CALIFORNIA PRIVACY PROTECTION AGENCY BOARD

TRANSCRIPTION OF RECORDED PUBLIC MEETING

December 8, 2023

Present: JENNIFER URBAN, Chairperson
LYDIA DE LA TORRE, Board Member
VINHCENT LE, Board Member
ALASTAIR MACTAGGART, Board Member
JEFFREY WORTHEE, Board Member
ELIZABETH ALLEN, Moderator
ASHKAN SOLTANI, Executive Director
PHILIP LAIRD, General Counsel
MAUREEN MAHONEY, Deputy Director of Policy and Legislation
KRISTEN ANDERSON, Attorney
NEELOFER SHAIKH, Attorney
LISA KIM, Senior Policy Counsel and Advisor

Transcribed by: FOCUS INTERPRETING

CALIFORNIA PRIVACY PROTECTION AGENCY

TRANSCRIBED RECORDED PUBLIC MEETING

December 8, 2023

MS. ELIZABETH ALLEN: Alright, we are stabilizing. Go ahead and start.

MS. JENNIFER URBAN: Thank you very much. Good morning, everyone. I'm pleased to welcome you all to this meeting of the California Privacy Protection Agency Board. It's December 8, 2023, at 9:02 AM. I'm Jennifer Urban. I'm the chairperson of the board. Thank you very much for joining us today, and happy Hanukkah to everybody who's celebrating. Before we get started with the substance of the meeting, I have some logistical announcements. Today's meeting, of course, is on Zoom so some of them relate to that. First, I would like to ask everyone to please be sure that your microphone is muted when you're not speaking. And for everyone, please note that the meeting is being recorded. Today's meeting will be run by the Bagley-Keene Open Meeting Act as required by law. After each agenda item, there will be an opportunity for questions and discussion by board members. I will also ask for public comment on each agenda item. Each speaker will be limited to three minutes per agenda item so please keep that in mind. If you wish to speak on an item and you're using the Zoom webinar, please use the 'Raise Your Hand' function. You can check the bottom of your screen and find that in the reaction feature down there. If you wish to speak on an item and you have called in by phone, please press *9 on your phone to show the moderator that you are raising your hand. Our moderator will call your name when

it is your turn and request that you unmute yourself for comment at that time. Those using the webinar can use the unmute feature, and those dialing in by phone can press *6 to unmute. When your comment is completed, the moderator will mute you. It's helpful if you identify yourself, but this is voluntary, and if you're in the webinar, you can input a pseudonym when you log into the meeting. The board welcomes public comment on each item on the agenda, and it is our intent to ask for public comment prior to the board voting on any agenda item. If for some reason I forget to ask for public comment on an agenda item and you wish to speak on that item, please let us know by using the 'Raise Your Hand' functions and the moderator will recognize you. Relatedly, I would like to remind everyone of rules of the road under Bagley-Keene. Both board members and members of the public may discuss agendized items only, and when speaking on an agenda item, both board members and members of the public must contain their comments to that agenda item. There are two additional options under Bagley-Keene. First, the public can bring up additional topics when we get to the agenda item for that purpose. That is number eight today. However, board members can't respond. We can only listen. Second items not on the agenda can be discussed by either-- it can be suggested, excuse me, by either board members or members of the public for discussion at future meetings. That agenda item-- there's also an agenda item designated for that purpose, and it is number nine today. We will take breaks as needed. This will include time for lunch and shorter breaks as needed. Please note that we have a closed session item on the agenda today. When we get to that item, the board will leave the Zoom meeting we are all in now to discuss it and will return

after it has completed its closed session discussion. During the time the board is in closed session, this Zoom session will remain open and members of the public can come and go as you like. My many thanks to the board members for their service and everyone who's working to make this meeting possible. I'd like to thank the team supporting us today: Mr. Philip Laird as meeting counsel, Mr. Ashkan Soltani's here in his capacity as our executive director, and multiple members of our Legal Division and Policy and Leg Divisions will be briefing us today. Today, I would also like to thank and welcome our moderator, Ms. Elizabeth Allen, and ask Ms. Allen to now please conduct the roll call.

MS. ALLEN: Board Member de la Torre?

MS. LYDIA DE LA TORRE: Present.

MS. ALLEN: De la Torre present. Board Member Le?

MR. VINHCENT LE: Present.

MS. ALLEN: Le present. Board Member Mactaggart?

MR. ALASTAIR MACTAGGART: Here.

MS. ALLEN: Mactaggart here. Board Member Worthe?

MR. JEFFERY WORTHEE: Present.

MS. ALLEN: Worthe Present. Chair Urban?

MS. URBAN: Present.

MS. ALLEN: Urban Present. Madame Chair, you have five present members and no absences.

MS. URBAN: Thank you very much, Ms. Allen. The board has established a quorum. I would like to let everyone know that we will take a roll call vote on any action items. We often have complex and lengthy agendas. Today's is particularly complicated and lengthy so I will be working to help everyone move along and to

facilitate conversation as we go. And with that, I'm looking forward to the discussion and we will move to agenda item number two. This is an update from the New California Privacy Rights Act Rules Subcommittee and a staff presentation of draft regulations on automated decision-making technology, risk assessments, and cybersecurity audits so we have a range of materials for this agenda item. I'd ask you to please turn your attention to those now and counsel Phil Laird will introduce the discussion. Please go ahead, Mr. Laird.

MR. PHILIP LAIRD: Thank you, Chair Urban. There's a lot of ground to cover here on agenda item two, as you see so I will map out how we plan to approach the topic-- each topic for today. So, to use our time most efficiently, we do recommend starting with the cybersecurity audit regulations then moving on to risk assessments, and then finally to automated decision-making technology regulations. So, to orient everyone before we get started for cybersecurity audits, there are a number of materials provided that Ms. Anderson will be explaining momentarily. However, staff will focus on the document titled Agenda Item 2A Proposed Rulemaking Draft - Cybersecurity Audit Regulations (Clean Copy), which we propose should advance to formal rulemaking. Secondly, then there will be for risk assessments. The New Rules Subcommittee will be walking the board through the subcommittee's revised draft. And then finally, for automated decision-making technology, staff will be presenting an overview of the proposed framework for the board and suggest a number of topics for board discussion. As the board begins to consider these various proposals though, I would like to recommend upfront as well as for that-- these proposals as well as

the ones that we'll be discussing in agenda items three and four, ultimately proceed to formal rulemaking in a single rulemaking package. This is going to have the benefit of streamlining procedural requirements under the APA and will ensure a consistent approach to interrelated elements. We can, of course, discuss that further once we've engaged in the discussion, but I wanted to preview that now as we think about the best ways to advance these proposals going forward. For now, though, I'm going to pass the floor to Kristen Anderson, who's one of our senior attorneys in the Legal Division.

MS. DE LA TORRE: Before we go into that, I think we have a question for the chair. There's three pieces to this presentation as Mr. Laird explained earlier. They're in different stages. The first one, the cybersecurity proposal. The subcommittee had a draft that came to the board. We intake the comments from the board, and then the subcommittee moved it to the agency; it’s now with the agency. So, any areas that might come after this meeting will be done by the agency. The second piece is the piece about risk assessments. That is subcommittee draft that is still with the subcommittee. We edited to address the feedback that we received from the board in the last meeting. The third piece is actually a staff draft. It's not a subcommittee draft yet. We advanced it as a staff draft just to expedite the process as we're all looking forward to having a final version as Mr. Laird mentioned, that can move to formal rulemaking. So, the question that I have for the chair is in terms of comments from the audience, should we take comments from the audience after each piece? Or is it more appropriate to leave the comments from the audience to the end? How

should we proceed on that?

MS. URBAN: I think we should proceed, however, is going to be most efficient for the public and for us. Given that I'm not on the subcommittee, I don't have a good sense of the relative length of each discussion so if it's alright with everybody else, I think I'll play it by ear. And if we start with the cybersecurity regulations, we will have board discussion. And if it seems like the right time to ask for public comment, I will do that. If it seems like maybe we could hold for the next one or until the end, I will do that.

MS. DE LA TORRE: Thank you.

MS. KRISTEN ANDERSON: Okay. Good morning, everyone. So as Phil mentioned, the first topic that we'll be addressing within agenda item two is the cybersecurity audit regulations. The associated meeting materials are the four at the top of today's meeting materials list prefaced by agenda item 2A. As Phil had mentioned during the September 8 board meeting, the board agreed to move the draft cybersecurity audit regulations out of the subcommittee to enable individual board members to provide feedback directly to staff. The New Rules Subcommittee posted their final October 2023 revisions to the cybersecurity audit regulations as a meeting material for today's meeting as well relative to the version that the board discussed in September. Staff then received feedback directly from other board members individually and produced the proposed rulemaking draft, which considers all feedback, but ultimately stands as staff's final recommendation. Staff has provided a high-level summary of all of those revisions made relative to the subcommittee's draft in the description of

revisions chart, which is also one of the meeting materials. We're happy to answer any questions about the most recent draft of these regulations but, otherwise, I will pass back to Phil for next steps.

MR. LAIRD: Thank you, Kristen. So yes, in terms of this particular set of regulations, staff does recommend that the board approve the proposed rulemaking draft of cybersecurity audit regulations and authorize staff to take all steps necessary to prepare the materials to initiate the formal rulemaking process. We do also request discretion to make additional changes as necessary to ensure clarity and compliance with other APA requirements as we sort of prepare the final rulemaking package. But at this point, we are happy to take questions about the proposal but are ready to move forward when the board thinks it's appropriate.

MS. URBAN: Thank you very much, Mr. Laird and Ms. Anderson. I just have a couple of clarifying process questions so that I understand what the board is considering in terms of process. So, my understanding from what you said would be that I would ask for a motion that would direct or-- and and give staff authority to prepare this package for formal rulemaking, which I understand would involve getting the economic assessment that I understand is being worked on that we talked about in September. But the economists would need us to do this so that they can judge the material that they are assessing as-- so there would be some work left to do this, and then it would come back to us with some more information, for example, from the economists to consider before we send it out for rulemaking. Is that correct?

MR. LAIRD: That's correct. Those familiar with the APA know

that there's actually a lot of document preparation that has to happen in advance of any formal public comment period. So, we'd be preparing that, including the economic assessment to, and then bringing it back to the board one more time for review and approval before beginning that public comment portion.

MS. URBAN: Okay. Thank you. I ask because we had a fairly extended discussion in September about some of the thresholds, and I think that the board generally would value, and I'm sure staff would value, having information from the economists and it seems to me like this is the way to be able to get that information from the economist that is directed towards language that we would expect. And then of course, we would get public feedback, so this makes a lot of sense to me. Ms. de la Torre, you came off mute. Would you like to ask question or comment?

MS. DE LA TORRE: I know, I believe Member Le is going to guide us to a conversation on the threshold. That's the piece that we were hoping to be part of the discussion today. And even though we don't have full information on the cost, that will come later. I believe we asked for a reference in terms of the numbers, the number of businesses that will be captured, and we have some information there that we should share with the board and make part of that conversation.

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

MR. LE: Yeah, no, not much to add. I was just going to ask, you know, we had, yeah, the discussion about the thresholds, you know, we had three different tiers, you know, just any information from staff would be helpful on, you know, well, the 250,000 is the number and perhaps maybe the direction is, yeah, to release it for

formal rulemaking but maybe have some direction for staff to change those thresholds if that-- depending on the economic analysis.

MR. LAIRD: Yes, absolutely. So, thank you for the question and for the thoughts. So, I can share we have been working with our economist teams to kind of do some preliminary work that we've that along these questions. And we know there was interest in understanding sort of number of businesses impacted depending on these thresholds. Our economist team really is at a very preliminary stage, still of kind of developing their methodologies and data sets to make these evaluations. And at this point what we can share is that the team's preliminary estimates of the number of businesses can focus on one of two categories but not merged. And that is they are able to look at the annual gross revenue thresholds, as well as then the number of businesses that meet the different personal information processing thresholds. But we haven't found a way at this point to sort of merge those data sets and to sort of a reliable number. So again, our economists are working towards that. So, in other words, we have separate estimates for the number of firms that meet gross annual revenue versus the PI processing thresholds. And again, we'll be exploring ways in the formal development of the economic assessment to better merge those numbers to get a more accurate count. But what I can share at this stage is that adding those estimates together provides, we can provide basically an upper bound that we anticipate is an overcount. But again, we're at a very preliminary stage, so please don't hold me to some of these initial kind of thoughts that I'm sharing. And so, our economics team is conducting additional research to try to better refine these estimates. But

the upper bound of businesses that we find are meeting the revenue threshold that $25 million or above threshold. Again, we're looking in a range of somewhere between 20,000 and 30,000 businesses. But that's just the monetary threshold. So, keeping that constant but doubling each of the PI processing thresholds, we see there's really no change in the amount of firms. So, when we've been looking at the different PI processing thresholds, there hasn't really been any significant reduction in the number of firms. But if we grow the monetary thresholds, so say instead of $25 million, if it's at $50 million and we keep the PI processing thresholds at the same that we've proposed, then we do decrease the number of businesses potentially covered by the regulations to around the 10 to 20,000 range. Again, these are very preliminary numbers, and I should be the first to say I'm not an economist, more a messenger. But these are the types of data sets and information we're looking at right now, and we are looking at ways to sort of better refine what it means to have a requirement of both that minimum monetary threshold as well as then the amount of PI processing a given firm does that meets that, that monetary threshold. So, I'm going to pause there. I will ask, of course, my colleague, Ms. Anderson, if there's something I missed that, misstated or left out, please do correct me. But that's sort of the initial information. But to Mr. Le's point, the plan is certainly to further refine these as we complete the required economic assessment for the proposal.

MS. URBAN: Thank you, Mr. Laird. Other comments or questions from the subcommittee?

MS. DE LA TORRE: I do have a question. So, when we say, I think that the upper number that was mentioned, and I understand

this preliminary, is 30,000 businesses that could be within the scope of this new requirement. Are we saying that there is potentially only 30,000 businesses in, I guess, internationally that make $25 million and are subject to CCPA, that's like the top number of business that we think are subject to CCPA or that may base on that threshold on the $25 million? It just sounds a little low to me, to be honest.

MR. LAIRD: So good question. Basically, the analysis for sort of the economic impact is on California only. And so, my understanding is, I believe, this is California businesses, although I think it could be expanded to nationally for those who are doing business in California. But I would need to double check with our economists. I would invite, of course, our executive director, Mr. Soltani, to jump in if he has anything more to add.

MS. DE LA TORRE: Okay, let me repeat back to make sure I understand. So, what we're saying is that the cost estimate that we will see will not consider costs that are costs on businesses that are not California businesses, that what we've seen, that the Office of Administrative Law requirements or our APA requirements do not include that cost and therefore will not calculate it.

MR. LAIRD: The cost require, oh, go ahead.

MR. ASHKAN SOLTANI: I can jump in, Phil. So, indeed, we're following what the previous analysis was for the past SRIA, which included my understanding was businesses located in California or doing business with headquarters in California. So having physical presence and doing business in California. And that's what's required under the OAL requirements. We have looked at and tried to compare national data, but we've not yet incorporated that into our

models just because the requirement in the state is to look at the impact of our regulations to California, and that's how the economists have done it in the past, and that's the model we're considering. But we're flexible. Thank you.

MS. URBAN: Mr. Worthe?

MR. WORTHEE: Yeah. I just want to clarify: you said headquartered in the state. Is it just anybody that has business has an operation in California that meets the revenue threshold regardless of whether quote unquote headquarters are, they don't have to be headquartered in California specifically, do they?

MR. SOLTANI: So, I think what they looked at was businesses headquartered in California or with physical businesses in California. So that's what in the last SRIA. This is the 2020… oh, sorry, 2019 regulatory impact assessment that was done for DOJ prior to our existence. And that's how they modeled, that's how they calculated those numbers, if I remember correctly.

MR. WORTHEE: Okay.

MR. MACTAGGART: Can I just jump in for Mr. Worthe's question? The law covers anybody doing business in California. I guess the APPA requirement is just to evaluate the businesses that are located in California, but the scope of the law is obviously on anybody doing business in California.

MS. URBAN: Thank you, Mr. Mactaggart.

MS. DE LA TORRE: Right, that's actually really helpful. I appreciate the information. That makes sense. The numbers seem a little low to me at the beginning because I was thinking of everybody that's subject, but if it's just California, it makes sense that it would be lower. So, the other piece of the equation

here, in addition to know the number, let's say it's 30,000, and I know that's preliminary, would be to understand the cost of the requirement, the cost of the audit. And that would be very difficult to ascertain because it's a new requirement, but I did try to get a better understanding of what other comparable audits cost, and I would like to share this with the board. So, in terms of something that will be comparable, like a soft-type audit, my understanding is that the lower threshold of cost will be you know, it depends on which type. There's soak one, soak two, soak three, but it will likely be at the minimum between 10,000 and $50,000. If it's a large business, we're talking about cost, that can be $100,000 to $150,000. And obviously there's a lot of calculations that need to be done. We do have a provision that will enable organizations that have gone through cybersecurity audits for other purposes to kind of use that for compliance with our rule. But I think that that gives us a-- at least a general idea of what is the cost of the requirement that we can bring into the threshold. My inclination in terms of advice to the staff to have a more clear cut understanding of the cost when we have the final thresholds, will be to think about setting the threshold into around two things. Number one, what we have done at the subcommittee level is the revenue. Right now, we have 25 million. It might be that the staff recommends something higher in the next version. And the number two thing that I think should be used or we should consider using is number of employees. I actually went through several proposals that have been enacted into law. And the one thing that I saw in terms of defining what's a small business that was constant in them is to identify what the number of employees is. I'm looking

at Government Code 4467. This is for disability assessments and Labor and Employment Code 12962. That's California small business and not-for-profits for COVID basic leaves. There's a number of other laws that try to carve out small businesses, and they typically do it on the basis of the number of employees. I think that will be a clear cap threshold that if we see the legislative is using for this purpose, we should consider using for the purposes of setting our carve out with the idea, at least at the beginning, excluding small and even medium businesses from these requirement so that we can be mindful of the cost that we're imposing. So, I would like to kind of gather feedback from the board in terms of that idea of setting the thresholds on revenue and employees.

MS. URBAN: Thank you, Ms. de la Torre. I'll invite Mr. Mactaggart and Mr. Worthe to speak if they'd like. And I have some thoughts I could share.

MR. MACTAGGART: Like my feedback on the package right now?

MS. URBAN: Oh, I think Ms. de la Torre was asking about the thresholds and the thought of looking at the number of employees.

MR. MACTAGGART: Yeah, I'm not a huge fan of the number of employees. I think that's not necessarily one that kind of resonates with me. I think kind of keeping the framework, whether its revenues or processing is more conducive to kind of the general framework of the law. I wouldn't want to introduce a kind of a new metric at this point, I don't think.

MS. URBAN: Thank you, Mr. Mactaggart. Mr. Worthe, I don't mean to put you on the spot, I just [crosstalk].

MR. WORTHE: That's fine. I think if you think about it, I

guess my thought is, I think I agree with probably the number of employees would not be necessary to add. And I guess really the reason why revenue is so important is because we want to think about what this cost could do to a business, right? So, it's really about the processing of PI. That, to me, that is what should be the focus. But I do think we need to get this feedback back from the economists about better understanding of how many businesses we covered. And I think it did seem low to me, but I think it's, we'll see what it's, whatever it is, it is. And then I'd like to really understand the audit costs. Because I don't know and I assume is that's something they're going to look at, right? Because this is a pretty unique type of audit. So, I don't know how you, somebody's going to comp it out, as was mentioned, it hasn't been done before, but we really didn't understand what we're proposing. So, I think the number employee is not as important to me. I want to understand what we're asking business in California to take on. And I think that's what we need to really kind of wrap this up.

MS. URBAN: Thank you, Mr. Worthe. I appreciate the thought. I tend to agree with Mr. Mactaggart and Mr. Worthe. We do have companies that are worth a lot, have very high revenues, and most importantly and from my perspective, handle a lot of personal information. And proportionally they may have quite few employees. I would also be loath to give businesses an incentive to have fewer employees, which who could help maintain security and so forth. So, I think going on the revenue is a good step for now. I would like to have attention to the risk basically, which I said in September, which ties to how many Californians' information are you processing and so forth. I agree with everyone that we do need to understand

what sort of proportionally we would be imposing on businesses. In my view, the way for us to get that information is twofold. One is to have the economists prepare the economic analysis to go together with the initial statement of reasons and so forth so that we could discuss again for our decision about what to put to rulemaking. And then most importantly, hearing from Californians and California businesses in the rulemaking about the practical effects on them. The economists will give us good information, but we also need, in my view, information directly from businesses. And the way to get that is to have comment from businesses in the rulemaking. I think we should make good choices to start. And I think this is a good start. I think I said this in September, I couldn't tell you which of these thresholds is the right one exactly. I really appreciate all the thought and work the subcommittee and staff put in to giving us some thresholds to start with. And I think that we need the economists', and then the public's, input to know for sure.

MS. DE LA TORRE: Thank you. I appreciate the feedback and assuming that the staff has enough feedback here, but maybe, I saw Vinhc-- uh, sorry, Member Le coming up. I don't know if he--

MR. WORTHE: It said a fire alarm was going off.

MR. LAIRD: Yeah, I believe Mr. Le's got a fire alarm going off in the background.

