function of
3 receiving and responding to consumer complaints as we require in
4 the statute. We're also contemplating our IT posture generally and
5 how we manage it so that was one category. The second two
6 categories, the ITS IIIs that I mentioned, those are what I
7 consider technologists. As you all know, I'm myself a technologist.
8 I think effective enforcement in this space will require both legal
9 expertise as well as technical expertise. Unfortunately, there's no
10 classification in the state system for technologists. They're--
11 they are kind of, you know, either your IT guy that fixes your
12 printers or, you know, there's some sense of policy technology, but
13 there's not really kind of these auditors-investigators as we see.
14 So, we've found that the ITS III classification is the closest of
15 that role, and we intend to provide two ITS III resources in
16 enforcement, and they'll be working within enforcement, and then
17 two in the Audit Division under the chief auditor. And those will
18 function more of a generalized informing the Agency, providing
19 expertise across the Agency, whereas enforcement, as you know, will
20 be siloed within enforcement. Separately, I do intend, and Ms.
21 Chitambira has been supportive, we're hoping to work with CalHR to
22 at some point establish a technologist role. I tried to do this in
23 the federal government as well, and there's a lot of efforts to
24 essentially make homes. This is kind of a pet project of mine to
25 make-- to recognize that this is a unique skillset. I understand
26 that to be a year- or two-year process at best to kind of create a
27 new classification. But for the interim, we're seeking ITS IIIs to
28 fill the kind of investigator-auditor roles.

1 **MR. LE:** Great. Thank you.

2 **MS. URBAN:** Thank you. And I certainly support expanding the
3 available roles in state government to allow for this. It seems
4 necessary-- necessary now for probably 20 years or more that we've
5 needed roles like this so appreciate your efforts there as well.
6 Ms. de la Torre, did you want to weigh in?

7 **MS. DE LA TORRE:** Yes. Yes. Quickly, first of all--

8 **MR. SOLTANI:** Microphone?

9 **MS. DE LA TORRE:** Is it working? Okay, great. First of all, I
10 am really thankful to Member Mactaggart, who is not here today, for
11 bringing up the possibility of obtaining the additional funds for
12 the COLA and the true-up. And I'm very thankful to Mr. Soltani for
13 actually going back to the Office of the Governor and getting it
14 through the process. I know it was not easy, and I very much
15 appreciate the effort. It resulted in us having significant extra
16 funds that can be put to good use with a growing team and the needs
17 of the Agency so thanks. Second, I really want to echo the words of
18 Mr. Soltani around the need for technologists, particularly in our
19 area. Privacy and data protection are so driven by understanding
20 what is happening behind the scenes with technology. And even
21 though I'm a lawyer and we have very talented lawyers with us in
22 the organization, the support of somebody with the knowledge of the
23 technology will be fundamental for them to be able to effectively
24 prosecute and also educate the public so thank you for bringing
25 that up and for those efforts. I fully support them. I have one
26 question on the budget. When I was looking at the pie chart here of
27 expenditures, I didn't see an expenditure for offices or renting an
28 office, and I wonder if maybe it's included within one of these

1 areas, and what is our current cost and what is our projection
2 towards the future if we think about moving to more of a hybrid
3 situation where maybe we have offices available for our staff to be
4 present at least some days out of the week in different locations
5 where they are currently living. Thank you so much.

6 **MR. SOLTANI:** It's a great question. So, the current office
7 expenditures contracts are encompassed or consumed in the
8 interdepartmental contracts at 22 percent of the pie chart. We've
9 spent on average \$29,000 on our inter-agency agreement with the
10 Department of Financial Protection and Innovation for the office
11 space we're maintaining, and we have a kind of great situation
12 right now. As a result of that arrangement, we have office spaces
13 as our headquarters in Sacramento, as well as offices in San
14 Francisco here and in Los Angeles. It allows staff to come in as
15 necessary to those locations because DFPI has such a broad presence
16 in the state. Moving forward, as we seek to potentially change our
17 arrangement and either pursue in-house kind of our own headquarters
18 formally or augmented relationship with DFPI, we will need to build
19 into the budget those additional funds. On average, it's about
20 \$10,000 per employee, and so we will build in those funds as we
21 seek to move into facilities. We're still for 23-24, anticipating
22 not yet necessarily moving into facilities, but beginning that
23 process because, as you might know, it's a multi-year process.
24 Usually, five years is the best guess, but the state is going
25 through some changes right now because of hybrid and telework, and
26 so there's some flexibility. If the Board has thoughts on
27 facilities, I think it's valuable. We find that, as a, you know,
28 digital agency, the fact that we came up during the pandemic but

1 also a lot of the space that we regulate is-- operates on the
2 Internet virtually as well as businesses in-house, it's beneficial
3 for us to maintain at least a hybrid presence because it allows
4 flexibility. It gives us a strategic hiring advantage across the
5 state as well because people value telework, and it works quite
6 effectively for us. So, our team is right now telework, and we
7 found that really helpful, but I'm happy to take the Board's
8 guidance. And to your point, the contracting costs are currently
9 consumed in that 22 percent, and they may grow depending on our
10 desire for being in presence-- in a physical presence more or less.

11 **MS. DE LA TORRE:** Just for clarity, when you said \$29,000 a
12 month-- that's a year? Oh my gosh, that's definitely a good deal.
13 And then \$10,000 per employee, that would be, moving forward, will
14 we project that yearly as an expense based on-- okay. And we have
15 foreseen that it might increase, and we have space to allocate that
16 within our budget based on the conversation? Thank you so much for
17 that update. I'm not sure if the other members have thoughts on the
18 hybrid. I fully support the idea of continuing some form of hybrid.
19 I see the advantage that Mr. Soltani mentioned can create in terms
20 of making a workforce that's more diverse and that is more
21 expansive in terms of where they are located. But at the same time,
22 I think that it is important to start thinking about some form of
23 in-office presence. Maybe there's a balance to it. Maybe it's two
24 days out of the week, three days out of the week, so that the teams
25 can just be together and work through things. I will assume that's
26 particularly important for enforcement as they will be dealing with
27 documentation that's quite confidential and maybe at home might not
28 be ideal. I'm not an expert on that. We, thankfully, have hired

1 somebody who's an expert and definitely should be the person that
2 decides that. But I'm just generally thankful that this is
3 something that we're aware of, that we are planning for, and that
4 we will take the time to develop so that we end up where we still
5 offer flexibility to our employees while strengthening our culture
6 and making sure there's connectivity within the team. Thank you so
7 much.

8 **MR. LE:** Yeah, similar thoughts. You know, I think the hybrid
9 model works. You know whether or not you go in two days a week or
10 how that would work, I think the idea about building culture is
11 really important. So, you know, there are other ways to do that,
12 whether there's, you know, organizational retreats or, you know,
13 building that into the budget so the full staff can get together
14 and build those connections and trust so that the work works
15 better. So, you know, I would support building that kind of-- those
16 kinds of things into the budget, maybe with the savings from not
17 having, you know, \$10,000 per employee for one office that may not
18 work for all of the employees. So yeah, I think as the Agency grows
19 more, that-- that's something that we probably need to revisit. I
20 think it seems to be working well now. It's a small agency. We're
21 growing. So yeah, appreciate the information.

22 **MS. URBAN:** Thank you very much, Ms. de la Torre and Mr. Le.
23 So, Ms. de la Torre asked my question, which was where is space in
24 the pie chart? So, thank you, Ms. de la Torre. Also, we do have the
25 architectural revolving fund still, correct? And we'll be able to
26 maintain that, and that covers-- it doesn't cover rent, but it
27 covers things like remodeling. If, for example, we wanted to take a
28 more permanent-- like have a more permanent space or remodel

1 something that we're leasing so that we had a hearing room and that
2 kind of thing. Okay. So that's wonderful. You know, I really think
3 it's in staff's ambit to think about the best way to organize work:
4 hybrid work or in-person work. I really commend you all for the
5 culture that you've built and certainly do take the point that, as
6 we grow, things might change, but I think that's very much within
7 the ambit of the staff in my view. And I really appreciate you
8 thinking ahead for all of this and stewarding our resources so
9 carefully. Are there other comments or questions from Board
10 members?

11 **MS. DE LA TORRE:** No.

12 **MS. URBAN:** Great. Thank you. Are there comments or questions
13 or-- sorry, are there any comments from the public?

14 **MR. SABO:** We're on agenda item 3. If you would like to make a
15 comment at this time, please raise your hand using Zoom's 'Raise
16 Hand' feature by pressing star 9 on your phone. Again, this is for
17 agenda item 3, Budget Update and Planning. This is the last call
18 for public comment on agenda item 3, Budget Update and Planning. If
19 you'd like to speak, please raise your hand using Zoom's 'Raise
20 Hand' feature or by pressing star 9 on your phone. Madam Chair, I'm
21 not seeing any hands.

22 **MS. URBAN:** Alright. Thanks so much to everybody. Thanks again,
23 both to Deputy-- Deputy Director Chitambira and Executive Director
24 Soltani and all the staff who worked with you on the budget this
25 year and will work with you on an ongoing basis. We really
26 appreciate it, and we'll be looking forward to hearing about the
27 trailer bill and updates when it's appropriate in our standard
28 calendar and, of course, in any meeting as you need to bring it to

1 us so thank you again for that. Sure.

2 **MR. SOLTANI:** Seems to be just with her microphone, there's a
3 little bit of glitching.

4 **MS. URBAN:** Oh, is it like cutting out?

5 **MR. SOLTANI:** I don't know if it's your laptop in the way or
6 just your batteries. I'm not totally sure.

7 [inaudible]

8 **MR. SOLTANI:** Say something?

9 **MS. URBAN:** Sure, okay.

10 **MR. SOLTANI:** Good.

11 **MS. URBAN:** Great. Thanks for letting me know. Just let me know
12 if it happens again and I'll stop. So, thanks again to everybody
13 and, with that, let's move to agenda item number 4. This is a
14 legislative update and a discussion about authorizing the
15 California Privacy Protection Agency's position on pending
16 legislation. This will be presented by Deputy Director-- oh, sorry.

17 **MR. SOLTANI:** Yeah, let's give it one second. Sorry.

18 [inaudible]

19 **MS. URBAN:** I can't look down so I can't-- [inaudible] Okay,
20 testing. Is this better? Interesting. I can't hear it as well.

21 **MR. LE:** Yeah.

22 **MS. URBAN:** But it seems as though it's better for everybody
23 else. Excellent. Alright. Thanks, everyone. That was our first
24 glitch. Let's-- let's hope that it's the only one, but we'll be
25 ready for more. So please, let's move to agenda item number 4,
26 which is a legislative update and a discussion about the California
27 Privacy Protection Agency's position on pending legislation, which
28 will be given to us by Maureen Mahoney, our Deputy Director of

1 Policy and Legislation. Please turn your attention to the materials
2 for this discussion under agenda item 4. And please note there is
3 an updated memo from this week because the Legislature is active
4 and made some amendments to one of the pieces of legislation. With
5 that, Ms. Mahoney, please take it away.

6 **MS. MAUREEN MAHONEY:** Thank you, Chairperson and members of the
7 Board. I'll first give a brief update on the federal landscape
8 before turning to California bills. So just a brief overview, it
9 should be under five minutes. So first, federally, with respect to
10 the American Data Privacy and Protection Act, or ADPPA, as you
11 know, the Board last year voted to oppose that legislation in its
12 current form over concerns over its sweeping preemption language.
13 In my update at the last Board meeting in May, I noted that the
14 bill had not yet been reintroduced this legislative session,
15 suggesting that stakeholders are still negotiating the language for
16 the bill, and that's still the case. The bill has not yet been
17 reintroduced. So, we're going to keep an eye on that as well as
18 children's privacy legislation and discussions over AI but no major
19 developments on that front. I did want to flag that we are
20 monitoring a partisan bill from the House Financial Services
21 Committee that updates the Gramm-Leach-Bliley Act, the federal
22 financial privacy legislation, but has concerning language that
23 seeks to preempt state privacy laws with respect to financial
24 institutions and their collection and disclosure of personal
25 information so we're keeping an eye on that bill as well and its
26 potential progress out of the House. Now, turning to California
27 bills that staff proposes to take a position on-- the proposals the
28 Board take a position on, these are all bills that I mentioned at

1 the last Board meeting in May. Staff selected the bills based on
2 whether they directly affect the Agency and its operations. Staff
3 has a support recommendation on all but one of them. Brief memos on
4 each are in the meeting materials, including an updated memo on SB
5 544. As the chairperson just mentioned, that has to do with Bagley-
6 Keene and teleconferencing. All advanced out of the first house.
7 They've advanced out of policy committees in the second house, and
8 the next steps are that the bills, if they haven't already, would
9 need to advance out of Appropriations by August 15th, then clear the
10 Legislature by September 14th, and then the governor would have a
11 month to make a determination on those. All of these would go into
12 effect January 1, 2024, although SB 362, the data broker deletion
13 bill, has provisions that become operational at a later date. So,
14 I'll just quickly give a description of each. AB 947 would add the
15 phrase "immigration or citizenship status" to the definition of
16 sensitive personal information under the CCPA. I'll note that since
17 the memo was published, the bill has advanced out of Appropriations
18 to the Senate floor so that's just one vote away-- one successful
19 vote away from clearing the Legislature. AB 1546 would align the AG
20 statute of limitations with the Agency's so raising the AG's
21 statute of limitations under the CCPA from one year to five years.
22 AB 1194 would strengthen reproductive privacy protections by
23 clarifying that certain CCPA exemptions--

24 **MS. DE LA TORRE:** Let me interrupt you for a second. Is there
25 materials that we can use to follow the bills that you're
26 mentioning? I'm a little lost in terms of finding them.

27 **MS. MAHONEY:** Yes, so I'm kind of going off the memo that we
28 put together that should be in the meeting materials, but it looks

1 like Mr. Soltani has some.

2 **MS. DE LA TORRE:** And so-- which bill are we talking about,
3 sorry?

4 **MS. MAHONEY:** Sure, so I just wanted to give kind of a brief
5 one-line summary of each bill that's described in the collective
6 memos in the meeting materials. So, now I'm-- so I went through
7 947, which adds immigration and citizenship status to the
8 definition of sensitive personal information, AB 1546, which would
9 extend the AG's statute of limitations to bring it into alignment
10 with the Agency's. AB 1194 would strengthen reproductive privacy
11 protections by clarifying that certain CCPA exemptions don't apply
12 when they have to do with searching for or procuring contraception
13 or abortion services, for example. SB 362 transfers the data broker
14 registry to the Agency and directs the Agency to create a global
15 deletion mechanism so that consumers in a single step can delete
16 their information that's held by data brokers, similar in concept
17 to the opt-out preference signal. Since the memo was published, the
18 bill has advanced to Assembly Appropriations. And then finally, SB
19 544 in its previous iteration would allow state agencies to hold
20 Board meetings by teleconference, would require a minimum of one
21 staffer to be in a physical location where members of the public
22 could address the board. Since the original memo was published, the
23 author has accepted amendments proposed by the Assembly
24 Governmental Operations Committee to sunset the bill on January 1,
25 2026, and to require that a majority of the board members be at the
26 same physical location at at least half of the board meetings in
27 one year. So, with the latter amendment, staff have changed their
28 recommended position to support if amended to remove that quorum

1 requirement, and that bill has advanced to Assembly Appropriations.
2 So, this concludes my-- my brief presentation, but I'm happy to
3 answer any questions.

4 **MS. URBAN:** Thank you very much, Ms. Mahoney. The memos were
5 extremely helpful. Thank you so much for that and for keeping track
6 of these bills for us. Mr. Le or Ms. de la Torre, did you have
7 questions? I know she just gave a very brief overview verbally.

8 **MR. LE:** I actually don't have one on these, but I did have a
9 question about the GLBA expansion. You know, how fast is that
10 moving? And does, you know-- I guess it's not-- since we don't have
11 a memo, it might be tough to get authorization to oppose that, but,
12 you know, I have read that it does seem to expand the definition
13 of, you know, financial information to preempt a lot of what we
14 want to do here to protect consumers in California so I just had a
15 little bit more information on that bill would be helpful for me.

16 **MS. MAHONEY:** Sure, absolutely. So, in terms of the content of
17 the bill, again, it's seeking to update Gramm-Leach-Bliley Act so
18 adding provisions like access to information and deletion. But,
19 again, the really concerning aspect is this sweeping preemption
20 language that seeks to preempt state privacy law with respect to
21 collection and disclosure of information, privacy policies, access,
22 deletion, and international data-sharing. In terms of progress,
23 again, it's a partisan bill. It has advanced out of the House
24 Financial Services Committee so, you know, it's sponsored by the
25 House Financial Services Committee and advanced from that. It was
26 filed last week as a potential amendment to the National Defense
27 Authorization Act so that kind of piqued our attention. You know,
28 it wasn't accepted as a potential amendment to be voted on so it

1 doesn't appear to be-- that it's going to be added as a must-pass
2 bill, but, you know, we just wanted to flag to keep an eye on that.
3 Since it is a Republican bill, and it's a Republican House, you
4 could see it move out of the House, and we wanted to prepare you
5 for that possibility. But, again, since the Senate is Democratic,
6 it seems less likely that it would ultimately advance in contrast
7 to a bipartisan bill.

8 **MR. LE:** Thank you.

9 **MS. URBAN:** Thank you, Ms. Mahoney. And I appreciate that
10 you're keeping an eye on this. I think it will be really important
11 to maintain visibility into it and maintain visibility as to how it
12 intersects with our 1798.145, I think it is, because we do have
13 some exemptions, right? And I think it will be important for the
14 drafters to understand that if it starts to-- if it starts to
15 advance, they may be doing more than they thought they were doing
16 and would encourage you to let us know-- let me know if it turns
17 out that, in your judgment, you think that it-- we really do need
18 to take a position, and I can work with the Board members to see if
19 we can do a short-- I can't remember what they're called but one of
20 those meetings that we did last-- last July where there's-- maybe
21 you meet with maybe a little bit less lead time in order to
22 consider just that. So, I think we would all support your continued
23 work on that bill as well as all of these. With regards to the data
24 broker bill, I apologize, I just got a little bit lost. You said
25 there was an update so it-- it-- it has now gone through
26 Appropriations in the other house?

27 **MS. MAHONEY:** No, I think in my memo I noted that it was
28 currently in Assembly Judiciary, but it moved out of Assembly

1 Judiciary and is now in Assembly Appropriations so it would need to
2 move out of that committee by the middle of August. And then we'll
3 have to have votes on the full floor of the Assembly and then
4 concurrence in the Senate before it would go to the governor.

5 **MS. URBAN:** Okay, wonderful. Thank you very much. And the data
6 broker registry currently exists. It currently exists under the
7 auspices of the DOJ, and this bill would move it so that it would
8 be under the auspices of the CPCPA in addition to the other things
9 that are above those. Okay, wonderful. Thank you very much. Are
10 there any other questions or comments from the Board, or shall we
11 ask Ms. Mahoney to offer her recommendations?

12 **MS. DE LA TORRE:** I have a few questions. On the GLBA federal
13 bill, I will appreciate it if we could get a memo to have a better
14 understanding of what the bill covers. I have not had an
15 opportunity to read it. I am open to having a conversation about
16 it, of course, and learn from our deputy director, but I do not see
17 authority as the only consideration whether we have the authority
18 to regulate or the federal government has authority to regulate. I
19 think that a good or a better perspective, from my-- in my opinion,
20 is how will consumers' privacy be advanced or not if that bill is
21 enacted? If the consumer privacy rights are strengthened or even if
22 they are equal and we feel that they have sufficient protections,
23 centralizing regulation of financial institutions might not
24 necessarily be something per se that I see as negative. It's been
25 interesting to see how the industry evolves through all of these
26 different state privacy bills that have been enacted and-- and
27 sometimes it's-- it's not making the disclosures to the customers
28 not as clear as I would hope they could be. So, I'm open to listen

1 to and interested in listening to the arguments that you might have
2 in favor or against supporting that-- that bill or-- or opposing
3 that bill, but I just need more information basically. And then I'm
4 not sure how that can be arranged whether it's an internal thing or
5 maybe that's something that has to come to a different calendar. I
6 leave that to the staff to determine and the chair to determine.
7 The second question that I had is on the-- there's a set of bills
8 that we received information for in advance that are privacy bills
9 that are now advancing through the Legislature here in California.
10 And I read the memos, and I find them really helpful. I see reasons
11 to support all of those views. The question that I had in my mind
12 is there's a larger universe of privacy bills that have been
13 proposed this year, and I was not clear as to why some of them have
14 not received our support in the same way that these have. And what
15 would be helpful for me is if we could distill a set of criteria
16 that we use to decide whether we support a bill or we do not
17 support the bill so that we have clarity from the Board perspective
18 and maybe an opportunity to listen to the criteria that just-- that
19 you might suggest and provide our feedback on that criteria. And
20 then if we could see a list of all the bills, which ones didn't
21 meet the criteria and therefore were not supported, which ones meet
22 the criteria and therefore we support, it's just-- I think it will
23 reflect better on us. It will help us make the case that we are
24 objectively analyzing all of these bills and taking a consistent
25 position across the bills, regardless of who is proposing the bill.
26 So for me, or maybe Member Le, if we happen to have a conversation
27 with an assemblyperson or a senator that has a bill that has been
28 proposed that didn't receive our support, it would be much easier,

1 I think, to verbalize an answer by saying, "Well, we have certain
2 criteria, and if your bill didn't receive support, it's likely
3 because it didn't meet our criteria," rather than just having, you
4 know, the understanding that definitely we want to support these
5 bills but not have full clarity on how the Agency is reasoning
6 through it. Does that make sense?

7 **MS. MAHONEY:** Yes, absolutely. So again, you know, the rubric
8 we use to select the bills was assessing whether or not they
9 directly affected the Agency and its operations. So, if there was a
10 privacy bill where the Agency doesn't have rulemaking authority or
11 the Agency doesn't have the authority to enforce, we didn't think
12 it was appropriate for us to necessarily take a position on that
13 bill or that it shouldn't be a top priority of the Agency as we're
14 still getting off the ground and routinizing our legislative
15 processes. But I definitely welcome feedback from the Board in
16 terms of the criteria that we're using to make a determination on
17 these bills. And I think it's a great idea to provide a list of,
18 you know, all of the potential privacy bills so that the Board is
19 aware of them, and I can better inform their feedback in terms of
20 criteria.

21 **MS. URBAN:** Mr. Le, please?

22 **MR. LE:** Yeah, I would like that as well. You know, I know not
23 every bill they're asking for, you know, the Agency's position,
24 but, you know, as they come up, you know, I think you did tell us
25 of some other bills that weren't tangentially-- like we didn't have
26 rulemaking authority over earlier this year-- [inaudible]
27 engagement. I know from working on the legislative side, the
28 agencies typically don't engage until it's-- it's much later in the

1 process because the bills change, costs change, there's staffing
2 issues. I know it's-- it's-- there's advantages to the Agency, and
3 I can tell from the other side that, you know, people would like
4 the agencies to engage earlier. So, I think it would be helpful to,
5 maybe not right now, but to get an explanation of like when do you
6 think it is best for-- for us to engage or when should we engage
7 earlier in the process? Because I do think there are advantages to
8 that as well in terms of, you know, maybe getting the drafters to
9 realize certain things earlier on so the language changes in a way
10 that is helpful or less hurtful to what we're trying to do here at
11 the Agency so, you know, definitely a strategic consideration. It's
12 not always best, I think, to engage at the very end, but I can see
13 why, you know, that's the case.

14 **MS. MAHONEY:** Yes, I think it'll definitely be an iterative
15 process as we're learning more. You know, as you said, we did want
16 to wait until the bills were in a more final form before taking a
17 position. But we've definitely heard feedback that it'd be better
18 for us to weigh in earlier so I definitely appreciate feedback from
19 the Board, and we may need to adjust moving forward.

20 **MS. URBAN:** Thank you. I appreciate all of this. I do think it
21 would be helpful. I wonder though how much of it would just be an
22 academic interest to have a more full set of the bills. I mean, I
23 do think it would be helpful. I would like to remind my fellow
24 Board members that under our list of sort of-- our list of powers
25 and responsibilities is providing technical advice to the
26 Legislature, and that is something that can happen at any time.
27 It's something-- if it's technical advice, it's something that
28 staff can do without us taking a position-- a position on a

1 specific thing, right? That requires the Board to meet and have a
2 discussion and take a position. That runs into logistical issues
3 with the fact that bills are just not baked for a while, among
4 other things, along with resources. I think that the criterion that
5 bills directly affect the operations of the Agency is a fair,
6 objective, and reasonable criterion. I really agree with Ms. de la
7 Torre's-- well, I don't want to mischaracterize because it was more
8 implied, I think, than stated specifically, but we wouldn't want to
9 sort of pick and choose based on who calls us or, you know, in
10 terms of what bills we pay attention to, and that's a very
11 objective criterion. I don't-- I'm not saying that we shouldn't
12 expand beyond that necessarily. I just do think that we do want to
13 be careful if we're going to move beyond that so I appreciate that
14 being the choice for this round. I mean, I think Ms. Mahoney,
15 you've heard sort of a request to think through it a little bit
16 more fully and advise us if you have further advice on that. But I
17 would like us to be thoughtful both in terms of the timing of the
18 bills and how resources are allocated and also in terms of how we
19 decide to take positions or not take positions on bills. Mr.
20 Soltani?

