

1 CALIFORNIA PRIVACY PROTECTION AGENCY BOARD

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3 AUDIO TRANSCRIPTION OF RECORDED PUBLIC MEETING

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6 FRIDAY, JULY 16, 2024

7 9:02 AM

8 LENGTH: 6:47:15

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Appearances: JENNIFER M. URBAN, Chairperson of the Board
PHILIP LAIRD, Meeting Counsel
ASHKAN SOLTANI, Executive Director
SERENA MARZION, Moderator
VINHCENT LE, Board Member
DREW LIEBERT, Board Member
ALASTAIR MACTAGGART, Board Member
VON CHITAMBIRA, Deputy Director of Administration
LISA KIM, Senior Privacy Counsel and Advisor for the CPPA
KRISTEN ANDERSON, Privacy Counsel
NEELOFER SHAIKH, Privacy Counsel
MIKE MACKO, Deputy Director of Enforcement
MAUREEN MAHONEY, Deputy Director of Policy and Legislation
MATT REGAN, Bay Area Council
TASIA KIEFFER, LA County Business Federation
PETER LEROE-MUNOZ, Silicon Valley Leadership Group
DAMON DIETRICH, Privacy Officer at the California Department of Insurance
BRYNNE O'NEAL, Regulatory Policy Specialist at California Nurses Association
ROBERT HERTZBERG, Former Speaker of the California legislature and the majority leader of the California State Senate
RONAK DAYLAMI, California Chamber of Commerce

1 MS. URBAN: Good morning, everybody. Welcome to
2 this July 2024 meeting of the California Privacy Protection
3 Agency Board. It's July 16th, 2024, at 9:02 a.m. My name
4 is Jennifer Urban and I'm the chairperson of the Board. I'm
5 pleased to be here remotely, which I'll talk about in a
6 moment, along with a large number of members of the public.
7 And also want to welcome all of you in-person at the
8 California Public Utilities Commission in San Francisco.

9 I have logistical announcements before we start
10 with the substance of the meeting as usual. First,
11 everyone, please do check that your microphone is muted when
12 you are not speaking. We have a complicated audio-visual
13 setup, so it's particularly important when we're doing
14 hybrid meetings like this.

15 Second, I'd like to ask everyone who is there
16 in-person to please turn off or silence cell phones to avoid
17 interruption. Thank you for doing that.

18 And third, importantly, please be aware that this
19 meeting is being recorded. As you know, our temporary
20 ability to fully meet remotely and still comply with
21 Bagley-Keene expired. Therefore, this meeting is in hybrid
22 format. My fellow Board members and members of the CPPA
23 staff are here -- are there in-person, and I know most
24 members of the public are joining remotely.

25 Today I am participating remotely as well,

1 pursuant to last year's Bagley-Keene Amendments that allow
2 for remote participation for some Board members because I'm
3 recovering from COVID. These amendments require that I
4 disclose whether any other individuals, 18 years of age or
5 older, are present in the room at the remote location with
6 me, and the general nature of my relationship with any such
7 individuals. No one is in the room with me. However, my
8 spouse may enter from time to time, for example, to give me
9 something to drink during the course of the meeting.

10 In addition, as I am still recovering, I have
11 asked the Board Member Vinhcent Le , who is the most senior
12 other Board member, to facilitate if I need to step away or
13 leave the meeting. I don't anticipate that this will be
14 necessary, but my many thanks to Board Member Le for
15 agreeing to do this. Beyond that, I will ask my fellow
16 Board members to please raise their hands high enough so
17 that I can see them as I'm seeing the dais as a whole. And
18 I just might need slightly bigger movements than usual.

19 Okay. I'll now go over logistics and meeting
20 participation more generally. Today's meeting will be run
21 according to the Bagley-Keene Open Meeting Act as required
22 by law. We will proceed through the agenda, which is
23 available as a handout in San Francisco and also on the CPPA
24 website under meetings and events. Materials for the
25 meeting are also available as handouts in San Francisco and

1 on the CPPA website.

2 You may notice Board members accessing their
3 laptops, phones, or other devices during the meeting. They
4 are using those devices solely to access Board meeting
5 materials. After each agenda item is presented, there will
6 be an opportunity for questions and discussion by Board
7 members, and I will also ask for public comment on each
8 agenda item.

9 Each speaker is limited to three minutes per
10 agenda item. We also have a designated time on the agenda
11 for general public comment, which is Agenda Item 2 today.
12 On that point, I want to notice a sort of a procedural
13 change in how we have decided to run the meetings. This
14 agenda item, the general agenda item for comment on items
15 not necessarily on the agenda, is usually at the end of the
16 meeting.

17 However, we have reordered the agenda to hear
18 public comments -- general public comments at the beginning
19 of the meeting in response to feedback from some
20 stakeholders who would like to better anticipate the Board's
21 timing for taking comment on specific agenda items. And
22 that makes perfect sense. Of course, you know, we can't
23 predict exactly when we're going to get to any agenda item.

24 But by having the general comment occur at or near
25 the beginning of the meeting, members of the public who are

1 unable to join the whole meeting will still have a
2 predictable opportunity to offer comments. So we're going
3 to try that out, and I hope it's helpful. If you are
4 attending by Zoom and you wish to speak on an item, please
5 wait until I call for public comments on that item and allow
6 staff to prepare for Zoom public comment.

7 Then please use the "raise your hand" function,
8 which is the reaction feature at the bottom of your Zoom
9 screen. If you wish to speak on an item and you're joining
10 by phone, please press star nine on your phone, and that
11 will show the moderator that you're raising your hand. Our
12 moderator will call your name when it is your turn, and
13 request that you unmute yourself for comment at that time.

14 Those using the webinar can use the "unmute"
15 feature on Zoom, and those dialing in can press star six to
16 unmute. When your comment is completed, the moderator will
17 mute you. Please note that the Board, if you're joining
18 remotely like this, will not be able to see you, only hear
19 your voice. That is helpful if you identify yourself. But,
20 again, this, as I say every time, it's important especially
21 to us. This is entirely voluntary, and you can also input a
22 pseudonym when you log into the meeting.

23 If you're attending in person and wish to speak on
24 an item, please wait for me to call for public comment and
25 then move toward the podium and form a line, keeping social

1 distancing in place. Please move to the podium when you're
2 called to speak in your turn. As for Zoom attendees, it's
3 helpful if you identify yourself when you -- before you --
4 or when you begin speaking, but it's entirely optional, and
5 you can use a pseudonym or not give a name at all.

6 Please do speak into the microphone so everyone
7 participating remotely can hear you, and your remarks can be
8 recorded in the meeting record. In general, this meeting
9 being in a hybrid format with many members of the public
10 joining remotely, we know from experience, creates a lot of
11 technical complexities. So if we have any technical issues
12 during the meeting, we will pause to address the issue.

13 Our meetings are physically held at the California
14 Public Utilities Commission in San Francisco, and we really
15 appreciate the CPUC team for their hospitality and not only
16 allowing us to use their board room, but also providing AV
17 assistance today. And many, many thanks to Mr. Robert
18 Stanford and his team for managing all those technical
19 aspects today.

20 Now, if you are attending remotely and experience
21 an issue with the remote meeting, for example, the audio
22 dropping, please e-mail info@cpha.ca.gov. That's India
23 November Foxtrot Oscar at [cpha dot Charlie Alfa dot Golf](mailto:cpha dot Charlie Alfa dot Golf Oscar Victor)
24 Oscar Victor. This e-mail address will be monitored
25 throughout the meeting, and if there's an issue, we'll pause

1 so we can work on it.

2 The Board welcomes public comment on each item on
3 the agenda, and it is the Board's intent to ask for public
4 comment prior to the Board voting on any agenda item. If
5 for some reason I forget to ask for public comment and you
6 wish to speak on the item, please let us know by using the
7 "raise your hand" functions, and the moderator will
8 recognize you.

9 If you're in person, please raise your hand and
10 move to the podium, and staff will let me know, and you will
11 be called to the podium to provide your comment. Once
12 again, each speaker is limited to three minutes per agenda
13 item. And if you are speaking on an agenda item under
14 Bagley-Keene, both Board members and members of the public
15 must contain their comments to that agenda item.

16 These are important rules of the road under
17 Bagley-Keene. We can only discuss agendized items with two
18 exceptions. One, is the public can bring up additional
19 topics when we cover what is Agenda Item number 2 today for
20 general public comment. But in that instance, Board members
21 can't respond, we can only listen. And the second is that
22 items that are not on the agenda can be suggested for
23 discussion at future Board meetings when the Board takes up
24 the agenda item designated to discuss future agenda items,
25 that's number nine today.

1 We will take breaks as needed today, including one
2 for lunch. I will announce each break and when we plan to
3 return so that members of the public can leave and come back
4 if they wish before we begin again. Do note that we can't
5 predict this perfectly, but I'll try to provide some
6 guidance. Please also note that the 10th agenda item today
7 is a closed session item. The Board will leave to take up
8 the closed session item, but we'll leave this public meeting
9 open. And when we're finished, we'll return to the public
10 meeting.

11 My many thanks to the Board members for their
12 service and for attending and thinking through the meeting
13 today, and to all the people who are working to make this
14 meeting possible. In addition to the conference services
15 experts I mentioned, everyone who worked on the meeting
16 infrastructure's work is very gratefully received.

17 And today I'd like to thank Mr. Philip Laird,
18 who's acting as our meeting counsel, Mr. Ashkan Soltani,
19 who's here in his capacity as our executive director, and
20 everyone who will be briefing the Board and presenting
21 today. It's a very rich meeting today, and we really
22 appreciate all the work that you've put into helping to
23 inform the Board, and helping us with our decision making
24 process. I would also now like to thank and welcome our
25 moderator, Ms. Serena Marzion, and ask Ms. Marzion, please

1 now conduct the roll call.

2 MS. MARZION: All right. Board Member Le? Le
3 present. Board Member Liebert? Liebert present. Board
4 Member Mactaggart?

5 MR. MACTAGGART: Here.

6 MS. MARZION: Mactaggart here. Board Member
7 Worthe? Worthe absent. Chair Urban?

8 MS. URBAN: Present.

9 MS. MARZION: Madam Chair, you have four present
10 members and one absent.

11 MS. URBAN: Thank you very much, Ms. Marzion. The
12 Board has established a quorum. I'd like to remind Board
13 members that'll take a roll call vote on any action items.
14 And with that, we will move to Agenda Item number 2, which
15 as I mentioned before, is public comment on items not on the
16 agenda. This provides an opportunity for general public
17 comment. And as noted, we move this up to give people as
18 much opportunity as possible to comment if folks need to
19 leave before we get all the way through the meeting.

20 I intend this will be our practice going forward
21 if it works out, unless it turns out to be unworkable for
22 some reason. We welcome public comment today. Before we
23 proceed, just a reminder that the only action the Board can
24 take is listen to comments and consider whether we would
25 discuss the topic at a future meeting. No other action can

1 be taken at this meeting.

2 Although, it may seem like we're being responsive,
3 we are not. We are listening, and following these rules is
4 critical to ensure that the Bagley-Keene Open Meeting Act
5 rules are followed and to avoid compromising the commenter's
6 goals or the Board's mission. And so with that, I will ask
7 Ms. Marzion to please request public comment, and we'll look
8 forward to that.

9 MS. MARZION: This is for Agenda Item number 2,
10 public comment on items not on the agenda. If you'd like to
11 make a comment at this time, please raise your hand using
12 the "raise hand" feature, or by pressing star nine if you're
13 joining us by phone. This is for Agenda Item number 2,
14 public comment on items not on the agenda. Madam Chair, I'm
15 not seeing any hands raised at this time.

16 MS. URBAN: Thank you very much, Ms. Marzion. And
17 with that, we will move to Agenda Item number 3, which is an
18 update from our executive director, Mr. Ashkan Soltani.
19 This will include updates on our agency's coordination with
20 other jurisdiction and on California adequacy in other
21 jurisdictions. I believe Executive Director Soltani will
22 explain what adequacy is for those who's heard us mention
23 the term, but don't know exactly what it means. And I thank
24 Board Member Mactaggart for asking in our May meeting that
25 we pick up an update on this topic, which I think is timely

1 right now. So, Mr. Soltani, thank you. Please go ahead.

2 MR. SOLTANI: Thank you, Chair Urban, and thank you
3 for the Board for the opportunity to provide an update on a
4 number of topics. First off, just the agency general
5 update. I'm very pleased to say that we're finally big
6 enough to be able to have an update from nearly every
7 division directly from the deputy rather than from me. With
8 the exception that the public affairs division doesn't have
9 an update today. In that spirit, I just wanted to share
10 with the Board that if you recall the campaign that the
11 Board reviewed and approved during the March and May
12 meeting, is underway.

13 As a reminder, the goal of that campaign was to
14 undertake a public awareness campaign encouraging
15 Californians to exercise their rights, and generally raise
16 awareness of the agency's work and their -- and their
17 rights. We previewed some of the creatives to the Board in
18 the last meeting, and some of you may have already
19 encountered our bill boards and streaming ads on the radio.
20 This fall we'll be undertaking additional digital media
21 campaigns including print, social media, and additional
22 signage, including out of home.

23 Megan, our head of public affairs, will have a
24 more fulsome update about these activities, as well as our
25 future public affairs strategy in our annual update. But I

1 wanted to share the news in the event the Board encounter
2 those radio ads. Along these lines and in terms of public
3 affairs, I'm also pleased to report that the stakeholder
4 sessions were a success. Our General Counsel, Mr. Laird,
5 will provide a detailed update as to the specific attendees
6 and the nature of the comments we received, but we believe
7 they were a productive way to share information about our
8 activities that really goes in the public.

9 We also recently concluded an informal stakeholder
10 session on implementation of the special deletion mechanism
11 required under SB 362. We've dubbed this -- most of you may
12 have seen, we've dubbed this DROP, there's deletion
13 requesting opt-out platform, make more (inaudible) with
14 consumers. The comments we received were specific to the
15 ADM portion or the DROP portion that we're working
16 diligently to check out. And we're also undertaking a rule
17 making on the data broker registry under SQ362, which Mr.
18 Laird will touch on.

19 The data broker unit will have a more detailed
20 update regarding summary and (inaudible) received with
21 respect to that (inaudible) mechanism or DROP system, as
22 well as the overall process we've been taking including the
23 required how or project approval lifecycle process, as well
24 as the proposed regulations for the DBR and data broker
25 registry that I (inaudible). I just want to provide those

1 updates to the Board as they're kind of background since I
2 haven't provided an update in a while, but I'm sure you'll
3 hear from the rest of the team on most of those topics.

4 So with regards to our agency's coordination with
5 (inaudible), as a reminder, under Section 1798.9945 of our
6 statute, we're directed to cooperate with other agencies
7 with jurisdiction of privacy laws, including other state,
8 territories and country to ensure successful application of
9 privacy protection. I'm pleased to report that we've been
10 quite active in this regard. In addition to our regular
11 engagement with US state and federal agencies and
12 legislators, I wanted to provide an update on our
13 international.

14 So last month I had the opportunity to travel to
15 Europe for a few separate engagements, which I'll touch on
16 briefly. Just the background, the Board may recall that the
17 agency was admitted for the voting members with Global
18 Private Assembly in October, 2021. The Global Privacy
19 Assembly is (inaudible) 130 data protection and privacy
20 authorities from around the world. And our agency's
21 participation in this one provides an -- it's important --
22 can everyone hear me okay? Is it loud enough? Yes. Great.

23 I'll speak more slowly and directly. Here we go.
24 Just a reminder, the -- our participation in this forum
25 really allows the agency to coordinate and collaborate with

1 other data protection authorities that have been doing this
2 for much longer than we have. The GPA, the Global Privacy
3 Assembly, is informed by another working group called the
4 International Working Group on Data Protection and
5 Technology or often called the Berlin Group.

6 The Berlin Group is an expert advisory body. It
7 comprises the participants from data protection supervisory
8 authorities, government agencies, international
9 organizations, and academic research from across the globe.
10 They serve to identify relevant emerging technology and
11 developing position and practical advice on privacy
12 enhancement solutions, with respect to technologies and
13 services. It's kind of a -- kind of a technical nerdy
14 group, and you can see why (inaudible). Typically the work
15 they do is in a form of opinion papers, which are then
16 subsequently presented to the Global Privacy Assembly at
17 their regular meeting.

18 I have (inaudible) an opportunity to participate
19 in the 73rd meeting of the Berlin Group last month, which
20 took place in Oslo, Norway as part of my trip to Europe. At
21 this meeting, the Berlin Group adopted a number of white
22 papers, including one on artificial intelligence, which the
23 agency had the opportunity to provide feedback on. At this
24 meeting, I also had the opportunity to present on the
25 California framework under the CPPA, and discussed our

1 innovative approach to these similar opt-out via the opt-out
2 preference signal.

3 As part of this presentation, I proposed that the
4 working groups take up the topic of opt-out preference
5 signals and how they may apply under GDPR in the privacy.
6 For example, to address the issue of cookie law for users
7 encounter when they travel to European sites. I'm pleased
8 to say that the group reflected strong feedback and support
9 of taking up this issue. And so the agency will be working
10 with several other data protection agencies to first -- to
11 collaborate on the first draft of this report.

12 Typically there's one or two reports per meeting,
13 and there's usually two cycles with two meetings until the
14 report is finalized, adopted, and then presented to the
15 Global Privacy Network. Again here, I think it's an
16 important opportunity to get kind of innovative tools and
17 technologies that helps operationalize and evolve on the
18 privacy work. Along this meeting, I then had an opportunity
19 to travel to the OECD and participate in the 10th session of
20 the working party on data governance and privacy, along with
21 the working party on virtual intelligence.

22 The OECD -- they are a coordinating role among a
23 number of G7 and G20 countries So being invited as an expert
24 was a huge honor. We, as we know, incorporated the OECD
25 definitions of AI into our work, and we -- and the

1 opportunity to present our approach on regulation of
2 automated decision making systems in this meeting. I had a
3 chance to also participate in a panel in advance of the
4 launch of the report on AI, data governance and privacy,
5 which they also launched at this meeting last month.

6 Finally, while I wasn't part of this meeting, the
7 agency is also part of the Global Privacy Enforcement
8 Network. And the Global Privacy Enforcement Network is also
9 a group of a subset of the GPA members that undertake
10 enforcement. As part of that work, other enforcement
11 divisions participated in (inaudible) dark pattern or
12 websites that have (inaudible) design pattern that were
13 undertaken by all these authorities. While we are unique in
14 that we have dark patterns defined in our statute, it was an
15 important opportunity to kind of collaborate and inform both
16 other agencies and the public about this issue of subjective
17 design dark pattern.

18 Finally, I'm pleased to announce that the agency,
19 we gave in our first international memorandum of
20 understanding of collaboration agreement with the CNIL. The
21 CNIL or the French -- the French regulatory authority,
22 French DPA often regarded as the most active as well as most
23 technologically advanced DPA among the members. So we were
24 really excited to be able to execute our first MOU with this
25 authority, which allows us to see additional information

1 sharing, additional learning from one another. And we have
2 just (inaudible) off that formal race difference that
3 (inaudible). Because that was a huge (inaudible) agency,
4 and I think it helps reflect the importance for both
5 international cooperation and the regard with which we're
6 held internationally. Test, test. Is that better?

7 MS. URBAN: That's a lot better.

8 MR. SOLTANI: Okay.

9 MS. URBAN: That's a lot better. It was -- I mean,
10 we could understand you out here, but the feed was a little
11 muddy. And that's a lot clearer. So thank you.

12 MR. SOLTANI: Is there anything you'd like me to
13 repeat.

14 MS. URBAN: Not for me. Thank you. I was able to
15 follow.

16 MR. SOLTANI: So could I pause (inaudible) items or
17 go through? Great. So onto the next item, as part of the
18 update, at the last Board meeting, Board Member Mactaggart
19 had asked about kind of an update on adequacy in other
20 jurisdictions, as a reminder of what adequacy is under EU or
21 even under other laws. Essentially, adequacy is a
22 determination made by, for example, the European Union that
23 allows data from companies in those jurisdictions of
24 European citizens to be transferred to data processors here
25 in California.

1 As a reminder, in October of last year, I believe
2 it was. The Dubai -- we -- the Dubai authority recognized
3 California as an adequate territory for data transfers. So
4 we've already received an adequacy determination from Dubai.
5 We have had -- and there has been numerous conversations by
6 the Board previously on this topic including prior to my
7 joining, I believe there's been folks in the administration
8 that have talked to the European authority, the European
9 Commission on this topic.

10 There are -- and the European Commission has
11 publicly said previously in the form of public comments in a
12 meeting that there is no -- that California could
13 technically qualify for adequacy, assuming certain key
14 protections are established or satisfied. And I understand
15 that California leadership of (inaudible) had this
16 discussion repeatedly. That said, my expectation is that
17 there are certain provisions in our statute that may need to
18 be amended or that could be an impediment, that we may need
19 to consider in order to, for example, satisfy recourse
20 mechanisms afforded to European citizens.

21 I've had a number of productive conversations in
22 this regard in terms with the appropriate authorities and
23 the European Commission. In terms of next steps, what I
24 might recommend and what they've offered is that the members
25 of the EC come to present to the Board at a -- at a

1 subsequent Board meeting, to give the Board a more fulsome
2 update on what the requirements of adequacy are, and then
3 answer potentially any questions with respect to that
4 process, as well as any -- having any changes that may be
5 needed to -- needed to be made in our process or in our law,
6 and kind of take it from there. If that's something the
7 Board would be interested in, we can endeavor to schedule it
8 and put it in upcoming meeting depending on the agenda. And
9 that's my update so far. Any questions?

10 MS. URBAN: Thank you. Could the -- thank you. I
11 have Mr. Mactaggart and I just want to give a second to see
12 if anyone, and then Mr. Liebert. Okay. Mr. Mactaggart,
13 please go ahead.

14 MR. MACTAGGART: Thank you. I had a couple
15 questions. One is just quickly about the campaign, the
16 public campaign, if we had any metrics around, did anybody
17 do anything in the -- in the public? Did they see it? And
18 did they start, I don't know, exercising more rights? So we
19 know that. We wouldn't really know that with respect to
20 businesses, but would they have more inquiries? That's one.
21 And then around adequacy, my, I guess, question and
22 suggestion would be, prior to having to, you know, if
23 anybody from the EC come and -- or from Europe come and
24 present to us, it would be -- I think it would behoove us to
25 maybe do an outreach to either the legislature or governor's

1 office.

2 And I prefer to -- Mr. Liebert here to talk about
3 how to do that, but just kind of set the stage so we're not
4 getting all excited about something that no one in
5 Sacramento cares about. Not that they necessarily have to
6 agree if it's a one way determination from Europe, but I
7 still think it would make sense if we could maybe go down
8 and make, you know, (inaudible) in Sacramento anyway. But
9 it might be a good tentpole around which to organize a
10 meeting there, just to kind of say, hey, this could be in
11 the offing. And then, because if Europe shows up and says
12 we need to change these four things, we're going to need
13 some legislative health problems to do that. So that would
14 just be my suggestion.

15 MS. URBAN: Thank you, Mr. Mactaggart. So just so
16 I -- just to clarify for my own purposes. So you were
17 thinking of a Board meeting in Sacramento, or suggesting
18 that staff make sure to continue their outreach to the
19 legislature and administration, or both.

20 MR. MACTAGGART: Well, I know Mr. Liebert had
21 suggested that we, you know, spend a little more time there,
22 which would be not a bad thing for us, I think, as to be
23 seen up there. So to the extent that we ever do have a
24 Board meeting in Sacramento, I think that would be -- but I
25 would be in support of that. That's the first thing. And

1 then the second thing is, regardless of whether we do or
2 don't, I do think as part of this adequacy discussion, it
3 behooves us to sort of do a little selling in Sacramento,
4 because most people there will have no idea what this means,
5 no idea why it's important.

6 And so, rather than just us pursuing, going down
7 the road with Europe and getting all excited about it, I
8 think it needs to be two pronged. And I think we need to be
9 working with Sacramento ahead of time to make sure that the
10 governor's office and that the legislature understands kind
11 of what we're trying to do. Notwithstanding the fact that
12 this is -- doesn't necessarily need "Californian's" consent.
13 I just think it's wise for us not to get too far out of our
14 lane in terms of working with the, you know, the powers
15 there.

16 Because I think unlikely that Europe shows up with
17 the, you're good to go. You don't need to make any changes.
18 They're probably going to say, we'd like this change or we'd
19 like to protect European citizens this way, and in case that
20 needs law, we'll need help.

21 MS. URBAN: Thank you. I don't think that's
22 inconsistent with what Executive Director Soltani was saying
23 at all. You know, of course it's something we would want to
24 coordinate with everybody else in the state on. Mr.
25 Liebert.

1 MR. LIEBERT: I think that's a great potential way
2 for us to interface as well as you know, Board Member
3 Mactaggart. I think that would be a great idea. My
4 question is going to take us back to the beginning of your
5 presentation, which was excellent, Ashkan, and that is about
6 cookies. And it caught my mind notice because I am one who
7 is very concerned about the cookies notice process. It's
8 like the notifications that we all get about terms of
9 service and about privacy policy, where you have to click
10 accept in order to use the service that you want.

11 And my guess is that most consumers have never
12 been educated about what cookies are, and just like adequacy
13 by the way, and what it means for them to click accept.
14 They just have to do that just like the privacy policies and
15 terms of service. So I'm wondering, to what extent --
16 obviously I think we should address that problem of consumer
17 education, but I also think that this needs to be considered
18 as a real key area for the -- for the agency's lack of
19 consumer knowledge about what they're being expected to
20 expect. So I'm wondering to what extent these types of
21 conversations are happening with the great work you're doing
22 with the international body. Because every -- this whole
23 cookie process came up like a revolution, right? For
24 pursuing, I think, to the work at the EU, et cetera. So if
25 you could help me understand, that'd be great.

1 MR. SOLTANI: Happy to -- test one, two. Okay.
2 Great. Happy to respond to Board Member Mactaggart and
3 Board Member Liebert's question together, if that would be
4 appropriate, Chairperson Urban.

5 MS. URBAN: Yes, of course.

6 MR. SOLTANI: But I think I can kind of respond to
7 all of these kind of together. So certainly starting with
8 the question of kind of the public affairs campaign.
9 Certainly, we are trying to work diligently to -- sorry some
10 activity in the room. We're working to inform the public
11 about kind of how their rights are (inaudible), including
12 how they may opt out of the sale of personal information.
13 Of course, cookies often help facilitate the sale of
14 personal information, but of course, they're not the only
15 way by which personal information is sold.

16 And so the team are both preparing kind of
17 additional explainers and FAQs and campaigns on our website
18 to help inform the public on how their information are
19 collected and how they may opt out of sale, including those
20 opt out preference signal. And we are tracking those
21 metrics, including we've had a nice little uptick on the
22 privacy.ca.gov website already (inaudible) to the campaign.
23 And the team will be reporting those metrics in their -- in
24 their updates.

25 In addition, we have of course talking to other

1 jurisdictions. So we were the first state to have opt-out
2 pressing signals now, I believe (inaudible) states. So it,
3 you know, these are being, you know, included in number of
4 state laws, including (inaudible) as the requirements to
5 honor opt-out preference. We'll have an update of our
6 preference Bill from Ms. Mahoney back today. But we are
7 certainly trying to about to benefit in terms of opt-out
8 preferences in addressing things like cookie walls and
9 cookie banners, et cetera. And we have some examples of
10 that in our regulation as well of how if consumers may more
11 easily interact with businesses when you don't provide those
12 popups.

13 One of the things to consider is that, you know
14 cookie banners under EU are not actually a function of CDCR,
15 they are a function of Privacy Directive, which has been
16 attempted to be updated numerous times unsuccessfully. The
17 Commissioner Reynders, or former Commissioner Reynders
18 previously tried to support a essentially cookie fudge,
19 which is voluntary fudge to address some of the issues
20 around the cookie popups under ePrivacy. And it did include
21 a recognition of how (inaudible) preference signal may
22 benefit. And so we're -- we were engaged in that
23 conversation, and of course, we've been engaged with EU on
24 trying to find that, you know, that balance while our
25 framework has opt-out and the EU has opt-in, I think, you

1 know, naturally both kind of lead to kind of a middle ground
2 where consumers can elect their rights more easily.

3 And I think that's what (inaudible) preference
4 wants to do. So we're engaged both with the regulatory
5 regime, whether it's policymakers, as well as other states
6 on this topic both around cookies and preference. Hopefully
7 that was helpful.

8 MS. URBAN: Thank you, Mr. Soltani. Mr. Le.

9 MR. LE: Yeah. Thank you for the update, and you
10 know, I think, great job coordinating with all their
11 international authorities. I think we all want to see
12 adequacy for all the businesses in California to make it
13 easier to, you know, do data transfers between the EU and
14 our State. And you know, on the issue of that, I think I
15 agree with the other board members that we should coordinate
16 with the legislature and perhaps, yeah, also meet in
17 Sacramento if we do have a meeting with folks from the EC.
18 But before that, I'd also like to know, you know, what
19 changes are needed, which ones are legislative and which
20 ones can we do under the TPPA's existing authority? I think
21 that would be really helpful in scoping the requests and
22 understanding how big of an undertaking, yeah, adequacy
23 would be. Yeah, that's it.

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

25 MR. SOLTANI: Certainly. Are there folks, mic off

1 after the -- thank you so much. Yeah. There's a bit of a
2 reverb. Yeah. Certainly, and just for clarity while we
3 could certainly ask members of the EU to come to California,
4 I had envisioned them to present remotely via Zoom to the
5 board at a future board meeting to outline exactly those
6 requirements, right? So what they often say is, you know,
7 adequacy is not equivalency, (inaudible) have effectively
8 some of the same protections, and they include things like
9 redress, both from things that our law governs, but also
10 perhaps (inaudible) public sector use of data.

11 Certainly, the Biden executive order addresses
12 some of the national securities uses of personal information
13 that the citizens have concern with, but, and that was kind
14 of the basis for kind of (inaudible). But in addition, I
15 think there's, you know, there's things like the outside of
16 our jurisdiction that may impact, for example, the criteria
17 the Information Private Practices Act and other kind of that
18 affects other agencies. And so I think that update would be
19 helpful for us and perhaps the legislature. I know as I
20 said, I believe the administration in the past members in
21 the administration are aware of this topic, but we can
22 certainly provide an update and invite them even to
23 participate in that -- when we receive that briefing from
24 the EC.

25 And similar, we can include the legislature, I'm

1 sure Ms. Mahoney can be sure to include them, because as I
2 said, there's some within our purview, some outside our
3 purview, some questions around redress. And I think it
4 would be good to have a fulsome discussion on that topic
5 because there's a lot of moving parts. And then lastly,
6 I'll say there's also a question of process. You know, who
7 is the right -- while it's not a formal process, if they
8 have kind of an informal discussion, which this will be, and
9 then at some point we'll essentially kind of try to enter
10 into a formal conversation. And, you know, we would want to
11 make sure we're coordinated with the legislature and the
12 administration on that process.

13 MS. URBAN: Thank you, Mr. Soltani. I also concur
14 that it would be really beneficial and beneficial for
15 California, beneficial for California businesses, and
16 beneficial more broadly if we can continue to grow the
17 ecosystem of data practices that are sufficiently privacy
18 protective for adequacy. So I think we all share that
19 general goal. I really take Mr. Mactaggart's point to be
20 sure that other folks in California, other regulators and
21 legislators are aware. I think that's important.

22 In listening to the conversation, I like Mr.
23 Soltani's thoughts for us to maybe bring those various
24 groups together and hear from the people who of course have
25 control over the process, which is the European regulators

1 who would be making that adequacy determination so that we
2 all understand what is required. It sounds as though there
3 might be roles and responsibilities for various entities in
4 California. So it would be helpful to hear that from the
5 horse's mouth as it were in my opinion.

6 So, but I think and please raise your hand fellow
7 board members, if I'm getting this wrong. But it sounds to
8 me like there is energy and support for asking staff to
9 devote some resources to building out the understanding of
10 what we might need to do and bringing in these various
11 voices into the conversation so that we can see where we are
12 and where we might go. Wonderful. Thank you. Other
13 comments, questions from board members on Mr. Soltani's
14 presentation?

15 I just want to add my thanks and highlight the
16 efforts with regards to other jurisdictions. As everyone
17 who's attended these meetings prior knows I find 1798.19940
18 L to be a really important, sorry, I to be a really
19 important part of our role as an agency, and that is to
20 cooperate with other jurisdictions. Privacy operates in an
21 ecosystem. It doesn't operate in an atom -- in an atomized
22 individual way and practice. And making sure that we can
23 provide certainty for businesses, and protection for
24 consumers in that way is really important.

25 It takes a lot of conversations, a lot of work, a

1 lot of effort, a lot of open-mindedness, and listening, and
2 sharing our views and listening to other views in order for
3 that to be a successful endeavor. And I really want to
4 commend Mr. Soltani and the staff on all of the efforts that
5 they have been making and also thank all the other
6 jurisdictions for the coordination and discussion that it
7 sounds like they have been doing with us. So I think that's
8 a just a really important part of how we build this process
9 going forward.

10 And I just want to commend everyone on that and
11 commend everybody on the outreach as well. And share Mr.
12 Mactaggart's interest in seeing if we can be, you know, as
13 effective as we can be in giving people information about
14 their rights. With that, I would like to ask Ms. Marzion if
15 there's public comment?

16 MS. MARZION: This is for Agenda Item number 3, the
17 Executive Director's update. If you'd like to make a public
18 comment and you are present, you can go up to the podium to
19 your right, or if you are online on Zoom, please raise your
20 hand using the "raise hand" feature, or by pressing star
21 nine if you're joining us by phone. Again, this is for
22 Agenda Item number 3, the Executive Director's update.
23 Madam Chair, I'm not seeing any hands raised at this time.

24 MS. URBAN: Thank you very much, Ms. Marzion. I
25 appreciate it. Thank you, Mr. Soltani. And thanks very

1 much to members of the board for the thoughts and feedback.
2 I'm actually going to, at this moment recall Agenda Item
3 number 2 because a significant number of attendees have
4 joined us via Zoom since we originally -- I originally
5 called that agenda item.

6 And as a reminder moving Agenda Item 2, which is a
7 public comment on items not on the agenda up to the top of
8 the agenda is intended to help normalize and make it as easy
9 as possible for members of the public to comment if they're
10 not able to stay through the entire meeting. And I want to
11 be sure that we provide that opportunity to as many people
12 as possible. So I'm now recalling Agenda Item number 2. As
13 a reminder, and this is public comment for general public
14 comment items that don't have to be on the agenda.

15 However, the board cannot respond, we can only
16 listen. And that is important under Bagley-Keene that we
17 respect that boundary, but we look very much forward to
18 hearing any comments from the public. Ms. Marzion, could
19 you please facilitate if there are any comments from the
20 public?

21 MS. MARZION: If we have anyone in the room today,
22 who would like to make a public comment. We encourage you
23 to go up to the podium to your right, and if you're joining
24 us by Zoom, please raise your hand using the "raise hand"
25 feature or by pressing star nine if you're joining us by

1 phone. Again, this is for Agenda Item number 2, public
2 comment on items not on the agenda.

3 MS. URBAN: And just to be clear, of course, folks
4 are always welcome to comment on any specific agenda item.
5 This is just to give an opportunity -- as much of an
6 opportunity as possible for folks who might need to leave.

7 MS. MARZION: Madam Chair, I'm not seeing any hands
8 raised at this time.

9 MS. URBAN: Okay. Thank you very much. With that,
10 let's move to Agenda Item number 4 which is our annual --
11 one of our two annualized regularized -- excuse me, annual
12 budget and planning updates and discussion. As a reminder,
13 we placed this on the July calendar so the Board could
14 receive an update and offer any feedback immediately upon
15 the legislature passing the budget and the new fiscal year,
16 which just happened. And it's paired with a regularized
17 item in January at the beginning of the calendar year to
18 help us help set priorities for this -- the lengthy
19 California budget process. Deputy Director of
20 Administration, Ms. Von Chitambira will present. And I'd
21 like to ask you to please turn your attention to the
22 materials for this item and ask Deputy Director Chitambira,
23 are you there? Please go ahead.

24 MS. CHITAMBIRA: Thank you, Chair and members of
25 the board. I'll be presenting the budget of the (inaudible)

1 the provided in January this year. And in the agenda, I
2 have an overview of the (inaudible) discussing, so I'll
3 cover our past year expenditures, our current year budget,
4 and future priorities. Starting with the past year
5 expenditures. I (inaudible) showing you the budget. So we
6 have (inaudible) with a finding that was available for the
7 fiscal year that just ended, fiscal year '23-'24. Starting
8 with the budget for '23-'24, I'll turn my attention to
9 bottom of that screen where we have the final budget amount
10 of (inaudible), that is how much was available to us.

11 And the truth concerns of our (inaudible)
12 appropriation of 11.4 million, we have 218,000 from fiscal
13 year 2021 (inaudible) was given to the agency which was
14 created. This amount (inaudible). We had a one time
15 contributed (inaudible) , that came up to 602,000 and some
16 budget adjustments coming up to 247,000. (Inaudible) our
17 available budget 12.6 million. As a reminder, it was a
18 re-appropriation from fiscal year '22-'23 for Media &
19 Outreach contract, and that was amounting to 6 million,
20 bringing our final budget to 18.(inaudible) --

21 Moving on to our expenditures for '23-'24. This
22 information is based as of June 21st, 2024. The fiscal year
23 ends on June 30th. At the time that we're preparing for
24 this presentation, the data available was very (inaudible).
25 I'll start with the line items as they show up in that

1 order. So beginning with our salaries and benefits. They
2 ware 6.4 million. External contracts amounted to
3 10,216,535. Majority of that came for that media and
4 outreach services.

5 The remaining were external contracts for smaller
6 vendor contracts that we have to support agency operations
7 and staff. Internal contracts worth 2.1 million. These are
8 comprised of inter agency agreements with other state
9 agencies for administrative support. For example, what we
10 received through DCS, facilitated through DFCI, (inaudible).
11 General and other costs were 400,276. This includes our
12 operating equipment and expenses. Travel expenses for
13 staff, and the Board. Projected expenditures for June was
14 952,000. Majority of this would be salaries and then
15 contracts were not executed at the time that we were
16 finalizing the budget.

17 In total, we are reversing approximately one
18 percent of the budget reviews up 18.4 million. I'll move on
19 to the current budget. We are now in fiscal year '24-'25,
20 which started two weeks ago running from July 1, 2024
21 through June 30th, 2025. For this current fiscal year, we
22 had two BCPs. We submitted two BCPS budget change
23 proposals, which were approved and included in the final
24 budget agreement between the administration and the
25 legislators.