MS. URBAN: Oh. So, shall we pause, take a short break, or should we proceed? Well, he can't tell us. So--

MS. DE LA TORRE: I can quickly, let me quickly call him, since this is as a subcommittee presentation, he might be comfortable with just me saying--

MS. URBAN: I agree. I loath to have him not be here for this

topic. So, everyone, let's take a five minute break. And we will reconvene when we have Mr. Le back. Thanks everybody. Thank you, Ms. Allen. I believe we can start again. I'll see if Mr. Le has been able to come back. Hi, Mr. Lee.

MR. LE: Hey there. Sorry about that, fire alarm went off.

MS. URBAN: Sorry. You had to take the meeting outside, but hey, at least we're on Zoom, so we can do that. If we've been in Oakland, we'd all have to troop outside and just wait. Welcome back, everyone. Give members of the public a minute to turn their cameras back on, and also make sure we have everyone with us from staff. Okay. So, where we, well, I'm not actually sure when the alarm went off Mr. Le but we were talking about the thresholds and where we were, I believe there was a general sense that we would like input from the economists. We'd like more information. I expressed an opinion that I would like to get information directly from businesses and members of the public, which we would get through rulemaking. I don't know if you were here for all of that, or if there's anything you wanted to add before we continue.

MR. LE: No, I'm supportive of that, yeah, to advance this as quickly as we can.

MS. URBAN: Okay. Thank you, Mr. Le. Other comments on the cybersecurity audit requirements, and I will let give you a preview that based on the work that the subcommittee has done over two years, which is incredibly impressive and staff has done and my understanding of where we are or could be in the process I would be, I plan to suggest a motion to go ahead and direct staff to take the package and put it together for formal rulemaking, authorizing them to make additional changes. They may, for example, get one-way

input from the board to improve clarity or otherwise make it compliant with the Administrative Procedures Act to, of course, put together the package with the economists' information and so forth. It would of course, come before us again for full discussion before we voted it to go to the 45 day public comment, to give the public time to the opportunity to tell us what they think directly. But that's sort of where I am on this item at this point. I know that wasn't a formal motion because I thought, well, I'll take the subcommittee's lead, but I thought they might want to go ahead and talk about risk assessments, but that's what I'm thinking. Ms. de la Torre?

MS. DE LA TORRE: Right. I believe from the subcommittee perspective for the cybersecurity rules, that's already been done. But if we need to vote on it or take comment before we vote for cybersecurity, that's, you can guide us through that.

MS. URBAN: Okay. Well, what I suggest is, why don't I just hold this, and I gave you the substance, but while we continue with risk assessments, I will put together something that's a more of a formal motion and maybe we can ask for public comments on cybersecurity rules and risk assessments together so that everybody has a good opportunity to comment, and we can be as efficient as possible.

MS. DE LA TORRE: Okay, so before we move to the rules on risk assessments, just want to make sure that other board members don't have any comment that they want to make on cyber as we will be kind of moving along to the next package.

MR. MACTAGGART: My hands up, I don’t know if you see it there, but—

MS. URBAN: Oh, I'm so sorry Mr. Mactaggart. I did not, you know why? Because it's on top of the yellow lock.

MR. MACTAGGART: Oh, yeah.

MS. URBAN: My sincere apologies. Please go ahead.

MR. MACTAGGART: No, no problem. I'm like, am I missing something here? I just had a couple of comments in the cybersecurity audit, which I think is generally in really good shape. So just the one and today, a number of my comments, I think for the regulations are going to be colored by the injunction on the age appropriate design codes. Some of my thinking from having watched, read that extensively, and I guess under the scope of the sky Cybersecurity audit, my sort of one comment in 71-23A, luckily it says in sort of the fourth line, it says, the cyber-security audit may assess the following thing. So, we're not saying shall, so that's good. But the last sentence about the negative impacts, including impairing their consumer's control over their personal information as well as economic, physical, psychological, reputational harm, I think especially in light of that, that decision having a business have to weigh in on what the psychological harm to a potential consumer is or is not, that just felt very much in the land of compelled speech. Kind of like, okay, who knows what the psychological harm to one, consumer A versus consumer B.? So, I would suggest striking that last sentence. The one starting with those negative impacts to consumers include pairing. And then on that front I have a couple of typo stuff, which I can send separately. But in the next, this is, I guess we're down in, it's the same section still, 71, 23, but it's Q which remains on page. I'm in the red line page 11, and it's, we're

talking about what the audit should include. And I just think that what we're saying in number Q, how the business manages its response in Q and then the next, the very next Q little sub one for the purposes of subsection Q security incident means that occurrence that actually potentially jeopardizes a little way later down, or that constitutes, I think if you read that, because it's kind of in the present tense, it would mean I'm a business and I have to come up with how I'm going to manage every single cybersecurity incident out there, which I think is kind of a large task. And if we change that to how the business managed, anything that happened and how the business evaluated something that jeopardized or that constituted, I just think asking businesses to sort of say, here's the universal things that could happen. How are they supposed to know that? So, I would try to limit to the scope of that to what actually happened, how they managed cybersecurity, and since, unless there's some particular reason why that's not the case. And actually, in that same little sub one, I think there's a typo that's repeated later. It should be unauthorized activity resulting in the loss of availability of personal information. But that's my comments on the cybersecurity audits.

MS. URBAN: Thank you very much, Mr. Mactaggart. And just as a reminder, individual changes like this absolutely can go to staff for incorporation. This doesn't mean that the words have to be exactly the words before, the words we have now have to be the words before we, before.

MR. MACTAGGART: Yeah. I just wasn't too sure about how people felt about, I mean, some of that, the wordsmithing stuff maybe, but the other, the one about the scope anyway.

MS. URBAN: The management?

MR. MACTAGGART: The one about whether they have to start weighing in about what the psychological harm to a consumer is, the physical harm to consumer, reputational harm to consumer. That feels—

MS. URBAN: I think it's helpful. It's helpful to hear your thoughts for sure. And I'm sure staff will take them into account.

MS. DE LA TORRE: I'm supportive of striking out that sentence. I think that Mr. Mactaggart made a good case.

MS. ANDERSON: If I may, we will certainly take that feedback back and we appreciate it. The one point that I wanted to raise in response to board member Mactaggart's feedback in Q sub one, the concept is about how you generally manage cybersecurity incidents or security incidents as we're defining them here. So, there is a sense—

MS. URBAN: I'm sorry, Ms. Anderson, we've, Mr. Le has, is maybe, hopefully being able to go back indoors.

MR. LE: I'm still outside.

MS. URBAN: Oh, okay. Alright. And you just needed to—

MR. LE: Yeah, there was just some folks walking around. Yeah, I just…

MS. URBAN: Okay.

MR. LE: Try to move across the street.

MS. URBAN: Okay. Feel free Mr. Le to just jump in and let us know if you need us to pause for a moment while you go back inside.

MR. LE: Will do, will do.

MS. URBAN: My apologies Ms. Anderson, please go ahead.

MS. ANDERSON: Not at all. I was just going to say that the

concept of incident management is one that's common throughout businesses and just having a proactive sense of how you will manage incidents as they come up and how you will escalate them and contend with them. So that was the intention in having it be proactive. I just wanted to say that obviously I heard your feedback, and we appreciate it. And then Phil, I didn't know if you wanted to address the previous point just about assessing the ADCA decision that is something that we're conscious of and considering.

MR. LAIRD: Yeah, absolutely. I think staff can kind of course, continue reviewing with that in mind. And we'll provide a recommendation sort of in the final draft that we propose. I suppose though, I'm starting to see some consensus building around striking a specific provision, and I think I would appreciate some direction from the board on whether or not that is the direction staff should take.

MR. LE: I take on, due to a psychological harm I don't think the request is necessarily to, I think if you're assessing that you're holding information that could cause psychological harm if lost that, it's something that assess in your protection for that data. So, I don't necessarily think it's asking them to control for every single psychological harm, but just whether the risk of this data being leaked could cause that.

MS. URBAN: Mr. Worthe.

MR. WORTHE: Yeah, I'm fine. I was fine with how Mr. Mactaggart explained it, and I was fine with removing it.

MS. URBAN: I also, I certainly appreciate Mr. Mactaggart's thoughts, and I see the challenge, potential challenge there. I do think the way it's worded, as Mr. Le pointed out, reduces concerns

that it's as broad as that, and I would value seeing sort of an analysis that would come with the package of it. So, I would on balance, probably leave it in at this point. Mr. Laird, I realize we have different opinions. So, this may not be of great help to you, but I would probably go with Mr. Le on this. Mr. Mactaggart, now I know to look for your hand.

MR. MACTAGGART: Thanks. The part I'm reading from the ADCA opinion is where its line 22, 23 on page 13 of 45, and it says the courts do not proceed by the state's argument because assessing how a business model might harm facially requires that business to express this ideas analysis about likely harm. And I think that they basically just said, we don't want you doing it. So here we are telling them to express their opinions about harm. And I feel like cybersecurity audit, everything else is pretty cut and dried here, but this one, so if you are going to leave it in, I'd love to see an analysis as to why this would survive when the court just threw something out that basically said the same thing.

MS. URBAN: So, I think at a minimum the potential questions have been raised. Mr. Laird, is that sufficient information for you to for legal division to build into its analysis? Or do you need direct…?

MR. LAIRD: I suppose I just want to clarify. It sounds like then it is still the staff's discretion based on our assessment of that provision to include or not. I think I just need some.

MS. URBAN: Okay. Thanks, Mr. Laird. Ms. de la Torre.

MR. LAIRD: I just wanted to add to what Mr. Mactaggart mentioned. There's the piece of the current litigation or past litigation, but I think also we have to be mindful of the skills

that professionals have, and information security professionals are not necessarily trained to assess psychological harms. And they're responsible for this kind of assessments. So, there could be a little, I think there's a lack of alignment in terms of the experts that will be doing this kind of security audit, their knowledge and what we're asking for here, in my experience information security professionals' look for ways to prevent the fire. Not that skill in identifying, specifically, definitely psychological harms. So that will be another argument to not include that sentence, but I'm not sure if that changes the opinion of the other board members.

MS. URBAN: Thank you, Ms. de la Torre. Well from a process perspective, Mr. Laird has asked for clear direction if we want staff to take it out. I think I understood that if the direction is staff could look into it more and in its discretion decide whether to take it out or leave it in before it comes back to us, that is another option that staff could work with. Is that correct, Mr. Laird?

MR. LAIRD: Absolutely. We can take that direction. Yes.

MS. URBAN: Okay. I'm still inclined to go with Mr. Le's view because I think he has thought about this a lot. I know Ms. de la Torre has as well though and to allow for more considered review on the part of staff to Mr. Mactaggart's sort of useful observation. So that would be my preference would be to give staff the discretion, understanding that we're going to look at it again. But if that is not the feeling of the majority of the board, then of course we can ask them to take it out. So, we do have to do a roll call vote finally, but I guess I'd like to check in my sort of very soft straw poll sense is that Mr. Le and I would go with the route

that gives staff discretion and ask them to look into it. Mr. Worthe was there, but I'm not sure where he is now.

MR. WORTHE: Yeah, that's fine. I'd like to staff to make the ultimate choice for us.

MS. URBAN: Okay. Is that sufficiently satisfactory, Ms. de la Torre and Mr. Mactaggart for us to go ahead and move on?

MR. MACTAGGART: Sure. I just, before I finally vote, then I just want to kind of put us all in notice that if there's not a pretty compelling reason as to why this wouldn't trip over the same problems that the ADCA tripped over…

MS. URBAN: There were a lot of ASDs and T.

MS. ALLEN: Yeah. So, I'd like the eventual analysis to address how this differs from what the court said in that decision, because it feels like this is precisely exactly what they said they didn't want to see. So—

MS. URBAN: Thank you, Mr. Mactaggart. Mr. Laird, is the way I formulated it clear enough for our staff?

MR. LAIRD: Yes, it is. And I would just like to take the opportunity, I know Mr. Mactaggart has raised the ADCA decision. It is something staff is aware of and is continuing to evaluate as we make our recommendations on regulations. So, I just want to assure that it's certainly in our minds as we prepare proposals for this board.

MS. URBAN: Thank you, Mr. Laird. Okay. So, I think that we have a plan, I can formulate a motion while we talk about risk assessments. Is that what's next? And are we ready to talk about those? Okay. Ms. de la Torre and Mr. Le are nodding, to whom shall I turn it over for risk assessment discussion?

MS. DE LA TORRE: I'm going to lead that piece for the subcommittee.

MS. URBAN: Okay.

MS. DE LA TORRE: Just for clarity, are we voting now or we going to…?

MS. URBAN: No, no. Well, I was just going to put them together to save time, but yeah, please go ahead.

MS. DE LA TORRE: Okay, so what we were hoping to do at a subcommittee level is just to highlight in the draft that we presented the areas that we think have undergone a bigger change for discussion, and then obviously be open to other comments that members might have on areas that are not necessarily areas that have changed substantially. So, I would like to direct the attention of the board to page five. And this will be the, I think this is the clean version. This is 7150(b)(5). It starts with for board discussion. This relates to the triggers, meaning what are the kind of activities that will trigger the obligation to conduct a data privacy assessment. The previous draft had a reference to the idea that use of personal data for training of automated decision technology or AI will trigger the assessment. Here what has been added is sections A, B, C, D, and E, which…

MS. URBAN: Sorry, I'm sorry to interrupt. I couldn't find the page. Are we on the clean copy or the red line?

MS. DE LA TORRE: I have the clean copy. So, if you have the red line maybe.

MS. URBAN: So, the clean page, five of the clean copy. I'm just trying to find my place. I apologize.

MS. DE LA TORRE: No, no, no. Take your time. Its 7150,

whichever copy you are, 7150 and then go to subsection (b)(5).

MS. URBAN: Thank you. Got it.

MS. DE LA TORRE: And it starts with for board discussion, is everybody there now? Yeah? Okay. So, this subsection lists basically thresholds for the risk assessment. And this particular threshold, the one on train using data to train automated decision making technology and AI has been modified what subsections (a) through (e). And those aim at identifying the kind of ADMT technology or AI technology that will be in a way high risk enough to trigger the assessment as opposed to just imposing across the board to any ADMT or AI technology. The threshold selected are any of the processing set for in subsection B3. That subsection B3 as a reminder is listing cellular or sharing, sensitive personal information, use of ADMT for decisions that produce legal or similar significant effects, profiling. And there's two categories of profiling and then behavioral advertising. So, it's a call back to the other thresholds. Wait. I'm misreading here. Apologies. So, the cross reference is to B3, which exclude selling and sensitive personal information is the use of automated decision making technology for decisions that produce legal or significant or similarly significant effects. And then the two profiling and the behavioral advertising. The second kind of AI system or ADMT system that will trigger the requirement. When the data is used for training, the algorithm is establishing individual identity on the basis of biometric information. And the third one is facial speech or emotion detection. The next one is the generation of deep fakes, and the final one is the operation of generative models such as large language models. We review the language at the subcommittee

level. We feel that is interoperable with other legal frameworks that are aiming at regulating AI. And so, we feel comfortable with putting forward this proposal, but we wanted to call this to the attention of the board to make sure that they, everybody understands it's new. It's a limitation but we believe it's sufficiently brought to address what will be at risk in ADMT and AI. Should we take comments on? Yeah.

MS. URBAN: I think so, this is new to address AMDT specifically. So, I think it's a good time to find out if board members have specific reactions since we discussed most of this material in our last meeting, but not this part. Mr. Worthe and then Mr. Mactaggart.

MR. WORTHE: Yeah, I just wanted to go back to that comment. I want to make sure that you all do feel that it's not too specific, that it's not too detailed. And it's hard to know today what we're going to be thinking about five and 10 years from now in this world. Because it’s evolving so fast. So, I just wanted to make sure everybody feels there's a lot of experience on this board with this whatsoever, really asking the board to confirm that they think this is broad enough to cover where we think this language needs to be years out.

MS. DE LA TORRE: And so, I think that's an excellent question, and we have struggled with it because there's so many changes happening in the area and how do you set your thresholds at the adequate level with something that has been on our mind. The two comments that I will have back are, one, these are rules, which means that we can reshape them in one or two years if we feel there is need for it. I think that's a great advantage that we have

versus other legislative processes that may be more uncertain in terms of whether you can change or not. So that gave us some level of kind of reassurance. And then the second thing that we did that I mentioned before is we looked at other frameworks and how they were thinking about high risk. And we are not one-on-one to other frameworks in that for example, we don't regulate the public sector, et cetera, but we look for thresholds that will align or be compatible. And the last thing, and I think that this is more for our general counsel, but in terms of a specificity when we are drafting rules, we are also accounting for the fact that there is a review process with the administrative office in California. And so, our language, if it's not a specific enough, could find itself in a situation where the office of administrative law doesn't consider that it's clear enough. And then we can have that challenge. So, we work with the staff to make it concrete enough that we feel that administrative review could not be problematic. I'm not sure if that addresses the comment, I think is a very valid comment. And we have done our best to aim at something that's helpful right now and flexible towards the future.

MS. URBAN: Thank you, Ms. de la Torre.

MR. WORTHE: I think it's a great answer. I appreciate it. Thank you.

MS. URBAN: I was indeed going to offer the Office of Administrative Law item if Ms. de la Torre did not, in California regulations are required to be, have very high levels of clarity and specificity, and that does mean they tend to be quite specific. But we can amend them. Mr. Mactaggart? Can you come off mute please, Mr. Mactaggart?

MR. MACTAGGART: Sorry, I thought I pushed it. Are you looking just for comments on this section, the subparagraph five or when would be appropriate to give you?

MS. URBAN: That is the topic under discussion at right now.

MR. MACTAGGART: Just five. Okay. I'll hold off then I have comments on the whole thing.

MS. URBAN: Okay. Thank you, Mr. Mactaggart. And if you can think of bundling them together into things that we should talk about here and things that staff can hear from you one way that would be helpful. I really appreciate the subcommittee's thoughtful work here. In terms of, as Mr. Worthe alluded to, trying to catch a very quickly evolving situation with enough flexibility that we are able to help businesses and consumers with guidance while being concrete enough to do the same, and also to meet the specificity requirements under the administrative procedures act in California and also harmonizing with other regimes to the extent that that makes sense for California and for the rules that we are instructed by our law to create. On that, I did have some concern about some language that I recognize from another regime and how it might play here. I want to preface this by saying that this would, in this does not mean that I would not vote to advance this. I would, I still, I tend to think that a lot of work has gone into all of these rules and it's time to work for public feedback and input from the economists and so forth, but legal or similarly significant effects. That's a term that I recognize from Article 22 of the general data protection regulation. And I realize that Colorado has also used a similar concept. So, on the face of it, I think it would seem as though that would carry meaning with it.

That would be helpful. I will simply express a concern that I think staff is well placed to eventually to look at and tell me if I'm wrong. With clarity for what is perhaps a slightly counterintuitive reason, which is that it is so similar or identical to words used in another jurisdiction with a very important law that we are certainly inspired by but is not our law and is not within our overall sort of legal and constitutional regime. So, the GDPR has a different set of defaults from the CCPA, for example. The default is no processing where that is not our default. Similarly, there's a contestation right in Article 22, our law has opt-out and informational access rights. And it looks a little bit different when you layer on the same words to a different regime. I'm not entirely sure how it plays, and our law doesn't actually have the specific limitation in it. The limitation is in the GDPR for reasons that are best understood by the people who drafted it. But it is a limitation that goes with a different set of defaults. And thus, while I certainly don't think this is worth not advancing the language, it is something that I do have some concerns about and would like for us to be sure that we understand it before we add in this limitation that doesn't exist in our law using language that exists in another law that has a different set of defaults. All of that said, again, I commend the subcommittee for its work, and again, we could amend it if it seems that people are confused or that the defaults, we've ended up with have not been set in the right place. But I did want to point it out.

MS. DE LA TORRE: Thank you for that comment. Chair Urban. I didn't mention that in my list of new things because it's really not used at the fine term. It seems that it's not being added to

the definition section here, but we'll, it's defined, and I'm just wondering if maybe we should move that conversation to the last piece, which is the ADMT, because I know that the definition is there, I just don't see it here in the—

MS. URBAN: I've seen the definition.

MS. DE LA TORRE: Right. Yes. So is it fine to mean exactly the same that we had in the—

MS. URBAN: Of course.

MS. DE LA TORRE: The prior language. So, there's no actual change there in terms of the new rules, but I hear your comment, right?

MS. URBAN: The ADMT rules are new to us, though.

MS. DE LA TORRE: Right. So do we want to have a, do you want to talk about whether that term should be redefined or--

MS. URBAN: I think we can hold it until we talk about the ADMT where it is fine, and I think I've basically said, right, what it might be. Mr. Le's.

MR. LE: Yeah. I think the idea there was, it isn't extremely necessary to label it legal or significant effects. You know, the Venn diagram of our conception and other jurisdictions conception of legal significant effect. There's a lot of overlap, but you're right, it's not 100%. I think it was there. Kind of, it's more related to the concept of having an easily named. Right? For understanding. But I think we take your point. And I think we were aware that the overlap was 100%.

MS. URBAN: Thank you. Thank you, Mr. Le. Yes. It is one of those oddities of law that you can attempt to aid understanding and not. And I don't know that that's how this would work out here. I

just noticed it. Mr. Mactaggart, did you want to, actually let me pause and just say, are there more comments on this new material before I ask instrument? Okay. Alright. Mr. Mactaggart, do you want to talk about some of your other comments or Ms. de la Torre, were you planning to introduce other things first?