21 **MR. SOLTANI:** And I'll just add we also do get called towards
22 the end of the process to provide a fiscal summary on bills that
23 are determined to affect our agency.

24 **MS. URBAN:** Right.

25 **MR. SOLTANI:** And so usually the Legislature reaches out to our
26 team, and we provide that fiscal.

27 **MS. URBAN:** Right. Okay.

28 **MS. DE LA TORRE:** I just-- I just wanted to mention that, and

1 my-- my intuitive perspective, which I'm open to listening to the
2 Agency and other Board members, was that our mission should drive
3 what we support. And I read our mission as broad in terms of being
4 supportive of initiatives that improve the privacy of California
5 residents so I don't see necessarily that limiting our ability to
6 support bills to only those that are within the ambit of what
7 affects our agency is necessarily the path we should follow. Again,
8 I'm open to having that conversation, but intuitively, I will think
9 about it from the perspective of what is our mission and does this
10 bill farther our mission. And to the extent that that's the case, I
11 don't see a problem with being generous in terms of, you know,
12 providing support to multiple bills that de facto we believe will
13 improve the privacy of California residents. So, to give an
14 example, there's an active law in California that deals with
15 recordings of cameras worn by officers, right? That's completely
16 outside the [inaudible] of the scope of what we regulate, but I see
17 that those provisions could be beneficial to the privacy of
18 Californians. And there are so many important issues right now
19 with, you know, reproductive rights, with, you know, all of, you
20 know, a number of other things that I-- I-- I'm, again, just
21 expressing my intuition and open to hearing the more elaborated
22 comments of our deputy director. But I will be initially very open
23 to expressing support for things that may not necessarily affect
24 directly the Agency so long as they actually improve on the privacy
25 of the residents of California.

26 **MR. LE:** Yeah, I'll add on to that. You know, it just-- I-- I--
27 I get what you're saying, and I think, you know, in terms of
28 priority, yes, the-- and I think what should happen is the ones

1 that Agency is directly involved with should be prioritized.
2 Academically, I would like to know all of the universe of privacy
3 bills, and if there are some that like maybe the Agency should
4 support technically, maybe not in terms of an actual support, you
5 know, like-- like we're doing now with these bills, at least in the
6 earlier stages, can be like a, you know, also a priority but lower
7 than the ones that directly impact us. And I-- I do know there are
8 political considerations of supporting bills that outside of our
9 ambit. I don't see it that often, and I don't know all the reasons
10 why, but, you know, I think agencies typically are a little bit
11 averse, in my experience, to-- to doing that. So, you know, there
12 are, you know, additional considerations, but, I think, as you
13 said, I think we should prioritize the bills that affect us first
14 but also let the Board know, maybe not through like this-- these as
15 detailed memos-- at least a high-level understanding of what bills
16 do advance privacy or harm privacy even if they aren't directly
17 connected to the Agency's mission.

18 **MS. DE LA TORRE:** I just wanted to add my last comments. Thank
19 you so very much for all the great work that you have done. These
20 comments are just meant to support what you have been doing. I
21 think that the main summary, although I know Chair Urban is
22 probably much better at summarizing things than me, is a clear
23 understanding of our objective criteria and maybe having an
24 opportunity even to, if it's appropriate, build on it as a Board. I
25 think it will be really helpful for the agency to project the great
26 work that you're doing and help other stakeholders understand our
27 priorities and criteria. Thank you so much.

28 **MS. MAHONEY:** [inaudible] And the bills have to be out of

1 Appropriations by September 1st.

2 **MS. URBAN:** Okay.

3 **MS. MAHONEY:** It's a little bit longer.

4 **MS. URBAN:** Okay, and then they will still be active, right,
5 when we meet in September in our regular meeting?

6 **MS. DE LA TORRE:** I think they'll be active.

7 **MS. URBAN:** Maybe or maybe not, right? If they're active, they
8 will be active to offer a tautology. Yeah, and I mean I certainly
9 agree that, you know, our statute is very clear about our mission,
10 and there are certainly things outside of the-- of the criterion of
11 directly affecting the Agency's operations that may be bills that
12 we would want to take a formal position on. I just would like to
13 give staff the opportunity to analyze that and would welcome, you
14 know, any additional criteria that you would want us to discuss or
15 think about. And I think, you know, we're all kind of nerds and
16 would love to see that slate of bills so--

17 **MR. LE:** Yeah.

18 **MS. URBAN:** So that that's there. Okay, so with that, my
19 understanding from the memorandum, Ms. Mahoney, is that
20 recommendations are currently for the Agency to support AB 947, AB
21 1194, and AB 1546, and SB 362. And then we can talk about the-- the
22 one that we have revised recommendation for after that. That's the
23 recommendation?

24 **MS. MAHONEY:** Correct.

25 **MS. URBAN:** Alright, so what I propose is that we will have a
26 motion to authorize staff to continue to support that suite of
27 bills I just named and, even if they're amended, so long as the
28 amendment is still consistent with the objectives laid out in the

1 analysis and anything else we might want to add, and also to remove
2 support or oppose if there are amendments that take the bill away
3 from the staff's analysis and, in staff's discretion, is no longer
4 consistent with those objectives. And then we can talk about SB
5 544, I think it is. But that's what I propose that we consider now.
6 Okay?

7 **MR. LE:** I second.

8 **MS. URBAN:** Okay, great. Well, I haven't actually formulated a
9 motion yet.

10 **MR. LE:** Okay, fair enough.

11 **MS. URBAN:** Well, you know we might be able to do-- we might--
12 we could almost-- but let's--

13 **MR. LE:** We were close. We were close.

14 **MS. URBAN:** Yeah, let's make it clear. So may I have a motion
15 to approve Agency staff's recommendation to support as currently
16 drafted AB 947, AB 1194, AB 1546, and SB 362; and two, to authorize
17 staff to continue to support those bills if amended if the bills as
18 amended are consistent with the objectives laid out in staff
19 analysis and the discussion today in staff's discretion; and also
20 to authorize staff to remove support for or oppose any of the bills
21 if they are amended in such a way that in staff's discretion they
22 are no longer consistent with the objectives laid out in staff
23 analysis and discussion today.

24 **MR. LE:** I so move.

25 **MS. URBAN:** Thank you, Mr. Le. Do I have a second?

26 **MS. DE LA TORRE:** I second.

27 **MS. URBAN:** Thank you, Ms. de la Torre. I have a motion and a
28 second, and I realized that there's-- actually, I have to ask

1 counsel-- meeting counsel. I've never offered a motion myself. Can
2 I do that? Like, there's a lot of pressure on Mr. Le and Ms. de la
3 Torre today.

4 **MR. LAIRD:** That's quite alright.

5 **MS. URBAN:** Alright, so I can pinch-hit if they get tired of
6 it? Okay.

7 **MR. LAIRD:** Yes.

8 **MS. URBAN:** Great. Alright, so that's the motion that we have
9 on the table, and let's set that aside for a moment before we take
10 public comments so we can talk about SB 544. So, SB 544 is the bill
11 that would change the requirements under the Bagley-Keene Open
12 Meeting Act, originally to allow something that looked more like
13 the measures taken during the pandemic to allow boards and
14 commissions to meet remotely and has now been amended such that-- I
15 think I'm going to just ask you, Ms. Mahoney, to remind us of
16 exactly what happened, but I think it's at 50 percent of the
17 meetings in a year have to involve a physical quorum of board
18 members?

19 **MS. MAHONEY:** That's correct. So, two amendments, first to
20 sunset the bill January 1, 2026, and second, to require that a
21 majority of board members have to be in the same physical location
22 in at least 50 percent of the board meetings in a year.

23 **MS. URBAN:** Thank you, Ms. Mahoney. And this is not, I mean,
24 this is just a question in case you know the answer that the
25 sponsors of the amendments have for it. How do we know what's 50
26 percent of board meetings? We do have our regularized calendar, but
27 we expect we may have to have additional board meetings so for
28 every board meeting that we have, do we then have to have an in-

1 person board meeting?

2 **MS. MAHONEY:** I think that's one of the challenges that's posed
3 by the-- the amendment and why we're concerned about it. You know,
4 aside from the fact that it undermines the objectives of the bill
5 to ensure accessibility of board meetings, you know, both for board
6 members and for the public, it's not quite clear how that amendment
7 would work in practice.

8 **MS. URBAN:** Thank you. Mr. Sabo or Ms. Hurtado, can you tell us
9 how many people have joined us on Zoom?

10 **MR. SABO:** Two-hundred fifty-nine attendees.

11 **MS. URBAN:** Two-hundred fifty-nine attendees on Zoom. We have
12 fewer than 10 people here in person. I'm just going to mention the
13 statistics of our current meeting as we get into discussion. Ms. de
14 la Torre and Mr. Le, do you have comments or questions?

15 **MR. LE:** I would like to thank the members of the public that
16 came.

17 **MS. URBAN:** Yes, absolutely. We welcome you. We're glad to see
18 you.

19 **MR. LE:** You're welcome. Yes. But yes, there's much fewer than
20 10, I'll say that. And I, you know, I understand what, you know,
21 the Bagley-Keene meeting is trying to do, but I think since, you
22 know, that bill was first passed-- yeah, the-- the-- the need for
23 physical-only participation has-- has really lessened with, you
24 know, the rise of hybrid, you know, the hybrid meetings, and people
25 can participate just as well online so-- and I do think these
26 amendments make it kind of obviate a lot of the benefits of what
27 this SB 54-- SB 544 originally tried to do.

28 **MS. URBAN:** Thank you, Mr. Le. I agree with you. I have

1 mentioned this before, but I think it's time to mention it again
2 and perhaps in a little bit more detail. I am disappointed in the
3 Legislature for amending the bill in this way. Really disappointed
4 in its lack of attention to accessibility for people with
5 disabilities, for people with children, for people who have jobs
6 and are not able to make a long trip to a board meeting in a
7 reasonable way. I absolutely understand that there are benefits to
8 meeting in person. I really value seeing my fellow board members in
9 person, seeing staff in person, and seeing members of the public
10 who came today in person. There is a value there. There is also a
11 value in having both the meetings for the public and for members of
12 your commissions and boards as Californians to be drawn from the
13 entire population of the state. That includes people with
14 disabilities, and that includes people like me who had to, and, you
15 know, it's ironic because this is the privacy board, but, or the
16 board of the privacy agency but you know what? One of the things I
17 won't do is compromise other people's privacy so I'll talk about my
18 own situation. I have a connective tissue disorder. It is
19 physically very difficult for me to get to these meetings
20 currently. It is very painful for me to ride in a car. Now if I had
21 not already joined the Board and I had to do this on a regular
22 basis, if I had to fly to LA, for example, this may be something
23 that I would not reasonably be able to do, and I'm only one
24 example. There are people who have lots to give to the State of
25 California for whom this requirement makes the possibility to serve
26 or the possibility of participating as a member of the public
27 either impossible or unreasonable. Our state is 60-- or sorry.
28 I'm-- I'm-- I'm-- I'm giving us more of a population than we have.

1 Our state is 40 million people spread over a vast area. People in
2 the far north of the state and the far east of the state and the
3 Central Valley and the far south of the state and rural areas and
4 urban areas and small towns throughout this entire state should be
5 able to serve, and they should be able to participate fully as
6 members of the public. I am really grateful to everyone who is here
7 in person. I'm also grateful to the 200-and-some people who are
8 here on Zoom. We are delighted to have you. I look forward to
9 hearing any comments that you have. I won't be able to see you. On
10 Zoom, I would be able to see you. And yes, it's not quite the same
11 as in person, but it is a more complete experience for all of us
12 than these difficult hybrid situations. So, I just do not see how
13 the benefit of having some forced meetings in person, to the level
14 that the logistics become impossible again, outweighs the benefit
15 of having the service on boards and commissions and public meetings
16 to be truly accessible to the people of California. And therefore,
17 I really appreciate Ms. Mahoney and staff keeping track of this for
18 us. You know, I-- sorry for speaking personally about my own
19 situation, I just don't know-- I don't want to speak about other
20 people's situations, and I think it's really important for the
21 Legislature to understand what they're doing here so I'm happy to
22 offer myself up for that purpose. And I just would like everybody
23 to understand that as I do that I'm standing in for probably
24 millions of people, and that this is a problem that we can solve.
25 It is a problem that should be solved. as Mr. Le said, Bagley-Keene
26 was passed a long time ago. It was solving a problem. It's
27 absolutely, you know, impeccable in its values and the goals that
28 it's trying to achieve, and it needs to achieve them so thank you

1 for hearing me out. If there are other comments or questions--
2 obviously I support the recommendation. Ms. de la Torre and Mr. Le?

3 **MS. DE LA TORRE:** I do have a few questions and, first of all,
4 let me stop to just appreciate. I was more aware than the public of
5 the challenges that our chair faces but thank you for being here
6 today with us. Your presence is valuable, and your leadership is
7 valuable to the Board. I do-- I'm a little behind on this bill
8 because we didn't receive the information until yesterday so just
9 bear with me in terms of helping me understand. So, if this was
10 enacted as it is, next year, we could still have a Zoom in our
11 meetings to enable the 255 people that are today with us to still
12 be present with us, right? Like that will not necessarily go, we
13 still could add a Zoom, is that correct?

14 **MS. MAHONEY:** Yeah, that's correct.

15 **MS. DE LA TORRE:** Okay. And then we could have our six meetings
16 next year and if our chair was in a situation where, you know, it
17 will be better for her not to-- not to come in person so long as,
18 in this case, like Mr. Le and myself were here, she could-- we
19 could hold this same meeting with her having the advantage of being
20 at her house. Is that--

21 **MS. URBAN:** No, but if Mr. Mactaggart were here, I think we
22 could try to do it just-- it would not be logistically really
23 feasible, but you have to have a quorum of the board, which is
24 three people so we ourselves are a quorum.

25 **MR. LE:** Yeah, we have that half in person.

26 **MS. DE LA TORRE:** Oh, okay. So, if three members were here,
27 then the other two members could be remote. Is that how it would
28 work?

1 **MS. URBAN:** I believe so, yeah.

2 **MS. MAHONEY:** That would be the requirement that there would
3 have to be a majority or quorum of board members in a physical
4 location at least 50 percent of the meetings although that would
5 raise the question of how you would determine how you get to that
6 50 percent because you need to have additional meetings and so on
7 and so forth.

8 **MS. DE LA TORRE:** But if we schedule our six meetings to be in
9 person, I mean, I think it will be very rare that, I mean-- so--
10 sorry, I'm a little confused again. So, we have six meetings that
11 we expect to have every year, but we could have, for example, an
12 emergency meeting. That emergency meeting will also have to be the
13 same rules? Three people here at the minimum and two people
14 possibly remote, or could one of them be fully remote?

15 **MS. MAHONEY:** I mean, that would-- I think that would depend on
16 the circumstances.

17 **MS. URBAN:** It would depend on how many total meetings you
18 ended up having in the year.

19 **MR. LE:** [inaudible] odd number [inaudible] even number.

20 **MS. DE LA TORRE:** What I'm striving to kind of understand here
21 is, wouldn't we be better off next year if this is enacted versus
22 if it is not enacted? Because what is the alternative? We stay
23 where we are right now, and we have to force our chair to come to
24 every meeting in person next year, or is there a different bill
25 that we can support? I'm just kind of trying to understand.

26 **MS. MAHONEY:** I think the issue is that the language of the
27 bill is still in flux, and there are a number of discussions going
28 on amongst stakeholders, and staff felt that we couldn't give a

1 support recommendation to the bill in its current form that we
2 would like to see changes to that language to, you know, better
3 ensure accessibility of these meetings. And that's why we
4 recommended a 'support if amended' position so if there are
5 amendments to make it more consistent with the original goals of
6 the bill, then staff would feel comfortable recommending support.

7 **MS. URBAN:** So, I would say we could certainly have a
8 discussion about what the threshold might be. I'm, again, I'm
9 disappointed in the Legislature because I don't understand why
10 they're nickel and diming this. And they're creating a situation
11 where they're dialing back true accessibility and having it be this
12 pained difficult situation that is costly as well for agencies to
13 try to set up these hybrid situations in order for everyone to
14 participate. If it's better that everybody's in person then why
15 then are we going to like, do this? I feel like the Legislature is
16 kind of acknowledging that there's an accessibility problem but is
17 not acknowledging that in a way that they actually create a
18 reasonable choice, a reasonable accommodation. I mean, you know,
19 yes, Ms. de la Torre, we could try to have a meeting where some
20 Board members are here and some Board members are not.
21 Logistically, like, that's just really difficult and I don't think
22 there's any reason for it to be so difficult. You know, I just
23 don't see the benefit of forcing this sort of difficulty on the
24 state and forcing this difficulty on people who have various
25 reasons why it's difficult for them to come to Oakland or LA or
26 whatever every time for a Board meeting. Mr. Soltani?

27 **MS. DE LA TORRE:** I am very supportive of our chairperson and
28 to be honest in this vote, I think that I will go with whatever

1 civil because that's the person that I, you know, personally want
2 to support, but I'm also concerned about a dynamic that can get us
3 in a position where we could have something that's better next year
4 and we don't-- and we don't have it.

5 **MS. URBAN:** I do understand, yeah.

6 **MS. DE LA TORRE:** And so I do understand, yeah. I want to
7 create flexibility for our staff to, to negotiate this support
8 because ultimately, you know, we went through the process with the
9 CCPA and CPRA of thinking, you know, what language should be in
10 this proposal so that we can have the support that was necessary to
11 enact it. And those processes sometimes don't lead you to the
12 perfect bill that you hope to have, but it is an incremental
13 improvement. So if there's a possibility that we can support an
14 incremental improvement and, in the assessment of the staff, that
15 is better than not having anything, basically, I just want them to
16 have the ability within whatever guidance we provide to, to kind of
17 maneuver that.

18 **MS. URBAN:** Yes, I agree with you. I think that my personal
19 view is that I agree with staff that, as currently amended, I just
20 don't think this is worth, the game is not worth the candle. We
21 could certainly talk about some ideas for what might be better. And
22 we can do a motion that is similar to the last motion, which would
23 be that we support staff's recommendation with regards to the
24 current iteration of the bill, and we authorize staff in their
25 discretion to support if it's amended in a way that, in staff's
26 discretion, would meet with the values or the requirements that we
27 talk about here today that they've laid out in their memo, and we
28 had also authorized them to then withdraw support if it gets

1 amended again, you know, so that they would need to oppose it. So
2 we can certainly do that and we can offer some thoughts about, you
3 know, what we think might be reasonable.

4 **MS. DE LA TORRE:** I have a question for counsel. In this
5 situation, I strongly feel that our chair should be the voice of
6 the Board on this. Will there be a possibility for us to just
7 delegate to her and empower her to, you know, direct the staff as
8 needed until the end of this process and let her be the voice of
9 the Board on this issue so that she has that opportunity to be part
10 of that conversation? If that's something that you, I, I would be
11 open to, yeah. That I would be very open to just directly empower
12 our chair to be the voice of the Board on this, not only now, but
13 just moving forward for whatever other amendments might come next
14 year.

15 **MS. URBAN:** Mr. Le?

16 **MR. LE:** Yeah, I would support that, and I'll just say, you
17 know, a 'support if amended' is not an oppose, right? The bill
18 could still pass, you know, as is, you know, we would just be
19 saying we wish it was better, right? So it's not necessarily a
20 binary, like if we do a 'support if amend' amend, then we get
21 nothing, right? This bill could very much still pass even if we, as
22 an agency, say we want it amended. What we do is add our voices
23 saying, you know, the original language was better. This should go
24 back to what was originally discussed. So I don't think it's quite
25 as binary as we don't have it. It's back to the status quo if we
26 vote this way. But that said, I like the idea, you know, I would be
27 happy to defer to the chair on this issue on how to approach our
28 position on this bill as it evolves.

1 **MS. DE LA TORRE:** Right. I'm just thinking that there's
2 dynamics that could be, we only meet six times a year, right? And,
3 and, and things might change. And, and so I feel very represented
4 by the voice of the chair on this topic and would be very happy to
5 fully delegate on her being representing the Board on this.

6 **MS. URBAN:** So, first of all, Mr. Laird, is that something that
7 could be delegated?

8 **MR. LAIRD:** Yeah, [inaudible] pretty explicitly in the law.

9 **MS. URBAN:** You know, I appreciate that. I do want to be clear
10 that I use myself as an example, but I don't want to suggest that I
11 can possibly speak for the wide range of experiences I was hoping
12 to invoke in general. So, I want to be clear about that, and I
13 would hope that we could also be sure that the Board supports the
14 staff's analysis of the resources it would take for the Agency to
15 fulfill the requirements in any sort of version of the bill, et
16 cetera. I'd also just like to highlight and reiterate what Mr. Le
17 said about "support if amended" is different from oppose. I mean, I
18 think it could get to a point that heads down that path could get
19 to a point where maybe staff should be authorized to oppose it, but
20 that really seems the right message to me to send.

21 **MS. DE LA TORRE:** So up to the chair, if you would prefer to
22 oppose it as we were planning, or if you know that you have many
23 other obligations, if you are willing to be the voice of the Board,
24 and you would prefer to just have us delegate that directly to you
25 for this year and other years moving forward, I'm open to both
26 possibilities.

27 **MS. URBAN:** Thank you, Ms. de la Torre. I'm not sure
28 logistically it's much different. But I guess I would ask what Mr.

1 Le would prefer and let's just go with that with between.

2 **MR. LE:** Yeah, I think, you know, I perhaps you mentioned some
3 middle ground where allowing staff and I guess you to change our
4 position as the political, as we, I get a better understanding of
5 how this bill is developing support for it is developing. So, you
6 may want to change the position if the amendments change. So, you
7 know, I would be fine with that middle ground. I think I would vote
8 for supportive if amended now with the caveat that you would work
9 with staff to change our position as needed. We delegate that to
10 you and staff.

11 **MS. URBAN:** Alright, Mr. Does that work? We could also do two
12 motions. One, which is similar to the one that we have on the table
13 for the other bills, but amended for the position here. And one
14 that just, I guess delegates to the chair the ability to speak on
15 this bill if the opportunity arises or something like that maybe.

16 **MS. DE LA TORRE:** Is speak on behalf of the Board in between
17 Board meetings. So, if there's any conversation that needs to be
18 had in between Board meetings, the voice of the chair is the voice
19 of the Board.

20 **MR. SOLTANI:** I think any of those options are perfectly valid
21 under the law. It really is just which sort of flavor you all would
22 like to choose from those options. But, you know, to the points
23 made today, I'll just emphasize, and I'm sure Maureen would say the
24 same thing, that staff can absolutely work in consultation with the
25 chair on this, regardless of the form of the motion today.

26 **MS. URBAN:** Well, after that little speech, I might get called
27 to the Legislature. So yeah. Alright, so in that case, let me see
28 if I can put this together. Let's start with the disposition on the

1 bill. May I have a motion to authorize Agency staff to, as
2 suggested, support SB 544 if amended to remove the proposed
3 requirement that a majority of members of the state body be present
4 at one physical location for a minimum of 50 percent of the
5 meetings of the state body each year, or if it is otherwise amended
6 in such a way that in staff's discretion is consistent with the
7 objectives laid out in the staff analysis and discussed by the
8 Board today? To authorize staff to support the bill if amended in
9 that way, and to authorize staff to remove support or oppose if
10 other amendments, in staff's discretion, render the bill
11 sufficiently inconsistent with the objectives laid out in staff
12 analysis and the Board's discussion today. So, I think that would
13 be one. I don't think I can keep going. I think we need to stick to
14 that and then talk about the other thing. So, does that make sense?
15 May I have that motion?

16 **MR. LE:** Yeah.

17 **MS. DE LA TORRE:** I move.

18 **MS. URBAN:** Thank you, Ms. de la Torre. May I have a second?

19 **MR. LE:** I'll second.

20 **MS. URBAN:** Thank you, Mr. Le. And then may I also have a
21 motion to delegate to the chair of the Board the ability to speak
22 for the Board and the Agency and offer its position on SB 544 in
23 its current form, or as amended?

24 **MS. DE LA TORRE:** I move.

25 **MR. LE:** I second.