1 The first BCP was for the COLA adjustment. In
2 accordance with statute, our general fund appropriations
3 must be adjusted annually, to reflect both (inaudible)
4 changes to support agency operations. This planning will be
5 used to find a permanent graduate legal assistance to
6 support with the legal division workload. Our second BCP
7 was for the Delete Act Senate Bill 362. This BCP requested
8 finding and position for the maintenance and support of the
9 data brought registry and planning dollars for establishing
10 the data, to delete request and opt out platform DROP from
11 now on, I'll just refer to this as DROP.

12 Specifically, the physicians approved for the
13 Delete Act. The (inaudible) for regulations development and
14 supporting the creation of the Delete Mechanism and
15 Associate Government Program analyst to support the attorney
16 as well as an IT specialist student to support the system.
17 The proposal also includes funding to support the project
18 management oversight and project approval lifecycle
19 activities being provided to California Department of
20 Technology.

21 These BCPs provide critical resources for
22 maintaining and explaining the agency's operational capacity
23 and compliance with legislative mandate. The Cost of Living
24 Adjustment ensures our general fund appropriation aligns
25 with inflation rates. While the -- while the data

1 (inaudible) funding supports essential regulatory and
2 operational roles.

3 With that, I will move on to the available funding
4 for this year, the '24-'25 Budget. It outlines funding
5 available to us from July 1, 2024 through June 30th, 2025.
6 Again, with that, with our appropriation of 11.4 million per
7 (inaudible), we have our Cost of Living Adjustments, which
8 is based on the 3.6 Consumer Price Index published by the
9 Department of Industrial Relations and Department of
10 Finance. And this is the same methodology that was used in
11 prior years and approved by finance.

12 The adjustment for COLA allowed to 440,000 of
13 which 263,000 was used to offset employee compensation and
14 retirement adjustments. That shows on the slide as the
15 baseline adjustments leaving 177,000 to establish a graduate
16 legal assistance. These adjustments bring our proposed
17 general fund by this to 11.8 million. Additionally, we have
18 901,000 for the Data Broker Fund for cost associated with
19 the Delete Act.

20 When we combine the General fund and the Delete
21 Act funding, our total budget for the fiscal year is 2.7
22 million. So just to note, the general fund will fund all
23 other operations and the Delete Act will only fund the three
24 positions and activities tied only to the Delete Act. I
25 will move on now to our budget breakdown.

1 Our funds to utilize these resources available to
2 us. Approximately 79 percent of our budget is allocated to
3 salaries and benefits assuming all (inaudible) bills. In
4 our salary and benefit estimations, we assume that vacant
5 position will be hired at mid range salary. If some
6 positions are hired at a lower range, this will reduce our
7 estimated salaries and benefits.

8 However, budgeting at mid range remains the
9 preferred methods for (inaudible). External contracts, I
10 expect it to decrease to two percent, while internal
11 contracts will be nine percent. Facilities and operations
12 will constitute two percent of our budget.

13 We are currently picking a new location in
14 Sacramento. As you know, we are currently leasing our
15 office with Department of Financial Protective Innovation in
16 Sacramento, and they'll be moving to a new location. With
17 that, we'll no longer be able to continue subleasing through
18 them because the space they have can no longer accommodate
19 us, as we have grown.

20 We are now working closely with the Department of
21 General Services Real Estate (inaudible) headquarters in
22 Sacramento. However, we'll continue to sublease with CFCI
23 for our San Francisco and LA Offices. General and other
24 expenses encompass various purchases to support operations
25 through printing, (inaudible), communications, travel, et

1 cetera. Miscellaneous funding is not directly allocated to
2 any division. It is available for other expenses that will
3 arise through the year.

4 As we continue to hire resources being used by
5 staff, new needs do come up and we'll be able to utilize
6 this miscellaneous category. Moving on to the data broker
7 funds breakdown. This ties closely to the BCP that was
8 submitted and approved. Salaries and benefits constitutes
9 47 percent covering the three positions. There are no
10 external contracts as we have not yet requested signing for
11 the Delete Act, which is --which is still in the power
12 process -- the project approval process.

13 Internal contracts include the project management
14 through BCP and project approval life lifecycle. Lastly,
15 general other miscellaneous expenses are also included in
16 this fund and they are at four percent and two percent
17 respective. So that covers our budget for '24-'25.

18 I will move on now to the priorities for fiscal
19 year '25-'26. And before we get into the details of what
20 we've planned for the future, it's important enough, the
21 budget letter that was issued by the Department of Finance
22 in December, 2023. Department of Finance sent the budget
23 letter outlining changes necessary due to anticipated budget
24 deficit in fiscal years '23-'24 and '24-'25. This letter
25 directed all entities under the Cabinet Direct Executive

1 Authorities to reduce general fund extended (inaudible)
2 immediately.

3 It included not entering into new contracts with
4 (inaudible) services, using non IT equipment purchases that
5 is not essential. Travel (inaudible) in request of the
6 architectural revolving fund. While our agency is not under
7 the direct authority of the Governor, we are aligning our
8 efforts with the directive -- with the Governor's directive.
9 As part of this alignment, we implemented a process for all
10 new purchases requiring documentation necessitating their
11 purchase.

12 We have made that important (inaudible) to ensure
13 our staying in line with the Governor, our strategic plans,
14 and ensuring that there meet some critical to maintaining
15 operations. We continue to monitor our standing closely
16 with the (inaudible) guidelines. We recently approved paid
17 by the for '24-'25 against two separate budgeted reduction
18 to balance the budget, specifically a 7.95 percent reduction
19 to spending and reduction for elimination to position.
20 These reductions apply to almost all agencies and
21 departments with limited exceptions.

22 Finance will issue additional budget letters to
23 further sell the process and filing for these reduction.
24 We'll continue to monitor directives coming from the
25 department of finance. Given that we're a new agency still

1 working to build out our funds to the new (inaudible)
2 obligations. We'll work closely with the governor of
3 finance and the development of the '25-'26 budget.

4 Lastly, we'll continually present with the plan
5 allocated to us to ensure that our (inaudible) is always
6 being considered. With that, I'll move on to some our
7 priorities. We plan to include a BCP for the Delete Act
8 implementation. In the prior Delete Act BCP, we requested
9 funding dollars. As we progress through the project
10 approval -- project approval life cycle, we need to identify
11 the necessary tools for implementation and submit a BCP for
12 (inaudible) mechanism implementation.

13 We're also considering resources for our
14 enforcement team to ensure they can continue to enhance
15 their investigatory activity and potentially additional
16 staff for the increasing workload. We will make the COLA
17 adjustment according to schedule using the CTI as resigned
18 in the past. We are required to establish a grant program
19 according to schedule. To set up this program, we will need
20 funding and position.

21 We are currently assessing the necessary resources
22 for this initiative. We've had preliminary meetings with
23 other departments that also run a program to understand how
24 they run theirs, so we assess what our needs will be. In
25 addition, we are continuing to evaluate some practice

1 services for administration and IT services. Given the
2 budget constraints, we're considering cost of bringing HR
3 inhouse and the assessments to bringing HR is already
4 underway.

5 IT migration will continue to be a priority, to
6 develop goal to maintain highest security for IT services.
7 And this can be a challenge when we are contracting IT
8 through another agency, which will migrate the IT services
9 within this fiscal year. This concludes the budget update.

10 MS. URBAN: Thank you very much, deputy director.
11 I really -- we all understand that this is a very difficult
12 budget year for the state. And while our main budget is
13 appropriated through the initiative, I really appreciate
14 staff and the legislature and our control agencies working
15 to help keep us moving forward as we establish the agency.
16 And I know we're all attentive to the overall difficult
17 budget situation. Thanks again very much for the update.
18 Comments, questions from the board? Yes, Mr. Le.

19 MR. LE: Yeah. Thank you for the update. I got a
20 had a quick question on the data broker registry fund. You
21 know, 43 percent of it is the internal contract. That's the
22 IT procurement. This is on the Data Broker Registry Fund
23 it's on that page.

24 MS. CHITAMBIRA: On the Data Broker Registry Fund.
25 So 47 percent is our salaries and benefits.

1 MR. LE: I was asking about the 43 percent for the
2 internal contract.

3 MS. CHITAMBIRA: Yes. So 43 percent is the
4 agreement we have with CDC for the project management
5 oversight and project line cycle approval process.

6 MR. LE: Okay. So your most -- a lot of it is
7 going to update. Okay. Thank you.

8 MS. CHITAMBIRA: Yes, that is the planning process.
9 Thank you.

10 MS. URBAN: Thank you very much. And just to
11 clarify for myself, that's the evaluation, the Powell
12 process?

13 MS. CHITAMBIRA: So the Powell process, as we
14 assess the needs for the project, we go through -- they --
15 it's a four step process that we go through with CDC. We
16 assess our initial needs and they review that and they
17 approve. We go to the second step. So -- and then in the
18 second step, they also review our financial assessment of
19 the impact of that project as well as whether there are any
20 alternatives in the process.

21 So it's all part of reviewing each stage of the
22 process. All the week that request for a contract if we get
23 to that. Request for information and proposals from
24 different vendors. And then ultimately the contract that we
25 put into it.

1 MS. URBAN: Great. Thank you very much.

2 MS. CHITAMBIRA: Great. We'll tell you when it's
3 done.

4 MR. SOLTANI: I'll just add, but yes, the cost we
5 pay CDC for that oversight function.

6 MS. URBAN: Right. So that's incorporated into the
7 internal contracts?

8 MR. SOLTANI: Thank you for that.

9 MS. URBAN: Okay. Great. Thank you. Mr.
10 Mactaggart, was that a hand.

11 MR. MACTAGGART: (No audible response).

12 MS. URBAN: Great. Go ahead, please.

13 MR. MACTAGGART: Thanks for this. Great. Couple
14 of quick questions. This year you mentioned that, you know,
15 we almost spent what the final budget was 18.6. Did we get
16 to keep that difference? Oh, about \$160,000. Between the
17 final budget for 18.6 for the 2023-24, and then the total
18 expenditure, 18.4. Do we keep that? I don't know if we do
19 or not.

20 MS. CHITAMBIRA: The amount that remains it refers
21 to the general fund. We cannot take it.

22 MR. MACTAGGART: Okay. Thank you. And then you
23 said this is, "Just accounting" but the COLA gets let into
24 the baseline and the cost of living adjustments, but that's
25 just the way it sound, okay? You know, the only question I

1 have, so -- and I obviously I'm super happy that we're
2 spending effort trying to make sure that all our purchases
3 are necessary and being, you know, very diligent about that.
4 And that's good government, we should be doing that.

5 But just with respect to the governor in the
6 department of financing that they're going to have
7 production, we're still committed to just getting our COLA
8 every year for the baseline, right? We can be nice about
9 trying to say, yes we'll align with your thoughts about
10 should travel just be necessary, but we're not voluntarily
11 giving anybody back or anything like that, right?

12 MR. SOLTANI: Certainly, yeah. We are -- we are
13 being mindful of the general fiscal progress. But we are a
14 new and billing agency are working with finance (inaudible).

15 MR. MACTAGGART: Thank you. And then I guess the
16 only -- and from a -- I just was trying to look. They
17 didn't allocate us money, right? We have to -- they gave us
18 possibility no money. So we have to hope that we get the
19 money there. What's the status of that? Or did Senator
20 Becker get money for us this year or has that worked?

21 MR. SOLTANI: So -- and any -- so -- and I know Ms.
22 Chitambira is going to provide an update on the -- folks
23 here on the -- on the other mic. You folks outside the room
24 here anything. I'm not trying to speak really directly
25 (inaudible.) But -- so yes -- so the (inaudible) act, so any

1 money we request from the department of Finance, we need to
2 go through essentially a budget change proposal for any
3 legislation. So we gave a kind of the fiscal estimate. And
4 now we are going through, essentially it's two BCPs and Bond
5 laid out.

6 The first BCP was for money associated with the
7 Data Broker Registry, as well as planning dollars for the
8 accessible mechanism that then were dropped. And so that
9 any money we request (inaudible) Powell process and we
10 talked about the oversight dollars that we can receive.
11 Through that planning process, we will then get an estimate
12 based on information we see from vendors as well as
13 information we assess for what it needs of (inaudible).

14 Through that planning process, we will then
15 request monies for implementation for essentially either
16 technical resources or vendors or some combination there as
17 of resources to then for the implementation of results. So
18 we'll have two BCPs, but the key thing with any government
19 project in the state is we can't request money for a project
20 without going through this project approval life cycle.
21 Which typically takes three years. And so we're on a very
22 accelerated timeline trying to do in a year and a half with
23 what typically requires three years.

24 And as I said, there is this additional
25 (inaudible) work we essentially fall outside -- the January

1 one day things we fall outside and normal by this cycle as
2 well. So at least we'll be provide it in the next board
3 meeting. I don't know, overview of this process is pretty
4 significant I'll say in terms of anything we've done at the
5 agency. Which is one of the most significant from a
6 resource perspective.

7 I would say at least half of most of our time has
8 been spent in this specific process. And we're not even
9 into building it yet. And -- but we'll provide a detailed
10 update of the peer point we will -- we have to request and
11 get approval for funding for broker planning dollars, which
12 we have right now. And the actual project is going be
13 spoken of.

14 MS. URBAN: Thank you Mr. Soltani. Mr. Liebert.

15 MR. LAIRD: Sorry, just one more point and now it's
16 my turn to see if this mic's working. I think it's working.
17 It's (inaudible) point Mr. Mactaggart all the activity on
18 the data act is actually funded through Data Broker Registry
19 fees. And so this is being Mr. Soltani's point, you have to
20 go to appropriation to spend that money, essentially
21 appropriation authority. But we are basically funding all.

22 MR. MACTAGGART: That's right. Okay. Thank you.
23 Yeah. Yeah.

24 MS. URBAN: Thanks both for that explanation. Mr.
25 Liebert, please go ahead.

1 MR. LIEBERT: Thank you, Chair Urban. I understand
2 you've had some diligent work going on right now trying to
3 find a new headquarters in Sacramento. And I wanted to get
4 a sense is it going to have a good auditorium that the board
5 meetings can be held in, would be the first question and the
6 will it -- whether it will have good technology? Those
7 would be two questions. So let me start there. I have a
8 couple of others too, if that's okay with the Chair.

9 MS. URBAN: Yes, please go ahead and hold your
10 questions. Mr. Liebert. Yes, deputy director. Sorry.

11 MS. CHITAMBIRA: Thank you. So as we were looking
12 for facilitators, those were some of the priorities that we
13 were looking into. Find locations like where we can host
14 our onboard meetings. We looked at several locations. We
15 are down to two. And those two both have auditorium options
16 that we can use to host board meetings. One of them has
17 another agency in it -- four other agencies that also have
18 auditoriums. That if we are not able to use ours, we can
19 borrow theirs. There is that option that they put forward.

20 MS. URBAN: Thank you.

21 MR. LIEBERT: Another question.

22 MS. URBAN: Please go ahead.

23 MR. LIEBERT: Oh, thank you. I'm just catching up
24 on some of these things as you know. So what -- is the
25 majority of staff right now of the agency in Sacramento, or

1 is it scattered around the state?

2 MS. CHITAMBIRA: We do have employees throughout
3 state. I don't have that information with me as to how many
4 are in Sacramento. I would say a good number of them are in
5 Sacramento, for example, the entire administrative division,
6 its number is based in Sacramento. Other divisions are
7 spread out.

8 MR. LIEBERT: Then my third question is, right now
9 as we talk about the budget, what is approximately number of
10 employees does the agency have, right?

11 MS. CHITAMBIRA: We are currently at about 40, and
12 I will get back in the next agenda item with the hiring
13 data.

14 MR. LIEBERT: Oh, okay. So -- and then that will
15 include enforcement as well, the breakdown?

16 MS. CHITAMBIRA: (No audible response).

17 MR. LIEBERT: Great. Okay. Good. I'll have a
18 question about that too. So that's great. Thank you very
19 much. Thank you, Chair.

20 MS. URBAN: Thank you, Mr. Liebert. One of the
21 things that I find very positive about how our agency is
22 being built out is that while it is of course, important to
23 have a headquarters and to have a strong presence in
24 Sacramento, we serve the entire state. And so having
25 employees who are spread throughout the state, in my view it

1 just makes it easier for us to be responsive to various
2 business communities and to consumers Californians
3 throughout the state.

4 So I appreciate the way that things have been
5 developing. Some of it was, you know, necessitated by the
6 pandemic to begin. But it has proceeded with a lot of
7 thought. Other questions or comments from the board about
8 the budget update? I would just like to -- I -- listening
9 to the exchange with regards to the the Powell's process and
10 so just for my own planning and edification.

11 So the plan is to talk about sort of how that
12 works and how the process goes with regard when we -- when
13 we take up the data -- the data broker or sort of suite of
14 data broker responsibilities in a future meeting. Is that
15 what I was understanding Mr. Laird?

16 MR. LAIRD: Yeah. Yeah.

17 MS. URBAN: Oh, okay. Great. That makes a lot of
18 sense. Thank you. With that, I'd like to ask Ms. Marzion
19 if there is any public comment on this item.

20 MS. MARZION: This is for Agenda Item number 4, the
21 budget update and planning. If there's anyone in the room
22 who would like to make comment, please see your way to the
23 podium to your right. If you are on Zoom and you'd like to
24 make a comment, please raise your hand using the "raise
25 hand" feature or by pressing star nine if you're joining us

1 by phone. And this is for Agenda Item number 4, budget
2 update and planning. Madam Chair, I'm not seeing any hands
3 raised at this time.

4 MS. URBAN: Thank you very much, Ms. Marzion. Then
5 with that, let's move to Agenda Item number 5, which was
6 hopefully alluded to by Board Member Liebert a moment ago.
7 That is our annual hiring update, including diversity and
8 inclusion metrics also from Deputy Director of
9 Administration Ms. Von Chitambira.

10 As a reminder, we moved this up from our September
11 regularized calendar in response to CalHR's reporting
12 schedule. So we have moved it to generally do it in July
13 each year. And we do include diversity and inclusion
14 metrics, which I've expressed interest -- by the board's
15 expressed interest.

16 I'd like to ask you to please turn your attention
17 to the materials for this item. It's again, Agenda Item
18 number 5 and ask that Ms. Chitambira, please go ahead and
19 take over.

20 MR. SOLTANI: Chair Urban, I might ask just
21 progress wise. Since you are not in the room and you can
22 give the best sense of audio, please interrupt us if you
23 can't hear us well. I know there's the inconsistent audio
24 from outside the room. We hear ourselves fine here, so if
25 you can't hear us let us know.

1 MS. URBAN: Okay. Sure. Of course. I imagine I
2 and the remote attendees have a similar experience. The
3 mics are fairly inconsistent. Just so you know. And I'm
4 happy to let you know if a mic is getting, you know, is sort
5 of not as easy to understand. The second one that you used
6 in your presentation was quite clear. So there's a piece of
7 information for you. And yes, I'll be happy to interrupt if
8 it's getting too hard to hear.

9 MS. CHITAMBIRA: Thank you Chair Urban.

10 MS. URBAN: And that is quite clear. So thank you.

11 MS. CHITAMBIRA: Moving on to the hiring update.
12 And moving on to the -- so I think -- so we'll start by
13 looking back at the fiscal year that just ended fiscal year
14 2023-24. In fiscal year '23-'24. The agency received 14
15 positions in July. And this increased our position
16 authorities from 34 to 48. We ended the fiscal year with
17 approximately 40 permanent positions filled.

18 Our plan is to increase this number to 45.
19 Throughout the year our average was around 30 to 35
20 employees. And this does not include temporary positions
21 that we also bring in to help us throughout the year. In
22 terms of the number of employees that we have, some
23 adjustments were made towards the end of the fiscal year.
24 And is expected to increase in the next month.

25 This demonstrates the number of positions we've

1 had since the department was established in 2020. Our first
2 hire being made in the last quarter of 2021. Over the past
3 two and a half years we can see the progress we've made with
4 onboarding staff. We've put significant effort into
5 recruiting and continuing to diligently identify talent
6 throughout the state.

7 This the nature of our work, most of the positions
8 that we have are trainees and IT specialists. And these are
9 hard to recruit. The fact that we've been able to fill
10 these position in a short time speaks highly of our agency
11 and the reputation that we have. This is attracting
12 employees.

13 Out of the progress we've made, is attributable to
14 the active recruitment efforts we've had in our hybrid
15 (inaudible). It enables us to recruit talent throughout the
16 states. And I want to acknowledge the HR's team as well as
17 well our Public Affairs office for all the work they have
18 done in recruiting and helping ensure that we have onboard
19 employees, as well as the hiring managers. As you may
20 remember, our strategy at the beginning was to fill the
21 leadership positions and then have those positions bring in
22 lower level staff. And that has been successful.

23 Moving on to the positions that are currently
24 filled. Mr. Liebert, this was the vacant positions we had.
25 So in terms of our capacity, I'm showing what we had in

1 '22-'23 compared to what the position that was filled as of
2 June 30th, 2024. This is for fiscal year that just ended.
3 So administration was one of the first positions to be
4 filled and they have maintained a hundred percent capacity.

5 The Executive division was at 50 percent the last
6 time we reported out. They are currently at 60. The
7 Enforcement division has grown the most from 10 percent to
8 82 percent. And the vacant position that remain are
9 primarily technology. Thanks to our outreach teammate was
10 the technologist application, we have over hundred
11 applications and our legal enforcement team has been
12 diligently reviewing the applications to identify talent for
13 those two positions.

14 The biggest hurdle we've had in the state is
15 research in finding technologists with research
16 classification because it doesn't currently exist in the
17 case classification and for us to research with this
18 position, we're using an existing classification that
19 doesn't necessarily meet all the needs that we're looking
20 for. And so this vacant needs talent for us in identify
21 technologist. But to help with this, we are -- we have
22 brought in temporary staff to help in the meantime.

23 Policy and Legislative division has increased to a
24 hundred percent. And Public and External Affairs is at 57
25 percent. Moving on to the next slide.

1 We began this reporting on the workforce analysis
2 last year and (inaudible) as per the request of the board.
3 And this is now an annual update. As a refresher just
4 telling us the Human Resources for California CalHR collects
5 demographic data on state employees. And this information
6 is (inaudible). CalHR requires state departments to conduct
7 an annual workforce planning analysis. And as part of this
8 analysis to look at three components.

9 The first one being the workforce composition,
10 which is an analysis of significant underutilization among
11 racial and ethnic groups. Another area they look at is
12 persons with disability. Here they look if there is under
13 representation in persons with disabilities and requires
14 state agencies to take and set (inaudible).

15 The third component we looked at is upward
16 mobility. It identifies employees occupational groups that
17 have upward mobility opportunities. Meaning entry level
18 positions that can move up and whether anything is being
19 done by State department to promote employees progress in
20 their career. Moving on to next slide.

21 The CPPA was exempt from the workforce composition
22 as well as the upward mobility requirements. Workforce
23 composition analyzes underutilization in the workforce. But
24 since we have -- at the time that this information was
25 gathered, which was December of last year, we had less than

1 30 employees in each group of occupation. And so we cannot
2 take into case.

3 This analysis requires a larger workforce to
4 determine the composition whether it is appropriate. And so
5 we are currently exempt. Regarding the upward mobility,
6 we're also exempt. It's a requirement that is dependent for
7 departments. For employees in low level positions to have
8 opportunities to move up within the agencies because we
9 don't currently have entry-level positions that are very low
10 level and we are operating with the union workforce. We
11 don't have entry level position and so we do not participate
12 in the upward mobility program.

13 We did however participate in the persons with
14 disability. We met the criteria to reports on persons with
15 disability. Departments are required to have representation
16 of at least 13 percent. And CPPA (inaudible). Our
17 representation was at 25 percent.

18 When we advertise positions, we are utilizing
19 Department of Rehabilitation. We entered an agreement with
20 them where we're able to advertise and amplify our positions
21 on their website. And this is helpful for people who
22 typically use Department of Rehabilitation resources,
23 because they're then routed to the (inaudible) website where
24 our jobs are posted. And this does help (inaudible)
25 marginalization. This is a recent change.

1 Prior to us partnering with Department of
2 Rehabilitation, we also took initiative to submit their
3 disability survey to our employees. This survey is designed
4 by CalHR and when employees participate in the survey, the
5 information is sent directly to CalHR from which we then are
6 able to gather that information from them.

7 Typically, when employees are hired, sometimes
8 they may not disclose their disabilities, but once they are
9 hired, they'll articulate information. And so through the
10 survey we're able to see the utilization increase and the
11 persons with disabilities. (Inaudible) and we are proud of
12 having an increasing workforce.

13 MS. URBAN: Ms. Chitambira, the sound is going in
14 and out a bit. I think it might help if you are sure to
15 speak directly into the microphone. But it may be that it
16 isn't just the mics. It might be something in the feed. So
17 it's still understandable but it would be helpful if it were
18 a little clearer.

19 MS. CHITAMBIRA: Thank you. Next slide. Moving on
20 to the Gender Demographic Report. This compares CPPA
21 demographic moved out of all state agencies. CPPA as you
22 can see on the chart, we have more females than the average
23 number of state employees. What it's comparing is State
24 CPPA workforce compared to all state employees in the State
25 of California.

1 Our representation for females is at 63 percent,
2 and Statewide it's 46.2 percent. In CPPA male
3 representation is 37 percent compared to state 53.8 percent
4 as of December 2023. In terms of leadership our CPPA team,
5 executive team is 50 percent male and 50 percent female.

6 Moving on to the Ethnicity Report. This includes
7 only full-time employees. And so as we compare the states
8 to CPPA employees, is that we generally have more Asian
9 representation compared to the state where it is 25.9
10 percent compared to 18.8 percent. Our African American
11 representation is higher than the state, where it's 7.4
12 percent compared to 6.8.

13 Hispanic and Latino representation is
14 significantly lower than the rest of the state. This was
15 based at the time of the report. However, we do have
16 additional Hispanics in our agency. However, they're not
17 included in this report as they're not full signed in.
18 There is also multiple races we are -- CPPA is at 18.5
19 percent compared to 9.8 and white representation of CPPA is
20 at 40.7 percent slightly higher than the State. That show a
21 diverse workforce. However there are some areas we could
22 improve upon and those I expect CPPA to (inaudible).

23 So looking forward to the goals that we have for
24 '24-'25. We are going to continue to improve our diversity
25 efforts. We're trying to continue to partner with

1 Department of Rehabilitation that amplifies advertisement.
2 We'll also continue to recruit diverse talent over
3 geographic areas by offering the highest grade position and
4 (inaudible).

5 We are leveraging professional affiliations for
6 recruitment. Specifically in areas of privacy and legal
7 perception. In order to continue to (inaudible) to promote
8 our agency. Our strategic plans emphasizes retention.
9 Recognizing the challenge in finding the right talent. Our
10 goal is to provide resources necessary for our employees to
11 succeed and remain with CPPA for a long term.

12 Additionally, we aim to maintain a vacancy rate of
13 no more than 10 percent. If we recruit for new position,
14 we're trying to extend over and do the inevitable
15 (inaudible). However we are estimating that no there is
16 vacancy rates below threshold according to our (inaudible).
17 And that includes (inaudible) hiring.

18 MS. URBAN: Thank you very much, Deputy Director
19 Chitambira. May I have the Board view so I can ask if
20 there's comment, feedback from the board? I am incredibly
21 impressed by the staff's ability, the Executive Director,
22 executive team, and everyone involved ability to continue to
23 make progress on our goals to fill out all of the required
24 roles in the agency.

25 I know from personal experience that this is a

1 very complicated task and we of course have a number of
2 specialized requirements for a number of our positions. So
3 I really commend everyone on this sort of robust and stable
4 trajectory to allow us to fulfill our responsibilities for
5 California. So thank you for that progress. Mr. Liebert, I
6 believe I saw your hand?

7 MR. LIEBERT: Thank you so much, Chair Urban. In
8 that great chart that you prepared, you noted the percentage
9 of how close we are to fulfilling our position. So do you
10 have the number of folks we have hired up right now in
11 enforcement? Approximate would be great.

12 MS. CHITAMBIRA: I don't have that number with me.

13 MR. LIEBERT: Oh, you'll have that later in your
14 presentation.

15 MS. URBAN: I think that might be in Mr. Macko's
16 enforcement update. Although correct me if I'm wrong. I
17 looked at the slides from the website, but I don't recall
18 exactly.

19 MR. LIEBERT: I was taking a look at other agencies
20 in terms of the number of employees that they have. And I
21 saw this California Water Board and its regional boards have
22 approximately 3,500 employees. The California Air Resource
23 Board has over 1300 employees. And according to the AI
24 engine on my computer, it says that Google has approximately
25 1000 in-house lawyers and many, many more that are hired

1 with outside law firms.

2 So our agency is to say the least incredibly lean.
3 And I know that all of my fellow board members share the awe
4 that we have with the great work that you're doing with so
5 few employees. Compared to so many other agencies that have
6 actually not nearly the breadth of responsibility that this
7 agency has.

8 So I think that obviously we have this
9 extraordinarily difficult situation with the state budget as
10 it is. But obviously the importance of us getting the
11 message out one of our the initiatives co-founders, if you
12 will, had the brilliance of creating this agency through
13 initiative. But it clearly needs a lot more, a lot more
14 employees to meet the moment.

15 So I'll certainly be ringing that doorbell a lot.
16 That it's so important for Sacramento and policy makers to
17 recognize that this is such a lean agency at this point and
18 it needs over time, certainly a lot more people. Thank you,
19 Chair Urban.

20 MS. URBAN: Thank you. Board Member Liebert.
21 Board Member Mactaggart. And then Board Member Le.

22 MR. MACTAGGART: Thank you Mr. Liebert. I agree we
23 need more resources. I will say we were -- and I know
24 you're not criticizing it in any way, shape or form. And
25 you understand that the election that we thought a big tag

1 -- yeah, palatable. And not to put too much pressure on the
2 next speaker, I think (inaudible) but I've always thought
3 that once we have that large settlement it will be easier to
4 go to the -- you know, to your former colleagues in the --
5 in Tech.

6 And then to think we have a little bit of that
7 extra so we can hire more people because clearly, yes.
8 You've got -- we're going to find out how big his division
9 is, Mr. Macko, but we've got 1,000 people at the legal
10 division at Google. One thing I will say, though, for -- to
11 remind the listeners, which I think is still extraordinary,
12 we are larger -- we are the only dedicated privacy agency in
13 the country, and we have more people than the FTC does for
14 regulating on a per capita basis for regulating and it might
15 actually be an absolute basis. I don't know if it's an
16 absolute basis or on a per capita basis. It's way more
17 people regulating privacy here in California than the
18 country does. So I think, you know, baby steps and I agree
19 that the -- we should rename their full agency, the David
20 Agency. You know, we're fighting Goliath, that's for sure.

21 MS. URBAN: Thank you, Mr. Mactaggart. Mr. Le.

22 MR. MACTAGGART: If I could -- just one question --

23 MS. URBAN: Oh, sorry. Sorry, Mr. Mactaggart,
24 please go ahead.

25 MR. MACTAGGART: Well, probably can you just

1 elaborate a little bit, let's say you've worked your --
2 you've made your billions working for the social media or
3 the datamining company, and you have the revelation that you
4 don't want to spend the rest of your life mining people's
5 data, and you want to come over and work for (inaudible) and
6 try to help. Is that almost impossible because you're not
7 part of the state kind of process and you haven't gone
8 through the D5 or whatever the number, you know, you haven't
9 been there for 25 years. And that we can't, essentially,
10 even if the person wanted to just give their time for free,
11 essentially, we can't hire those people. Is that more or
12 less correct?

13 MR. SOLTANI: That's a great question. And I just
14 want t to thank the Board for the recognition that we do
15 need additional resources. I hear that from my team. We
16 are sensitive to the political climate. But certainly Mr.
17 Mactaggart -- Board Member Mactaggart, the issue isn't just
18 resources. We have, you know, essentially multiple
19 positions open for chief auditor, and both investigator, and
20 auditor and technologist. And the challenge there is that
21 the classification for those research don't exist in the
22 space. We have tried to hire (inaudible) from the IT
23 environment, they're not researchers privacy (inaudible).
24 They're not the type of kind of investigators that we --
25 even so we're trying to think through creative ways to hire

1 them, including the positions that I highlighted.

2 We're going to try to think through kind of
3 academic partnership, other kind of internships and
4 arrangements to bring back talent in-house. Certainly there
5 are dedicated people, and this is -- ironically, this is
6 what I did as the FTC (inaudible) division, but I'll just
7 share that the FTC and under executive order -- the Biden
8 Executive Order, also known as direct hire authority, which
9 is the ability to essentially appoint people outside of the
10 standard state classification. We do not for these roles.
11 The only kind of exempt position is mine, as you all know.
12 But other agencies, for example, are able to hire through
13 direct hire both federally as well as in states.

14 So one thing we are working on is trying to work,
15 and there's a lot of -- to probably share. There's a lot of
16 support for this in the legislature and even in the
17 executive field office, digital innovation, CDP. We're not
18 the only agency with this challenge. We're unique in that
19 these folks are very specialized, but we're certainly not,
20 you know, as the legislature looks to regulate AI, governor
21 looks to regulate AI, certainly we are going to need that
22 expertise in this case.

23 So I think it's a shared recognition that we need
24 to solve that pipeline issue. And we are taking steps to
25 work and partner, and see if -- kind of figure out creative

1 solutions to bring those folks in. Because certainly there
2 are people that want to do it. It's whether they can figure
3 out how to apply, whether they can basically clear the
4 classification screening, all these pieces that the, you
5 know, the current US President has solved by giving agencies
6 that are hiring technologists direct hire authority. It's
7 an important piece of their portfolio, and that's been how
8 they've been able to be so successful in the regulation of
9 both the technology in FTC and elsewhere.

10 MS. URBAN: Thank you, Executive Director Soltani.
11 Mr. Mactaggart, was that -- was that you.

12 MR. MACTAGGART: (Inaudible) went their way
13 (inaudible) to try to, you know, work with the authors to
14 make sure they put that in there, because, boy, we're doing
15 this, and it would've been great to put it in there. So I
16 think if Ms. Mahoney, when she's up there talking to the
17 authors, really to spring that up, because I think it's easy
18 to add in and no one's really going to get bent out of
19 shape.

20 MS. URBAN: There's definitely, as Executive
21 Director Soltani mentioned, in my conversations with folks
22 in the legislature, there's definitely a strong awareness of
23 this sort of set of challenges that is across the state and
24 across a variety of agencies, and indeed the executive
25 generally. So I think there would be openness to thinking

1 about how to -- how to help solve the issue. And we do have
2 an item on legislative update coming up later in the
3 meeting. Now, Mr. Le, did I see you raise your hand or did
4 you just move and I was being a little too -- ?

5 MR. LE: No, I had a comment and a question.

6 MS. URBAN: Okay.

7 MR. LE: Yeah. Thank you. One -- a couple
8 questions. You know, one that I had was how large are the
9 European Data Protection Agencies, authorities, just so I
10 have an understanding of like how we are in comparison to,
11 you know, our international counterparts. You can answer
12 that one first.

13 MR. SOLTANI: I think the ICO's in the thousands,
14 and the CNIL is also in the hundreds, if not thousands. I
15 think it's -- also have to look they're significantly
16 larger. And then, you know, this is where I'm a little bit
17 jealous. They also have two different research divisions
18 and partner with the equivalent of their, I guess, it's kind
19 of like NIST, but on a research side. So they have a
20 research house, they have two audit divisions and an
21 investigative divisions. They have -- those are separate --
22 those are all technologists. And then they have teams of
23 lawyers including responding to complaints.

24 The UK ICO, you know, I'll just -- we had a funny
25 interaction, you know, and I want to just, you know, thank

1 you for the positive remarks around my update earlier around
2 our international work. I just want to say that wasn't just
3 me, right? That's the entire staff supporting that work,
4 making that happen, and working tirelessly. We had
5 interaction with another very large European regulator, and
6 they're like, it's great you guys have this capacity. We
7 don't have the, you know, this is a thousand-person agency.

8 They're like, you know, we don't really have the
9 capacity to engage on these as much as you guys do. And I'm
10 like, are you kidding me? Right? And so, yes, absolutely,
11 these are very large agencies internationally, and we are,
12 you know, just a fraction of that. Even FTC, to Mr.
13 Mactaggart's point, you know, they have 12 technologists now
14 in the Office of Technology, the former office that I set
15 up. And they have both an enforcement division and a of
16 legal division kind of separate. And then they look at, you
17 know, privacy that is separate from credit, separate from,
18 you know, marketing practices.

19 So these are really well resourced agencies. We
20 are the fifth largest economy in the world. Most of the
21 companies are here in our backyard. I expect that we will
22 all want to grow, and the key is to have the kind of support
23 of the Board, but also the political capital for us to grow.
24 Because ultimately, at the end of the day, we still have to
25 make and justify our growth to the California voters, the

1 California citizens, as well as the Department of Finance
2 and all of our other control agencies.

3 MR. LE: Thank you for that. Yes, David, for sure.
4 And then the other -- well, one quick comment I had is this
5 issue around hiring folks outside of IT classifications for
6 technologists roles. Yeah. It's not just statewide, it is
7 definitely nationwide. And I talked to some folks from New
8 York that are having the exact same issue. You know, IT may
9 be good for, you know, networking and building the technical
10 resources, but, you know, on the cutting edge of AI and
11 automated decision making technology, those job descriptions
12 don't often line up.

13 And then the last question I had was, you know,
14 I've seen quite a few and I've shared with, you know, my law
15 school and others, the graduate program for law students
16 coming into, you know, to the CPPA, to the agency. And I
17 don't know if that was in this update, but like, how is that
18 pipeline, you know, progressing? Are we -- are we seeing
19 hires from that program, and, you know, what are -- what are
20 your thoughts on how that's been going?

21 MR. SOLTANI: Certainly, I can respond and then
22 I'll also leave it to the -- if anyone else wants to jump
23 in. We've been very successful both through our graduate
24 legal assistance program, and we have a fellowship that Mr.
25 Laird can talk about that brings folks into legal, but also

1 through our essentially technologist intern that we're
2 getting through UEI. These are often PhD research
3 technologists. And so what we're going to -- we're working
4 to do is augment our research capacity through this program.
5 Certainly on investigations and enforcement.

6 We want to build that expertise and those tools
7 and those methodologies in-house, and that's something that
8 I've been trying to support. But for the time being,
9 absolutely, the research pipeline is probably better served
10 through academia and through partnerships with academic
11 institutions, because of the kind of lack of expertise in
12 state civil service roles. I don't know if Mike or Phil,
13 you guys want to jump in on (inaudible).

14 MR. LAIRD: In fact, early in the budget on the BCP
15 that was approved for the single graduate legal assistant,
16 that is to Mr. Soltani's point, sort of the premier
17 establishment of this honors privacy fellow position we've
18 established. So we in the legal division will have a
19 rotating annual cycle of an honor privacy fellow who will be
20 a recent graduate, you know, usually waiting for their
21 (inaudible) getting trained up in our shop and sort of
22 learning ins and outs, and also supporting the work.