MS. DE LA TORRE: We have two more things that are new, and then we can open it to everything that might come from the board in terms of comments.

MS. URBAN: Okay. Is that Alright?

MS. DE LA TORRE: If I could go?

MS. URBAN: Yeah. Go ahead.

MS. DE LA TORRE: Okay, so the other thing, and I take it that that piece that is new, there's consensus around keeping it the way it is. Is that the summary of our conversation?

MS. URBAN: I am not asking to change it in order to advance the package to the next point, no. So, you have concerns.

MS. DE LA TORRE: Okay. So, the next piece that is new and this is more minor, but for me its page 18 is in section 71, 56, timing and retention requirements for risk assessments under A three. Again, it starts with for board discussion. Is the idea of this whether automated decision making, sorry, whether risk assessments should be periodically review on what should be the cadence for that review. Typically, and that's part of the rules, there's a requirement to obviously review your risk assessment when your activities change. But this is, in addition to that, is there a need to review these assessments annually, biannually, every three years? Whether the activities that the business is engaging have changed or not. And that language is new. I think that we got some

feedback last time. And I want to recall that the consensus was around three years. It's not necessary to require it. We could just allow business to update this when their activities change. But we will welcome any feedback that the board has, if anybody has a strong opinion on this piece, how often it should come up for review.

MS. URBAN: Thank you, Ms. De La Torre. I mean, I think it's attractive because it helps businesses have a regular process, whatever the time period is, and it helps consumers know that they can rely on that regular process via the agency. That said, again I think it's going to be a little mysterious to us what we're asking in terms of cost and so forth until we hear more. So, I would be in favor of including it, and I'm agnostic as to the timeframe. I think it, things are moving quickly, they're not moving instantaneously. And so again, I would be happy with kind of any of these thresholds. Mr. Worthe, were you, did you—

MR. WORTHE: Yeah. I'm just wondering if in the section right above it, it's a three year regardless of the business change or not, why not just tie together so they're doing it all at the same time.

MS. DE LA TORRE: Right. That's exactly, I mean, I think that's intuitively what we were with the subcommittee, because there are other three year periods, and I will say, my personal opinion is that you don't want to make this short. It takes a long time to do a risk assessment. It's not a 10 day process. It's a longer process. So, I will definitely be speaking against the idea of doing it every year, I will be open to just not require periodical assessments. So long as there's a requirement that when activities

change, there's an assessment. But if the board will prefer, like Mrs. Server mentioned to have this time requirement for all assessments to be reviewed, I will lean on the longer period, like a three year.

MS. URBAN: That makes sense to me. I think Mr. Worthe made a very good point in terms of efficiency. Yeah, of course. We don't want businesses to feel like they have to rush so that they're not doing a full job either. I just continue to be aware of my own limitations and knowing exactly what all of this means from the perspective of the businesses doing it. And indeed, we'll just have to wait and see to some degree. We'll have to wait and see what comes out of the process and we could amend it later. But again, I would like to just go with something and hear from people with direct knowledge what it would mean. Mr. Le.

MR. LE: Yeah. And this is maybe cheating a little bit, but it's within this section, but 7156C, there's a saying businesses should conduct the first risk assessment for processing operations done before the effective be of these regulations. It says 24 months, I think given that these regulations are out. And there's already going to be some time in between maybe reducing that to 12 months would be the better, better move since businesses have a lot of advanced notice. But that is just from me. You know, wanted to get any thoughts while we're in this section.

MS. URBAN: I see. Yeah. So, integrating the timelines altogether as Mr. Worthe pointed out, maybe we are asking businesses to have a set schedule with time to do updates and so forth. Maybe we need to ask for the initial effort with a slightly tighter timeframe, given that these have been before the public

since September. I think, okay. Mr. Mactaggart, Sorry, Ms. De La Torre, I didn't mean to—

MS. DE LA TORRE: Let's allow Mr. Mactaggart to share first.

MR. MACTAGGART: I'm happy to let the discussion go on the timing because I don't have very strong feelings about that. So, I'll come back with sort of some bigger, I mean, some different comments.

MS. DE LA TORRE: I am aware of the fact that this and draft has been out for a while. However, I also want to remind the board that the way we are proposing to do automated decision making and this piece risk assessments is very broad compared with what has been proposed or required by other jurisdictions. And specifically, there's a piece of it, which is employment, which has not been required by any other jurisdiction in the US and this is because we have a different scope of our law. So, I will be mindful of that when we think about how much time will it require to complete one of the assessments. And also, it is fraud to start performing an assessment without the rules being final. Because you could be including work that doesn't need to be included or excluding work that needs to be included since there's going to be changes. So, I will lean on not expediting or requiring a faster time to come into compliance because I think this is a very big ask for compliance teams, and I want to make sure that they have the time, the knowledge, the ability to do it in a way that is of substance and they're not overwhelmed with 12 months where there's more work than maybe a compliance team can necessarily easily undertake.

MS. URBAN: Thank you, Ms. de la Torre. Further comments on this topic, I would point out that no matter what else happens,

there's going to be significant more lead time because we still have to have all of the preparation of the package. The economic analysis, which I understand takes months at a minimum, go through the entire rulemaking process, which we've been through, going quite quickly. I'm still proud of us for going as quickly as we could. So, there's going to be a lot of lead time no matter what we do. So, there was a third item you wanted us to focus on specifically Ms. de la Torre?

MS. DE LA TORRE: Yes. Yes. And I think that we have the feedback for 71, 58 A2, which will be, say at three years just for clarity. I believe the feedback that we received on that one, the critical update. The last one thing that we wanted to point out as new is at the end of the rules and is section 71, 58, this is about submission of the risk assessments to the agency. The mandate on the agency in terms of submission from the law is that there has to be some form of submission, but there is no clear or there is no requirement that the submission be every year, every two years, know when the impact assessment change. So, there is a lot of flexibility in terms of how this provision can be set. The staff drafted something that's, I think two pages and a half. So, it is very detailed and we can allow them to answer any questions that the board might have. And I also have a personal opinion on it, but I want to hold that back to hear the feedback from other board members on this formal obligation to submit annually that the staff has drafted. So, should we allow the staff to present or do we want to go to comments from the other board members?

MS. URBAN: Well, I think that you have been much more closely involved in the conversation than I have. It makes sense to me to

find out if legal division folks who worked on this one comment and then go to board members.

MR. LAIRD: Sure. Happy to. I might ask Ms. Neelofer Shaikh to join us if she's available.

MS. URBAN: Ms. Shaikh, welcome.

MS. NEELOFER SHAIKH: Hi. Yes. I'm happy to walk through the submission requirements that are currently in section 7158. And so, you'll see that there are different pieces that are addressed in 7158. So, the first 7158(a) just goes to the cadence of submission, which would be an annual submission period. There currently is a 24 month period as a placeholder for the first submission in line with board member Le's feedback. We could reduce that to 12 months. And so that's something for the board to consider. Part B is actually what must be submitted to the agency with each annual submission. The B1 addresses a certification of compliance that would be submitted with the risk assessments. It provides a bit more detail, but in short, it just explains that a business would have to actually certify compliance with the risk assessment requirements as part of its submission. (b)(2) goes into what actually would be submitted, which would be the risk assessment in abridge form. And B2 outlines what is an abridge form of a risk assessment that would have to be submitted. B3 gives businesses the option to also include a hyperlink to a public webpage that includes it’s on abridge risk assessment. 7158(c) outlines the method of submission, which would be via a risk assessment submission web page and 7158(d) outlines that the risk assessments must also be provided to the agency upon request. So that's generally at a high level how 7158 works, which is outlining the timing of when things must be

submitted, what actually must be submitted. C is how it will be submitted, and D makes clear that the agency can also request these risk assessments upon request. I'm of course happy to answer any questions about these specific provisions.

MS. URBAN: Ms. Shaikh, questions or further comments from board members. Okay. Ms. de la Torre, you mentioned that you have comments yourself.

MS. DE LA TORRE: So, the last section, the risk assessment shall be provided to the agency. I do believe that we should amend that to mention that it should be provided either to the agency or to the AG if the AG was to request it. And other than that, my point of view is that we should encourage the staff to simplify anything that is formal paperwork as opposed to substance work on identifying risk and setting measures of control. So, thinking about whether the submissions could be biannual instead of annual or whether there is a way to create a more summarized version that will suffice for the submission will be things that I will value. There is a costing time to do anything. And to me, the value of the risk assessment is not in the submission, but it's in the fact that is thoughtfully performed and it's available to the agency at any time is if we request, that will be the full version. So, this to me is more of a formal requirement that has to be part of the regulations because it’s required under the law that there has to be some submission. But I will appreciate if staff could revise this thinking about how they can make it easier for organizations to comply. And be mindful of the time that it can take to just summarize documents and present them on regular basis when we know that the agency has access to the full report at any time.

MS. URBAN: Thank you, Ms. de la Torre. Mr. Laird or Ms. Shaikh, did you want to comment? Is Ms. de la Torre invited?

MS. SHAIKH: Yes. So, on the timing, I do think that is something that it would be helpful to get board direction on. So, staff has recommended an annual submission. Board member de la Torre. Based on your feedback, you are also asking for consideration of a different timing cadence. And so, if other board members do have feedback on this specifically that would be helpful for staff to consider.

MR. LE: Yeah, this, I think, I mean, I like the idea of annual, but at the same time, if nothing is changing, right, they're not updating their risk assessments, then perhaps whenever it's updated could be helpful. And then it, maybe the assumption is there's no changes in between, but that's very early thinking. I'm okay with the language as is. But yeah, that's the other option I could think of.

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

MR. MACTAGGART: Yeah, I'd support what Mr. Le just said you know, annual, but if nothing's changed, no requirement.

MS. URBAN: Thank you, Mr. Mactaggart. Other thoughts? Ms. Shaikh, I appreciate… Oh, sorry, Mr. Worthe, go ahead.

MR. WORTHE: No, I was just to say I'm fine with that too.

MS. URBAN: Ms. Shaikh, is that sufficient for you?

MS. SHAIKH: That is helpful. I appreciate the feedback on that. And then we will also take board member de la Torre's note just generally about how to further streamline these regulations. And so, in whatever ultimate motion happens on the risk assessment, if staff could have discretion to just streamline the regulations

for readability, for clarity, and to simplify as possible, that's just something I'm going to throw out there as potentially helpful as well.

MS. URBAN: Okay, thank you. Yeah, I think that should be pretty much standard for anything that we send on. At this point, I appreciate everybody's thoughtful analysis of the meaning of these as with others for compliant businesses. I still have in mind the other timeline, which is actually getting the regulations in a form that we get public feedback in getting them done. So, all of these timelines are somewhat speculative until we given the length of time for rulemaking. So, I'm happy to go with the 12 months for the first submission. I'm happy to go with other board members' thoughts about the ongoing submissions and I think Ms. de la Torre, hopefully we've discussed the questions you had on this one. Mr. Le.

MR. LE: I think perhaps maybe it would be helpful to get Mr. Mactaggart and Mr. Worthe's opinion on the first submission, just so we can get clear direction for staff. It'd be 24 months for the first submission or 12 months knowing that probably these regulations won't be effective until quarter two, quarter three of next year. That's all speculated. Yeah.

MS. URBAN: Mr. Mactaggart or Mr. Worthe, do you have a thought?

MR. WORTHE: Yeah, I just think, I appreciate that they're not going to be out for a while, but when you start with something new like this, I think it's just going to be a lot of heavy lifting for folks to get it into their normal routine. And so, I was fine with the 24 months. If you think the 12 months is really important, I

could agree with that. I just think 24 would be helpful to the businesses starting something new.

MS. URBAN: Thank you, Mr. Worthe. Mr. Mactaggart?

MR. MACTAGGART: Yeah, I agree with Mr. Worthe. I think it's, the first time it’s going to be a lot of work, so I'd go for longer.

MS. URBAN: Okay. Alright.

MS. DE LA TORRE: I agree with that point of view as well.

MS. URBAN: Okay. And I continue to express my lack of expertise on the people who are in the building doing the thing. So, I don't feel strongly about this. I very much appreciate Mr. Le's observation about the other timelines. So, Ms. Shaikh, I think that we are in sort of a general consensus that we go ahead and leave it at 24 months.

MS. SHAIKH: That works. Thank you.

MS. URBAN: Okay. Alright.

MS. DE LA TORRE: At this point we want to open it for feedback from the board, across the board for all of the…

MS. URBAN: And Mactaggart I know had some thoughts on different parts of the risk assessments. So, Mr. Mactaggart, I'll invite you now to offer those and just remembering that some things can go through staff if it's not something that you are concerned about talking about in public. And of course, if you are, please bring them up. Please go ahead.

MR. MACTAGGART: Yeah, I think, so I have some more granular comments, but I guess one thing, kind of stepping back, what I'd love to find out having now seen these changes, which are pretty extensive and realizing this is, it always was going to be a lot of

work. I'm just wondering, I would love to see from staff and assessment of, and Chair Urban, you were talking about GDPR and there's some parts what I've, and I'm not an expert in GDR, but when I've looked at it, there's some parts I think we do better. I'd like our do not sell mechanism better, but I'd be really interested to know how is their privacy impact assessment, how are their risk assessments working? And we do kind of nod at it, talk about allowing other jurisdictions if you satisfy them, do you satisfy us? But they've had a regime that's been in place for five years. It covers all businesses, big and small, and it has a requirement for these risk assessments. And I'd love to know how it's working because there I'd lay, so if it is working okay and there's not some massive problem with it, could we have a situation where we say, yeah, and if you supply, if you meet the GDPR test, you can submit it here. And I don't have any sort of pride of has to be invented in California if it's functioning there, because I do think that's the largest trading block in the world. We're the fourth largest economy in the world, and if the standard is working there, part of me says you know, that might be something to consider. So, I'd love to just know and I don't have to note right now, but if as part of this, if we could get a sort of an assessment of this is a possible avenue or not to consider, because it certainly would make it easier on businesses if you just have kind of one global standard, you have to adhere to. So that’s kind of my biggest kind of picture, that's thing. And then…

MS. URBAN: Mr. Mactaggart, I think Mr. Le might have an observation on that big picture point, is that right?

MR. LE: Yeah, just quickly, I think if you're doing a DPIA in

the EU, you're already very close to finishing your California one, I think California rules go further where necessary. And beyond that, I think that there's been a lot of debates on the effectiveness of DPIAs. But one thing that these rules do better is there's more public disclosure, at least in the abridged version on what businesses are actually doing in these risk assessments. I think that's been one of the flaws of the GDPR model is we don't get a lot of DPIA results, but yeah, I'll stop there. And I know staff has done a lot of analysis on this and we've talked about that a lot. So, I'll stop there and I think Mr. Soltani has point to make as well.

MS. URBAN: Thank you, Mr. Le and I assume that that would go into the initial statement of reasons or some explanation in the reasoning for the provisions. Mr. Soltani and then Ms. de la Torre.

MR. SOLTANI: Thank you chairman. And Mr. Mactaggart, thank you for the comment. Absolutely I think your instincts are right in the sense that there's been, as you know, five years of experience with under GDPR and staff have consulted and reviewed both kind of Colorado's approach and GDPR approach and incorporated that. There's portions of the language that's say, if you comply with these other jurisdictions, here's some similarities. And I imagine the compliance folks will build crosswalks to our heart's content. One of the benefits of our participation in the GPA, the Global Privacy Assembly is I've been able to meet, and staff has been able to meet with a number of regulators across Europe and Asia. And we have talked at length as to how they kind of what they see in their DPIAs, how effective they are, what works and what doesn't. And that has informed quite a lot of our reasoning. You know, as I

said, it's been five years since they've been doing that. I think there is also opportunity to improve on that, to make that more significant. So, I won't share who, but one regulator we spoke to receives numerous DPIAs and I think they're scheduled to release an assessment of kind of a holistic summary of what their experience has been, which colored some of our insights. And they essentially say most DPIAs, they review rarely give them the results they need. They almost always have to go back for more information. And that's what, in fact, informed how we structured our DPIAs. So just know that we've had a lot of that conversation with our counterparts, and we've incorporated some of that feedback into our approach.

MS. URBAN: Thank you, Mr. Soltani. And I am always happy if section 1798.199.40(i) is mentioned. As you know, I'm a big fan of that provision. Ms. de la Torre.

MS. DE LA TORRE: Thank you. So, I have done data protection potentially assessments. I have reviewed data protection assessments. The feedback that we thought we originally got from the board, and I don't think there has been a change on this, was to not look so much at Europe as to look at other states and be mindful of the power of our rules in terms of helping set a national standard. And that's where my attention has been rather than the European experience. I do have to say that two things. These documents are long. They can be 80 pages. They can be 40 pages. They are not five pages. If you have a data protection impact assessment that's five pages, you probably didn't pass the bar in any jurisdiction that I'm familiar with. So, it's a significant undertaking. And second thing that I wanted to mention is that for California, one of the things that we have to be very

aware of is the difference in the scope of what we regulate, particularly business to business communications and employee data is something that is not regulated by other states. And it's something that nobody has done for GDPR, because GDPR never require employee data when the employees based in California to be subject to requirements. So, there is going to be a significant push, and I think some of the members mentioned this, there's going to be a significant push that will have to happen for compliance with our rules, just because of the scope of what CCPA covers versus other jurisdictions. And it is good to have details, but it's also good to find flexibility when we are providing guidelines for the data protection impact assessments. So, I do see the point that Mr. Mactaggart mentioned, and I think director Soltani also mentioned, which is after reviewing a data protection impact assessment, the agency has the ability to go and ask more questions. And I do not anticipate that that will not be the case in most situations because these processes are complex. So, industry specific processes might not be, even when you're trying to draft this data protection impact assessment, to be clear, might not be initially, initially clear to our staff because they might not be that familiar with what the specific industry is engaging in. So, to me, that's a call to find flexibility because the information can be available anyway to the agency through questions after reviewing a data protection impact assessment. So that to me is a call for allowing for flexibility in the preparation of the formal document because there's no limitation in the information that can be received by the agency after they review the document.

MS. URBAN: Thank you, Ms. de la Torre. That is helpful. I want

to do a quick time check. We've been talking for about an hour and 45 minutes, and we do have 10 items on the agenda. This is in no way intended to limit full conversation particularly of course on this agenda item. But I do want to be sure that we are cognizant of the fact that the ADMT regulations are coming before Mr. Worthe, Mr. Mactaggart and myself for the first time. And again, that the sort of stakes, if you think of it that way, do not include us not having substantive feedback on these rules again. Alright. Mr. Mactaggart?

MR. MACTAGGART: Great, thank you. So anyway, I think I heard all that feedback on GDPR. I still think it would be useful, and I've asked staff to consider having a section here which says, if you've comply with GDPR, here are the things you need to do for California. And I just think that I hate having to, I think I'm a big 80/20 fan, and I think that the easier this is to implement, the more widespread the adoption will be and the better for consumers. And so, I think if business has and this is probably mostly just the big businesses that have business in Europe, but that's a lot of them, if they've already used to doing it one way, and if it's not some big fatal flaw, I would urge us to look at, and to Mr. Le's point, maybe it's okay, you have to have more transparency here. And here's the sort of list of things. So, if you've already complied with GDPR, go to section this one. And so anyway, that's one thing. Then specifically within the actual document, I do have some comments. One is this notion of profiling consumer when they're in a publicly accessible place. The GDPR construct is the systematic monitoring of publicly accessible areas on a large scale. What we're saying is slightly different. We're

saying it's based on where you are, so if I'm walking in a street and I'm on Yelp looking for a Chinese restaurant, that's what this is now. Or if I'm Google, if I'm on Google Maps or Apple Maps, that's now profiling me or if I'm getting an Uber. So, I think that I prefer the GDPR construct because this is just, if you happen to be in a public place and you're using a software, you're now into this world. So, I think it's more all of our concerns, more around surveillance. On a large scale, you're walking along, you don't even know you're getting surveilled. So that's one concept. I have. One comment I have there. In terms of the risk assessment requirements, so this is now section 7152, I just want us all to think about what we're going to be getting. So, like, for example, 1A says the business has to say why they're using the automated decision making as opposed to manual processing. And yet our decision of automated decision or our definition of automated decision making is so broad. It's basically software, like any time, it helps you make a decision. So, now we're going to be saying to every business, essentially, why are you using your software? And for little businesses that are, not little, but are not software businesses that develop the software themselves, it's like, why did you buy this accounting software and not another one? And so that struck me as we're going to ask these questions, and the overarching aim of this section is to improve privacy and security. And I don't think that does. And then we're getting pretty granular about in a risk assessment in, this is now same 7152(5)(g). And we're saying, if they're using the automated decision making to determine compensation for its employees, we're ask them how it uses the compensation, how it uses the output to

determine the actual compensation. And I don't know, this feels like we're getting past what the actual function here is. We're number seven—

MS. URBAN: Mr. Mactaggart, I'm sorry, could you clarify that a little bit? So, remember, for OAL, we have to be very specific. I kind of lost, I'm sorry, I just lost it. Lost what you were saying there.