26 **MS. URBAN:** Thank you very much. Okay, Mr. Laird, I want to
27 check. Okay. Thumbs up from Mr. Laird. We have properly formulated
28 motions and just as a reminder to everyone in the public, we also

1 have a motion on the table to take staff's recommendation on the
2 suite of other bills that were brought before the Board today. And
3 those motions are both on the table. So, with that, I'd like to ask
4 for public comments in case anybody has comments that they would
5 like to provide to us before we vote.

6 **MR. SABO:** Okay. So, this is for agenda item four. If you'd
7 like to make a comment on this item, please raise your hand at this
8 time using Zoom's raised hand feature or by pressing star nine if
9 you're joining us by phone today. And this is for agenda item four,
10 legislative update and authorizing CCPA's position on pending
11 legislation. Again, if you'd like to speak at this time, please
12 raise your hand using Zoom's raise hand feature by pressing star
13 nine. This is the final call for agenda item four, public comment.
14 Madam Chair, I'm not seeing any hands at this time.

15 **MS. URBAN:** Thank you very much, Mr. Sabo. In that case, I
16 would ask you to please call the roll call vote for the motion on
17 AB 947, AB 1194, AB 1546, and SB 362 that we formulated earlier in
18 our discussion.

19 **MR. SABO:** Okay, this is a roll call for the motion as stated
20 by the chair. Board member de la Torre?

21 **MS. DE LA TORRE:** Aye.

22 **MR. SABO:** De la Torre aye. Board member Le?

23 **MR. LE:** Aye.

24 **MR. SABO:** Le aye. Board member Mactaggart? Chair Urban?

25 **MS. URBAN:** Aye.

26 **MR. SABO:** Urban aye. Madam Chair, you have three ayes and one
27 not voting.

28 **MS. URBAN:** Thank you very much. The motion carries by the vote

1 of three to zero. With that, so we have authorized staff action on
2 AB 947, 1194, 1546, and SB 362, as discussed. Now, let's address SB
3 544. I do apologize. I was trying to be efficient. I didn't restate
4 the motion. Would you like me to restate it? No. No. Okay. Alright.
5 Mr. Sabo, could you please conduct the roll call vote on the
6 Board's motion related to SB 544 from earlier in our discussion?

7 **MR. SABO:** Yes. Board member de la Torre?

8 **MS. DE LA TORRE:** Aye.

9 **MR. SABO:** de la Torre, aye. Board member, Le?

10 **MR. LE:** Aye.

11 **MR. SABO:** Le, aye. Board member McTaggart? Chair Urban?

12 **MS. URBAN:** Aye.

13 **MR. SABO:** Urban, aye. Madam Chair, you have three ayes.

14 **MS. URBAN:** Oh, dear. You know what? I did not... We had two
15 motions. We got to do that again.

16 **MR. LAIRD:** I think it would be fine if we, to me it was
17 sufficiently clear that that was for the first motion. Yeah, so I
18 think we'll do one more vote for the final motion.

19 **MS. URBAN:** Okay. Fantastic. Thank you, Mr. Laird. And my
20 apologies for the glitch. I can glitch too. So, Mr. Sabo, could you
21 please call the roll call vote on the second motion we formulated
22 with regards to SB 544, which relates to delegating to the chair
23 the ability to speak on the bill?

24 **MR. SABO:** Yes. Board member de la Torre?

25 **MS. DE LA TORRE:** Aye.

26 **MR. SABO:** de la Torre, aye. Board member, Le.

27 **MR. LE:** Aye.

28 **MR. SABO:** Le, aye. Board member McTaggart? Chair Urban?

1 **MS. URBAN:** Aye.

2 **MR. SABO:** Urban, I. Madam Chair, you have three I's.

3 **MS. URBAN:** Thank you very much. So, both of those motions
4 carry with the vote of three to zero. Thank you very much to Board
5 members for the thoughtful discussion. To Ms. Mahoney, for the
6 really helpful guidance, walking us through this. And we will look
7 forward to talking about a somewhat larger landscape in the future,
8 understanding that we expect your discretion and helping us figure
9 out what is a good sort of path there. With that, it is 11:36, so I
10 think we are in good time for our schedule. So, let's move along to
11 agenda item number five, which is an update on the California
12 Children's Data Protection Working Group, which will also be
13 presented by Deputy Director Mahoney. Ms. Mahoney, please go ahead.

14 **MS. MAHONEY:** Thank you, Chairperson and members of the Board.
15 The California age-appropriate design code, which went into effect
16 January 1st, 2023, among other provisions, creates the California
17 Children's Data Protection Working Group, which is tasked with
18 submitting a biennial report to the legislature that makes
19 recommendations until 2030 regarding best practices regarding
20 children's access to online services, products, and features.
21 Appointments to that working group were previously delayed because
22 the age-appropriate design code did not clarify in which agency the
23 working group would be housed, raising questions as to funding and
24 staffing of that working group. A budget-related bill, AB 127, was
25 signed earlier this week by Governor Newsom, and that helped
26 clarify some of these questions. The bill houses the working group
27 operations within the office of the Attorney General. It also
28 pushed back the due date of the first report from January 1st,

1 2024, to July 1st, 2024, and then every two years thereafter until
2 2030. The bill removed one of the agency's appointments to the
3 working group, so the group will consist of nine members. We
4 understand this revision was made to further minimize the impact to
5 the agency with respect to the agency's appointment to the working
6 group. Staff are still in the vetting process. We expect to have a
7 candidate for the Board to consider at the September Board meeting,
8 and I'm happy to answer any questions.

9 **MS. URBAN:** Thank you very much, Ms. Mahoney. So, the
10 rulemaking authority and enforcement authority are still with the
11 Attorney General's office, correct?

12 **MS. MAHONEY:** Correct.

13 **MS. URBAN:** And that didn't change, so that, okay. So, the
14 legislature basically rationalized the situation?

15 **MS. MAHONEY:** Correct. The Attorney General's office has
16 rulemaking and enforcement authority with respect to the age-
17 appropriate design code. So consistent with that, the working group
18 is going to be housed with the Attorney General as well.

19 **MS. URBAN:** Okay. Thank you very much. Comments, questions, Ms.
20 de la Torre? Mr. Le?

21 **MR. LE:** No.

22 **MS. DE LA TORRE:** I do have a question. Was it offered to the
23 agency the possibility of housing the working group within the
24 agency? There seems to be a lot of alignment between that law and
25 what we pursue. Was that offered to us?

26 **MS. MAHONEY:** There were discussions about where to house the
27 working group. One option was within the agency; however, there
28 were a number of concerns as to the impact of housing the working

1 group within the agency. Given that our focus needs to be on
2 meeting the responsibilities directed to us by Proposition 24,
3 specifically to complete these rulemakings, there were concerns
4 that it could divert resources from our key priorities.

5 **MS. DE LA TORRE:** Concerns raised by other stakeholders?

6 **MS. MAHONEY:** Largely within staff, there were concerns.

7 **MS. DE LA TORRE:** So, we were offered the opportunity to house
8 the working group, but we decided that that might not be
9 beneficial. Is that correct?

10 **MS. MAHONEY:** Well, staff pointed out concerns as to how
11 housing the working group within the agency could impact our
12 operations, as well as the consistency with housing the working
13 group with the Office of the Attorney General, which also has
14 rulemaking and enforcement authority over the age-appropriate
15 design code.

16 **MS. DE LA TORRE:** Is there a connectivity between that and the
17 fact that we lost one appointee, or that's not related?

18 **MS. MAHONEY:** That's unclear to me. I don't have insight into
19 that decision-making process.

20 **MS. DE LA TORRE:** Okay.

21 **MR. LE:** Yeah, I think considering they have rulemaking and
22 enforcement authority, I think it did make most sense for it to be
23 in the DOJ, personally. I appreciate that you all shared that as a
24 growing agency, this may take a lot of resources to house a nine-
25 person working group. I'm curious, does that working group have to
26 also do Bagley-Keen meetings? Okay.

27 **MS. MAHONEY:** Now, yes, the working group would have to follow
28 Bagley-Keene. However, there was a provision that was added through

1 that budget-related bill AB 127 stating that the meetings could be
2 held by teleconference, but, you know, it was a bit vague as to how
3 that would interact with Bagley-Keene.

4 **MR. LE:** Interesting. Okay.

5 **MS. URBAN:** Further comments or questions?

6 **MS. DE LA TORRE:** No, thank you.

7 **MS. URBAN:** Thank you very much. Are there comments or
8 questions from the public? Comments, excuse me.

9 **MR. SABO:** This is for agenda item five, the California
10 Children's Data Protection Working Group update. If you'd like to
11 make a comment on this agenda item at this time, please raise your
12 hand using Zoom's raised hand feature or by pressing star nine if
13 you're joining us by phone. Again, this is for agenda item five,
14 the California Children's Data Protection Working Group update.
15 This is the final call for public comment on agenda item five. If
16 you'd like to make a comment... Oh, I see Lisa Gavin. I'm going to
17 unmute you at this time and you'll have three minutes to make your
18 public comment. Lisa, go ahead whenever you're ready.

19 **MS. LISA GAVIN:** Hi, Lisa, can you hear us? So, Lisa's hand is
20 raised, but she is not responding. Lisa, you've been unmuted, so
21 you can go ahead and begin your public comment. Okay. Lisa has
22 lowered her hand. If there are no other public comments, if anyone
23 else would like to speak at this time, please go ahead and raise
24 your hand or press star nine if you're joining by phone. Madam
25 Chair, I'm not seeing any other hands.

26 **MS. URBAN:** Thank you very much, Mr. Sabo. Alright. For
27 everyone, the Board will repair to the closed session location to
28 have that discussion. We will keep the public meeting on Zoom open.

1 Everyone who's here in person, of course, you're welcome to go get
2 lunch. Take a break. I cannot predict exactly how long the
3 discussion will require, but so what I'm going to do is say that we
4 won't come back before a certain time so that everyone can feel
5 confident that they won't miss anything if they're back by that
6 time. Shall we say an hour, shall we say 1:00 PM? 1:00 PM? Alright.
7 We won't come back before 1:00 PM. We may return after that time if
8 necessary, but we won't start before then. So, everyone should know
9 that you can take a break for at least that time. Thanks very much
10 to everyone for everything we've discussed this morning. And we
11 will see you later on today. We are now in recess. Oh, shoot. We
12 are not in recess. I'm sorry. We're going into closed session. My
13 apologies, everybody. Are we ready to begin? Wonderful. Welcome
14 back, everyone, to the CCPA Board meeting for July 14th, 2023. We
15 will be turning to agenda item number six, which is an update from
16 the new CPRA rules subcommittee. I'd like to ask you to please turn
17 your attention to the materials for this agenda item. As a
18 reminder, the new CPRA Rules subcommittee, or New Rules or new
19 Rules subcommittee for short, is composed of Mr. Le and Ms. de la
20 Torre. It was informed to advise the Board on some new rulemaking
21 set out of the California Privacy Rights Act of 2020. The voter
22 initiative and its complimentary subcommittee was the update CCPA
23 subcommittee, which advised on rulemaking topics integrated with
24 the rules already promulgated by the Attorney General in 2020. That
25 subcommittee has finished its work as the rules package was adopted
26 and improved earlier this year. Before I turn things over, I just
27 wanted to say a couple of things. First, I really want to thank the
28 new Rules subcommittee and terrific staff attorneys for the

1 tremendous amount of work so far on this really interesting and
2 complex area, including the preliminary request for comments that
3 we've received comments in response to already. And I'd like to
4 thank the public for its continued robust participation in our
5 rulemaking. With the preliminary request for comment, again, we got
6 a lot of comments and a lot of really thoughtful and substantive
7 comments. I just wanted to thank the public for that and for its
8 attention to these important topics. Second, I will take the
9 opportunity to recommend again how the public can keep up with our
10 rulemaking work. The website cppa.ca.gov is a great place to
11 start. If you click on the regulations page, you'll find the staff
12 is prepared and FAQ and regularly publishes relevant materials,
13 including the public comments that I just mentioned. And you can
14 check that out at cppa.ca.gov/regulations, or just click on
15 regulations from the homepage. And you can sign up for our
16 rulemaking email list in order to receive rulemaking notices
17 directly. And for that, go to cppa.ca.gov and click on join our
18 mailing list on the front page. I'd also like to welcome staff
19 attorneys, Kristen Anderson and [inaudible] who are joining us for
20 this discussion today. Thanks again to Mr. Le and Ms. de la Torre.
21 Please take it away.

22 **MR. LE:** Thank you, Board Member Chair Urban. Do we have the
23 slides? We'll probably need to open that up to, so, so I'll begin.
24 So, as we previewed in our last Board meeting, the new rules
25 subcommittee and staff have identified key issues related to
26 cybersecurity audits, risk assessments, and automated decision-
27 making technology for future Board discussion. So, this
28 presentation provides a status update to the Board and teases up

1 these issues for Board discussion at a subsequent meeting. But
2 first, on behalf of the subcommittee, I wanted to give a huge
3 thanks to Daniella Fache and Kristen Anderson for the tremendous
4 work they put into both this presentation and the preliminary
5 language that we are discussing today. So, next slide. Yes. No for
6 this rulemaking package, the agency has engaged in several pre-
7 rulemaking activities. On the topics just discussed, we are
8 currently reviewing the public's comments and drafting regulatory
9 texts. Once again, I'll note, you know, the staff has made
10 tremendous progress, and this is a way for us to preview key issues
11 for further Board discussion. This will help inform staff in the
12 subcommittee if we have a general Board consensus on the approach
13 we have taken and whether we need to add or subtract anything as we
14 approach the official rulemaking process. Next slide, please. So,
15 we are on the overview of key issues. So as a reminder, the CCPA
16 directs the agency to issue regulations on these three topics:
17 cybersecurity audits, risk assessments, and automated decision-
18 making technology. The purpose of a cybersecurity audit is
19 generally to help businesses assess and improve their practices in
20 protecting personal information. The purpose of a risk assessment
21 is generally to help businesses assess and mitigate privacy risks
22 before engaging in certain activities. And the purpose of access
23 rights and opt-out rights regarding automated decision-making
24 technology is to provide consumers with meaningful information and
25 the ability to control how businesses use that personal
26 information, including providing consumers with the ability to opt-
27 out. For each of these topics, there are several questions that
28 need to be answered in the regulations, and we've listed some of

1 those questions here on this slide. And this presentation will
2 preview some of the language to the Board and the public we've
3 developed and specific issues that we recommend the Board discuss,
4 both today and at a future Board meeting. These issues are bolded
5 on the slide. The regulations will address all of the questions
6 above, but the feedback on these key issues in bold is necessary to
7 inform our future drafting. And these are bolded because of their
8 complexity impact, and we wanted to give Board members the ability
9 to consider them further as we proceed in drafting. And then I will
10 hand it off to Ms. de la Torre to talk about the cybersecurity
11 audits.

12 **MS. DE LA TORRE:** Thank you. I also want to take the time to
13 thank the staff for the wonderful work that they have done
14 supporting this committee. We're going to move on to cybersecurity
15 audits and maybe go to the, this is slide. Thank you. This is
16 simply a reminder of the rulemaking authority that was granted by
17 statute on the agency. We have authority to issue regulations on
18 cybersecurity audits under 1798.185(a) (15) (A) of our statute. We
19 can move on to the next slide, please. Thank you. As background on
20 the work that has been done on cybersecurity audits, our staff has
21 looked into examples of frameworks and resources that are available
22 and comparable to what we intend to do. So, for example, the
23 California OAG and the FTC data security orders and guidance have
24 been reviewed by staff and are considered in terms of our drafting.
25 The CIS Critical Security Controls, the NIST Cybersecurity
26 Framework (Special Publication 153), New York DFS Cybersecurity
27 Regulations, GLBA Safeguards Rule, FFIEC Council's Audit IT
28 Examination Handbook, and California Insurance Code. This is not an

1 exhaustive list. There are many other resources that have been
2 considered. We just are, you know, sharing some of them to give you
3 a flavor of the work that has been done and the kind of frameworks
4 and resources that we have consulted. Most privacy and data
5 protection laws do not have a specific requirement for
6 cybersecurity audits. However, we are a little unique in California
7 in terms of our regulatory mandate. We can move to the next slide,
8 please. One of the key questions that we are bringing to the Board
9 for consideration when it comes to cybersecurity audits is what
10 should be the threshold of applicability of the requirement, and
11 that, in essence, means which organizations will be required to
12 comply with the obligation to undergo cybersecurity audits. The
13 language that we have here aligns with, at this point, the
14 subcommittee would like to recommend to the Board. We bring it for
15 discussion and welcome comments from other Board members. The way
16 we have been looking at this after a lot of consideration is that
17 we think that businesses that primarily or significantly engage in
18 the sale and sharing of personal information should be subject to
19 the cybersecurity audit requirement regardless of the size of the
20 business. Meaning if they are within the threshold of our law,
21 which, you know, there are three different categories. And the
22 business is either a data broker or a business that engages
23 primarily in sharing personal information as they are defined in
24 our law, the subcommittee recommendation will be to impose on those
25 organizations the obligation to conduct cybersecurity audits.
26 Beyond that group, beyond the group of data brokers, we do think
27 that there is wisdom in calibrating this obligation based on the
28 size of the business. We are envisioning this cybersecurity audits

1 not as a mere check-the-box exercise, but as an in-depth look into
2 the actual cybersecurity status of the organization. And that
3 obviously comes with a cost. We want to be mindful of not affecting
4 smaller organizations, medium organizations that perhaps need
5 resources and education on how to improve their cybersecurity
6 posture, but might not have the resources to engage in the kind of
7 work that we expect from cybersecurity audits. So, then the policy
8 question becomes what will constitute a large business? This is
9 something that is actively being discussed within the subcommittee.
10 We have an example here of how we could go around defining large
11 business. It's very preliminary. It might be that we go in a
12 different direction, but we wanted to bring it for discussion. And
13 we welcome the feedback of other Board members, which in this case
14 is Chairman Urban. The one thing that I wanted to highlight is that
15 we envision this discussion as an ongoing discussion, meaning we
16 will have another opportunity to have this conversation in the next
17 meeting of the Board. So, it's not necessary for, you know, the
18 other Board members to necessarily provide all of their feedback
19 right now. But to the extent that they have any opinion that they
20 want to share with us, we welcome that. So, the example that we
21 have here will be going around defining what a large business based
22 on the amount of data that they process annually, the amount of
23 sensitive personal information that they process annually. It could
24 also be correlated to the annually processed personal information
25 of minors, which is another area of particular concern. And I think
26 for the subcommittee, protecting minors, there are other ways of
27 defining what's a large business. There are statutes that define
28 large business around the number of employees that an organization

1 has. It could be a threshold that relates to the revenue of the
2 organization. This is an active conversation, so please don't think
3 that this is, you know, the final language that we are suggesting
4 to you. We want to pause here and give an opportunity to Chairman
5 Urban to share any thoughts that she might have on, first of all,
6 the idea of if you're a data broker, because you're benefiting from
7 the data by selling it, we expect you to be more responsible with
8 the data, and therefore, you should be subject to the cybersecurity
9 requirement, even if you are smaller. And then the second piece of
10 this will be, however, if you're not in that category of data
11 broker, we're going to consider the size of your business in terms
12 of where we set the threshold for applicability of the obligation.

13 **MS. URBAN:** Thank you. First of all, I really appreciate how
14 carefully this is thought out. I apologize to everybody in the room
15 and on camera that I'm now turning this way so that I can see Ms.
16 de la Torre and Mr. Le. So, I think this is quite well thought out.
17 I had a couple of observations. First of all, I really appreciate
18 that the subcommittee with staff have included both of the
19 considerations you mentioned, Ms. de la Torre. So, there is a
20 question, of course, of resources for a business to have to expend
21 and when is that reasonable? So maybe that is tied to the amount of
22 resources available to the business and the scope of their
23 business. But I think it's really important that you also connected
24 the responsibility to how involved they are with consumers'
25 personal information. And under the definition of large business,
26 there is the possibility, again, of calibrating it back to the
27 information, to how much information they have, to how much
28 sensitive personal information they have. I think that's just a

1 crucial way to think about it. I'm quite sensitive to the concerns
2 of smaller entities. But unfortunately, we know that there's great
3 cybersecurity risk from entities who don't secure their data
4 properly, no matter what their size. And we know that there are
5 attacks on small entities specifically because there's a hope that,
6 you know, their cybersecurity defenses aren't as robust. So, I
7 think that it's important for us to provide guidance to business
8 and protection for consumers that takes into account both of those
9 things with regards to the thresholds that are offered on the
10 slide. And also later down, there's some more specific thresholds
11 on different things. For me, it's also calibrated against what is
12 the requirement. So, I absolutely agree that it shouldn't be a box-
13 checking exercise. But what's the sort of balance between the
14 resources? Again, we're going to ask businesses to expend, and the
15 value received from that and sort of how far the obligation
16 extends. So, I think that, you know, my initial thinking about this
17 is that this looks like a pretty reasonable framework and quite
18 thoughtful. And then it's also going to be affected by what that
19 actual cybersecurity audit requirements look like, because that's
20 going to hit different businesses differently. The second sort of
21 observation, that was sort of a set of observations just about the
22 structure. The second observation I had, which you alluded to Ms.
23 de la Torre, is that, if I'm understanding this correctly, this is
24 a nested set of thresholds that exist within the existing
25 thresholds of the statute. And so, I don't have a very fully formed
26 thought on this, so please, you know, take this with somewhat of a
27 grain of salt. But I think it would be important to think about the
28 value of simplicity, given that we already have thresholds in the

1 statute that take into account business resources and, and also how
2 much personal information they handle as, and then a new set of
3 thresholds, right? So it's, I'm assuming that these thought about
4 this and has decided that it would be valuable to have a second set
5 of thresholds, but I think it would be useful to think through
6 where that makes sense or where simplicity might be useful too,
7 both for consumers and also for businesses. So that was just an
8 observation that I really only had as I was looking at it this
9 time. And so, forgive me for being a little bit half-baked.

10 Finally, I also appreciate, Ms. de la Torre, what you suggested
11 with regards to process. I do think it'll be really important for
12 us to talk when we have a little bit more details so that we can
13 judge some of the trade-offs and sort of what's required in the
14 cybersecurity audits as I alluded to earlier. And when we have, you
15 know, Mr. McTaggart here and hopefully our fifth Board member, I'm
16 hesitant, you know, I'm hesitant to for the three of us to make too
17 many decisions, but I, you know, I think this is a good start. And
18 I would just ask that as staff work on this, that some of the
19 considerations that I mentioned would be taken into account. I'm
20 assuming you were thinking of most of those, if not all of them.

21 **MS. DE LA TORRE:** I just wanted to share some thoughts that
22 might be part of the conversation. I agree that we do not need to
23 come to a conclusion. It was not meant to be an, it is meant to be
24 an ongoing conversation, but in terms of thresholds, there's that
25 correlation. And you alluded to these two, what's the cost of
26 conducting a cybersecurity audit? And because we envision this
27 cybersecurity audits as an in-depth cybersecurity audit, we do not
28 expect them to be you know, as affordable as a more of a tick-the-

1 box exercise. And then the idea of not having thresholds, which is
2 I think what you alluded just, you know, to potentially have all
3 businesses that are subject to CCPA decided to these cybersecurity
4 requirement. Our concern is that potentially businesses that not,
5 they cannot necessarily easily afford cybersecurity audit cost
6 might be subject to it. Also, the idea of taking resources from
7 maybe, you know, hiring somebody else or whatever purposes you have
8 in terms of growth. So, this is an ongoing conversation within the
9 subcommittee, and we hope to come to you with more concrete
10 references on how to balance that. But that's why we steer away
11 from saying we shouldn't have any thresholds. We should just apply
12 this across the Board to all of the organizations that are subject
13 to CCPA. I hope that, that, you know, was kind of a helpful
14 reference for Chairman Urban.

15 **MR. LE:** Yeah, I'd just like to add to that. Yeah, I think that
16 we had a lot of staff-made discussions about how do we balance
17 this. We don't have the cybersecurity audit requirements on these
18 slides. I think we have fleshed them out to some extent. Hopefully,
19 I don't know if it'll be possible to get it ready before the next
20 Board meeting or if we could release that just to make a fuller
21 discussion. But, you know, I would hope so. And then maybe you'll
22 be able to see kind of the trade-offs because you know, there are
23 trade-offs in terms of, yeah. If you do kind of just a basic one
24 versus a thorough and independent third-party audit. So yeah, like
25 we, we are kind of handicapping the conversation a little bit. So,
26 I, I will acknowledge that. But yeah, I'll just say to, to the
27 extent that we can, we'll try to get out those cybersecurity audit
28 requirements.