23 The -- probably the greatest problem we'll face
24 then is the fact that we are still a very small legal
25 division. And as we hit our capacity talent that will

1 support certainly the industry, and I think privacy
2 generally, but maybe won't always have a spot directly in
3 the agency until we continue to grow our numbers.

4 MR. LE: Great. I mean, that's great news. You
5 know, I came up from my organization as a legal fellow
6 myself, so, you know, really great to see that happening at
7 the agency. That's all.

8 MS. URBAN: Thank you, Mr. Le. And I absolutely
9 concur. One of the questions that I get from students, I
10 mean, have gotten from students perennially since I began
11 teaching is how can they chart a career path that is in the
12 public interest and technology, specifically in privacy.
13 And those opportunities were pretty far -- few and far
14 between for a very long time. And so I talked with people
15 about being creative, about how they grew their skillset and
16 how they were nimble, and were able to make adjustments in
17 their career with a longer term goals in mind.

18 And that's, of course, still absolutely true for
19 any attorney, for any professional, for any technologist.
20 But at the same time, it's been really exciting to see
21 on-ramps for at least the legal expertise in the area that
22 didn't exist before. And I really hope that we can continue
23 to grow out the tech on-ramps as well. It's something
24 that's just key for all of us, not just our agency. Other
25 questions or comments with regards to the hiring? Yes,

1 Board Member Mactaggart, please.

2 MR. MACTAGGART: (Inaudible).

3 MS. URBAN: Mr. Mactaggart, I'm sorry, you do have
4 a slightly muddy microphone. It just -- if you speak
5 straight into it, it's a lot clearer.

6 MR. MACTAGGART: Is it better? Is it better? Just
7 to clarify, if someone's (inaudible) and they're not looking
8 for money, but they would like to help, is there -- do you
9 have a home for that person with -- where he or she could
10 come along and be a like a kind of a volunteer, but legally
11 could, you know, exchange information and be a fellow and
12 have some kind of a title that might look good on their
13 resume if they took two years to think about their next
14 career move? I mean, certainly I think a title goes a long
15 way, and we didn't -- wouldn't necessarily -- and maybe you
16 could give them health insurance or something. Is there
17 some middle ground, which doesn't have to go through a whole
18 bunch of government classification?

19 MR. SOLTANI: I can -- Oh, that's hot. Sorry. I
20 can take that back. You know one of the challenges being,
21 well, obviously we don't have stock options. But separate
22 from that, we, you know, we are an enforcement agency, so
23 things around conflicts outside employment, conflict of
24 interest will be an issue that we'll have to address, but
25 certainly we can look at it. I think the -- kind of the

1 academic partnership, and this is just for folks reference.
2 The -- most of my predecessors at the FTC were hired through
3 kind of what you're describing Board Member Mactaggart. It
4 was called the Inter-Agency Personnel Act, another IPA, and
5 that allowed folks from university or from other
6 institutions to essentially work for the government being
7 supported through their institution.

8 And, you know, and those monies were free and
9 clear. As far as an individual private citizen volunteering
10 for the agency, I'll have to have -- take it back with HR
11 and legal. But I do know the conflicts and the kind of
12 confidentiality issue will be the probably forefront in my
13 mind, but that's not a, you know, that's -- otherwise, I
14 think that's not a terrible idea as well.

15 MS. URBAN: Thank you. All right. I would like
16 now to ask Ms. Marzion to see if there's public comments on
17 this item.

18 MS. MARZION: Okay. This is for Agenda Item number
19 5, annual hiring update, including diversity and inclusion
20 metrics. If you'd like to make a public comment at this
21 time, and you're joining us, please see your way to the
22 podium to your right. If you're joining us by Zoom, please
23 raise your hand using the "raise hand" feature, or by
24 pressing star nine if you're joining us by phone. Again,
25 this is for Agenda Item number 5, annual hiring update,

1 including diversity and inclusion metrics. Hey, Madam
2 Chair, I'm not seeing any hands raised at this time.

3 MS. URBAN: All right. Thank you. And thank you
4 very much for those really enlightening and helpful updates,
5 Ms. Chitambira And to the board for helpful questions and
6 thoughts as we continue to develop and grow, and as the
7 staff continues to be just incredibly impressive with what
8 they've been accomplishing with -- as Board Member Liebert
9 put it a very lean organization. I think it would be
10 helpful when we check in on our strategic plan to have top
11 of mind some of these questions about growth and goals as to
12 why we might grow, and what our goals are with regards to
13 that.

14 So when we get to -- when we get to the future
15 agenda items topic, I will -- I'll bring that up as well.
16 So thank you again very much for everybody. I'd like to
17 note, I need a break. With your indulgence, if we could
18 take approximately 10 minutes and return to the meeting at
19 11:00 a.m. Or those in the room, I realize you may need a
20 little bit longer to go get a drink or something. So
21 somebody give me feedback if it needs to be a little longer
22 or if 10 minutes is good.

23 MR. SOLTANI: I think 10 minutes is great. I'm
24 going to also share that we will be doing a little bit of
25 mic tests --

1 MS. URBAN: Okay.

2 MR. SOLTANI: -- mic checks, so you can ignore that
3 until 11:00 when we return, but you might hear some audio.

4 MS. URBAN: Okay with that, this meeting of the
5 California Privacy Protection Agency Board is on a break,
6 and we will return at 11:00 a.m. Thanks very much
7 everybody.

8 (RECESS)

9 MS. URBAN: Thank you very much, Ms. Marzion, and
10 thanks to the board and everyone for so promptly returning.
11 This meeting of the California Privacy Protection Agency
12 Board will now return from our brief break, to take up
13 Agenda Item number 6. Agenda Item number 6, excuse me, is
14 the annual enforcement update and report on enforcement
15 priorities from our Deputy Director of Enforcement, Michael
16 Macko. As a reminder, this is on our regularized calendar
17 generally in our March meeting.

18 Deputy Director Macko was prepared to present
19 then, however, we ran out of time in that meeting for the
20 presentation and discussion. Mr. Macko, thank you very much
21 for coming back to us. I am very much looking forward to
22 our update, and as I'm sure you gathered from our discussion
23 under other agenda items. And we are all looking forward,
24 indeed, to hearing what's happening with enforcement and to
25 talk about priorities with you. And so please everyone turn

1 your attention to the materials for Agenda Item 6. And
2 Deputy Director Macko, please go ahead.

3 MR. MACKO: Good morning. And thank you for that.
4 I'm Mike Macko, Deputy Director of Enforcement. I'm very
5 happy to provide the board with an update today for our
6 enforcement division. Some of you might remember my first
7 update. That was shortly after we received our enforcement
8 authority last July. A lot has happened in the past year.
9 I'd like to divide the discussion today in three parts.
10 Part one will address our overall approach to building an
11 effective enforcement division. Part two will address more
12 specifically what we've done to build a portion of that
13 infrastructure, and part three will address next steps and
14 where we're going, including some enforcement priorities.
15 You'll see high level slides behind me. My discussion with
16 you all today is not dependent on the slides, but I really
17 intend them to be the guide or placeholder.

18 So let's start with part one, kind of our approach
19 to building an enforcement division in general. We had a
20 unique benefit here, a real opportunity when we started this
21 enforcement division. Because we were building it from
22 scratch. This gave us a chance to look at the structure and
23 activities at other enforcement agencies to kind of take the
24 best aspects of those agencies and make them part of our
25 own. So let me give you a few examples of our approach. We

1 considered the enforcement divisions of other (inaudible) to
2 be sure, but we also considered the US Department of
3 Justice, regional US Attorney's offices, the Securities and
4 Exchange Commission, Federal Trade Commission, just to name
5 a few. We considered other state attorneys general as well
6 as other federal regulators. You heard Ashkan Soltani, our
7 Executive Director mention the CNIL earlier, the French Data
8 Protection Authority.

9 We consider the enforcement practices and
10 procedures at other international regulators as well. Let
11 me tell you what we took away from that at a high level
12 first. Each of these regulators has their own set of
13 enforcement procedures. Each one of them has their own
14 procedures for fact gathering, their own internal processes.
15 What we did is consider what would work most effectively for
16 us at this point in our development, and what would work
17 most effectively for us for the longer term. We also
18 consider the experience that we have from engaging with
19 enforcement agencies from another perspective, from the
20 in-house perspective and from a law firm perspective. What
21 worked well at agencies and what didn't work well with that
22 context in mind. We would very much like to be a model
23 enforcement agency, not just for privacy, but in absolute
24 terms.

25 Californians voted to create this agency. They

1 deserve a strong and effective enforcement division. One
2 thing we observe from this landscape that I've just
3 described is that most effective enforcement agencies have a
4 very strong infrastructure in place for handling their
5 investigations and for developing cases. So getting that
6 infrastructure in place has been a big priority for us over
7 the past year. So taking those kind of best practices into
8 account, generally to the key components of infrastructure
9 that we sought out to build, and then I'll get into the more
10 specifics of what we've done over the past year. First
11 general category is, of course, staffing, the personnel
12 needed to advance the cases. This is by far, I think, the
13 most important for us. Next might be case management, a
14 general category of the administrative, the technical
15 infrastructure to manage any type of portfolio of cases.

16 This is similar to what exists already at law
17 firms and at other regulatory agencies. Next would be a
18 consumer complaint system. Many enforcement agencies have
19 tip lines, they have complaint systems of various kinds. I
20 have relied on those kinds of complaints for years in a
21 prosecutorial capacity. It's really important for us to
22 have a system to process those kind of complaints. And
23 another key component would be a portfolio of
24 investigations. Successful agencies are advancing
25 investigations on multiple fronts. Investigations can take

1 a long time to do properly. As a government enforcer at
2 other agencies, it was important for me to do those
3 investigations right. For me, that means no rush to
4 judgment. It means ensuring that the evidence is solid. It
5 means following the proper investigative processes and
6 procedures that respect the rights of third parties, that
7 respect the rights of targets, and determining importantly,
8 whether enforcement is the right outcome.

9 Investigations are the longest part of kind of a
10 case lifecycle at any enforcement agency. Speaking from my
11 own personal experience handling cases at DOJ and SEC, most
12 investigations that I had worked on there took years. I
13 would say a typical consumer protection investigation takes
14 about 18 months. This is not unique, of course, to federal
15 investigations. Look a few months at the California DOJ's
16 recent case against DoorDash, there was a complaint filed in
17 that case. The allegations there arose at the start of
18 2018, and a settlement occurred about six years later.

19 Now, during any kind of period of time between
20 when conduct arises and when there's a public announcement,
21 the public generally won't know all the efforts that are
22 being taken by an agency during the investigative phase of a
23 case. Those efforts do become apparent later after there's
24 been a settlement or an enforcement actions brought. But
25 for a time, it might seem quiet to an outsider. Quiet does

1 not mean inaction. It's the building phase of the case.
2 Our goal certainly is to move as quickly as possible as part
3 of vigorous enforcement. We'll need to balance our interest
4 in speed, however, with our interest in handling the
5 investigations properly and consistent with our priorities.
6 That calibration is something that we are watching closely.
7 I will tell you that getting that calibration right is
8 something that I think is important.

9 Our -- with that, I'll shift to part 2, our
10 building so far, what we've done, in fact, over the past
11 year. As the board knows, our -- part of our mission as an
12 agency is to conduct vigorous enforcement. We built a
13 number of -- we built out kind of a number of the key areas
14 that I mentioned. I went over the other four categories
15 that we observed from other agencies. Let me kind of dig
16 into some of those categories and how they played out for us
17 over the past year. And I'll start with staffing. I know
18 that this came up in response to the questions from Board
19 Member Liebert and Board Member Mactaggart. And I
20 appreciate very much those questions because staffing not
21 only is important to us as a general matter, but getting the
22 right number of staff in an enforcement division is
23 important.

24 It's not an understatement to say that we have
25 built a top tier enforcement division in the United States.

1 In the first six months, first six months that we existed,
2 we went from receiving that enforcement authority and having
3 no staff, to having more than 100 years of combined
4 experience. In another six months we added even more. Now,
5 in response to questions about staffing levels, let me tell
6 you that we have, Board Member Liebert, about a dozen
7 official positions filled within enforcement. We have
8 roughly four more roles that we're seeking to fill mostly
9 technologist roles. I think those numbers in isolation
10 might give you an incomplete picture, and I would like to
11 respond a little more directly to some of the questions
12 earlier. The first is that, take a look at the trajectory
13 of the enforcement division and what we've done over the
14 past year.

15 I would very much like to see that trajectory
16 continue. And the second point is, I think it'd be helpful
17 to share a little color about our team and what it brings to
18 bear. It's not just the quantity of physicians that matter
19 to an enforcement division, it's the quality. And for that,
20 I'd like to give you a description of kind of the team and
21 what they bring. We have the former chief privacy officer
22 of a Fortune 500 company. We have former federal
23 prosecutors and in-house privacy counsel from major tech
24 companies. We have multiple litigators from big law firms
25 who advise some of the world's largest companies, both from

1 a compliance perspective and from a litigation perspective.
2 We have an expert in administrative proceedings who came
3 from another state agency doing similar kind of enforcement
4 work like we do here. We have legal professional support
5 staff with decades of experience in legal aid and in other
6 capacities.

7 It's a formidable group. On a -- on a personal
8 level, this team is passionate about privacy law. They're
9 passionate about our mission. They're passionate about
10 government enforcement in general. We have a really
11 important mission. The big mission, we have the right
12 people to do it. We are hiring for technologists roles and
13 for additional support roles. And I would welcome, of
14 course, an opportunity to continue to build out that staff
15 as we're going to need to do in the future to continue to
16 meet our goals. You can see the overall structure on the
17 slide for kind of what the roles generally are within
18 enforcement. I mentioned last July that we're also
19 leveraging some existing resources within the agency to
20 compliment and kind of supplement enforcement. So this is
21 necessarily an incomplete picture, but it does give you an
22 overall structure.

23 Staffing has been a top priority for enforcement
24 over the past year. Next I'd like to turn to kind of case
25 management tools that the staff has been using. Think about

1 your favorite courtroom drama, or I don't know, Law & Order
2 episode that you watch on TV. Behind every successful
3 prosecution or successful enforcement action, there's a case
4 management structure underneath that. It's rarely the most
5 exciting part, but it's a necessary part of bringing a case.
6 We have undertaken a number of different procurements over
7 the past year within enforcement to help attorneys build
8 these cases. First we procured a legal research platform.

9 This is a staple at law firms and agencies and
10 courts for that matter. We procured a document management
11 system. This is the system that we use for investigations
12 and litigation to kind of manage evidence, store documents.
13 We established a document transfer system. This is a secure
14 way of receiving evidence in our investigations. We also
15 procured a training platform. It has over 6,000 -- it's a
16 repository of over 6,000 training sessions that we use to
17 support our team. As I mentioned, our enforcement team has
18 diverse experience and broad experience, but this training
19 system is meant to help us fill any knowledge gaps, given
20 that we're all coming at these issues from a different
21 perspective.

22 Turning next to consumer complaints. We built a
23 system from the ground up to manage those consumer
24 complaints. Consumer complaints inform us, they inspire us,
25 they motivate us as a team, we review every consumer

1 complaint that we receive. I have consulted those systems
2 regularly as a prosecutor when investigating cases. These
3 systems are iterative, so we started with fundamentals. We
4 expect to adjust that system over time and improve it as
5 consumers are interacting with it.

6 We'll certainly respond to signals that we get
7 about what's useful and what's not. Our approach to
8 consumer complaints overall, it's very similar to how other
9 agencies use complaints. We don't represent individuals as
10 the board knows, but we do use complaints to help inform our
11 enforcement priorities. We use them to help identify
12 targets, to spot trends and certainly as a pipeline for
13 future investigations.

14 The complaints that we receive compliment our
15 investigative work, and we have publicized this complaint
16 system that we have at every opportunity that we get. I do
17 think those efforts have paid off. If you look at the
18 numbers of consumer complaints we've received since
19 launching the system last July, we've received just over
20 2,100 consumer complaints. That shows a robust public
21 response.

22 You wouldn't expect the number of these complaints
23 to equal the number of health tickets or communications that
24 large companies might receive, because typically, consumers
25 turn to a regulator only after those efforts have been

1 exhausted. And they are -- it's a last ditch effort often
2 that we -- that we hear from consumers. And so that number
3 is meaningful.

4 I think that number will grow over time as
5 awareness grows, both of the system itself and awareness of
6 the rights that consumers have under our laws. This system
7 and the complaints that we receive, kind of the number
8 underscores the importance to us of approaching it from a
9 data driven perspective, and looking at what those
10 complaints are saying, especially as we continue to grow.

11 Already consumer complaints have prompted the
12 opening of multiple investigations. The lens or the
13 perspective that we bring when reviewing complaints is, how
14 can we bring about change for the maximum number of
15 Californians possible. If you look at the data and kind of
16 how this breaks down, most of the consumer complaints we've
17 received over the past year have come from Californians.
18 About 84 percent are from Californian residents, 16 percent
19 from elsewhere.

20 We have some metrics for what those complaints
21 look like. About half of them involve the right to delete,
22 another roughly half 47 percent involve the collection, use,
23 storing sharing of personal information. And a similar
24 number, a little less, 41 percent involve the right to opt
25 out of sale or sharing. Like you'll notice, of course,

1 those percentages don't add up to 100 percent. That's
2 because any individual consumer complaint may involve
3 multiple categories.

4 There are some less common categories that we
5 observed from our consumer complaints over the past year.
6 The least common categories involve the right to correct,
7 children's privacy and financial incentive or loyalty
8 programs at 12, 4 and 2 percent respectively. It may be
9 helpful to share with the Board our process for consumer
10 complaints. I mentioned that we review and evaluate every
11 complaint. That evaluation happens typically within the
12 first 14 days of a submission. Often within the first seven
13 days.

14 The response that we give to a consumer
15 acknowledging that complaint or responding to the complaint
16 occurs later. We feel the need for speed, but we also feel
17 the need for meaningful action. Given the volume that we've
18 received, we have been prioritizing taking action. This
19 means that we've been prioritizing our investigations in our
20 engagement with businesses. We are implementing a short
21 term plan to provide faster responses to consumers, and a
22 longer term plan to improve the response efficiency with a
23 new complaint system sometime down the road.

24 In terms of the actions that we take in response,
25 some complaints are referred to enforcement attorneys for

1 additional review. Some prompt us to contact the business
2 or to open a formal investigation. Others appear to fall
3 outside of our jurisdiction. For some of those, we can
4 refer them to other agencies that do have jurisdiction or
5 that might, [privacydotcadotgov](https://www.privacydotcadotgov) is our website that we
6 created earlier this year. That highlights some of the
7 other agencies where we might refer complaints. You can
8 find a list there.

9 Much of what we do in response to consumer
10 complaints, it's behind the scenes because it's part of our
11 investigation and we do it as part of investigations. So a
12 consumer might notice, for example, that a business resolves
13 their problem after they submitted a complaint to us. They
14 won't necessarily know our role in bringing about that
15 change. That's by design. We inform consumers about the
16 general actions that we're taking, but we don't disclose
17 confidential details about an investigation itself.

18 Investigations might not lead to public
19 enforcement actions. It would be unfair to businesses if we
20 disclosed all of our investigative files prematurely. If we
21 do bring an enforcement action, then those details become
22 public. There are some recurring issues, but I wanted to
23 make sure the Board had visibility into -- in terms of the
24 types of complaints that we've received. Some complaints
25 appear to fall outside of our jurisdiction, or might fall

1 within an exemption to our law.

2 A number of these complaints relate to, in some
3 way, to a criminal prosecution. Maybe an alleged invasion
4 of privacy by a law enforcement agency or by a caseworker,
5 parole officer. Others may involve police or government
6 agencies complaints about that sort of conduct. Complaints
7 regarding certain nonprofit entities or complaints about
8 small businesses that don't appear to meet the thresholds in
9 our law.

10 Another recurring issue that's a bit of a pain
11 point for consumers, deals with public records. Consumers
12 have complained about seeing their property transfer or
13 their property ownership records appear online, because
14 those records appear to show consumers addresses. And the
15 same goes with criminal records. This is undeniably
16 frustrating for consumers. It is, as the Board knows, a
17 nuanced area of law because of the intersection between
18 public records and privacy.

19 We are aware of this frustration that's been
20 reported to us. In any case that we look at from an
21 enforcement perspective, we will be looking at whether our
22 law provides a remedy under the specific facts presented,
23 and these issues are all necessarily very fact intensive. I
24 mentioned the enforcement process, and kind of how consumer
25 complaints fit into that. I'd like to address that in a

1 little more detail, and break it down for the Board.

2 There are basically two phases or components of
3 any enforcement action. There's an investigation phase and
4 there's a litigation phase. The investigation phase is the
5 collection review, the analysis of evidence that might
6 relate to a violation that might inform an enforcement
7 recommendation. The litigation phase happens when an agency
8 brings -- when our agency, in particular, brings an
9 administrative enforcement proceeding. Here, that would
10 start with a probable cause hearing by the agency, and it
11 would be followed by a proceeding before an administrative
12 law judge.

13 And as a reminder to the public, the board then
14 serves as the ultimate -- as the ultimate decision maker in
15 the cases that we bring. And this is why in any particular
16 matter, our process is designed to maintain a separation
17 between the enforcement division on the one hand that
18 investigates and prosecutes the cases and our board that
19 serves as a fair and neutral decision maker. In terms of
20 the lifespan and life cycle of our work in the enforcement
21 division, we spend most of our time in the investigative
22 phase, at least right now, rather than the litigation phase.

23 You might end up prosecuting one type of
24 straightforward violation at the end of the day, and the
25 case might look really simple, but to get there, you had to

1 investigate multiple other more complicated theories and
2 facts in order to tee it up in the most appropriate way.
3 And that process can take, of course, many months. Or you
4 might have had a defendant that we -- where we do bring an
5 enforcement action, and the defendant produced documents
6 very slowly with over a trickle, over a long time, or do not
7 cooperate in a -- in a manner that we would expect.

8 We want to give businesses an incentive to
9 cooperate with our investigations. We would like to see
10 timely responses. We would like to see businesses
11 communicate with us early and often, timely and robust
12 cooperation by the regulated community, it does lead to
13 better resolutions that are more efficient for everybody.
14 It might be appropriate and useful to give the Board a sense
15 of the mechanics here for an investigation and what we do in
16 enforcement.

17 The typical engagement with -- that we have with
18 businesses involves evidence gathering. And we do that in a
19 variety of different ways. It's kind of on a spectrum of
20 formality. On -- at the most informal level, we sometimes
21 engage with a business through a phone call about an issue,
22 or it could be an e-mail if it's a slightly more complicated
23 issue. We might correspond with a business by sending a
24 letter enclosing a consumer complaint and asking the
25 business to respond to it.

1 We sometimes send our own bespoke letters that may
2 not accompany a complaint, but ask the business to address
3 various issues and facts. We might have a request in a
4 letter that asks the business to produce documents to us, or
5 to answer certain questions. And at the -- as we approach
6 the kind of the most formal, we may issue subpoenas for
7 documents, for interrogatories or testimony. All of the
8 evidence that we gather, this corpus of evidence, becomes
9 part of our investigative file within enforcement.

10 The document productions themselves that we
11 receive from businesses, that usually takes -- usually takes
12 months depending on the complexity and the level of
13 cooperation by the business. It usually takes additional
14 time to review. There are often follow up requests
15 afterward and additional productions of documents.
16 Testimony might occur later. Sometimes it may happen
17 earlier.

18 Although I was able to share with the Board
19 metrics for our consumer complaints, I'm a little more
20 limited in what I can describe about our ongoing
21 investigations, except to say that we've been very busy
22 conducting investigations over the past 12 months. The
23 number of formal investigations that we have is easily in
24 the double digits, and it's growing.

25 This number makes sense given our resources and

1 the investment of time needed to do these investigations
2 properly. But we are not slowing down. We are following
3 those facts wherever they lead. We're not limiting
4 ourselves to particular provisions of law. We're not
5 limiting ourselves to particular practices. We're tracking
6 trends to see how we can use them to inform future
7 rulemakings, improvements to our law.

8 One aspect of our investigative activity that the
9 board is aware of and that the public is aware of is our
10 connected vehicle sweep. We announced that sweep last July
11 shortly after we received our enforcement authority. We did
12 not announce in that connected vehicle sweep these business
13 names or businesses that were investigation -- that we are
14 investigating. We described the overall industry. The --
15 our review of connected vehicle practices is ongoing. Our
16 review of that ecosystem.

17 We are pleased to see additional attention placed
18 on that ecosystem since we announced our sweep last year.
19 That sweep and that effort is just one example of the types
20 of investigations that we have ongoing. We have many
21 investigations that don't relate to the connected vehicle
22 ecosystem that relate to other issues. The other big
23 category I mentioned, besides the investigation phase, would
24 be the litigation phase. That's currently the smaller
25 percentage of our time. It's very important, however. It

1 starts with the probable cause hearing, the ALJ, the
2 administrative law judge proceeding would be next, followed
3 by a board decision. I mentioned that just to keep it in
4 context with how it fits into the investigations that we do.

5 So with that, I'd like to get to the final part of
6 what I have to share for -- with the board today, which
7 relates to kind of the year ahead and where we're going.

8 This past year has been about laying the foundation in many
9 ways. And we would like to improve on that foundation.

10 We'd like to build on that foundation. Some of that will be
11 moving faster. Some of it will be broadening the reach that
12 we have. We do anticipate that we'll be moving into the
13 litigation phase and building that foundation as well.

14 I expect it's going to be another dynamic year.
15 We have fully enforceable regulations in place. We have
16 additional regulations coming. New technologies, new users
17 of data, new types of data usages will certainly emerge.
18 It's important to us to build an enforcement division that
19 can iterate along with those changing technologies and keep
20 up with them, and keep up with consumers' needs. So for the
21 infrastructure in the year ahead, we have a few things in
22 mind. The hiring process is underway for additional
23 research technologists to support investigations. That's a
24 really -- it's a key role.

25 We have. Hiring underway, as well, for additional

1 support staff. We have plans for improving our consumer
2 complaint system. The current system requires quite a bit
3 of time in terms of processing the complaints. We would
4 like to streamline that process and improve efficiency going
5 forward. We are planning updates to our enforcement
6 website. We would like to explain more of the process, the
7 mechanics that I was sharing with the Board today. We'd
8 like to put that out on the website so that it's clear and
9 transparent, and give consumers and the regulated community
10 a better idea of our process.

11 Similar to our infrastructure that we've been
12 building. We also are working to develop building blocks,
13 what I think of as building blocks of precedent. And we do
14 that through our priorities. In July of last year I spoke
15 about categories of priorities, where we were seeking the
16 Board's input. And as a reminder, I spoke about privacy
17 notices and policies. That was a gateway issue. I spoke
18 then about the right to delete, and especially the facts
19 that it's been on the books for a long time.

20 And I discussed implementation of consumer
21 requests and our desire within the enforcement division to
22 get under the hood and look to see how businesses are
23 actually implementing consumer requests. All of those
24 priorities involve fundamental aspects of our law. They're
25 not technical violations. We will be outlining additional

1 priorities through the publication of enforcement
2 advisories. I'm very excited to share this with the Board.
3 Enforcement advisories are a tool that can be used by some
4 enforcement agencies. They're sometimes called risk alerts
5 or compliance advisories.

6 I had encountered them in different capacities in
7 financial regulation and healthcare fraud in the healthcare
8 fraud space. And we issued our first advisory from --
9 directed to privacy in our law through our enforcement
10 division in April. And that advisory related to data
11 minimization. And there are more advisories to come. But
12 what these advisories are, they don't interpret our law, but
13 they do highlight an issue that we have observed within the
14 enforcement division, and they do describe scenarios that
15 the enforcement division is concerned about.

16 The goal of these advisories is to place the
17 regulated community on alert. It's useful to put businesses
18 on notice of different issues. It's an opportunity for what
19 I think of as self-critical evaluation when you see an
20 advisory like that. On the other hand, as a practical
21 matter, ignoring an enforcement advisory does relate to a
22 business's state of mind, business's intent. That in turn
23 can affect the magnitude of a business's exposure to
24 administrative fines.

25 Now, intent is not required under our law, but the

1 lack of intent is a factor we can consider when we decide
2 whether we are to pursue an enforcement action, and it can
3 affect the amount of a fine that we would seek in an
4 administrative proceeding. These advisories that we have
5 started to do and that we are going to continue to do help
6 everyone. They help consumers because they show kind of
7 what to watch out for particular issues.

8 They help us because consumers can bring business
9 practices that we may describe in an advisory to our
10 attention. And they help businesses, because they help, you
11 know, show businesses the types of issues that we are
12 reviewing during investigation. We intend for these
13 advisories to deter violations of our law. We're all better
14 off if businesses comply with the law. The reality is that
15 sometimes stronger medicine will be in order. We're not
16 going to hesitate to act when necessary. We are going to
17 tackle privacy violations on multiple fronts.

18 So in that spirit, we intend to issue additional
19 advisories throughout the year. I'd like to close, before
20 seeking the Boards feedback and direction, by sharing some
21 of our additional priorities since I last addressed the
22 Board. We can't reveal specific investigations or specific
23 businesses, in part because the Board will later serve as a
24 -- as a decision maker. And also because specific
25 investigations are more effective when we have a period of

1 non-public investigation. But we can share, and I -- and I
2 will share general categories so that we can seek input from
3 the Board.

4 There are four additional categories that we
5 expect will be priorities, all of which flow naturally from
6 what I described in July. Let's look at the first category.
7 Businesses that fail to honor consumer opt-out requests
8 unless the consumer submits verification. So regulations
9 our are really clear on this point. They say that a
10 business shall not require a consumer to verify their
11 identity, to make a request to opt-out or to limit. So the
12 regulations say that businesses can act for -- can ask for
13 information necessary to process the request, but they can't
14 go beyond that, like by asking for a photo with a driver's
15 license.

16 We addressed this issue in our first enforcement
17 advisory. It lies at the intersection of verification and
18 also data minimization. This is one area that we will be
19 reviewing. It does -- it relates to implementation that
20 consumer requests. It's a -- it's a component of that. A
21 second category of priority for us will be businesses that
22 sell or share personal information without a proper notice
23 through opt-out mechanisms. Do the notices that they have
24 line up with the business practices? Are the opt-out
25 mechanisms effective?

1 We'll be looking at whether businesses are hiding
2 from the law's requirements, or are just not honoring those
3 requirements. A third category, and this is an important
4 one, relates to businesses that use dark patterns to prevent
5 consumers from asserting their rights. As the Board knows,
6 our law defines the term dark pattern. Our law gives
7 concrete guidance to businesses on how to avoid engaging in
8 them. I had cautioned folks at the IAPP global event about
9 dismissing dark patterns as some sort of buzzword. And I
10 meant it.

11 If anybody has doubts about that, just take a look
12 at our detailed regulations in dark patterns. So this will
13 be a priority for us pending feedback, of course, from the
14 -- from the Board. And finally, the fourth category that we
15 intend to make as a priority would be businesses that
16 violate our law in a way that affects vulnerable populations
17 and vulnerable groups. I say this because I mentioned
18 earlier that when we do any particular investigation or we
19 review an allegation, we're often looking at, how can we
20 help the maximum number of Californians? And that is true,
21 and that is a kind of a north star.

22 But at the same time, we want to make it a
23 priority to look at who the vulnerable communities are in
24 California. Some of them we instinctively understand, maybe
25 they don't understand the technology at issue or what's

1 being asked of them. People tend to think of children as
2 one example of that. We're considering how to identify
3 non-obvious vulnerable communities. We have resources and
4 we have the ability to look beyond just instinctive or
5 apparent vulnerability.

6 We want to make sure that we're doing this in a
7 data-driven way. I like to look at the complaint in the FTC
8 v. Kochava case as instructive. This is a case involving --
9 it's an ongoing case involving geolocation and a data
10 broker. There was a second amended complaint filed just a
11 few days ago, or maybe even yesterday. All I'll say about
12 that is that if you look at that complaint, it identifies
13 many sensitive groups that were affected by the allegations
14 there.

15 It implicated reproductive rights. That was an
16 issue that members of the Board I know have raised before,
17 and that we have been mindful of. The complaint in that
18 case raised religious practices, LGBTQ identity, race. We
19 want to be on the lookout for these kinds of issues in any
20 of our investigations. This is an especially important
21 priority for us given where we are with changes in
22 technology, and the evolution of technology and use of data.

23 Changes in technology can obviously be very
24 helpful. They can also make certain communities vulnerable
25 overnight. Being nimble is a key strength of any

1 enforcement agency. And we have the team in place to be
2 nimble and to stay ahead. I'm happy to take questions from
3 the Board, and I look forward to receiving the Board's
4 feedback and direction. And thank you, Chair Urban, for the
5 opportunity to speak here today.

6 MS. URBAN: Thank you very -- excuse me. Thank you
7 very much, Deputy Director Macko for a really incredibly
8 impressive work building out our enforcement function over
9 the course of the last year. This is just tremendous
10 progress, and many thanks to your team as they come on board
11 and join the effort. It's clear that there's just a lot of
12 really strategic and careful planning going on, and a lot of
13 excellent execution. So thank you very much for that. I
14 would, at some point, like to circle back to the last point
15 about priorities, but first I'd like to ask if there are
16 questions or comments from other board members, and then I
17 have a couple myself. Mr. Liebert, please.

18 MR. LIEBERT: Thank you so much, Deputy Director
19 Macko, that was truly extraordinary presentation, really
20 appreciated. I echo the chair's compliments. And actually
21 I want to also compliment the Executive Director and
22 administrative staff because I am constantly reminded as we
23 have these meetings now, what work the chair and the
24 administrative staff have done in just really real person's
25 work and terrific staff and people here. Thank you all for

1 the work you're doing.

2 I have a couple questions. My first one is, since
3 in your presentation you mentioned half of the consumer
4 complaints being received that enforcement's having to take
5 a look at, are dealing with delete requests. I'm curious to
6 what extent that will make it reasonable to suggest that
7 some of the fee monies that are portioned from the Delete
8 Act enforcement process, is there a connection there with
9 the such substantial work that will be constantly being done
10 by the enforcement division? Is that going to be accounted
11 for in the fee calculations that come about for the cost of
12 implementing the Delete Act?

13 MR. MACKO: Concerns about the right to delete
14 those translate into high fee revenue. Is that --

15 MR. LIEBERT: Yes. Yes. I believe a portion of
16 the work that your division will be doing in enforcement?

17 MR. MACKO: Yeah. What I think the number of
18 complaints that we received about the right to delete and
19 how that relates to the data deletion mechanism, those
20 complaints validate why we have the Delete Act in the first
21 place. They give us not just validation, but a -- but a
22 mandate to continue doing that work and to take enforcement
23 very seriously when we see deletion issues.

24 It's no surprise that when we described deletion
25 as a priority issue last year, that the complaints that we

1 then received tended to bear that out and show that indeed
2 this is a concern that consumers have. And I hope that the
3 resources that we devote and that the -- that the regulated
4 community devotes to compliance in the deletion area will
5 continue to increase.

6 MR. LIEBERT: And I just have one other question.
7 That is -- and you might have touched upon this already a
8 little bit. But clearly, we get most bang for the buck for
9 the great work that the division will be doing. I imagine
10 there is some collaboration that goes on, not just with the
11 Department of Justice, but I'm assuming also with other
12 State Enforcement Agencies, the Federal Enforcement Agency,
13 and of course, internationally. And I'm wondering how that
14 -- how that's going as well.

15 MR. MACKO: I'm so glad you asked that because I
16 think I may have glossed over that when I was addressing the
17 Board. First of all, as we've been building our
18 infrastructure, it's not that -- it's not like we could
19 figure out necessarily how all these other agencies are
20 operating and find the best pieces without their cooperation
21 and their generosity in working with us.

22 And so the first aspect of building those
23 relationships has been really their generosity in sharing
24 with us their best practices. Some of those practices, of
25 course we knew about from our own experience, many of us on

1 the team have worked at these agencies, but for -- to be
2 able to collaborate with them on the infrastructure on a --
3 on an ongoing basis has been a real benefit to us.

4 But the second piece of that is in particular
5 investigations and more generally when it comes to tech
6 expertise and understanding what's going on in the industry.
7 On particular investigations, we do collaborate with a
8 number of Federal and State partners that are considering
9 similar issues or grappling with similar technical
10 challenges that exist in any of these investigations to
11 unpack them. That's something that we are really skilled at
12 doing given the technological expertise that our agency has.

13 But being able to collaborate with those agencies
14 and entering into appropriate agreements with them to do
15 that has been very important. And as Mr. Soltani mentioned,
16 it's not limited to Federal and State regulators, although
17 that's the bulk of the collaboration that we do on
18 enforcement. We are building out even more international
19 collaboration, not just with the CNIL but we hope with other
20 regulators over time, and that will -- that will be playing
21 out as well.

22 MS. URBAN: Thank you. Mr. Liebert other comments,
23 questions? Yes. Board Member Mactaggart.

24 MR. MACTAGGART: Well, this is a wonderful
25 presentation from my perspective. And Mr. Macko, I'm so

1 pleased you joined us. I know you have a lot of options out
2 there, and so we were lucky to get you and congratulations
3 to Director Soltani for pursuing you and getting you. And I
4 think really there's no more important thing that we do.

5 I mean, just with the do not sell my information I
6 can't tell you how many times I still kind of lose my mind
7 because you get to somewhere and there's nothing, there's
8 like no indication whatsoever that they have an idea of the
9 loss. I do want to call out one positive thing. So here
10 I've been noticing I go to CNN and it's super simple.

11 There's a do not sell or share my information if
12 you click on it, and right here, I'm looking at it right
13 now, it says, for California, Colorado, Connecticut, Oregon,
14 Texas, Utah, and Virginia residents. So one in three
15 basically of the country, you can (inaudible) button. And
16 that has to do with all the Director Soltani's development
17 of the global privacy control.

18 So we are, you know, we are -- we're changing the
19 world here, we're changing the country. And yeah, I think
20 if you could just keep on focusing on that, on just even
21 that simple thing it's really binary, right? Like, it's
22 very clear, let's have this button, and so many places
23 don't. And so I'm very hopeful that it can get to be a
24 place where -- and I'm not a fan of, you know, enforcement
25 for the sake of enforcement or fines for the sake of fines.

1 But I do think somebody needs to do something where people
2 are going to be like, oh, wait, hey boss, we need to do this
3 because we'll kind of have it over there. We're going to
4 get in trouble if we don't. And so pretty clear, and I
5 can't wait for the day that the Privacy Control is respected
6 everywhere. And you are -- you are -- you are the way we're
7 going to get there. So, good going.

8 MR. MACKO: Thank you for that. Thank you for the
9 very kind words. I think the team that we have assembled
10 within enforcement, they are here because of the passion and
11 commitment to doing this work. This is a really
12 accomplished group who could do whatever they want. They
13 all choose to be here because of what we are building and
14 what is to come. And as for your point about do not sell or
15 share, that really speaks to the importance of having
16 building blocks of precedent.