MR. MACTAGGART: No, I think for a lot of the elements of the processing, for example, in number seven, we're asking them to tell us how much money they make from the sale or sharing of consumer's personal information. And this is in the risk assessment. That's what they're saying: that they are using the-- if the benefit to the business is that they make money. And I guess I'm, it feels like we are, and getting into what I was talking about earlier, where we're really asking a business to get into areas that are kind of far afield from the risk assessment of what's the risk of processing the information feels different than how are you using, what's the output when you're using this software to determine compensation for an employee. And if you go to section eight, the Negative Impacts to Consumers Privacy Association, all of that feels, again, going back to the age appropriate design code. I look at all that stuff, the constitutional harms, the political participation, the religious activity free assertion, I'm like, wow, this is requiring businesses to start weighing in on the discrimination harms and the disparate impact of upon protected classes. I don't think that's where we should be going with this. And so, I just thought it was… I thought there could be some cutting back here in terms of the section 7152, the risk assessment

requirements.

MS. URBAN: Section?

MR. MACTAGGART: 7152.

MS. URBAN: 7152. Thanks, Mr. Mactaggart. If it's alright, I'd like to pause you again because I think Mr. Le and Ms. Shaikh may be able to clarify our respond.

MR. LE: Yeah. Ms. Shaikh, why don't you go first?

MS. SHAIKH: Absolutely. I think there's just two points that I wanted to make with respect to section 7152. So, for example, in the example about estimated profit, it is because one of the things that must occur in a risk assessment as required by the statute is an assessment of whether or not the benefits outweigh the risks. And so, if an expected benefit is monetarily profiting off of a consumer's personal information, what that estimated profit would be, we believe would impact the assessment of whether or not the benefits outweigh the risks with respect to the actual negative impacts identified. Of course, we're happy to, of course, take board feedback on how to streamline these regulations. Those are generally, we did look to what other states such as Colorado, have identified as risks for consideration. And in the interests of interoperability, we've tried to use a similar framework. But again, I do think this would be particularly when we receive individual board member feedback to further refine the regulations, it is something that we're happy to take back.

MS. URBAN: Thank you, Ms. Shaikh. It's helpful.

MR. LE: Yeah. I was just going to say that's exactly the point around the risk benefit analysis. You know, if you don't know the benefit, then how can you estimate whether the risks of your

processing outweigh those benefits? And I think the idea here is that companies, when they have so much data on you, right? There's a huge information and power asymmetry that occurs. And that can create risks of discrimination and other types of harms due to the ownership of that data. So, the idea here is, so that you have a lot of power as a business and its upper limits around 29,000, 30,000, making sure that now that you have all this power, you're using it responsibly. So that is really the goal around here on a lot of these regulations as the subcommittee drafted them.

MS. URBAN: Thank you, Mr. Le. I mean, I really do take Mr. Mactaggart's point here, but I want to underscore… well, I don't know, I don't have the power to underscore, but I will repeat with a affirm what Mr. Le said about requiring an actual assessment of benefit. This has been a problem with cost benefit analysis for decades in terms of being able to actually understand what the trade-offs are on the part of the public. So, I think that I really appreciate the subcommittee taking that into account, as well as taking into account other jurisdictions as Mr. Le laid out so clearly a few minutes ago. I very much appreciate all that work, and I think that listening to the conversation helps me see a lot about some of the choices here. Ms. de la Torre. I'm sorry, Ms. de la Torre, could you come off mute?

MS. DE LA TORRE: Thank you. I appreciate the discussion and the thoughts shared. I wanted to highlight a few things. Number one, this section, this section on risk assessments doesn't have a threshold. Meaning if you're a small organization, medium organization, you're going to be required to perform these risk assessments as if you were a large organization, because we have

set up without threshold. So, when we look at these requirements, we have to think about how they apply not only to larger organizations that might have compliance teams that are able to do these assessments, but also smaller organizations that might not even have a general counsel and that will be required to perform these kind of assessments. So, I take Mr. Mactaggart comments to also be inclusive of that concern. In terms of the streamlining requirements, I think that there could be an opportunity to take a look at them. I do have to point out that I mentioned with the cybersecurity piece that it is typically the case that cybersecurity experts are not necessarily trained to identify the kind of risks that are in this list of negative impacts. That's not quite the case for privacy compliance professionals, I think that we are aware and trained to identify negative impact in a way that's more flexible, not necessarily so technical. The last thing that I wanted to mention, and this might be part of the conversation that we have to have lecture when the staff presents their draft on the ADMT rights, is that the point that Mr. Mactaggart mentioned on the definitions, how we define ADMT, it's very relevant here because the definition is very broad. So, any use of technology to make decisions, basically the way the definition stands right now would trigger an assessment of the risks and also potentially opt out rights. But I'm not sure if that's something that we should have a conversation about here, or maybe we should wait for the staff to present the right section that they drafted.

MS. URBAN: Okay. Alright. Thank you, Ms. de la Torre. Ms. Shaikh or Mr. Laird, do you have thoughts about the order of the

conversation?

MR. LAIRD: None from me. I think that would be fine to have that conversation for the ADMT stage.

MS. URBAN: Okay. Thanks very much. That makes sense to me as well. Alright. Mr. Mactaggart.

MR. MACTAGGART: Thanks. Actually, Mr. Le, that was well said about the benefits, so thank you. I think probably my, if I come down to it, I'm very worried about number eight in 7152. Again, and I take your point Ms. de la Torre, that maybe the privacy professionals are more versed in figuring this out, but I look at the, again, what we're asking the businesses to weigh in on, and that feels large, sort of mountainous in terms of what all the potential harms are. And then that kind of also spills over into the next section 7153, the additional requirements for businesses using automated decision making. Because again, now they're going to have to tell you their definition of equality and equity and discrimination harms. They're going to have to say did we evaluate other versions of the automated decision making technology? And we're talking about a business that bought software, so now it's going to have to come tell you why they didn't buy another piece of software. Because essentially this is the definition of software. And so that's a, I'm not sure that advances the privacy conversation the way we may want to. And did we test, I'm a business, I'm buying an accounting software that might recommend remind me when to pay my bills or something like that. But it's making, it's helping me make a decision. Now, I have to say whether I evaluated it for validity, reliability, fairness, I think we're, I guess I think we're, it's easy to add things on later when we

have a mistake if we'd like, okay, this is really, we need to add things on later. But I would start with less. I'm a big less is more fan to begin with. So, I think we'll obviously see this again, but I am concerned about how much we're asking businesses to do here that are not, I think, intuitive initially for a level.

MS. URBAN: Thanks, Mr. Mactaggart. I wonder if this also is something that we could bundle with the ADMT discussion since I think there's significant overlap.

MS. DE LA TORRE: I think the question is, because there's two ways to think about solving. One is to better define ADMT to avoid the situations that Mr. Mactaggart was mentioning. Like software that might not be really making any decision is just used as an aid in making a decision. So that's one thing. And the other possibility will be to keep the definition broad, but perhaps reconsider the specificity in terms of the requirements for the assessment. So, I wanted to ask Mr. Mactaggart, either of those avenues will solve there and the concerns that he raised or if he had a very specific preference for revisiting the list of requirements as opposed to revisiting the scope of the definition.

MR. MACTAGGART: I think it's-- I'd have to see it how it worked. I think that the definitions of ADM and profiling are so vast, so broad that they basically cover kind of all technology, all the use of technology, and then to evaluate why you're doing that as opposed to doing manual thing. Well, of course you are, because that's world we live in. So, whether we limit the requirements for people who are going to do the risk requirements or we limit the definitions. I'm some somewhat indifferent to and I think this is why was underlying my comment about GDPR, just, I was

like, wow, this is a tremendous amount of work to do, and if there's already a system that's working well. Does it make sense? And I hear about Colorado, but you know, the EU is whatever, 500 million people, that's a pretty big area to try to, maybe to align with if it's working. So anyway thanks.

MS. URBAN: Thanks, Mr. Mactaggart.

MS. DE LA TORRE: I would like to—

MS. URBAN: Mr. Le and Ms. Shaikh, both have their hands up, so if it's possible, I'd like to give them the opportunity to speak.

MR. LE: Yeah, so I think the validity, reliability and fairness portions, that's part of the AI risk management framework. This is going, this is a small, tiny subset of what the National Institute of Science and Technology has said that everyone deploying automated decision systems, AI systems should be doing. So, in my perspective, if you're having a decision, you're having a system that is controlling your access to healthcare employment, its incumbent on the businesses who are making more than $25 million or processing certain amounts of data and making these decisions. So, there's several layers of thresholds that limit the application of these rules. You need to know whether or not your system is reliable, valid, or fair. And we're not saying you have to have any one definition of reliability, validity or fairness, but it's incumbent on you if you're making these critical decisions that you know if your system works or not. There is a case just now where a Medicaid algorithm allegedly denied people healthcare, health, their claims 90% of the time erroneously. So, I think businesses need to know this. They need to be able to actually assess this before they release their products to make potentially

life threatening life, very important decisions. So, I think there's a real strong, once you have this much data on someone and you're using it to make critical decisions about them, it is part, it should be part of any risk assessment that you've done this, whether or not the idea about evaluating other types of systems, that is part of the disparate impact analysis, is there a less discriminatory alternative to the system that you've used? So, this gets at that, I hear your point. This may be administratively burdensome. So there, I'm willing to consider staff proposals and other proposals about how do we get there. But I think at a minimum if businesses in California are making these critical decisions, they have to assess whether their systems work.

MS. URBAN: Thank you, Mr. Le. I will say that we are balancing a number of different issues here in terms of where the burdens lie and the timing. I take Mr. Mactaggart's point that much of the time, we can amend the regulations. These systems are being built and deployed right now, as Mr. Le said, they are using massive amounts of personal information, sometimes very sensitive personal information. And three years from now they are going to be affected. How they work and how dangerous they are is going to be affected by how they're built. Those of us in the privacy and data protection world have a saying that it is always much easier to bake privacy in than to bolt it on afterwards. And thus, I think given the subcommittees, again, two years of work on this and very thoughtful approach to it, in this instance, and it's not the case for every instance, in this instance, I think that the better path is to start with a protective model. And businesses can tell us, and they absolutely should, if it's not working, if the cost

benefit analysis is too much, if it's just not something they can comply with. But right now, these things are happening. Right now, these systems are being built and if we like do something that doesn't take into account the issues that we know exist, in theory, I suppose we could tack them on later, but it's just going to be more cost on businesses. And in the meantime, we have consumers who've had, for example, their Medicaid claims denied for no reason sort of extrapolated. I don't think we can know exactly how this is going to play out or exactly what the risk is. But I think we absolutely need to keep in mind the way that technologies are built and deployed using personal information based on what we know from the past. This is in no way to say that I want to burden businesses unduly at all. I definitely do not. I just want to be sure that we're giving businesses the tools to build things in the best possible way. And that the businesses we are targeting are those who meet the thresholds under the statute, which of course they are. And those are businesses that either have relatively high revenues or use our data a lot and it's a large part of their business model. So, there is a risk there to the people of California. So, if we're going to err on one side right here, I would be in favor of err on the side that would allow us to pull back if we don't need to, within reason, of course. But anyway, I'm sorry, Ms. Shaikh, I was listening hard, and I apologize, I completely forgot your hand was up and it's over the block again.

MS. SHAIKH: No, no, thank you, Chair Urban, the only thing I was going to add to what board member Le had said just as he had mentioned, it's not any use of ADMT that would trigger these requirements. It would be, one, you would have to meet the

definition of business under the statute. Two, you would be using automated decision-making technology, and three, you would be using automated decision-making technology in one of the ways that is listed in the thresholds under 7150. And so, it would not be all uses. And the second thing that I wanted to just quickly raise is that the regulations do acknowledge that there may be instances where a business, for instance, is not the entity that actually developed the model. So, for instance, if you receive the model from a service provider, our regulations do require that a service provider assist you in completing the risk assessment so that you are not left in the dark. Similarly, under section 7154(b), the entity that is training the model that you are using also must assist you in completing the risk assessment. The idea here is that the businesses who are using the models in one of the ways triggered under 7150(b), if they don't have access to all information about the model, including how it was evaluated for fairness, that this information does need to be provided for the, to them so that they can themselves complete their own risk assessment requirements. And so, they would not be left in the dark trying to comply with something that they don't have sufficient information to comply with.

MS. URBAN: Thank you, Ms. Shaikh. Mr. Mactaggart?

MR. MACTAGGART: Yeah. Just to Mr. Le and Ms. Shaikh point, I get that, except that's not what it says in the sense that if it were just about the Medicare and stuff, that would be a different, it was just the legal effects, the decisions producing legal effects that would be one thing. But actually, when you look at the definition of ADM, which is to any, using computation as a whole or

part of a system to make or execute a decision, which is pretty much any software. And the fact that this 7150 is for profiling a consumer when they're out in the street, it means basically any consumer who's using any kind of app in the street is now falling into this category. So that's a very different thing to me than you're being denied insurance or a loan or healthcare. So, I don't agree that Ms. Shaikh is…

MR. LE: At that point, systematic is something that I would potentially like to add to that definition. Right. But at least on the point of legal or similarly significant effects I guess, what are your thoughts on, I think the regulations definitely make sense when it comes to the…

MR. MACTAGGART: Yeah, I think that's why we, and that's why I sort of like that construct of these big decisions that are important in terms of your health, your financial stuff, feel different. And also, I like the profiling for behavioral advertising. Because that's clear. That's also, we're trying to track you but the ones that are sort of just, I'm looking for a restaurant or I'm trying to find a car, they don't feel the same threshold.

MS. URBAN: Ms. de la Torre and then Ms. Shaikh.

MS. DE LA TORRE: Thank you. So, in the definition of decisions that produce legal or similarly significant effects concerning a consumer, which Chair Urban brought that before, I just wanted to read it out loud. So, it means a decision that results in access to, or the provision or denial of financial or lending services, housing insurance, education, enrollment or opportunity, criminal justice, employment or independent contracting opportunities or

compensation, healthcare services or essential goods and services. And I'm generally supportive of the definition. I have two questions on the definition is, so we say financial or lending services, housing, insurance, education, enrollment or opportunity. And what's opportunity? Opportunity is not a clear line for me. So, if you don't accept somebody into an educational program, are you denying them an opportunity? Potentially, I think there is a possibility to make that a little bit more clear, because I don't anticipate that that's what we will consider legal or significantly similar. And then the other one that I wanted to highlight is employment, not only employment, but also independent contracting opportunities. So, if I'm a business and I am receiving proposals from several businesses, I'm going to make a decision as to which one I will choose. Is that within the definition of decision that produces legal or similarly significant attacks because we regulate business to business data? Those are the kind of things that I think we could be a little bit more thoughtful around in our definition to make sure that we really cover what we mean, which is really significant decisions about individuals, not necessarily about deciding on which contractor you might hire. But I generally, like I mentioned, support the other pieces of the definition. I also wanted to take an opportunity to read out loud the definition of automated decision making technology, which I think it underlies a lot of the concerns that Member Mactaggart share. And we send automated decision technology means any system, software or process, including one derived from machine learning statistics or data processing, or artificial intelligence that process personal information and or uses computation as a whole or part of a system

to make or execute decisions or facilitate human decision making. So, I think that's the point that Mr. Mactaggart is raising on the broad definition. And we can look at it from the definition or we can look at it from the requirements. I'm very supportive of the comments of Mr. Le in terms of, and chairman Urban in terms of these systems that are making important decisions and how they need to be regulated. And I think that has been a lot of the attention from the subcommittee, and I'm very supportive of it, but at the same time, I'm wary of saying that some use, any use of technology should trigger the kind of investment in doing data protection impact assessment. Or we will talk about rights on the other end. Because I don't think that that's where the concern of the people is. I don't think that people are concerned about the use of technology. I think they are concerned about systems that make decisions without transparency or without human intervention. And like I said, we can think about it from the perspective of whether we tailor the definitions or we set other thresholds around some of the requirements that we attach to those definitions.

MS. URBAN: Thanks, Ms. de la Torre. Ms. Shaikh. Sorry, I'll ask you, just a moment of patience because I think we have inevitably entered the discussion of ADMT, and I'm just trying to think about the most efficient way to do this. Ms. Shaikh, maybe if you'll respond, and then I'll ask Mr. Mactaggart if he has comments on risk assessments that aren't related to ADMT and if he's willing to have the conversation about the thresholds for ADMT and sort of how they all fit together when we talk about the ADMT regulations. But I'll let him think about that. Ms. Shaikh, while you go ahead.

MS. SHAIKH: Absolutely. Thank you, Chair Urban. With respect

to the comments made by board member Mactaggart and board member and de la Torre, just wanted to clarify three things quickly. So first with the profiling in publicly accessible places, board member Mactaggart, I think this could just be an area of wordsmithing. The examples that we provided are really intended to give guidance on the types of technologies we're most concerned about being used in public. Things like facial recognition, technology being used in public, license plate recognition, things like that. So, it's not actually intended to capture, you happen to be using an app while you're in a public place, but again, I think that's something where we can wordsmith this to make that point clearer. And so, I'm hoping that allays some of the concerns you have about the breadth of that specific threshold. Board member de la Torre on the use of the word opportunity. That's generally to get to the idea again of the decision to promote someone, to hire someone, to fire someone. Those we saw as opportunities. But again, this is something that I think some wordsmithing could help alleviate your concerns about. Just making it more precise, making things clearer. On the definition of automated decision making technology, we did review a variety of materials and putting forth this definition, we reviewed academic literature, other proposals by legislators, by civil society. In terms of refining this definition. It is something that we think would really benefit from the public comment process. We have reviewed as many secondary sources as possible on this, but the businesses who are actually using these technologies, we would absolutely benefit from what they actually would recommend on tightening up the definition. So, my recommendation would be to keep the definition as is with, of

course, any additional feedback by the board at this time, but that we move forward with that definition largely intact for public comment and actually refine it once we get more technical expertise received via public comment.

MS. URBAN: Thank you, Ms. Shaikh. It's very helpful. Mr. Mactaggart, what are your thoughts on continuing this conversation when we're talking about ADMT and maybe getting your thoughts on anything else in the risk assessments?

MR. MACTAGGART: Sure. I'm happy to, just to continue this in ADMT code. I think there was a lot of overlap. And I will say thank you to Ms. de la Torre who said what, I was kind of feeling much more eloquently than I did. I am concerned about the breadth of the definitions. And it's funny, I had underlined just that section of the legal decisions that it's the employment, the independent contracting. Because at that point, it's every time Uber assigns you the drive and not you the drive. And why did they assign that person? And that's independent contracting opportunities. Is that really what we want to be for the legal effects? You know? So, there's got to be, I think, some threshold or some kind of thoughtfulness about why Door Dash chose this driver and not that one to deliver your food to you. And I think that's not what we want. And I think what Ms. de la Torre said was exactly right. We're concerned about these unknowable systems that say you're going to get a healthcare and you're not. And the rest of the stuff I can take up with staff, but that was my main concern, is that plus the whole ADCA component in item eight, the negative impacts that one.

MS. URBAN: Okay. Thank you, Mr. Mactaggart. Other comments on

risk assessments especially, and then I will do a process summary check in with everybody. I'd like to go to public comment. I think we may need a break. So, if people want to think about that trying to juggle a variety of different things to be sure we have a full conversation and get, manage to go through the agenda. Anything else on risk assessments? Okay. So, taking into account the whole conversation and where I understand these draft, maybe sub packages given Mr. Laird's note at the beginning about putting things together as staff needs to, sorry, the different, excuse me, the slightly different points at which these packages are and all the subcommittees work that's gone into them. I am going to suggest first that we have a motion to direct staff to advance the proposed cybersecurity relations, regulations, excuse me, to formal rulemaking through commencement of the 45 day comment period, authorizing staff to make additional changes to and Ms. Shaikh, I don't remember all the words you used, but to improve clarity, ensure compliance with the Administrative Procedures Act.

MS. SHAIKH: And the streamlining for readability. Because I believe that is one of the comments we received.

MS. URBAN: Okay. Streamlining for readability, recognizing everyone that this is to direct and authorize staff to continue the work. We'll see it again before it comes back. And then with regard, or sorry, it will come back before it comes down for public comment. Excuse me. My apologies. And then with regards to the risk assessments, which we have considered in our last meeting and the subcommittee and staff have done further work on, and we've heard some pretty thoughtful comments from Mr. Mactaggart and others. There, I would request a motion to direct staff to receive feedback

on the draft from individual board members as we have done with the cybersecurity requirements. And to propose a revised draft in a future meeting before we advance to formal rulemaking. And Mr. Laird, does that comport with what would work in order to help staff obtain the necessary economic assessments and so forth? I want to be sure I'm not splitting things up too much such that we are not getting the assessments, but also that we are making sure the staff has all the feedback that it needs, and the board is able to give that feedback.

MR. LAIRD: I appreciate that. In this instance, I think we could accommodate sort of emotion of that nature and be able to turn around a new draft before completing the rest of the documentation for preparation of notice.

MS. URBAN: And would that be and that would, I'm sorry to, I just want to be, I know we all have questions about the effect on businesses and the economics, and this would give you the ability to help work with the economists to give us recommendations with that sort of background expertise built in.

MR. LAIRD: Yes. Although I think, maybe I should just clarify. I think the understanding would be that staff would have the opportunity getting feedback from individual board members and otherwise cleaning up the proposal to bring that proposal back to the board. I anticipate in the next one to two meetings for final kind of, not sign off, but to then complete the rulemaking, I guess. I mean, the sooner we can kind of get clarity on the parameters of the regulation, we can certainly start the economic assessment. And I think as long as there aren't significant changes, at the next time the board sees the language, then we

could begin at least that effort.