1 **MS. URBAN:** Okay. And so, what I was hoping to do is be
2 helpful, and I hope, let me know if this is helpful, which is that
3 again, I think that the considerations that you have embedded into
4 these potential thresholds are the right considerations. They are
5 the risk of the public, and they are what is reasonable. And so, I
6 think that is that makes sense. And I'm glad to know that you're
7 thinking about the sort of interaction between the different
8 thresholds, the thresholds in the statute and the thresholds here.
9 And that you are thinking of having the cybersecurity audits be,
10 you know, genuinely informative and thinking about sort of what
11 that means for all of the affected parties. That's the public, and
12 that's also businesses. So, I will look forward to a little bit
13 more detail, but this seems like to me, as one Board member, this
14 seems like a reasonable way to think about it. I hope that's
15 helpful.

16 **MS. DE LA TORRE:** That, that's very helpful. I'm going to try
17 to summarize it a little bit. So, the idea definitely for
18 businesses that are data brokers, mm, to not have thresholds. If
19 they are subject to CCPA as a data broker, we expect them to just
20 have a more robust cybersecurity program that will be, you know,
21 one piece of it. And then for those businesses that are not data
22 brokers to continue considering whether, not thinking about
23 excluding some of those businesses could be not the right approach.
24 So, for data brokers, you have to commit to the cybersecurity audit
25 no matter what your size is. If you meet the baseline requirements
26 for applicability of CCPA or non-data brokers, continue to consider
27 whether there should be a higher threshold. Is that the summary of-

28 -

1 **MS. URBAN:** Yes. I mean, again, I think I will need to see more
2 detail. I just, you know, I kind of endorsed the way of thinking.
3 And the slide says, G Data brokers, I wouldn't want to tie us to a
4 definition that can Oh, sure. Yes. For data brokers. But you know,
5 that's, it does seem like a reasonable way to be thinking about it,
6 and I will look forward to the further detail whenever, whenever
7 that's ready.

8 **MS. DE LA TORRE:** Thank you so much. That was very helpful. We
9 are going to move on to the last slide on the cybersecurity piece,
10 which talks a little bit about how we are thinking to build these
11 regulations so that we can ensure that this audit is thorough and
12 is independent. The staff, again, has done a, I think, a very great
13 job at thinking about our options to ensure that those two things
14 are implemented with this rule. So potential requirements to ensure
15 thoroughness that we are considering actively is number one,
16 cybersecurity audits must articulate the scope and criteria and
17 identify specific evidence that was examined. Number two, the
18 regulations listing all of the components of a high cybersecurity
19 program that cybersecurity audits must assess and document. And
20 that doesn't mean that our regulations will be like, you know,
21 guidance from this, but at least at the high level, all of the
22 requirements that we initially expect to see in a cybersecurity
23 audit. The last one, cybersecurity audits should assess and
24 document all applicable components of the business's cybersecurity
25 program. So, we are not envisioning this cybersecurity business
26 being siloed to one specific product, but to be broader so that
27 they cover all of the organizations, all of the organizations.
28 Those are the requirements that we're thinking about actively in

1 terms of ensuring that the audit is thorough in terms of potential
2 requirements to ensure that the audit is independent. We are
3 envisioning, including in the rules, a date for businesses to
4 provide the independent audit auditor with all the information that
5 will be relevant to the audit. In addition, we're thinking about
6 establishing that the independent auditor must determine the scope
7 of the cybersecurity audit and the criteria the cybersecurity audit
8 will evaluate. That will create objectivity in terms of what the
9 scope of the audit is, as opposed to leaving necessarily to the
10 business, the decision of what the cybersecurity audit should
11 cover. Finally, we just wanted to highlight the cybersecurity audit
12 requirements will take into account cybersecurity audits,
13 assessments, or evaluations a business has completed for other
14 purposes. This is something that we saw often in the comments from
15 organizations that already conduct cybersecurity audits. And our
16 idea is that to the extent that those cybersecurity audits are
17 compliant with our requirements, they should not have to redo the
18 work. Obviously, if they're only partially compliant, we would
19 expect them to use what they have done, but go above what they have
20 already done to extend their cybersecurity audit so that they can
21 meet all of our requirements. So let me pause here. This is just a
22 description of how staff has suggested that we think about
23 thoroughness and independence. The subcommittee supports these, and
24 we just wanted to gather the thoughts of Chairman Urban in terms of
25 those ideas. It's not an exclusive list. Again, this is some
26 highlighted areas that we are considering.

27 **MS. URBAN:** Mr. Le, did you...

28 **MR. LE:** No.

1 **MS. URBAN:** Oh, thank you. Yes. So, thank you. Again, I think
2 this is reasonable. It's well thought out. I also wanted to go back
3 and just say that I very much appreciate the review of all of the
4 existing requirements because to the extent that we can comport
5 with existing requirements, even if we need to go beyond them or be
6 a little bit different, obviously that will be easier for
7 businesses to comply with and ultimately better for consumers. And
8 I see a lot of this as having a similar impetus while maintaining
9 independence and thoroughness. I have some questions that I think
10 will probably be worked out in the future. For example, what is an
11 independent auditor? You know, are there criteria for the
12 independent auditor in order for them to be, you know,
13 appropriately a decision maker for some of these questions? But
14 again, I think I'll look forward to seeing the detail when we get
15 to that part of the conversation.

16 **MS. DE LA TORRE:** I would like to pause for a second. I think
17 that those are really important questions. We have members of staff
18 present here that have helped really draft these regulations. So, I
19 want to ask them if it would be appropriate for us to give the
20 chair or any potential answers to the questions, or it might be
21 preferable to just wait until we have more information for the
22 Board.

23 **MR. KRISTEN ANDERSON:** Can you hear me?

24 **MS. URBAN:** You'll have to bring it forward. Yeah. Okay. I-

25 **MR. ANDERSON:** I think it would likely be more beneficial for
26 you all to be able to see the draft regulations that lay out some
27 of the criteria of independence within the context of the draft
28 regulations. And I defer to our general counsel about the

1 appropriate time to share those. But that would be my view.

2 **MS. DE LA TORRE:** Thank you so much. So, we'll just wait. Yeah,
3 it's, yeah, it will come.

4 **MS. URBAN:** And once again, I mean, it seems clear that you all
5 are thinking about this, which is the main thing at this point.

6 **MS. DE LA TORRE:** Thank you so much. That concludes the
7 presentation on cybersecurity. We should move on to risk
8 assessments. Yes.

9 **MR. LE:** If you go to the next slide after this. Yeah, that's
10 fine. Oh, there we go. Yeah, so, you know, just again, this is the
11 authority for our agency to do risk assessments. And I'll get into
12 more detail on how we're actualizing that on the next slide. Okay.
13 So, this slide proposes potential risk assessment thresholds for
14 Board discussion. You know, a key issue for the risk assessment is
15 what activities pose a significant risk to consumers' privacy and
16 thus triggers a risk assessment. And as context, when we say
17 thresholds, we mean that these activities would require risk
18 assessment under the CCPA to determine whether the risks of these
19 activities outweigh the benefits, and to ensure businesses
20 implement appropriate safeguards to address those risks. These
21 thresholds are generally interoperable with other state laws, such
22 as Colorado and or the GDPR. The first set of thresholds addresses
23 selling or sharing personal information, processing sensitive
24 information, processing children's information, and using automated
25 decision-making technology for certain key decisions such as access
26 to credit or other critical services and opportunities. These are
27 thresholds that we, as a subcommittee, felt very confident about.
28 However, there is an additional set of thresholds in the second

1 set. These are another set of potential thresholds for Board member
2 discussion, which address issues such as employee monitoring,
3 public surveillance, and training AI systems. These are areas where
4 we've identified a privacy gap in the current California
5 marketplace, and where there is significant concern among
6 consumers, regulators, as well as other stakeholders right now. For
7 example, many data protection authorities require risk assessment
8 for employee monitoring or public surveillance. And I'll note that
9 the appendix contains more detailed language on these potential
10 thresholds for risk assessment. But both now and at a future Board
11 meeting, I'd like to get Chair Urban's and eventually the whole
12 Board's thoughts on, you know, whether those first four we feel
13 comfortable with and whether we should add as well the other three
14 thresholds.

15 **MS. URBAN:** Thank you. I just have a question because I'm
16 curious with regards to the exception for employers. And the first
17 one, is that related to the way it works with the GDPR or another
18 law?

19 **MS. DE LA TORRE:** Not necessarily. We were thinking about the
20 recommended initial thresholds in a way aligning us with what's
21 already required by Colorado. As you well know, Colorado regulates
22 the data of employees. So, we wanted to be mindful of the fact
23 that, for compliance reasons, there's sensitive data of employees
24 that employers have to process. And that's, you know, fairly
25 regulated already. And so, we didn't want to necessarily trigger an
26 obligation to do a risk assessment for something that is already
27 kind of implemented and regulated. We don't mean that language to
28 be a concrete expression of how the final regulation might look

1 like. We just wanted to bring to the Board the idea that for
2 sensitive personal information, no, Colorado, and I'm going to
3 check with the staff in case I misspoke, but Colorado does require
4 potential risk assessments for organizations that process sensitive
5 information. In our case, we might want to think about sensitive
6 information, but within the context of employment, we might want to
7 set some safe harbors so that we don't, you know, it will be really
8 repetitive and have—

9 **MS. URBAN:** Right. You already have to apply protections to
10 social security numbers that you...

11 **MS. DE LA TORRE:** Right. Exactly. Social security numbers or
12 situations where the business, especially large businesses, might
13 have to collect information around...

14 **MS. URBAN:** Demographics.

15 **MS. DE LA TORRE:** Demographics, because they're required to do
16 so by federal law. That's the kind of situation where we didn't see
17 a lot of value in requiring businesses to do more paperwork
18 necessarily, as they are already regulated. Let me pause and allow
19 our staff to give us a little bit of the roadmap here. And correct
20 me if I was wrong,

21 **MR. ANDERSON:** That is an accurate summary of the thinking
22 behind the exception. And so, again, an example to potentially make
23 this a bit more concrete, employers may have to collect certain
24 government identifiers for just simple I-9 authorization. They may
25 have to collect financial information from employees to enable
26 direct deposits. This type of information is subject to general
27 reasonable cybersecurity requirements under CCPA already. So, it
28 would not be without protection under our existing framework. But

1 as Board member, de la Torre pointed out, it's not necessarily a
2 significant risk to consumers' privacy that would trigger a risk
3 assessment simply because it is routine processing that may also be
4 required under certain other existing federal and state privacy
5 laws and federal and state employment laws. For a lot of... There
6 are separate laws that require protection.

7 **MS. URBAN:** For the information. Okay. That's very helpful,
8 thank you.

9 **MR. LE:** Yeah, and I'll just note, you know, it's thinking
10 about capturing, you know, employee monitoring that isn't required
11 by law. Right. Or yeah. There, there's a lot of practices of that
12 increasing, and those are things that we are concerned about and
13 aren't things that we are considering, like adding to that limited
14 employment versus purposes exception.

15 **MS. URBAN:** I see, and you have that recommended for, you have
16 recommended for discussion a subset of, of information, well, a
17 subset of processing, I suppose that would be to monitor or
18 surveil, basically. Yeah. Yeah. Okay.

19 **MS. DE LA TORRE:** And I just wanted to point out that we don't
20 envision these rules as our final rules on risk assessments. So,
21 when we are thinking about our recommendations, we're thinking
22 about what we think should go in this initial package from this
23 point of view of the subcommittee versus the ones that recommended
24 for discussion. They might be something that we want to consider
25 now and adopt now, or consider now and delay the adoption to future
26 updates of the rules if we know, if the Board sees that as
27 appropriate. But we just thought that those three areas were good
28 examples of situations where perhaps other states do not require

1 privacy impact assessments. But we might, we want, might want to
2 think about requiring them either in this package or in future
3 packages. And Mr. Le offered a really good example, which is the
4 monitoring of employees. You know, there are some developments that
5 are concerning that we might want to think about addressing to
6 offer protections to residents of California.

7 **MS. URBAN:** Thank you. Well, on review of the slides in
8 preparation for the meeting and in listening to the presentation
9 again, like these seem quite reasonable to me and also to put
10 California in the position of maintaining our leadership in privacy
11 protection of natural persons, as our statute puts it. So, I would
12 look forward to the further development. I think of everything that
13 you have on the slide, I will need to think about it more. One of
14 the things that I, you know, noted as I was going through the
15 slides is it's always harder to think of the things that aren't in
16 here. Yeah. and you seem, I mean, this looks really thorough to me,
17 but I would like some time to think about it, and maybe when we
18 finish the conversation about the work the committee's done thus
19 far, we can talk a little bit about the process and what you're
20 thinking about that and how we might organize the next step as we
21 were discussing with, you know, the more detailed information about
22 some of these things. But, you know, I think this is very
23 thoughtfully again, very thoughtfully done.

24 **MS. DE LA TORRE:** Thank you.

25 **MR. LE:** Okay, thanks.

26 **MS. DE LA TORRE:** I'm going to try to summarize, just so that
27 you know, for our work as a subcommittee, what I think I'm hearing
28 is that the recommended thresholds for implementation that really

1 align with Colorado are generally supported, like to set that as
2 our baseline in terms of where we will require data protection
3 impact assessments, and then we'll continue the conversation on the
4 other potential areas where we might want to require data
5 protection, data privacy impact assessment, even though they might
6 not be required in other states. Is that a good summary?

7 **MS. URBAN:** It is a good summary. I would go a little bit
8 further and say that I think the items under "recommended for
9 discussion," or in my view, and of course within the discretion of
10 you and staff in terms of resources, but in my view, these are all
11 worthy of development, which isn't to say that ultimately, they
12 will be something that the Board decides to put in the package.
13 Yeah. But I think they're very much worthy of development. I think
14 that they are picking up on some real holes in protection that
15 we've had for a while that affect people every day. I think that,
16 you know, it may be that as they're developed further, we see that
17 there are trade-offs that may make us want to wait or, you know,
18 maybe to not continue with all of these, but these seem to be, I
19 would say, low-hanging fruit is what's occurring to me. But I don't
20 want to make it seem as though they're not creative and, you know,
21 and that you haven't put a lot of thought into them because it's
22 obvious, you know, that you have. So, I just want to be sure that
23 it's clear that I think that they're worth, in my view, they're
24 worth continuing with. Yeah. Okay.

25 **MR. LE:** Helpful. Okay, I'll move on to the next slide. And,
26 you know, these are the teeth to, you know, those thresholds,
27 right? So once that threshold is hit, you know, what do you have to
28 do? And this is, you know, these are the activities and what should

1 be included in a risk assessment for those activities that present
2 a significant risk to consumers' privacy. This is just a quick
3 preview, you know, what should be included, such as the risks and
4 benefits, and you know, that assessment from a company, whether,
5 you know, this processing, you know, the benefits of this
6 processing outweigh those risks. And you know, I won't repeat all
7 of these. I think these risk assessment requirements are kind of
8 what we're seeing generally. But one area that I did want to flag
9 for Board discussion is that very final point, right? Additional
10 assessment requirements for automated decision-making technology. I
11 think one thing is, I've noticed with risk assessments in my
12 research, and, you know, the SUBC community has thought about this
13 as well, is a lot of inconsistency in between risk assessments. One
14 company may do it very carefully, another one may not. And it's
15 hard to compare, you know, how approaches to risk within certain
16 industries or across industries within different sectors. So, one
17 thing I wanted to raise is, should we advise staff to incorporate
18 elements of standard elements into these risk assessments? And in
19 incorporating elements, particularly from the NIST AI risk
20 management framework? You know, they require documentation of
21 certain metrics and something that I feel could be, should be
22 included in automated decision-making technology risk assessments.
23 So, for example, documentation requiring documentation of, you
24 know, the metrics an entity has developed to measure the
25 performance of an AI system. Right? Companies may have different
26 metrics, that's okay. But actually, making this the standard
27 element of a risk assessment will help comparison for the agency
28 and doing its audits and enforcement. Or, you know, for example,

1 you know, what fairness metrics were used to examine system
2 performance across subgroups. You know, were they using statistical
3 parity, error rate, equality, percentage point differences, or
4 other methods to examine their performance? And then, you know,
5 from there, perhaps we can develop best practices. So, this is a
6 bit more prescriptive than, you know, I, I've seen other risk
7 assessment regulations in other jurisdictions, but I feel like this
8 is something that, you know, California again can lead on. You
9 know, it's building on the work of you know, other agencies such as
10 NIST and yeah, will help the agency compare risk assessments across
11 different sectors and learn best practices. So just something, I
12 don't know if you have any initial thoughts or we can discuss that,
13 you know, at a further Board meeting, but you know, we can discuss
14 any of these elements, but that's in particular something I feel
15 strongly about.

16 **MS. URBAN:** Thank you. And Ms. de la Torre, did you want to add
17 anything?

18 **MS. DE LA TORRE:** No, I fully support the comments...

19 **MS. URBAN:** Yes. I mean, and it sounds as though you've been
20 looking at the literature on what makes risk assessments effective
21 and when they're not effective. And so, I think I defer to the
22 subcommittee. I'm somewhat familiar with that literature, but I'm
23 not an expert in it. I would recommend if you haven't, you probably
24 have already, reading Ken Bamberger and Deirdre Mulligan's work
25 "Privacy on the Ground," which I think has a richly detailed
26 description of sort of how various policies, risk assessments are
27 come in there can be implemented by, by businesses. And I don't
28 know that I have a comment on any individual item here. I would say

1 that I also tend to think that concreteness will be helpful in
2 order to achieve parity of information that is received and, and
3 information that companies need to keep track of. So, if you have
4 to actually report on something, then you have to pay attention to
5 it, and that by itself is already important. So, and I think
6 achieving parity in that way is important for a few reasons. A big
7 one is, as you mentioned the agency's ability to enforce, the
8 agency's ability to make decisions about where enforcement
9 priorities should be and how to enforce. Of course, the trade-off
10 is that the more prescriptive and concrete you are the, the less
11 flexible. So, it is possible that we could get some of these wrong.
12 And I tend to agree that previous risk assessment requirements have
13 perhaps been a little bit too general allowing for that lack of
14 parity. And so, you know, in general, I'm supportive of trying to
15 be more concrete. I think it's valuable for businesses as well
16 because then they know what to do. But I just wanted to name some
17 of those trade-offs as you continue to, as you continue to think
18 about this. And of course, you know, this ties into, again, to the
19 thresholds, like how much we require is related to the thresholds.
20 Similarly, automated decision-making technology, I know we're going
21 to talk about that next, but thinking carefully about what is
22 encompassed within automated decision-making technology will be
23 important.

24 **MR. LE:** Yeah. I think, to borrow the words of our executive
25 director, that is a very helpful steer for staff and the
26 subcommittee, you know, as we think through how to flesh out those
27 automated decision-making technology risk assessment requirements.
28 So, I'll just quickly talk about the next slide. I'll just quickly

1 talk about other jurisdiction requirements. You just want to
2 briefly explain how other jurisdictions in other states at the EU
3 have approached their analogous risk assessment requirements. These
4 are often referred to as data protection assessments or impact
5 assessments. In other states, thresholds are generally laid out in
6 state statutes. Colorado has also provided for additional
7 requirements, risk assessments via the regulations. And the EU, the
8 key requirements are provided in Article 35 of the GDPR. The
9 European Data Protection Board and the data protection authorities
10 across the EU have provided additional guidance and what activities
11 trigger an assessment or activities are exempted. All this to say,
12 these are the things that we were looking at as we, as staff, I'll
13 say, develop these risk assessment requirements, and just to
14 highlight that we are thinking about harmonization where we can and
15 then where we need to be a little bit more or we're thinking so. I
16 don't, if there's any comment on that, it's just kind of...

17 **MS. URBAN:** I mean, I will say, and I really, again, I
18 appreciate all the thoughtful work on this. This is certainly a
19 place where we can learn from what has come before for sure, both
20 in order to harmonize and also to adjust in some of the ways that
21 you were talking about Mr. Le and, and we've been talking about.
22 So, I think, again, that this makes a lot of sense. And I'm also
23 realizing how old I am because I have to always read European Data
24 Protection Board twice because I think Article 29 working group. I
25 have to translate it quickly in my head. So, so yeah, this makes a
26 lot of sense.

27 **MS. DE LA TORRE:** I just wanted to, before we move to the next
28 section, highlight one thing that's, I think an important decision

1 that we are moving towards. As a subcommittee, initially, we really
2 gave a lot of thought to following the European approach, which is
3 a little different. Formally, we had a great presentation to the
4 Board a few sessions back about this. And their approach is these
5 nine factors that they have detail around. And the idea is if you
6 trigger two of the nine, you need a data protection impact
7 assessment. We gave a lot of consideration to, to that possibility,
8 but when we were looking at that and comparing it with the Colorado
9 approach, which is a little bit more, I think, aligned with the US
10 legal framework and it's a little bit more straightforward. So, you
11 don't have to go through nine activities and say, if you trigger
12 two, then you have to do a data protection impact assessment.
13 Rather, you go through specific identified activities like selling
14 data, processing personal data for targeted advertising, processing
15 sensitive data, those will automatically per se trigger the data
16 protection impact assessment. And after a lot of consideration, we
17 thought that aligning a little closer with Colorado and perhaps not
18 as close with the European Union was the right potential approach
19 for California. So, I just want to kind of, you know, we expressed
20 that about it so that we can gather, hopefully Chairman Urban's
21 support. I think that, in terms of, you know, what activities will
22 be subject to the data protection impact assessment, it might be
23 that net-net is the same in Europe. And, and Colorado. But the
24 thought process, the analysis that goes into identifying them is
25 going to be a little different. It's not going to be nine
26 activities. You trigger two, do a data protection impact
27 assessment. It's going to be a set list of activities, and if you
28 meet any of these four, five different bullet points, then you need

1 a do a data protection impact assessment. If I'm probably being
2 repetitive, and I'm sure that Chairman Urban already gathered this,
3 but I just wanted to be expressed about it.

4 **MS. URBAN:** I appreciate that. And again, I think the thinking
5 makes sense. Of course, obviously the GDPR informs our law quite
6 clearly. And it's also a California law and within the United
7 States, and some of the assumptions, the baseline assumptions are
8 different starting with when you can process and, you know, and how
9 that's handled. So, you know, I, I just, I think that it makes, I,
10 I just think you have a lot of models for this particular
11 requirement. There are a lot of risk assessment models out there,
12 and it seems as though you and staff have been reviewing them all
13 and, and, and matching them up to our law. And that makes sense to
14 me.

15 **MS. DE LA TORRE:** Okay. Give my marker. Apologies before, sorry
16 about that question. Thank you. Before we move on to the next
17 point, I just wanted to give an opportunity to staff to correct us
18 if maybe we steer away from what is accurate.

19 **MR. ANDERSON:** Corrections here, Board member de la Torre. And
20 I do think one point that you raised does warrant emphasis, which
21 is that these thresholds at the state level are generally
22 interoperable with the GDPR approach. So, for instance, if you are
23 selling personal data, you've likely hit two of the nine factors
24 under EPB. So as Board member de la Torre pointed out, we'd likely
25 end up in the same place., it's just a different way for businesses
26 to assess how they actually, whether or not they need to do the
27 risk assessment., and as Board member de la Torre pointed out,
28 having a clear list not only helps us with the OAL Clarity

1 standard, but of course, just from helping just from the
2 perspective of helping businesses with their own compliance and
3 understanding when they need to conduct a risk assessment, there
4 are some benefits to the state approach.

5 **MS. URBAN:** Wonderful. Thank you.

6 **MR. LE:** Alright. Yeah. We'll move on to part three, automated
7 decision-making technology. Actually, I'll hand it off to Board
8 member de la Torre.

9 **MS. DE LA TORRE:** Thank you. So again, the first slide that we
10 see here is just a reminder of the authority for rulemaking that
11 this agency has. We can project it for a second and then move on to
12 the next slide, please. One thing that we gave a lot of
13 consideration to is how to define automated decision-making
14 technology (ADMT) within the terminology of our statute. I think
15 that the fact that Member Le was part of this subcommittee was
16 extremely helpful to consider all of the options. He has extensive
17 experience in this area. And again, we are not judging or stating
18 that this should be the definition. We are still considering
19 options. The staff is still considering options, but we wanted to
20 give the Board a flavor of where we are going at this point. I can
21 read it out loud. Automated decision-making technology will mean
22 any systems, software, or process, including those derived from
23 machine learning, statistics, or other data processing or
24 artificial intelligence techniques, that processes personal
25 information and uses computation as all or part of a system to make
26 or execute a decision or facilitate human decision-making. And we
27 will be stating that ADMT includes profiling, as you see next week.
28 It is a definition of profiling within our law, which we will

1 definitely not change. It's just defined the way it is defined. So,
2 I, again, defer to Member Le, it seems to me to be a rather broad
3 definition of ADMT, which will be comprehensive, and that's how we
4 are thinking about it, but concrete enough to enable organizations
5 to assess whether a particular technology is automated decision-
6 making technology. And then the second layer, which we will point
7 in this conversation in the next slide is, you know, what rights
8 does it trigger that? There's a question of what technology we're
9 defining and then what happens when this technology is used in
10 terms of the rights that we will grant on California residents. So
11 let me pause here and...

