

CALIFORNIA PRIVACY PROTECTION AGENCY

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**California Privacy Protection Agency Board Meeting****November 15, 2021****MEETING MINUTES****Board Members Present:**

Jennifer M. Urban, Chairperson
Lydia de la Torre, Board Member
Vincent Le, Board Member
Angela Sierra, Board Member
J. Christopher Thompson, Board Member

Staff Present:

Ashkan Soltani, Executive Director, California Privacy Protection Agency
Brian Soublet, Interim General Counsel, California Privacy Protection Agency
Debra Castanon, Interim Deputy Director of Administration, California Privacy Protection Agency
Thomas Bruder, Deputy Attorney General, Government Law Section, California Department of Justice
Trini Hurtado, Conference Services Coordinator, California Department of Justice
Susan Wayland, Executive Assistant, California Department of Justice

Agenda Item 1 Call to Order and Establishment of a Quorum
Jennifer M. Urban, Chairperson

Chairperson Urban called the meeting of the California Privacy Protection Agency (Agency) board to order on November 15, 2021; at 9:05 A.M. Chairperson Urban made opening remarks and went over logistical announcements. She informed all attendees that the meeting would be held in accordance with the Bagley-Keene Open Meeting Act and that the meeting is being recorded. Rules and procedure for making public comment were reviewed. Chairperson Urban thanked the board members and staff.

Moderator Trini Hurtado called roll. All five board members present. Quorum established.

Agenda Item 2 Executive Director's Update
Ashkan Soltani, Executive Director

Executive Director Soltani began by stating his focus has been getting up to speed with the Agency's current operations. This includes becoming familiar with the partner and control agencies the board relies on as well as identifying what policies and procedures are necessary. He also expressed gratitude to the support agencies that

are currently supporting the Agency. Executive Director Soltani reiterated that the Agency has expanded its arrangement with the Attorney General's Office as reported at the last board meeting, and he wanted to thank the AG's office for their legal support as well as operational support such as in this meeting.

The Agency has one full-time employee, the Executive Director, along with one part time employee, Retired Annuitant Mr. Brian Soublet, who is acting as Interim General Counsel. Debra Castanon has also been supporting the Agency in a part time capacity and even extended her contract through this month. Executive Director Soltani expressed his gratitude and thanked Ms. Castanon for her service in getting the Agency started.

As far as hiring, it is the opinion of the Executive Director that the Agency needs to accelerate hiring of in-house staff. The hiring of a Chief Deputy Director of Administration is underway and applications are under review. Applications are also under review for the General Counsel position. Executive Director Soltani's next priorities include hiring an HR liaison to allow the Agency to hire more expeditiously, working to establish key positions in the system to accelerate hiring, and working with DGS to streamline operations in order to hire more quickly. The Agency will also continue to work with the Department of Justice (DOJ) to obtain additional needed resources and support.

Regarding rulemaking, the comment period for the preliminary Invitation for Comments has closed. Several dozen comments were received from the public. The Agency is processing those comments and they will be made available on the website once processing is completed.

Executive Director Soltani stated that moving forward his focus is working on resources to support the rulemaking and the hiring. He is hopeful this is in alignment with what the board is thinking and he welcomes feedback and comments from the board.

Board Member Le inquired as to Mr. Soltani's thoughts on hiring someone to do outreach and PR, to help with the informational hearings and educating Californians on their rights.

Executive Director Soltani replied that after hiring the HR liaison as well as establishing roles, the next task would be to identify what are the key functional senior roles, of which this type of Outreach and PR role would be included. There are also some infrastructure needs the agency has around finance and additional public affairs type of roles. Mr. Soltani desires to do this hiring in parallel, versus serial.

Board Member de la Torre stated she is hoping to get an update on the plans to hire an auditor, as she understands this is a key position and that there is difference as to the processes this hire has to go through because it is called out within the CPRA. Is there a timeline, or would the Executive Director be waiting for the enforcement process to start?

Executive Director Soltani replied that he has not personally made any inquiries. His personal opinion is that the Agency is currently far off from enforcement and still defining rulemaking and outlining the audit authority. He will defer to the board as to when to make that appointment, as it is a board hire. As mentioned, his first priority is to hire the HR liaison, then get rulemaking underway, and then proceed to the other tasks such as enforcement and auditing.

Chairperson Urban agreed that getting the HR liaison first is important as that person supports all of the rest of the hiring. She also stated that the Chief Privacy Auditor could provide the Agency input on audit authority, and if the board would like to talk about that, time can be slotted in for that discussion.

Board Member Thompson thanked Executive Director Soltani for his update, and agreed with the Executive Director's prioritizations. He does not want to lose sight of the need for an organizational design process, and what that process looks like as these hires are being made. What is the organization going to look like? Board Member Thompson stated the Agency has unique challenges and opportunities with having a budget, and not positions.