MS. URBAN: Okay. I guess I'm trying to see if there is a way that we don't have to discuss the parameters again without having the full economic assessment. And my understanding from the conversation is that we, for the risk assessments we talked about thresholds in terms of how long businesses have to comply before they go into the… for the first risk assessment and then the cadence for other risk assessments. And then there were as well some pieces of substantive feedback from Mr. Mactaggart that are connected intimately with the ADMT regulations. And I know he mentioned he has some other sort of one-way comments, so I guess I'm asking if there's a…

MR. LAIRD: I think I'm following now.

MS. URBAN: Yeah. Okay.

MR. LAIRD: Yeah, I think I'm following now. Yes, absolutely. I think you could delegate sort of exactly that level of responsibility to staff. We could proceed with development of the economic assessment and then return to the board sort of with the rest of the package having taken into account any trailing individual feedback from board members.

MS. URBAN: Okay. Wonderful. Thank you, Mr. Laird. Ms. de la Torre.

MS. DE LA TORRE: I'm fully supportive of the proposed plan for cybersecurity, but I would like to hold back on board on what is the destination for the risk assessments until we finish the conversation, because they're very, very interconnected with the ADMT rights. And I want to know where we are at the end of the conversation before deciding whether it makes more sense for them

to go back to subcommittee or to be released to the agency.

MS. URBAN: Thanks, Ms. de la Torre. Yes. And we certainly wouldn't vote until we'd heard from the public. Your comment does raise for me a question which is that I wonder if, so I have given you the outline of what I see as the motions I'm going to request right now. I was thinking at the top of the conversation that we would then ask for public comment in order to sort of keep things relatively clean. But given that the risk assessments and the ADMT, topics have been have, are connected and I should have thought of that because of course they are in the language. We could just wait for public comment until we have the ADMT discussion as well. Or I could ask for public comment on the cybersecurity regulations specifically. I would probably prefer to ask for public comment when we finish the ADMT discussion as well. And so, I'm going to go ahead and say that that's what we'll do unless anybody stops me because of course I could have missed something. Alright. And then I'm going to propose that we take at least a short break maybe 10 minutes. Okay. So, let's take a break and reconvene here at the, just me even it out. Let's make it 11:35 on my clock. Thank you everybody for a really robust discussion. And I will look forward to seeing you again in 10 and 12 minutes. Thank you.

MR. LAIRD: Take whenever the…

MS. URBAN: Wonderful, thank you very much. Then we will just wait a couple minutes for Ms. de la Torre and Mr. Mactaggart. Mr. Le, am I reading the materials correctly that there's a slide presentation that staff will be presenting?

MR. LE: Yeah, the ADMT.

MS. URBAN: Okay. Well, perhaps while we wait for Ms. de la

Torre, staff could be invited to go ahead and pull that up and prepare.

MR. LAIRD: Sure. I'd ask Liz to go ahead and…

MS. URBAN: Okay.

MR. LAIRD: Put the presentation up. Thank you. I don't want to speak for Ms. de la Torre, but no, as you know, the subcommittee is pretty familiar with the content that is to be presented. Perhaps we could start in the interest of time.

MS. URBAN: Of course. I think that makes sense. And if you could speak for the subcommittee, then let's go for it. I believe I will hand it over to Mr. Laird.

MR. LAIRD: Sure. And I'm just actually going to pass it directly again to our excellent staff Ms. Kristen Anderson and Neelofer Shaikh.

MS. ANDERSON: Thank you, Phil. Alright. Well, Neelofer and I are part of the agency's team working on the draft automated decision making technology regulations just as an FYI. We will sometimes use ADMT as shorthand just so that we're not saying automated decision making technology literally every time. As you all have seen, the draft ADMT regulations are posted to the agency's website as a meeting material, but we thought that it would be helpful both for the board and the public to provide this walkthrough of the proposed framework that undergirds those regulations. So, this morning I'll be providing the higher level overview of the proposed framework to regulate the opt-out and access rights with respect to businesses use of automated decision making technology. Neelofer will then provide more detail on some of the key components of the framework. And then finally, I'll

return to certain topics to facilitate board discussion, and we'll be happy to respond to questions from the board following this presentation. Next slide, please, Liz. And we'll actually go to slide three. Thank you. We'll begin with a reminder of the CCPA's delegation of authority to the agency. The CCPA directs the agency to issue regulations per governing access and opt out rights for consumers with respect to business' use of automated decision-making technology, including profiling. It also articulates certain requirements for businesses' responses to consumers' access requests. As noted at the bottom of this slide, other jurisdictions have their own frameworks that govern the use of automated decision making technology or profiling such as EUS, GDPR and other state consumer privacy laws, such as the Colorado Privacy Act. We consider these other privacy laws and regulatory approaches in drafting the proposed framework and regulations. We do seek to harmonize to the extent that doing so is consistent with and furthers the intent and purposes of the CCPA, but the CCPA has its own scope and structure which differ from those laws. For example, CCPA's delegation governing access and opt-out rights is not limited to solely automated processing or to profiling only, and furtherance of decisions that produce legal or similarly significant effects. In addition, the CCPA's requirements apply to the personal information of employees, independent contractors, and job applicants. The proposed framework and draft regulations, therefore, are based upon the CCPA scope, structure, purpose, and intent. Next slide please. This slide provides the proposed definition of automated decision making technology, which includes profiling, the slide also excerpts the profiling definition from

the statute. To be clear, the draft regulations do not regulate all uses of ADMT. While the definition is broad, a business's obligations depend upon whether the business's use of ADMT meets one of the thresholds outlined in the proposed framework and the draft regulations, which we'll turn to shortly. Next slide please. There are three main components of the proposed ADMT framework; free use notice requirements, opt-out right requirements and access right requirements. To be clear, where a business's use of ADMT meets the thresholds that we'll be going over on the next slide, it must comply with each of these requirements to illustrate how they can work together. It may be helpful to think about them from a consumer's perspective. First, before a business can use its ADMT with respect to a consumer, it must provide that consumer with a pre-use notice, that notice gives the consumer information about the business's proposed use of the ADMT and the consumer's rights, so that the consumer can decide whether to opt out or to proceed, and whether to access more information about the business's use of ADMT. Second, once the consumer has received the previous notice, they can choose to opt out of the business's proposed use of the ADMT or to proceed with it. If the consumer proceeded with the business's use of ADMT, the consumer can then make an access request for information about the business's use of ADMT with respect to the consumer. When the business receives a consumer's request for access, it must then provide certain information to help the consumer understand the decision that was made about them and how the business made the decision. Next slide, please. The previous notice opt out and access right requirements apply when a businesses using automated decision making technology in one of the

ways it's outlined on this slide. The first threshold focuses on the type of decision making that can have the most significant impacts on consumers' lives, such as deciding whether to provide or deny employment opportunities. The second and third thresholds address contexts in which consumers are particularly vulnerable to the use of profiling and maybe less able to avoid it, such as in their workplace at school, or in publicly accessible places. The fourth threshold is one that the new rule subcommittees recommended, including this threshold, would enable consumers to opt out of profiling for behavioral advertising. To be clear, this opt-out would not be limited to cross context behavioral advertising, which is defined by the statute. In addition, consumers known to be under 16 years of age opt-in consent would be required for behavioral advertising. The fifth and sixth thresholds were previewed for the warrant in July. They focus on profiling consumers known to be under 16 and on training uses of ADMT. Note that if the board is interested in pursuing these two thresholds, staff would need to refine the language of these thresholds and framework accordingly. For example, to ensure consistency with the risk assessment framework and the requirements within proposed section 7030 and 7031. Next slide please.

MS. SHAIKH: Turning now to the components of the proposed framework, starting with the pre-use notice requirements, before a business can use ADMT with respect to consumer, it would need to provide a pre-use notice to the consumer so that the consumer can decide whether to opt out or proceed and whether to access more information about the business's use of ADMT. To be clear, there is no exception to providing a pre-use notice. If the business met one

of the thresholds discussed on the prior slide, it would need to provide a pre-use notice to the consumer. In drafting these requirements, we considered what information about the business's proposed use of ADMT would be most meaningful to a consumer at that stage when exercising their CCPA rights. Accordingly, the information would include the purpose for which the business proposes to use the automated decision making technology, a description of the consumer's right to opt out, and how they can exercise that right, a description of the consumer's right to access, as well as how they can exercise that right. And then the business must also provide a simple and easy to use method for consumers to obtain additional information about its use of automated decision-making technology. This additional information would include explanations of the logic of the ADMT, including key parameters that affect the intended output, what the intended output of the ADMT actually would be, such as a score that it may generate, how the business would use that output, including the role of human involvement and whether the ADMT has been evaluated for validity, reliability, and fairness, and the outcome of that evaluation. Next slide, please. Generally, if a business receives an opt-out request before it uses automated decision making technology with respect to a consumer, it is not permitted to process that consumer's personal information using that ADMT. However, if a consumer does not initially opt out but decides to do so later, this slide explains that a business is required to cease processing that consumer's personal information using that ADMT, and to notify relevant service providers, contractors, or other persons of the opt-out, and to instruct them to comply. Next slide

please. The proposed framework also outlines certain instances where a business would not be required to provide consumers with the ability to opt out, with respect to these exceptions the language in this slide is an abridged form of what is in the draft regulatory text in section 7030(m). There's three things we'd like to highlight about these exceptions. First, these exceptions address instances where a business's use of ADMT is necessary to maintain the security of consumer's personal information for fraud prevention, for safety, or to provide a requested good or service. If the business has complied with section 7002's requirements. And assuming it is conducted a risk assessment and uses the personal information only for the purposes outlined on this slide, the business is not required to provide consumers with the ability to opt out. Now, with respect to the last exception on the side, specifically when the use of ADMT is necessary to provide a requested good or service, please note that to rely on this exception, a business, to rely on this exception, first, the consumer must have specifically requested that good or service. And second, a business must demonstrate that it has no reasonable alternative method of processing other than the use of ADMT. The draft regulations outline how a business can demonstrate this and provides examples. Second, the reference to section 7002 here is to remind businesses that any use of personal information, including a use subject to an opt-out exception, must still comply with section 7002s requirements. Lastly, for profiling for behavioral advertising, none of these exceptions would apply. A business would be required to provide consumers with the ability to opt out without exception. Next slide please. Turning to the access right

requirements, if a consumer chooses to proceed with the business's use of automated decision-making technology, the business must provide consumers with access to information about how the business used that technology with respect to the consumer. In drafting these requirements, we consider what information would be most meaningful to a consumer in understanding how a business used ADMT with respect to them. That information includes the following, the purpose for which the business used ADMT with respect to the consumer, the output with respect to the consumer. So, for example, if an ADMT generates scores for consumer, a business must notify the consumer of their specific score. Next, how a business actually used that output to make a decision with respect to the consumer, including what decision was actually made. What other factors besides the output impacted that decision? The role of human involvement and whether the business's use of automated decision-making technology has been evaluated for validity, reliability, and fairness, and the outcome of that evaluation. The business must also explain how the ADMT worked with respect to the consumer, for instance, how its logic and key parameters affected the output and how they apply to the consumer. The business must also provide the range of possible outputs so that consumers can understand how they stack up relative to others. And lastly, the business must explain to a consumer how they can exercise their rights under the CCPA, such as the right to correct, as well as how the consumer can submit a complaint about the use of automated decision making technology to the business or to the agency or California Attorney General. Next slide, please. This slide addresses exceptions to what information businesses must provide in their responses to

consumer's access requests. To be clear, there is no exception to providing a response to a consumer's access request if the business meets the thresholds discussed on slide six. This slide merely highlights that where a business is using automated decision making technology only for the purposes outlined on this slide. And as set forth in section 70-30 M1 through three, the business would not be required to provide information that would compromise its processing for these purposes. Next slide please.

MS. ANDERSON: There are two topics in particular that we've identified for board discussion, which we'll turn to now. Next slide please. The first topic is when pre-use notice, opt out and access rate requirements should apply. This slide, which mirrors slide six, outlines the thresholds for these requirements. We flagged the latter three thresholds as options for board discussion, including in the draft regulatory text. Staff's recommendation is to retain all of these thresholds in the proposed framework at this stage, as we would appreciate the opportunity to receive public feedback on them. Next slide, please. The second topic is the exceptions to the opt outright. This slide, which mirrors slide nine, sets forth the exceptions to the opt outright. Again, staff's recommendation is to retain these exceptions at this stage, as we would appreciate receiving public comment on them as well. That concludes our overview of the proposed ADMT framework. And I'll now turn it back over to our general counsel, Phil Laird for next steps.

MR. LAIRD: Hi, and thanks again to the team. Yes, at this point, essentially we would like to turn discussion back to the board, and I know we've already sort of started to toe into the

waters here on some of this framework and these definitions. But certainly feel free to start with the two topics identified. But obviously anything within the draft proposal that the board would wish to discuss, we are open to receive comments and also answer any questions if we could be helpful.

MS. URBAN: Thank you Mr. Laird, Mr. Worthe, please go ahead.

MR. WORTHE: Sorry for the background noise. Thank you for the presentation. That was very helpful. I had a couple questions. If somebody opted out, is the business allowed to deny them access to their service? That's one question. The second was, as it relates to the under 16 additional option, I think it, you asked the question of us, I think all three of the additional options and those exceptions are fine to add in. I want to get to number four on the exceptions, but on additional options, is there any age at which the, some parental approval is required for a decision being made? You mentioned under 16 they have to… if they know they're under 16 that they can choose to opt in or out. Correct. And if so, at what age would a parent have to be involved in that decision? That's the way I understood what you just said. And the final point on exception four, just, I think you're just going to have to figure out the wording on this. Because it could be wide enough that you could drive a lot of things through it. So, I'd want to spend time and I think that's part of the purpose of what you just described, is we're going to get this out and get some feedback and spend some more time with it. But those are my comments.

MS. URBAN: Mr. Worthe, could I ask a quick clarifying question on your first question, when you say, can the business deny access to their good or services—

MR. WORTHE: To the consumer. Yeah.

MS. URBAN: New offering, the offering, the opt-out, et cetera.

MR. WORTHE: Correct.

MS. URBAN: Yeah. So, you want this, so go find another business.

MR. WORTHE: Yeah, if you don't want us to be able to sell your info, then you can't be a customer of ours.

MS. URBAN: Okay. Thank you. That's what I thought you meant. Just want to be sure. Ms. Anderson, Ms. Shaikh.

MS. SHAIKH: I'm happy to address your first two questions and then I'll turn it over to Ms. Anderson for the last question. So, on the access to the service, the CCPA does prohibit discrimination when a consumer is exercising their CCPA rights. And so that should hopefully prevent a business. So, for instance, if an employee wants to opt out of profiling, they shouldn't be discriminated against for opting out of profiling. And then on the last exception, the requested good or service exception, that is intended to address situations where a business could really not provide a good or service requested by the consumer without the use of ADMT. And that exception is meant to prevent the general use of ticket or leave it offers essentially that last exception is meant to address situations where a business really has no alternative except the use of ADMT. Otherwise, when a consumer opts out, they should be able to receive the service that they requested without being penalized. On the under 16 and when parental approval would be required. That is something that our current regulations already addressed. Generally, it's under 13, you need parental approval. And we would generally align with that framework if opt-in consent

was included in this framework as well. So, it's generally under 13, you need parental approval. 13 to 16 is when you would have the minor provide the consent.

MR. WORTHE: Great, thank you.

MS. URBAN: And board member Worthe, I was going to take your question about the exception, and I just wanted to clarify. Is your concern is about the last exception where there's a requested good or service in the businesses trying to avail itself of the exception that it has no reasonable alternative method?

MR. WORTHE: Yeah, I mean, listen, I just, when I read them the first time, the first year is super clear, right? And the fourth is just has, I just want to spend time with it and hear, get feedback on it to understand if it's, we're not going to create an opening that we're not intending to have. That's all. I don't think there's anything to do about it right now.

MS. URBAN: Sure. So, if it's helpful, I can walk through some of the way that we constructed this. So, with this particular exception we drafted it to account for circumstances in which a business literally cannot provide the requested product or service without the use of ADMT. And we did take several steps, drafting the exception to try to avoid potential abuses, including by making it a rebuttable presumption that a business does have a reasonable alternative method of processing if either the business or anyone in its industry or a similar industry is using or ever has used an alternative method to provide even a similar good or service. So, it starts with a rebuttable presumption, effectively, if you or anybody else like you has done it without ADMT. And then in order to rebut the presumption, the business would have to demonstrate

one of the following three things, the futility of developing or using an alternative method of processing. Two, that the alternative method would not be as valid, reliable, and fair. Or three, that developing an alternative method would impose extreme hardship upon the business. And there's much more detail about each of those, including with some examples within the draft regulatory text. But those were three ways in which we were hoping to cabin abuses that might otherwise arise from businesses saying that they just cannot provide a good or service without the use of ADMT. And then finally, there's a requirement that the business that's relying upon such an exception document, how they meet those requirements and be able to provide it to the agency within five business days of the agency's request. We're of course, open to feedback on tightening those exceptions, and we think that we could get great public feedback on those points as well.

MR. WORTHE: Yeah, I think that would be fine. I did notice the five business days, that comes up pretty quick on you. If you're operating a business and you're looking one direction and you get a letter in the mail that maybe someone's out two days later, they get to it. So, I would just ask people to think about that timeframe. Because I don't know that going to 10 business days is going to really make a big difference to us. But that's just my thought on that.

MS. URBAN: Thank you, Mr. Worthe. Other comments, questions from the board. Mr. Mactaggart, thank you very much. And then, Ms. de la Torre.

MR. MACTAGGART: Okay. So, I have a couple of overarching comments. One is, so going back to the section we were just talking

about, I'm a big fan of yes, including the behavioral advertising, including the under 16 in the training. So, let's get feedback on that. So, I think that's, I would include those, the two and three. So, three, I have the same comment I had with the risk assessment. I think we need to tighten up that profiling language. Because right now it's just basically you're using apps out in the wild. So, I'd go with the European systematic monitoring kind of concept. And then two I have-- you know this is about the jobs and about employees. And I, many times when we were in the election to get this passed, I would say the same thing, that we all have an interest in knowing if the delivery driver is blowing through red lights or stop signs, including the delivery driver. So, there shouldn't be monitoring of employees that the employees are not aware of. But I'm very, I don't know where we're getting this, for me anyway, I'm very uncomfortable with the notion that all of a sudden we're going to say in, everybody does business in California that your employees can opt out of essentially your HR and work process. So, think about just truck drivers, right? There's software that monitors whether they've slept enough or they're driving too fast, or did the pilots land the plane in the right part of the runway or are the delivery drivers showing up on time? Are they running too fast? Are the call center people being rude and saying terrible things and are bank tellers stealing or bartenders stealing money? I mean, there are all sorts of processes that we've developed in the workplace to make sure that we serve customers fairly. That you can think about a world I've always believed that one day we're going to extend this, the reach of this law to government agencies and to nonprofits. This would allow, if

you ever did extend it to cops, the cops could say, hey, I'm not going to get, don't put that camera on me. I don't have to be monitored anymore. And that ADM stuff that's going to go through all my millions of hours of cop video, no, we don't have to do that now because we can opt out. And so, I'm very, I think that I actually would strike this. I don't agree that employees should be able to opt out of the business' software, whatever the workplace is, but they should absolutely know that it's going on so that if you're on the work computer and you think it's, you're not being monitored. No, actually, it's your work computer. We're monitoring you. And I think there's a lot of history about if it's a work device, it's the businesses. If it's your personal device, and they should not, I'm super committed to the fact that if they're outside of work or on their own phone, of course the business should not be monitoring them. And that's, I got to find that offensive. But equally, I think we're going to break a lot of stuff if we all of a sudden say to every employee who works for a company that does business in California, you no longer have to be subject to all the processes that are part of your job. I just think it's a huge step to take. And so, I'm not a fan of number two.

MS. URBAN: Can I respond to that before you move on Mr. Mactaggart? I think this is a really important point. I think it is complicated and that leads me to desire public input on it. Mr. Mactaggart mentioned, for example, truck drivers, Professor Karen Levy has a paper or a series of papers that rely on her research with long haul truck drivers and the intense surveillance that they undergo. And it's not clear that that in surveillance is well matched with things like safety and so forth. But it is very

difficult for the drivers. I see that as a bit of an analogy to our limited capacity to know exactly how these things will play out towards the outcomes that we desire and that our statute requires of us. I don't think that trucking companies are trying to make life miserable or undignified or in fact unsafe for truck drivers with the surveillance, but the result of some of the techniques that she studied was not as positive as you might think. And so, I think that it's complicated. I also think that when I read this language I certainly saw some of the questions you're raising Mr. Mactaggart. I also saw it a little bit through the lens of the pandemic and the fact that home and work became very porous for a lot of people in a way that has not necessarily changed. Again, I think it's complicated. I think the line drawing is complicated. And I think the subcommittee had, the staff have done a really good job sort of within an initial pass. And I would really like the opportunity to have more in-depth feedback, conversations with staff ultimately with an eye towards hearing from the public and from experts. Absolutely. So that's, I think these are really valuable questions. I would not be ready to make a decision without more input that we would get through other channels. And I apologize, I think maybe Ms. Shaikh had, did you have something sort of technical to respond with and then Ms. de la Torre?