12 **MR. LE:** Oh, I'll add really quickly to that, you know, yeah,
13 staff since I synthesized this definition from multiple frameworks,
14 you know, Civil Rights Commissions, propose modifications,
15 employment regulations, the Office of Tech Science and Technology
16 Blueprint for the AI Bill of Rights, and, you know, there's a lot
17 of definitions floating around. There is no one that's going to
18 make every single stakeholder happy. And I think we, the
19 subcommittee and staff have kind of threaded that needle to pick
20 one that covers what we think should be covered. And we have, you
21 know, these thresholds of who the CCPA applies to, and these other
22 kind of checks on making sure that, you know, this definition, on
23 its own, doesn't trigger a lot of things, right? You have to do a
24 risk assessment under this definition, you have to be, you know,
25 regulated by the CCPA, you also have to hit these thresholds. So
26 yeah, I think this is kind of a good first step at our definition
27 as we approach, you know, a more final rulemaking that we'll
28 actually finalize this.

1 **MS. URBAN:** Thank you. Yes. I recognize bits and pieces. So,
2 thank you for that. I think I'd just like to hear the...

3 **MS. DE LA TORRE:** The whole?

4 **MS. URBAN:** The whole.

5 **MS. DE LA TORRE:** Okay. So, let's move on to the next slide,
6 please. And I think that's a wise point here. So, the fact that
7 technology might be within the definition of ADMT the way we're
8 thinking about it will not automatically trigger access and opt-out
9 rights. Only ADMT that meets certain thresholds will trigger those
10 rights we have listed what we think will be or how we're thinking
11 about reasonable thresholds. I'm going to read them out loud. So,
12 if the use of ADMT is using partners of a decision that results in
13 the provision or denial of financial or lending services, housing,
14 insurance, education, enrollment or opportunities, criminal
15 justice, employment or contracting opportunities, or compensation,
16 healthcare services, or access to essential goods, services, and
17 opportunities, that's number one. Number two, the use of ADMT to
18 monitor or surveil employees, independent contractors, or
19 applicants or students. Number three will be the use of ADMT to
20 track the behavior, location, movements, or actions of consumers in
21 publicly accessible places. This point, the subcommittee feels that
22 those three will be good points or thresholds to recommend for
23 implementation. Again, this is a very complex area. This language
24 is not final. We just try to bring some information to the Board on
25 how we are thinking about this. The second list that you will see
26 there, there are additional thresholds that we are recommending for
27 potential discussion. They might not need to be enacted in this
28 initial package, but maybe they should be considered for future

1 packages, or perhaps, you know, if the Board supports it, and
2 that's the preference, we could consider including them in the
3 initial package. So, the first one is the processing of personal
4 information of consumers that the business has actual knowledge are
5 less than 16 years of age. And the second one will be the
6 processing of personal information of consumers to train ADMT
7 systems. Those are more new, and maybe you don't find them in other
8 frameworks either state frameworks or international frameworks,
9 although should double check with the staff that that's the case.
10 But let me pause here. Just remind Chairman Urban that this is not
11 the only opportunity to have a conversation about this. It's a very
12 complex area. We just try to be thoughtful and gather some feedback
13 from the Board in terms of how we're thinking about it right now.

14 **MS. URBAN:** I have a, you know, I think I, I think I need to
15 hold my question for a little while until we finish the overview of
16 the ADMT part because everything is interrelated, as you well know.

17 **MS. DE LA TORRE:** I believe this is the last slide?

18 **MS. URBAN:** That's just the final...

19 **MR. ANDERSON:** Oh, the rest of it is appendix.

20 **MS. DE LA TORRE:** And just as a reminder, you know, it's
21 perfectly okay to bring your questions, and we will check with the
22 staff. It might not be that we can answer those questions right
23 now, but even the awareness of the question will be beneficial
24 because it will give staff an opportunity to prepare answers for
25 you to be presented in future Board meetings.

26 **MS. URBAN:** Yeah. So, I read the appendix as well earlier, and
27 so I think I was thinking of slide 23, which provides some further
28 information. Yes. You know, I think it's probably a good time to

1 talk about process and next steps because I am wondering how to put
2 together the language in the statute that talks about opt-out and
3 meaningful information for automated decision-making, including
4 profiling. And I think I'm reading this as some subset of profiling
5 would be covered. And I just need to think about what I think about
6 the subset that's identified here versus other kinds of profiling
7 that might arise. But that's something that again, I think I can be
8 more constructive as you continue to flesh this out. So first of
9 all, this is just really impressive. So, to Mr. Anderson and Mr.
10 [Inaudible], to both of you, I mean, this is just really
11 impressive, as we all know. This is a very rapidly developing area,
12 and yet somehow there's just a lot of opinions out there about how
13 to go about it. It's rapidly developing technologically,
14 societally, and we have the opportunity to lead. But of course, we
15 want to do this in the best way for California consumers and
16 thinking about what it would mean for businesses. So again, I just,
17 I really think that the approach that you're taking here is a very
18 good one. And I'm looking forward to some of the sort of fleshed-
19 out information about, again, what's going to be required for
20 things like cybersecurity, arts, and risk assessments, how that
21 interacts with the thresholds, how some of this might play out. So,
22 what would it mean for a business to allow somebody to opt out, you
23 know, at what point in the decision-making, what would the consumer
24 need to do in order to opt out? Would there be exceptions? You
25 know, these kinds of things. All of them are related to whether the
26 thresholds are the right thresholds or not. So, I got animated,
27 that was a bad idea. So, I very much look forward to that. And then
28 in terms of process, let me just, let me just do not feel tied to

1 this. Okay. I'm just going to tell you what would be great from my
2 perspective, and everybody can tell me if that works or not. What
3 would be fantastic from my perspective would be for some of the
4 more detailed information, and I don't know if that's in the form
5 of memos or a draft ISO, maybe some draft regulatory language that
6 would be an obvious choice. If that were available to the Board
7 sometime with some copious time before the next meeting for the
8 Board to think about, that would be wonderful. If it were possible
9 for the Board to offer maybe written feedback the way we did on the
10 request for comments, that would be wonderful. I don't know if that
11 would be before the next Board discussion or after. I realized that
12 if we start, if the staff starts collecting Board written feedback
13 like that, then we have to give it to the staff, because we end up
14 with having to think about Bagley-Keene. So, I'm completely open as
15 to like when that would happen. I would just like to have the
16 chance for that at some point because the complexity of the topic
17 lends itself, at least for me, to that kind of feedback at some
18 point. But regardless, if we could have a discussion at the next
19 level of complexity, whatever that is, and if, you know, if
20 everybody's ready to have a draft regulatory package, that's great.
21 Or if it's something in between, that's great. That we could start
22 looking at before the next meeting. That would be, from my point of
23 view, sort of selfishly, I think that would allow me to be very
24 constructive, but I'm very open to other options as well.

25 **MS. DE LA TORRE:** I think that that's a conversation that
26 maybe, you know, we should have, because I don't know that the
27 subcommittee, we, we have kind of ironed out how this will work and
28 anything that we say is subject to the staff being able to

1 complete, you know...

2 **MS. URBAN:** Yeah, I'm sorry. I was actually addressing
3 everybody.

4 **MS. DE LA TORRE:** But, but my vision for this package, and I
5 think this substantive vision for this package is to do things in a
6 way that's different from how we did it for the first package.
7 There is a lot of urgency around getting that first package to
8 being final. We have a little bit more space here. And so, what we,
9 how I'm envisioning this package is we front load the Board
10 conversation so that we can gather feedback and consolidate a draft
11 before we start the formal rulemaking process. That entails things
12 like the ones that Chairwoman Urban suggested. I, I apologize. And
13 this is not my—I mean, first language. So, I constantly—I mean,
14 ideally, we are envisioning bringing to the Board draft regulations
15 way ahead of the time where we have to finalize them with the
16 understanding that there will be drafts so there can be space for
17 changing things. We have to make sure that the staff is ready to
18 provide those. I think that they will not come as a whole package.
19 I think we could think about, for example, having the draft on
20 cybersecurity, which I think, is more close to being able to be
21 shared with the Board in a meeting, hopefully maybe perhaps the
22 next meeting. And then after that, providing these other two topics
23 separately to the Board. I want to pause for a second and, and
24 rethink what I, yes. I think that will be—I'm very confident that
25 given the apologies, we are, we, we, the subcommittee has working
26 drafts for all these three sections. They're just not at the same
27 level of kind of maturity to be presented to the Board. So, I do
28 anticipate that the first one that might be available to present to

1 the Board is cybersecurity and hopefully, you know, in the next
2 meeting, but we would like to ask a little bit of space to go back
3 to the staff and make sure that that's realistic.

4 **MR. LE:** And yeah. I'll add to that. Yeah, we do have working
5 drafts, you know, some of the teeth and how this interacts with
6 opt-outs and what is meaningful information. I think we have that,
7 and I think we're going to try to get it out as quickly as we can.
8 I want to give ourselves space in case we can't, and staff works,
9 but I, I think my, yeah, my preference is, you know, I, I would
10 love for you all to have those in a final form—or a form that you
11 can have more accurately discuss these regulations by September.
12 I'm not sure if it'll be everything you'd like, but I think we can
13 commit to working as fast as we can as a subcommittee and staff to
14 get you as much draft regulatory language as we can. So, because we
15 don't want the September meeting to have these same questions about
16 how things interact.

17 **MR. ANDERSON:** Yes, I apologize.

18 **MS. DE LA TORRE:** No, I will have the same questions if I were,
19 you know, not part of it. It's totally understandable.

20 **MR. LE:** Yeah. And I guess this was just to make sure that we
21 weren't very off base, right?

22 **MS. DE LA TORRE:** I don't think you're off base.

23 **MR. LE:** Yeah. So, we just wanted to do the gut check to make
24 sure that we're not making staff draft, you know, a bunch of
25 regulations that we will have to throw away and start all over with
26 if things don't go well with the full Board. So yeah, we wanted
27 this initial steer but things are relatively far along and we can
28 just see if we can get that out before September.

1 **MS. URBAN:** Okay. And I also don't mean to rush you in any way.
2 And I'm one Board member, so obviously there may be different, an
3 additional, there will be additional views, maybe somewhat
4 different views in September. But to the extent that I can offer my
5 general sense that I don't think you're off base. I'm very happy to
6 do that and appreciate that. Now, I would like to ask if staff had
7 any...

8 **MS. DE LA TORRE:** I wanted to just two things before we go
9 through staff. One of the questions that you had around providing
10 comments or reading feedback to staff.

11 **MS. URBAN:** Yeah.

12 **MS. DE LA TORRE:** I think that should be a priority to figure
13 out how we can enable other Board members to participate in the
14 final drafting of the rules. I'm not sure logistically how we are
15 going to accomplish that, but I think it should be a priority so
16 that if you wanted to perhaps suggest that a different steer on the
17 language of a particular provision, we can ensure that you have the
18 resources available from the staff to be able to offer that
19 alternative. And the second thing that I wanted to mention, and I'm
20 sure that when we get the comments from staff will come up is that
21 we do anticipate that this package will meet the dress holes to
22 require assessment of financial assessment. So that is in part
23 another that looks logistical piece that we have to make sure that
24 we have in place. This initial presentation in part is meant to
25 help staff understand at least the threshold so that we can
26 hopefully start the work to prepare that assessment as soon as
27 possible, because you will take time. And we are aware of the fact
28 that the residents of California are waiting on us to finalize to

1 get rights that we want to offer it to them as soon as possible.
2 And the final comment that I wanted to make is, from my
3 perspective, there are other priorities for the agency, but this is
4 a key priority to finalize these rules as soon as possible because
5 again, there's 40 million people, residents of California that we
6 want to serve and we want to make sure that we don't delay their
7 access to the rights that we are going to, and the protections that
8 we are going to with these rules. So with that, I want to pause. I
9 know that staff will have comment particularly on this additional
10 process that will exist for these rules because we anticipate we
11 will meet the threshold for that economic assessment.

12 **MR. SABO:** I just before. Should be good.

13 **MR. SOLTANI:** Great. I'll just echo that. Yeah. We are
14 undertaking or we're currently trying to move in parallel on the
15 economic analysis to determine that whether it meets the threshold
16 and begin that process since it takes additional time. And I'll
17 just echo that it is the priority, this package is a priority, and
18 so we're dedicating significant resources to it.

19 **MS. URBAN:** Okay. Thank you. And feel free to just take what I
20 said about what would be helpful to me and work with it as it works
21 in order to balance the need for the package to be efficiently
22 created and put together and for the Board to give the feedback
23 that we need to give on it. And if it is helpful, yes, I'm in full
24 agreement. This is a priority. These are very important topics.
25 They are in the initiative that Californians voted for and we want
26 to get them right and we also want to get them done and available
27 for both businesses and consumers. So you've heard what I thought.
28 I think. Hopefully that was somewhat helpful. I mean, I found this

1 tremendously useful and again, really commend everybody who's been
2 working on it.

3 **MS. DE LA TORRE:** And the last comment that I wanted to make in
4 terms of processes, I think that we should anticipate for future
5 meetings that is highly likely that this subcommittee will have a
6 presentation on virtually all..

7 **MS. URBAN:** Yep.

8 **MS. DE LA TORRE:** Meetings until we finalize the package. And
9 we wanted to create flexibility in that. So that maybe thoughts
10 that didn't come up in this conversation, you might think about it
11 over two months and make sure that we can in intake that input in
12 the next meeting. So we want to create flexibility there.

13 **MS. URBAN:** That makes sense. Alright. With that I'd like to
14 ask for any public comments on this item.

15 **MR. SABO:** Chair, it looks like we do have one public
16 commenter, Stephanie Wong, I'm going to unmute you at this time and
17 you'll have three minutes to make a public comment. So go ahead and
18 begin whenever you're ready.

19 **MS. STEPHANIE WONG:** Hi, can you hear me?

20 **MS. URBAN:** Try again.

21 **MS. WONG:** Hello?

22 **MR. SABO:** Hello.

23 **MS. WONG:** Okay.

24 **MR. SABO:** Go ahead.

25 **MS. WONG:** Thank you for the opportunity to speak. My name is
26 Stephanie Wong and I'm a policy fellow at the Future Privacy Forum.
27 FPF is a nonprofit think tank that focuses on consumer privacy and
28 helping policymakers, privacy professionals, academics and

1 advocates find consensus around responsible business practices for
2 emerging technology. I have three comments for the subcommittee to
3 consider regarding the potential definition of ADMT and potential
4 thresholds for ADMT access and opt out rights. Given the breadth of
5 the proposed definition of ADMT is unclear what opting out would
6 entail or how it would work in practice. Under the GDPR individuals
7 have the right not to be subject to a decision based solely on
8 automated processing, including profiling, which produces legal
9 effects concerning or similarly significantly affecting them. In
10 contrast, the agency's proposed definition of ADMT is not focused
11 on solely automated decisions or final decisions, but appears to
12 extend to the use of any computational processing that furthers a
13 human decision. In practice, this definition could require
14 businesses to make decisions that are necessary to provide services
15 without the use of common tools, such as word processors,
16 calculators, and Excel sheets. Second, the agency's proposed
17 language on ADMT also introduces several new terms that are not
18 defined under the CCPA, specifically, the terms monitor, track, and
19 surveil. All three terms could be seen to have similar but distinct
20 definitions while still overlapping with the CCPA's regulation of
21 data collection. In proceeding, we encourage the Board to clearly
22 define each of these terms and explain their direct correlation to
23 algorithmic decision making. In departing from the common legal or
24 similarly significant effects standard for opt-out thresholds, the
25 proposed texts could prove over inclusive, particularly in granting
26 absolute opt-out rights to parties such as employees or students.
27 We encourage the Board to consider how the proposed definitions and
28 thresholds would impact common practices. For example, would

1 students be allowed to opt out of proctoring or anti-plagiarism
2 software? Would a user that is under age 16 be able to opt out of a
3 ride share that uses GPS to determine an optimal route? And would
4 an employee have an absolute right to opt out of a program that
5 allocates and tracks hours worked and vacation time? Finally, as
6 the agency proceeds in drafting regulations to clarify access
7 rights, we encourage considering whether an organization sits as
8 either a developer or deployer of an ADMT system. Developers and
9 deployers have varied contractual and structural means to have
10 access, transparency, or even control of AI systems. The ability of
11 developers to provide meaningful information or ensure
12 cybersecurity protections while doing so will vary depending on a
13 variety of factors. Thank you for your time and consideration of
14 these important issues.

15 **MS. URBAN:** Thank you very much. Stephanie Wong. Is there
16 further public comment?

17 **MR. SABO:** This is for agenda item six, new CPRA rule
18 subcommittee update. If you'd like to speak on this agenda item at
19 this time, please go ahead and raise your hand using Zoom's raise
20 hand feature by pressing star nine. If you're joining us by phone.
21 Again, this is public comment for agenda item six, new CPRA rules
22 subcommittee update. If you'd like to make a comment, please go
23 ahead and raise your hand or press star nine. Madam Chair, I'm not
24 seeing any further hands.

25 **MS. URBAN:** Thank you very much Mr. Sabo. And thanks for the
26 comment. Thank you again to the new roles subcommittee for all the
27 thought and work that went into this and to your very helpful
28 presentation and to Ms. Shake and Ms. Anderson for your work and

1 others. I'm sure there are others for your work on the topic, let's
2 move to agenda item number seven, which is a demonstration of the
3 agency's new consumer complaint system. I am personally very
4 excited to see this and it will be presented by Elizabeth Allen,
5 the CPPA special advisor. Ms. Allen, when you're ready, please go
6 ahead. And everyone bear with us while we set up. Is there a URL I
7 can go to? Okay. Otherwise, I think I might be able to just turn
8 all the way around. Okay. I think I see it.

9 **MS. ELIZABETH ALLEN:** You see it?

10 **MS. URBAN:** Yeah. File a complaint, right?

11 **MS. ALLEN:** Yeah.

12 **MS. URBAN:** Okay.

13 **MS. ALLEN:** Exactly. Okay. Hi, I'm Liz Allen and I am proud to
14 announce that after months of work, the CPPA has soft launched our
15 complaint system last week. So we're excited to give you a quick
16 tour and to see if you had any feedback. Okay. So you can see that
17 we have, you can get to the complaint from three different
18 locations. The first is on our homepage at this bottom bar. You can
19 also go up to the navigation bar and click through up here. And if
20 you go to frequently asked questions, we have a new section, very
21 exciting, down here, entitled Filing a Complaint with the CPPA.
22 Here we have added five FAQs, addressing the most commonly asked
23 questions, such as how to file a complaint, how to write a helpful
24 complaint, and what happens after you file a complaint. And of
25 course, we created the actual complaint system itself. So this is
26 an online, this is the online form. It was designed to be simple
27 and easy for the public to use. We want to gather as much
28 information as possible as a new agency, because we want to know

1 the privacy issues and experiences of the California consumers. Our
2 statute directs us to accept both sworn and unsworn complaints in
3 1798, 199.45. This single form collects both as well as contains
4 the important disclaimer that our agency course does not represent
5 individuals. On the backend, the complaints come into the agency as
6 a CSV file where we review label and sort the complaints as
7 appropriate. We'll do a quick tour through the questions and move
8 on from there. So first we have the description of the various
9 rights that the complainant can choose and select as a possible
10 violation of the CPPA, an identification of the business or service
11 provider, contractor or person that they believe violated the CPPA
12 or the CCPA, apologies, whether the person is a California
13 resident, a narrative of the complaint, as well as a description of
14 any supporting materials, such as like a screenshot of a business
15 interface or an email exchange between the business and the
16 consumer. Whether the person already reached out or contacted the
17 alleged violator. And then importantly in number seven folks can
18 toggle between an unsworn or sworn complaint. The sworn complaint,
19 when you check it, some of the contact information becomes
20 required, and at the bottom, the form must be signed under penalty
21 of perjury. We collect optional contact information and then
22 optional information about the alleged violator, including their
23 website, their data privacy officer contact et cetera. And here at
24 the bottom the person can sign and then hit complete. So that is
25 the form. And since our soft launch, which was July 6th, so about a
26 week ago, we've actually received 13 complaints through the form.
27 The average individual complainant identifies four possible CCPA
28 violations. 77% of those complaints were sworn, 54% were submitted

1 from California residents. And the right to limit the use of
2 sensitive personal information was the most frequently alleged
3 violation. Second to that was right to know and right to delete,
4 which were tied. So we are thrilled to be live. This was so much
5 work with our small team, including the Indie Fatigable, Julie Hall
6 in our legal support division, and the gracious Ron Mendoza who was
7 head of it. It also included countless hours with the Department of
8 Consumer Affairs to create the backend of this. And it was actually
9 quite the lift. So thank you to everyone who beta tested the forum
10 and provided feedback. We are thrilled to be hearing from the
11 public about their privacy issues and concerns. Do you have any
12 feedback or questions about the form? And Ashkan? Go ahead.

13 **MR. SOLTANI:** Just thanks staff, Le, for putting this together.
14 I'm so happy that agency as you know, has very limited IT resources
15 and expertise and Liz Allen and Julie Hall have pinched hit for
16 multiple roles to do this. So, I'm very impressed that we got this
17 off the ground and we homegrown this solution. So thank you. Thank
18 you both and thank you to everyone else, Ron, too.

19 **MS. URBAN:** Wonderful. Thank you. Ms. Allen. I will defer to
20 Mr. Ley and Ms. de la Torre first and then have some comments.

21 **MR. LE:** Yep. Yeah, I would like to second, congratulations to
22 the staff for being able to put this together, short timeline and
23 short on resources. So I think this is exactly the type of thing
24 I'd like to see from the agency and I'm really happy to see it
25 here. And as it comes towards other tools for the public and for
26 businesses, whether it's submitting risk assessments or certifying,
27 they did cyber security audits or things like that. I'd love to see
28 these types of tools available as we grow our agency and our IT

1 staff, just to make compliance easier where we can.

2 **MS. URBAN:** Thank you Mr. Le. Ms. de la Torre?

3 **MS. DE LA TORRE:** Thank you. I want to second what has already
4 been shared. Thank you to the security director for thinking about
5 this project and to the staff that put it together. I do have a few
6 thoughts and my thoughts are not meant to, in a way detract from
7 my, congratulations on getting this together, but as I was looking
8 through it, I was thinking about accessibility. So one of the
9 things that I was thinking in terms of accessibility is this form
10 is only in English. We do have extensive population in California
11 who are residents who might not speak English. I know this is the
12 initial version. Are we thinking about expanding this by adding
13 other languages?

14 **MR. SOLTANI:** I can take that. We're thinking about it for
15 across the website accessibility as a whole. We've done a kind of
16 informal survey of what languages, and it's included actually in
17 our media and outreach contract to have translation services. And
18 we're thinking about potentially two ways of doing it. One is to
19 explicitly translate a bunch of the different portions of the site.
20 The second is potentially implementing some third party plugins,
21 assuming we can find ones that maintain our privacy values, that do
22 dynamic accessibility, not only for language, but there's stuff
23 that for colorblind for people that can't see contrast or hearing
24 and prayer. And so we're exploring that as part of kind of that IT
25 roadmap. So it's definitely on the radar. This is very much a kind
26 of very early version. When we evaluated other states that have
27 done this, they've done long-term yearlong procurements with large
28 companies implementing them, third parties. We chose to do it in-

1 house, both, so that we can gain the learning ourselves, get
2 something out there. And then two, again, we have particular
3 privacy preferences about using third parties. We want to give
4 ourselves a chance to contract with those privacy priorities as
5 well as accessibility priorities. So it's definitely on the
6 roadmap. It's just this was kind of, we wanted to get something out
7 there by July.

8 **MS. DE LA TORRE:** Perfect. Thank you. So on the accessibility
9 piece, not everybody is comfortable with using the internet. Are we
10 thinking about creating a 1-800 number in addition to these or a
11 mailing address where people can actually mail their complaints?

12 **MS. ALLEN:** Yeah, we do have a paper complaint form so people
13 can and I can show it to you real quick. It's essentially the same,
14 but it's a PDF where people can print it out and mail it to the
15 agency.

16 **MR. SOLTANI:** And we also have our agency phone line or directs
17 people on how to file complaints via the phone.

18 **MS. DE LA TORRE:** The last question that I have, and this is
19 something that was part of the conversation when we talked about
20 updates to the existing rules, it will be very helpful if when a
21 consumer receives a denial of a right notification from a business
22 or otherwise the business communicates in terms of any of their
23 requests to have a requirement that denial contain a reference to
24 you have the right to complain to either our agency or the attorney
25 general. I know that's more on the rule making side making that
26 update, but you do anticipate that this will be kind of compatible
27 that if the rules were updated to include that requirement that
28 they, people could be potentially one click away to filing their

1 complaint.