17 So you are describing one provision of our law.
18 Our law has a lot of different provisions in it. When we
19 are looking at any given dark pattern, we are always trying
20 to figure out what makes sense for an enforcement action.
21 What -- how can we best choose which cases to bring? That
22 will give us building blocks to get -- to expand that over
23 time. And I share the frustration of seeing apparent
24 violations. I know consumers do, and we are very hard at
25 work with a lot of investigations to dig into that pretty

1 deeply.

2 MR. MACTAGGART: Thanks. I have one other request
3 Chair Urban.

4 MS. URBAN: Please.

5 MR. MACTAGGART: Not for today, but at some point,
6 I would love it if -- whether it's Mr. Laird or Mr. Macko or
7 the Executive Director. But if you go to 1798, 19930 that
8 paragraph ends with the wording that the agency made
9 contract for services that cannot be provided by its
10 employees. And I'd love a little legal interpretation of
11 that. You know, going back to Mr. Liebert's comments about
12 a thousand lawyers at Google and just us here, you know, if
13 you're in the middle of a thick enforcement activity and all
14 of a sudden Mr. Macko's like, boy, I wish I had an extra
15 couple hundred lawyers here right now.

16 Is that a situation that, is that -- does that
17 language susceptible of allowing us to enter into some kind
18 of an arrangement with a commercial entity that would help
19 us bolster our efforts? I've always kind of thought it was
20 there for that reason, but at the same time, I understand
21 that the State is a big state and we've got lot of
22 (inaudible) and all the rest of it. So just would love
23 people to go, come back to me with some interpretation of
24 that. Thanks.

25 MS. URBAN: Thank you. Thank you, Board member

1 Mactaggart. And you're thinking like an expert consultancy
2 or something like that.

3 MR. MACTAGGART: Well, no, I'm thinking of a --

4 MS. URBAN: A person.

5 MR. MACTAGGART: A contingency situation.

6 MS. URBAN: Yeah. Sure. Okay, great. Thank you.

7 So I have -- I also had some general recommendations I'd
8 like to return to the -- your discussion, Mr. Macko at the
9 end of priorities. And I have a comment and a question.
10 And I do apologize for my voice. Excuse me. The comment is
11 I fully endorse -- first of all, I fully endorse everything
12 that my fellow board members have said complimenting you and
13 the team on how you're building this out and prioritizing.

14 I fully agree with Mr. Mactaggart that sort of
15 overt messaging and understanding of what is going to
16 trigger a response is really important. And more generally,
17 however, I'm very pleased to hear about this multifaceted
18 approach that involves working directly with companies based
19 off of what you are understanding and learning from consumer
20 complaints in order to help them comply.

21 Because one really important and often very
22 invisible -- just invisible piece of an enforcement strategy
23 and an enforcement program is essentially educational in my
24 view. It essentially brings together information about what
25 is harmful to people and what is unacceptable to people and

1 what businesses are doing.

2 Businesses have a lot of priorities. They have a
3 lot of things that they are thinking about. We've talked a
4 lot about our lean organizations. You know, this varies
5 greatly by business. But sometimes businesses are lean and
6 they're in their own compliance or governance divisions in
7 this area, either because they should have invested and have
8 not, or because they, you know, weren't aware.

9 And so, to Mr. Mactaggart's point about awareness
10 as well, I think this is a crucial and very sort of
11 generative and positive use of the enforcement mechanism and
12 really commend you for doing that. Because in the end, our
13 goal is to fulfill our mission to protect Californians and
14 to provide guidance to businesses. And that's a really
15 important way for that to happen. That isn't always so
16 visible. So thank you for that.

17 That does lead to my question, which is you know,
18 may just be a sort of a general question at this point for
19 future discussion. And because I'm truly unsure of what is
20 allowed and what is feasible. But I'm wondering about when
21 you've noticed things in the consumer complaints or you find
22 out things when you talk to companies you issue an advisory
23 and you follow up on those, some priorities like, you know,
24 not really making the deletion mechanism usable or other
25 things are going to continue to bubble to the surface.

1 And you mentioned that some things that come up in
2 the complaints, for example, may be very repeated pain
3 points for consumers, but they're not necessarily within our
4 jurisdiction or covered by our law. Some things, of course,
5 will just be outside of our jurisdiction, but I was
6 wondering about whether there is a keeping investigation --
7 well, excuse me, while keeping investigations appropriately
8 confidential, et cetera, if there is a communications stream
9 that will allow for that kind of feedback and learning to
10 come out of the enforcement division so that, for example,
11 the policy division could consider whether to brief the
12 Board on changes in the law that might be beneficial or, you
13 know, you could directly brief the Board on things that seem
14 to be holes, for example.

15 So I'm just not entirely sure what the best
16 process for that is, but it seems as though there will over
17 time be some really valuable information that could be used
18 to help strengthen the law and sort of make it better.

19 MR. MACKO: Thank you for that. And I appreciate
20 the feedback. As for changes and improvements to the law,
21 the enforcement division does provide that kind of input on
22 an ongoing basis, but that tends to be informal. So I will
23 take back with the team how we might be able to formalize
24 that a little more. There are also changes in the law that
25 I think would be helpful from an enforcement perspective as

1 a little broader. And we will also discuss how best to
2 formalize that and maybe give more visibility to it.

3 In terms of communicating with both the public and
4 the regulated community about what we're seeing, the
5 advisory should be a good way of doing that. And as we
6 continue to grow and mature, the settlement and enforcement
7 actions that we bring, that will also give us an opportunity
8 to speak to that. But the point is well taken that anything
9 else we can do or additional that we can do to help improve
10 our law or to give more visibility to what we see as
11 violations that will lead to fewer violations. We'd like to
12 do that.

13 MS. URBAN: Thank you, Mr. Macko. And of course,
14 another crucial component to that is what you learn with
15 regards to how understandable and implementable our
16 regulations are and how protective they are. And if they
17 are -- if they've also fallen short in some way, you know,
18 one of the great benefits of regulations is that they are
19 more mutable.

20 You know, they are sticky in the sense that they
21 have the effect of law and they can't be changed, you know,
22 just willy-nilly. But they are intended to be responsive to
23 changing circumstances. So that really important
24 information that you're learning, I think will be important
25 for that over time as well. Thank you. Other comments or

1 questions from board members? Yes Board Member, Le please.

2 MR. LE: Yeah, I think -- I thank you for your
3 presentation, Mr. Macko. I think I'm very excited to hear
4 about the great team that you've built. It sounds like
5 you've got a lot of stars there. And I guess my question
6 was on this dark pattern sweep you know I looked through the
7 advisory, you know, it's not enforcement action but it can
8 be followed up.

9 And I'm curious, you know, if you can speak about
10 it, like what does that follow up look like from California
11 and you know, on dark patterns and opt out-do not track
12 generally, you know, is there -- I've seen some patterns
13 that I think are perhaps not symmetrical. I'm curious if
14 there's any plans to do an enforcement advisory on that.
15 Yeah, on that topic as well.

16 MR. MACKO: It's a great question. We are actively
17 discussing the substance of the next advisory, which we
18 expect to issue in the near future. Dark patterns are
19 always a thing that we are talking about and thinking about,
20 and we will find the best way of communicating that, whether
21 it's in an advisory, whether it's through another mechanism,
22 but absolutely, we are thinking about whether that should be
23 the subject of an advisory.

24 MR. LE: Thank you. Yeah, and you know I was
25 looking at the hypotheticals on you know, the first

1 advisory, and I thought that was very helpful. And, you
2 know, some sort of hypothetical with images and perhaps
3 concerns with those implementations would be helpful for
4 businesses that maybe in a gray area, not quite sure if
5 their implementation is fine.

6 MR. MACKO: Absolutely. I think one of the real
7 benefits of our regulations is that they are so detailed and
8 they do provide so much guidance, but the fact that we have
9 an opportunity to pinpoint it even further for specific
10 issues is something we want to take advantage of.

11 MR. LE: Yeah.

12 MS. URBAN: Thank you, Mr. Macko. And I'll take
13 this opportunity for my periodic public service announcement
14 which I haven't made in a while, and I think is often
15 something that is not necessarily completely intuitive
16 understandably about California law which is that businesses
17 may understand -- may understandably like it if the
18 enforcement division or the agency generally provided
19 something like best practices or guidelines and there are
20 just limits to what we can do in that area under the
21 California Administrative Procedures Act. We have to avoid
22 what's called an underground rulemaking.

23 And that is one reason why we take great care for
24 our regulations to be as clear and detailed and actionable
25 as possible. And why the advisories from Mr. Macko's team,

1 I think are incredibly valuable. And, you know,
2 hypotheticals and so forth hopefully can be really helpful.
3 But there are limits compared to what some other agencies
4 can do in that realm for us.

5 So that's my small public awareness announcement.
6 So we really are doing our best to make sure that we're
7 helping people as much as possible. All right. Any further
8 questions or comments from Board members? All right. Mr.
9 Macko, is there anything you'd like to add before I request
10 public comment?

11 MR. MACKO: No. Thank you, Chair.

12 MS. URBAN: All right. Ms. Marzion, could you
13 please call for public comment on this item.

14 MS. MARZION: (Inaudible) for Agenda Item number 6,
15 annual enforcement update and priorities. If you'd like to
16 make a comment and you're joining us here today, you can
17 come up to the podium to your right. If you're joining us
18 by Zoom, please raise your hand using the "raise hand"
19 feature or by pressing star nine if you're joining us by
20 phone. This is for Agenda Item number 6, annual enforcement
21 update. And I do see a hand raise on Zoom. AK, I'm going
22 to unmute you at this time. You have three minutes to make
23 your comments. Please begin as soon as you're ready. AK,
24 I've unmuted you so you can go ahead and speak when you're
25 ready. They've had their hand raised for some time, so they

1 might not have been wanting to speak.

2 MS. URBAN: Thank you, Ms. Marzion. I'm wondering,
3 did they need to be promoted to be a panelist or -- .

4 MS. MARZION: No. I just allow them to speak.

5 MS. URBAN: Okay. All right.

6 MS. MARZION: But it looks like they have removed
7 their hand from being raised.

8 MS. URBAN: Okay. All right.

9 MS. MARZION: So I think that we can go on. So I
10 don't have any other -- any other hands raised at this time.

11 MS. URBAN: Okay. Thank you very much, Ms.
12 Marzion. And of course, if AK would like to circle back
13 later in the meeting we would be happy to hear their
14 comment. Thanks again, Deputy Director Macko for that
15 wonderful presentation and to you and the entire enforcement
16 division and everyone who has supported the development of
17 the -- of the enforcement division. We look forward to
18 future updates and what the Board can do to support within
19 our role. And of course to any cases you need us to
20 adjudicate when they get to us.

21 With that we -- I'm going to take the next agenda
22 item out -- I'm going to take an agenda item out of order
23 next and move to agenda item number -- let me just verify to
24 be sure I have my agenda correct. I believe it's Agenda
25 Item 10. Yes, Agenda Item 10, which is our closed session

1 agenda item. We are going to take this now in order to give
2 everyone a chance to have a break for lunch while the Board
3 goes into closed session.

4 Agenda Item number 10 is -- excuse me. Again, I'm
5 just finding my place on my agenda because I'm out of order.
6 Agenda Item number 10 specifically pursuant to Government
7 code section 11126, Subdivision E1 and Subdivision 2A. The
8 Board will meet in closed session to confer and receive
9 advice from legal counsel regarding two matters, California
10 Chamber of Commerce versus California Privacy Protection
11 Agency, et al and California Privacy Protection Agency et al
12 versus the Superior Court of the State of California for the
13 County of Sacramento and California Chamber of Commerce.

14 We will be discussing those matters in closed
15 session. And we'll -- the Board will leave this public
16 meeting to repair to closed session, but we will leave the
17 meeting open. So everyone who's attending is most welcome
18 to hang out or to leave and come back. It's up to you.

19 As I mentioned at the top of the meeting, it's not
20 entirely possible to predict exactly how long the item will
21 take. But we will not return before, I guess I'll round it
22 up to 1:00 p.m. Actually, let's say 12:50 p.m. We won't
23 return before ten to 1:00. And so that people feel
24 confident that they can go away for a bit and they won't
25 miss any of the meeting. And with that, I will ask Board

1 members to head into closed session and for the staff to set
2 up the break -- the break from the public meeting until we
3 return. Thank you very much everybody.

4 (RECESS)

5 MS. URBAN: Thank you very much, Ms. Marzion and
6 thanks to everyone for bringing the public meeting --
7 reopening the public meeting. The Board now is returning
8 from closed session discussion of Item number 10. We've
9 completed our discussion of that item and thus have returned
10 to the public meeting to continue with the agenda. And that
11 is Agenda Item number 7. We'll be on Agenda Item number 7,
12 which is a legislative update and a possible authorization
13 for CPPA positions on pending legislation. It will be
14 presented by our Deputy Director of Policy and Legislation,
15 Maureen Mahoney.

16 This updates and follows our discussion from our
17 May, 2024 meeting in light of the legislature's continuing
18 work on various bills that could affect the agency. Deputy
19 Director Mahoney has also prepared for us an updated memo
20 with a bit more detail on how the process that we adopted is
21 playing out as she does her work with her team in the
22 legislature.

23 So with -- it's a pretty complicated item because
24 the legislature is very active in important areas that
25 affect Californians and touch potentially on the agency's

1 work. So I would ask everyone now to turn your attention to
2 materials for this item. And we'll ask Ms. Mahoney, if I
3 can turn it over to her to walk us through.

4 MS. MAHONEY: Great. Thank you, Chairperson Urban,
5 Board members really appreciate the opportunity to provide
6 an update on our legislative work. We can go to the next
7 slide, please. This item, I'll do several things as
8 (inaudible) preview. First I'll give an update on federal
9 legislation, particularly the American Privacy Rights Act.
10 Second, I'll provide an update and receive feedback on the
11 agency's legislative process. Third, I'll provide an update
12 on several California privacy and text bills that relates to
13 the agency. And at the end I'll present for board
14 consideration recommended position on three California bills
15 SB 1223, which has to do with neural data safety 1008, which
16 has to do with the definition of personal information and AB
17 2930, which has to do with automated decision tools. So if
18 it's okay with the Chairperson after each of these sections,
19 I'll pause for comments or feedback and forward just
20 (inaudible).

21 MS. URBAN: Yeah, sure. Just let me know kind of
22 how -- just let me know when you want to pause and then we
23 can -- we can do that. I just ask if you can talk directly
24 into the microphone and as slowly as you can given the sound
25 issues. Thank you.

1 MS. MAHONEY: Great. Go to the next slide please.
2 So, turning to federal (inaudible). So at the last board
3 meeting separating update on the American Privacy Rights Act
4 and that federal legislation that speaks to pre-empt nearly
5 every provision in the California Consumer Privacy Act and
6 other state privacy laws. And this is something we're very
7 concerned about, it's an important priority for our team and
8 the agency to encourage -- to ensure that any federal
9 legislation support safe ability to continue to innovate in
10 this area.

11 So, just a brief update since the last board
12 meeting the measure was formally introduced in the House of
13 Representatives and the agency sent a letter opposing the
14 bill in its current form over its language with respect to
15 the state. Notably of plans full committee markup in the
16 House Energy Commerce Committee on June 27th was canceled at
17 the last minute. Reportedly over objections from house
18 leadership. On the Senate side, we are hearing that the
19 Senate Commerce Committee plans to mark up the bill the week
20 of July 23rd.

21 Although as of this morning it did not get the
22 schedule. It does appear that there's a (inaudible) ahead
23 for the bill this year, particularly given where we are in
24 the calendar. But we'll continue to engage and monitor
25 staff expect this issue pre-emption will continue to be a

1 concern in the (inaudible).

2 Simultaneously, we're keeping an eye on
3 legislation with respect to children's data since the kids
4 on like Safety Act, as I talked about in previous meetings
5 you know, that could potentially move in the Senate in the
6 coming weeks, especially given broad bipartisan support for
7 the bill. So we'll keep an eye on that as well. And that's
8 the current state of play for federal privacy.

9 Okay. So next slide please. So moving on to the
10 legislative process update. So because it's been a couple
11 of years since we developed the legislative process we have
12 new board members. There are an increasing number of bills
13 that relates to privacy and AI in California. Staff's
14 wanted to provide an update on our recommended approach to
15 legislation with the goal of ensuring that the agency and
16 staff can respond to legislation in a meaningful and timely
17 manner.

18 So there's a memo in the meeting materials and
19 that's an update to a memo that we've given to the board in
20 2020. It primarily reflects more detail in terms of how
21 staff approaches technical assistance on legislation,
22 particularly California legislation, and provides a bit more
23 detail in terms of the criteria for the agency taking formal
24 positions on bills.

25 So just to go over it a little bit you know, much

1 of our legislative work is guided by our statute. The CCPA
2 requires our agency to do three things in this area. First,
3 to monitor relevant developments related to the protection
4 of personal information. Secondly, provide technical
5 assistance to the legislature on privacy legislation upon
6 request. And then third, to work towards consistency in
7 production where possible, including (inaudible).

8 So to that end, in staff view we did make sense to
9 track, analyze, and provide technical assistance where
10 appropriate on bills that relate to the processing of
11 personal information. And this includes bills relating to
12 artificial intelligence to the extent that personal
13 information or privacy (inaudible).

14 However, just many bills relate to the processing
15 of personal information and privacy. In terms of taking
16 formal positions on bills, staff recommends focusing on
17 bills that meaningfully affect the agency. This is those
18 that amend the CCPA, task our agency with specific
19 responsibility or present significant overlap with the CCPA
20 and implement risks.

21 Board members are certainly welcome to identify
22 specific goals to staff on which it might be appropriate to
23 take a position or consider. So we think this rubric will
24 provide flexibility to weigh in where needed while
25 preventing us from extending limited resources on bills that

1 won't have (inaudible) on us. And the memo provided for
2 this meeting also discusses the process for constraints,
3 bill proposals as well which we expect to do as the November
4 board meeting scheduled for that. And board members are
5 also welcome to just proposals and I'll pause here for
6 feedback from the Board.

7 MS. URBAN: Thank you, Ms. Mahoney. So this is
8 really helpful. This -- I reviewed the memo that we adopted
9 in December, 2022 alongside this, and I really appreciate
10 you giving us sort of some updates of how this has played
11 out and how you've been implementing the more general
12 guidance that the Board provided. This all makes sense to
13 me. And it's helpful to sort of know and also helpful to
14 remember that should anything slip through your net, which
15 seems unlikely, you are so thorough, that we can bring it to
16 your attention. Is there any questions or comments from
17 Board members? Yes, Mr. Mactaggart.

18 MR. MACTAGGART: Yeah, I found this presentation.
19 I know we haven't finished it, but I found it very formative
20 when you're going through the individual bill, Ms. Mahoney.
21 I would find it helpful if you kind of clarified this is why
22 we're either not (inaudible) recommending watch as opposed
23 to taking a position because some -- that (inaudible) would
24 take position on and some (inaudible) were watching on. And
25 I just kind of wasn't entirely apparent to me why we were or

1 were not.

2 MS. URBAN: Very helpful. Thank you, Board Member
3 Mactaggart. All right. Shall we dive in Ms. Mahoney?

4 MS. MAHONEY: Great. Okay. So let's move on to
5 the California Bills. Next slide please. Okay. So just
6 for some table setting provide an update on where we are in
7 the California Legislative Calendars (inaudible). So
8 California Legislature is in recess right now, I believe
9 they come back August 5th, and then it'll be a sprint to the
10 end until August 31st. And that'll be the deadline for when
11 they'll have to make it out in the legislature.

12 Then the governor will have until September 30th
13 to sign a review of these bills. If he takes no action,
14 they go into a (inaudible) and then unless authorized
15 stated, the bills will go into effect January 1st, 2025. So
16 this is just high level. There are accepting to everything,
17 but that's what we're looking at.

18 Next slide, please. And next we'll provide
19 updates on several pieces of California Legislation that
20 would affect the agency. So first is AB 3048 from Assembly
21 Member Lowenthal. So this recall is CPBA sponsored
22 legislation to require browsers to offer to consumers the
23 ability to enable (inaudible). That bill has advanced
24 office senate judiciary it's now under consider by Senate
25 appropriation.

1 And the bill has been amended. The biggest change
2 has been to narrow the scope of the bill and its application
3 from browsers and devices to browsers and mobile operating
4 systems. In response to stakeholder feedback and mobile
5 operating systems is defined as the operating systems used
6 by smartphones and tablets.

7 And second, the bill was amended to incorporate
8 the feedback provided by Board member (inaudible) at the
9 main meeting to explicitly state that the agency can issue
10 regulations, flushing out what it means for one of these
11 signals to locate (inaudible). So we're continuing to work
12 with stakeholders on this bill.

13 But you know, we are really excited about the
14 progress so far in a good example of California continuing
15 to be a leader on this issue. Actually I'll note that it's
16 -- we're up to approximately a dozen other -- dozen states
17 that now require businesses receiving these opt-out
18 (inaudible) signals to honor them is not out of sharing.
19 But we would be the first state to require browsers and
20 operating mobile offering (inaudible).

21 Next slide, please. And next one, update on the
22 AB 3286. That's an on bill from the assembly privacy
23 committee, and that includes several fixes to the CCPA
24 proposed by agency staff. As you recall, it covers you
25 know, putting the method for calculating consumer price

1 index adjustments to the monetary principles into the
2 statute that the agency begins administering the grant
3 program when the amount of grants available is 300,000, and
4 clarifying that when responding to complaints the agency
5 does (inaudible) law enforcement privileges.

6 So that's cleared the legislature. It was
7 actually signed by the governor yesterday. So that was
8 (inaudible). And we're very grateful to the assembly
9 privacy committee for good work. Next slide, please. Okay,
10 next up is --

11 MS. URBAN: Actually Ms. Mahoney -- Ms. Mahoney, I
12 apologize. Could we just pause in case there's anything on
13 the CPPA sponsored bills?

14 MS. MAHONEY: Yeah.

15 MS. URBAN: I just -- and I personally had a quick
16 question on 3286. Thank you for all of your work on that,
17 for everyone who's worked on it. I think this will just
18 make things more efficient for everybody thanks to the
19 legislature and the governor's office as well for supporting
20 it. My question is so this will free us from having to
21 recalculate every year and do a regulation for the monetary
22 thresholds. Is that correct?

23 MS. MAHONEY: Yes.

24 MS. URBAN: Okay.

25 MS. MAHONEY: (Inaudible).

1 MS. URBAN: Okay. That's wonderful. And I think
2 that I mean, I wasn't a drafter of the -- of the original
3 the CCPA or the CPRA, but I think that is much more in line
4 with what was intended in terms of having that consumer
5 price index COLA adjustment. So that's great. Thank you.
6 I know it's -- you know, it's not the most sexy or exciting
7 to fix these technical things, but it's really important.
8 So thank you for that. Board Member Liebert?

9 MR. LIEBERT: I just want to thank you, actually.
10 It's always great that when we raise issues up here and you
11 look as empirically as you did. And so the progress that
12 we're making on AB 3048 is exciting. And I congratulate the
13 staff too for having been behind this to begin with. So
14 thank you for doing that.

15 MS. URBAN: Wonderful. Thank you for indulging the
16 interruption, Ms. Mahoney, I just thought it was worth
17 having that category of the bills we'd sponsored to pause on
18 for a second.

19 MS. MAHONEY: I appreciate that. And a reminder to
20 -- yeah, slow down. Okay. So next up is 19, maybe 1949
21 from Assembly member Wicks sponsored by the California
22 Department of Justice. It has to do with this information
23 and how, and the CCPA. So at the last board meeting, the
24 agency took support if amended position on the bill.
25 Amendments were taken to the bill on July 3rd that are

1 consistent with the agency's recommendations.

2 So as before, the bill provides opt-in protections
3 for kids under 18, as opposed to under 16. The bill still
4 expands opt-in protections from sale and sharing with
5 current loss students with collection use disclosure, as
6 well as the sale and sharing.

7 But now consistent with agency requests the actual
8 knowledge standard in the CCPA will be retained and the
9 requirement that the agency promulgate additional
10 regulations by July 20 files has been eliminated.

11 (Inaudible) also also added a provision clarifying that
12 businesses mistreat a consumers under 18 if the consumer
13 sends a signal indicating (inaudible).

14 So consistent with the delegation provided the
15 last meeting staff anticipate moving to a support position
16 on the bill as amended July 3rd. And we will continue to
17 watch the bill carefully because it may be invented again.
18 And I'll pause here briefly (inaudible).

19 MS. URBAN: I again want to commend you and your
20 work. I know there's been collaboration across a lot of
21 different interested parties and with the legislature and
22 the sponsor of the bill. We all really want to do
23 everything we can to protect kids' privacy. And as we
24 talked about in May, this is a subtle issue. You know, it's
25 something that can seem a little bit counterintuitive, that

1 if you have -- if you preserve that actual knowledge
2 standard, that that actually could protect kids' privacy
3 more and also be more implementable for businesses.

4 So I know it's a complex issue and I really
5 appreciate, you know, the work that you've done to help the
6 legislature's work on this and of course, the member and her
7 staff's work to help clarify and make the bill stronger. So
8 that's great. It's as Mr. Liebert says -- said, I just
9 really commend you on the success at this point. I know
10 it's still being discussed. Mr. Mactaggart?

11 MR. MACTAGGART: I don't want to belabor this, it's
12 just for Director Soltani. Do you have any indication,
13 given that this is expanding from selling or sharing of
14 children and their expanding children's definition to
15 collecting, did any indication at all that you're going to
16 try and use that as an stating you know, gives an expansion
17 of the restriction from sale or share to actually basically
18 collect feel like that's something they're going to use to
19 try to HG and, you know, say terrible thing, et cetera?

20 MR. SOLTANI: That's a great question.
21 (Inaudible). Great question. Board member Mactaggart it --
22 the age gating issue for a number of reasons is one of the
23 -- or is one of the key reasons that I believe staff have
24 flagged this. And so we're carefully watching both the
25 development of this bill as well as if it does pass,

1 there'll be monitoring industry response or business
2 response to how they operationalize this bill. I don't know
3 if, I'll have to think more about your specific question. I
4 was thinking of it. I think staff were thinking of it more
5 only the knowledge standards component piece of it but I'll
6 definitely take that -- take that back.

7 MS. MAHONEY: And I also point out you know, that
8 that would (inaudible) with a lot of other states that have
9 a requirement, you know, for consent for (inaudible) with
10 pair, with an actual knowledge. Yeah.

11 MS. URBAN: Thank you. Mr. Mactaggart, really
12 helpful observation. Anything else to add? Okay. All
13 right. Shall we go ahead, Ms. Mahoney?

14 MS. MAHONEY: Next slide, please. Next we'll move
15 to providing updates on several pending bills related to
16 artificial intelligence. So as you know, the legislature is
17 considering at least two dozen bills that have to do with
18 the regulation of AI from bills like (inaudible) 1047 from
19 Senator Wiener, that requires safety evaluation a very large
20 AI model before initiating training to content provenance
21 bill, workers' rights, the use of AI in political
22 advertisements, just to name a few. While many of these
23 bills do not task agency with any responsibilities several
24 of them do, and we'll focus on the ones that do.

25 So first, just an update on AB 2877 from assembly

1 member Bauer-Kahan that would amend the CCPA to prohibit an
2 AI developer from using his personal information to train AI
3 without permission. So since the proposal was to amend the
4 CCPA, the agency would have rulemaking and enforcement
5 authority with respect to the bill. We're analyzing recent
6 amendments and just keeping a loss on bill (inaudible).

7 Next slide please.

8 MR. MACTAGGART: Sure. Could you just give a
9 little color about why required watch (inaudible)?

10 MS. MAHONEY: Sure. Well, I mean, it's recently
11 been amended, so we're taking a look at those amendments
12 specifically having to do with requirements to de-identify
13 and aggregate information you know, even after the business
14 after -- even after the business has gotten consent. So
15 we're just taking a look at that. And then, because it has
16 to do with kids' use of data, you know, we're also closely
17 looking at its intersection with AB 1969 and then potential
18 events there.

19 MS. URBAN: Ms. Mahoney, could you say a little bit
20 about the procedural path of this bill? I don't want to
21 speak for Board Member Mactaggart, but I expect part of the
22 question is, this is a watch position. Would there be a
23 point at which we might need to do a sort of shorter term
24 notice meeting if you need us to consider a support opposed,
25 supportive, you know, kind of position. I -- you know, this

1 bill, I'm just wondering where this bill is sort of in the
2 process and what we -- what we might expect.

3 MS. MAHONEY: Sure. So the bill has, you know,
4 already crossed over from the assembly made it out of policy
5 committee and is now in appropriations. So we need to clear
6 appropriations and then it would head to the floor. So, you
7 know, we are getting pretty close to the end of the
8 legislative session. August 31st is the end. So no, I
9 think we're just kind of keeping an eye on the legislation
10 to make sure there aren't, you know, any major changes and
11 to make sure we don't have any (inaudible) with it. If we
12 do need, if that does happen you know, we may need to come
13 back, but I don't expect that.

14 MS. URBAN: Thank you.

15 MS. MAHONEY: Next slide please. So next, we have
16 three bills that regulate state use of AI and all three of
17 these bills were recently amended to provide a role for the
18 ACC. So likewise for all three of these staff are
19 continuing to evaluate recent amendments and are watching
20 these bills.

21 So first is SB 892 from Senator Padilla and that
22 requires the Department of Technology to adopt regulations
23 establishing a procurement standard for automated decision
24 schools. It would follow the agency's adoption of agency
25 regs or enactment of comprehensive ADT legislation by the

1 legislature, whichever fits sooner. And it would require
2 the Department of Technology to consult with our agency in
3 the development of these regulations.

4 And the regulations must be consistent with the
5 agencies and with adopted automated decision tool
6 legislation. And for that one, you know, it was very
7 recently amended to create the agency's role with respect to
8 the bill. So we're not recommending a position today
9 because, you know, we're still (inaudible).

10 Next slide please. Next is SB 893, also from
11 Senator Padilla. So that would require the government
12 operations agency the Governor's Office of Business and
13 Economic Development, the California Department of
14 Technology, as well as our agency to establish the
15 California Artificial Intelligence Research Hub within
16 (inaudible) or the Government Operations Agency.

17 So that would be a centralized facility to
18 facilitate collaboration to advance AI research, including
19 by increasing academic researchers, lawful access to
20 government data and the agency would be tasked with
21 reviewing and improving for release any government data
22 disclosed pursuant to the bill. And likewise, I've gone
23 through a number of amendments including to bring in the ACC
24 which we are still doing.

25 Next slide please. SB 896 from Senator Dodd.

1 This, you know, very similar to the Governor's executive
2 board on AI. It requires government operations agency,
3 California Department of Technologies, office of Data
4 Innovation, and our agency to develop an updated needed a
5 report on the benefits and risk generative AI and also
6 tasked a number of entities, some of the same ones.
7 Government Operations Agency, California Department of
8 Technology, as well as Department of General Services,
9 California Cybersecurity Integration Center, and our agency
10 to develop and update as needed general guidelines for
11 public sector procurement gen AI likewise, you know,
12 recently amended, we're still evaluating it.

13 We wanted to make sure that the Board is aware of
14 these developments and we also think it's a positive
15 development that, you know, the agency has a role in these
16 bill to make sure that these conversations are happening
17 safely. And these procurement standards (inaudible) an
18 approach to AI.

19 MS. URBAN: Would this be a good time to -- I feel
20 like the Senate bills have a familial relationship in that
21 they are attempting to look at the issues sort of across the
22 state regulatory apparatus.

23 MS. MAHONEY: (Inaudible).

24 MS. URBAN: Which I very much appreciate. I really
25 appreciate this work that the legislature is doing to think

1 through how these technologies affect various functions of
2 the State and people in California and are thinking about
3 helping this kind of collaboration among agencies. I think
4 that's really important.

5 I -- you know, my question of course is goes back
6 to an earlier agenda item which is with regard to resources
7 if there's any update on how resources might be allocated
8 for some of these roles. And either way I would put my sort
9 of pitch in for help reminding, you know, the legislature as
10 they work on these that of course will be important to all
11 these agencies ability to fulfill the goals of the bills.

12 MS. MAHONEY: Yeah. We're certainly mindful of the
13 resource issue. And we're kind of in the process now of
14 developing fiscal estimates that we'll submit to the
15 appropriate committee, and that'll be kind of the first step
16 in getting a sense of what kind of resources are needed and
17 then, you know, goes along to actually obtaining those
18 resources. So that will be to make sure that results can be
19 implemented appropriately.

20 MS. URBAN: Great. Thank you. This also ties of
21 course, to, I know executive director and other staff's
22 efforts to be sure that we are in communication with
23 (inaudible), with these other agencies. And I just really
24 that -- I think that's important. Mr. Le?

25 MR. LE: Yeah. You know, I just wanted to thank

1 you, Ms. Mahoney for -- you know I've been following a lot
2 of these bills since they've been introduced. And you know,
3 one thing that worries me is that you may have so many
4 different conflicting standards for businesses, for
5 government, and I think it's because of, you know, you and
6 the rest of the agency putting in some or talking to
7 legislators that I'm seeing language saying, you consult
8 with the agency, look at what the agency's regulations on
9 ADT are.

10 I want to commend you for making that advocacy.
11 And you know, I think on a general note, you know, I think
12 one thing that's bothered me for a bit is that if businesses
13 in California have higher standards than, you know, our
14 government, that's not a good look. So, you know, perhaps
15 with these bills, if they do pass you know, we can have some
16 complimentary between the public sector and the private
17 sector.

18 MS. URBAN: Thank you, Mr. Le. I quite agree, and
19 I -- you know, I -- we all understand that this is, you
20 know, changing technology, changing business practices and
21 things that touch a lot of different actors and agencies,
22 and it's a lot of work to think through how to make things
23 consistent, as Mr. Le said. So kudos to you and your team
24 and to the folks in the legislative staff who I know have
25 been working hard on this as well. I mean, in the other

1 agencies.

2 MS. MAHONEY: Right. Yeah. Two thoughts there,
3 you know, completely agree. And, you know, I think there's
4 a lot more work to be done in terms of our outreach to the
5 legislature and making folks aware that we're out there and
6 you know, facilitating important conversations. So we're
7 going to continue paperwork on that. And then, yeah, I also
8 just wanted to point out that it's many of the same entities
9 that are involved in the state procurement process and then
10 businesses covered by the (inaudible).

11 So anytime you know, there are regulations on same
12 entities in the same area, we want to make sure that
13 (inaudible). Okay. So now this is the last section of the
14 presentation. We're going to go over three bills. These
15 are the bills on which staff has recommended the Board
16 consider taking a formal position. So for the sake of time,
17 I'll plan to present all three briefly and then turn it back
18 to the Chair for discussion.

19 So part of the bill that we discussed at the last
20 meeting that SB 1223 from Senator Becker. And that would
21 amend the CCPA to add neural data to the definition of
22 sensitive personal information in the CCPA. So neural data
23 is defined as information that generated by the measurement
24 of an activity of an individual central or peripheral
25 nervous system. And then it's not inferred from non neural

1 information.

2 So staff recommends a support position on this
3 bill. This is uniquely sensitive information that can
4 implicate the consumer's emotions, thoughts, and senses.
5 And there are a number of companies that are really
6 (inaudible) have actually developed these brain computer
7 interfaces and actually expanded them as part of their
8 research with the goal of enabling to manipulate devices
9 through thoughts alone.

10 So that feels that this data is worthy of extra
11 protection and it's a pretty you know, clean and simple bill
12 that we don't have reservations about. And it also has a
13 benefit of following in Colorado staff. So trying to work
14 towards (inaudible).

15 Next slide please. So next is AB 1008 from
16 Assembly Member Bauer-Kahan. So I think this still existed
17 at the last board meeting. This has gotten amends, I think
18 it was a conservation bill before. And it's gone through a
19 couple iterations since then. But in its current form, it
20 underscores the personal information can exist in various
21 formats, including physical, digital, and abstract digital
22 formats.

23 And abstract digital formats includes compressed
24 or encrypted files, metadata or artificial intelligence
25 capable of outputting personal confirmation. So we

1 recommend a support position on this bill. You know, my
2 understanding is the intent of the bill is to emphasize that
3 personal information exists in AI systems. It's still
4 personal information and therefore (inaudible) existing CCPA
5 obligations on businesses and (inaudible). This is existing
6 law, but we think that the bill can help make consumers
7 aware of their rights with respect to this information and
8 therefore advance consumer privacy. And it also dovetails
9 nicely with the work that the agency's doing in this
10 (inaudible).

11 Next slide please. And next we have AB 2930 also
12 from Assembly Member Bauer- Kahan having to do with
13 automated decision tools. So we discussed still at the last
14 meeting and how this legislation on significant overlap with
15 staff, with the agency's draft automated decision making
16 technology and risk assessment regulations. Specifically
17 both this bill and the draft regulations provide for
18 previous notice risk assessment and some form of opt-out
19 with respect to automated decision making technology.

20 So following the last four meetings, staff
21 provided technical assistance to the author to help align
22 the bill with the draft regulations including by suggesting
23 that the agency have rulemaking authority over relevant
24 (inaudible) bill and enforcement authority. With respect to
25 (inaudible) the bill. There were changes to the bill's

1 notice requirements in line with the agency's suggestions.
2 However, most of the suggestions have not been taken at this
3 point.

4 The author has said that they need more time to
5 consider. There also have been, you know, recent amendments
6 for the bill that have included a new role for the agency.
7 First, to assess impact assessments and then send them to
8 enforcement authorities for potential enforcement action and
9 to set up a schedule for state to agency compliance with the
10 provision of the bill. So that's an element that'll
11 certainly require resources so that (inaudible) leave those
12 requirements.

13 So (inaudible) you know, more work is needed to
14 bring the bill into alignment with both CCPA and the draft
15 regulations, and to encourage consistency moving forward
16 including extending the scope of the opt-out in AB 2930 to
17 tighten exemption and to include language to avoid
18 duplicative risk assessment requirements. But -- and staff
19 has a support, if amended recommendation. So with that, I
20 will stop (inaudible) chair.

21
22 MS. URBAN: Thank you very much, Deputy Director
23 Mahoney, and thank you for really making clear a very
24 complicated set of developments. So we will discuss the
25 recommendations at this point. First I'd like to invite

1 Mr. Le to make an announcement. Oh, you know what? I cannot
2 hear your audio Mr. Le, it's silent.

3 MR. LE: Sorry, I didn't press it. (Inaudible) --

4 MS. URBAN: There you go.

5 MR. LE: -- for, yeah, the board and the public.

6 You know, because my organization has been in a position for
7 AB 2930, I'll be recusing myself from conversation on that,
8 discussion on that item.

9 MS. URBAN: Thank you, Mr. Le. And you mean your
10 day job at the Green Line Institute?

11 MR. LE: Yeah. Yeah.

12 MS. URBAN: Okay, wonderful. Thank you. So when
13 we discuss these, Mr. Le will recuse himself from discussion
14 of AB 2930 specifically and I'll make sure to sort of help
15 with that if needed. Mr. Liebert?