MS. SHAIKH: Yes. I just wanted to raise that this is a threshold, one to chair Urban's point. This is an area where staff identified particular vulnerabilities of employees. It is much harder to leave your workplace if you're being subject to intensive profiling than to just leave a website. And so, this was meant to address that specific vulnerability in the workplace. One thing

that I also wanted to flag is that this is, this would interact, and we foresee that this would interact with some of the exceptions built into the framework. And so, for instance, if you are profiling your employees as part of cybersecurity to make sure that they are respecting access controls and not trying to circumvent them, so long as you are complying with section 7002 and have conducted a risk assessment and are only using that information for the purposes of the exception, you would not be required to provide an opt-out. However, there are instances where profiling of employees is not simply for security. It's not simply for fraud prevention. And those are the instances that we are trying to get to. So, for instance, as part of a workplace wellness program, if you are tracking your employee's movements, they should have the ability to opt out that would not meet one of the exceptions listed in the four under section 7030(m). And those are the instances again, where if you're an employee, you're particularly vulnerable and you should have the ability to say, I would not like to be subject to profiling and not be discriminated against for exercising that right to opt out.

MS. URBAN: Thank you, Ms. Shaikh. Ms. de la Torre.

MS. DE LA TORRE: Thank you. I wanted to stay on this topic of employees, independent contractors to applicants and students. I actually have her presentation from Professor Levy that Mr. Vin referred to and I this is years ago, right? Like, I don't know what's going on right now, but this area of intrusive surveillance, it’s concerning and it's concerning as it relates to employees. And I think that there's broad support within the board to create octal rights around intrusive surveillance. I want to also be mindful of

this scope because we define ADMT to mean basically technology and many, if not all of the decisions that employers make on their employees will use some type of profiling. And I don't see necessarily getting involved in decisions on promotions, decisions on hiring and firing that do not involve intrusive surveillance as part of the scope of the agency. I know that there are other state agencies that are working to ensure that those are fair and there is no discrimination. And I applaud those efforts. I just want to make sure that our agency sits in the lane where I think we belong, which is more that intrusive surveillance space. So, I will appreciate if staff walked us around how this really works for employees, also independent contractors. I think independent contractors takes it even one step farther. Mr. Mactaggart make reference to some of the businesses that use extensively independent contractors. To what degree should those independent contractors have an opt-out drive from the use of technology basically? And students is another one that I was thinking about because obviously I teach, and so the example that came to mind for me in terms of use of technology. I take role. Every day at the beginning of the class, I see who is there and who's not. I can do it on a paper, or I can do it on Canvas, which is the system that my university uses. It's just more efficient to use technology to do that. And it will impact my decision on the grade in terms of who is presented. And obviously I know the US system is not within the scope of what we regulate, but my point, the point that I'm trying to make is that often technology is used simply because it's sufficient. And if it's sufficient and it's transparent and it's fair, I don't know that there needs to be an out right around that.

Like Mr. Mactaggart a little wary of going into that space. So, if we could maybe get some specific examples on how the staff is at this point thinking about employees, independent contractors, job applicants and students, and not the intrusive surveillance, but just technology in general. What happens when technology is used to profile and let's remember, profile is defined to me evaluating any aspects concerning the natural person's performance at work? So, technology is going to be used to evaluate performance at work. Right. I will appreciate that. Input and feedback. Have you thought through a specific examples where this will be triggered when there's no intrusive surveillance?

MS. URBAN: Thank you, Ms. de la Torre. Ms. Shaikh.

MS. SHAIKH: Absolutely. So, I think it's helpful that this is not about just any use of an employee's personal information. You would specifically have to be profiling them, which has a specific definition under the statute and that we would leverage under the regulations. One thing that I'd like to flag in terms, I don't know if there necessarily should be a distinction between employees and independent contractors and job applicants. The statute doesn't make a distinction across these three categories in providing these individuals with privacy protections. And particularly because in a gig economy, a lot of individuals are functioning as independent contractors. They should still receive similar privacy protections, particularly if they're being subject to profiling. And then on examples, I think one example that could be helpful to, again, explain why job applicants independent contractors, these individuals should be part of this framework. So, for instance, if you are applying for a job and you receive a job interview, if as

part of the job interview, the hire wants to use some sort of emotion recognition technology to analyze your personality as part of the job interview process, you should be able to opt out of that type of intrusive profiling without losing that job opportunity, without being discriminated against for exercising your opt-out right. That's an example none of the exceptions would apply. That is the type of profiling that we've seen of job applicants that we think does warrant privacy protection.

MS. DE LA TORRE: But I think that your sample goes exactly to what I already said, like intrusive profiling and I support that. Is there any example that doesn't involve intrusive profiling that you could relate to employees, independent contractors or applicants or students, or they should have a right to opt out? That's kind of the example that I'm looking for.

MS. SHAIKH: I think it would be helpful to understand what you mean by intrusive profiling. We've given a lot of examples in the draft regulatory framework of the types of profiling that would be subject to the requirements. So, for instance, keystroke trackers, productivity or retention monitors, video or audio recording, live streaming, facial or speech recognition, automated emotion assessment, location trackers, speed trackers, web browsing, mobile application, and social media monitoring tools. And so, we think there are a lot of examples already provided in the draft framework to guide businesses on the types of profiling technologies we are thinking through. But if there are things that you think are missing or that are not appropriately addressed, we're happy to take that feedback.

MS. DE LA TORRE: Right. But profiling is defined to mean any

prediction concerning an actual person's performance at work, right? Like any prediction related to performance at work that is intermediate through technology will become part of this framework, right? With the caveat that there might be an exception. And I think that one of the considerations for us is whether we tailor the right to our concern, which I absolutely agree on the intrusive profiling examples that have been shared. And we don't have intrusive profiling define in the law as you know, but we could define it and then tailor a ride around something that's more concrete. It sounds to me like you don't have any particular example of a situation that will not be intrusive to share.

MS. URBAN: Can I just ask Ms. de la Torre to clarify your question. This is really helpful. Thank you. It's very helpful. Would it be helpful to have examples that are sort of tailored to these different roles that people play? I can certainly imagine intrusive profiling that is specific to a student, a student who is on a campus, for example. We know that some schools are now trying to keep track of students in order to have early interventions to be sure that they don't fall behind or fall out before they graduate. And I expect that people have positive associations with that. But also perhaps, negative associations with that. So that would be one example of something that is in a general umbrella sense, could be seen as intrusive profiling. It's quite specific to a certain social context and people may have different views on whether it should fall within this framework or not. And so, I would first be interested to see if that is the sort of thing you're thinking about. And then secondly if that were something where, and I always fear I'm going to mess up with OAL, but if we

were to have examples or something like that, that would help, I would find it valuable again to sort of get public feedback on things that people can sort of hold on to, if that makes sense in terms of their own social context.

MS. DE LA TORRE: Right. That was really, really helpful. So, the way I'm thinking about this is because this is a staff draft that is coming back to subcommittee, is how do we as a subcommittee improve on the initial draft? And one of the things that I was thinking, I mean, and this is strategic, right? How do you get to where you want to go in terms of offering the right, and there's the possibility that I think the staff has taken, which is they find a very broad ride with a rather broad exception, or there's the possibility of tailor the right to the concern and they have a match narrower exception. And I see advantages and disadvantages to both. And that's why I've been thinking in terms of what, if you were to tailor the right more to the concern, and all of the examples that I could come up with will fall in this category of something that is not just the profiling that we are concerned about. It's just a specific kind of profiling. We're not necessarily concerned about the use of technology to do a 360 review of an employee. That's not something that we necessarily, I mean, that logistically more efficient. And I don't think it’s concerning. And one of the factors here to me as well is how do we communicate out to the public? I think that one of the successes of CCPA was to create a ride around opt-out of sale. The reason being is that cell has an intuitive meaning for people. And so, if it's a right that's based on opt-out and its name around something that's intuitive, I think it will increase the chances that people

actually will exercise that right. So, tailoring right to opt out in the space of automated decision making to something that's more precise, like intrusive automated decision making, sorry, intrusive profiling or specific automated decision making I think also will help communicate to consumers the importance of exercising that right. So, I don't, I'm hoping that that helps you understand where I'm mentally, right? Like, do we tailor the right to the actual concern? To me, profiling, that's some form of intrusiveness in the profiling and in automated decision making is lack of transparency, number one. And number two, lack of human intervention is something that still people care a lot about. And then maybe the exception in the backend can be narrower in the subcommittee version because we have tailored the right more clearly. So that's where my mind is, and I literally couldn't come up with an example of profiling that will not be intrusive, that I would be necessarily concerned about, or I think the public will not be concerned about. So maybe staff has that kind of, they have dedicated more time to it. So perhaps they had some examples that I was missing.

MS. URBAN: Thanks so much de la Torre. I just wanted to check a little bit on process, just so I understand. My understanding of the draft is that the subcommittee has done a lot of work on it and has had a lot of input. I just want to be sure that I'm understanding that correctly because it does indicate something about maybe where we want to go next with the draft.

MS. DE LA TORRE: Right. So, this is a staff draft. I think there was a little bit of a miscommunication when it went out. It should have come out with a staff draft at the beginning and be labeled that way. When we realized that it was not labeled, it was

little too late to relabel because of the processes that going to getting anything on our website that I understand now takes two weeks. So, we expedited it because we wanted to make sure to help accelerate the process. But we have not had a full opportunity to review it as the subcommittee. And my expectation is that it will come back to subcommittee so that in the next board meeting we'll present that subcommittee version of this job.

MS. URBAN: Thanks Ms. de la Torre, Mr. Le, I just, sorry, Mr. Mactaggart, I know you're there. I just want to give Mr. Le a chance.

MR. LE: Yeah. So, I think the idea was the subcommittee would see it one more time, but considering how much input the rest of the board has maybe, yeah, I'm just worried about timelines. So, I know I would be supportive of maybe just letting the subcommittee hold onto it for like two more weeks and then releasing it to staff or yeah, just so we can get the final subcommittee version out. But happy to do whatever the full board decides if we want to get it out today for individual feedback or just let us hold it onto it for a little bit longer. But yeah, I mean, I've seen there's a lot of input, so maybe staff would be best address the individual board members' input.

MS. URBAN: Thank you, Mr. Le. I mean, I'm certainly hankering to have input, substantive input, even more than we could probably have in a conversation in a public conversation. I really, I know I've said this a couple times, and I wish I could come up with better words rather than just repeat, repeat it. But I really commend the subcommittee for this thoughtful, detailed work that absolutely it's obvious that it draws upon expertise in the

subcommittee and has been under development since the September of 2021. And I do think that the others on the board also are very invested in this and would like to provide feedback. So, I would prefer a shorter timeline to getting there, particularly after the really thoughtful and robust discussion we've been having today, listening to other board members as well. So anyway, I thank you both for the notes on what is happening and where it's going. And I'll ask Mr. Laird, did you have a comment on that? And I'm so sorry, Mr. Mactaggart, then you're next.

MR. LAIRD: Yeah, apologies. I just wanted to make one clarification. And that is, I would have to disagree that there wasn't an opportunity for the subcommittee to provide feedback. We actually had multiple rounds of discussions with the subcommittee on this draft. So, I just wanted to make that clear that we've been very engaged on this from a staff perspective.

MS. URBAN: Thanks, Mr. Laird. Alright, Mr. Mactaggart.

MR. MACTAGGART: Yeah. I think with respect to this employee thing if you can, if you look at the definition of profiling in ADM, this literally would cover a badge that badged you into work that said, I was here. So, when you're going to look at someone's attendance and you can say, were they there or not? I mean, this is the most basic kind of employee HR stuff this covers. And so, I think, to Ms. de la Torre's point, which I think is a good framework, I'll give you two examples that we used that I think most people, that's kind of intrusive. So, if a business knows, it's going to maybe be having some layoffs and starts to say, okay, which of our employees might be having medical problems? They're going to going to be expensive, so we can get them off of our

insurance. We'll lay these people off. That feels unrelated to work and super intrusive, right? Or let's say there's a unionization drive, and the business is like, let's make sure that we track down the employees that we think are going around to different, other employees houses after work to do like a card check situation. Let's fire those guys. Again, super intrusive. But my point with most of this stuff at work is this is just work. You know, if I'm in a big call center and there's software saying, oh, you're taking two calls an hour, and this guy's taking 27 calls an hour, and the average is 27, I don't, why should we all of a sudden start saying, okay, people get to opt out of this, this is not what, we're a privacy agency. And we're not, I don't think an HR agency coming around to say that all the processes that business has developed and maybe there's a paper out there saying that the truck drivers are surveilled too much. But at the same time, I'm pretty happy that the truck driver, some alarm goes off if he or she's driving too many hours or as a consumer drives on the roads. And I think that that safety aspect goes forever. And I don't think that the exceptions in (m)(3) or (m) do it. So, I feel like I'd love to get some more feedback from staff if they could come back and maybe think about it from a, one way to think about it, is this in a reasonable expectation of an employee that they would be monitored this way? Sort of, we have reasonable expectation somewhere else. You know, it’s reasonable to me to think that I'm on a work computer that the work's going to be monitoring my computer, you know? And so, versus totally unreasonable, unexpected, unknown. So that might be one way of looking at it. But I think we we're opening a huge can of worms if we leave this language as it is.

MS. URBAN: Thank you. Mr. Mactaggart, sorry. Because I found that the truck driving research interesting, the surveillance was in no small part to get them to go faster and to like restless. But I was wondering, Mr. Mactaggart, about your thoughts on the legal or similarly significant effects as a threshold for this, you know, I'm thinking of your call center employee who's not answering calls and, I said I mentioned my sort of general concerns with that approach. But are you thinking that a threshold that would try to capture the things that essentially to be very, very… not detailed, but the things we care about and the things we don't care about, separate those out a little bit more? Is that sort of what you're thinking?

MR. MACTAGGART: Yeah, I mean, I like the, with the caveat that Mr. de la Torre made about the employment or independent contracting within the decisions to produce legal consequences, I think, because I do think we have a huge problem with the gig economy on that one. But in general, I think that's a good threshold. And I don't mind the notion of, I actually find it offensive if you're going to try and find out who's pregnant. So, you can fire them in before the lay, before they get pregnant, because of the childcare costs, or they're going to take it a leave. That's the kind of stuff. And I do think that would be covered by some form of like, reasonable expectation. So, I like the threshold of the legal or similarly significant effects if it's a little bit amended. I like that. If its massive surveillance in a public area, I like, I'm a big, huge fan of the behavioral advertising. It's just this one at work, I think is, has got me really pausing because I think we are going down a road that has

severe consequences.

MS. URBAN: Thank you, Mr. Mactaggart. My ears are open for further comments. My eyes are also on the clock. And my thoughts around the understanding that people might be hungry, but I wanted to check in to see where the board thinks the conversation might be. I'm still in favor of an approach where we take this good work, we do something like the risk assessments, board members like Mr. Mactaggart, who has a lot of sort of detailed thinking could offer this one way to staff. And they staff could come back to the board with more detail, hopefully being able to get, again, like more outside information on a relatively soon from economists and stakeholders. So that's sort of where I still am. I'm also happy, because I know we haven't talked about all the aspects of the ADMT draft. So, there may be more to talk about. Ms. de la Torre and then Mr. Mactaggart.

MS. DE LA TORRE: Let's Mr. Mactaggart go first. And my question was on the logistics, and you answered it.

MS. URBAN: Go ahead, please.

MR. MACTAGGART: Yeah, well chairman, I have sort of two more kind of areas I was going to talk about, but if you'd like to, it's up to you. I wasn't too sure whether you want to take a break or not, but I can just kind of mention what they are, if you'd like.

MS. URBAN: I'm good, but I am aware that everybody has biology, so Mr. Worthe was nodding. And staff are we okay to continue the conversation? Okay, great. Please go ahead. Okay.

MR. MACTAGGART: Okay, then my next section is in M the exceptions and it's, I think, appropriate to say you don't have to allow the consumer the right to opt out if it's to provide a good

or service that they're specifically requesting, but then the whole rubric below that in order to take advantage of that. So, Mr. Worthe's asking for a car, I'm getting him the car there. I need to use my ADMT to get him the car. He wants to opt out of it. And I'm like, I can't opt out. I can't get you the car if you opt out of the service. But now to do that, I have to demonstrate all these things that there's no other reasonable alternative. And I struggled to figure out what that's doing for us for privacy. They have a system. Amazon gets you your package and it assigns the driver somehow, and it's all ADM. And at some point, your package shows up in the middle of the night, or it shows up the next morning, and it's up to them, and I want to opt out of that. They then have to go through this whole thing saying that no one else, there's no other service that can work. There's no reasonable alternative. They have to show you why there's no reasonable alternative. Now think if you're a small business, you're buying, again, a software that does whatever, it turns on your utilities or saves utilities. You install this, someone says they want your 10, wants to opt out or something that you have to demonstrate that there's been no other system out there. You just bought a package of software. So, this whole set of kind of qualifiers for the exception of providing the good or service specifically requested by the consumer, it didn't make any sense to me. And it's a ton of work to demonstrate why the business which has, because there's this presumption here that automated decision making is terrible. Like when you look at this, there's this presumption if you read this, that it's a bad thing and I think it's a bad, it's a tool or a weapon, right? It's a bad thing depending on how it's used, not

necessarily a bad thing. And this, I've found the whole four A through E on page 10 and 11, just to be very focused on sort of a business having to justify why it wasn't letting the consumer opt out. And much of this is going to be like, hey, it doesn't work. Our thing just doesn't work if you want to opt out of this. And so, I think this is problematic. And I'll stop there. I have one more thing after this, but I'll stop there for now.

MS. URBAN: Okay. And thanks Mr. Mactaggart. So, there's the substantive problematic ness of the example, which is really helpful. And then there's the question of process around that. And so, I'm wondering if the sort of list of affirmative requirements weren't there for some, I don't know, set of examples or some sort of defined things that would be more, that would be less problematic from your point of view. I'm just trying to think. I hear what you're, I'm trying to think in like how the framework might be set up. And Mr. Worthe pointed out that another option or another outcome would be a big hole that we didn't intend in the regulations as well.

MR. MACTAGGART: I guess for me, if I'm asking for the good, I want the thing delivered to my house, I want the car to come to my street corner. I want the food to be delivered, I want to get the recommendation for the restaurant, that feels very different. Again, that goes back to the, even in 121 and in the actual statute, with respect to the process, you can say, don't process my sensitive personal information, but you can't say it if it's necessary to deliver the good that you're requesting. And we back in the statute, we just tie it to the reasonable expectations of a consumer. And I don't know why we wouldn't do that here. And to

demonstrate that there's, it's futile to use an alternative method of processing, just think about what we're asking a business to do. And I don't know how that gets us any closer to privacy. It's a lot of work for the business, but I don't think it advances the cause of privacy. What you want to make sure is they're not using an excuse to say, oh, well, we really need to surveil you 24/7 in order to tell you what news you want to see. Well, that's not right. So, you want to make sure that this exception is in fact necessary to provide you the good or service. But we could, that you just say it has to be necessary and you have to be able to show that it's necessary if we ask you.

MS. URBAN: So that is the framework, the process of the framework as to sort of what you have to do as a default affirmatively. That was what I was hoping to understand. I think I understand the thought now Mr. Mactaggart. Ms. Shaikh, did you have a response just to that, Ms. de la Torre is in the queue?

MS. SHAIKH: Absolutely. And this is actually quite simple. My feedback is that this is the exact line that staff has been trying to navigate, which is how to prevent abuse of this exception and ensure that surveillance and profiling is not simply happening just because it can. But that it is in fact necessary to provide the requested good or service. And so, this is one where we would particularly appreciate having feedback like this from board, individual board members to understand how we can find that right line. You know, the subcommittee has gotten the chance to give us feedback on the factors that are currently in the proposed framework, but again, given board members, board member Mactaggart's feedback, I think it would be helpful to also get

individual feedback from board members as well.

MS. URBAN: Thank you.

MS. ANDERSON: I'll second that.

MS. URBAN: Ms. de la Torre, oh, sorry, Ms. Anderson, I believe you said I'll second that for the record.

MS. ANDERSON: Exactly.

MS. URBAN: Ms. de la Torre.