2 **MR. SOLTANI:** Yeah, I don't see it as incompatible. And I think
3 whether that's a rulemaking requirement in regulation, or if it's a
4 legislative fix, I'd be happy to explore it. There's also other
5 practical functions, which is as you know, in Europe, there's a
6 requirement to have a data protection officer listed. That same
7 requirement doesn't exist here. We've asked consumers to provide
8 what information they can provide about the subject of their
9 complaint, but there are probably other policy fixes that could
10 help consumers exercise their rights writ large, identify the
11 target, et cetera. So there's nothing incompatible. And again, this
12 is very much designed to take feedback, so appreciate your
13 feedback. And we anticipate as we grow we will implement a much
14 more robust system as part of our media and outreach planning,
15 including redesigning the website and creating new features. But
16 this gets it done and we have a paper version, we have. So this was
17 very much designed to get us started.

18 **MS. DE LA TORRE:** Again, thank you so much for the great work.
19 I love that we were able to launch it and I appreciate that now
20 consumers can complain and somehow 716 already found their way to
21 us. And so it is a very exciting development for the agency. Thank
22 you.

23 **MS. URBAN:** Thank you. As I said, I was very excited about this
24 and I remain very excited about it. I know to a lot of people, this
25 may look fairly simple, but there is a lot of work I can imagine
26 from other projects I've done in my other life on the backend for
27 this. So I really thank and commend Ms. Allen and Mr. Mendoza, Ms.
28 Hall for all, and everybody for all of the work to get this out and

1 get it available to the public and to have it available for the
2 agency so that we can learn what people are experiencing and best
3 direct our enforcement, and how we think about rulemaking and how
4 we think about public awareness, what things people need to be able
5 to understand both to rectify their rights and also if there are
6 limits to the rights that they're not understanding. And it's just
7 going to be very valuable. I think I wanted to especially say I'm
8 building a little bit on what Ms. de la Torre said and I fully
9 support everything she said about improvements for accessibility
10 and so forth. But related to that, I really appreciate how
11 integrated this is and how you've been thinking about how the
12 pieces work together. So there is a complaint tool, but there's
13 also an FAQ that explains it. I assume that this will be part of
14 public awareness materials so that people know about it and they
15 know how to use it. And I just really commend everybody for it
16 because I think this is a key part of our function. I am looking
17 forward to learning what we can learn from the complaints that come
18 in. Thank you Ms. Allen for giving us those very early statistics,
19 which it's only a few, so what can you say about 54% of 17 or
20 whatever. But we will eventually have more information and in line
21 with what our general counsel advises and what makes sense. I
22 personally would really value periodically hearing, getting a
23 report about what's being observed from the complaint system to the
24 extent that that's possible under our various constraints. I think
25 that would be valuable for the Board, again, to understand sort of
26 where priorities might be valuable for the public and would be
27 valuable for businesses. Because to the extent that their practices
28 are mismatched with what consumers are expecting or not, right, or

1 they're successful, I think it would be very helpful for them to
2 sort of see this and understand it and to hear us talk about it so
3 they can see that our reactions to that. So that would be
4 wonderful. It's not a huge priority given all of our priorities,
5 but I think that it would be very helpful. And again, I just thank
6 you everybody to this because I just think its key that the public
7 actually, that the public has this kind of interface with the
8 agency. And this is a wonderful way to do it especially as we're so
9 small. Mr. Soltani.

10 **MR. SOLTANI:** Thank you. Yeah. So I appreciate all the
11 wonderful feedback and indeed we do anticipate providing kind of
12 periodic updates to the Board and the public about the type, not
13 the specifics of the complaints, but the type and nature. I think
14 it will inform both, not only our enforcement, but really our
15 rulemaking and our public awareness and public education. As Ms.
16 Allen laid out, this was a soft launch. We were waiting to promote
17 it much more broadly after this Board meeting. So we plan to, we're
18 currently, as you know, as I mentioned in the budget update, we're
19 waiting on an update on our media and outreach contract. Hopefully
20 that will execute soon. But separately, we plan to promote this on
21 the various kind of public outreach channels initially to get to
22 drive consumers to it, and then make it a core piece of our public
23 awareness efforts, which we then will report back to the Board. And
24 I think we are also going to integrate it as kind of, as part of
25 our larger campaign. And we're currently have some positive
26 developments on how to make it simpler for consumers, California
27 consumers and citizens, to not only find our complaints system, but
28 how to coordinate between our complaints and the DOJ's complaints

1 and creating portals for both, submitting complaints for business
2 guidance for education. And so we're going to have some positive
3 developments in that area, I think quite soon which we'll report
4 back to the Board, and this will be a key piece of it. But starting
5 kind of next week, we will plan to start. We already have Ms. White
6 is here. We plan to put together a roadmap for promoting the
7 complaint system early on. There's also an issue. We don't manage
8 our i.t, so if we get a million complaints, then there's another
9 thing and that we're mindful of that. So yeah, so absolutely we
10 will plan to report back. And, again, I just want to give my thanks
11 to staff for kind of going above and beyond and getting this
12 together, Julie Hall and Ram Mendoza who can't be here, but they're
13 instrumental as well. Thank you.

14 **MS. URBAN:** Wonderful. Thank you. With that Mr. Sabo, could you
15 let us know if there's any public comment on this item online? And
16 if there's anyone here in person, I'd like to invite you to come to
17 the podium if you'd like to make public comment on the item.

18 **MR. SABO:** Yes. This is for agenda item seven, consumer
19 complaint system demonstration. If you'd like to speak on this item
20 under public comment at this time, please go ahead and raise your
21 hand using Zoom's raise hand feature or by pressing star nine on
22 your phone. Again, this is for agenda item seven, consumer
23 complaint system demonstration. This is the final call for public
24 comment on agenda item seven. Madam Chair, I'm not seeing any hands
25 right now.

26 **MS. URBAN:** Okay. Thank you. Mr. Sabo. Again, thanks so much,
27 Ms. Allen and team, and we'll look forward to the fruits of the
28 complaint system and being available to the public in this way. I

1 encourage everybody to check it out. Let's move to agenda item
2 number eight, which is an overview of the agency's enforcement
3 process. This will be presented by Mr. Philip Laird, our general
4 counsel. Mr. Laird, please go ahead.

5 **MR. PHILIP LAIRD:** Thank you, Chair Urban and members of the
6 Board. First of all, it's good to be back with you all. I'm happy
7 to share with everyone here that my wife and I welcomed two
8 beautiful identical girls to the world in April. And so twins are a
9 lot, but they're learning our way for sure.

10 **MS. URBAN:** Welcome back. Welcome back.

11 **MR. LAIRD:** Thank you. I'd also like to thank staff. Alright.
12 Is this any better? Okay. Can you hear me? Oh, alright. There we
13 go. Okay. So first of all, great to be back. Secondly, I did want
14 to take the opportunity to just thank the staff that supported me
15 while I was out and helped oversee the legal division. Special
16 thanks to Mr. Nelson Richards, Brian Sublay, Lisa Kim, as well as
17 the whole legal division that has done an outstanding job in my
18 absence. And finally, I just want to recognize, I know its four
19 o'clock on what's already been a six hour Board meeting, so I'll
20 try to keep my remarks short, but on point here. So for this agenda
21 item, I am providing to the Board a general overview of the
22 administrative enforcement process as detailed in both our law, the
23 CCPA and the Administrative Procedures Act as well as some high
24 level guidance around Board member conduct now that our agency's
25 enforcement authority has vested. So this overview is not...

26 **MS. URBAN:** I'm sorry to in interrupt you, Mr. Laird, but there
27 was a presentation I think in the materials?

28 **MR. LAIRD:** There is.

1 **MS. URBAN:** Is I going to use that or...?

2 **MR. LAIRD:** Yeah, I would like to use that. I was waiting to
3 see you. Oh, apologies.

4 **MS. URBAN:** Wonderful. Alright. Thank you. Apologies for
5 interrupting. And I think everybody at this point knows that I will
6 ask them to direct their attention to the materials for this agenda
7 item.

8 **MR. LAIRD:** Right. Alright, wonderful. And I just want to
9 mention this overview is not only for the Board's benefit, but also
10 for the public and regulated industries edification on agencies
11 enforcement process and boundaries. So beginning with the
12 presentation we were just referring to, if you could go to the next
13 slide, please. I will be specifically covering the topics in the
14 agenda; background on adjudicative proceedings, CPPA administrative
15 enforcement process, ex parte communications, bias and prejudice,
16 and an impermissible interest in the proceedings. So I'll unpack
17 all of that over the next few minutes. Please go to the next slide.
18 So in tandem with the phrase enforcement action, you'll often hear
19 us also use the phrase adjudicative proceeding. While the former
20 may refer to all stages of administrative enforcement action from
21 complaint and investigation to final disposition, the latter really
22 refers to the actual hearing and decision process. And the APA
23 defines an administrative proceeding as an evidentiary hearing for
24 determination of facts pursuant to which an agency formulates and
25 issues a decision. In simple terms, this is the trial and in fact,
26 an administrative hearing really operates much like a mini trial.
27 There's a prosecutor, which is in our case, will be the enforcement
28 division and a defendant or respondent which will be a regulated

1 business that we have jurisdiction over who has been accused of
2 violating the CCPA. And they both will have the opportunity to
3 present evidence and make arguments about whether or not the
4 violation has occurred. Now the bet, let's see, I'm realizing I
5 should ask you to go ahead and move to the next slide, Mr. Sabo,
6 and I'll keep going. Alright. So yeah, actually, we can stay there,
7 but I'm not quite there. I'm following my notes finally. Now, the
8 bedrock of a fair trial is the concept of due process, which
9 requires not only a balanced and equal presentation of facts and
10 arguments to the decision makers, but also requires that decision
11 makers not be biased or prejudice against either party or give
12 either party exclusive opportunities to present information more on
13 that in a bit. Okay. Now, turning your attention to this sort of
14 process overview. This is to give everyone a very, very bare bones
15 sense of what a typical administrative enforcement action will
16 entail. First, the enforcement division will open an investigation,
17 and this can occur in any number of ways, including based on a
18 complaint received through our system that was just demonstrated as
19 well as on the enforcement division's own initiative. Deputy
20 Director Michael Macco will be presenting next on exactly what his
21 enforcement priorities and strategy will be. But one thing to note
22 is that the target of an investigation may not always be aware that
23 there's an investigation going on against them, and the law does
24 not require such notice. Next, and this is fairly unique to our
25 agency, the enforcement division will file what's called a notice
26 of probable cause proceeding. This will provide the target of an
27 investigation. Notice that the enforcement division is alleging
28 they have violated the CCPA as well as a summary of the evidence

1 they've collected. The alleged violator will be notified of their
2 right to representation and the date of the hearing to determine
3 whether probable cause has been established that the violation has
4 potentially occurred, pursuant to the delegation that will be
5 considering a little bit later today. This probable cause hearing
6 would be carried out by the legal division, who until this point,
7 will have no knowledge of the investigation or the alleged
8 violations due to the internal separation of functions our agency
9 has implemented. I should note that this follows the same process
10 that the FPPC uses, who is actually the only other state entity
11 that is mandated to hold these probable cause hearings. Once a find
12 of probable cause has been made by the legal division, the action
13 then proceeds pretty much like any other administrative proceeding
14 in the state. The adjudicated proceedings are carried out primarily
15 by what's called the office of an Administrative hearings, another
16 state entity, but that's separate from our agency who, like a
17 courthouse assigns an administrative law judge to preside over the
18 hearing. This begins with the enforcement division filing what's
19 called an accusation, which is akin to a complaint or a repetition.
20 And then the matter continues with briefing and an evidentiary
21 hearing. At the conclusion of the hearing, the administrative law
22 judge renders a proposed decision to the agency. This is where the
23 agency Board comes in. Once a proposed decision has been rendered,
24 the Board will be given the opportunity to review and deliberate on
25 the proposed decision and the underlying record. During a closed
26 session of a regularly no noticed Board meeting, the Board will
27 ultimately vote on whether to adopt, reject, or modify the proposed
28 decision. If the Board adopts the decision, then the decision and

1 the order become final, essentially a final judgment. If the Board
2 rejects or modifies the decision, it must prepare its own written
3 reasons for doing so with support from legal division staff. The
4 penalties authorized by the CCPA are an order to cease and desist
5 activities that violate the CCPA and fines ranging from 2,500 to
6 \$7,500 per violation. Now, I know that's a lot I turn, I just
7 covered in terms of the process. As I said, its very bare bones,
8 but I will take a moment here to ask if Board members have any
9 questions about that process.

10 **MS. URBAN:** Nope.

11 **MR. LAIRD:** Alright, I'll continue then to the next slide, Mr.
12 Sabo. Thank you. So given the Board's role as a final adjudicator
13 or judge, some might say there are a number of prohibitions
14 included in the Administrative Procedures Act meant to ensure due
15 process is upheld in administrative proceedings. The first
16 prohibition is on ex parte communications. And the APA defines ex
17 parte communication as a direct or indirect communication to a
18 Board member from a party or interested person about a pending
19 adjudicative proceeding that occurs without notice and the
20 opportunity for all parties to participate in the communication.
21 Now, this means with some limited exceptions, that Board members
22 cannot talk to a party to the proceeding, including enforcement
23 division staff, about the proceeding while the matter is pending.
24 Additionally, this prohibition extends generally to interested
25 persons, which can include trade groups and industry
26 representatives. So that's sort of ex parte in a nutshell. I'll
27 just kind of keep running through the various prohibitions now. So
28 next slide please. So another prohibition against..

1 **MS. URBAN:** Sorry. Can I ask you a quick question on that? So
2 other interested parties. So someone who might in a court setting
3 file an amicus brief because they, I mean, an amicus brief is a
4 friend of the court, but might try to intervene, I suppose, but
5 they're not the business that is actually the subject of the
6 adjudicated proceeding. They're not the defendant.

7 **MR. LAIRD:** That's correct, and I think we're aware there's a
8 lot of trade groups that represent different types of industries or
9 different types of businesses who often will advocate for even
10 certain outcomes in an administrative proceeding because they want
11 what's best for their businesses they represent. So that would be
12 another instance where maybe it's not a direct party, but it is
13 somebody who's established has a pretty clearly observed interest
14 in the outcome of the proceeding and the benefit it might have on
15 their organization or their representatives and that the same rules
16 would apply with them.

17 **MS. URBAN:** Okay, thank you.

18 **MS. DE LA TORRE:** I have a question also on the ex parte
19 communications. We had a prior meeting of the Board where this was
20 discussed to some extent, and I just wanted to get some clarity as
21 to, at what point of the administrative enforcement process this ex
22 parte communication prohibition is triggered. Be mindful of the
23 fact that for the initial part of the enforcement process, the
24 Board might, in reality, you will not know that an enforcement is
25 going on. And as I understand it is when the enforcement division
26 files the accusation under the Office of Administrative Hearings,
27 at that point, this will become officially filed. It will be
28 public, and the Board will be enforced and informed. So would it be

1 correct in assuming that that's the point where they ex parte
2 communication obligation is triggered for the Board members?

3 **MR. LAIRD:** That's a great question. Board member dilatory
4 absolutely by that stage, I would say yes. Once there is a public
5 filing and anybody including Board members are made aware that
6 there is now a public action, again, an administrative action
7 against a target by our agency, certainly we'd ask that you observe
8 these ex parte prohibitions. I will add the extra caveat. As you
9 know, there is a little bit more confidentiality baked into the law
10 around the probable cause hearing proceedings. So there may be a
11 situation where a Board member is not aware at that point that a
12 matter is sort of brewing, so to speak. But may then a
13 representative of a business may come to you saying, hey, we got
14 this notice of probable cause proceeding. Even if you were made
15 aware at that point that's what they wanted to discuss with you, I
16 would still recommend that you treat that as a moment in time when
17 you should no longer continue the conversation. So certainly at the
18 accusation stage, but anybody trying to speak really with Board
19 members about an investigation or the beginnings of an enforcement
20 proceeding against them, it would be the recommendation of the
21 legal division that Board members abstain from that.

22 **MS. DE LA TORRE:** Let me repeat back, make sure that I
23 understood it correctly. So at the time of the filing, it will
24 become public, the Board will be informed clearly the ex parte
25 communication, prohibition kicks in. Before that filing, we could
26 become aware of it because a party brings it to our attention or it
27 becomes public because a party decides to go public with it. And we
28 should be really proven the moment that we understand that we have

1 awareness of that. And will it be correct to assume that the legal
2 division will be available for Board members to reach out and
3 obtain advice if we think or suspect, or maybe even before having
4 actual knowledge, we might have a conversation where we think,
5 well, this is a little bit of a red flag. Let me make sure that I
6 beyond the regular caution that we observe in general, absent
7 enforcement, and maybe I have to do something else, will the legal
8 division be the right, I guess the right section of the agency to
9 reach out to her advice on them?

10 **MR. LAIRD:** Absolutely. Absolutely. It's a service we are more
11 than happy to provide. And again, because of the separation within
12 our agency, please do contact the legal division as opposed to Mr.
13 Macco and the enforcement division.

14 **MS. DE LA TORRE:** Thank you so much.

15 **MR. LAIRD:** So unless there are any other questions.

16 **MS. URBAN:** Please go ahead.

17 **MR. LAIRD:** I'd like to move to the next slide, please. So
18 another prohibition against certain Board member conduct is around
19 concepts of being biased or prejudiced against a party. So as the
20 slide explains, bias generally refers to a lack of impartiality
21 towards a party, and prejudice generally refers to when an
22 adjudicator has prejudged facts at issue in an adjudicative
23 proceeding. An extreme but clear example of bias would be if the
24 respondent in a matter is the ex-spouse of a Board member. There
25 may be bias for or against in that situation, but certainly a
26 personal relationship that would cause into question the ability of
27 a Board member to be impartial, right? Now an example of prejudice
28 on the other hand is when, for instance, a Board member states

1 publicly that they are convinced a respondent company violated the
2 law before the matter has even gone to hearing. Again, that would
3 indicate that that Board member has drawn a conclusion without
4 listening to all the evidence, and would, in that instance,
5 establish some level of prejudice against the parties. Now the
6 existence of bias or prejudice occurs on a bit of a spectrum and
7 often calls for a case by case assessment. So back to Board member
8 de la Torre's point, the legal division is available to advise the
9 Board members when either matter is potentially an issue. But the
10 guiding principle should always be that a fair hearing requires an
11 objective and open-minded decision maker. So with that, I'll move
12 on to my final sort of prohibition on the list of no(s) and touch
13 on today concerning what's considered an impermissible interest.
14 And this relates primarily to financial conflicts that the
15 adjudicator might have with one of the parties. Now, a common
16 example here would be that, that of a Board member who owns stock
17 in a respondent company, a decision to significantly find the
18 company could have detrimental impact on the value of the Board
19 member's stock, and therefore they would have an impermissible
20 interest in the outcome of the proceeding. Now, this prohibition
21 exists not only under the APA, but as you probably pieced together,
22 also exists more generally as a conflict of interest prohibition
23 which is part of, sort of a separate body of law enforced by the
24 FPPC. But under both laws, the rule generally is really no
25 financial interests in a company coming before this Board and with
26 a decision that might impact that financial interest. So with that,
27 I tried to keep it short and sweet. That really does conclude my
28 presentation on sort of rules of the road, so to speak, for Board

1 members going forward and also what enforcement process will look
2 like going forward as well.

3 **MS. URBAN:** Wonderful. Thank you very much, Mr. Laird.
4 Questions or comments, Mr. Le or Ms. de la Torre? Alright. That was
5 very clear. Much appreciated, I think, as you said, helpful for the
6 public as well. Mr. Sabo, are there any requests for public
7 comment?

8 **MR. SABO:** For agenda item eight, if you'd like to make a
9 comment on this item, please raise your hand at this time using
10 Zoom's raised hand feature, or by pressing star nine if you're
11 joining us by phone today. Again, this is for agenda item eight,
12 overview of the enforcement process. Madam Chair, I'm not seeing
13 any hands at this time.

14 **MS. URBAN:** Thank you very much, Mr. Sabo, and no one has come
15 forward here in Oakland. So thanks very much again to Mr. Laird.
16 I'm going to pause for just one moment to do a time check. It's
17 04:15, a little after 04:15. We do have a few agenda items to get
18 through but I did want to check if case anybody needed a break.
19 Nope.

20 **MR. LE:** Use a five minute.

21 **MS. URBAN:** You could use a five minute break. Alright, so
22 let's take a short break and come back at 4:25 PM and for everybody
23 on the zoom, as usual we'll just leave it open and we'll be back in
24 a few minutes. Thank you. Okay. Okay. If someone has a comment
25 they'd like to make, they can always make it during the item for
26 general public comment.

27 **MR. SABO:** I sent her message. Yes.

28 **MS. URBAN:** Okay. Okay, wonderful. Welcome back, everyone.

1 Let's move straight on to agenda item number nine, which is an
2 enforcement update and priorities which will be presented by our
3 new Deputy Director of Enforcement, Mr. Michael Macco. Welcome, we
4 are delighted to have you. And please go ahead.

5 **MR. MICHAEL MACCO:** Thanks very much. Good afternoon to the
6 Board, and as well as to the public who are all joining us both
7 here and via Zoom. Let me make sure before I get started that the
8 microphone is working well. And thank you for the kind introduction
9 as well. So my name's Michael Macco. I joined the agency just a few
10 months ago, as you mentioned, in May as deputy Director of
11 Enforcement. As the Board knows enforcement can begin as of July
12 1st subject only to a recent court decision that I'll address in
13 just a moment. We're already hitting the ground running to do what
14 consumers expect of us to protect their privacy and to ensure that
15 covered businesses are complying with the law. I'd like to take the
16 opportunity today to introduce myself first and foremost. And also
17 to inform the Board and the public of the enforcement division's
18 priorities for the coming year, the division's overall approach to
19 enforcement and our plans for staffing which Mr. Soltani alluded to
20 earlier today. I'll conclude by inviting the Board to provide
21 feedback on our overall direction and our allocation of resources,
22 mindful of the separation that Mr. Laird discussed a few moments
23 ago between the agency's enforcement role, on the one hand, and the
24 agency's adjudicatory role, on the other hand. Whenever I mention a
25 judicatory role, I'm referring to what Mr. Laird described, where
26 the Board has the function in deciding cases that are presented to
27 it by the enforcement division. And the Board acts in that capacity
28 as a decision maker. Before doing that I'll start with just some

1 very brief background about who I am. I come from law enforcement,
2 and that background informs the approach that I have and that I
3 take in terms of the matters that the enforcement division brings
4 to the Board for Adjudication. It also informs the way in which the
5 Enforcement division engages with both the public as well as the
6 regulated community. I've spent most of my 17 year legal career in
7 government enforcement at the federal level. For a decade, I served
8 as an assistant US attorney in the Eastern District of
9 Pennsylvania, one of the largest jurisdictions in the United
10 States. My role there was to achieve justice, to bring justice, and
11 it wasn't to rack up wins or a number of cases. Focusing on that
12 just result was a very important guiding principle for me, and I
13 think for anybody who works in the Department of Justice. And it
14 does shape and kind of color my approach to civil enforcement. As a
15 federal prosecutor, I investigated and litigated cases involving
16 fraud. That was one of my specialties. I focused on companies and
17 individuals who flouted the rules in different areas of the law,
18 ranging from healthcare, government contracts, financial
19 regulation, grant making, just to name a few. I also enforced the
20 federal civil rights laws, things like the Americans with
21 Disabilities Act, their Housing Act as well as laws that dealt with
22 the federal response to the opioid crisis, like the Controlled
23 Substances Act as just one example. These are all areas where I'm
24 quite passionate. Afterward, I served in the enforcement division
25 of the US Securities and Exchange Commission where I handle insider
26 trading cases and other fraud cases under the securities laws in a
27 similarly complex industry. The structure at the SEC is, it's not
28 unlike the structure here at the CPPA, where there I brought

1 matters before SEC commissioners who heard cases and decided cases
2 from an enforcement division, so that structure is familiar. I've
3 sat on both sides of the aisle. Before joining the agency, I served
4 as in-house counsel, where I managed government facing litigation
5 and regulatory engagements worldwide. I worked in the tech
6 industry, so these matters related generally to cloud computing,
7 advertising, consumer protection, content moderation, data privacy
8 and overall financial regulation. I started my career at a large
9 law firm. I represented clients both large and small in that role.
10 And I also clerked for judges in the district court in the U.S
11 Court of Appeals. So, I would like to turn to the priorities for
12 the enforcement division, and as we think about that I'd like to
13 want make one thing clear at the start as it relates to the
14 enforcement division's work. As the Board knows a trial court
15 issued a decision over the July 4th holiday that affects
16 enforcement of some of our regulations. And it's very important to
17 place that decision in context, and I'd like to do that. Businesses
18 do not have a free pass from all enforcement. There's no vacation
19 here from enforcement. And why is that so? It's because nothing
20 stops the enforcement division from enforcing the statute that the
21 voters approved in 2020, the California Privacy Rights Act, nothing
22 stops the enforcement division from enforcing the earlier statute
23 that the CPRA amended. And nothing in that decision stops us from
24 enforcing the earlier regulations or any of the regulations more
25 recently that were discretionary under our statute. As for those
26 regulations, though, that were affected by the court's decision,
27 it's important to note that they're only one of our enforcement
28 tools. We expect vigorous enforcement over the coming year, and by

1 March of 2024, we would expect to see robust compliance with the
2 entire set of regulations, given the nature of the trial court
3 decision, where nonetheless, sensitive to the fact or the potential
4 impact of the court's decision on businesses who might have
5 designed their practices around the newer regulations, many of
6 which sought to bring simplicity and harmony to compliance
7 obligations. And some of those regulations are on hold for
8 enforcement purposes. The enforcement division will be considering
9 any of those issues on a case by case basis but we wanted the Board
10 to know that we are aware of those potential effects and sensitive
11 to that. With that said, I'd like to turn to enforcement priorities
12 and afterward invite feedback on the enforcement division's overall
13 direction, and the allocation of resources. As a new enforcement
14 division, we'd like to build public trust and confidence. At the
15 same time, we'd like to show the regulated community that we will
16 enforce the privacy laws fairly and sensibly, and when we find
17 violations, we will take aggressive action to protect the public. I
18 think that's what the statute calls for. And as the Board knows,
19 some parts of the CPPA have been on the books for years. Others are
20 newer, but for any part of the law that's been in effect for
21 several years, businesses have been on notice of the requirements
22 and the enforcement division expects them to be in full compliance.
23 But that said, we do have discretion in determining which cases we
24 bring and when we bring them. So over the coming weeks and months
25 we'll be sketching out internally the specific areas where we think
26 the public would benefit the most from enforcement, and we'll be
27 determining the proper order for addressing those cases. And we
28 have a few guiding principles in mind as we set out to do that.