Board Member Sierra also agreed with the path outlined by the Executive Director of working in parallel with hiring and rulemaking. She stated that her feeling is that the HR, outreach and rulemaking hires mentioned will help to move things forward much more quickly, and give the infrastructure needed to move forward with civil service hiring. In regards to the Privacy Auditor position she feels it would be helpful to hold off on this position for now given the priorities and issues already mentioned.

Chairperson Urban echoed the board members' thanks and sentiments to the Executive Director for his presentation and stated that she is looking forward to hearing more about his plans for future needs.

No Public Comment

Agenda Item 3 Approval of September 7-8, September 24, and October 18, 2021 Meeting Minutes
Jennifer M. Urban, Chairperson

Chairperson Urban stated that, as mentioned in the last board meeting, the Agency is still short on staff, which has resulted in some tasks taking some extra time. Staff is still working on the September 7 and 8, 2021 meeting minutes. The September 24, 2021 and October 18, 2021 minutes are ready and are included in today's meeting materials. Chairperson Urban also noted that recordings of all board meetings are available on the Agency's website and YouTube channel. She expressed her gratitude to the Office of the Attorney General staff for taking minutes for the October 18, 2021 board meeting and for today's meeting.

Chairperson Urban inquired if board members have any additions or corrections to the September 24, 2021 minutes as submitted.

No Board Member Comment

No Public Comment

Chairperson Urban requested a **motion to approve the September 24, 2021 Board Meeting Minutes as submitted.**

Board Member Thompson moved.

Board Member Le seconded.

Roll call vote taken. **Motion Approved 5-0.**

Chairperson Urban stated that she will work with staff and the Executive Director to have the "DRAFT" designation removed from the approved September 24, 2021 meeting minutes and to have them posted to the Agency's website.

Chairperson Urban then moved on to the October 18, 2021 meeting minutes. She inquired if the board members have any additions or corrections to the October 18, 2021 minutes as submitted.

No Board Member Comment

No Public Comment

Chairperson Urban stated that the board will now vote whether to approve the October 18, 2021 meeting minutes as submitted. Chairperson Urban asked for a **motion to approve the October 18, 2021 Board Meeting Minutes as submitted.**

Board Member Le moved.

Board Member Sierra seconded.

Roll call vote taken. **Motion approved 5-0.**

Chairperson Urban will work with staff to remove the "DRAFT" designation from the approved October 18, 2021 meeting minutes, and to have them posted to the Agency's website.

- Agenda Item 4** **Start-Up and Administration Subcommittee Update**
Angela Sierra, Board Member; Jennifer M. Urban, Chairperson
- a. Hiring Update**
 - b. Organizational Policies Update**

Chairperson Urban noted as a brief reminder for those not attending prior meetings, that the board formed advisory subcommittees during the June 14, 2021 and the September 7 and 8, 2021 board meetings. Some of those subcommittees will be reporting today. The Bagley-Keene Open Meeting Act allows for subcommittees of two people to act in an advisory capacity for the board.

Board Member Sierra reported on behalf of the Start-Up and Administration Subcommittee.

Board Member Sierra first touched on hiring. The application periods for the Chief Deputy Director of Administration and General Counsel have both closed. The review of applications is underway. With respect to additional positions such as civil servant, the subcommittee is working with the Executive Director in a supportive role to assist with that process.

Turning to the subcommittee's work on organizational policy, the subcommittee has been working over time to identify and provide to the board advice on necessary policies for both the Agency and the board. Chairperson Urban had also sought advice from counsel before the subcommittee was formed, which resulted in the Conflict of Interest policy that the board adopted in its October 18, 2021 meeting. Those consultations also resulted in a recommended draft board handbook on which Chairperson Urban sought feedback on during the June 14, 2021 board meeting.

After seeking advice from counsel on the timing of policies, the subcommittee will focus first on policies required by law, or necessary for the immediate operation of the board or the Agency. During the September 7th and 8th meeting the board adopted a board policy for administration of per-diem compensation and the subcommittee has since then been working on an incompatible activities policy.

Since the October 18, 2021 meeting, the subcommittee has reviewed existing efforts with Interim General Counsel Brian Soublet, and are seeking his advice on a range of needed policies and how they should be developed. Mr. Soublet is currently doing the review and should have some information soon. Board Member Sierra thanked Mr. Soublet for his assistance. Board Member Sierra stated that moving forward, as the Agency has more staff capacity, the role of the subcommittee will be moving towards more of a supportive role.