16 MR. LIEBERT: Thank you, Chair Urban. I think this
17 bill points out the kind of complex moment we're in as an
18 agency right now, in the sense that we have the AI related
19 bill going through the process, frankly, almost at the very
20 end of the process right now. And we have a regulatory
21 process of -- that we're also involved in. And so I'm a
22 little concerned about a supportive amended process approach
23 to this, given this complexity right now.

24 And I'm not quite sure how to grapple with it, but
25 at some extent, if this will somehow evolves in a way in the

1 final week's session and it's not consistent with where the
2 agency is in terms of regulation, I'm just a little uneasy
3 about it. So I wanted to pass that back because I think
4 that on the one hand we'd like to be very supportive of
5 important other experts on these issues. But at the -- on
6 the other side of this coin for me is that we don't really
7 quite know where this bill is headed as well. So that's the
8 conundrum that I feel.

9 MS. URBAN: Thank you very much, Board Member
10 Liebert, and with apologies, I will circle back on process
11 for just a second. I think it relates to that really
12 helpful observation and it's my fault that I didn't
13 introduce this more clearly when I started the conversation.
14 So what I am planning would be for us to consider three
15 motions. One on AB 1008, which staff has recommended
16 support, one on SB 1223, which again, staff has recommended
17 support.

18 And then a motion on AB 2930, which Mr. Liebert
19 was talking about some of the complexities with their
20 support, if amended approach. Mr. Liebert, you know, is the
21 consummate expert on legislative process and how it
22 interacts with other things. So I'd be really curious to
23 hear, if you have other ideas Board Member Liebert as to
24 sort of how to help these things mesh. My own thinking is,
25 if we have an authorization for Deputy Director Mahoney and

1 her staff, that is to take our direction and support if
2 amendments warrant, but also to withdraw that support if
3 things, you know, get broken in the kerfuffle at the end of
4 the legislature, that that might be the most sensible way to
5 go forward.

6 Along with the understanding that she could always
7 notify, me if she needs a short term meeting for us to
8 consider it again. But, you know, I am not as familiar with
9 all the legislative mechanisms out there as she is and you
10 are, Board Member Liebert. So I just -- I don't -- I don't
11 mean to put you on the spot, I'm just genuinely curious.
12 And then -- and then, we'll get to Board Member Mactaggart.

13 MR. MACTAGGART: I just have a question which might
14 --

15 MS. URBAN: Sure.

16 MR. MACTAGGART: -- might affect Mr. Liebert's
17 thinking, might not, but could I just understand in more
18 granularity what we want amended? Because the reason this
19 one's making me nervous, for example, when we did the age
20 dating one meeting ago, I think it was -- it's the thought
21 many experts, well, probably among them, that you don't want
22 to cause companies to collect more information. And so it's
23 pretty clear from a privacy point of view, that privacy
24 requiring companies to go ascertain is not a good idea.

25 So that was pretty safe as, you know, we're

1 staying in our lanes here. What I'm worried about right
2 now, I'm hearing, and I -- and I may have conferred, but I'm
3 hearing a little bit of, oh, they might be stepping on our
4 toes with this, and we have regulations, but their
5 regulations behind our (inaudible) backs, that's feeling
6 different to me. That feels like, well, but they're
7 legislature.

8 They have the right to pass. So I -- so I guess
9 my question is, can you explain a little bit more like
10 what's wrong with this bill? Obviously many organizations
11 are looking for support, a lot of support there. So what --
12 why are we saying, you know, we can't follow all those other
13 organizations that are supporting?

14 MS. URBAN: Great. Thank you, Mr. Mactaggart. I
15 was only hearing a need for consistency, and that it would
16 be hard for us to judge that, if things are in motion in
17 multiple directions but it's a very good question. Ms.
18 Mahoney, would you like to respond?

19 MS. MAHONEY: Yeah, I'd be happy to. So again,
20 yeah, we're looking into the lens of our (inaudible)
21 responsibility to work towards consistency and protection
22 where possible. This bill would be going into the business
23 and professions code, rather than the civil code, you know,
24 there's potential for, you know, two sets of requirements on
25 the same businesses that are in the same space, which could

1 make compliance difficult.

2 So, you know, we just want to, you know, work
3 towards consistency to make sure that everything's working
4 together really nicely. And then I think part of that is,
5 you know, having agencies rulemaking authority with respect
6 to relevant provisions of the bill and also important
7 support. And I would say those are, you know, two of the
8 key priorities, in terms of the bill. Because both of those
9 can help facilitate consistency with time, because I think a
10 concern would be, you know, if that part of the statute
11 keeps getting amended and (inaudible) even greater part. So
12 it's just an effort to ensure that there is consistency.

13 MS. URBAN: Thank you, Ms. Mahoney. Yes, Board
14 Member Liebert?

15 MR. LIEBERT: I'm not sure I can bring too much
16 illumination to this other than to say, one point you just
17 made, Deputy Director Mahoney, which I'm sure caused a
18 potential pause for my fellow board members, is that there
19 might be this inconsistency, if you will, between the
20 business and professions code and our code. And that could
21 lead to some potential confusing obligations on the part of
22 business. To me, that suggests, maybe, a little more
23 caution in how we would proceed at this moment in terms of
24 being supportive of the measure.

25 As I understand our statute, we are here to opine

1 and assist the legislature when we want make a determination
2 that something's either consistent or inconsistent with our
3 statute. And in this regard, I think we don't know yet.
4 And so my inclination would be to hold off on a support
5 position, which is in, by no means not feeling comfortable
6 for you to have that delegation of determination, but that's
7 the kind of caution that I would bring to the process at
8 this moment in time with so little time left in the
9 legislative process. So my personal opinion would be to
10 kind of wait and not to reach a support position as amended
11 at this point.

12 MS. URBAN: Thank you very much Board Member
13 Liebert. Board Member Mactaggart.

14 MR. MACTAGGART: Yeah, I think that's eminently
15 sensible. I think, the other -- the other thing is that it
16 could pass as it is, and then, you know, I -- I'm not sure
17 -- I think at this late date. Given that there's a lot of
18 support for it from reputable groups, I -- I'm just not sure
19 that from our point of view, we really want to get in this
20 -- middle of this.

21 If it becomes a fight and we're identified as the
22 squeaky wheel, I think it's safer to say, you know, things
23 are moving too fast. And it's a little too complicated.
24 And even I will say, your things are, "What we'd like to be
25 changed," also, maybe the legislature in it's wisdom

1 (inaudible) professionally, you know, maybe they don't want
2 to give it law enforcement. I don't necessarily think that
3 that's still for us to dial on. So I would support -- not
4 support just this, kind of punching on this one.

5 MS. URBAN: Right. So that's all makes sense and
6 is quite well reasoned. Just to include a slightly
7 different analysis and I don't feel terribly strongly about
8 this. I'm just trying to think it through with the Board,
9 the bill could have fiscal impacts. Ms. Mahoney is bringing
10 to us bills that could substantially affect the agency and
11 my understanding was that this would help guide Ms.
12 Mahoney's work and also help us just communicate clearly
13 with the committee and with the -- with the sponsor that
14 there are things that we think are very valuable about this
15 bill. We cannot support it unless it's amended.

16 And if we're silent, I -- I'm not sure that
17 provides as much to work with for the member. But again,
18 you know, Mr. Liebert, you are the expert on how -- on how
19 all of this works. So I just wanted to provide an
20 additional, or a sort of slightly different analysis to see
21 if that was something that was helpful to folks. Yes, Mr.
22 Liebert.

23 MR. LIEBERT: Great conversation we're having.
24 Thank you. Yes, I appreciate you calling me the expert.
25 There's many experts around me as well, for sure. I think

1 we're absolutely -- it would be -- I -- I'm very consistent
2 with what you're saying, Chair Urban. I think we should be
3 communicating with the author and the staff of the
4 appropriations committee and others about the need for the
5 fiscal issues to be addressed. And I don't think we have to
6 be in support of the measure in order to do that, frankly.

7 Both the legislature and the governor's office
8 will be concerned about the fiscal dynamics as well. And so
9 I think those should be highlighted. We certainly can
10 communicate through the author that this is by no means a
11 declaration of not supporting the legislation. We're just
12 not at this juncture as it's moving and changing in a
13 position to be in a support position, but that we do want
14 them to be aware of those fiscal dynamics. It's always an
15 art and not a science, that's for sure, but thank you for
16 that point.

17 MS. URBAN: Thank you very much. Yes, you know, I
18 always feel like I need to be very humble about the
19 formalized ways of communicating in legislative work. You
20 know, I'm more familiar with the formalized ways of
21 communicating in court and so forth. And those are all
22 really important because we don't want to unintentionally
23 not communicate in a way that is helpful for everybody who's
24 working on this. Okay. But it seems as though the general
25 feeling is that this is still in development and we're

1 probably not ready to take a position at this point on AB
2 2930.

3 I think I -- I think that I am hearing that
4 correctly. So everyone let me know if that's not right.
5 All right. In that case, I would like to turn our
6 discussion to AB 1223, which is the other bill from, Chair
7 Bauer-Kahan of the -- of the Privacy Committee and AB 1008,
8 which is the senate bill regarding neural data, and open
9 that up for discussion and welcome Mr. Le back into the
10 discussion since he doesn't need to recuse himself from
11 those. And as a reminder, staff are recommending support on
12 each of these. We can take them in turn, whatever's most
13 efficient. Yes, Mr. Mactaggart.

14 MR. MACTAGGART: Thanks. I definitely support,
15 1223, and I will say for 1008, I guess my question is, it
16 looked like it got amended right down to basically restating
17 some grammatical -- I mean, just in different paragraphs, is
18 there any -- so now we're saying essentially that personal
19 information can be on a disc and can be on a -- hard drive
20 and all the rest of it. Can we -- you know, Mr. Soltani's
21 always lectured me on -- not lecture me, but nicely taught
22 me that one shouldn't get too attached to one particular
23 technology over time because it changes over time. So, is
24 there any risk? I guess not that much. Fine. Okay. Well
25 then I would support both.

1 MS. URBAN: Thank you, Mr. Mactaggart.

2 MR. MACTAGGART: (Inaudible) listening, Mr. Soltani
3 was nodding at me, so I would think you might keep
4 (inaudible).

5 MS. URBAN: It's always such an important question
6 that by trying to name things, have you inadvertently
7 limited when you were actually trying to be clear that,
8 there was a -- that the -- that the definition was general.
9 So I think it's a really, important observation. I also
10 really appreciate, Chair Bauer-Kahan and her team's work to
11 help clarify, that's always the balance, right? Clarify,
12 versus inadvertent effects. And if everyone is comfortable,
13 that Mr. Mactaggart's concern is addressed here, I'm
14 comfortable. Then I also support supporting 1223 for sure.
15 And then 1008, the neural -- oh, sorry, I'm -- I have the
16 wrong number, don't I?

17 MS. MAHONEY: Yeah, I think we just finished
18 discussing --

19 MS. URBAN: Sorry. Let me correct what I just said
20 and apply it all to AB 1008. I continue to be impressed,
21 Direct --Deputy Director Mahoney, to you and your team's
22 ability to keep the bill numbers straight. And I wish that
23 I were better at it myself. But, let's then -- I just want
24 to invite, specifically any feedback on, SB 1223, which is
25 the one about neural data that we discussed the last time.

1 And I also agree that this is quintessentially sensitive,
2 personal information. It seems helpfully clarifying, not
3 inadvertently limiting in response to Mr. Mactaggart's
4 concern about the other bill. And so I think that this
5 would be a good bill to support as well and would very much
6 appreciate any other thoughts from other board members.

7 MR. LE: Yeah, you know, really not much to add
8 other than say, you know, both 1223 and and 1008 look like
9 they're just clarifying more protections on what I believe
10 is very personal information, whether it's generated by AI
11 or is it your -- your brain signals. So yeah, I would
12 definitely support those two.

13 MS. URBAN: All right. So, I will give you all a
14 chance to think if there are any final thoughts on this
15 while I say that my plan is to ask for two motions. One, to
16 authorize agency staff to support AB 1008, as most recently
17 amended on July 3rd, 2024, and to authorize staff to
18 continue to support the bill, even if it's amended further,
19 if in staff's discretion, the amendments are consistent with
20 the objectives set out in the memo in our discussion today.

21 And to authorize, staff to remove support or
22 oppose if amended, if necessary. There's a little bit more
23 formality to that but that would be for AB 1008, which again
24 is the assembly bill that would clarify the types of
25 information that are personal or the locations and kinds of

1 information that are personal information. And similarly, a
2 similar motion, for SB 1223 on the neural data.

3 I preview that so that we can request public
4 comment and find if there are any public comments before we
5 move forward with motions. And once again, I'll pause just
6 in case something has occurred to a board member while I was
7 setting that out.

8 MR. SOLTANI: Actually, Chair Urban, can I confer
9 with, Mahoney and Phil for one second? Before we go, I just
10 want to understand one aspect of earlier discussion in the
11 sake of kind of the timeline that we're under. So can I
12 just take two minutes to -- .

13 MS. URBAN: Absolutely. Sure. Absolutely.

14 MR. SOLTANI: Thank you guys for that -- for that
15 opportunity. Thank you so much.

16 MS. URBAN: Okay, great. Anything that you would
17 like me to share?

18 MR. SOLTANI: Yeah, no, I just -- I was -- wanted
19 to just check -- you know, as Ms. Mahoney laid out -- as
20 Deputy Director Mahoney laid out, these timelines are until,
21 quite aggressive. And so, you know, there was some
22 indication by Board Member Liebert and even Board Member
23 Mactaggart that this could take a direction that we're not
24 comfortable with. And so our choices at that point would be
25 to have a -- essentially, was it called emergency session of

1 the board or --

2 MS. URBAN: It's not called emergency anymore --

3 MR. SOLTANI: Yeah.

4 MS. URBAN: -- but it's a shorter term notice.

5 MR. SOLTANI: That's right. Special meeting of the
6 board --

7 MS. URBAN: Special meeting.

8 MR. SOLTANI: -- which gives us -- or
9 alternatively, if the board would like to provide here just
10 some guidance to Ms. Mahoney on what are the top level
11 concerns they have. The board -- sorry, with the exception
12 of Mr. Le, so that we may take that back to the author, so
13 that, you know, if there are concerns, we can express them,
14 if there are. If there aren't, that's perfectly fine, but
15 we were just -- you know, by removing our position, it'd be
16 great to know, you know, what top level highlighted concerns
17 if any the Board have with legislation. I'll share that,
18 you know, we have reviewed it from a resource perspective.

19 And given that we are doing risk assessments and
20 we're -- you know, we're required to do risk assessments in
21 our statute, and this also has risk assessments, not only is
22 there concern around kind of overlap, but there's also
23 concern about just resources of receiving those securely and
24 managing those and referring them to other agencies.
25 Separately, you know, I think there might be some

1 enforcement concerns, but I don't want to speak for Deputy
2 Director Macko who stepped out.

3 But, I just thought if the board -- I don't -- I
4 don't think staff welcome the Board's position on this, but
5 if they have any color to help us in the next month or so as
6 these things are negotiated, that'd be helpful. Or, you
7 know, if it gets really dire, we can always bring it back to
8 the Board. I hope that made sense.

9 MS. URBAN: Yes. So just to be clear, when you
10 refer to this, Executive Director Soltani, you're referring
11 to AB 2930?

12 MR. SOLTANI: Yes, 2930. And sorry, can we have
13 the volume in the room up just slightly? I couldn't hear
14 you clearly, Ms. Jennifer Urban.

15 MS. URBAN: Oh, I'm sorry. I do have my input all
16 the way up, so, please do let me know if I need to speak up.

17 MR. SOLTANI: No, it's on -- it's on our end.

18 MS. URBAN: Okay. All right. Okay. Yeah. So our
19 options would be to provide a little bit more detail if
20 people have detail to provide at this point. We can,
21 certainly call a special meeting, if it seems that it is
22 necessary. But if we don't call a special meeting, we would
23 be foregoing the formal position basically, today. So all
24 of those -- all three of those things are on the table.
25 Yes, Board Member Liebert.

1 MR. LIEBERT: I haven't wanted to talk this much.
2 Let me just say, Executive Director Soltani, I don't think,
3 we should have any confusion. I don't believe there's been
4 any statement really made about concerns about substance,
5 about the bill. It's really been process issues that we
6 have this dual situation going on between a rulemaking
7 process as well as the legislature weighing in. And so I
8 think that we have a very able Deputy Director of
9 legislation who can convey that there's not been a substance
10 concern raised.

11 There's been a process sensitivity that the Board
12 would like to wait to see how the legislature wants to
13 proceed with the legislation, which is appropriate sometimes
14 for us to bring that humility to it and to recognize that
15 it's really up both to the legislative process as well as
16 the executive branch to determine if this is something that
17 they want the agency to do. So I don't think there should
18 be any offense whatsoever taken. We're not taking a -- an
19 opposed position at all. We're, really, taking a
20 deferential position at this time, I think as a board, which
21 I think has some wisdom.

22 MS. URBAN: Thank you very -- Mr. Liebert.

23 MR. SOLTANI: Yeah, that was really helpful. I --
24 that clarifies a lot. Thank you.

25 MS. URBAN: And to the extent that it is helpful,

1 having reviewed the memo and the draft bills and everything,
2 just to pick up on the risk assessments, I do think it would
3 be very beneficial, if the bill were to clarify that a risk
4 assessment that meets requirements could be -- you could
5 submit for multiple purposes. The way that we have, in our
6 draft regulations right now, I think that is more
7 implementable for companies. It's more implementable as
8 Executive Director Soltani mentioned, for regulatory
9 agencies. It's just clearer for consumers.

10 Of course that risk assessment needs to be robust,
11 and effective but, I believe and trust that that is
12 certainly a goal of the legislature as well as us. And so
13 that kind of consistency, is -- certainly, would be
14 beneficial and I'm glad that staff flagged it. Okay. So
15 I'm inclined to go ahead and, continue with sort of the
16 Board's, you know, guidance, feedback, deference, to the
17 legislature on this point.

18 And hopefully, Ms. Mahoney, you have enough sort
19 of information from us in terms -- in order to have the most
20 helpful conversations, possible with the legislature. We do
21 have also the other two bills that staff have recommended we
22 support and I've previewed how that would look in a motion
23 at this point. So I will certainly, provide additional
24 opportunities if something comes up, but at this time, I'd
25 like to see if there is public comment on this item.

1 MS. MARZION: For this Agenda Item number 7,
2 legislative update and possible authorization for CPPA's
3 position on pending legislation. If you'd like to make a
4 comment and you're joining us live, please come up to the
5 podium to your right. If you'd like to make a comment on
6 Zoom, please raise your hand using the "raise hand" feature
7 or by pressing star nine if you're joining us by phone.
8 Again, this is for Agenda Item number 7, legislative update,
9 possible authorization for CPPA's, positions on pending
10 legislation. Madam Chair, I'm not seeing any hands raised
11 at this time.

12 MS. URBAN: Okay, thank you very much. Excuse me.
13 In that case again, additional thoughts are welcome if you
14 have them. But, assuming that we have discussed this
15 sufficiently, I would like to request at this point, a
16 motion for AB 1008, that is the assembly bill related to
17 what personal information covers. So I would like to
18 request a motion to authorize agency staff to support AB
19 1008 as most recently amended on July 3rd, 2024, and to
20 further authorize staff to continue to support this bill,
21 even if it is amended, if in the staff's discretion the
22 amendments are consistent with the objectives set out in the
23 memo before us today for this agenda item and our discussion
24 today. And to authorize staff to remove support or oppose
25 the bill if amended if in staff's discretion, it is no

1 longer consistent with those objectives. May I have a
2 motion, Mr. Liebert?

3 MR. LIEBERT: Happy to do it.

4 MS. URBAN: Thank you. I have -- Mr. Liebert has
5 moved. Do I have a second?

6 MR. LE: I'll second.

7 MS. URBAN: Thank you Mr. Le. I have a motion and
8 a second on supporting AB 1008. Ms. Marzion, could you
9 please conduct the roll call vote.

10 MS. MARZION: Yes. Board Member Le?

11 MR. LE: Aye.

12 MS. MARZION: Board Member Liebert?

13 MR. LIEBERT: Aye.

14 MS. MARZION: Board Member Mactaggart?

15 MR. MACTAGGART: Aye.

16 MS. MARZION: Chair Urban?

17 MS. URBAN: Aye.

18 MS. MARZION: Madam Chair, you have four ayes and
19 zero nos.

20 MS. URBAN: Thank you very much, Ms. Marzion and
21 the Board. The motion carries with a vote of four to zero.
22 Thank you very much. At this point, I would like to request
23 a motion on Senate bill 1223 that defines neural data or
24 includes neural data, in sensitive personal information. I
25 would like to request a motion to authorize agency staff to

1 support SB 1223, as most recently amended on June 26th,
2 2024, and to further authorize staff to continue to support
3 this bill, even if it is amended, if in staff's discretion,
4 the amendments are consistent with the objectives set out in
5 the memo before us today on SB 1223 in our materials and our
6 discussion today. And to authorize staff to remove support
7 for or oppose the bill if amended, if and staff's
8 discretion, it is no longer consistent with those
9 objectives. May I have such a motion?

10 MR. LE: I so move.

11 MS. URBAN: Thank you, Mr. Le. I have a motion and
12 do I have a second.

13 MR. MACTAGGART: Sure. Second.

14 MS. URBAN: Thank you. I have a motion from Mr. Le
15 and a second from Mr. Mactaggart,. Ms. Marzion, could you
16 please conduct the roll call vote.

17 MS. MARZION: Certainly. Board Member Le?

18 MR. LE: Aye.

19 MS. MARZION: Board Member Liebert?

20 MR. LIEBERT: Aye.

21 MS. MARZION: Board Member Mactaggart?

22 MR. MACTAGGART: Aye.

23 MS. MARZION: Chair Urban?

24 MS. URBAN: Aye.

25 MS. MARZION: Madam Chair, you have four ayes and

1 no nos.

2 MS. URBAN: Thank you very much. The motion
3 carries with a vote from -- of four to zero. Thanks very
4 much to Ms. Mahoney for -- and her staff for the attention
5 review and guidance on these bills. And thanks to the Board
6 for its careful consideration. Thanks also to Ms. Mahoney
7 and her staff, and to the Board for careful consideration of
8 the many other bills that we might be able to provide
9 helpful input on, and especially for the discussion of AB
10 2930. And I look forward to our agency's continued
11 engagement on that bill. And thanks very much again and we
12 will go ahead and move to Agenda Item number 8. Agenda Item
13 number 8 is -- oh, yes. Yes.

14 MR. SOLTANI: Can I ask that we take five minutes
15 for staff to swap out and --

16 MS. URBAN: Oh, of course.

17 MR. SOLTANI: -- settle.

18 MS. URBAN: Yes, absolutely. Absolutely.

19 MR. SOLTANI: Great. So, Nate, could you put up
20 the -- wait, so we'll take five minutes.

21 MS. URBAN: So we'll take a five, we'll take a five
22 minute break, and come back at 2:20 p.m., in order to take
23 up the next agenda item. Thank you.

24 (RECESS)

25 MS. URBAN: Okay, wonderful. Thank you. And with

1 that, thanks everyone for your patience. We now return from
2 a brief break, and audio testing to take up Agenda Item
3 number 8. Agenda Item number 8 is a discussion and possible
4 action to advance draft regulations to formal rulemaking for
5 automated decision making, technology, risk assessments,
6 cybersecurity audits, and updates to existing regulations.

7 This, as everyone will hopefully recall, is the
8 next stage in a series of conversations we have had about
9 updates to the existing regulations as well as what we have
10 informally called the new rules. The cybersecurity audits,
11 automated decision making, technology regulations, and risk
12 assessments, along with some other regulations that we are
13 mandated to produce, for example, to comport with the
14 insurance code.

15 So it is a large package, an omnibus package, and
16 a number of our excellent and expert legal experts have an
17 update for us today, on a -- on a number of these topics.
18 So I'll ask everybody to turn your attention to the
19 materials for this item and, look forward to hearing our
20 General Counsel, Phil Laird and our Counsel, Lisa Kim,
21 Kristen Anderson, and Neelofer Shaikh, to go through and
22 give us an update, on this, for our discussion.

23 And we will take public comment after we've heard
24 everything and the Board has had a chance to do some
25 discussion. So thank you very much and I believe, shall I

1 turn it over to you, Mr. Laird, will you begin?

2 MR. LAIRD: Yes, I will. Thank you and good
3 afternoon to the Board. Deputy Director Macko got the
4 opportunity to talk about what a crack team he had, and I
5 will just take this opportunity to say I am only as good as
6 my team, and I brought some of my star performers here up
7 with me today, and I'm happy to be joined by them, but I
8 want to acknowledge that it really was a full legal division
9 effort to get us to this point.

10 And so other members of the legal division in this
11 -- in the audience today, both in person and virtually have
12 really been, just tremendous in bringing this package to
13 this point and in doing the work to support everything
14 required under the Administrative Procedures Act and to make
15 sure we're doing responsible rulemaking. So I just want to
16 start by acknowledging, the great work of this team.

17 So to begin, we wanted to give you a quick recap
18 on what we're discussing today and how we've gotten here.
19 Staff have been working to prepare the documents necessary
20 to perform -- to begin formal rulemaking for a multi-pronged
21 package. It consists of the following topics, updates to
22 existing regulations. These are updates to the regulations
23 already in a -- already in effect under our law and within
24 our agency that were recommended by individual board
25 members, staff, or members of the public at past meetings.

1 Additionally, we have a component on insurance
2 companies and insurance businesses, and those are
3 regulations, proposed pursuant to Civil Code section
4 1798.185 (a)(21), although I'm going to acknowledge to
5 everybody now the bill that passed yesterday -- that was
6 signed into law yesterday that Ms. Mahoney mentioned, does
7 unfortunately renumber some of this. So (a)(21) is now
8 going to be (a)(20). I'm not going to make anybody stay on
9 top of those number changes today, but I want to acknowledge
10 that now.

11 Which requires the agency to review existing
12 insurance code provisions and regulations relating to
13 consumer privacy, but not insurance rates or pricing, to
14 issue regulations that afford consumers the greatest privacy
15 protection. In addition, we have three other topics covered
16 in this proposal. One on cybersecurity audits, which are
17 regulations pursuant to Civil Code section 798.185 (a)(15),
18 directing the agency to issue regulations requiring
19 businesses whose processing of consumer's personal
20 information presents significant risk to their security to
21 perform a cybersecurity audit on an annual basis, to define
22 the scope of the audit and to establish a process to ensure
23 that audits are thorough and independent.

24 The package also can -- includes a portion on risk
25 assessments, adopted, as directed by Civil Code section

1 1798.185 (a)(15)(b), which requires the agency to issue
2 these regulations requiring businesses whose processing of
3 consumer's personal information presents significant risk to
4 consumer's privacy to submit the agency on a regular basis,
5 a risk assessment with respect to their processing of
6 personal information, including whether the processing
7 involves sensitive personal information and identifying and
8 weighing the benefits against the potential risks and the
9 goal of restricting -- with the ultimate goal of restricting
10 or prohibiting the processing of these risks when they
11 outweigh the benefits.

12 Finally, there's a portion of this on automated
13 decision making technology pursuant to Civil Code section
14 1798.185 (a)(16), which requires the agency to issue
15 regulations governing access and opt-out rights with respect
16 to business' use of automated decision making technology,
17 including profiling. So with that said, I'm going to ask
18 each of my colleagues to kind of present on a portion of
19 these -- this package and how we've gotten to each -- to
20 this place for each portion, and then we'll come back to
21 where we are in the process.

22 MS. KIM: Good afternoon. So I will be covering
23 the section regarding updates to the existing regulations.
24 As mentioned earlier, the update regulations (inaudible)
25 various revisions introduced by either individual board

1 members, staff, or some of which have been suggested by the
2 public to (inaudible). So more specifically, these proposed
3 regulations include regulations that were previously
4 withheld to each (inaudible) the first time around,
5 regulations that harmonize California law with other
6 jurisdiction as they develop their own type of laws.

7 Expansion of the definition of sensitive personal
8 information to include the personal information that
9 consumers under the age of 16. It had previously completed
10 CPI for price index adjustment, but because of the new
11 passed laws signed by the governor yesterday, we'll be
12 taking that out (inaudible) necessary. So one good thing,
13 one less thing to include in this package. And just as a
14 reminder, many of these items were discussed before this
15 Board, back in May, 2023 during our biannual rulemaking
16 discussion.

17 You may recall that back then the staff provided
18 the Board with a chart of various rulemaking topics and
19 priorities, and the Board directed staff to use discretion
20 in developing rulemaking proposal from that chart
21 (inaudible). At the December, 2023 meeting, I presented the
22 proposed update regulations to the Board and received
23 feedback from the Board during that meeting and also after
24 that meeting.

25 And then back in March 2024 of this year, I again

1 presented the revised update regulations that incorporated
2 the feedback from the board and the Board authorized staff
3 to advance these regulations to formal rulemaking up through
4 the commencement of the 45 day comment period. The Board
5 also agreed to give staff discretion and rulemaking to
6 combine these update regulations with other topics and to
7 move them forward, as one single rulemaking package.

8 Next, also to update the Board with regard to the
9 insurance company regulations. As Phil mentioned, these
10 regulations were drafted pursuant to Civil Code Section
11 1798.185 (a) (21), which requires the agency to review
12 existing insurance code provisions and regulations relating
13 to consumer privacy, except those relating to insurance
14 rates for pricing and to determine whether any of the
15 provisions of the insurance code provide greater protection
16 to consumers than the provisions of this title, meaning the
17 CPPA.

18 So upon completing its review, the agency shall
19 adopt a regulation that applies only the more protective
20 provisions of this (inaudible) insurance company. Now this
21 topic was assigned to the rulemaking process subcommittee
22 back in November 15, 2021, and the staff did conduct an
23 in-depth review of the insurance code and its corresponding
24 regulations and have had several discussions with the
25 Department of Insurance and made recommendations to the

1 rulemaking process subcommittee based upon what we had
2 learned about recent developments in the NAIC, which is the
3 National Association of the Insured Commissioners.

4 Basically the NAIC was continuing to work on to
5 adopt a new model law that would've affected insurance
6 provisions that pertained to consumer privacy. So those
7 recommendations back then were presented to the Board during
8 the December, 2023 meeting and ensured we recommended
9 adopting regulations that clarified that the CPPA applied to
10 insurance committee where insurance laws jurisdiction end.

11 And at that time, the Board gave us authority to
12 incorporate further feedback from the Department of
13 Insurance, which we did by adding examples or adding more
14 specific examples of when CPPA applied to insurance
15 committee. The Board also voted to advance those
16 regulations to formal rulemaking through commencement as a
17 45 day commence period. While we have since learned that
18 the progress on the new model law has somewhat stalled, we
19 believe that these regulations are necessary to clarify
20 insurance companies obligations in the interim, and we'll
21 continue to monitor the development of the new model law.

22 MS. ANDERSON: Thank you Lisa. We've provided the
23 next two slides because we thought it would be helpful to
24 orient the public and to remind us all of how the agency has
25 developed the new rules regulations over the past few years.

1 On September 7th of 2021, almost three years ago, the Board
2 approved the formation of the new rule subcommittee and
3 assigned to it cybersecurity audit, risk assessments, and
4 ADMT. That fall and in the spring of 2022, the agency
5 conducted preliminary rulemaking activity.

6 Those activities included first, issuing an
7 invitation for written comments, which was open from
8 September 22nd through November 18th of 2021. Second, two
9 days of instructive informational sessions by academic
10 officials from the office of the Attorney General in
11 California, the agency, and the European Data Protection
12 Board. Lastly, it included three days of stakeholder
13 sessions that provided an opportunity for members of the
14 public to speak.

15 In December of 2022, the subcommittee recommended
16 additional preliminary rulemaking on those three topics. In
17 February of 2023, the Board directed staff to invite public
18 comments. The agency then solicited preliminary written
19 public comments from February 10th through March 27th of
20 2023. One year ago, the subcommittee previewed key issues
21 for future board discussions, including the thresholds that
22 should trigger a cybersecurity audit, a risk assessment, and
23 consumers access and opt-out rights with respect to ADMT as
24 well as what ADMT is and how it should be defined. Next
25 slide, please.

1 Two months later, in September, 2023, the
2 subcommittee presented on draft cybersecurity audit and risk
3 assessment regulation. They sort the Board's feedback on
4 options within the draft. For example, in a cybersecurity
5 audit draft, those options pertain to the thresholds that
6 would trigger a business path to complete an annual
7 cybersecurity audit, such as business numbers of employees
8 and personal information processing thresholds.

9 It also included whether audits should have to
10 assess and document how a business' cybersecurity program
11 protected against six particular types of negative impacts
12 to consumers. In the risk assessment draft, the option
13 pertains to the level of detail required, regarding
14 stakeholder involvement and business oversight of risk
15 assessment and the frequency of risk assessment reviews and
16 updates. In December of 2023, taking into account the
17 Board's feedback from the September meeting, the
18 subcommittee and staff presented on cybersecurity audit
19 regulations, the subcommittee presented on risk assessment
20 regulations, and staff presented on the proposed ADMT
21 framework and solicited board feedback to inform further
22 drafting.

23 In December, the Board directed staff first
24 advance the proposed cybersecurity audit regulations to
25 formal rulemaking up through the commencement of the 45 day

1 public comment period. And second to incorporate changes to
2 the risk assessment in ADMT draft that were agreed on by the
3 Board during the meeting, to consider the Board's overall
4 discussion, receive feedback on the draft regulations from
5 individual board members following that meeting and propose
6 revised draft at a following meeting for possible
7 advancements rulemaking.

8 In March of 2024, staff presented on revised risk
9 assessment in ADMT regulations, and it was at that meeting
10 that the Board authorized staff to advance the proposed risk
11 assessment and ADMT regulations to formal rulemaking,
12 including by drafting the materials that are before the
13 Board today. Finally, in May of 2024, staff held a series
14 of pre-rulemaking sessions. I'll now turn to the Ms. Shaikh
15 to describe those sessions and summarize the feedback
16 accuracy.

17 MS. SHAIKH: All right. In May, the agency held
18 three pre-rulemaking stakeholder sessions to receive
19 feedback on the proposed cybersecurity audit, risk
20 assessment, and ADMT regulations. These sessions were held
21 in person in Los Angeles and Fresno, and both in person and
22 online in Sacramento. They were collectively attended by
23 nearly 400 members of the public. At the session, staff
24 provided an overview of the proposed rules and provided fact
25 sheets about them for the public's awareness.

1 Staff also received preliminary public comment,
2 and today I'll be providing both the Board as well as
3 members of the public. With a short recap of some of the
4 public comments received at these sessions. We received
5 close to 50 comments across all three sessions. These
6 comments came from a variety of stakeholders, which included
7 consumers, small business owners, union and workers
8 organizations, industry associations, and advocacy
9 organizations.

10 So for instance, with respect to consumers, we
11 heard from a dozen California artists who raised concerns
12 about the use of their artworks to train AI models and the
13 lack of transparency in consumer control for their use --
14 for this use of their data. We also heard from consumers
15 who made a variety of recommendations such as reducing the
16 24 months compliance period through risk assessments and
17 cybersecurity audits to 12 months, providing workers with
18 human review of termination decisions and access to their
19 information.

20 And lastly, providing opportunities for public
21 input and business education about privacy risks to
22 consumers. We also heard from small business owners whose
23 feedback included, for instance, that 24 months for
24 compliance would be -- with risk assessments and
25 cybersecurity audits, would be too long given the speed at

1 which technology is developing, that opt-out of ADMT should
2 be on by default, and that further stakeholder sessions and
3 small business education campaigns would be helpful.

4 Turning to union and workers organization, they
5 raised concerns about the lack of transparency and control
6 for workers with respect to how their personal information
7 is used, including via automated tools that set benchmarks
8 for productivity and discipline and penalized workers. We
9 also heard from several nurses associations that raised
10 concerns about the potential harm to patient's health and
11 safety that can result from automated staffing and other
12 tools.

13 We heard from various industry associations as
14 well, including several chambers of commerce about the need
15 for more engagement with and education for businesses both
16 now and after the regulations go into effect. They also
17 want the agency to ensure harmonization with legislative and
18 executive AI efforts within California, as well as with
19 other enacted state laws and the NIST privacy and
20 cybersecurity framework. Some of these commenters also
21 raised concerns about the proposed regulations.

22 For example, they identified concerns with the
23 inclusion of the profiling for behavioral advertising
24 thresholds in the proposed ADMT framework, as well as with
25 the proposed definition of automated decision making

1 technology. Others sought more clarity and flexibility
2 proportions of the regulations such as within the risk
3 assessment requirements.

4 By contrast, several advocacy organizations told
5 the agency that they thought that the ADMT definition was
6 too narrow and recommended that the agency revert to the
7 proposed ADMT definition in the December, 2023 draft of the
8 proposed regulations. They also supported an expansive
9 definition of behavioral advertising and its inclusion --
10 and the inclusion of this threshold in the proposed
11 regulations. One advocacy organization recommended
12 narrowing the definition of significant decision and
13 revising the ADMT framework so that there is no opt-out
14 persuing of this assistive decisions. Lastly, one
15 organization, thought the evaluation exception put too much
16 trust in businesses to complete, that the human appeal
17 exception would be burdensome on consumers as compared to
18 being able to opt-out of the ADMT.

19 For members of the public who would like more
20 information about these sessions, both recordings and
21 transcripts of the sessions are available at the meetings
22 tab of the agency's website at cpa.ca.gov. I'll now turn
23 it back to our General Counsel for the next slide.

24 MR. LAIRD: So I know that was a lot of history we
25 just covered, and I want to reorient where we are then in

1 the rulemaking process. And the truth is, the history I've
2 just covered has only spanned the pre-rulemaking process to
3 date. So where we are and what the slide shows on the
4 screen is that we are now at the pre-step where the agency
5 must take before it can start formal rulemaking under the
6 Administrative Procedures Act.

7 And that is, I must submit a standardized
8 regulatory impact assessment for SRIA as you'll hear us
9 refer to it a lot, to the Department of Finance for review
10 and comment and to further update that document at least 60
11 days in advance of opening formal public comp. Now, this
12 pre-step isn't required of every rulemaking package, but
13 only proposed regulations estimated with an estimate in
14 economic impact of \$50 million or more in the first year of
15 implementation.

16 So specifically the timeline works like this.
17 Once we submit our SRIA to the Department of Finance, the
18 Department of Finance will have 30 calendar days to provide
19 their written comments back to the agency, and then the
20 agency will have the opportunity to further update the SRIA
21 in response to those comments before submitting that
22 document to the Office of Administrative Law to finally open
23 formal rulemaking.