MS. DE LA TORRE: So, a couple of things here. Number one this carve out is to provide the good or perform the services specifically requested by the consumer, which to me, reads as not applicable in the context that we mentioned before of employees, independent contractors, job applicants, and students, because they don't request services. So, it doesn't completely address, to me, in my view, it doesn't really address the concerns around that broad opt out right in those contexts. And again, I just want to highlight, I do support a right for employees contractures, the applicants to opt out of intrusive surveillance or intrusive profiling. And then the second thing is that it fundamentally, with it fundamentally does this approach. And that's why I want to rethink it with it fundamentally does, is it reverses the burden of the proof. If you are using technology under this framework, which the definition of AMDT is using technology to make a decision, and it's not that the technology is the only decision maker, but you aiding your decision or to profile, you actually have to prove that that’s not detrimental. And I think that in most cases, the use of technology is just efficient. It's not detrimental, it's efficient. And so, to me, there's a distinctive advantage of crafting the rights, tailoring the rights around our specific concerns is

there's an advantage in terms of communicating out to the public so that they understand what we really are talking about, and they take the steps that they need to take to opt out, because this is still an opt-out framework. And then there is an advantage in terms of lowering the cost of compliance because you as an organization, you're going to have to go through these analysis to make sure that you don't run afoul of the rules. And that has a cost. And I was talking with Mr. Le on these, and I'm not sure, I'm the only one here that's an immigrant, so I'm not sure that I represent the perspective of Californians as well as others, including the staff that might be raised here. But to me, this is the piece of the rules that is a little you know, based on your conceptualization of what individuals should have as rights, granting rights on individuals is not going to necessarily resolve for the fairness of the system. To me, the risk assessment is a better tool to resolve for the fairness of the system. Granting, granting rights on individuals is about whether we think this particular person should have a right or not. And it does, it can have a benefit for society. I do support people having a right to opt out of intrusive surveillance. I do support people having a right to human intervention. I think these things are really, really important and should be clearly called out in our framework. To me in a way that's more easily accessible than the initial draft that staff has provided. But at the same time, I don't know that I support the idea of just opting out of technology because it does have a cost, and I don't see the benefit. I don't see the privacy benefit to it. So, to me in a way you could compare these to another part of US culture, and I'm a citizen now, so I should consider myself

included, but it is one that is difficult for me to kind of wrap my mind around either though. I have been here for 20 years, just the right to wear arms. This country has this attachment to the idea that individuals have to have a right to wear arms that as society we cannot break through, even though we know that as a society, there is a cost for everybody. So maybe there's more support in California for strong individual rights that have a cost for society than that I will have as somebody who grew up in, I think a region where public interest is something that is still very much considered and not so much individual rights. So, to put my ideas in a nutshell is I will prefer to draft opt out rights around concerns that are clear and have a smaller exception on the back end. I think it gives us more control on what we are granting the rise as opposed to this system where actually the businesses have the control after they read the exception even though I know the staff has done a lot of thinking around how to make sure that this is not a humongous carve out that organizations can use to deny rights. But we will have more control if we actually define it in the front end. And also, I think it will be a better experience for consumers, because you want to be able to communicate this out. One of the missing opportunities to me in this framework is that we don't name the rights. All of our rights in CCPA have a name that we choose, and then we ask businesses to use, right? Like, I have a right to opt out of a sale, that has a meaning. I would love this to be set up, or I think there will be a benefit in setting this up as I have a right to opt out of legal or similar significant decisions that are, sorry, it's after 12 and we're all hungry and I'm not, that… am I struggle to just find the correct words?

MS. URBAN: Yeah, Ms. de la Torre, if you are hungry, everybody's hungry. Is this what you're thinking? That one, another approach would be to narrow the rights, but also narrow the exemption.

MS. DE LA TORRE: Exactly.

MS. URBAN: And name all the rights.

MS. DE LA TORRE: Exactly. Right. And so, if we name the right, if we say this is your right to opt out of intrusive profiling, and we call it intrusive profiling, then industry will have to say, hey, you have a right to opt out something that's named intrusive profiling, that has an intuitive meaning to the consumer immediately. If we do not set the name of the right, there's, first of all different organizations are going to use different names, which is going to be confusing to the consumer. But second, I think we are missing that opportunity to kind of push for compliance because the label has a meaning and organizations will choose to stop activities so that they don't have to use a label that they don't find beneficial for their brand. So that’s the other major improvement that I would like to bring back as part of a subcommittee draft of these ADMT rules.

MS. URBAN: Thank you. Ms. Shaikh?

MS. SHAIKH: Yes, thank you for the feedback board member de la Torre. One thing that I would like to flag is that when we use words like intrusive or even the word surveillance, neither of those terms are defined by the statute. And I do think those are quite hard terms to define as and meet the APA clarity standard. And so that's just something for the board to keep in mind, which is defining a word like intrusive is actually going to be quite

difficult. And it's going to involve the same type of line drawing that we have with the thresholds and the exceptions. And so, I just wanted to flag that we can't use words like that without also defining them. And so, we might end up in a very similar place, which is again, what's in, what's out and how to scope it. But you know, we're happy to, of course, to take that feedback. And if the board feels very strongly about going in that direction, we would need a clear direction of how to define these types of terms from the full board.

MS. URBAN: Thanks so much Ms. Shaikh. So, I really value what Ms. de la Torre just said, and this sort of the thinking about the framework I find really helpful. I remain of the view that in terms of process, this is complex, it's nuanced. There are a lot of trade-offs. There's a lot of really good, thoughtful, detailed deep work and the drafts that we have, and I think that we've aired those drafts well here. So, I would like to suggest a motion, again, that is similar to the risk assessments. And then Mr. Mactaggart could have discussions with staff. I could, Mr. Worthe could, Ms. de la Torre, could, Mr. Le could, and then staff would bring back to us with explanation sort of where collectively we are at that point. So that's what I would like to do, Mr. Mactaggart before we break for lunch. And I'm also wondering how people are feeling about taking public comment before lunch. I'm sure everybody's hungry, including the public but I'd like to give people a chance to respond. Because we've been thinking about this for several hours now. Mr. Mactaggart.

MR. MACTAGGART: Yeah, thanks. I'm fine with that approach of defining things. I do think you're, somewhat, you're going to have

to define, and I keep on saying I would tie it to reasonable expectations. But I do want to also in public, just before we sort of, because it feels like you're about to make a motion here before we close off, I also do want in public bring up, so the third area that I wanted to have the staff really take a look at is this notion of if the business has made a decision that results in the denial of goods or services. And so, this is in 70, this is in 7031. And D talks about what happens if the business makes a decision that results in denial. And it's with respect to B1, what worries me a little bit is we going to create a world? Because then now the business has to get back to you. It has to tell you why it made, what the decision. And I want to make sure we're not causing businesses to hold onto a lot of information in order to get back to you in case you ask, it felt like we were, this could end up being something that was bad for privacy. You applied for a job, you threw your resume into the, whatever, the online service, you didn't hear back. But now, I don't know how that works. Every time they have 10,000 resumes, they pick for whatever, do they have to send back 9,999? You didn't get the job here. And those people get to now ask why. And so, I just want to be, I don't have a good answer right now because obviously people's jobs, we want to make sure that businesses isn't discriminating terribly against one particular protected class, but it also felt like this would create a ton of opportunity for business or requirement. Now businesses have to hold onto stuff they wouldn't normally hold onto. So, I'm a little nervous about that one.

MS. URBAN: Thank you, Mr. Mactaggart. I think that's a great question. And something for, I think there's a lot of nuance here.

Obviously as members of the board, we have a lot of thoughts and feedback. And thus, I remain where I have been on the process. Everybody stop me before I call for public comment, while I say, again, the motions that we're going to put on the table just so everybody's aware, one is to direct staff to advance the proposed cybersecurity regulations to formal rulemaking and authorized staff to make any of the necessary changes. Ms. Shaikh pointed out improved readability, clarity, et cetera. The second would be to have staff take back the information that they got today on the draft risk assessment proposed regulations and receive feedback on the draft risk assessment regulations from board members taking care to incorporate changes from the board during this meeting. And then the third one would be a very similar motion related to the automated decision making regulations, which would be to a motion to direct staff to take into account today's conversation in this public meeting and receive feedback on the draft from individual board members proposing a revised draft at a future meeting. And I know Mr. Le had a second idea, which was like a time period before it goes in and to staff sense. I wanted to acknowledge that as well.

MR. LE: Yeah, I think its fine. I mean, I get the, I quite enjoyed working with Mr. de la Torre and staff has been great in the subcommittee process, but seeing how much feedback you all have, I don't know if it's best for the subcommittee to be the one that's translating all of that into the next draft. So, I think its fine for the motion as you've described it.

MS. URBAN: Okay. Thank you Mr. Le. With that I would love to hear, we would all love to hear, I'm sure from members of the

public is, are there public comments on this agenda item? If so, I'd like to remind you to use the raise your hand function, if you are participating via the Zoom webinar and to press star nine, please correct me, Ms. Allen, if I got that wrong, if you have called in in order for Ms. Allen, our moderator to call on you. And a final reminder that you are limited to three minutes. Thanks very much.

MS. ALLEN: Okay, great. Yes, this is for agenda item 1, 2A, 2B and 2C, cybersecurity regulations, risk assessment regulations, and automated decision making technology regulations. If you would like to make a comment, raise your hand, of course, if you're on the phone by pressing star nine. And I will call on you. We're going to take-- we have several hands raised. So, we will take these public comments in turn, and we will start with Edwin Lombard. So, I'm going to unmute you at this time, and you'll have three minutes to make your comment. Okay. Edwin, you have been unmuted. Please go ahead.

MR. EDWIN LOMBARD: Can you hear me now? Okay. My name is Edwin Lombard. I came today to listen and see for myself if the agency is applying lessons learned from developing the last round of regulations. Unfortunately, I'm here, I'm hearing more of the same. We are requesting that the agency publish the timeline after this meeting. So small businesses know what to expect and how quickly the agency intends to move. As a representative of small business owners who rely on technology, including automated decision-making technology to remain competitive and better serve our communities, we feel compelled to make this board aware of the importance of ensuring small businesses are not adversely impacted by these new

regulations. Governor Newsom and the legislature have been thorough and thoughtful around guidance for AI and ADMT. While this agency charges forward without the transparency process or robust engagement with small businesses that will be impacted by these regulations, the agency has a longstanding pattern of ignoring the concerns of small businesses. I strongly encourage collaboration through ongoing dialogue between the agency and businesses of all sizes to develop effective rules that work for everyone. Thank you.

MS. URBAN: Thank you, Mr. Lombard. Ms. Allen?

MS. ALLEN: Yes. Thank you. Okay. We are going to ask Alex Torres. I am going to unmute you at this time. You'll have three minutes to make your comment. Are you there, Alex?

MR. ALEX TORRES: Yes. Can you hear me?

MS. ALLEN: Yes. Great. Go ahead.

MR. TORRES: Excellent. Thank you. Members of the board, Alex Torres here with Brownstein High at Farber Shrek on behalf of the Bay Area Council, we represent 320 of the nine County Bay area's largest employers. You know, picking up on some points that Mr. Lombard expressed. I am encouraged by the conversation here today, chair Urban Mr. Mactaggart expressing some concerns around some of the scope of this. I think that's kind of where some of our concerns come in. We want to make sure that we encourage adoption, but also make sure it's realistic with feedback from these businesses. I was encouraged Chair Urban by your notes, to hear from the business community, and I think we really welcome the opportunity to engage in this in a meaningful way. So, look forward to the conversations to come. I mentioned one of our primary concerns center around the scope of the draft risk assessment

regulations. We feel the scope is far beyond that of other state privacy laws and beyond the bounds of the under California privacy law as well.

MS. URBAN: Mr. Torres, did you drop out or, I think Mr. Torres's comment may still have been going on.

MS. ALLEN: Yes. Mr. Torres, we cannot hear you. Let me try to, oh, there you're.

MR. TORRES: The definitions of AI and automated decision making are so overly broad that they could effectively encompass all automated technology as written, even simple algorithms, I think believe that was something that was discussed. In addition, the detailed requirements in the section are not appropriate to a privacy law and go far beyond the mandate of the CPRA. The CPPA differs from other state privacy laws in ways that we believe will be counterproductive to California consumers. Lastly, the regulations prescribe an inappropriate role of the businesses board of directors and requiring the submission of the risk assessment to the board of directors for approval or requiring its certification of the risk assessment. We believe this requirement should be eliminated. This regulation if retained, should preferably require presentation to an employee with responsibility in this area. Certainly, the level of involvement should be as determined by the business. The business can assess whether the full board or an appropriate committee of the board is warranted, just to call out a couple specific concerns, but again, encouraged by the conversation and the call to engage with economists, engage with industry to figure out the specifics of what's workable and look forward to the conversations to come. Thank you so much.

MS. URBAN: Thank you Mr. Torres. Ms. Allen?

MS. ALLEN: Yes. We are going to go to Grace Getty. Grace, I'm going to unmute you at this time.

MS. GRACE GETTY: Fantastic. Thank you so much.

MS. ALLEN: There you go. You have three minutes, you may begin.

MS. GETTY: Wonderful. I'm Grace Getty. I'm with Consumer Reports where I work on artificial intelligence policy in the consumer interest. I want to thank the board for their work on these draft rules. My comments will focus on the automated decision making technology draft rules. I'm going to start off with a couple of things we really liked and then mention a few areas we'd like to see strengthened. So first, the definition of automated technology, automated decision making technology. We appreciate that this is a broad definition and is not confined to technologies that make quote, solely automated decisions about individuals. These tools can be risky even if human reviewers are empowered to intervene. Second, we appreciate that these rules require businesses to wait at least a year after a consumer opts out before putting the question to them again. Rights aren't useful in practice if businesses can wear consumers down with frequent requests. And third, we appreciate that the board move to protect consumer privacy in public spaces. We have questions about how to make these rights usable for consumers and practice, but we think setting up a process for opting out of profiling technology in publicly accessible spaces is super important. Onto some things we'd like to see tweaked or strengthened, we'd urge the board to consider clarifying the explanation a consumer can get if they're denied a

good or service. We'd flag the CFPBs recent clarifications around what counts as a specific and accurate explanation when someone is denied credit under the equal Credit Opportunity Act including when complex or AI tools are used. We'd also urge the board to consider clarifying that if a business can't produce a sufficiently specific or accurate explanation for why an ADMT denied someone a service, that tool cannot be used. We think consumers should be subject to unexplainable decisions. And then lastly, there's an addition we'd like to see to the pre-use notice. We think there should be a prominent, succinct and plain language explanation for what the process looks like if someone does opt out of an ADMT, including how the good or service will be provided without the ADMT. You know, anyone facing the decision of whether or not to opt out of a resume screening tool or an exam proctoring software will probably want to know what happens if they do. That's it for me. Thank you so much to the board for these rules. We know they take a lot of work.

MS. URBAN: Thank you, Grace Getty. Ms. Allen.

MS. ALLEN: Great. We are going to turn to Vanessa Chavez. Vanessa Chavez, I'm going to unmute you and you'll have three minutes to complete your comment. Vanessa, are you here?

MS. VANESSA CHAVEZ: Thank you, chair Urban and members. Vanessa Chavez with the California Association of Realtors. We're continuing to review the initial draft and as the language continues to evolve, we may have input or concerns regarding any housing related aspects of the proposed regulation. We think the agency for its work on this and other matters, and we look forward to being a constructive participant in this process. Thank you.

MS. URBAN: Thank you Vanessa Chavez. Ms. Allen, do we have further public comment?

MS. ALLEN: Yes, we do. Peter Laro Munoz, I'm going to unmute you. We'll have three minutes to start to give your public comment. You may proceed when you're ready.

MR. PETER LARO MUNOZ: Thank you. Good afternoon. I'm speaking on behalf of the Silicon Valley Leadership Group, a business association representing more than 300 innovation economy companies. We echo the comment shared by previous speaker Alex Torres, representing the Bay Area Council. My comments address additional industry concerns, disclosure, risk assessments, and other submissions to the agency would result in the disclosure of confidential and proprietary information. The regulations do not include any protections from public disclosure, nor do they note that all applicable legal privileges are retained a protection that is available under other state privacy laws. These requirements should be eliminated, or the proper protections added to the regulations to protect them from state FOIA requests and other disclosures and for privileges to be retained. Regarding automated decision making consumer opt out for data used to train AI models is contemplated by the regulations. However, by allowing consumers to opt out of having their data used for training, the models we produce or will be produced, will actually become worse as a result, hurting consumers by reducing the potential for innovation built on more complete data and increasing the risk of bias. Further, removing this opt-out would not affect the privacy of any consumer because the data would be used generically in the AI modeling, which relies on trends in patterns and data overall, not

on a particular individual's data. Regarding cybersecurity audits, the draft regulations create extensive requirements for conducting cybersecurity audits that would conflict with generally accepted standards. The proposed requirements will create a burdensome and different cyber regime in California that is inconsistent with the White House's National Cybersecurity strategy. Further, some of the proposed requirements go beyond the scope of the statutory authority and are not within the agency's jurisdiction. For example, the definition of cybersecurity incident requires disclosure of an event that only potentially jeopardizes a business' system. This is an overly burdensome and vague requirement that will be confusing to comply with and difficult to enforce. Further the definitions inclusion of businesses' information system.

MS. ALLEN: Peter Laro, you have 15 seconds left, just so you know.

MR. MUNOZ: Thank you so much. Expands the regulations outside the statutes authority that is limited to systems that process personal information. The federal government is making significant strides to harmonize cybersecurity requirements. California should look to generally accepted frameworks like the NIST Cybersecurity Framework as a foundation regulation. Thank you.

MS. URBAN: Thank you very much, Peter Laro Munoz. Ms. Allen?

MS. ALLEN: Yes. We'll have Suzanne Bernstein at this time. I'm going to unmute you. You'll have three minutes. You can begin now.

MS. SUZANNE BERNSTEIN: Hello, my name is Suzanne Bernstein, and I'm a fellow with the Electronic Privacy Information Center, also known as EPIC. We're an independent research and advocacy

center focused on protecting privacy in the digital age. Throughout the rulemaking process, EPIC has submitted several comments and provided testimony. EPIC commends the CPPA's work to protect the privacy of Californians, and we are encouraged to see the agency's work to limit harms from ADMT technology. Today I'll address three points, the ADMT notice and opt-out requirements, behavioral advertising, and general clarity. First, epic commends the draft regulations proposed notice requirements to provide consumers with much needed information about the use of ADMT technology in plain language, we support the opt-out requirements that would provide consumers with the ability to opt out of many uses of ADMT, including high impact decisions, profiling of employees and students, profiling in public places and profiling for the purposes of behavioral advertising. Without this kind of regulatory action, consumers are continually subjected to these ADMT systems that make decisions that may affect their livelihood often without their knowledge. Second, epic supports a default prohibition on profiling minors for behavioral advertising. Minors are uniquely vulnerable to the harms associated with the behavioral advertising system and the default to protect minors from this harmful profiling. We support the opt-out requirement for behavioral advertising for all consumers. We also encourage the agency to ensure the availability of a user-friendly universal opt-out mechanism so that consumers would not need to exercise the behavioral advertising opt-out for each business. This would be tedious and fatiguing and would ultimately undermine consumer's efforts to be removed from behavioral advertising systems writ large. We strongly support the agency's continued discussion about providing consumers with a full

opt-out for all behavioral advertising, and we are happy to provide further materials related to this topic. Finally, we appreciate the clear disclosure requirements provided in this round of draft regulations, including the obligation for a business to disclose the purpose for which it will use any ADMT. For too long, businesses have used generic purpose language, like quote, improving our services and quote as carte blanche for ADMT use. In conclusion, EPIC supports the work of the agency to regulate harmful ADMT uses to protect the privacy of Californians. Thank you for the opportunity to share our comments.

MS. URBAN: Thank you, Suzanne Bernstein. Ms. Allen.

MS. ALLEN: Yes. Next up we have Matt Schwartz. Matt, I'm going to unmute you and you'll have three minutes. You may begin now.

MR. MATT SCHWARTZ: Good afternoon. My name is Matt Schwartz, Policy Analyst at Consumer Reports, and I'll be discussing the draft rule and risk assessments. Thank you to the board for the opportunity to comment and for all the hard work on these draft rules. Consumer reports applause the agency for drafting what would likely represent the strongest risk assessment requirements tethered to a comprehensive privacy law in the country. We appreciate that the current draft rules apply broadly to businesses undertaking a variety of risky processing activities, and that there will require businesses to commence the thorough accounting of their data collection and processing activities. Moreover, we appreciate that the current rules will require businesses to share their findings in a manner that will be both useful to consumers who seek to understand more about the business's practices, as well as regulators who want to take a closer look under the hood. We do

have some suggestions for how the rules could be strengthened to further the consumer interest. First, we believe that businesses should be required to share in their risk assessment when their processing sensitive personal information for the purposes of making inferences about consumers. Under the law and existing regulations, certain protections around sensitive data, including the requirement for businesses to allow consumers to limit the use of their sensitive information, only apply to the extent to which businesses are using that information to infer characteristics about consumers, consumers deserve to know when businesses are processing their data in this manner and such a disclosure will help regulators and businesses grapple with the enhanced stakes that come along with making inferences from sensitive data. Additionally, in our view, the current regulations allow businesses to provide less than optimal clarity on this point. So, we believe that business' assertion of their use of inferences should be provided in an abridged version of the risk assessment. Second, we believe that every business covered by these requirements should review and update their risk assessment annually rather than every three years. As is one of the options currently under consideration, we recognize that the rules otherwise state that businesses must update their risk assessments whenever there's a material change to processing activities. We believe that requiring an annual review will likely inspire better risk assessment hygiene and give consumers a higher degree of confidence that current business practices have been accounted for in the risk assessment. Finally, we believe that the agency should require businesses to publish a publicly available version of the risk assessment.

Currently, the draft rules seem to only contemplate an optional publishing of an unabridged risk assessment, whereas we'd argue that at a minimum businesses should be required to share in abridged version of the risk assessment that's updated with the same level of regularity as the unabridged version.

MS. ALLEN: You have 15 seconds left, 15 seconds remaining.

MR. SCHWARTZ: And of course, if businesses want to provide an abridged version, they may do that as well. So, thank you for the time and happy to answer any follow up questions.

MS. URBAN: Thank you, Matt Schwartz.

MS. ALLEN: Alright. Next up we have Johan Serato. Johan, I'm going to unmute you and you'll have three minutes. You may begin now.

MR. JOHAN SERATO: Thanks very much. I'm Johan Kim Serato, partner in the San Francisco office at Baker Hospitaller. I appreciated the discussion regarding harmonization, and I had a question for clarification. I thought we heard during the discussion on risk assessment requirements that GDPR does not govern and specifically does not require a DPIA for employee data. This comment was made quite briefly, and I would like to make sure that this comment was heard accurately and considered by the board. We understand that GDPR does govern employee data and a DPIA requirement and GDPR should include the collection and processing of employee data. So, I would like a clarification of future meetings, whether the board has considered that a risk assessment under GDPR would cover employee data. Thanks very much.