Chairperson Urban thanked Board Member Sierra for the update and timeline. She also mentioned that with the hire of an Executive Director the subcommittee would shift to more of a supportive role. Chairperson Urban expressed her gratitude towards Mr. Soublet for his review and legal advice on policies needed in order for the board and Agency to have a coherent plan going forward.

Board Member Thompson posed a process question. His question is regarding the interaction between the Rulemaking Process Subcommittee (Process Subcommittee) and the Start-Up and Administration Subcommittee activities. What is the Process Subcommittee's scope and jurisdiction and how do they interact with the Start-Up and Administration Subcommittee in order to not duplicate efforts? In addition, how will the staff interact with and support the board? Will staff support board members individually or the board as a whole?

Board Member de la Torre added that the example where this came up is in that the Process Subcommittee is to provide supervision of the process for rulemaking activities the board is undergoing now and in the future, how can the board best organize itself, how are other boards organized. This organization would have implications as to how the Agency would be staffed.

Chairperson Urban responded that the Start-Up and Administration Subcommittee has largely limited its activities to hiring, policies, and looking into space. It may make more sense for the board to hear more specifics when the Process Subcommittee gives its update.

Board Member Sierra has no comment other than agrees this is an important topic moving forward. She also agrees that the board needs to all be on the same page as to how to move forward on the staffing structure and what the staff's roles will be in relation to the board's work.

Chairperson Urban believes now that there is some staff support, the staff is in the best position to direct traffic between subcommittees, although the board will continue to have input on bigger ticket items. This can be reviewed further during the Process Subcommittee's update. Chairperson Urban asked Board Member Thompson if this was in line with his thoughts.

Board Member Thompson replied yes, his purpose was really to get thoughts started in order to have a robust conversation later on the agenda.

Chairperson Urban thanked Board Member Thompson and Board Member de la Torre for their comments and asked if there were any other comments from the board.

No further Board Member Comments

No Public Comment

Agenda Item 5 Update of CCPA Rules Subcommittee Update

Angela Sierra, Board Member; Jennifer M. Urban, Chairperson

a. Rulemaking Topics for Subcommittee Review

Chairperson Urban began with the background information that, during the June 14, 2021 board meeting, the board formed a Regulations Subcommittee to advise on the Agency's upcoming rulemaking. That subcommittee was comprised of Chairperson Urban and Board Member de la Torre. During the September 7th and 8th board meeting, Chairperson Urban and Board Member de la Torre recommended and the board agreed to replace the Regulations Subcommittee with three different subject-matter-based subcommittees, which continue to advise the board on rulemaking. The Regulations Subcommittee was then dissolved.

The new subcommittees are: The New California Privacy Rights Act Rules Subcommittee, which is covering things that are new from the 2020 Initiative; the Update of CCPA Rules Subcommittee, which is covering updates to the existing rules that the Attorney General's office promulgated under the CCPA; and the Rulemaking Process Subcommittee, which is advising the board on the rulemaking process. Two of these subcommittees will be giving updates today starting with the Update of CCPA Rules Subcommittee, which is composed of Board Member Sierra and Chairperson Urban.

Chairperson Urban reported on behalf of the Update of CCPA Rules Subcommittee (Update Subcommittee).

Chairperson Urban began by stating the subcommittee is continuing to work with a set of topics that were developed by the Regulations Subcommittee and assigned to the Update Subcommittee on September 7th and 8th along with an additional topic assigned on October 18th, the definition of "business purposes." The subcommittee has noted there may be other items that could come up.

Board Member Sierra and Chairperson Urban have reviewed the slides the Rulemaking Process Subcommittee provided for today's meeting. Chairperson Urban noted that the Rulemaking Process Subcommittee has given careful thought to allocating topics, which is very much appreciated and their work is fully supported by the Update Subcommittee. Chairperson Urban noted that she feels it is most appropriate to discuss the specifics of that during the Process Subcommittee agenda item.

In addition to supporting the Process Subcommittee's allocation recommendations, the Update Subcommittee is proposing that the allocation process for individual topics be completed today and that staff take over advising subcommittee on any additional topics that come up.

Chairperson Urban noted that subcommittees might encounter issues as they do their work and it is difficult for the board to communicate while also keeping themselves separate per the rules under the Bagley-Keene Open Meeting Act. For this reason, it is recommended that the board now turn to staff to advise and direct traffic as an efficient way to move forward. She thanked the Process Subcommittee for its thoughtful work and recommended that this request be left for reintroduction and discussion during the Process Subcommittee's agenda item.

Chairperson Urban inquired if Board Member Sierra had anything to add.

Board Member Sierra stated she did not have anything to add.

Chairperson Urban asked for any other board member comments.

Board Member de la Torre agreed and thinks it is appropriate to address it in the next agenda item.

No further Board Member Comments

There was a Public Comment from Edwin Lombard.