24 Once the full notice package, which includes not
25 only that economic assessment that's SRIA, but also a

1 notice, an initial statement of reasons, and the text of the
2 regulations is all submitted to the Office of Administrative
3 Law, that's when we would actually open formal rulemaking,
4 which begins with a mandatory 45 day public comment period.
5 At the end of the 45 day period, the agency will hold a
6 public hearing to receive oral comments as well as those
7 written comments that we might receive over 45 days.

8 Now, this again, is what I describe as the
9 beginning of formal rulemaking, and that's because as a
10 reminder, the process is intended to elicit exactly this
11 type of specific input from consumers and businesses, and
12 that that input in the form of public comments will help
13 inform the Board's decision making as it comes to the
14 decision of, did we get it right the first time or is there
15 -- or is there more work to be done on these draft
16 regulations?

17 A little note to the public as they begin
18 preparing for, eventually a formal rulemaking on these
19 topics is that, public comments should address the practical
20 effects of these proposed regulations both on consumers and
21 stakeholder or and businesses. Furthermore, stakeholders
22 are welcome to provide feedback on everything in the
23 proposed regulatory text.

24 And that feedback can include proposed alternative
25 approaches to balancing risks to consumers and businesses

1 compliance obligations. And stakeholders are also welcome
2 to share data and evidence about the costs and benefits of
3 these regulations through that comment process as well.
4 That feedback can include, for example, additional suggested
5 data sources and information about the prevalence of
6 business' use of ADMT for certain purposes.

7 All of this feeds into the record for this Board
8 and this agency to then consider, and staff will review
9 every comment as well as the Board will have every comment
10 available to them, and staff will make recommendations to
11 the Board after that process on whether or not further
12 changes are warranted to the draft regulations. At that
13 stage, the Board could also decide outside of staff's
14 recommendations that further changes are warranted.

15 The point I really want to emphasize here is what
16 I'm talking about starting formal rulemaking, I'm starting
17 at a starting point and not the final point where we
18 actually adopt regulations. So at the end of this process,
19 after we've been through public comment period, and after
20 we've come back to the Board after reviewing the full
21 complete record, the Board would have the opportunity to
22 either vote to say, yes, we'd like to adopt these
23 regulations or drafted, or we'd like to make some amendments
24 in any direction.

25 Should the Board do that, then we would again have

1 another public comment period. This time it's typically 15
2 days depending on the substance of the changes, but in most
3 instances, it would only be 15 days. And we can do this
4 multiple times as an agency. The only real constraint is
5 that from the time we open formal rulemaking to the time we
6 submit the final package to the Office of Administrative Law
7 for approval, is a -- we have a year to do that, otherwise
8 we actually have to begin this whole process over again. I
9 don't think anybody's interested in doing that.

10 So with that all being said, staff wanted to
11 provide this update to the Board today and share with you a
12 number of things. First of all, we wanted to share with you
13 the draft materials that you have -- that we've provided
14 both to the public and to you all that's -- that are being
15 developed. We thought some important materials to include
16 more the initial statement of reasons, which -- it was a
17 lengthy document as you saw, and -- but really explains the
18 why and the necessity behind each provision of the draft
19 regulations.

20 We've also, of course, provided the actual text of
21 the regulations. And then we've also provided some of the
22 preliminary cost benefit and alternative estimates that our
23 economists have prepared as they're drafting our SRIA. We
24 thought, again, this was responsive to the Board's interest,
25 especially in the discussion last fall on cybersecurity

1 audits of understanding perhaps the different costs that
2 could result from the alternatives, considered last fall.

3 But furthermore, to give the Board a sense of sort
4 of where the initial preliminary information is heading. So
5 I just find my plates. So I've said it before and I'll say
6 it again, these draft regulations really are merely a
7 starting point for the formal public engagement process.
8 And the Board will have ample opportunity to amend proposals
9 however we see fit, however the agency fits, and how you see
10 fit during that initial comment period.

11 But if the Board is inclined at all to change the
12 starting draft of these regulations, then this is a good
13 opportunity for us to check in today to understand if
14 there's something that is to be tweaked sooner, and that
15 will assist us be able to more efficiently get us
16 progressing towards that formal rulemaking commencement. So
17 with that said, I -- I'll pause there. I'm sure you may
18 have questions, about this presentation or about the
19 materials we've provided, but I wanted to begin by turning
20 it over to board members to hear about where -- any thoughts
21 or questions you might have.

22 MS. URBAN: Thank you very much Mr. Laird, and Ms.
23 Kim, Ms. Anderson, and Ms. Shaikh for a very efficient
24 presentation on a lot of information. That is certainly
25 appreciated. I know we will talk about any reactions the

1 board members have to the substance, but I do want to very
2 much thank the staff for all the work that has gone into the
3 initial statement of reasons which is an incredibly helpful
4 document, particularly when we've been working on these
5 regulations -- these draft regulations for some years.

6 And they cover a number of topics, so that is
7 valuable to the Board and to the public. And we really
8 appreciate, or I really appreciate the time that we have to
9 look into that. I also really appreciate staff's efforts to
10 listen to and be responsive to some of the board's earlier
11 questions.

12 That is the one piece that we -- is still, as I
13 understand still underway, and of course, we'll have to go
14 through Department of Finance review. But I do think that
15 it is important for the Board to have access, or to have
16 thought through and be able to see that information as well,
17 so I really appreciate the update on that.

18 Last but not least, I want to thank the staff, and
19 the board members who have participated over the years, and
20 most recently Board Member Liebert for joining me at the
21 stakeholder session in Sacramento in all of this information
22 gathering that we've been doing, and very much thank the
23 members of the public who have given us so much background
24 information, and so much information about where they are,
25 and their interests, and concerns.

1 I think we are at a place now where we really
2 understand pretty sharply the policy choices, and I think
3 Ms. Shaikh laid those out really well. That comports very
4 well with my experience with the stakeholder sessions and
5 all of the written feedback that we have received. There
6 are policy choices that we will be needing to make, and we
7 will need to be guided, of course, by our mission, and by
8 what we learn in the formal rule-making.

9 But it is a tremendous effort on behalf of the
10 agency, all the other agencies we've consulted with, and
11 especially the public to get us to this point. And I just
12 want to acknowledge and recognize that this is an incredibly
13 robust piece of public engagements and development of these
14 regulations, and I really appreciate everyone's efforts to
15 that. In that regard, it will help the Board do the best
16 job that we can for the public.

17 So I just wanted to pause on that because we are
18 at a point where we are waiting for some more economic
19 information, but we have a tremendous amount of information,
20 and a fully pull -- full pulled together package, and it's
21 important, I think, to pause and recognize sort of where we
22 are there.

23 All right. So Mr. Laird has suggested that it
24 would be particularly helpful today if the Board wanted to
25 provide any additional record -- information on substance.

1 I am fairly open from a process perspective here, but I'm
2 not terribly inclined today to vote to put this into the
3 formal rule-making process, although I think that we need to
4 do that soon.

5 The reason why is, again, because I would like to
6 see the full SRIA economic impact assessment. The bad news
7 is that -- actually, this was already bad news. I think we
8 are going to need to use that September meeting that we were
9 holding, but maybe weren't going to need to use for other
10 topics as well.

11 So that is one thing to keep in mind, and I am
12 open to other viewpoints because I do think we have a sharp
13 set of information now, and we are in a good place to go
14 into formal rule-making, but I would like us to have all of
15 the information ready. So there's a couple ways we could
16 go, and in any case, feedback staff are asking for, and is
17 most welcome. So comments, questions from board members.
18 Yes, Mr. Le.

19 MR. LE: Yeah, I want to thank staff for putting
20 all this together. And, you know, I think maybe some folks
21 will think that this process has taken a long time, but I
22 was taking a look at, you know, the EU AI Act, and they
23 started in 2018, and they're just finishing this year, and
24 they had thousands of people, you know, building that. They
25 had high-level working groups, multi-country consultation,

1 and you know, I think when we first started, we had, you
2 know, Ms. Kim on some of the regulations, and you know, you
3 had, you know, your rules update work as well.

4 So I think, you know, the work we've been able to
5 do, and end up in a, you know -- in the past couple years,
6 and end up in a place that we're pretty -- I mean,
7 complimentary to what EU AI Act has come up with, but in a
8 California specific context, I think in doing that with the
9 staff that we've had, the great participation from the
10 public and all the experts has been a great accomplishment.

11 You know, I know we're waiting for the economic
12 analysis before we can get this into formal rule-making, and
13 I don't think anyone's more ready for that than perhaps
14 myself and other subcommittee members, Neelofer and Kristen,
15 who've been working on these regulations for such a long
16 time.

17 But yeah, I wanted to appreciate staff for that.
18 And, you know, in terms of substance, I think what I said
19 last time was, you know, I really wanted to see what the
20 comments are, and you know, I think I really appreciate all
21 of the issues raised from the public session. You know,
22 first party behavioral advertising is something I really
23 want to de comment on, and, you know, in terms of the risk
24 assessments, how they apply, the human exception.

25 So, you know, I'm not going to say too much on

1 substance today, and perhaps wait for input from the public,
2 but yeah, first wanted to thank staff so much for getting us
3 to essentially, you know, where we we're at a point where we
4 can start measuring and calculating, you know, what this is
5 going to cost to implement in California.

6 MS. URBAN: Thank you, Mr. Le. Mr. Mactaggart,
7 please go ahead.

8 MR. MACTAGGART: Great. And Chair Urban, would you
9 -- I have comments on all -- both the -- all the insurance
10 ADM, and then risk assessment, so would you just let me to
11 go through them?

12 MS. URBAN: Let's start with insurance and then
13 pause in case some staff or the Board have dialogue they'd
14 like to engage in, and then we'll just walk through each
15 topic --

16 MR. MACTAGGART: Sure.

17 MS. URBAN: -- if that works.

18 MR. MACTAGGART: Okay. So for insurance, when I
19 look at the statute, it says, determine whether any
20 provisions that the insurance code provide greater
21 protection to consumers than this title, and then adopt the
22 regulation that applied only the more protected provisions
23 of this title, insurance companies, because while we were
24 going through it, we thought, well, if in some areas
25 insurance is more protective, let's do that. Some areas

1 were more protective, let's do that."

2 And I guess I'm -- when I read this, I'm not a
3 hundred percent seeing that. What I sort of fear is that if
4 you're subject to the insurance code, you don't have to
5 comply in those areas with TPPX. So if insurance law
6 covered, you know, your name, or how fast you're going, then
7 you don't have to comply with us. But I think our language
8 is pretty clear, whatever is more privacy protective as
9 (inaudible) is what needs to be adopted, so I just didn't
10 really see that concept here, that's Article 12 and I kind
11 of missed it.

12 MS. URBAN: Thank you, Mr. Mactaggart. Ms. Kim?

13 MS. KIM: Yes. I'm happy to field that question.
14 So just as I mentioned earlier, what, after staff had done a
15 detailed analysis in insurance code and regulation by taking
16 a view of what was more privacy protective or not, that's
17 when in our discussions with the Department of Insurance, we
18 understood that, at least at that time, the Department of
19 Insurance believed that the NAIC was very close to passing a
20 model law, which would've been adopted into legislation most
21 likely in California.

22 And that new model law actually had a significant
23 portion of it pertaining to consumer privacy that was
24 actually more protective than CPPA was. And so, given the
25 timeline at that time, it was a bit counterproductive

1 because we thought that that had monologue because
2 (inaudible) seen us out or been equivalent to, and it
3 would've caused some confusion as to which one should apply.

4 And so at that time, we made a recommendation, and
5 you're correct, what we're doing right now in the draft
6 regulations is not really changing the status quo, it's just
7 makes very clear for insurance companies that where the
8 insurance code stopped its jurisdiction getting picked up,
9 but it doesn't, it specifically apply more protective
10 provisions, and we're hoping to do that as we're watching
11 the model law, and see how far they're getting in regards to
12 that.

13 MS. URBAN: So just to clarify, Ms. Kim, this would
14 help -- the idea is that this would help provide guidance to
15 companies and to consumers as to what would apply right now,
16 and then we can update it once we know more about the model
17 law, and staff will give us guidance as to whether you think
18 it is really moving and is going to happen and what happens
19 with it?

20 MS. KIM: Yes, that is the intention.

21 MS. URBAN: Thank you. Mr. Mactaggart.

22 MR. MACTAGGART: So. Yeah, so I'm a big fan of
23 clarity and that would provide insurance companies, and
24 consumers, and all the rest of stakeholders clarity. May I
25 just request then that say, in a year, we calendar something

1 so that we can just get it on the calendar, and review
2 what's happened because, you know, I -- the bill is in regs.

3 There's no mention of the fact that the more
4 private protective code should be the one governing, and I
5 understand that the statute talks, not the regs, so we can
6 always amend the regs for the future, but I just would love
7 it -- us to kind of happens it on the calendar; otherwise,
8 it might just kind of -- you might not forget, get locked
9 and shuffle, and there's a lot of other things that, that
10 going on, so I look to kind of re-calendar that for year.

11 MS. URBAN: Thank you, Mr. Mactaggart. Ms. Kim,
12 that makes sense to me. Can you let us run a new -- help us
13 run a new traps on that? Would that make sense to pick it
14 up? We have a May scheduled regularized discussion of
15 regulations, for example, maybe we could be sure to return
16 to it then?

17 MR. LAIRD: Yes. Chair Urban, we're going to
18 (inaudible).

19 MS. URBAN: Oh, sorry, Mr. Laird.

20 MR. LAIRD: Yeah, but I'm going to jump in and say,
21 yes, we can, but in fact, we can even do one better to the
22 extent anything were to change during formal rule-making.
23 For instance, we find out this fall that the model code has
24 been adopted, or will not be adopted, or something like
25 that, we could actually still make further amendments

1 through this process before this rule-making's even
2 complete. So part of the benefit here is we have started on
3 the topic, and we can continue on that topic, and be a
4 little flexible as we work through this whole formal
5 rule-making process.

6 MS. URBAN: Thank you, Mr. Laird. Mr. Mactaggart
7 more on insurance, or do you want to move to the next item.

8 MR. MACTAGGART: No, that's me on insurance.

9 MS. URBAN: Okay. I'm sorry. Let me not use the
10 word item confusingly. We usually use that for agenda
11 items. The next topic, or subtopic that you wanted to
12 mention.

13 MR. MACTAGGART: Well, certainly. I'll bring up my
14 next one. I'll start with risk assessment, and then we can
15 go to ADM, I suppose. And I do want to acknowledge
16 tremendous amount of work everybody's doing here, and I
17 think everybody is starting from a good place and we're all
18 headed in the same direction, and we might just have
19 different ways of trying to get there.

20 I opposed these regulations the last time they
21 came up for vote. I'm glad we're not voting on them today
22 because I would've a hard time with them. I still think
23 that our -- we're hurting privacy, not helping it because
24 our definition of it, is so broad of AI, and then ADM, that
25 basically, if you use technology, you're going to have to do

1 a risk assessment, and I just don't think that's what we
2 want.

3 I mean, literally, I can make the argument, if you
4 use e-mail or TextStuff to contain PI, you have to do a risk
5 assessment that, you know, employees, and scheduling
6 software help schedule, that when leasing office, an
7 apartment would trigger a risk adjustment.

8 A real estate agent -- you call a real estate
9 agent, put your name on a list to get updated in the list --
10 updates to new listing, the real estate agency would have to
11 do a risk assessment. But schools use an automated system
12 to say, have you -- have you submitted your different, you
13 know, recommendation of something for admission would then
14 trigger you doing a risk assessment. And for me, the issue
15 is that, you know, Section 1798.185(a)(15), which is the
16 governing statute here, states, the requirement for
17 conducting a risk assessment is for business systems
18 processing a PI presents a significant risk to consumers
19 privacy or security.

20 And again, I came back to something I did earlier,
21 which Mr. Soltani was critical in my education around the
22 privacy matters, where he really said, don't get attached to
23 one technology, that will change over time. What's
24 concerning to me about the risk assessment is we are tying
25 it to ADM, but we have just things that we just identified

1 automated decision-making, but if you do that, it's risky.

2 And so I could actually make the argument for you
3 that ADM is less risky. I could say, well, there's no
4 person involved to retrieve my information, or there's no
5 snooping involved. And -- but when we, as soon as you do
6 ADM have a significant decision that requires a risk
7 assessment, and I'm like, we could say if you use a Dell
8 computer, you need a risk assessment.

9 You know, it doesn't to me the activity that
10 should be driving whether or not you do a risk assessment.
11 Dollar share? Absolutely. Process SBI? Absolutely. I
12 just, for the life of me, we still can't figure out why we
13 are focused on the ADM as triggering the technology, as
14 triggering the requirements for risk, and so my
15 recommendation would be really to eliminate that.

16 And I think, honestly, we'll get -- we will lose
17 the report on that because there's no rationale for saying
18 that this particular thing, a risk privacy, any more than a
19 hundred other activities we think of. And I don't think ADM
20 also has to do with the second part of that clause, the
21 185(a), 13(b), if the risk, the privacy consumer outweigh
22 the benefits resulting from profitable business, yada, yada.

23 And I mean, you could turn it around, right? You
24 could say, what if a business was collecting a PI, not using
25 software, which is hard, but then denying consumers

1 essential services, we would all view that as bad. That
2 wouldn't actually trigger a -- that's a risk assessment
3 here, because you wouldn't be using the ADM to deny the
4 (inaudible) essential services.

5 So my big concerns here are it's the fact that we
6 are trying the risk assessment, the ADM, and I think that
7 that could change over time. The technology, it really
8 should be what is happening to your information, not how is
9 it getting to the -- to the significant decision.

10 Sure, if the significant decision is happening,
11 that is risky. If you're being denied housing, or if you're
12 being denied, you know, something for sure, but at the same
13 time, it shouldn't be how you got there. And actually, if
14 you think about it, I'm arguing for broader, you know,
15 inclusion because I'm saying, no, not if it's just going
16 through ADM, it's however you get to deny that significant
17 situation.

18 And then the second big part for me is I really am
19 uncomfortable. I know a lot of legislation business right
20 now, but we really need to clarify or eliminate the word
21 access to, and I know I have a different opinion originally,
22 but the more I've thought about it, I am very concerned that
23 access to one of these essential services is going to be
24 very confusing unless we really say, what does this mean?

25 Because does it mean I'm seeing an ad? Does it

1 mean, it was on the map or not? It -- and again, we are --
2 so I would really tie this much more to the provision or
3 denial of essential services. That's a -- that's a bright
4 line that's easy to understand.

5 Access too could be one of a hundred different
6 things, but my second point, I think we should enumerate, my
7 third point, would be enumerate the goods and services that
8 we say are essential goods and services they're at taking
9 out, is it an (inaudible) ticket? Like what's an essential
10 goods and service? We should -- these are regs, they should
11 be giving clarity.

12 And my final point would be having a list of other
13 jurisdiction risk assessment. If you've done one for the
14 GDPR, what's wrong with it? What do you need to do to add
15 with to get a California risk assessment? If you've done
16 one for Japan, what do you need to add or subtract to get
17 here?

18 So again, I think that reference to the ADM should
19 be removed. I think we should really redefine or limit the
20 words access to, and like insignificant decision. I think
21 we should enumerate what the goods and services are, the
22 essential ones, and I think we should have this own around
23 risk assessments to allow businesses to say, I've already
24 done one for grants, we (inaudible), what do I need to do
25 that give to California (inaudible)?

1 MS. URBAN: Thank you, Mr. Mactaggart. Just as a
2 point for staff on Mr. Mactaggart's last request. I know
3 because -- I know from law school, but law school was a
4 little while ago now that there are, again, limitations to
5 our general ability to be able to point to -- point to other
6 standards, requirements, et cetera, that are specific to
7 California. So I just -- I just want to point that out. I
8 mean, I think that, you know, what Mr. Mactaggart is
9 suggesting certainly would be very helpful, if it's -- if
10 it's doable within the -- within what we're able to do, and
11 balanced against, you know, use of resources, so forth. Mr.
12 Le?

13 MR. LE: Yeah, so I do agree with many of your
14 points, actually. You know, I think more clarity on what
15 access to means. You know, some ads are actually giving you
16 credit. Some ads are just saying, hey, visit this website
17 and you could get some credit. So, you know, maybe that
18 could be clarified. Enumerating, you know, I think is --
19 it's in there, right, but perhaps even more enumeration.

20 But, you know, on the point around, you know,
21 using your e-mail or the style to make a decision, I think I
22 -- we'll have a disagreement on this, then I think the ISO
23 covers it pretty well when they explain, like, if you're
24 just organizing the information, it doesn't become ADMT,
25 using a spreadsheet to organize information.

1 And I think one of your examples is mentioned in
2 there around like, who to promote if you're using a
3 spreadsheet to calculate, you know, performance review
4 scores, so I do think staff has worked to address a lot of
5 those concerns.

6 But, you know, to your point around ADMT, not
7 requiring risk assessments, you know, in my head, you're
8 processing personal information about someone that can be
9 sensitive in an automated way, and you're making a
10 significant decision; credit, housing, employment,
11 education, you know, that is to me, a privacy risk.

12 And, you know, AB 2930, which we discussed today,
13 essentially, puts in the same requirements. They enumerate
14 what those essential goods and services are a little bit
15 more. The EU AI Act for high-risk systems require the risk
16 data management system. They require human oversight,
17 transparency when that system controls access to essential
18 private services, eligibility for education, or jobs.

19 So, you know, when I was looking at this, I think,
20 this is the direction that society at California, the EU is
21 moving, and businesses are going to be doing this risk
22 assessment in many other jurisdictions. So you know, to
23 some extent, like it -- it's already happening. The niche
24 rules base that these types of decisions should have risk
25 assessment, you should make sure your data quality is good,

1 make sure that this stuff is accurate, you're not
2 discriminating.

3 So, you know, I feel like the conversation has
4 shifted. I think there is a greater recognition both by
5 business and the public and regulators that these types of
6 ADMT do require risk assessments, because when you take out
7 that human element, massive oversights could happen, and you
8 can get big denials of medical care like we saw in Arkansas
9 and other states.

10 Unemployment benefits, you know, in Michigan. Tax
11 benefits in the Netherlands. So I think that's -- these
12 real, very real examples about how personal information is
13 being abused by these systems necessitate ADMT being a part
14 of a risk assessment.

15 MS. URBAN: Thank you. And so I like --

16 MR. MACTAGGART: (Inaudible) ask him a follow up
17 question on that?

18 MS. URBAN: Of course.

19 MR. MACTAGGART: What I don't understand is why
20 limit it to ADMT? If the significant decision's being made,
21 and you're being denied the business services, if you're
22 using my -- this is the privacy law, if you're using my PI,
23 and you're a coverage business, and you're denying these,
24 you know, and I'm assuming we can limit access to those
25 (inaudible), and I -- by the way, I -- it enumerating, when

1 I said enumerate, it's just the final log there, essential
2 goods and service.

3 MR. LE: Yeah.

4 MR. MACTAGGART: I think that's the one that to be
5 enumerated, because is that a gas station Is that its
6 whatever is great.

7 MR. LE: Utility and like that, yeah.

8 MR. MACTAGGART: It's that one. If you can
9 enumerate that, and if you can limit access to, so it's
10 clear, my point is forget that ADM, why shouldn't it just be
11 if you are denying someone housing, doesn't matter whether
12 you're using ADMT, you might have 10 people in a room who
13 are all looking at it.

14 We're a privacy in the law if you're using my PI,
15 and I think the reason is, look, there's still much buying
16 and selling of personal information that I -- I'm very
17 uncomfortable, I've been trying to think that ADMT to
18 businesses is a (inaudible), it's not even the same
19 discussion.

20 And by the way, there's nothing in the statute
21 which suggests that that should be the criteria for risk
22 assessment. And literally is just, we've invented ADMT as a
23 criteria for getting into the whole risk assessment. And I
24 think we're going to get student. People will think, why
25 are you using that? Why shouldn't it be whether the

1 (inaudible) wearing blue shirts on Tuesday, you know?

2 MR. LE: So, you know, to that point, this risk
3 assessment and staff can just this risk assessment applies
4 to processing of PI generally, it just adds specific
5 additional requirements if you're using an ADMT. So that
6 broad perspective that you have is there, right? You have
7 to do a risk assessment if you're processing a PI. It's
8 just, there's additional risks when you use ADMT that
9 require additional risk assessment requirement.

10 So to some extent, you know, within the
11 jurisdiction, you know, this is focused on the use of
12 personal information for trigger risk assessment, and the
13 use of personal information, and ADMT for a significant
14 decision. And I think that's substantial -- substantially
15 facilitate additional limitations, then you'll have extra
16 requirements on your risk assessment. So to some extent
17 there it is broader, but the more detailed requirements only
18 kick in once you're using PI in an ADM.

19 MR. MACTAGGART: And I think this may just be one
20 where we agree to disagree. I just -- I couldn't disagree
21 more that we are -- we are identifying a particular
22 technology and then we're seeing it, and we're -- and the
23 whole -- you don't get to significant decision unless you
24 get there through ADMT, that's what's crazy to me, like, you
25 can't have a significant decision in this risk assessment

1 unless you've gotten there via ADMT.

2 MR. LE: I see it as the PI being the personal
3 information, what do you think? The connecting factor.

4 MR. MACTAGGART: Oh, it does. It's Not what it
5 says. It says using ADMT for significant decision
6 concerning consumer, and that's what to me, it's like I --
7 you know, anyway, I --

8 MR. LIEBERT: (Inaudible).

9 MR. LE: You'll get the idea, let the staff.

10 MR. MACTAGGART: Yeah. Yeah.

11 MS. URBAN: So --

12 MR. LE: (Inaudible) on here, if you could clarify
13 please.

14 MS. URBAN: Yeah, so I think -- so this is -- this
15 is -- this is very -- this is a helpful back and forth to
16 listen to. I think the question -- one question is how the
17 Laird requirements work. I understood it to be something
18 like Mr. Laird is describing that there are general
19 requirements for risk assessments that would pull in things
20 like significant decisions because it pulls in the more
21 general uses of the information.

22 And then ADMT is specifically clarified. Mr.
23 Mactaggart isn't reading it that way. And I guess my first
24 sort of instinct is to leaving aside the way the sort of
25 language operates to see if we have guidance -- collective

1 guidance, or separate guidance from board members who
2 disagree, for staff on the sort of underlying goal here. It
3 sounds very similar to me from Mr. Le and Mr. Mactaggart,
4 but I could be missing something. And then I want to be
5 sure Mr. Liebert also has a chance to ask questions or weigh
6 in on this subpoint, if he'd like.

7 MR. LIEBERT: I would love to hear from staff on
8 this.

9 MS. URBAN: I'm just trying to -- I'm trying to
10 diagnose, you know, the discussion, so that we are -- so
11 that we are as clear as possible.

12 MS. ANDERSON: Sure. So we'll, we'll collectively
13 deal this. So I think it seems like one of the -- one of
14 the kind of threshold things that we're talking about is
15 when is the risk discussion require? Then how does ADMT
16 interrelate with that? There's a definition of ADMT, and
17 then there are ADMT specific requirements, and there are
18 also also risk assessment requirements, and then additional
19 risk assessment requirements for specific uses of ADMT.

20 So risk assessment requirements are tied to the
21 use of personal information that presents significant risk
22 to consumers privacy. That includes selling or sharing
23 personal information, processing (inaudible), using ADMT
24 only for certain things like for significant decisions.

25 Therefore, the use of ADMT is for a significant

1 decision, and as you know, the definition of ADMT
2 incorporates the concept of processing personal information
3 using computation in all or in part to make or substantially
4 facilitate that human decision-making that results in the
5 decision-making decision.

6 It also includes the use of ADMT for extensive
7 profiling, and that includes the worker educational
8 profiling that we discuss profiling for behavioral
9 advertising, and profiling in public places, and the use of
10 personal, sorry, and there's another threshold for risk
11 assessment, which is the use of personal information to
12 train ADMT or AI that can in turn be used for certain
13 purposes. And I'll pivot it over to Neelofer for additional
14 (inaudible).

15 MS. SHAIKH: And so one of the things that I'd
16 understood from your feedback, Board Member Mactaggart, is
17 why ADMT for significant decision and not just any use of
18 personal information for significant decision. And so there
19 were two considerations that were -- that are flushed out a
20 bit further into the materials we rely upon. I think
21 there's two factors to consider here for the Board, and of
22 course, we will absolutely take them from the Board if there
23 are other factors to consider, or if the Board would like to
24 broaden the threshold.

25 On the use of ADMT, I think there are two things

1 that make it different from any -- from any typical use of
2 SRIA, one is scale. We're talking about technologies that
3 can make quick decisions within seconds potentially that are
4 affecting people in these very consequential ways.

5 I think the scalability of ADMT presents a more
6 significant risk to consumer privacy. There's also the
7 concern about the opacity of these systems that a lot of
8 concern has been raised about the lack of transparency and
9 control for consumers with respect to their personal
10 information for these technologies.

11 Now, the risk assessment is chairs with the
12 access, right? And that is an important tool as well. But
13 because of some of the risks that we've seen with the use of
14 ADMT, again, because of the scale issues, because of some of
15 the black box issues, we do think a risk assessment before
16 it's deployed is an important risk identification and
17 mitigation tool that would address some of the harms to
18 consumers that we've seen.

19 And again, these are -- this is fleshed out more
20 in the ISO, but I think that's a very -- well, I think
21 that's a question that's quite fair in this context, which
22 is just why ADMT specifically, and those are two factors
23 that staff had considered that's fleshed out more in a lot
24 of the scholarships -- that scholarships that we cited.

25 MS. URBAN: Thank you.

1 MS. ANDERSON: Sorry, just one final point. As you
2 all know, like we're directed by statutes to issue -- the
3 issue will (inaudible) ADMT so oftentimes regulations are
4 tech agnostic. In this instance, there's a specific
5 direction with respect to automated decision-making
6 technology. We understand that's in a different provision
7 of the CPPA, but I think that's kind of the underlying
8 driver for why we're addressing ADMT in particular on top of
9 the risks that drive these things that are articulated in
10 ISO.

11 MS. URBAN: Thank you. Thank you very much, Ms.
12 Anderson and I just want to pick up on Ms. Shaikh's mention
13 of the scholarly literature in this area. You know, there
14 is a scholarly debate over the difference or lack of
15 difference or extent of difference between an automated
16 decision and a decision by a human. So Mr. Mactaggart's
17 point is very well taken that decisions that use personal
18 information and have significant effects are hugely relevant
19 to people. And the current sort of draft I think reflects,
20 as Ms. Anderson said, both the statutes specific focus on
21 ADMT among other things and the risk assessment draft
22 regulations don't just focus on ADMT.

23 And also as Mr. Le pointed out a sort of
24 developing, but pretty well developed approach at this
25 point, that takes into account those scale and opacity

1 issues for automated decisions in particular. People, seem
2 to consider this quite a dignitary upfront both because of
3 the opacity and the sort of the lack of -- the lack of human
4 intervention or very limited human intervention in some of
5 these decisions. And the other thing that can happen
6 because of the scale and because of the opacity is that you
7 get harm and you don't see it. You can't see it until
8 somebody manages to report it.

9 So some of the examples that Mr. Le brought up are
10 good ones. There are other ones, you know, an algorithm
11 that doesn't take into account all of the aspects of the
12 needs that somebody has for home healthcare, for example,
13 resulting in tremendous human harm. And the only way we
14 know that happened is because somebody finally was able to
15 talk to another person to say, hey, we've got people who are
16 stuck in their house and they can't get to the bathroom, and
17 they're not getting this care.

18 If the decision making were not being made in that
19 wide scale, opaque automated way, we would have more
20 information about harms all along. So in my view, that
21 makes this very eligible for risk assessments because we do
22 have at least a qualitative, and of course quantitative
23 because of the scale change in risks. That said, Mr.
24 Mactaggarts point about the fundamental underlying interest
25 here being the same is certainly very well taken. Mr.

1 Mactaggart.

2 MR. MACTAGGART: I think I understand that what the
3 definition of ADM is. It's -- the problem is that 185(a), 15
4 is a completely different section than 185(a), 16. They're
5 completely separate, 185(a), 15 says, to risk assess. If
6 you're doing something risky with the consumer's
7 information, you can't get in this graph to the term
8 significant decision unless you go through the ADM gate.
9 This is as preposterous in my mind as saying it's a risk if
10 you use ADM to sell or share personal information.

11 We don't have the gate in front of seller share,
12 or you said using ADM to process SPI. We don't have the --
13 we don't have the gate there. But somehow with significant
14 decisions, we have the ADM gate in front of it, doesn't make
15 any sense. Literally not architecturally proper. And by
16 the way, it's not going to be -- you're -- we're going to
17 call this effort into it.

18 The chamber's going to come along and say, "Oh,
19 why are you choosing this technology specific?" Because
20 under 185(a), 15, there's no mention of ADM, sure. And, so
21 I just think that it's silly of us. My point is, if you're
22 doing it at scale, it'll still get covered by what I'm
23 saying. It just shouldn't -- we shouldn't have the gate
24 using -- it should be, are you the company using consumer's
25 personal information to do these things? Are you denying

1 people housing? Are you denying them jobs? Are you denying
2 them education?

3 If you're denying them, I don't care whether
4 you're doing with ADM or with people, we should know about
5 it. And that's kind of what I'm saying here, and we should
6 -- I -- it just doesn't make any sense to me at all to have
7 this ADM gate here in three -- in 7150 B3.

8 MS. URBAN: Thank you, Mr. Mactaggart. I do
9 believe I understand your structural concern. And I, you
10 know, I think that this is in part a policy choice with
11 regards to the specifics, but it's also a choice about how
12 best to craft the regulations. Assuming that we do agree
13 that at least to some use of ADMT can result in a
14 significant risk, which is the operating principle behind
15 the risk assessments. My understanding, and I wasn't on the
16 subcommittee so Mr. Le is best placed.

17 But my understanding is that the risk assessment
18 draft regulations are helping to implement and explore when
19 would be a significant risk, which is something that we need
20 to do in order to implement that provision. And that these
21 kinds of decision making ADMT within, you know, the gates
22 that you talk about, you know, how narrow, how wide, whether
23 they exist, that's a policy question are part of what could
24 create a significant risk. So there's a -- there's a --
25 there's a sort of a drafting decision as to where to put a

1 more specific guidance as well.

2 I don't think there's any structural legal concern
3 with mentioning ADMT as something that could provide a
4 significant risk. But it is something that, you know, it
5 was a choice that the subcommittee and staff and their
6 recommendations made to put that specific -- to name that in
7 the risk assessment regulations as well. Mr. Le.

8 MR. LE: A little bit -- yeah. I think I
9 misunderstood Mr. Mactaggart a bit, and I understand your
10 point about making it broader. I think I'll speak for
11 myself, not the entire subcommittee, but you know, the use
12 of automated decision making technology with PI, we saw as
13 a, you know, it makes a different decision, was a
14 significant risk to privacy. But your point is processing
15 SPI to make any significant decision to create a significant
16 risk to privacy.

17 And perhaps, you know, one -- I'm just throwing it
18 out there one solution is, you know, you put, you know, on
19 B2 processing SPI and then, you know, processing SPI to make
20 significant decisions, that would be a big broadening. And
21 I actually would wonder if that increases the number of
22 businesses that have to do a risk assessment that would --
23 whether that necessitates more economic analysis. But to
24 your point, I get it. I, you know, and I know there's other
25 agencies that regulate the use of PI to make decisions

1 around banking, credit housing. So, you know, I think they
2 would appreciate and I mean, they have jurisdiction over
3 that, but the risk assessment part, I think is a point well
4 taken.

5 MR. MACTAGGART: And if I could just add one thing,
6 because I also was concerned Mr. Le, about, okay, are we
7 just going to massively broaden it? But I think actually,
8 if you really kind of have what access to the services
9 meant. So you're a company, you know, am I denying --
10 basically, it's not really are you giving, it's much more
11 (inaudible) are you denying. Are you denying (inaudible)
12 lending services employment, you know, are you turning those
13 down and then you should have (inaudible).

14 So I feel like you might actually limit the number
15 of companies that businesses if you really kind of focus on
16 access too and made that much more granular. But again, I
17 think if we're going to be in this for the right reasons for
18 privacy with what's happening with my information, there's
19 such a market out there for it. I think people have with
20 the -- what the statute says.

21 MR. LE: So I, yeah, you know, I totally agree with
22 your point I think use the ADMT gate was actually, you know,
23 in a way to limit the risk assessment requirements because
24 the automated decision requirements are a bit more -- yeah.
25 In depth, right? There's higher cost there. So I think

1 that was the point. But, you know, the broader is that
2 anyone processing SPI to make a significant decision,
3 perhaps should be doing a risk assessment. That said, you
4 know, it's broadening the thing. So yeah. There's benefits
5 and I mean, I think that's perfect -- you know, a perfect
6 topic for comments for the public. How do we cabin this?
7 How do we, you know, enumerate it? And do we extend the
8 same significant decision threshold to just the processing
9 of SPI.

10 MS. URBAN: Thank you Mr. Le. Yes, you know, my
11 read of this, remember that these draft regulations have
12 also been revised from the first draft that we saw in
13 December of 2022. In order to limit them broadly speaking,
14 I read them as limiting their effect to some degree. Of
15 course, we have to evaluate what -- we have to hear, of
16 course, from the public and evaluate that specific feedback
17 in the formal process.

18 But even after we have regulations done, we have
19 to evaluate how this is matching up to what people's
20 concerns are and to what -- how the market is developing.
21 And that I think it's very important to keep in mind.
22 Again, you know, we have to make decisions without full
23 information. That is just the nature of the game with
24 regulating this kind of technological process.

25 And, you know, the subcommittee and staff have

1 made a set of choices. I take Mr. Mactaggart's points.
2 Certainly, I think they're really helpful. In terms of a
3 process point, I would still I think like to hear in the
4 formal rulemaking process about this. And that is in part
5 because I do think that the really extensive preliminary
6 rulemaking process that we've -- that we've undertaken has
7 given us some very, again, sort of pointed and clear
8 feedback from different members of the public.

9 Some of which would ask that we significantly
10 narrow some of this and some of that -- this would ask that
11 we -- that we brought in it and is concerned about
12 loopholes. And I think that we need to take all of that
13 into account as we decide to move forward. Mr. Liebert.

14 MR. LIEBERT: It's so -- it's so convenient being
15 the new person here.

16 MS. URBAN: I have to say, I do not envy you. I
17 mean --

18 MR. LIEBERT: No. That's okay. I want --

19 MS. URBAN: It's three years of record development.
20 It's a lot to get your head around.

21 MR. LIEBERT: So I get to just ask questions, which
22 is great and not give opinions. In my question really is
23 the staff, and that is that if I am beginning to understand
24 this regulatory process the seeming compromise that may have
25 developed from this communication between my terrific board

1 members can ultimately be added to the -- to the regulation
2 through this process. So it's really just getting the
3 process going, listening not only to them who really
4 understand this. But to members of the public and
5 stakeholders and everyone who will be commenting and will be
6 in a position then to make adjustments to these regulations
7 along the way.