1 First, any form of government enforcement, whether it's us or by
2 any other agency, it requires the exercise of sound prosecutorial
3 discretion. And this is a concept that's very familiar to me and
4 comfortable to me. And I'd like to emphasize that. As we use that
5 discretion, the enforcement division intends to prioritize matters
6 that involve children, the elderly, any vulnerable or marginalized
7 community or group that might be more susceptible to privacy
8 violations or more susceptible to being overlooked. Second, the
9 enforcement division intends to consider the overall circumstances
10 of the case as we're deciding whether or not to use, enforce the
11 enforcement tool. Legal violations as the Board knows that
12 sometimes they can be black and white of the violation themselves.
13 But our decision to prosecute a violation as an enforcement
14 division requires judgment. And we would expect to consider things
15 like the harm to consumers, the nature and the severity of that
16 harm, the business's good faith efforts to comply with the law and
17 the business's size and resources. Among other things, all of these
18 considerations can lead to a just result that I mentioned at the
19 outset, which kind of informs my overall approach, these
20 considerations I should add, they're nothing new. They're relevant
21 to whether it's enforcement by us, whether it's enforcement by any
22 other kind of enforcement agency. So we intend to consider those
23 factors and any other relevant factors as we're deciding how to
24 proceed to best protect the public. So, with those considerations
25 in mind, I'd like to turn to a few categories of potential
26 enforcement that we expect will be priorities over the coming year
27 understanding that the Board will be the adjudicator in any
28 enforcement matter. I'll be describing a few of these priorities

1 only at a high level and not in any particular order. So, first, a
2 priority will relate to privacy notices and policies. Enforcement
3 division expects to review privacy notices and policies to ensure
4 compliance with the laws, requirements, notices to consumers are
5 very much a gateway issue. They're not onerous, they've been part,
6 they're not new, they've been part of California law in their most
7 basic form for many years, and they're explicit in the law. This
8 isn't a question of legalese or paperwork. It's foundational, and
9 it's a question of business function. So the enforcement division
10 intends to review whether businesses are collecting and using data
11 in a way that they disclosed to consumers. In other words, are
12 businesses doing what they say? A second priority area will relate
13 to the right to delete. As we all know California law protects
14 consumer privacy in a lot of different ways including by giving
15 consumers the right to request the businesses delete their personal
16 information. The right to deletion is well established. It's even
17 older than the right to request correction, for example. So the
18 enforcement division expects to review whether and how businesses
19 are employ are complying with that longstanding right that we have
20 in our law. And a third priority for the enforcement division will
21 deal with the implementation of consumer requests. This priority
22 also focuses on business practices. The enforcement division
23 expects to review how businesses, in fact, are implementing
24 consumer requests that they receive. So in other words, when
25 consumers make a request under the CCPA, such as a request to opt
26 out of sale, for example, what are businesses doing specifically in
27 response? How are businesses actually operationalizing the law's
28 requirements? What barriers, if any, are businesses introducing to

1 prevent consumers from exercising their rights? These are important
2 questions for us. Businesses need to do more than pay lip service
3 to the law's requirements. And so this priority will address that
4 in attempts to get at that. The enforcement division's priorities
5 will be evolving. And they're not limited to these broad areas that
6 I just outlined. We will constantly reevaluate our priorities as
7 we're learning more information from consumers and from the
8 industry. The Enforcement Division fully expects that to pursue
9 investigations that involve aspects of the law that I haven't
10 mentioned that's very likely. The next logical question is how we
11 plan to tackle these priorities. And I'll start with staffing that
12 we had discussed earlier today. Currently, we are hiring up to
13 three enforcement attorneys at the attorney four level,
14 recruitment's already underway. And we are reviewing applications.
15 We are also hiring an enforcement attorney at the attorney three or
16 one level, depending on the candidate's experience. Recruitment is
17 likewise underway for that role. In the coming months, we expect to
18 advertise the position of assistant chief counsel for enforcement,
19 as well as an additional attorney position. We also expect to bring
20 on a senior legal analyst and a staff services manager, all as part
21 of our build out of the enforcement division's capabilities
22 including handling of consumer complaints. So this team working
23 together is going to build the infrastructure that we need to have
24 a robust enforcement program. I'm very happy to be a part of that
25 from the start. And while we work to build out that team, I should
26 mention that we're not waiting to begin enforcement. The
27 enforcement division will be using our existing resources to build
28 a foundation for bringing these cases in a way that is consistent

1 with the agency's separation of functions that we have discussed.
2 So I'll now give the Board an opportunity to provide feedback on
3 what I've described as our priorities and our overall direction,
4 mindful of the Board's potential role as an adjudicator down the
5 road. Thanks very much for the opportunity to introduce myself
6 today and to share these priorities with all of you and with the
7 public. And we look forward within the enforcement division to
8 presenting these matters to the Board in a clear and fair way in
9 the years to come.

10 **MS. URBAN:** Thank you very much. Mr. Macco. I really am
11 grateful that you've joined the agency. It's clear that you bring a
12 wealth of relevant experience that will help build out our
13 enforcement function very significantly. So thank you very much.
14 Just for being here and for joining us. I would like to open it up
15 to my fellow Board members for any questions or comments. I just
16 have a quick comment about the court decision that you mentioned.
17 Before we start, I'm pleased that the court was clear that
18 significant portions of Proposition 24 privacy protections were
19 enforceable starting July 1st. It is disappointing that the
20 enforcement of some portions of the regulations is delayed until
21 March of next year. But for myself, I just wanted to state that I
22 fully support the agency in its work to enforce the law outside of
23 what is covered by the delay on behalf of Californians and look
24 forward and look forward to that work. With that, I'd like to ask
25 if there if other Board members have questions or comments?

26 **MR. LE:** No. Okay. Yeah, I'd like to echo the chair and all of
27 those comments really. And thank you for your introduction and
28 sharing your priorities, excited to have you on. And I thought that

1 was a strong statement of what the agency is going to pursue and a
2 clear notice to businesses throughout California that this isn't a
3 vacation that we will have enforcement of what they should have
4 notice of. So thank you for that. And I think in terms of, one
5 thing I wanted to, for the enforcement division to keep in mind is
6 while there is a firewall between, many times the Board and the
7 enforcement division and legal division, what would be helpful is
8 to, as enforcement happens, is to think through how we can relay to
9 the Board and the agency fully about how, as we draft our
10 regulations, what makes it easier for enforcement to do their job,
11 right? How do we design our regulations in ways that make it easier
12 for businesses to comply and for us to uncover violations? So, just
13 trying to be efficient with making your job easier and making
14 compliance easier as well.

15 **MS. URBAN:** Thank you, Mr. Le. Ms. de la Torre.

16 **MS. DE LA TORRE:** Thank you. I also fully support this
17 statement that was provided by the Chair in terms of enforcement. I
18 want to welcome you to the agency. I'm very glad that we have been
19 able to attract the talent that you bring to the agency. In terms
20 of the presentation, I do have a couple of comments that I wanted
21 to share. I understand that there has to be a division between
22 enforcement and legal and the Board, but as we mature and you grow
23 your staff I think it will be beneficial to think about how other
24 similar agencies, I think about priorities for enforcement. And I
25 support that you came here with ideas. All of them seem strong
26 ideas, but I think every year, maybe we should have a conversation
27 on how you're thinking about just priorities in general so that you
28 can get the feedback from the Board. Unfortunately, our resources

1 are limited, and you're going to have to make some tough choices in
2 terms of some cases that might not, we might not be able to..

3 **MR. SABO:** We're good. You're good.

4 **MS. URBAN:** Okay. Wonderful. Could you let us know when it, do
5 you know when it cut out, does Ms. de la Torre..?

6 **MR. SABO:** It was, I think halfway through, I had to guess
7 halfway through Ms. de la Torre remarks.

8 **MS. DE LA TORRE:** I can quickly summarize them, and then that
9 should be, so I just generally supported the comments from the
10 chair from member of AI, welcome Mr. Marco to the agency. And I had
11 a few ideas that I wanted to share around how to, as we mature as
12 an agency, think about priorities for enforcement and the
13 participation of the Board in getting an understanding and of those
14 priorities and also shaping those priorities. I appreciate the fact
15 that we have been presented with very sound initial priorities to
16 have, but in the future, starting, when staff resources permitted
17 it will be helpful to have a presentation from the enforcement
18 division that outlines what are going to be the priorities for the
19 next 12 months in a written form, and have the opportunity to have
20 a conversation at the Board level. The one thing that I mentioned
21 specifically in terms of vulnerable communities, which I fully
22 support the protection of the communities that were mentioned by
23 our deputy director. And the one that came to mind to me that was
24 not maybe specifically mentioned, although I'm sure that it was
25 considered, is the reproductive rights and how we can do the center
26 thing that we can protect presidents perhaps of other states that
27 seek services in California, that they need to ensure their
28 wellbeing and the wellbeing of their families. Other than that, I

1 think that's...

2 **MS. URBAN:** That's what I remember.

3 **MS. DE LA TORRE:** Right.

4 **MS. URBAN:** I'm impressed.

5 **MS. DE LA TORRE:** Perfect.

6 **MS. URBAN:** I don't think I would've been able to recreate what
7 I said so effectively, thank you, Ms. de la Torre.

8 **MS. DE LA TORRE:** Thank you.

9 **MS. URBAN:** With regards to the comment about enforcement
10 priorities, we do have an enforcement annual priorities discussion
11 on our annual calendar. It's currently set for September. We got a
12 little bit of a preview, I think, since we're welcoming Mr. Macco
13 and starting enforcement. But that is something that is regularized
14 on the calendar, and I'm sure he'll advise us as to whether that is
15 the right timing and so forth. So I appreciate that very much. With
16 regards to vulnerable communities, I would also just like Mr.
17 Macco, you would consider, obviously this requires resources, to
18 also consider language barriers and possibly having some language
19 skill on staff or via contract. I mean, that's difficult with
20 enforcement, but in any case, thinking through the fact that
21 communities, different language communities are likely to be
22 targeted differently, affected differently, and so we can enforce
23 on behalf of all California. I would just like to mention that it's
24 probably already on your radar but I wanted to bring that up as
25 well. Mr. Le.

26 **MR. LE:** Yeah. I was going to say this perhaps for September
27 but while we're mentioning our wish lists to the extent possible,
28 right? As resources allow. I think as resources and timing allow

1 just taking action on when you said what impact, right? You want to
2 think big impact. I think reducing friction for consumers that want
3 to exercise their rights whether that's in terms of how they access
4 their opt out rights or what the data minimization requirements
5 that businesses should have to be aware of. I think those things
6 minimize the need for consumers to have to go through burden and
7 processes to protect their data. And I think setting a strong
8 signal to our enforcement would be a helpful way to let businesses
9 know that and consumers, right, that California's rights are
10 beginning to come into effect, are coming into effect, have come
11 into effect and letting them notice right when they go on the
12 internet, that they don't have to click through so many things to
13 exercise their rights.

14 **MS. URBAN:** Thank you, Mr. Le. Yes. I would also just like to
15 say that I fully support the thinking to focus on where mechanisms
16 aren't working for consumers. I'm not exactly sure how you
17 described it, but what is the response that they get? Is it
18 meaningful? Does it comply with the law? Of course, I think that is
19 an important priority. Other comments or questions? Right Mr.
20 Soltani?

21 **MR. SOLTANI:** Just a quick logistical one about the agenda
22 item. As you mentioned, Chair, we typically have, or on our
23 regularized calendar, we set this agenda item for September
24 regularly but we thought to move it up this year because it's the
25 first month, we begin enforcement in July, so it seemed
26 appropriate. We can certainly do another one at the next Board
27 meeting if the Board prefer or we anticipated doing the following
28 one, the following September, or even sooner if we find the

1 timing's better. But any direction on whether you all prefer to
2 have this repeated and basically in two months or to wait and I
3 defer to the Chair.

4 **MS. URBAN:** Okay. Thank you. If Mr. Le, Ms. de la Torre have of
5 thoughts on that, I'd be happy to take them. My view would be, so
6 there are some pros and cons. We've been, I think well briefed in
7 this session. So I would, for purposes of the three of us, I would
8 suggest that maybe we have sort of a catchup before the next yearly
9 priorities. But I would be happy to leave that up to the discretion
10 of Mr. Michael and the enforcement division and whether or not they
11 think that that would be helpful and something that we need. I am
12 attentive to the fact that we are just the three of us. And so to
13 the extent that it would be helpful to have an item on the agenda
14 before that, whether it's September or maybe November or something
15 like that. I would also like staff to consider that, but again, I
16 would be very happy to leave that up to staff's discretion. That is
17 my initial reaction. But I would like to ask if there are feedback
18 from Mr. Le and Ms. de la Torre?

19 **MR. LE:** Yeah. I think maybe, yeah, I just said my piece right
20 now but perhaps one before March could be helpful. It doesn't have
21 to be September or November, but before March.

22 **MS. DE LA TORRE:** That makes sense to me. I think that on a
23 regular schedule, it should be once yearly and before the year it
24 starts. So I think it was calendar, right? But given that we got a
25 preview if that has to be delayed or it makes sense to delay it
26 until the beginning of next year to the extent possible, if we
27 could anticipate, although we cannot anticipate, but ideally this
28 conversation could be had with five Board members that will be what

1 we should attempt to achieve. If that causes a little bit of a
2 delay that, I think that is fine. So I basically support with the
3 Chair just mentioned of giving flexibility to stop considering or
4 prioritizing the ability of the Board to hear this again sometime
5 before the end of next year, ideally with five Board members
6 present.

7 **MR. MACCO:** Thank you for that feedback and for all the
8 feedback that you provided. And we will get back to you with a
9 proposed agenda item to address that concern.

10 **MS. URBAN:** Wonderful. Thank you Mr. Michael. We'll look
11 forward to seeing you when we see you. And with that, I would ask
12 if there is any public comment on this item?

13 **MR. SABO:** Yes, Madam Chair, we have Megan Gray. Megan, I'm
14 going to unmute you in just a moment and you will have three
15 minutes to make your public comment.

16 **MS. MEGAN GRAY:** Hi everyone. Can you hear me?

17 **MS. URBAN:** Yes, we can. Thank you.

18 **MS. GRAY:** Hi, you all are doing great work. Thank you so much
19 for all the time you've put in. I just wanted to make a, a quick
20 comment. I know that you all can't respond to this. I'm not
21 anticipating a response, I just wanted to get this on your radar.
22 The presentation about enforcement was very helpful. I think it
23 would be even more helpful to have more granular information about
24 some components of that. There was a line item about the statutory
25 administrative fine, but I did not see anything about injunctive
26 relief. As I think we're all familiar, the ultimate goal here is
27 behavior change, and that's going to revolve largely around your
28 ability to force your will on a potentially recalcitrant company.

1 So I'd be interested to hear more about the injunctive path, and
2 I'm also interested to learn more about how you calculate
3 violations. The administrative fine is determined on how you won,
4 determine what is a violation, and then you have to count it. There
5 is ambiguity at the federal level on how you count violations. It's
6 not as intuitive as one might expect. So I would also be interested
7 at some point if you could expand on that. Thank you very much.

8 **MS. URBAN:** Thank you very much. Megan Gray. Are there
9 additional public comments?

10 **MR. SABO:** Oops. So at this time, if you'd like to make a
11 public comment, please go ahead and raise your hand. This is for
12 agenda item number nine, enforcement update and priorities. You can
13 raise your hand using Zoom's raised hand feature or by pressing
14 star nine if you're calling in by phone. Again, this is for agenda
15 item nine, enforcement update and priorities. Madam Chair, I'm not
16 seeing any further hands.

17 **MS. URBAN:** Thank you very much, Mr. Sabo. Thank you to the
18 Board members and thank you very much, Mr. Macco. Again, welcome.
19 We will be seeing you when we see you. And with that let's move to
20 agenda item number 10. The topic is a delegation of authority to
21 conduct probable cause hearings. I think we have a theme going.
22 Phillip Laird, our general counsel will present that. Thank you,
23 Mr. Laird. Please go ahead.

24 **MR. LAIRD:** Thank you. And hello again. I will try to keep this
25 quick. In connection with this item, there is publicly available
26 memorandum that was included to explain generally the purpose and
27 benefit of explicitly delegating authority to agency staff the
28 ability to hearing conduct probable cause proceedings. As the Board

1 is aware, this probable cause proceeding is fairly unique to our
2 agency and modeled after the FPPC. Accordingly, we proposed to
3 follow the same process that the FPPC does, whereby the general
4 counsel and/or the legal division as delegated by the executive
5 director will conduct the probable cause proceedings and make a
6 finding of probable cause. Because the legal division is strictly
7 walled off from the enforcement division, we will be able to carry
8 out this role without creating any sort of conflict. And so with
9 that, unless there are questions from the Board staff is
10 recommending at this time, the Board make the delegation that was
11 included in the public materials, I'm happy to read that aloud if
12 that's helpful. But otherwise that is staff's recommendation for
13 this item.

14 **MS. URBAN:** Thank you, Mr. Laird. Just as a clarification, the
15 draft delegation that we have in our materials for today delegates
16 to the executive director, as you mentioned, it's going to have to
17 take a job, right? Because of the separation between the legal
18 division and enforcement, or just for practical purposes. And the
19 reason we're delegating to the executive director who could then
20 further delegate is because the statute gives us the ability as the
21 Board to delegate to the chairperson or the executive director,
22 correct?

23 **MR. LAIRD:** That's correct.

24 **MS. URBAN:** I just want to be sure I had the path, correct.

25 **MR. LAIRD:** And interestingly, it is the same path that FPPC'S
26 delegation you can take. Yes.

27 **MS. URBAN:** Yes. Okay, wonderful. Thank you. Questions or
28 comments from the Board?

1 **MS. DE LA TORRE:** No.

2 **MR. LE:** No.

3 **MS. URBAN:** Okay. Wonderful. Thank you. In that case I will
4 propose that we have a motion to pursuant to Civil Code section
5 1798.199.35, that we delegate to the Agency's executive director
6 the authority to hear and decide or further delegate probable cause
7 proceedings pursuant to Civil Code section 1798.199.55 and Title 11
8 of the California Code of Regulations Division 6, Chapter 1,
9 section 7302, consistent with requirements of the Administrative
10 Procedure Act. In order to ensure that probable cause proceedings
11 are fair and impartial, the executive director may further delegate
12 the authority to hear and decide probable cause hearings to the
13 general counsel or to an attorney from the Agency's Legal Division.
14 May I have that motion?

15 **MR. LE:** Alright, so move.

16 **MS. URBAN:** Thank you, Mr. Le. May I have a second?

17 **MS. DE LA TORRE:** I second.

18 **MS. URBAN:** Thank you. Ms. de la Torre. We have a motion on the
19 table. May I ask for public comment?

20 **MR. SABO:** This is for agenda item 10, delegation of authority
21 to conduct probable cause hearings. If you'd like to speak on this
22 item at this time, please raise your hand using zoom's raise hand
23 function, or press star nine if you're joining by phone. Again,
24 this is for agenda item 10, the delegation of authority to conduct
25 probable cause hearings. This is the final call for public comment
26 on this item. Madam Chair, I'm not seeing any further hands.

27 **MS. URBAN:** Thank you, Mr. Sabo. In that case, I will ask you
28 to please conduct a roll call vote on whether to adopt the motion

1 as stated.

2 **MR. SABO:** Okay. Board member de la Torre?

3 **MS. DE LA TORRE:** Aye.

4 **MR. SABO:** De la Torre aye. Board member Le?

5 **MR. LE:** Aye.

6 **MR. SABO:** Le aye. Board member Mactaggart? Chair Urban?

7 **MS. URBAN:** Aye.

8 **MR. SABO:** Urban aye. Madam Chair, you have three ayes.

9 **MS. URBAN:** Thank you very much with that the motion passes
10 with a vote of three to zero, and I will ask that executive
11 director and staff implement the delegation as given to you. Sorry,
12 it's getting a little bit late in the day. So let's move on to
13 agenda item number 11, which is delegation of authority for hiring
14 of a Chief Privacy auditor. That is a position that is mentioned in
15 our statute. And if you'd like to please turn your attention to the
16 materials, there's a short memo on this item recommending that the
17 Board delegate authority to hire the Chief Privacy auditor. And
18 again, the proposed delegation. This will also be presented by Mr.
19 Laird. Please go ahead. Thank you.

20 **MR. LAIRD:** Thank you, Chair Urban, I'll keep this one even
21 shorter. There is, as the chair mentioned, a publicly available
22 memorandum that I think is pretty self-explanatory. So in short,
23 staff is recommending that the Board delegate authority to the
24 executive director to hire the chief privacy auditor with the
25 option should the Board choose to present the successful candidate
26 for the Board concurrence? Which is very similar to what was done
27 with my position. So if you'll see in the materials, the proposed
28 delegation has an end, at the end Board for concurrence in the

1 hiring that is in brackets because depending on the nature of the
2 delegation the Board wishes to make. If you'd like to exercise that
3 option, we can include that. If you'd like to just make the
4 delegation outright, we would omit that.

5 **MS. URBAN:** Thank you very much, Mr. Laird. I think this makes
6 a lot of sense. We were very happy to do the work to hire our
7 executive director. But having the expertise of staff for this hire
8 in particular, I think would be very beneficial. Comments,
9 questions from Mr. Le and Ms. de la Torre, and if you have an
10 opinion on the bracketed language, please do mention that.

11 **MS. DE LA TORRE:** I've managed to, which place the Exhibit A.
12 No, sorry. Thank you. Thank you so much.

13 **MR. LE:** I can, I can go first while you read that. I tend to
14 think that the staff has done a good job. Executive director has
15 done a good job in making hires. And considering how these Board
16 meetings are getting more and more packed, I would tend to just
17 delegate without needing to provide that concurrence. But I guess I
18 would, before I do that like a little bit more information on how
19 the executive director envisions the role of the Chief Privacy
20 auditor at this stage.

21 **MR. SOLTANI:** That's a great question. Thank you for that
22 opportunity. As I laid out in the budget presentation, I think the
23 agency is unique in that we have authority to audit businesses,
24 compliance with the statute. And we have a separate enforcement
25 division that will fundamentally enforce the law. But I see the
26 chief auditor as both informing or referring to enforcement
27 businesses compliance as well as conducting independent research
28 and recommendations to inform the agency generally about our

1 rulemaking about compliance, et cetera. I think if I had to, you
2 know, the closest corollary would be my previous position as the
3 FTC as the chief technologist. So it would be essentially building
4 up the resources within the agency to monitor and observe an audit
5 compliance with the law. I imagine once for example, when the DPIs,
6 their risk assessments are completed or cybersecurity audits, they
7 could flow to both enforcement or initially through the chief
8 auditor and their staff. And so in the org chart, the chief auditor
9 is kind of separate from enforcement, and they have two ITS threes
10 for lack of a better classification to other technologists under
11 him or her. And they will effectively help both inform the agency's
12 practices with regards to rulemaking, observe business' practices,
13 and perform audits, as well as make referrals to enforcement. Thank
14 you.