Mr. Lombard is the President Emeritus of the California African-American Chamber of Commerce. Today he is representing the Black Chambers of Commerce, the Black Business Association and the California Association of Black Pastors. As a leader of the minority-owned businesses, his time and energy is dedicated to creating a predictable and positive business environment to help small business stay on their feet and thrive in the state of California. Mr. Lombard stated that small business; particularly minority-owned small businesses are the lifeblood of California's economy. In a recent NAACP study, it was found that five percent of all small businesses in California are owned by African-Americans and nearly a quarter by Latinos. COVID had an irreversible impact on small business in the state; 43 percent of all Black small businesses went out of business during COVID. Small businesses cannot afford additional regulations that could affect their economic recovery. Speaking on behalf of the organizations he represents here today, they understand the charge of CPPA under Prop 24, which is to protect the privacy of consumers. Mr. Lombard feels the protection needs to have a balanced approach that does not have a disparate impact on communities of color. His communities are prepared to work with CPPA and he loves the work the agency is doing today. He has two questions. What is the CPPA's process in reconciling regulations with the Attorney General's Office to address conflicting provisions and ambiguities with the upcoming regulations, and will CPPA amend the AG regulations or will the AG have their own regulatory process to fix conflicting provisions and ambiguities in the upcoming regulation?

Chairperson Urban thanked Mr. Lombard for his very helpful comment and two questions. She stated that with regard to the first question, the CPRA directs the board to update the existing regulations in certain ways. The board would not want to create conflict and this is part of what the board was just discussing. In regards to the second question, she would like to defer that to the Process Subcommittee although, her understanding is the board's job is to amend and add to the regulations where necessary. Chairperson Urban asked if Board Member's de la Torre and Thompson wanted to record Mr. Lombard's question and answer it under their agenda item, or respond now.

Board Member de la Torre responded the one thing that is very important for all of the public to remember is that this Agency will share the authority to enforce the law with the California Attorney General's Office. In regards to rulemaking, CPRA transfers that responsibility away from the California Attorney General and into this Agency. The board has been working very closely with the AG's office and will continue to during the rulemaking process and during the enforcement process. The specific answer to the question is, at the end of the process we will have one set of rules that will be promulgated by this agency to account for the requirements of the CPRA.

Board Member Thompson thanked Mr. Lombard for his comments and questions. He stated that he felt that the topic of addressing the diverse needs of this state should be at the forefront of the board and Agency's thinking and it is always helpful to be reminded of the impacts on African-American businesses. Board Member Thompson asked for clarification as to how the board responds to a question from the public, thinking that the board usually receives the questions but does not normally engage in a response.

Chairperson Urban responded that is generally the process and that Mr. Lombard's questions were straightforward factual questions; therefore, she made the decision in the moment to answer. Chairperson Urban confirmed with Mr. Soublet that this response was correct.

No further Public Comment

Agenda Item 6 Rulemaking Process Subcommittee Update

Lydia de la Torre, Board Member; J. Christopher Thompson, Board Member

a. Rulemaking Topics for Subcommittee Review

Chairperson Urban turned things over to the Rulemaking Process Subcommittee (Process Subcommittee), composed of Board Members de la Torre and Thompson.

Board Member de la Torre began on behalf of the subcommittee

Board Member de la Torre began by referring to the slide presentation that goes along with this update. The presentation is three different pieces. The initial part is an opportunity for all to understand the difference between the general rulemaking process and the emergency rulemaking process. Mr. Soublet, Interim General Counsel, is presenting this part and will be available for all board members to ask questions in order to provide clarity on how the two different processes work. The second part, presented by Board Member Thompson, covers next steps and general recommendations. It may be a good opportunity to have the conversation discussed earlier in this meeting as to how the board envisions dividing responsibilities between the subcommittees. The last part of the presentation is a proposal for assignment of pending topics. There will be an action item to vote on and an opportunity for the board to discuss how to address future potential topics that were not listed in the initial presentation.

Board Member de la Torre turned things over to Mr. Soublet.

Mr. Soublet began with a review of slide 3, a visual representation of the regular rulemaking process. He then moved on to slide four regarding the second way a regulation can be adopted, which is on an emergency basis. To do that the Agency has to meet what is the factual standard for an emergency, which is defined as to avoid serious harm to the public, peace, health, safety, or general welfare. To get that you either have to have statutory authority or to meet what the definition of an emergency is. None of the statutes the Agency is currently implementing grants the ability to do an emergency regulation. The emergency rulemaking process is an abbreviated process in comparison to the regular rulemaking process. Slide 5 provides an illustration of pros and cons for doing an emergency regulation. The only issue is less opportunity for the public to provide input; you do not have a 45-day period because it is really condensed down to a five-day period.