8 Am I understanding that correctly? And I guess
9 this is a really polite way of asking you your own
10 perspective, given your expertise on the rulemaking
11 processes to how you'd recommend we would, for example,
12 implement this potential compromise approach in the process
13 that we're proceeding with?

14 MR. LAIRD: That's a great question, Board Member
15 Liebert. In some ways it is interesting as I reflect on it,
16 by having this conversation today. I think regardless of
17 where we start, whether we modify something now or keep it
18 as is. I anticipate we'll receive public comment on exactly
19 these questions and these considered expansions and to the
20 point you were making. I think absolutely no matter where
21 we start, whether if we decide to further amend our starting
22 point today as this -- as we've considered in this
23 discussion, or we've decided to start with what's currently
24 drafted with the knowledge that we might amend towards
25 something like things discussed.

1 That is something that can absolutely happen after
2 we begin the public comment process. So I don't want to
3 call it totally a chicken or an egg thing, but we sort of
4 have our choice of, you know, where you want to start, but
5 you will absolutely all have a choice in where we end up on
6 this. So changing it in the direction that Mr. Mactaggart
7 has suggested. And we could start there, but we could also
8 do it later in the process.

9 It -- and I don't actually think the public
10 comment will be that much impacted except to the extent that
11 anybody who's not been listening and following this, I
12 suppose, will only maybe have the final text that we go out
13 for formal regular rule making to consider. So for
14 instance, if they see a version that doesn't limit this to
15 ADMT, maybe they won't know we've never considered having
16 that narrower risk assessment can threshold gatekeeping. On
17 the flip side, they will -- we only do ADMT, they may not be
18 aware that we've considered broadening it to be sort of all
19 processing that makes it -- ADMT is used to make a
20 significant decision, for instance. So the choice is a
21 little bit the Board's, but at the same -- by the same token
22 the option to move in that direction, certainly remaining
23 after we begin formal rulemaking.

24 MR. LIEBERT: So if I understand your point if we
25 try -- if you as staff try to address the -- if you will the

1 compromise that has been talked about here, if that -- if
2 that works, does that substantially slow down this process
3 that is underway?

4 MR. LAIRD: I'm sorry, I missed that last comment.
5 If there was a question, I apologize.

6 MR. LIEBERT: Sure. So I assume that my great
7 board member -- Board Member Mactaggart might prefer to
8 start solving this problem right now as opposed to down the
9 road through the regulatory process, unless it were to
10 substantially delay that process. So I'm curious about this
11 -- how it impacts just the journey.

12 MR. LAIRD: It's a good question. I mean, first
13 that comes to mind is if we decide to start with text that
14 is more expansive on risk assessments, for instance, then we
15 would likely have to go back to our economists and ask them
16 to look at sort of this broadened scope. Okay. That could
17 delay our ability to finalize and submit a standardized
18 regulatory impact assessment at this stage to the Department
19 of Finance.

20 MR. LIEBERT: So that's the risk is the impact on
21 the economic analysis and what that means?

22 MR. LAIRD: Essentially.

23 MR. LIEBERT: Got it. Okay.

24 MS. URBAN: So can I ask with regards to that, that
25 is -- that is one flag for me as well. And again, I'd just

1 like to remind everybody that one of the benefits of
2 regulations is that we see how they work, we gain
3 information and we continue -- we can continue to return to
4 them if we need to. But with regards to the process now and
5 the impact assessment we have right now before us that
6 really helpful information about the cybersecurity
7 thresholds.

8 For example do you see that it would be difficult
9 or, you know, just really not -- excuse me, I am -- I am
10 still dealing with being sick, let me back up. Not worth
11 the -- not worth the candle, I suppose to ask the economists
12 to give us something like that. Not necessarily change the
13 draft language, but give us something like that that we
14 could look at with another, you know, with a broadened
15 option in our next meeting. And please feel free to tell me
16 that this is really unrealistic.

17 MR. LAIRD: Well, I'll just chime in to say it is
18 actually part of the APA process that we consider
19 alternatives considered. And that's why in fact, you see
20 the economic impact some of the alternatives this board
21 considered on cybersecurity audit. So with that said it's
22 hard for me to estimate exactly how much work or how
23 difficult this will be for economists to do this work. I
24 will just share that estimates in this space has already
25 been pretty difficult for our economists to zero in on if

1 there just isn't significant data right now at least
2 publicly available on certain volume and processing,
3 especially if things that would maybe not previously
4 required risk assessments in the arena. So --

5 MS. URBAN: Thank you. Thank you.

6 MR. LAIRD: So this is to say, if we expand it to
7 potentially have more of a reach than just limited to ADMT,
8 I anticipate a higher number, but that might be -- that
9 might be a difficult number to estimate.

10 MS. URBAN: Thank you. And it's really, if I -- if
11 I am looking at the the sort of high level analysis
12 correctly, one of the things that I found interesting about
13 it is that a lot of this is just the fact of the -- of the
14 law. The fact that a cybersecurity audit must be done, the
15 fact that a risk assessment must be done.

16 And so we would most likely be -- as with the
17 cybersecurity audit seen that maybe a wider number of
18 companies would fall under it. And that would be sort of --
19 that would be sort of the change broadly speaking. And,
20 sorry, I really am, I don't mean to put you on the spot. I
21 know this is a question for the economist. I'm just trying
22 to get my head around it.

23 MR. LAIRD: It -- yeah, it's a good question. I
24 think it would be the number, sort of, it would be estimates
25 regarding the amount of work per business. I will say in

1 the numbers you're currently seeing, the estimated total
2 number of firms currently at lease for -- according to our
3 economists, is 52,326 businesses in the state subject to
4 CCPA across the board.

5 So any changes to these requirements that these
6 initial estimates were prepared with an upper bound estimate
7 of every business having to do some sort of work on risk
8 assessment in this pursuant to these draft regulations. So
9 any sort of expansion of risk assessment requirement would
10 really be the volume and complexity of additional and new
11 risk assessments for businesses to consider. It wouldn't
12 necessarily scope in additional.

13 MS. URBAN: Thank you. Mr. Mactaggart.

14 MR. MACTAGGART: Yeah. So I'm a little confused
15 about a couple things. One is -- by the way, that it's any
16 business that does business in California. So the whole
17 risk assessment, looking at the number of businesses in
18 California doesn't make any sense to me. That's -- well, I
19 guess Mr. Soltani is shaking his head at me. But my point
20 is, I think if you go back to the ADM gate, our definition
21 of ADM is basically, do you use software? And pretty much
22 everybody does. So, and for -- yeah.

23 So this shouldn't change actually, the number of
24 firms that are engaged in a significant decision, it won't
25 change at all because everybody uses software. Our

1 definition of AI and ADM is so broad that it's -- if you've
2 used it as a -- as a key factor in making a decision, it's
3 not going to change. But it is going to clean it up to make
4 sure that in 20 years, when the 10 years, when the -- when
5 the new technology comes in, we're not tied to did you use
6 ADM?

7 This is just -- did you make a significant
8 decision that was good or bad? And so I'm -- I really feel
9 like it -- we should not be tying ourselves to this
10 technology. We should be looking at this. And if we want
11 -- if we're concerned, and I am very concerned about the
12 cost, let's start with a higher threshold. Let's just say,
13 okay, risk assessments are not, you know, for companies that
14 just barely meet the criteria for being a business, let's
15 have a much higher revenue threshold. And walk before we
16 run, and we could figure out how it's working. And it has
17 to be a huge company to have a risk assessment, but
18 nothing's stopping us right now.

19 And that could be an easy way of sort of easing
20 our way into it. We're about to get inundated. I mean, can
21 you imagine this agency with 52,000 risk assessments, it's
22 going to kill us. So if we could limit that the first
23 couple of years to 5,000 or 2,000, you know, let's start
24 with where the big problems are and then get down to the
25 smaller ones. So I think I would -- I would support

1 changing the down. I would also support looking at the
2 threshold to make sure we don't try to all of a sudden
3 regulate into (inaudible) thousand.

4 MS. URBAN: Thank you, Mr. Mactaggart. Mr. Le.

5 MR. LE: Yeah. I mean, I -- you would like to see
6 the numbers on all of that, right? And get comment and just
7 more on a process point. You know, most of the comments
8 that I've done in response to regulation, they have pointed
9 questions, right? So to your point, Mr. Laird, you know,
10 the person who doesn't know about the alternative, you could
11 ask for a specific alternative in, you know, that the
12 request for comments. No. I was reminded that there's a
13 portion in our document, in fact, that we'll discuss
14 (inaudible) considered.

15 So it is something we could -- we could include
16 now. Yeah. I mean, I -- to your point, Mr. Mactaggart,
17 yeah, I'd like to see, you know, how many businesses are
18 covered by a broader requirement. You know, I still think
19 we need specific ADMT risk assessment requirements
20 considering the different risks with automated technologies.
21 But you're right, if you're -- if you're processing SPI to a
22 PI to make significant decisions, you should assess that.
23 Yeah. So that was my main point. We should have a -- some
24 sort of question specifically on that. And then perhaps
25 that will avoid the need to maybe rewrite all of this and we

1 can actually just change the threshold once we begin
2 rolling.

3 MS. URBAN: Thank you. Thank you, Mr. Le. Mr.
4 Mactaggart, just -- I would like to summarize and check my
5 understanding of, again, our options here from a process
6 perspective. You know, Mr. Mactaggart substantive point is
7 well taken and it's attractive and we do urgently need to
8 gather formal information from people on this. So Mr. Laird
9 given that there seems to be some appetite I've heard it
10 from Mr. Le, I've expressed it myself. I assume Mr.
11 Mactaggart is also interested in it for this sort of, you
12 know, if we were to expand it some information on that to go
13 along with the economic impact assessment paired with some
14 specific questions to the public as part of the rule making.
15 I think the eyesore already walks through the -- this in
16 pretty detail -- pretty good detail. If that would -- if
17 that would be a good way to manage this effectively.

18 MR. LAIRD: I think it would. But one point of
19 clarification certainly here, Mr. Le's interest, and I
20 understand that it's a very reasonable request. The one
21 concern is under the APA we don't want to necessarily
22 suggest anybody there limited to answering certain
23 responses. So typically the practice we'd advise, at least
24 from legal, would be to not sort of zero in on any specific
25 questions of the risk that we are suggesting. That's all

1 we're taking comment on. But --

2 MS. URBAN: Of course.

3 MR. LAIRD: Again, we could make clear, of course,
4 this alternative that's being considered by the Board, both
5 in the economic impact assessment and in the initial
6 statement of reasons. And then it would be in the formal
7 record. And certainly I would say now even you know,
8 anybody listening is welcome to provide comment on exactly
9 this discussion.

10 MS. URBAN: Okay. Wonderful. Thank you. Yes.
11 That absolutely it would -- the intent would not be to in
12 any way limit the kinds of comments. I also just want to
13 make a plug again, for the extensive information gathering
14 and communication that the agency has undertaken anybody
15 coming to this discussion later. All of the materials and
16 all of the comments that we've received and the previous
17 versions of the drafts are all available on the website.
18 They're available to review and consider. All right. Mr.
19 Mactaggart and then Mr. Le or Mr. Le, I can't tell whose
20 hand went up first. I apologize. I lost track.

21 MR. LE: Yeah. I just wanted to add one point to
22 that summary is I think there was also appetite from the
23 Board to get comment on from the public. And potentially
24 from the economic analysis on if we do expand the risk
25 assessment requirements to, you know, a broader array of

1 people processing FPI or PI without ADMT. What are
2 alternative ways to limit that cost, perhaps through a
3 phased approach or a higher threshold would also be good to
4 get comment on, right? So I think we had some discussion
5 around a hundred million dollars threshold for
6 cybersecurity. What does that look like for risk
7 assessments? Can we even do that? Yeah. With a regular,
8 you know, our jurisdiction.

9 MS. URBAN: Thank you, Mr. Le. I certainly support
10 all reasonable information, you know, by which I mean, what
11 we can reasonably sort of obtain and sort of maintain our
12 progress with full information. I will say I have a similar
13 reaction to Mr. Mactaggart on gating with regards to the
14 cybersecurity audits. And when we get to the ADMT
15 regulations as well, you know, I'm unsure of some of these
16 additional gates that we've put in place.

17 My reasoning is very similar to Mr. Mactaggart's
18 on the risk assessments. You know, this law only applies to
19 companies of a certain size or who use personal information
20 to a certain level in the state of California. And it's a
21 very, in my view risk-based approach to who is covered to
22 begin with. And I've told the subcommittee this in our
23 public meetings, and I've said, I'm just unsure about adding
24 these extra thresholds.

25 So to the extent that it, you know, that I found

1 the cybersecurity information very helpful in the high level
2 SRIA feedback, and to the extent that is valuable for some
3 of these other things as well that would be really helpful
4 because, you know, Mr. Mactaggart's point is so well taken.
5 We have fundamental goals here and we need to make sure that
6 we keep our eye on that -- on that ball. Thanks very much.
7 Now, Mr. Mactaggart, did you have your hand up? Yes, thank
8 you. Please go ahead.

9 MR. MACTAGGART: Yeah. I had a quick question for
10 Director Soltani. When I read the statute business is
11 defined as a business, doing business in California.
12 Doesn't matter if it's in Tel Aviv or Tokyo. And I see this
13 risk assessment of covering businesses isn't California
14 business, this is businesses.

15 MR. SOLTANI: Certainly, I can respond to that.
16 And I had a point of clarification, no question too. That's
17 okay.

18 MS. URBAN: Yes, please. Sorry.

19 MR. SOLTANI: So, absolutely. So yes, the statute
20 applies to businesses business in California, the logs
21 pertaining to their standard regulatory impact assessments
22 SRIA looks at the impact -- the net impact to the state.
23 And that is interpreted as California business enterprises
24 to mean firms with a physical presence in the state. So
25 that's the economic question. The other kind of just point

1 of clarification, I think we're -- it sounds like we're
2 converging on kind of some ideas. I just wondered two
3 points of clarification. One bigger and one smaller.

4 The bigger question was, you know, and Mr. Le, you
5 outlined considering alternative thresholds, like similar to
6 what we do with cyber around, you know, if we were to -- I
7 think your comment was, if we were to expand the definition
8 of essentially the number of firms that would have to take
9 risk assessment, perhaps there's a slider in the other
10 direction that goes around certain size limits that are, can
11 you articulate kind of what some of those attributes may be.

12 And I only asked for the perspective of, it was
13 already very -- like there's not real clear data on, for
14 example, whether a company is using a particular category of
15 data that makes a particular decision. And so you know, we
16 thought the ADMT gate was essentially a good start. I kind
17 of quote my general council here, you know, in the same way,
18 you know, we will always be rule making. So we will always
19 have opportunities to improve on the rules that we find that
20 doesn't capture some of the things we were thinking about.

21 But to the degree that, you know, the ADMT gate
22 doesn't capture things we want to capture and we want to
23 remove the ADMT gate but we wanted them consider narrowing
24 some of the other processing thresholds because impact less
25 businesses. If you could articulate kind of what those

1 might be such that the challenge we have then is to work
2 with the economists to identify any data that might even be
3 a proxy to say, only X businesses in a particular sector or
4 different types of data.

5 MR. SOLTANI: And then one last small part of
6 clarification, you guys went back and forth around, was it
7 all SPI used for ADMT? Or was it just terms -- sorry, was
8 it all SPI used for significant decision or was it PI used
9 for significant decision? I think you guys went between the
10 two and I couldn't tell if you wanted to go from SPI
11 (inaudible). So those are kind of three questions. Sorry,
12 I can repeat them or if that's clear let me know.

13 MR. LE: Yeah, those are all good. We were not
14 clear on any of those things. We -- I said both SPI and PI.
15 You know I'll defer to Mr. Mactaggart on here use of PI for
16 a personal significant decision. Should that be subject to
17 risk assessment or just SPI?

18 MR. LAIRD: But if I -- if I may, actually -- I
19 should point out in our current proposal, it's actually
20 processing of SPI trigger's (inaudible).

21 MR. LE: Yeah.

22 MR. LAIRD: Which includes, that would include
23 making significant decisions using sensitive personal
24 information. So the only thing that would actually be an
25 expansion of that provision would be personal information.

1 MR. MACTAGGART: Yeah. I'm just very mindful.
2 Look, I think -- I think there's -- we I --you've heard me
3 say, I think we have a -- we get the right architecture.
4 That said, I think we run the risk of having way more than
5 50,000 businesses do these things because it's every
6 business everywhere in the world that business in
7 California, which is any business scale. So I think, again,
8 what I would do is I would try to start small with us and
9 then get bigger. One way you could start small is you could
10 say significant decision just refers to significant
11 decisions using SPI. Its Mr. Soltani's question about, you
12 know, what firms -- we already know what firms this, as long
13 as you define essential goods and services, you know, what
14 activity or this goes to businesses.

15 And then I would probably just have a higher -- a
16 much higher revenue threshold to start with. Because we, as
17 a 50 person agency, can't possibly meaningfully look at
18 50,000 risk assessments. Now there's a -- there's a utility
19 to ask the business to do it because just like if you don't
20 audit every tax return business does it. So that's good.
21 But I would also say, let's start -- let's walk before we
22 run, you know going to make or break us if we start with a
23 smaller number for the first five years and we get bigger.
24 So I think we can set it to however we want.

25 MR. LE: Okay. So I think it's SPI which I guess

1 wouldn't increase the number of businesses. The second
2 part, I think we're looking maybe another -- just use a
3 hundred million dollar threshold too, since we already have
4 the number for that, perhaps for risk assessment. But
5 there's also one from AB 2930, which is more than 55
6 employees, or the automated decision tool impacts more than
7 999. So that was another potential limiting factor that
8 look into. I don't know how much time that adds. I think
9 for me, I think I would rather get these rules out and just
10 ask maybe potential other limiting thresholds from the
11 public. But those two come to mind.

12 MS. URBAN: Thank you, Mr. Laird and Mr.
13 Mactaggart. Mr. Soltani does that give you more clarity?

14 MR. SOLTANI: No, I think that that does help.
15 I'll just -- so one process perspective is again, whether to
16 do the -- so part of the challenge here, and part of the
17 benefit I think of, you know, doing this in the rulemaking
18 is that this is what we've wanted for quite a long time, is
19 more data, right? The challenge is that we are making
20 estimates, for example, how you arrive at what the revenue
21 of a firm is actually using EDD numbers. Again, what I'm
22 not -- I'm not an economist if they went on Zoom, but
23 essentially the -- you know, we use as a proxy, the number
24 of employees as a proxy for the firm side. That's how we
25 get to some of the revenue thresholds.

1 And so, again, we can request as part of the
2 rulemaking comment because people will comment both on the
3 regulations themselves. They'll also provide comment. And
4 we have been in class receive comment on. They can comment
5 with that. So we will receive comments and provide data to
6 say, what is the number of firms that will be impacted
7 during that? And so that to me is another benefit of doing
8 it. These kind of getting this input through the formal
9 rulemaking because then we can just request more economic
10 data as well as policy information.

11 The other piece just to tease out, if we were to
12 make the change, for example, 199 folks making a significant
13 decision, again, I think there's difficulty in arriving at
14 -- you know, what portion of the business is processing then
15 leads to, you know, effectively a significant decision. And
16 then how many people, you know, you have to basically make
17 the number of assumptions. Again, I think there's value in
18 getting that information, but we can certainly try to make
19 the rest than it out the gate. It just would obviously
20 delay the timeline that we need to prepare the economic
21 analysis for Department of Finance.

22 MR. LE: I can't speak to this before, but I think
23 my priority would be to get this out by the next meeting.
24 Does that mean we can't get the numbers, then we should just
25 request specifically comment on that, which I think we

1 should do anyways on the different thresholds and the
2 economic data associated with that. From -- yeah, from
3 businesses saying like hey I'm going to be below the
4 threshold, above the threshold when I think about it. So
5 you know, if it can't happen for me personally, if it can't
6 happen before the September meeting, I think I'd just like
7 to see it as a specific question that we get a comment on.

8 MS. URBAN: Thank you, Mr. Le. I would like to
9 simply very briefly state my view on risk assessments
10 generally and the value of doing them. It is not just how
11 many we enforce against, it is giving businesses a tool to
12 be thoughtful about how they are designing their products
13 and their services. In light of, again, our sort of North
14 Star overarching and undergirding goals here those are risk
15 assessments are not just about enforcing against companies.
16 They are tools.

17 And so I simply want to make that substantive
18 point in response to Mr. Mactaggart's observation earlier.
19 I tend to share Mr. Laird's process views. And I would --
20 what I would like is for us to be able to ask staff to take
21 into account all of this understanding, I think we have
22 significant consensus over what we would like more
23 information on. And the best way to do that while
24 continuing to move forward. Mr. Soltani, do you have the
25 info you need on those three points?

1 MR. SOLTANI: I do. Can I just add on to one other
2 point with respect to -- I meant to respond along the lines
3 of what you said with Mr. Mactaggart's point around risk
4 assessment staff capacity to review the risk assessment et
5 cetera. So currently under the framework, the risk
6 assessment serve a few functions. They help support our
7 enforcement role. They help support our work around around
8 complaints.

9 But more -- most importantly, if you look at the
10 economic analysis we did on the cybersecurity audits and
11 loss avoidance, right? If you just look at loss avoidance
12 from firms undertaking cybersecurity audits and making a
13 very conservative estimate on the benefits of doing those
14 audits, you see that that oftentimes the audits themselves
15 can have significant benefit outweighing -- consumer benefit
16 outweighing the costs of those. And so if you kind of
17 extrapolate that to risk assessments as well, and think of
18 just like, one of my favorite papers in this domain is
19 around the cost of reading privacy policies.

20 If you looked at how much time it would take an
21 average human to read privacy policies, and you summed up
22 the numbers, they're -- they're astronomical. So if you
23 think about the same thing with respect to whether to object
24 or whether to request exemption, or whether to try to
25 understand whether a decision was made -- was fair.

1 If by doing a risk assessment firms essentially
2 improve their quality of service around significant
3 decisions to make it so that that consumers have additional
4 trust or avoid taking a lot of time trying to figure out
5 what happened, that itself can be a huge value, essentially
6 loss avoidance, the loss of consumer time, right? And so I
7 think there is -- even if the agency is not reviewing every
8 single assessment, but we're receiving attestation, but they
9 were done correctly I think, again, that is like a
10 certification in some sense.

11 Like it increases trust in the marketplace and has
12 upstanding value. So I would think about that with
13 perspective, how we approach the cyber security audit and
14 think about that in the concept of risk success. Certainly,
15 I don't expect to read every single one, but I think they
16 become quite valuable just for the back of it. And then
17 they become even more valuable when either us or other
18 divisions like DOJ or Civil Rights Division are also looking
19 at whether a business is processing was essentially -- met
20 the statute requirement.

21 MS. URBAN: Thank you, Mr. Malta -- Mr. Soltani
22 excuse me. Board Member Liebert.

23 MR. LIEBERT: I think this has been a great
24 conversation. You've all educated me and I think we're
25 actually on the road here to progress because I certainly do

1 feel it important for us ideally not to get way late in
2 keeping the regulatory process moving forward. And it
3 certainly seems that it will accommodate exactly what Board
4 Member Mactaggart has been pointing out needs to be
5 accommodated in that process. So my sense would be that
6 staff do exactly as we've requested and that we very much
7 keep in mind the points that you brought out as we have to,
8 I'm sure, massage these regulations pursuant to all of the
9 comments that we're going to get, especially the very smart
10 ones from Board Member Mactaggart. So that would be my
11 impression of where we're at right now.

12 MS. URBAN: Thank you, Mr. Liebert. I quite agree.
13 Mr. Mactaggart, you also had a third point that you wanted
14 to go through.

15 MR. MACTAGGART: I think I'm done with risk. I do
16 have ADM comments, but if that's --

17 MS. URBAN: Yes.

18 MR. MACTAGGART: The time now?

19 MS. URBAN: Yeah, I believe so.

20 MR. MACTAGGART: Well, I think I said a lot of this
21 in the last meeting. My concerns really around ADM are that
22 our language is so broad that it's basically the use of any
23 software by people in business. And we're it's -- when we
24 say that ADM is a -- is a technology that substantial filter
25 human decision making, and it's any kind of software that

1 was a key factor in the human decision. It covers all
2 businesses in basically 75 percent of the economy.

3 And because we're allowing consumers to opt-out of
4 ADM regarding sign -- significant decisions, and I get back
5 to my significant decisions, including access to the service
6 because we haven't defined access to, I'm very concerned
7 what we're going to do is we're going to wipe out contextual
8 ads in W5 percent of economy, because I can make the
9 argument, well an ad can give you access to the service.

10 And so I'm a consumer, I come along and say, I
11 don't want to see ads related to insurance, to banking, to
12 health, you know, and one of the -- again, I come back to
13 Mr. Soltani, who helped educate me during the writing
14 process of, hey, we can actually do contextual ads in a very
15 privacy friendly way. I'm really worried this not to be too
16 hyperbolic here, this kind of thing, if we -- if we do it
17 here, it breaks the internet for 75 percent of the economy.

18 And so, you know, and our answer of, oh, well, the
19 business doesn't have to offer an opt-out if they allow an
20 appeal mechanism. That's not sustainable at scale, and that
21 doesn't really work in the real world. And I don't actually
22 think it does anything for privacy. So imagine I call up
23 Amazon and I say, I don't want you to use your scheduling
24 software to deliver my stuff, because that's ADM. I want to
25 opt-out of ADM. How does that even work? How does that

1 help privacy? How does that help me? I call the hotel and
2 I say, I'd like a room, but you can't use your booking
3 software because you -- I don't want you to use your ADM on
4 me.

5 They're going to like, look at me like I have two
6 heads. Like, how does that actually help privacy? I call
7 the airline and I say, give me a seat. But don't use your
8 software. And so I -- you're humans. If I'm calling
9 someone, yeah, I mean, maybe, but then I have to go to
10 appeals to someone and they have to set up an appeal for at
11 scale thousands of people. Now maybe you'll say not
12 everybody won't call up, you know, Amazon and say, I want to
13 not use your software, but we're creating the architecture
14 to allow it.

15 And I come back to the fact that I think the
16 notion that because we say you don't have to offer the
17 opt-out, therefore the same thing as Colorado thing, that
18 action is not covered. I completely agree with that. But
19 Colorado has said it's -- if a human's involved, it's not
20 covered. And you do have to have a -- they have to have a
21 informed explaining why anything you can appeal. But they
22 basically, the way they've structured it, you can just go
23 point to the website, say, this is why you can't opt-out of
24 the use of it.

25 And, you know, this statute was taken from Article

1 22 language. Look, let's take it from Article 22 of GDPR
2 and Article 22 refers to the consumer's rights in the
3 article, not the subject (inaudible) based solely on
4 automated, which produces legal effects. And similarly,
5 Colorado's law distinguishes between the various -- the two
6 levels of human involvement.

7 And if the human is substantially involved and
8 human in decision, there's no opt-out required. And so --
9 and they don't have the full notion of access to. It's
10 provision or denial. And again, I don't mind the concept of
11 access too long as you really, really cabinet. I look at
12 the cost of (inaudible) 1,000,000,004, and that's just for
13 the California businesses. That's not worldwide for the
14 regulations. It's staggering to me. And I don't think it
15 helps privacy. I don't think the architecture.

16 So what would I do? I would again really really
17 either eliminate or clarify that access to the essential
18 business service to enumerate what the essential
19 (inaudible). That's the first thing. The second thing is I
20 would flip 180 degrees our architecture instead of saying
21 this massive list of activities is covered, but if the
22 business offers an opt-out then -- and if the appeal --
23 sorry, if the business offers an appeal where you can go
24 talk to a person, you then don't have to opt the person out,
25 which is not at all the same thing from a cost and a -- and

1 a -- and a trial and tribulation part of the business. I
2 mean, now the -- you know, you have to set up this whole
3 appeal mechanism for 99 percent of what you do, as opposed
4 to saying no if a human's actually involved in this, I don't
5 have to offer that.

6 The second thing and then I -- again, we can get
7 there, but we have to, you know, I think get to a place
8 where we treat -- we change these thresholds in a billion
9 and a half dollar just for California business is -- I don't
10 think that helps privacy, and I think it's massive
11 regulatory burden, at least with the cybersecurity audit,
12 you can make a huge direct link to, hey, that person's not
13 suffering through identity theft.

14 They don't spend five days trying to get their
15 life back together is a huge savings. This one, I don't see
16 the same savings. And I think or we're just -- we're far
17 too broad and our architecture is 180 degrees the wrong way.
18 I said this before, I'm -- I mean, I went on this one, but I
19 really, I'm very concerned about showing up and saying to
20 the California public, hey, by the way, we're going to pass
21 a billion and a half dollars regulatory burden regulation,
22 and what do you get for it? Get this the right to opt-out
23 of basically all of kind of business, so --

24 MS. URBAN: Okay. Thank you, Mr. Mactaggart. I
25 have a response and then I see Mr. Laird had his hand up as

1 well. Again, I really appreciate this. And I think that
2 everyone wants to take a measured approach, one that also
3 doesn't result in a situation where we just do not get in
4 front of what's happening. But in terms of how the
5 regulations are structured, I think it's really important to
6 remember that it goes in a stepwise fashion and there are
7 multiple components.

8 So one of the things that we need to do under the
9 statute and is necessary for the ADMT regulations is define
10 the relevant technology. Then separately and secondly, we
11 have to decide what those rights in the statute, the opt-out
12 rights, the access rights et cetera, when they kick in for
13 what kinds of actions and in what kinds of situations.

14 So with regards, I mean I hear you, Mr.
15 Mactaggart. I just fundamentally do not think that it is
16 the right approach to focus trying to narrow the technology
17 -- the definition of the technology. This seems to me to be
18 a sister point to the one that you were making with the risk
19 assessments. And -- but there are other reasons for that.

20 One is that that is simply what gets us to
21 considering how to put flesh on those rights and when they
22 should apply. So, you know we are not saying in these
23 regulations, or we wouldn't be saying in these regulations
24 that those requirements would apply necessarily every time
25 the overall decision -- the overall definition applies the

1 definition itself is of course inherently limiting in some
2 ways. And it -- and -- but it is part of sort of a
3 step-wise process.

4 It also is part of what we were talking about in
5 the other agenda item about some kind of consistency, et
6 cetera. So while the GDPR does talk about solely automated
7 decision making that has been heavily criticized, it has
8 been very hard to implement and so forth. And we know that
9 the California Legislature, for example, is working on
10 thinking through what is a consistent way to think about
11 this technology, not just for what we are doing, but more
12 broadly in other areas and in other ways.

13 And I will give you an example -- a specific
14 example. I just happen to be looking at the -- at the Civil
15 Rights Council's draft regulations, or I think they might
16 actually be in rulemaking right now. I apologize. I'm not
17 entirely certain. But their definition of automated
18 decision making technology is significantly broader than
19 ours. It just says facilitate.

20 And they -- but they're doing something else, you
21 know, they're -- they're working on something else. So I
22 don't think that -- I think the definition should be as
23 agnostic as possible. And then we look at when it kicks in,
24 and it kicks in ways that are pretty limited compared to
25 some of the statutory language.

1 So for example, if you're undertaking extensive
2 profiling, the statutory language says including profiling.
3 And so this is my -- you know, again, Mr. Laird can maybe
4 shed some light on this, but my understanding was that the
5 subcommittee was offering us some analysis to help us kind
6 of do this in a sort of measured and reasonable way.

7 And it turns on when those requirements apply. I
8 don't think focusing on trying to narrow the definition of
9 ADMT would be productive. And I think that it gets us
10 straight back into that poor practice of regulating some
11 very specifically defined technology when we don't know
12 where it's going to go in the future. So I think we just
13 are seeing that a little bit differently. And I -- you
14 know, I value that the sort of over overarching goal, but
15 that is not how I read how this works. Mr. Le?

16 MR. LE: Yeah, a couple points here, I think the EU
17 AI Act, specifically requires high risk AI systems to have
18 human oversight, you know, someone that's able to override a
19 decision which is, you know, very similar to the human
20 appeal. And I think on a broader -- if we're talking about
21 consumers, if I'm getting a decision that is significant,
22 right? Whether I can go to school, whether I get a job, and
23 an AI system says, no, I'm not happy just because, oh, you
24 had a human somewhere in the process I want someone to look
25 at that decision and explain to me, or give me an actual

1 redress to what could be a very life-changing decision.

2 So, you know I think having a human with
3 meaningful control over a decision that may be inaccurate,
4 may be biased, maybe based off of incorrect data, is a check
5 that consumers really benefit from, especially when we
6 consider all the different ways that we've tried to limit
7 the applicability of this so that it's not an Amazon
8 delivery service, but it's whether or not I get healthcare
9 or whether I get access to, you know, essential services.

10 So I really do think meaningful human, whether if
11 the opt-out can encourage, you know, meaningful human
12 oversight, then I think that's a good thing for consumers.
13 And then on this topic about you know, we have narrowed the
14 language of the statute a bit. It used to be, you know, a
15 broader, if it just helps out in a decision now, is it a key
16 factor?

17 I would just ask the staff to take a look at, you
18 know these new substantial factor languages coming out, very
19 similar, but is it -- you know, is this decision capable of
20 altering the outcome, perhaps that is easier to process for
21 a business than a key factor and maybe an easier legal
22 standard or standard to apply. So yeah, take a look at that
23 language and see if you can get comment on it or perhaps
24 adopt something similar.

25 MS. URBAN: Thank you, Mr. Le. And again, I think,

1 whoops, sorry, there's the echo. I heard an echo. It
2 sounds okay. Now you know, again, I think that, you know,
3 developing the record on all of this is really important. I
4 want to check in with staff on this part of the conversation
5 as well. Mr. Mactaggart made some points about the
6 structure again and the substance and we talked with that.
7 He also, I believe, made an economic point, and I wanted to
8 see if there was any of that you'd like to clarify for us or
9 ask us to clarify.

10 MR. SOLTANI: And I'll just respond really quickly
11 to one point Mr. Mactaggart made, and then I want to hand it
12 over to Phil (inaudible) see if he has what he needs. One
13 just point around the -- that's doing the 1 billion or 1.5
14 billion number you're citing Mr. Mactaggart or Board Member
15 Mactaggart is that in this instance, we took an incredibly
16 conservative approach because of the rapidly changing
17 landscape around AI compliance, around risk assistance and
18 AI.

19 So in other kind of regulatory baseline
20 assessments, we often look at what firms are already doing
21 in this respect. But here we just took an incredibly
22 conservative approach and we didn't factor, for example,
23 firms that are also complying with CDPR or AI Act or
24 Colorado's (inaudible) or even were 2930 to pass. And that
25 compliance (inaudible) bill effect before our regulations

1 are final, that would essentially kind of offset the cost to
2 -- as they're doing very similar kind of undertaking similar
3 work to satisfy the compliance.

4 I just want to clarify, we took that number is on
5 the very conservative side. As I wouldn't rely too heavily
6 on it because as we know today, Colorado's (inaudible) are
7 already in effect and terms are compliant as of AI Act. And
8 then Phil, as if he wanted to kind of try to summarize our
9 --

10 MR. LAIRD: Yeah, thank you. And I don't mean to
11 cut short any further conversation if there was more
12 conversation to be had, but I just want to make sure sort of
13 the expectations of Snap as we move forward. You know
14 again, the kind of constraining element we're under is when
15 we submit the SRIA to finance, it's going to be based on a
16 single text. And I think we have a lot of good ideas, but
17 we can't just come out to -- you're not allowed to propose
18 three versions of text essentially when you start
19 rulemaking, but we can absolutely identify alternatives
20 we've considered, and then obviously we'll receive public
21 comment on that as well.

22 So when we zero in on the alternatives that the
23 discussion today has focused on the primary one I picked up
24 on that we could work with our economists to see if we can
25 incorporate and further update our initial statement of

1 reasons on would be to remove use of ADM in the risk
2 assessment portion and be removing the use of ADMT to make
3 significant decisions. It would be a broader standard of
4 processing personal information to make personal or a
5 significant decision. And that would be the alternative
6 that would be considered, but not necessarily in the text in
7 terms of the draft we're starting with.

8 So I understand that one. Are there any others
9 that sort of the Board is building consensus on -- at this
10 stage of what should be initially considered here that we
11 could sort of identify certainly for an economic estimating
12 purpose, but then also in terms of an actual sort of
13 concrete proposal?

14 MS. URBAN: Thank you. Mr. Mactaggart.

15 MR. MACTAGGART: Yeah, I think we just fast forward
16 a little bit there. Mr. Laird from my perspective I think
17 we still in the ADM world. And so I just -- I just want to
18 say again, I feel like the Mr. (Inaudible) point, the notion
19 of some human involved somewhere you're not comfortable with
20 a significant decision being made. I understand that none
21 of us want to kind of talk to the social security clerk and
22 say, you know, you're -- you've just been, you know, I don't
23 know, denied it's lifesaving operation that you want. Good
24 luck, right.

25 So if businesses are using it to -- as a way to

1 get around having to respond, and that's where the
2 distinction happens. What worries me greatly is essentially
3 our definition is so broad that anytime a human uses
4 software, let's say, you know, you go to a bank and you have
5 a long detailed conversation, get turned down by a loan,
6 we're going to -- and a banking not covered because it's a
7 separate set of rules federally, but if you -- if it's a --
8 if it's essential, goods and service and you don't get the
9 thing that you're looking for, you have this now right --
10 another whole another right which we're creating even if
11 you've been really considered well by that business. So I
12 think that's why for me, the Colorado approach is so much
13 more granular or better where they say, look, there're
14 humans involved, you don't been really substantially
15 involved. You do not get the right to opt-out.

16 However, if the human's only personally involved,
17 you get the right to opt-out. And they distinguish between
18 the fake human and the real human. And I don't know why we
19 don't do that. And it's already there. They already have
20 that statute, and it's -- and it's working and we have this
21 much more cumbersome thing where you say, we get the right
22 to opt-out to everybody. But if you have an appeal right,
23 you don't have to offer it. I think it's backwards. And I
24 think we're going to confuse the world.

25 I think they already have thoughtfully can come up

1 with. So data, I don't know why we don't use it. And I
2 think we get to the same place, but we much less regulatory
3 burden on companies because instead of a company saying, my
4 -- all my activity is covered, I have to offer an opt-out to
5 all of it. A company could have -- a business could have a
6 safe harbor and think, well, none of that's covered. Ninety
7 nine percent of this isn't covered because we have a human
8 involved. That to me, feels much less regulatory,
9 burdensome. And that's why I'm kind of passionate about
10 this because I think -- I do think that it's -- and by the
11 way, I'm not at all disagreeing with you. I agree. You
12 know, you get -- don't get into that thing you really need.
13 It has a better service, but -- and you should be able to go
14 talk to someone about it. So we're not disagreeing on the
15 substance.