15 **MS. URBAN:** Thank you, Mr. Soltani. Ms. de la Torre?

16 **MS. DE LA TORRE:** Thank you. So please position the chief
17 privacy auditor, position is a role that we have considered at the
18 Board on level for a while. Basically, since the beginning, we
19 thought about it as a one of the initial hires potentially. I
20 understand that the hire was delayed, and at this point, because of
21 the requirement to meet in person, it will be getting, it's
22 difficult to think about how the Board could get involved without
23 delaying the process. So I'm happy to delegate to the executive
24 director. That said, I thought it was helpful to have an
25 opportunity to concur in the appointment of the general counsel.
26 And I will very much appreciate if we could also do the same with
27 the executive director. I think it gives us an opportunity to learn
28 more about the person that has been chosen. It also gives us an

1 opportunity to support that hire right from the start. And it's an
2 important hire. Because we now have a regular schedule where we
3 meet twice a month, it shouldn't cause delays in the hiring process
4 because you could expect that whichever meeting the selection is
5 ready, we could just quickly have a conversation about it, learn
6 more about it, and then express our support for the candidate that
7 is chosen. So my preference would be to leave that option to concur
8 on the selection of the candidate if the other Board members
9 support that.

10 **MS. URBAN:** Thank you, Ms. de la Torre. Mr. Le expressed the
11 practical, efficient and priority point of how many items we need
12 to be considering in Board meetings at the moment and for the
13 foreseeable future. So I wanted to give you, Mr. Le an opportunity
14 to give us the temperature of your opinion.

15 **MR. LE:** If we made a higher, wanted to submit an offer, like
16 in between those, it might require that candidate to wait a month
17 and we may lose that candidate, is my concern. And so I do think it
18 is going to slow, might slow things down. Maybe perhaps there is
19 another way we can get Board information, maybe just through email
20 separately. I don't know if there's any alternative like midway
21 positions between this that wouldn't require us to time the hire
22 with a bimonthly Board meeting. So yeah, that's my main concern
23 around the bracketed language.

24 **MS. URBAN:** Thank you, Mr. Le. Mr. Soltani.

25 **MR. SOLTANI:** Yeah, I can respond to that. And I fully
26 recognize this is an important functional role. I think we could
27 certainly work around whatever the contours, the Board prefers. Mr.
28 Le, you are right that we, one of the challenges in the process

1 that we've identified for Mr. Laird and for Ms. White, is that we
2 can't actually extend a formal offer to a candidate until the Board
3 concurs because of the potential for the Board to take a different
4 position. And so therefore there could be up to, however many a
5 month or two where we have a key candidate and we effectively
6 aren't able to extend an offer formally. And so if they're willing
7 to wait, and maybe they are, we can get them. I'll leave it to Mr.
8 Laird to answer if there's any other way. Sorry to put you on the
9 spot.

10 **MR. LAIRD:** Board member Le, I've been racking my brain to
11 think through a creative way. I could do exactly kind of what you
12 were suggesting. Unfortunately, it would be difficult. I think
13 there wouldn't really be a way for us to solicit Board consensus
14 outside of a Board meeting on that.

15 **MS. URBAN:** Could I offer a suggestion? This is on the fly, so
16 I'm warning you now. Would it be possible to delegate the authority
17 with the expectation that if a Board meeting is timed such that it
18 doesn't delay an offer and staff's opinion and discretion in a way
19 that would cause detriment to the agency or the hire then the Board
20 would be given information and be able to concur?

21 **MR. LAIRD:** Absolutely. That we could accommodate.

22 **MS. DE LA TORRE:** So I see this a little different. I think the
23 role is really a key role for us. And if a candidate is not willing
24 to wait for a few weeks, it might not be the ideal candidate for
25 the role, to be honest. And the interviews have to be time. They
26 can be time in a way that it aligns with the calendar that we now
27 can predict for the foreseeable future. That said, I do hear the
28 concerns that have been raised, and I wouldn't want to create a

1 situation where we miss out on a great candidate, which there's
2 circumstances that we cannot anticipate. The one suggestion that I
3 will offer is to go with something similar to what the chairman
4 mentioned with the caveat that if there's a need to extend that
5 offer that doesn't align with a Board meeting, perhaps that could
6 come to subcommittee, perhaps the process subcommittee, just to
7 avoid that potential difficulty. And I just want to pause here
8 because this is on the fly as well. So I want to check with Mr.
9 Laird. Will that be possible?

10 **MR. LAIRD:** Can you restate it just to make sure I understand
11 it clearly? What that, right?

12 **MS. DE LA TORRE:** So to leave this additional opportunity for
13 the Board to concur with the caveat that if it was to cause any
14 dysfunction that the staff will have an opportunity to bring it to
15 the subcommittee so that an offer can be extended before a meeting
16 of the Board take place. Would that be a possibility?

17 **MR. LAIRD:** So I suppose the key there would be if there's
18 still four full Board concurrence required at the end of that, you
19 see what I...

20 **MS. URBAN:** The subcommittee would not be able to concur itself
21 because the subcommittee doesn't have any decision making
22 authority. So it would be informing two Board members, I guess, at
23 a higher level. I think if... so, first of all in response to Ms. de
24 la Torre, I absolutely agree this is an important position for the
25 agency, and I think that's a really important point. I am balancing
26 it against the fact that they're, and I also take your point that
27 we need to have the right person and there are indications of who's
28 the right person, one of which is will they take the job on the

1 schedule that we can offer it. I think those are both very
2 important points to keep in mind. I'm also cognizant of having done
3 some of the state hiring work before the staff blessedly took it
4 away from me that there can be so many things that are
5 unpredictable that are just in the sort of the hiring processes and
6 Cal HRs processes in the state that I would probably come down on
7 the side of, if we are able to articulate anything to Mr. Soltani
8 that we want to be sure is encompassed in this role to then go
9 ahead and delegate it fully. At the same time, I don't feel
10 terribly strongly about this. I guess what I'm saying is I really
11 see the value in both Ms. de la Torres and Mr. Le's useful
12 interventions which is why I suggested that kind of middle ground.
13 And I wonder, I think there are complications with the subcommittee
14 idea, and I'm not sure that it would fulfill the goals of having
15 Board input. Of course, if there were something that indicate that
16 that came up so that the hire had to happen outside of a Board
17 meeting, of course, then we would be giving up input fully. But if
18 staff thinks that the sort of middle way where so long as it's
19 reasonably connected to a Board meeting, the Board has input via
20 concurrence I would be comfortable with that. I don't know. I just
21 want, I don't know if that goes far enough for you, Ms. de la
22 Torre, and also, I don't know, I mean, Mr. Le made the point that
23 it isn't just that we have a meeting in place, it's also that our
24 meetings are really packed. So it's 05:20 on a Friday. And I really
25 appreciate everybody's work and sticking around. But everything we
26 add is more Board meeting time, so we're valuing our own resources
27 basically.

28 **MS. DE LA TORRE:** Yeah. I'm less concerned about the meeting

1 time piece, because I don't think it will take too much time. And I
2 think it's important enough to dedicate perhaps 30 minutes to it,
3 but I value the concern of Mr. Le. So maybe something similar to
4 what the Chair described can address both concerns.

5 **MR. LE:** Yeah, I mean, if the subcommittee idea doesn't work,
6 then it doesn't work, but I would be okay with that. But it doesn't
7 sound like general counsel believes that that is a valid way to do
8 this.

9 **MR. SOLTANI:** To the Chair's point if there's a prohibition
10 essentially through Bagley King, unless the subcommittee wanted to
11 consider this all in public session, which makes it a little bit
12 more complicated not allowing us to delegate that full authority.
13 And then plus if the idea was that the subcommittee was still to
14 present the Board for concurrence, then I think we haven't actually
15 resolved the issue. We've just sort of created the..

16 **MS. URBAN:** No layer.

17 **MR. SOLTANI:** Inter step.

18 **MR. LE:** Okay.

19 **MR. SOLTANI:** One other thing I just thought I'd mention, which
20 I know none of us like to entertain, we'd ever have to go this
21 path, but you know, the position of this position would be an
22 exempt position, which means under state service, it's actually an
23 at will position, unlike other civil service positions that receive
24 some protections. The point being there would be an avenue if the
25 Board were dissatisfied with the hire that the Board could convene
26 during a meeting and give a direction to the executive director
27 about their dissatisfaction with the hire.

28 **MS. DE LA TORRE:** But that's, I mean, that's the opposite of

1 the objective here. The objective is really to express the support
2 of the Board for the hire. So I will very much want to not be in
3 that position, and I don't think we would be so...

4 **MR. LE:** And I guess the, so there's no two-way delegation like
5 we did with the delegate to the Chair who also delegates it to the
6 Chair and subcommittee. Okay. Alright. Yeah, I think the
7 alternative model is if, maybe the hire is within two weeks of a
8 Board meeting, right? Then just wait, make, hire, sorry, the hire
9 has to wait the extra two weeks. That could be good. But I think
10 waiting a month and a half in limbo, whether or not you can get a
11 job offer may be a little bit difficult. So that's kind of maybe
12 the balance that we could do.

13 **MS. DE LA TORRE:** How about the idea of indicates of, I just,
14 it's difficult for me to imagine that somebody cannot wait for a
15 month or I mean, that's not what I've experiencing.

16 **MR. LE:** Yeah.

17 **MS. DE LA TORRE:** But, I want to make sure that we address
18 everybody's concerns. So if it cannot be delegated to us,
19 subcommittee could be delegated to the Chair. Like if there's a
20 situation where it's just not feasible to bring it to the full
21 Board, could we just make sure that at least the higher gets the
22 concurrence of the Chair?

23 **MR. SOLTANI:** Yeah, absolutely. Or I'll answer that, but I
24 think the, again, I have no, I fully recognize that if this is
25 valid outcome, I have not a strong preference. I just want to
26 clarify that we would ultimately, and we might need Vaughn for
27 this, but I think you, we're essentially saying, and we did it with
28 Phil and Mr. Laird and Ms. White, but that the Board would

1 ultimately be the, from a hiring HR process, the Board would be the
2 final essentially.

3 **MS. URBAN:** No, I don't think so. We worked all of this out
4 when we worked out the delegation, sorry to interrupt, I figured
5 for efficiency sake.

6 **MR. SOLTANI:** Yeah.

7 **MS. URBAN:** When we worked out the delegation, for your
8 delegation in which we carved out the concurrence.

9 **MR. SOLTANI:** I can see.

10 **MS. URBAN:** But that was not actually a limit on your ability
11 to hire. It was that the Board would give, I think Mr. Thompson's
12 term coming from Congress was like advice and consent. And so I
13 don't know that, it wouldn't be a Board hire, I don't think.

14 **MR. LAIRD:** I think that's right. I guess what I'm trying to
15 clarify is through, from what I understand of Cal HR rules, and
16 Juan can clarify, but in the adverse situation, if the Board were
17 not satisfied with the candidate that the staff and the review
18 panel had scored and gone through the Cal HR process, then there
19 would need to be a kind of justification for why that candidate was
20 not chosen. And so we would essentially have to and I don't think
21 this was going to happen. I'm just giving you guys the contours
22 that in closed session, you guys would essentially be the final
23 review panel and we would need to have you document that just, so
24 that there is a reason why the highest scoring candidate from the
25 prior interview panels was not chosen. So that's just one
26 procedural piece. But I think we can overcome that by making sure
27 that in that concurrence process, if there is an adverse decision
28 or if there's a decision not to select that recommended candidate

1 or the candidate that staff put forward, that you all are in a
2 position to document and clarify the reason that, so that it
3 comports with Cal HR rules. Because we have to basically submit to
4 an audit every two years of how our hiring processes are fair and
5 equitable, and they're usually based on the scoring criteria of the
6 desired qualifications and the desirable qualifications, et cetera.
7 So that's a long-winded way of saying, I think we can do it however
8 the Board see fit. But I do want to just flag that closed session
9 concurrence piece doesn't exactly comport with Cal HR, so we would
10 instead set it up as essentially a final interview panel.

11 **MS. URBAN:** I understand. Okay. Thank you. Thank you for that
12 clarification. Alright. So I think we have a few options on the
13 table. One of course is either version of what's on the paper. One
14 is to delegate the authority and if the hire would be within two
15 weeks or we could tweak it of a Board meeting that the Board could
16 concur, one would be that there's a delegation to the executive
17 director and also a delegation from the Board to concur with the
18 executive director's, sorry, the delegation from the Board to the
19 chair to concur with the executive director's decision, if I
20 understand the structure de la Torre. Okay. So I think those are
21 the options that we have.

22 **MS. DE LA TORRE:** I think the second option will meet all of
23 the requirements. We don't need to put at like a two week or leave
24 it flexible, but enable the staff to make a determination if the
25 delay is going to cause an issue with the hire. And it is relevant.
26 There is a venue to kind of have that conversation with the Chair.

27 **MS. URBAN:** Okay. Mr. Le, does that work for you?

28 **MR. LE:** Yeah. Okay.

1 **MS. URBAN:** Alright. Mr. Laird, if you can help me with this
2 one. Here's my suggestion on the fly. A motion pursuant to civil
3 code section 1798.199.135, and I won't read all of this because
4 I'll do the final motion after you tell me if it works or not.
5 Delegate to the agency's executive authority, the authority to an
6 executive director, excuse me, the authority to act on the Boards.
7 They have to conduct and oversee the hiring of the agency's chief
8 privacy auditor, provided that if a hire could be accomplished
9 within a reasonable proximity to a Board meeting in staff's
10 discretion then the selected candidate chubby presented to the
11 Board for concurrence on the hiring.

12 **MR. LE:** Oh, no.

13 **MS. DE LA TORRE:** I have a different suggestion that might
14 simplify. So we could approve this delegation as is and then have a
15 separate delegation to the chair to act as the Board in terms of
16 the concurrent for the hiring, if it's.

17 **MR. LE:** Yeah. So I think just instead of with the bracketed
18 language, perhaps just changing, present it to the chair.

19 **MS. URBAN:** Oh, okay. I'm sorry. I missed, I think I miscounted
20 the options, so I thought..

21 **MS. DE LA TORRE:** Sorry. I like, maybe we need assistance of
22 the general counsel, but I was thinking we could approve this as
23 assist with the language in brackets. And then have a separate
24 delegation to the chair to be able to act on behalf of the Board in
25 the concur for these hire, for other hires if they delay to bring
26 it to the Board.

27 **MS. URBAN:** Oh, I see. You've combined all the.

28 **MS. DE LA TORRE:** Yes.

1 **MS. URBAN:** Okay.

2 **MS. DE LA TORRE:** Before we work for any other hire?

3 **MS. URBAN:** Okay. That's fine with me. Does that work, Mr.
4 Laird?

5 **MR. LAIRD:** Yeah. When we say for any other hire, how do we
6 mean?

7 **MR. LE:** I don't think if there's any other.

8 **MS. URBAN:** No.

9 **MR. LAIRD:** I would say we couldn't expand it beyond the chief
10 privacy auditor based on today's agenda item, is my only concern,
11 but I think we can do for this position exactly what you're saying.

12 **MS. DE LA TORRE:** Okay. So let me make sure I understand. So
13 can we not fully delegate on the chair moving forward the ability
14 to speak for the Board in any concur because it seems to be easier.

15 **MR. LAIRD:** I agree. It would be easier. We just, it's not
16 quite the nature of this agenda item, because that would be..

17 **MS. DE LA TORRE:** Oh, got it.

18 **MR. LAIRD:** Other employment items. So I think we have to leave
19 it to the chief privacy auditor.

20 **MS. DE LA TORRE:** Perfect.

21 **MS. URBAN:** So, okay. I think I understand now. So we've
22 combined actually what I thought were two options. So first
23 delegate to the executive director, and then secondly, delegate to
24 the chair, the ability to concur with the executive director if
25 there isn't approximate Board meeting.

26 **MR. LAIRD:** I do. Yeah. I think we could almost do it as a
27 single motion with the bracketed language and a sort of, but if
28 there is an approximate Board meeting.

1 **MS. URBAN:** How about with the exception or provided that the
2 selected candidate shall be presented to the Board for concurrence
3 in the hiring, if in the chairperson's judgment there's a
4 reasonably proximate Board meeting or something, can we kind of
5 flip the signs a little bit?

6 **MR. LAIRD:** That's fine with me. Yeah.

7 **MS. URBAN:** And do we need to use the word delegation?

8 **MR. SOLTANI:** To the chair.

9 **MR. LAIRD:** Well, I suppose it depends. If you would like the
10 chair to just serve as sort of the gatekeeper of this, then we
11 wouldn't actually even be delegating the concurrence necessarily,
12 unless you want to. I think there's a, I know we're probably
13 overcomplicating this, right?

14 **MS. URBAN:** I'm not sure about two motions, because if we've
15 delegated full authority, then we're delegating, I don't know.

16 **MR. LAIRD:** Why don't we just do the bracketed but then, but
17 it?

18 **MR. SOLTANI:** Yeah. Or I was going to say the bracketed
19 presented to the Board for concurrence in the hiring, or in the
20 event a Board meeting is not proximate to the hiring to the chair
21 for concurrence. Okay.

22 **MS. URBAN:** Yeah. Yeah. I think that, well, Mr. Laird to tell
23 us that's legally...

24 **MR. LAIRD:** Yes. That I believe we could do.

25 **MS. URBAN:** Okay. Alright. Very good. Alright. So I'm going to
26 formulate this and feel free to tell me I got it wrong. May I have
27 a motion, pursuant to Civil Code sections 1798.199.35 and
28 1798.199.40, subdivision (f), the California Privacy Protection--

1 that the California Privacy Protection Agency Board delegates to
2 the Agency's executive director the authority to act on the Board's
3 behalf to conduct and oversee the hiring of the Agency's chief
4 privacy auditor with the exception that the selected candidate
5 shall be presented to the Board for concurrence in the hiring
6 unless, in the chair [inaudible], is not a reasonably approximate
7 Board meeting, in which case concurrence shall rest with the chair.
8 Shoot. I messed it up.

9 **MS. DE LA TORRE:** That's great.

10 **MR. LAIRD:** I love that. That'll suffice.

11 **MS. URBAN:** Alright. May I have that motion?

12 **MS. DE LA TORRE:** I motion.

13 **MS. URBAN:** Thank you.

14 **MR. LE:** I'll second.

15 **MS. URBAN:** Thank you, Mr. Le, for the second. Is there public
16 comment item?

17 **MR. SABO:** This is for agenda item 11, delegation of authority
18 for hiring of a Chief Privacy Officer. If you'd like to make a
19 comment on this item at this time, please raise your hand using
20 Zoom as raise hand function, or press star nine if you're joining
21 by phone. And this is for agenda item 11. If you'd like to make a
22 comment, please raise your hand. I'm not seeing any hands at this
23 time.

24 **MS. URBAN:** Thank you very much, Mr. Sabo. Thanks everybody.
25 Mr. Sabo in that case will you please perform a roll call vote on
26 whether the Board agrees to adopt the motion as stated?

27 **MR. SABO:** Yes. Board member de la Torre?

28 **MS. DE LA TORRE:** Aye.

1 **MR. SABO:** [inaudible] Board member Le?

2 **MR. LE:** Aye.

3 **MR. SABO:** Le aye. Mactaggart? Chair Urban?

4 **MS. URBAN:** Aye.

5 **MR. SABO:** Urban aye. Madam Chair, you have three eyes.

6 **MS. URBAN:** Thank you very much. The motion carries with a vote
7 of three to zero. Thank you very much to both other members of the
8 Board and then to staff. And I'll just in case the subordinate,
9 subordinate clause kicks in, I will follow what I understand from
10 the discussion today in terms of exercising my discretion. So thank
11 you much. Thank you very much for the thoughtful consideration of
12 that issue. With that we will move to item number 12. This is our
13 item for public comment on items not on the agenda. As mentioned at
14 the top of the meeting this provides an opportunity for public
15 comment on items that we haven't covered on the agenda. As a
16 reminder, we do welcome public comment today, but before we
17 proceed, please recall that the only action we can take in response
18 to comments is to listen and to consider whether we might discuss
19 at the topic at a future Board meeting. We cannot take any other
20 action on such an item at this meeting. It may seem as though we're
21 being unresponsive. But this is very important to ensure that the
22 rules of the open Meeting Act are followed to avoid compromising
23 either the commenter's goals or the Board's goals or mission. So
24 with that statement I'd like to open it up for public comments on
25 items not on the agenda. And Mr. Sabo, please let me know if anyone
26 would like to comment via Zoom.

27 **MR. SABO:** Sure. This is for agenda item number 12, public
28 comment on items not on the agenda. If you'd like to speak on this

1 agenda item, please raise your hand at this time using Zoom's raise
2 hand feature or by pressing star nine if you're joining us by
3 phone. Again, this is for agenda item 12, public comment on items
4 not on the agenda. Madam Chair, I'm not seeing any hands.

5 **MS. URBAN:** Thank you very much, Mr. Sabo. With that, we'll
6 move to agenda item number 13, which is the item for future agenda
7 items. Under this item we can bring up and the public can bring up
8 items to be considered for future agendas. Although we cannot
9 discuss those items themselves. As a reminder we'll be keeping a
10 list of items to be considered in addition to the standing items we
11 already have on our annual agenda. The calendar is available for
12 reference in the materials from our May four, 15th 2023 meeting on
13 our website to preview for my fellow Board members benefits. In our
14 next meeting, which is in September, the annualized topics are the
15 enforcement report and priorities that we talked about, and we've
16 discussed what to do with that. Renewing the executive director's
17 delegation of authority and an annual hiring update including
18 diversity and inclusion metrics. In addition, I have on my running
19 list strategic planning. As I mentioned in my update earlier today.
20 Ms. de la Torre and Mr. Le are likely to have a CPRA, a new CPA
21 rule subcommittee item for that coming up soon. Ms. de la Torre and
22 I will have a rulemaking process subcommittee update relatively
23 soon. And that will be scheduled when it makes sense to do that. We
24 have the California Children Data Protection Working Group
25 appointee when it's the appropriate time for that. We also have
26 some Board practices and policies to discuss so that we've been
27 putting these in place steadily. We have a good stable of them. But
28 we will have need to discuss a couple in September. We will

1 certainly need to discuss policies for agency funded travel and
2 related speaking by Board members and what the policy needs to be
3 around that. As mentioned, we've been putting these in place
4 steadily, and just to give you a heads up Ms. de la Torre and Mr.
5 Le will be working to collect those into a handbook. We had a start
6 a long time ago. So we'll collect those into a handbook. I think
7 it's a good time to do that. We have a good set of policies now.
8 And we'll also hopefully be welcoming a new Board member soon. We
9 welcome to Mr. Mactaggart as well. And so having something for
10 everybody to use I hope will be helpful. So please keep an eye out
11 for that. So that's my running list. Please let me know if I missed
12 anything or if you have additional agenda items to suggest. No.
13 Wonderful. Thank you. Mr. Sabo, is there any public comment? Does
14 anyone wish to suggest additional and agenda items?

15 **MR. SABO:** This is public comment for agenda item 13. Future
16 agenda items. If you'd like to speak on this item at this time,
17 please raise your hand using Zoom's first hand feature, or press
18 star nine if you're dialing in by phone. Again, this is for agenda
19 item 13, future agenda items. This is the final Boarding call for
20 agenda item 13. Future agenda items. Madam Chair, I'm not seeing
21 any hands.

22 **MS. URBAN:** Alright, thank you very much, Mr. Sabo and
23 everyone, I'm going to be very short, but very sincere. Our next
24 and final agenda item is number 15, adjournment. I would like to
25 very sincerely thank everyone, my fellow Board members, staff, and
26 members of the public for all of your contributions to the meeting
27 and the Board's work through I think a very packed, substantive and
28 long meeting. Today on a Friday, I want to express my special

1 thanks to everyone for all you've been providing for the agency and
2 for the public through a very long day. So thank everyone for that.
3 And may I have a motion to adjourn the meeting?

4 **MR. LE:** I so move.

5 **MS. URBAN:** Thank you.

6 **MR. LE:** I second.

7 **MS. URBAN:** Thank you. I have a motion and a second to adjourn
8 meeting. Mr. Sabo, would you please perform the roll call vote on
9 whether the Board approves that motion?

10 **MR. SABO:** Yes. The motion is to adjourn. Board member de la
11 Torre?

12 **MS. DE LA TORRE:** Aye.

13 **MR. SABO:** De la Torre aye. Board member Le?

14 **MR. LE:** Aye.

15 **MR. SABO:** Le aye. Board member Mactaggart? Chair Urban?

16 **MS. URBAN:** Aye.

17 **MR. SABO:** Urban aye. Madam Chair, you have three ayes.

18 **MS. URBAN:** Thank you very much. The motion has been approved
19 by a vote of three to zero, and this meeting of the California
20 Privacy Protection Agency Board stands adjourned. Thanks,
21 everybody.

22 (End of recording)

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