Board Member de la Torre mentioned that Mr. Soublet remains available for questions after this meeting if there are questions that come up in the future.

Chairperson Urban posed a question to Mr. Soublet regarding the emergency rulemaking. She stated that it is her understanding that it is more of the timing of public input that changes, rather than less public input. Meaning, the emergency rules would take effect but then after that, there would be a regular rulemaking process. She also inquired if the Agency had more time, could they solicit public input on the front end, for example like the Invitation for Comments the board already put out as part of preliminary rulemaking activities?

Mr. Soublet confirmed that this is correct; public participation is encouraged in the pre-drafting stage. In past agencies that he has worked for, they would hold public workshops in order to give the public an opportunity to comment even in the drafting process. Therefore, even if you are doing an emergency rulemaking procedure there is the opportunity for public discussion while drafting the regulation. The second part is even if you adopt

an emergency regulation the Agency still has to go through the full regular rulemaking proceeding in that 360-day period. So while adopting the emergency rulemaking has a lesser degree of public participation other than outside of the preliminary activities, there is always the opportunity for the full public participation because you have to adopt it as a regular rulemaking.

Chairperson Urban thanked Mr. Soublet for his clarification and asked if there are any other comments from Board Members. No further comments from Board Members. Chairperson Urban handed things back over to Board Members de la Torre and Thompson.

Board Member Thompson presented the next part on behalf of the subcommittee.

Board Member Thompson mentioned that Board Member de la Torre and he have been meeting regularly and the addition of staff resources and support during those meetings has been vital. He thanked Executive Director Soltani and Mr. Soublet for their participation and support.

As mentioned in the Executive Director's update, the public comment period on the initial rulemaking process has closed. The next steps will be a review of those comments by the CPPA and the new rules update subcommittee. The rules subcommittee will continue to work with the executive director and the staff on informational hearings, which is an important support role for public awareness.

A major milestone in the processes will be the development of the text of the regulations and the statement of reasons. The subcommittee has been considering how to prioritize activities to apply the limited resources currently available and try to identify creative solutions to support the rulemaking activities and informational hearings. Board Member Thompson discussed potential solutions identified on the slide and stated that the subcommittee will continue to work with Mr. Solatani and the staff to generate a list of options. He would like to see a more robust consideration of four to six options with deliberation at a future meeting on the pros and cons. The next slide, with recommendations, was reviewed. Board Member Thompson would like to look to comparable boards and agencies whose processes can be benchmarked and used to guide this board in how the subcommittees interact with each other and how the board operates. Would this be something the Start-Up and Administration Subcommittee would look at or things the Rulemaking Process Subcommittee should look at. He then asked Board Member de la Torre if she would like to give a couple of examples of where these type of questions have come up.

Board Member de la Torre explained that the subcommittee was thinking of how to improve the processes for not only rulemaking and maintaining rules right now but also moving forward in to the future. The subcommittee proposes to have conversation with other agencies that have similar responsibilities to gather information on how they function for rulemaking but also how they function to supervise budget and other things, and then bring that model back to the board for further discussion. She also detailed the questions as to how the topics may be divided amongst the subcommittees and the need for some clarification in this area. The other item discussed was staffing, perhaps obtaining some temporary staffing. For example, maybe reaching out to the University of California. This subcommittee is open to the board's questions and looks forward to their feedback.

Chairperson Urban thanked Board Members de la Torre and Thompson and inquired if the board had any questions or comments.

There were no further board member comments.

Chairperson Urban discussed confirming today what topics can be delegated to each subcommittee in order for the board to leave the meeting knowing what each subcommittee will be doing, while also relying on staff to direct traffic. Chairperson Urban asked Board Member Sierra for her thoughts.

Board Member Sierra identified a couple of different layers to the issue. She recognized the UC and other interesting and creative ideas, while seeing the board's role as bringing up the ideas and then having staff or the Executive Director pursue the ideas now that the Agency has the staff as a resource. As Chairperson Urban mentioned, now that the Agency has staff, the Start-Up and Administration Subcommittee is in more of a supportive role so that the Executive Director can take the lead on seeking those outside resources. Board Member Sierra stated she is supportive of the idea and recommendation of staff directing the traffic on these issues. She also expressed supporting the idea of looking at other similar agencies and boards for comparison. She personally prefers the model where staff runs the day-to-day operations making the decisions for the Agency and that the board provides guidance where necessary and direction on policy matters.

Board Member Thompson agrees with the idea that the staff would get input from the board and then develop proposals and recommendations they can give to the board. He would like to be able to look a little further down the road to the medium and longer-term issues for the board to determine how these issues will be organized and directed.

Board Member de la Torre wanted to highlight there is consensus around allowing the staff to direct traffic and set priorities. In addition, within the CPRA there is a possibility of asking for legislative changes to the board if the board discovers there is a model they seek that may require some changes in the way responsibilities are allocated.