16 MS. URBAN: So again, this concept is embedded in
17 the -- in the definition substantially facilitates, for
18 example. I mean, it depends on what part of the ordered --
19 the sort of order -- order of operations you are looking at.
20 Your substantive point, Mr. Mactaggart is very well taken.
21 So is Mr. Laird's.

22 What I want to hear is very -- is again, specific
23 like play this out for us companies and civil society groups
24 and consumers in comments that respond to this language.
25 Because we have discussed this now a couple of times, and I

1 think that we all want this to be both workable and
2 protective of consumers. And we are seeing the sort of
3 structure in slightly different ways.

4 So what we need is specific information from the
5 perspective of those people who would be implementing it on
6 sort of both sides and who would be implementing it on sort
7 of both sides and who would be watchdogs for the public on
8 the civil society side, for example. So I think we could go
9 around and around on this. But I think that what we need is
10 that -- is that kind of concrete information to help us move
11 towards what is pretty much, you know, sounds it -- I
12 believe is a shared substantial share, and we may end up
13 with policy disagreements and certainly the stakeholders
14 we've heard from have, again, those clear policy agreements
15 for us to -- disagreements for us to consider. But in terms
16 of how it all works together, I think we need to hear from
17 the public on that. And we do, I think can agree that we
18 all want it to work well and to be protective and to be
19 implementable. Mr. Le, you had your hand up?

20 MR. LE: Yeah, I -- no, I think you, you
21 encapsulated, well, you know, in my head we're not saying
22 anything very different. You're humans in the front. My
23 humans at the back, you know in my head it's -- you go
24 through an automated process, you get denied, and you go --
25 you call up the company like -- what did I get denied? And

1 they're like, this is why -- that's your appeal. They're
2 like, we -- we looked at it again and it's a no. You know,
3 I call up Amazon once their, you know, their machines deny
4 my return or something. And I'm like, can (inaudible) I'm
5 out of the timeframe, but can I still return it? They'll
6 say, yeah.

7 So I just think we're not too far apart. I think
8 a lot of businesses already have a human appeal option even
9 delivery on Amazon. So, you know I do think we might be,
10 you know, I might hear examples from businesses saying it's
11 impossible for us to have a human appeal and it's going to
12 totally take us out of business. And that's exactly the
13 information that I would need to move off my, you know, my
14 thoughts on this. So I think well said (inaudible) and I
15 really appreciate your point, Mr. Mactaggart.

16 MS. URBAN: I'll also just add that we do have the
17 human at the front as well in the definition of ADMT that we
18 would consider to begin with. And how this all works
19 together I'm just really curious to get some sort of
20 concrete information on because what's clear to me from this
21 conversation is we all want to do it right. Mr. Mactaggart.

22 MR. MACTAGGART: Yeah. I'm less convinced that our
23 -- that our human at the front is quite as at the front as
24 you're saying. But I do -- what I -- what I want to agree
25 with Mr. Le is, you know, if it were limited to denial,

1 that's a -- that's a huge cavity now. So now you're saying
2 if you're denied a service, the whole access to provision
3 gets confusing. So I think there's a lot of ways to do
4 that. I know Mr. (Inaudible) would like more clarity. I
5 mean, and I know -- I don't know how you do that. Ms. Urban
6 with the Board of us here and whatnot here. And so I don't
7 know quite what to do. I don't know what I would do, but
8 one voice here.

9 MS. URBAN: So again my view of it is that we have
10 aired these issues in terms of how we are anticipating that
11 the draft regulations may play out. I think that both the
12 subcommittee and staff have diligently worked to put
13 together a workable framework in light of the great amount
14 of feedback that we've received from outside the agency and
15 our discussions by the Board.

16 And this is the appropriate time to get the tires
17 kicked really hard by the public. I do look forward to
18 whatever additional information we can get with the full
19 SRIA, as I mentioned. But there is something that is just
20 irreplaceable about receiving those formal comments in the
21 formal rulemaking period. And there is a time at which it's
22 simply time to do that.

23 And this, I believe is the time we have -- we have
24 -- I believe that we have mined the field of knowledge about
25 as far as we can. And this is the -- that's the appropriate

1 venue to sort of play this out and hear whether we are
2 completely, you know, misunderstanding on how this would all
3 work or we're getting it close to right, or you know there
4 is, you know, great concern about having this human be at
5 the end as an appeal process or that they would need to move
6 up in the process. Just to give an example.

7 So that's my view of it, I think -- I think the
8 public has heard sort of our thinking about it. Then the
9 draft is there and we've heard from them, but I would really
10 like to hear from them with that language in front of them.
11 But I do think, you know, we do need to get the full
12 information from the -- from the rest of SRIA. We have some
13 specific topics that Mr. Laird has collected as we go.

14 I will ask one more time as well, or not one more
15 time. I'll just ask staff, if there's anything else that we
16 -- that we need to clarify. We won't be taking formal
17 action today. But that is where I think that we are and I
18 think that we -- that we are headed towards or that we
19 should be headed towards.

20 And I also don't mean to cut off the conversation
21 at all. I do have -- I am somewhat mindful of the time.
22 But I want to be sure that we give this the full -- the full
23 airing that it needs, and I want to be sure that we hear
24 from members of the public as well.

25 So let me first ask staff just to check in with

1 them to feel -- to find out if they -- if they have further
2 questions or clarifications, and then I'll go back to the
3 Board to see if we've missed anything that we really need --
4 that we need to talk about.

5 MR. LAIRD: Apologies, I was just speaking with the
6 director. I -- well, I think at this point what I've heard
7 is kind of concretely to investigate or at least represent
8 in the bill making documents, the alternative for risk
9 assessments that I described earlier. And that would be
10 removing the ADMT sort of element of significant decisions
11 and actually just have it being a processing PI (inaudible).

12 I have heard discussion of the other alternatives,
13 although again, in terms of how much to represent the
14 rulemaking package, I don't know if I have adequate clarity,
15 except, you know, I think we could start there with what I
16 just put out in terms of sort of our formal proposal of
17 alternative and just the ongoing commitment from staff.
18 That we certainly hear Board Member Mactaggart would be
19 happy to continue engaging him sort of directly outside so
20 we can kind of identify sort of what the details of a
21 recommendation would look like as we move through a formal
22 rulemaking process.

23 MS. URBAN: Thank you, Mr. Laird. I think that is
24 -- I think that is the, you know, the best place. I think
25 -- I think that is the most reasonable and best place for us

1 to be. I do want to be sure that I check in with the Board
2 as well again. In case there's anything that we have
3 missed. I really appreciate again, the clear conversation.
4 I do think that we have surfaced issues that are very
5 salient and important and that we will need to be informed
6 by the public on. Yes, Mr. Le.

7 MR. LE: Yeah. And I -- this is all recorded, but
8 I think we said SPI. Even though that processing SPI to do
9 significant decision was already encapsulated in there.

10 MR. LAIRD: Oh. So, okay. We can include that. I
11 would just say all processing of SPI for significant.

12 MR. LE: Yeah, I mean, just clarifying, I mean, no,
13 it doesn't increase the number of businesses we're just
14 taking off the gate that's tied specifically to ADMT.

15 MR. LAIRD: Yes. But then we would still -- just
16 to be clear then, for ADMT regulations, though, we would
17 still include, for instance, significant decisions based
18 solely on PI.

19 MR. LE: That's correct. That's what I thought.

20 MR. LAIRD: Okay.

21 MS. URBAN: That was my understanding as well.

22 MR. LE: And then you know to Mr. Mactaggart's
23 point, you know, this access to question on advertising is
24 one I'm not fully sure of, right? You know, we don't want
25 to kill all of advertising. So, you know, just in terms of

1 question, do you ask the public yet, do we want to limit
2 that? How do we limit that? Is it just like when you're
3 advertising the terms or offers of a significant decision or
4 what about just like, you know that Capital One exists or
5 something like that? So yeah, how do we make sure they're
6 not capturing too much on that access too.

7 MS. URBAN: Thank you, Mr. Le. Mr. Mactaggart.

8 MR. MACTAGGART: Yeah. At the risk of continuing
9 to talk too much I'll just say maybe for staff it would be
10 helpful to -- for them to hear kind of what I would support.
11 One is for ADMT, either getting rid of access to or
12 significantly significantly (inaudible) it. I'd be a big
13 fan of also -- because denial is very easy. I'd be a big
14 fan of limiting provision or defining provision.

15 But what's the provision of is an ad of provision,
16 provision of a service, denial is, you know, life changing
17 as it relates says. I would want to have a very much more
18 granular person at the front as opposed to back. So if the
19 person at the front is involved and then there's no opt-out.
20 It's the key -- ADMT gives is the key way to help the
21 person, but the person in the front is, as opposed to saying
22 the ADMT is key to the person, if the person is key to the
23 decision, they'll opt-out.

24 That's what I would say the person substantially
25 involved, which is what Colorado in the decision. No, it

1 doesn't matter whether they're using ADMT or not. Doesn't
2 matter whether using AI or not. There is a human being
3 substantially involved in decision still locked out. That's
4 what I -- that's my big concern. And then I would force, if
5 you need to increase the threshold to the cost regulation is
6 unbelievable. So I would increase the revenue threshold
7 probably.

8 MR. LAIRD: On the ADMT regulation.

9 MR. MACTAGGART: Yeah, I'd do it -- I'd do it on
10 all of them. Yeah, I mean, \$1.4 billion for regulation for
11 just California businesses, it doesn't even cover the
12 businesses that are not located in California. I don't --
13 you know, we need to -- I just feel like as a new agency in
14 a new world, let's walk before we run extraordinary costs
15 that I think will not help privacy as much as they will hurt
16 our thought.

17 MR. LAIRD: So, Mr. Mactaggart I certainly hear all
18 of those. I don't know if we can adequately represent all
19 of those alternatives in these documents in part because I
20 think some of them require further definition, which is what
21 you were looking for, but it would require staff to
22 essentially make a kind of random call at this point on what
23 that would be, including if we're going to raise threshold.
24 So again, I'm just trying to get clarity on what the
25 expectations the Board are in terms of an opening package.

1 MS. URBAN: Thank you, Mr. Laird. I think that
2 there were the risk assessment item that you identified and
3 a couple of other questions the Board has identified. I
4 think anything that we can reasonably put into the package
5 as a question would be helpful, I would not be in favor of
6 opening up the structure of the regulations again before
7 again, we hear it from comment. I do think that if folks
8 want to comment on some of this they have our conversation
9 to respond to as well as everything that goes into the
10 package.

11 I thank Mr. Mactaggart for being very clear about
12 his view of how he would do some of these things. I think
13 that's helpful for the public and I think it's helpful for
14 staff. And what I would like to do is leave it to the
15 discretion of staff to figure out what is reasonable to be
16 able to include in that call to the public. With the
17 understanding that it, you know, the public can comment on
18 anything. And we see how things may affect various parties.
19 We can have a more informed discussion during the formal
20 rulemaking process.

21 MS. MAHONEY: One, thing that might be helpful to
22 clarify just on the risk assessment alternatives that the
23 Board asked us to consider if we did limit it to just the
24 use of sensitive personal information to make a significant
25 decision, we would in fact not be broadening the risk

1 assessment requirements would be narrowing it because
2 businesses under 7150 B2, which is requiring a risk
3 assessment, if you are processing sensitive personal
4 information, they would already be required to do a risk
5 assessment for that type of use of SPI.

6 So I just wanted to make sure that that was clear.
7 We already have a threshold that addresses that use of SPI
8 in the existing draft, and the ADMT threshold that's
9 separate from that for a significant decision makes clear
10 that aside from processing SPI to make any type of
11 significant decision, if you are using ADMT, regardless of
12 the SPI Nexus, you would also be required to do a risk
13 assess.

14 So that's just one thing I wanted to clarify, but
15 of course, we're happy to take the direction from the Board.
16 I just wanted to make clear, this would not be broadening
17 with the risk assessment threshold. They would be narrowing
18 it.

19 MR. LE: Yes. We (inaudible) either way. I think
20 we talked about it and I think broadening it to PI for any
21 significant decision is too broad. So I think there's no
22 change. I think we're -- we're I think my expectation is
23 you proceed to our September meeting text, mostly unchanged.
24 But lots of alternatives spelled out in request for
25 comments.

1 MR. MACTAGGART: Very well. We can absolutely
2 accommodate that.

3 MS. URBAN: Thank you, Mr. Le was able to
4 articulate that more succinctly than I did. So thank you.
5 All right. We can -- I can return if something occurs to
6 someone. But at this time, I would like to call for public
7 comments on this item.

8 MS. MARZION: This Agenda Item 8, discussion and
9 possible action to advance draft regulations, the formal
10 rulemaking for automatic -- automated decision making
11 technology, risk assessment, cybersecurity audits,
12 insurance, and updates to existing regulations. If you'd
13 like to comment at this time and you're in person, you can
14 make your way to the podium. If you are on Zoom, please
15 raise your hand using the "raise hand" feature or by
16 pressing star nine if you're joining us by phone. This is
17 for Agenda Item number 8, and we do have some hands raised.
18 Matt Regan, I'm going to unmute you. You have three minutes
19 to make your comment. Please begin as soon as you're ready.

20 MR. REGAN: Good afternoon, Board members. Matt
21 Regan with the Bay Area Council. We are a 78-year-old
22 employer-sponsored public policy and advocacy organization.
23 Our mission is to keep the Bay Area the best place in the
24 world to live and work. And we'd like to think we've done a
25 pretty reasonable job at that over the last 78 years.

1 We are particularly concerned currently about the
2 State of our region's economy. A recent survey by the Bay
3 Area Council Economic Institute found that out of 25 peer
4 metro economies the San Francisco economy is 24th out of 25
5 in terms of post COVID recovery. The San Jose metro area is
6 19th out of 25, so not good by any standard.

7 The one bright spot in our region's economy is
8 artificial intelligence. Just one block away from where
9 you're sitting today Hayes Valley is home to over 80
10 artificial intelligence startup companies. It is the
11 potential savior of our economic malaise.

12 In 2023, 25 percent of all venture capital
13 investment in the United States was in artificial
14 intelligence. A total of \$31 billion were invested, 22.2
15 billion of that was invested right here in the Bay Area.
16 Unicorn companies, companies valued at a billion dollars or
17 more that had an IPO or other liquidity event in 2023.
18 There were 35 of them in the US. Twenty two are located
19 here in the Bay Area. So artificial intelligence is
20 critical to our region's economy.

21 So we are urging that you do this slowly, you do
22 it right, and you do it in a balanced fashion. We all have
23 a great deal of concern for consumer protection, but it
24 can't be at the expense, or it must not be done in a manner
25 that puts our economic growth and prosperity at risk. It

1 has to be done in a balanced manner. Which is why we
2 support the Governor's executive order. We believe that is
3 the right approach. And we have communicated that to the
4 governor's office.

5 We would like that any regulations that are made,
6 are done in conjunction with the State legislature. The
7 sausage that's made at the State is not often pretty. But
8 the process quite often is the best process. It's
9 deliberative, it allows all of the stakeholders to have
10 their say. And we believe that that is the best place for
11 these regulations to be made in conjunction with this body
12 and with the governor's office.

13 So we are happy to hear. It appears that no
14 action will be taken today, and that we urge that when
15 action is taken, that it is done in a balanced manner with
16 our economy in -- as a priority as well as consumer
17 protection, and that it is done in concert with the
18 legislature and the governor's office. Thank you very much.

19 MS. MARZION: Thank you for your comment. Tasia
20 Kieffer, I'm going to unmute you. You have three minutes to
21 make your comment. Please begin as soon as you're ready.
22 Tasia Kieffer, go ahead and unmute yourself.

23 MS. KIEFFER: Hello, my name is Tasia Kieffer and
24 I'm here on behalf of the LA County Business Federation,
25 also known as BizFed. BizFed is composed of over 245

1 diverse business organizations representing 420,000
2 employers and 5 million employees across Southern
3 California. Thank you for allowing public comment today.
4 And thank you for holding off on taking a vote on the
5 drafted proposed rules.

6 In their current form, the drafted rules propose
7 significant consequences for California businesses and the
8 economy. The drafted rules are very confusing for the
9 businesses that will have to potentially comply with them,
10 and many businesses still have questions without clear,
11 proper answers.

12 And that being said, I would like to specially
13 thank Board Member Mactaggart for your comments about
14 narrowing the definition of ADM and for emphasizing
15 providing additional clarity on the rules regarding risk
16 assessment. We appreciate your sentiments.

17 I would still like to highlight some of board
18 members' specific concerns regarding the proposed rules. We
19 recommend that the Board should remove behavioral
20 advertising from activities that would give rise to an
21 opt-out if automated decision making is used. The CCPA
22 already provides for an opt-out for sharing, which includes
23 cross contextual behavioral advertising. Expanding this
24 opt-out may conflict with the statute.

25 Secondly, cybersecurity requirements are required

1 by the audit, are more extensive than any other government
2 requirements, and do not follow a specific framework. By
3 including this, the agency is creating a backdoor to
4 security requirements. And in reference to the drafted
5 rules to allow consumers to opt-out from their data being
6 used for the purpose of training AI models is a concern.

7 By allowing consumers to opt-out of having their
8 data used for training, the model will actually become worse
9 as a result, hurting consumers by reducing the potential for
10 innovation and increasing risk of bias. The lack of an
11 opt-out mechanism would not affect securing privacy of any
12 consumer because the data would be used generically for
13 modeling. Modeling relies on trends and patterns and data
14 overall, not an individual's data. In fact, it's an
15 important way to mitigate bias.

16 And finally, we understand that the agency's
17 intent with the proposed regulations is to ensure that the
18 consumer privacy remains a primary focus as new technologies
19 are developed. However, the proposed draft rules do not
20 help businesses accomplish the goals that you have set
21 forth.

22 To that end, we strongly encourage the agency to
23 streamline with the legislature and the governor's office.
24 And we urge you to await moving forward on taking a vote on
25 this. Until we know where the State legislation stands,

1 this will better serve not only our businesses, but
2 Californians and our economy, and help ensure that the
3 agency does not exceed the authority and the purview granted
4 by voters. Thank you for your time.

5 MS. MARZION: Thank you. Peter Leroe-Munoz you
6 have three minutes. I'm going to unmute you now. Begin
7 when you're ready.

8 MR. LEROE-MUNOZ: Good afternoon. My name is Peter
9 Leroe-Munoz and I'm speaking on behalf of the Silicon Valley
10 Leadership Group, a business association that represents
11 innovation companies on matter of policy at the local,
12 state, and federal levels.

13 We wish to raise several concerns with the
14 proposed regulations, and we are also grateful that no
15 action is taken today. We echo the concerns that were just
16 shared by the representative from the Los Angeles County
17 BizFed as it relates to behavioral advertising, as well as
18 opting out as it relates to automated decision making.

19 In addition, the scope of the draft risk
20 assessment regulations is far beyond that of other State
21 privacy laws and beyond the bounds of the underlying
22 California privacy law as well. The scope would create
23 extensive compliance obligations across a broad array of
24 processing activities that go far beyond the contours of
25 what is commonly understood to be privacy regulation and

1 stray into other areas, including substantive regulation of
2 artificial intelligence.

3 Further cybersecurity requirements as required by
4 the audit, or more extensive and prescriptive than any other
5 government requirements, and do not follow a specific
6 framework or refer to specific standards. By including this
7 or considering this, the CPPA is effectively creating a
8 backdoor to security requirements from what is supposed to
9 be a limited to an audit requirement as stated earlier.

10 Finally, the degree of board oversight of the
11 cybersecurity audit in the proposed regulations is not
12 reasonable. These go beyond accepted norms of board
13 involvement in publicly traded companies. Further, the
14 requirement that a board member has to sign the
15 certification is not in the ordinary duties of the board of
16 directors and should rightfully be fulfilled by a business
17 executive with authority to certify on behalf of the
18 business and who is responsible for the Business'
19 Cybersecurity Program. Thank you for your attention to
20 these concerns.

21 MS. MARZION: Thank you. Dietrich, I'm going to
22 unmute you at this time. You have three minutes to make
23 your comment. Please begin as soon as you're ready.

24 MR. DIETRICH: Good afternoon. My name is Damon
25 Dietrich. I'm a privacy officer at the California

1 Department of Insurance. As Mr. Laird and Ms. Kim alluded
2 to, we've had some discussions previously about the
3 insurance regulations. I can't say enough about their
4 professionalism and subject knowledge and really thank the
5 collaborative spirit with which they've approached the
6 subject.

7 That said, the department does have some concerns
8 that the insurance regulations are premature at this time.
9 As was alluded to, the department is participating with the
10 National Association of Insurance Commissioners in
11 developing a new privacy model law which will hopefully be a
12 uniform standard for all of the 50 states.

13 Obviously it's going to take some time to get all
14 50 States aligned in the same direction, but these efforts
15 are ongoing and we hope to have a model finalized in the
16 near future. We do have some concern that adopting a new
17 regulation pertaining to the insurance industry at this time
18 is just going to cause some confusion. So in any case we
19 look forward to further collaboration with your agency, and
20 we appreciate the important consumer protection work that
21 you're doing. And thank you for your time and attention.

22 MS. MARZION: Thank you. Brynne O'Neal, I'm going
23 to unmute you. You'll have three minutes to make your
24 comment. Please begin as soon as you're ready.

25 MS. O'NEAL: Good afternoon. I'm Brynne O'Neal,

1 regulatory policy specialist with the California Nurses
2 Association. A labor union representing over a hundred
3 thousand registered nurses throughout the State. Nurses see
4 healthcare employers rapidly adopt ADMT's as a cost cutting
5 measures that automate de-skill and devalue the work and the
6 professional clinical judgment of nurses.

7 Nurses urge the CCPA -- CPPA and State regulators
8 to use what we call in the healthcare field, the
9 precautionary principles when approaching ADMT. The use of
10 automated tools in clinical prediction and assessment leaves
11 patients without the human to human relationship. That is
12 the basis for nursing, undermining nurses' professional
13 judgment, and threatening both patient and worker safety.

14 So the final CCP -- CPPA regulations must be
15 drafted broadly to ensure pre-market testing and regulatory
16 approval of any new technology in healthcare. Before
17 they're deployed with ongoing monitoring to ensure that
18 ADMT's are safe, effective, therapeutic, and equitable. The
19 burden of demonstrating safety should rest with developers
20 and deployers not patients and their caregivers. We must
21 establish clear red lines around the use of these tools in
22 healthcare to ensure that they do not replace nurse's
23 clinical judgment and do not put patients at risk or harm.
24 We'll send more detailed comments as the rulemaking process
25 continues. Thank you for your work.

1 MS. MARZION: Thank you. (Inaudible) I'm going to
2 unmute you at this time. You have three minutes to make
3 your comment. Please begin when you're ready. (Inaudible).
4 Robert's iPhone. I'm going to unmute you at this time. You
5 have three minutes to make your comment. Please begin as
6 soon as you're ready.

7 MR. HERTZBEG: Thank you very much. My name's
8 Robert Hertzberg. I as the honor of serving as the former
9 speaker of the California legislature and the majority
10 leader of the California State Senate. While I was in the
11 Senate, I spent hundreds of hours negotiating with Mr.
12 Mactaggart to write the privacy law to form the foundation
13 of your agency.

14 I also am the person who created with Mr.
15 Mactaggart and negotiated with him and others in that room
16 the prop 24, which created your agency. And I'm involved
17 and know every single detail of what was -- what transpired
18 with respect to your matter, with respect to this measure.

19 I'm very proud of your work to listen today and to
20 listen to what you've done. It's extraordinary to take and
21 give birth to something like this and to watch how hard
22 you've worked and the level of intelligence that has been
23 brought to this. But I'm participating today because I am
24 deeply concerned about what your process is with respect to
25 AI regulations. The outset of this meeting, the Chair Urban

1 talked about this is part of an ecosystem and we have to
2 cooperate.

3 A member -- Board Member Drew Leper(ph) talked
4 about process sensitive. We have a situation now where I
5 used to serve many years ago on a board that was regulated
6 and dealt with the APA and how we dealt with this. This is
7 so fundamentally different. We have a governor who has been
8 so involved with budget cuts, has been so involved with his
9 ballot.

10 We -- for those who are at the meeting with the --
11 with Berkeley and Stanford as I was, he cares deeply about
12 this issue. He's issued an executive order. This is a
13 dramatically exchange -- changed area. And the discussion
14 that you're having involving something that's so important
15 in my judgment, is so limited, and the speed with which
16 you're trying to move on these very minor changes in
17 something that is so spectacularly impactful.

18 When we drafted this, we talked about privacy. We
19 put in a couple of lines about AI, and now this becomes the
20 AI agency. The bottom line, from what I'm trying to tell
21 you is we now have 39 bills in the legislature. What have
22 you done to analyze what your regulations are with respect
23 to that? What communication has there been with the
24 governor's office with respect to where he wants to go and
25 aligning this with respect to his executive order?

1 This is a gigantic gigantic measure and to wait 30
2 days or whatever it may be under the circumstances, we saw
3 what happened with Europe. I was involved with GDPR. We
4 know how long all this stuff took. It is not right to move
5 so quickly, and the like. And I would suggest that it's
6 inappropriate for this agency. It -- in my judgment, this
7 really undermines the institutional credibility of this
8 critically important agency that I put my guts into. And it
9 makes my, you know, it's just painful to watch. And here
10 you are talking about putting something before the
11 Governor's Department of Finance where no one's talked to
12 the Department of Finance. You need direction from the
13 governor and you need direction from the legislature in
14 terms of making this happen.

15 And I would suggest lastly that to the extent that
16 there's been some arguments about the litigation, I don't
17 know with respect to the chamber. But the bottom line is
18 somebody I'm guessing needs to talk to the Chamber of
19 Commerce and find out they pushed this back. There is no
20 urgency on something that's this gigantic and an agency
21 that's this important on an issue that is so fundamental to
22 the economy of California. Thank you for --

23 MS. MARZION: Thank you so much for your comment.
24 If there are any other members of the public who'd like to
25 speak at this time, please go ahead and raise your hand

1 using Zoom's "raise hand" feature or by pressing star six if
2 you're joining us by phone. This is for Agenda Item number
3 8. Are there any members here who are present who'd like to
4 speak? Madam Chair. I'm not seeing any additional hands
5 this time.

6 MS. URBAN: Thank you very much, Ms. Marzion, and
7 thank you to each and every person who commented. That is
8 very helpful. I do want to clarify one more time that we
9 are not taking action today, but the next section we would
10 take would not be to adopt these rules. It would be to go
11 into formal rulemaking, which is another information
12 gathering process that is more formalized. So I think it's
13 really important to understand that fact.

14 And I -- and again, I very much appreciate the
15 public comment. I want to do a quick time check. It is 10
16 to 5:00, and I've really appreciated the care and the
17 attention and the frankly stamina that the Board and staff
18 and public have demonstrated as we walk through a number of
19 very complicated issues today. As Senator Hertzberg said,
20 this is -- this is a major set of issues in the state of
21 California. And I've really appreciating the care. We do,
22 as I understand it need to end around 5:00, or is it exactly
23 5:00. Mr. Soltani, could you give me a quick process and
24 administrative update here?

25 MR. SOLTANI: We technically need to leave at 5:00.

1 I think a few minutes is probably okay, but I want to be
2 respectful of folks' time. I also understand there's one
3 other comment -- one hand raised. I don't know if you want
4 to -- if you want to recall, that item has allowed one more
5 comment, but yes, 5:00 and we have (inaudible).

6 MS. URBAN: Okay. We have another substantive
7 agenda item of talking about future -- potential future
8 agenda items. I want to be sure that we don't miss any of
9 those, but I think that I have a good list that I've been
10 keeping and hopefully that will be pretty -- pretty
11 efficient. Again, I really appreciate the information that
12 has come out today. So -- and I do want to be sure that we
13 make time for the public, so if it is possible for us to
14 stay for just a few extra minutes, then I would like to
15 return to public comment. Mr. Soltani, would that be okay
16 if we take, I don't know 10, 15 minutes more?

17 MR. SOLTANI: I think so, we do that.

18 MS. URBAN: Okay. Mr. Liebert, sorry you had an
19 intervention?

20 MR. SOLTANI: Mr. Liebert has to (inaudible) on the
21 dot.

22 MS. URBAN: Okay. Well, in that case, what I'm
23 going to do is move to the next agenda item so that Mr.
24 Liebert has a chance to weigh in on any future agenda items
25 if he would like. And then I can recall this topic to hear

1 those last couple of public comments. So thanks everybody
2 for your patience as we -- as we manage our time and try to
3 take in as many -- as many pieces of information as we can
4 in our meeting today.

5 So moving to Agenda Item number 9, this is a
6 future agenda items. As a reminder, this is the protected
7 time or the time on the agenda where we can bring up
8 potential topics for future board meetings. We cannot
9 discuss them in substance. We can just consider whether to
10 -- whether to add them to a future agenda.

11 From today, I have a number of agenda items on the
12 list. One is adequacy, so this is a holdover from May when
13 Mr. Mactaggart brought it up. We received the update from
14 Director Soltani and we talked about paths forward. I
15 expect and propose that we will take this up later in the
16 year. But I would like to leave that to staff the best
17 order of how to bring in the voices within California and
18 the voices from the EC so that we understand what next steps
19 might be. Strategic plan and how that compares to growth,
20 hiring, and thinking about the structure of the agency as we
21 move forward was something that I brought up.

22 I don't think this is immediate, but we are
23 working under a strategic plan and I think it's important
24 that we remain strategic. Item that came up under
25 enforcement but also relates to growth in human resources.

1 Mr. Mactaggart requested that we consider 1798.199.30. And
2 our ability to contract for services that can't be provided
3 by its employees. We'd like to understand that some more.

4 Obviously, we are still doing work discussion wise
5 on automated decision making, cybersecurity audit risk
6 assessment regulations. And we have now planned to take up
7 the insurance regulations in a future conversation according
8 to what Ms. Kim suggested, so that we are on top of that.
9 And the changes that may come with activities by the
10 legislature and the department of insurance. And I think
11 the gentleman from the Department of Assurance as well for
12 Wayne.

13 And there -- and this adds to my running list from
14 previous meetings a report out on public awareness, budget
15 details and breakdown, and Mr. Mactaggart mentioned again
16 today as well. If there are metrics for success that we are
17 reaching people that we know that they're understanding
18 their rights. That businesses are getting guidance that
19 would be wonderful as well. And so I add that to the list.

20 And further to public awareness, Mr. Liebert
21 pointed out that, you know, there are some technologies, for
22 example, like cookies that can be pretty mysterious to
23 people. And updates on how educating people and helping
24 them understand their rights and how those things actually,
25 how the tech works is on -- is on the list as well. In May,

1 Mr. Worthe requested hearing about comments received from
2 the data broker industry as the data broker registry moves
3 forward, the regulations related to the data broker
4 registry.

5 That brings me back again to the fact that we do
6 generally have a regularized meeting in September on our
7 calendar. We tentatively took it off this year because we
8 had moved the hiring metrics up to this month to July. And
9 our executive director has an ongoing delegation at this
10 point, which of course we can revisit at any time. However
11 we have more to talk about with regards to the regulations
12 we were discussing today.

13 And this would be -- and staff tells me that we
14 will need to talk about the data broker draft regulations
15 that are undergoing formal rulemaking right now. So I would
16 like to ask that we be prepared to have a September meeting
17 and that those items will be part of that agenda. Not yet
18 scheduled, but still and the list in the hopper is Mr.
19 Mactaggart requested consideration of rulemaking that would
20 implement the right to delete -- to include partial
21 deletion. And that may be potentially for the November
22 regularized discussion of rules.

23 In any case, it is on the list. The rulemaking
24 process subcommittee Ms. De la Torre and I finished that
25 out. I didn't start it, but we finished it out. We do have

1 learnings to share and I will slot those in when I can.
2 Similarly, we are still working through some last items on
3 the board handbook. And that will come back when we -- when
4 we can, and we will eventually need to talk about the grant
5 program updates and processes.

6 I know board members are interested in that and I
7 know that staff is interested in letting us know how that's
8 developing at the appropriate time. That is my list, I will
9 simply, in the interest of time, refer people to the
10 regularized calendar for the high level list for upcoming
11 meetings and ask if board members have additional items they
12 would like to consider for a future board meeting. Okay,
13 great. Thank you very much. Are there additional items
14 from the public?

15 MS. MARZION: This is for Agenda Item number 9,
16 future agenda item. If you'd like to make a comment at this
17 time, please raise your hand using the "raise hand" feature
18 or by pressing star nine if you're joining us by phone.
19 This is for Agenda Item number 9, future agenda item. We
20 have a hand raised then -- sorry, one moment.

21 MS. URBAN: We do have hands raised for -- we did
22 have hands raised for Agenda Item number 8. And so
23 unfortunately, I need to recall that item in order to hear
24 those comments. So those of you who want to talk on Agenda
25 Item number 8, if you might take your hand down for just a

1 second. Okay. Is the -- are there any additional agenda
2 items to suggest from members of the public under this
3 agenda item, Agenda Item number 9.

4 MS. MARZION: Madam Chair. I'm not seeing any
5 hands raised at this time.

6 MS. URBAN: Thank you very much. And thanks to the
7 Board as well. With that, let me recall Agenda Item number
8 8 to check if there is any additional public comment on that
9 agenda item before we adjourn.

10 MS. MARZION: Okay. For Agenda number 8, we have
11 Ronak Daylami. I'm going to unmute you at this time. You
12 have three minutes. Now, they're gone. Go ahead and start
13 when you're ready.

14 MS. DAYLAMI: Hi, can you hear me this time.

15 MS. MARZION: Yes, we can hear you.

16 MS. DAYLAMI: Okay. Thank you. Thank you. Ronak
17 Daylami with Cal Chamber. Our members understand the
18 importance of consumer protection guardrails as technology
19 rapidly evolves. And they also understand the impact of
20 overregulation all too well. Unfortunately, we have shown
21 up to each meeting flagging that the draft regulations are
22 overly broad, vague, and at times going far beyond the realm
23 of privacy, if not exceeding the agency's actual authority.
24 Including in how the regulations have veered into a general
25 AI regulatory framework. And yet these issues persist even

1 with members of the board sharing similar concerns.

2 This is especially alarming to us as the agency
3 would be getting ahead of the legislature and governor on AI
4 issues. Which are of massive statewide importance issues
5 that should first be debated and decided by elected
6 officials who examine policy changes in the broader context
7 and not just through a single lens. Ultimately setting the
8 overall policy direction for the state on such matters and a
9 process designed for meaningful engagement and thoughtful
10 consideration of different policy implications, legal
11 rights, and competing interests.

12 We stand on the precipice of tremendous
13 opportunity as AI carries the potential to generate the
14 greatest growth and economic activity since the last
15 industrial revolution. California has a strong lead in this
16 field, and it stands to competitively gain or lose more than
17 any other state. The governor's executive order understood
18 the risk, encouraging reasonable guardrails in AI
19 regulations, but also accelerating the adoption of
20 beneficial uses of AI to encourage technological growth and
21 economic prosperity.

22 The agency's current approach, however, stands to
23 undermine that directive as well as the state's economic
24 interests. Despite agreement among much of the broader
25 technology business and policy communities across the US and

1 the world. That pre-emptive efforts to restrict the
2 technology in the absence of clear information and
3 risk-based use cases can damage economic competitiveness.
4 California cannot afford to get this wrong and the agency
5 should not rush ahead on what would now constitute premature
6 regulations, especially given questions about its authority,
7 risk to the economy, unintended consequences, and now
8 confusion or conflict with pending state actions.

9 The legislature is currently considering dozens of
10 AI related bills, examining whether existing law provides
11 sufficient protections for any number of concerns, defining
12 key terms like AI and ADT, and deciding which agencies
13 should enforce various laws and more. We encourage the
14 Board to refrain from advancing to formal rulemaking until
15 after the legislative process is completed. At which point
16 it should reassess the draft regulations and align them to
17 the statutory framework and state priorities as well as the
18 agency's authority.

19 As drafted we do have some concerns that the
20 regulations continue to contravene the law out of -- for
21 example, with the opt-out right for behavioral advertising
22 voters granted the -- an opt-out right for sharing -- I
23 apologize, I'm trying to get to all my points. Voters
24 granted an opt-out right against sharing for cross context
25 behavioral advertising only. It's also incredibly

1 concerning that these regulations effectively include
2 backdoor security requirements and the -- what's supposed to
3 be an audit requirement. And lastly, we are concerned that
4 you stay focused on high risk use cases and not lower risk
5 activities like training AI. Thank you.

6 MS. MARZION: Thank you for your comment.

7 MS. URBAN: Wonderful. Thank you very much. We
8 will need to adjourn. Ms. Marzion, I just want to do one
9 last double check on public comments on this item.

10 MS. MARZION: Okay. But this is for Agenda Item
11 number 8. If you'd like to make a comment at this time,
12 please raise your hand using the "raise hand" feature or by
13 pressing star nine if you're joining us by phone. Again,
14 this is for Agenda Item number 8. Madam Chair, I'm not
15 seeing any hands raised at this time.

16 MS. URBAN: Great, thank you. And thank you very
17 much again to the public for the comment. And I'm glad that
18 we were able to fit everyone. And thank you so much Board
19 Member Liebert, I know that you need to go. And I want to
20 thank you for your contributions to the discussion today as
21 well as Board Member Le and Board Member Mactaggart and all
22 of the guidance and information from the staff as well as
23 from the public.

24 With that, we will move to Agenda Item number 11,
25 which is our final item, and adjournment. Again, my many

1 thanks to everyone. These are challenging issues, they are
2 complicated issues, they are difficult issues. And we
3 really appreciate hearing from stakeholders and from the
4 careful consideration that everyone is bringing to these
5 topics. With that -- and I also want to, again, thank the
6 staff who's helping us with our hybrid meetings so that we
7 can make these meetings as accessible as possible to as many
8 people as we can. With that, may I have a motion to adjourn
9 the meeting?

10 MR. LE: I'll so move.

11 MS. URBAN: Thank you very much. I have a motion.
12 May I have a second?

13 MR. LIEBERT: You sure can.

14 MS. URBAN: Thank you Mr. Liebert. I have a motion
15 and a second to adjourn the meeting. Ms. Marzion, could you
16 please conduct the roll call vote.

17 MS. MARZION: Yes. This is a motion to adjourn.
18 Board Member Le?

19 MR. LE: Aye.

20 MS. MARZION: Board Member Liebert?

21 MR. LIEBERT: Aye.

22 MS. MARZION: Board Member Mactaggart?

23 MR. MACTAGGART: Aye.

24 MS. MARZION: Chair Urban?

25 MS. URBAN: Aye.

1 MS. MARZION: Madam Chair, you have four aye's.
2 Thank you. Adjourn.

3 MS. URBAN: Thank you very much. The motion
4 carries with a vote of four to nothing. Again, thanks very
5 much for all of your work today. And this meeting of the
6 California Privacy Protection Agency Board stands adjourned.

7 (END OF RECORDING)

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