Chairperson Urban supports the Process Subcommittee working with staff to produce a report that analyzes the options for the rulemaking process. She also thinks the Start-Up and Administration Subcommittee could offer to work with the Executive Director and staff to organize a couple of things for the board. One being general information about organizational structure and the role of the board.

Board Member Sierra stated that as the other member of the Start-Up and Administration Subcommittee she thinks that what Chairperson Urban is proposing is a good idea. Working with the Executive Director and staff on the bigger organizational and strategic issues for the board, and then providing a report to the board on what type of model would work going forward.

Chairperson Urban feels that in terms of the immediate rulemaking and the idea that Board Members de la Torre and Thompson mentioned regarding approaching experts at UC to assist with work on the economic impact statement would be appropriate, along with working with the Executive Director.

Board Member Le stated that in his overall vision and thoughts about structure he imagines working from the bottom up. Where the board can set the overall direction and tone and then staff can let things bubble up to the board, and bring up topics they would like the boards input on after the board has set this overall structure and long-term vision.

Board Member de la Torre wanted to clarify that the Rulemaking Process Subcommittee has always understood its role to go beyond this particular rulemaking process into rulemaking moving forward. She believes this might be something to not resolve today but just start thinking about. In terms of involving the staff, this may need to be de-prioritized as the staff has many other priorities they have to deal with right now.

Board Member Thompson agreed that this has been a good discussion and the subcommittee has the guidance needed for the next set of meetings. What he heard loud and clear was the agreement that an analysis of options and the relative merit of them are something the subcommittee should prioritize and deliver as soon as they can.

Chairperson Urban asked to make it clear for the record that when the board is talking about the rulemaking process they are drawing from what Mr. Soublet presented, just to be sure, all board members are on the same page. She also wanted to clarify the Process Subcommittee is thinking about rulemaking generally. Of course, the interaction of the board with the staff and the way the Agency develops an organization and all that is not just rulemaking. It crosses all of the different areas of the Agency's remit so, is there energy for the Start-Up and Administration Subcommittee to help the Executive Director think about this at a higher level, or is there more energy around leaving it with the Executive Director or putting it aside.

Board Member de la Torre's perspective on this is that the Process Subcommittee should continue the work on the rulemaking piece and table the other conversation regarding any additional work for the Start-Up and Administration Subcommittee for now, based upon immediate needs and staffing levels.

Chairperson Urban thanked board Member de la Torre and handed it back over to her for the third phase of the subcommittee's presentation.

Board Member de la Torre reviewed slide numbers 10 and 11 regarding the distribution of subcommittee assignments of rulemaking topics. She noted that there is one topic the Process Subcommittee advises against including in the current rulemaking activities. This is the bi-annual adjustments to monetary thresholds. Based upon the reading of that requirement, those adjustments should be made in 2025 so the subcommittee does not have to address them right now.

Board Member de la Torre would like to open this for comments before an action item to vote on allocating topics.

Chairperson Urban asked if there was any comments or feedback from other Board Members.

Board Member Sierra asked to clarify, would the action be the previous slide (slide 10).

Board Member de la Torre confirmed the action item would be to have a motion to allocate the topics as described in the slides, unless there is some feedback or comments where we have to change the allocations.

Board Member Sierra replied that yes, she thinks the allocations seem very appropriate to her and the division of topics provided seem appropriate. She offered to make a motion for the action item.

Chairperson Urban thanked Board Member Sierra, stating the board needs to take public comments here. She would also like to register her support for this plan and to thank the Rulemaking Process Subcommittee for its careful thought on the appropriate way to allocate the topics that the Regulations Subcommittee had listed.

Chairperson Urban asked if there are any other comments or questions from the board.

No further Board Member Comments

No Public Comment

Chairperson Urban proposed three action items, which allocate the topics to the different subcommittees.

First, Chairperson Urban requested a **motion to assign the following topics to the New CPRA Rules Subcommittee for further work, if and as needed: the definition of “law-enforcement-agency-approved investigation;” the enforcement process; and the subset of record-keeping requirements that apply to cybersecurity audits, risk assessments, and automated decision making; and any other topics as reflected in the slides the Process Subcommittee presented in the board’s November 15th meeting.**

Board Member de la Torre moved.

Board Member Sierra seconded.

Roll call vote taken. **Motion approved 5-0.**

Chairperson Urban moved on to the second action item. She requested a **motion to assign the topics listed in the Rulemaking Process Subcommittees slides for the board meeting on November 15, 2021 to the Update CCPA Rules Subcommittee for further work, if and as needed: including the definition of “dark patterns;” the definition of “de-identified;” the definition of “unique identifier;” methods for submitting requests; categories of personal information; categories of sensitive personal information; exceptions as necessary to comply with state or federal law; the definition of “intentionally interacts;” the definition of “precise geolocation; and record-keeping requirements other than those that apply to cybersecurity audits, risk assessments, and automated decisionmaking.**

Board Member de la Torre moved.

Board Member Le seconded.

Roll call vote taken. **Motion approved 5-0.**

Chairperson Urban moved on to the third action item. She requested a **motion to assign to the Rulemaking Process Subcommittee for further work, if and as needed, the items listed on the Rulemaking Process Subcommittee slides for the board meeting for November 15, 2021, including coordinating a report on how the California Consumer Privacy Act of 2018, as amended by the California Privacy Rights Act of 2020, relates to existing Insurance Code provisions the regulations relating to consumer privacy.**

Board Member de la Torre moved.

Board Member Sierra seconded.

Roll call vote taken. **Motion approved 5-0.**

Chairperson Urban thanked the Rulemaking Process Subcommittee for their careful thought and to the board for the robust discussion.

Agenda Item 7 **Delegation of Authority for Limited Administrative Functions**
Jennifer M. Urban, Chairperson

Chairperson Urban stated that she would provide some background, followed by a recommendation, and would then invite discussion.

Chairperson Urban began with a reminder of Section 1798.199.35 of the CCPA which states that the Agency board may delegate authority to the Chairperson or the Executive Director to act in the name of the Agency between meetings of the Agency except with respect to resolution of enforcement actions and rulemaking authority. Section 1798.119.40 also directs the board to appoint a Chief Privacy Auditor.

In the October 18, 2021 meeting, the board voted to delegate authority for day-to-day operations to the Executive Director, with the exception of hiring the Chief Privacy Auditor. The delegation of authority was placed on this agenda for discussion.

In discussion on October 18, 2021, all board members were generally supportive of the delegation and wanted the executive director to have the ability to make day-to-day decisions. However, board members did have multiple viewpoints as to how the delegation should apply to hiring.

Specifically, the majority board view was that the delegation should apply to hiring all positions other than the Chief Privacy Auditor, which is designated in the implementing statute as a position to be appointed by the board. In the majority's view, the delegation strikes the right balance allowing the Executive Director the ability to build the Agency and oversee it on a day-to-day basis while retaining to the board the authority identified by voters. It was also pointed out that the delegation exists until amended or rescinded. A minority of the board however, felt that the board should have further input into some executive positions. Board Member Thompson explained that since this is a new Agency, certain executive positions could really affect how the Agency's culture develops. He proposed that the board could carve out the General Counsel position or he proposed that the board could seek consensus around a less formal approach. Board Member Thompson proposed the Executive Director should seek concurrence from the board with the final candidate for some important positions. The board voted to extend the delegation as drafted and agreed to discuss the delegation again in this meeting.

The Chairperson reported that she has consulted with the Executive Director, and has confirmed that, for especially important positions, the Executive Director prefers not to exercise his authority without some input from the board. However, under the Bagley-Keene Act, the board cannot deliberate outside of a properly noticed meeting. For this reason, the Executive Director cannot seek input from individual board members. He can however, seek input via a properly noticed meeting and a closed-session discussion for specific job candidates.

Chairperson Urban stated that after research and thought considering the previous conversation, it is her recommendation that the board find consensus around the idea of concurrence in the form of input via a properly noticed closed-session discussion for the General Counsel and in the future, the Deputy Director of Communications. The Chief Privacy Auditor remains within the board's authority and responsibility to appoint directly.

Chairperson Urban then opened the subject to discussion and comment.

Board Member Thompson thanked Chairperson Urban for taking his views in to consideration and her thoughtful deliberation. He felt that her recommendation would move the board forward very effectively. Board Member Thompson thanked Chairperson Urban for her leadership.

Board Member de la Torre also thanked Chairperson Urban. She feels the recommendation is appropriate.

Board Member Thompson wanted to express his appreciation of Executive Director Soltani's flexibility.

Board Member Le asked for clarification of the concurrence process.

Chairperson Urban stated that the board would not be changing the delegation of authority. Rather, that once the position of General Counsel was ready to be filled with a final candidate, the board would have a closed-session discussion, giving the board a chance to provide input to the Executive Director. She proposed the same process for the Deputy Director of Communications position when that was ready. The appointment of the Chief Privacy Auditor will look more like the Executive Director process because the board will appoint that person directly.

Board Member Le expressed his preference would be to not have these and give the Executive Director the power to make the decisions. He does understand the need to find a middle ground. Therefore, as long as the Executive Director is okay with this process, he can be persuaded to agree.

Board Member Sierra thanked Chairperson Urban for her work on this. She supports this recommendation and believes it is a good path forward.

Chairperson Urban asked if there are any further comments or thoughts from the board.

Board Member Thompson inquired if it was Chairperson Urban's thinking that the Chief Technologist and Head of Enforcement would likely be part of the Chief Privacy Auditor function of the organization.

Chairperson Urban responded that the Chief Privacy Auditor position is not fully defined yet and that is something the board would presumably discuss further in the future.

Board Member Le thinks he can support this action as long as it only applies to these two hires. He does not want to micro-manage the Executive Director and the Agency.

Board Member Thompson offered to propose a motion if appropriate.

Chairperson Urban paused in case there are any further comments and expressed her gratitude for the board's flexibility and thoughtfulness in supporting the Executive Director. She then asked for any public comments.

No Public Comment

Chairperson Urban asked for a **motion to direct the Chairperson to work with the Executive Director to coordinate properly noticed meetings in which the board can provide input on hiring decisions for the General Counsel and the Deputy Director of Communications.**

Board Member Thomson moved.

Board Member de la Torre seconded.

Roll call vote taken. **Motion Approved 5-0.**

Agenda Item 8 Public Comments on Items Not on the Agenda

Chairperson Urban invited public comments, including items not on the agenda. She explained that the only action the board can take is to listen to comments and consider whether it will discuss the topic at another board meeting. No other action can be taken on the item at this meeting, per the Bagley-Keene Open Meeting Act.

There was a Public Comment from Julian Canetti.

Julian Canetti is President and CEO of the California Hispanic Chambers of Commerce. Mr. Canetti thanked Chairperson Urban and the board members for the opportunity to address them. He stated that California's small businesses recognize that the state has passed privacy rules that put the highest priority in protecting consumers. These forthcoming regulations ensure that the customers can be confident that businesses manage their personal information in a secure and responsible manner. The commerce supports privacy regulation even if that means additional compliance costs. Mr. Canetti feels that regulators must be careful to ensure their rules are reasonable, practical, and as clear as possible to minimize resource burdens for the community of small and diverse businesses he represents. Today California's businesses face conflicting obligations related to the rules that enable consumers to opt-out of the sale of personal information. As the board is aware, under the CCPA consumers have the right to tell a company not to sell their personal information. Companies that sell personal information must provide consumers with an opt-out link. The AG's regulations include an additional obligation that incidentally is not found anywhere in the CPPA itself that businesses must recognize universal web browser or device opt-out signals which are to operate across all apps or websites consumers may visit. Meanwhile, under the CPRA, which will take effect of course in 2023, the global opt-out is not mandatory. Businesses can either provide an opt-out link to their pages or recognize a global opt-out signal in a browser. There are also important differences in how the global opt-out mechanism is to work in practice. For example under the CCPA, the global opt-out may be set by the browser or device maker by default. Under the CPRA, affirmative user choice is required. How should California's small and diverse businesses manage these conflicting frameworks? We urge the California Privacy Protection Agency and the Attorney General's Office to work together to review and resolve some of these conflicting provisions. Perhaps regulations could give companies the option of whether to honor a universal opt-out browser. Making the global opt-out optional but requiring the do-not-sell link under the CCPA will benefit consumers by creating an opt-out standard that is consistent with both CCPA and CPRA as written. We respectfully request that CPPA take reasonable and balanced approach in developing these privacy instructions.

Chairperson Urban thanked Mr. Canetti and inquired if there are any further public comments.

There was a Public Comment from Wendy Reynolds.

Ms. Reynolds inquired if an informational hearing has been calendared. If so, has there been subject matter identified?

Chairperson Urban replied that information about the regulation process is on the Agency's website.

She also thanked Mr. Canetti and Ms. Reynolds and asked if there are any additional public comments.

No further Public Comment

Agenda Item 9 Future Agenda Items

Chairperson Urban has a few items. Focusing on rulemaking substance, also the suggestion of organizing meeting time between administration and substance. The board still has the potential for doing training or tutorials. For example, in the last board meeting there was discussion about expert presentations, which may be part of informational hearings. Those could also be on the agenda. A potential discussion of board operations and policies. There is also the potential for presentations on some of the things that were discussed today under the Rulemaking Process Subcommittee.

Chairperson Urban asked if board members have any additional items. No board members had any additional items.

No Board Comment

No Public Comment

Agenda Item 10 Adjournment

Chairperson Urban thanked the board members, and all of the staff involved in putting the meeting together. Lastly, she thanked the members of the public for their contributions and attention to the boards work and asked for a **motion to adjourn**.

Board Member Thomson moved.

Board Member Sierra seconded.

Roll Call Vote Taken. **Motion approved 5-0.**

Meeting Adjourned at 11:49 A.M.