MS. URBAN: Thank you very much, Johan Kim Serato.

MS. ALLEN: Alright. Next up, we have Rocio Beza. Rocio, I'm

going to unmute you. You have three minutes. You may begin now.

MS. ROCIO BEZA: Hello. My name's Rocio Beza. I am a mom, a consultant, a business owner. I was born California about 30 something years ago. I'm also a privacy advocate. I feel that my background provides me perspective that allows me to see the implications of the proposed rules here. So, I first want to emphasize that everyone that is in this call I feel that this is a very historical time. I commend each and every one of you for the hours and hours of work that I know goes into putting this forth and seeing this come to fruition. So, I want to congratulate you, and I think that this is something that the country is looking at in the terms of an example. So, I just want you to honor the incredible work that everyone here is doing. I also want to share for the purposes of making these rules and regulations more effective as it relates to protecting the privacy of consumer personal information that I think the agency and the board is doing an excellent job as it relates to being thoughtful with the requirements and outreach to industry to the public. And specifically when it comes to some of the requirements around the cybersecurity audit. I just want to emphasize that as a consultant that has worked with consumer lenders as an auditor that has been involved in assessing online lenders compliance to data privacy laws and regulations, and as a consultant that has helped with readiness, helping online lenders bridge the gaps but also being a mom to two little kids, they're going to be interacting with this technology. It's important that for the cybersecurity audit items.

MS. ALLEN: Yeah. 15 seconds remaining. 15 seconds.

MS. BEZA: Thank you. We be mindful that the cybersecurity

industry is still young, and industry is looking at the group for some standardization here. And I also want to recommend prescriptive requirements for the risk assessment because—

MS. ALLEN: That's time. That's three minutes.

MS. BEZA: Thank you.

MS. URBAN: Thank you. Thank you, Rocio Beza.

MS. ALLEN: Okay. Next up we have Ronak Dilami. I'm going to allow you. I'm unmute you and allow you to talk. You will have three minutes, go ahead and we can—

MR. RONAK DILAMI: Thank you. Thank you Chair Urban and members. Ronak Dilami with Cal Chamber representing over 14,000 members, the vast majority of which are smaller businesses. We're continuing to evaluate the drafts put forth for discussion today but appreciate the chance to provide some initial comments that we hope would be considered prior to moving into formal rulemaking. On the whole, we are concerned that the draft rules create extensive requirements for conducting cyber audits and risk assessments that are frequently over burdensome, insufficiently risk-based or otherwise out of sync with and exceeding other state privacy laws, potentially conflicting with generally accepted standards. We are especially concerned that these regulations, including the ADMT regs, at times go beyond the bounds of the CCPA itself and the directive set by that law, and in fact, veer into rewriting the law such as what the brand new opt out for behavioral advertising and for processing the PI of consumers to train ADMT. Excuse me. We strongly urge the agency to avoid getting ahead of the legislature and governor as well as the voters in such a manner, particularly in relation to AI. With respect to the cybersecurity audits

regulations, we are concerned that they place companies into a perpetual audit diverting critical resources away from actually ensuring security. We note that the CCPA calls for regulations for businesses whose processing of consumers PI presents significant risk to consumer's privacy or security. The statute sets forth that significant risk requires consideration of the size and complexity of the business and the nature and scope of processing activities. We feel that the triggers in this draft fall short of that directive. Next, the requirements for approval and oversight of audits by company's board of directors create responsibilities that are out of sync with accepted norms for board action and involvement for publicly traded companies. We see a similar issue in the risk assessment regulations. I believe they should be eliminated. Turning to the risk assessment, ADMT regs as drafted these rules create extensive compliance obligations across a broad array of processing activities, going far beyond the contours of what's commonly understood to be privacy regulation. We caution that some of the risk assessment requirements such as the requirement to disclose to the agency can actually violate confidentiality agreements and require companies to divulge confidential and proprietary information, potentially including trade secrets. If disclosures to be required, proper protections are needed to ensure that this information is protected from Public Records Act requests and to ensure applicable legal privileges are retained. Next, we find it alarming that the ADMT regulations are being used to create new overbroad opt-out and data deletion requirements. The CCPA notably defined opt-out choices and balance consumer rights with the operational needs of companies and these

regulations upset that critical balance. And finally, the use of ADMT and the employment context raises unique considerations. The inclusion of profiling in the ADMT definition, even when the technologies are not making significant employment decisions and requiring employers to allow…

MS. ALLEN: Fifteen seconds left, 15 seconds.

MR. DILAMI: To opt out of the use of the technology, even when the use is job related and consistent with business necessity would unduly burden employers. And with that, we thank you for your time.

MS. URBAN: Thank you, Ronak Dilami. Ms. Allen, how many more people do we have on the queue?

MS. ALLEN: We have two.

MS. URBAN: Okay. Thank you. Please go ahead.

MS. ALLEN: Okay. Stacy Higginbotham, I'm going to unmute you and allow you to talk. You'll have three minutes. Go ahead when you're ready.

MS. STACY HIGGINBOTHAM: Awesome. Thank you. So, hi, I'm Stacy Higginbotham. I'm a policy fellow focused on cybersecurity at Consumer Reports, and I'm going to be commenting on the draft of the cybersecurity audit regulations. So, these sorts of compliance criteria measured by an audit are already best practices across industries. And while they can come at a cost, they also benefit businesses by helping them establish policies and procedures to prevent and retroactively deal with hacks. In its latest breach report, IBM estimates that the global average cost of a data breach this year was $4.45 million. So, this is not a huge cost to a business and does provide benefits. So, when we talk about the regulations, our questions are in section 7001 in the definitions,

there's a definition for multi-factor authentication, and the law requires at least two authentication types. I just want to make sure that that is future proof for things like pass keys, which are coming right now and usually only require one type of authentication, like a biometric or a token. So, in section 7122(i), there was some text about the board and executive team having to review and understand the audit. We are in favor of that because cybersecurity needs to be part of a business culture and all of its processes. And this can only happen if leadership is onboard and takes responsibility. And finally, in section 7123(m)(i) related to training, we wanted to offer suggestion for improving cybersecurity overall. And that would be to tie the type of employee and contractor training to the level of privilege the employee has within the IT or physical systems. Those with greater privileges, even if they are contractors, should get more intensive security training. This also applies to executives who might have more access. Anyhow, thank you for doing this. These are really great rules, and we appreciate you all.

MS. URBAN: Thank you, Stacy Higginbotham.

MS. ALLEN: Alright. Last we have Eileen. Eileen, I'm going to unmute you. There you go. And go ahead. You have three minutes. You may begin when you're ready.

MS. EILEEN KIERNAN: Thank you very much. My name is Eileen Kiernan, and I come before you today, not just as an individual, but a representative of the countless consumers who value their right to privacy and the protection of personal data. In the discourse surrounding the proposed CCPA regulations, I feel compelled to express the urgent need to uphold the core principles

of the legislation and safeguard the interests of consumers. The CCPA was a milestone in recognizing the importance of granting consumers control over their personal data. It was a pivotal step towards empowering individuals in an increasingly digital age where data has become a currency of its own. As we discussed potential amendments and regulations. It is paramount to remember the original intent of the legislation to strengthen consumer control and enhance privacy. I understand the concerns raised by businesses and employers here, but I feel compelled to emphasize that it is crucial to maintain a balanced perspective. While businesses have had time to adapt, consumers have been waiting for the promise of enhanced data protection to be fully realized. Any compromise or delay in implementing stringent regulations would be a disservice to the very essence of the CCPA. We need our policymakers to stand firm against lobbying pressure, especially from the largest technology and internet corporations with near monopoly power over user data. These behemoth companies, in particular, can easily afford to disregard regulations and have counted on agencies being too overwhelmed to investigate violations. Strict privacy rules under the CCPA forced them to respect consumer consent around data collection and sales. We must resist the temptation to cater to corporate interests at the expense of consumer rights. The proposed regulations signify progress, a step towards rectifying the power imbalance between corporations and individuals. We cannot afford to backtrack on this journey, especially in the face of powerful lobbying. The technology and internet giants with their immense influence and access to vast amounts of user data should not be exempt from stringent regulations. These regulations are our shield

against potential abuse of our personal information. They force these entities to respect our consent and ensure our data is handled responsibly. I implore the board to stand firm against industry pressures seeking to dilute the regulations. Now more than ever, as technology advances, we need robust safeguards in place. Our rights as consumers should not be compromised for the convenience of a few powerful entities. Let us not forget the purpose of the CCPA. To give California consumers meaningful control over their personal data, I implore you to prioritize the protection of consumer rights and privacy over the interests of those who may seek to exploit or disregard the regulations. And I urge you in the strongest terms not to weaken any draft regulations that represent real progress towards giving consumers meaningful control over our personal data, which is the intention and spirit of the CCPA legislation. Thank you for your time and commitment to upholding the principles of consumer protection embedded in the CCPA.

MS. URBAN: Thank you Eileen. Ms. Allen?

MS. ALLEN: Yes. We have one person left. This is Tyler Gerlach. Tyler, I'm going to unmute you and allow you to talk. Go ahead. You have three minutes when you're ready.

MR. TYLER GERLACH: Hello, can you hear me okay? Okay. Hi, my name is Tyler Gerlach and I'm the public policy associate at the California Asian Pacific Chamber of Commerce. Representing the interest of the over 746,000 Asian-American and Pacific Islander owned small businesses in the state, our members understand the importance of these technologies. Automated decision making technologies deeply embedded in the day-to-day operations and

businesses across California contributing significantly to their efficiency and success. But rush regulations would put California small businesses at a disadvantage. As ADMT continues to evolve, the agency must actively engage, educate, and collaborate with small and diverse business owners throughout the decision-making process to understand their perspectives regarding the implications of these regulations. The agency cannot prioritize the race to be the first agency to draft ADMT regulations over being thoughtful and including the perspectives of the small business community that keep the state running. The governor's office and legislature should continue to lead on this issue. Governor Newsom's recent AI executive order outlines a clear process and the agency's action should be consistent with that. We hope that the rulemaking timeline is clear and aligned with the realities of the small business community in California. Thank you.

MS. URBAN: Thank you, Tyler Gerlach.

MS. ALLEN: Okay. If there are any other members of the public would like to speak at this time, please go ahead and raise your hand or you start nine on your phone key. I do see several more hands. Okay. We are going to go to Nicole Smith. I am going to allow you to talk and unmute you. You should have three minutes. Please begin when you're ready.

MS. NICOLE SMITH: Great. Thank you so much. Thank you for everyone's work with this. I'm a privacy attorney in Silicon Valley. I work for a cybersecurity company, and I've been in charge of doing audits on vendors. So, any company that we bring in and share data with for about a dozen years now. And I think it's very critical that the Agency includes this in rulemaking regarding some

of the points that were raised earlier, pursuant to GDPR requirements, many of the medium and large size companies in the Valley have been doing this for five plus years. And we currently have a lot of learnings from that. My question for the board, and you can address this in any way that you'd like, is in order to submit some of the learnings, is there a deadline where it would be most useful for you to hear some of the things that we've learned about, and also areas as I believe one of the board members raised for improvement on these learnings. For instance, the ICO in the UK provided great templates, but we've learned as a tech company that there are loopholes where vendors could try and fool their customers, such as the entities doing business with them into sharing more data than they have adequate security for from. So, we have put in more of a trust but verify approach, and I'm more than happy to share these learnings with the board. Would love to hear, especially given the holidays, what is the ideal deadline for these in order to be helpful for the board members? Alright. Thank you so much.

MS. URBAN: Thank you, Nicole Smith.

MS. ALLEN: Okay, next you have Craig Erickson. Craig, I'm going to allow you to talk and unmute you. You will have three minutes. You may begin when you're ready.

MR. CRAIG ERICKSON: Okay. Thank you. I'm Craig Erickson, a California Consumer, and I'll be commenting on the draft regulations on ADMT specifically section 7030, subsection (o) and 7031, subsection (d), item four, which basically requires businesses to provide a link for consumers to file complaints against the business with enforcement agencies. And I think that

this is more likely to be abused than it would actually provide actual benefits to consumers and businesses and enforcement agencies. In particular, I'm concerned that businesses may track and possibly discriminate against website users who click on the link that competitors authorized agent services hackers or hacktivists will exploit the link for their own purposes. That enforcement agencies can be deluged with complaints like effectively denying service to other consumers who use these websites or obfuscating legitimate swarm complaints that contain evidence by flooding the complaint system with anonymous or unsubstantiated complaints. And that consumers will expect enforcement action but won't receive notification of the enforcement action, which could contribute to apathy or mistrust that the law is being fairly enforced. So therefore, I implore the board to explain its rationale for this particular requirement and why the board thinks the benefits to the public would outweigh any potential cost to businesses and consumers. Thank you.

MS. URBAN: Thank you, Craig Erickson. Ms. Allen?

MS. ALLEN: If there, we have no hands raised at this time, however, if there is any member of the public who'd like to speak, please go ahead and raise your hand using the raise hand feature on Zoom or star nine on your phone. Again, this is for agenda item two, which is to A to B to C, cybersecurity risk assessments and automated decision making technology regulations. Madam Chair, I'm not seeing anyone else. Thanks.

MS. URBAN: Great. Thank you, Ms. Allen. And thank you to all the members of the public who have taken the time to comment today. It's much appreciated and lots of valuable and helpful information

from the public comments period. As I mentioned earlier, I'm going to propose—request, I suppose-- three motions. I will start with the first, which is on the cybersecurity audit draft regulations. I would like to request a motion to direct staff to advance the proposed cybersecurity regulations to formal rulemaking up through commencement of the 45-day public comment period and to authorize staff to make additional changes where necessary to improve the text clarity, improve readability, or otherwise ensure compliance with the Administrative Procedures Act. May I have that motion?

MS. DE LA TORRE: I move.

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

MR. LE: I'll second.

MS. URBAN: Thank you, Mr. Le. I have a motion and a second. Ms. Allen, could you please call the roll call vote?

MS. ALLEN: I can. This is a motion for cybersecurity regulations under 2A as stated by the chair. Board member de la Torre?

MS. DE LA TORRE: Aye.

MS. ALLEN: Board member Le?

MR. LE: Aye.

MS. ALLEN: Board member Mactaggart?

MR. MACTAGGART: Aye. But just because this has happened to me before on boards, I do want to mention to everybody that one in 7123(a), that last sentence, I'm not happy about. So, I don't want to have people come back and say, “You approve this.” Because that’s happened to me before so I'm approving it for now on the-- but I do want to raise that it's still an issue for me. Thanks.

MS. ALLEN: Mactaggart aye. Worthe?

MR. WORTHE: Aye.

MS. ALLEN: Worthe aye. Chair Urban?

MS. URBAN: Aye. And yes, Mr. Mactaggart, I think everybody's on notice when it comes back to us again, you may say the same thing if it-- okay. Thank you. Thank you, all members of the board. I now request a motion to direct staff to incorporate changes and incorporate the discussion from today by the board, and to additionally receive feedback from board members on the draft risk assessment regulations, and to propose a revised draft at a following meeting for advancement to formal rulemaking. May I--

MS. DE LA TORRE: Can I ask a question before we move on that. Logistically, how will that work then? In January, we will see a new draft from staff that includes those. And how will they interact with us? Do we have information on that?

MS. URBAN: So, in terms of the last part, the interaction will be like other things that we have moved to staff. So, for example, the cybersecurity regulations and previous initiatives where individual board members can talk to staff in one-way, conversations in terms of when the board may see it again. I can't predict that exactly. And I don't know if Mr. Laird wants to say for sure or if he wants to provide some information about that.

MR. LAIRD: About when it would return to the board?

MS. URBAN: Yeah.

MR. LAIRD: So, I think we could frame the draft so that it could come back to the board immediately prior to the 45-day public comment period but after we've completed all supporting paperwork, including development of the economic analysis and all, that would be staff's recommendation, but we are happy to take direction.

MS. URBAN: And I think Ms. de la Torre was asking if that would necessarily be January's scheduled meeting.

MS. DE LA TORRE: Right. So, there is feedback that has to be incorporated from this meeting. So that will be a new draft. And I was assuming like that will happen and we will be shown a draft that incorporates the feedback from this meeting, and then we will be able to comment on that, that's what will make sense to me. So maybe January we'll see the draft that incorporates this meeting, and then after that we can comment on it.

MS. URBAN: I think, well my motion that I requested direct staff to gather information from board members and to incorporate changes or discussion today, I thought of it as incorporating, finding out the information that we asked for. So, I wouldn't want to insist that it be January. If to, some degree it also depends on us being able to offer our thoughts to the board, to the staff. So, I would like to give them some timing flexibility there, but I think, yeah.

MS. DE LA TORRE: And my question is not as much to the timing as to the next draft that we see in a board meeting. Is that a draft that we're going to be asked to vote on to move to formal rulemaking? There's no in-between draft, is that the plan?

MS. URBAN: That is the plan, which of course we don't have to do. We could say we're not. This is ready.

MS. DE LA TORRE: So, the option is whether don't see a draft again until the date that we are asked to put, to move it in to formal rulemaking, at which point it will just go to formal rulemaking.

MS. URBAN: Not necessarily, but this would give staff the

ability to pull together the ISOR, the economic analysis, do all that research. So, we would have it in front of us the next time we discuss it.

MS. DE LA TORRE: Right. But--

MS. URBAN: We don't have--

MS. DE LA TORRE: I mean, it's just that there was a lot of feedback, particularly to the last piece. And I want to be sure that we have an effective way to incorporate that in a way that's thoughtful as opposed to, I don't want to be in a position where we come back in March with a draft to go into formal and then there's a request to delay that process basically because we haven't seen how our feedback was or was not incorporated in the draft.

MS. URBAN: Mr. Mactaggart?

MR. MACTAGGART: Yeah, I would just say I'd love to have a chance before all the economic analysis has been done and it's sort of like, either submit it now and so if you raise up a concern, you end up derailing a whole process here. So, I don't know, maybe we can do that individually and we can have individual meetings along the way with the staff to get comfortable enough so that at least they know, okay, board member X is not happy with this or know it's probably not going to support or something. I don't know. But I do think sometimes you get these things, and they get presented in the package and you know, at that point the consequence of being squeaky wheels even is huge.

MS. DE LA TORRE: Right. But what I want to bring to Mrs. Urban attention is just by clicking implications on that. Because if we are in different places, we should have that conversation at a board meeting and not individually potentially for clicking. So in

my experience, it has always been that it has to come and be published a new draft before we have that conversation. I might run on that, Mrs. Urban.

MS. URBAN: I don't. So, once it is in the public rulemaking process, it follows the process prior to that, we can do whatever we would like. I would like to give staff discretion to be able to come to us and tell us we have everything here. We have the initial statement of reasons with all the background, we've talked to all the board members and things are ironed out. And then the board could agree or disagree, or for staff to come back and say, we've had a lot of feedback from board members. We've taken into account more information. We want to have you discuss it before we ask for the formal rulemaking. I mean the request like this is just so there is an option. We don’t have to send it to formal rulemaking.

MS. DE LA TORRE: Yeah. Could we perhaps the motion not requiring that the draft come backs in January but, if possible, incentivizing?

MS. URBAN: Yeah, it does not.

MS. DE LA TORRE: Okay.

MS. URBAN: Require, but I can, I'll restate it and I will, let me add--

MS. DE LA TORRE: Stating a preference towards it. If it's feasible. I think it just will be easier to have the conversation, the five of us, as opposed to individually with the staff.

MS. URBAN: Okay. Let me restate the motion to try to be certain that it's clear that it isn't necessarily going to be formal rulemaking and ask Mr. Laird if it is an appropriate motion. May I have a motion to direct staff to incorporate any changes

agreed by the board during today's discussion, consider the board's discussion overall, and, additionally, receive feedback on the draft risk assessment regulations from board members after this meeting and propose a revised draft at a following meeting for possible advancement to formal rulemaking? I added "possible"--

MS. DE LA TORRE: I move.

MS. URBAN: Thank you Ms. de la Torre. Do I have a second?

MS. DE LA TORRE: Second.

MS. URBAN: Thank you, Mr. Worthe. Mr. Laird, are we good? Okay. Thank you.

MR. LAIRD: Yes.

MS. URBAN: Okay. Ms. Allen, could you please conduct the vote?

MS. ALLEN: Yes. The motion is for-- two-- for risk assessments as stated by Chair Urban. Board member de la Torre?

MS. DE LA TORRE: Aye.

MS. ALLEN: De la Torre aye. Board member Le?

MR. LE: Aye.

MS. ALLEN: Le aye. Board member Mactaggart?

MR. MACTAGGART: Aye.

MS. ALLEN: Mactaggart aye. Board member Worthe?

MR. WORTHE: Aye.

MS. ALLEN: Worthe aye. Chair Urban.

MS. URBAN: Aye.

MS. ALLEN: Urban aye. Madam Chair, you have five ayes and no noes.

MS. URBAN: Thank you very much, Ms. Allen. And I realized I neglected to say with regards to the cybersecurity regulations motion, the motion carried with a vote of 5-0. And with regards to

the draft risk assessment regulations, the motion carries with a vote of 5-0. Lastly, I would request a motion to direct staff to incorporate any changes agreed to by the board during today's discussion and consider the board's discussion overall in today's meeting and to additionally receive feedback on the draft automated decision-making regulations from board members after this meeting, and to propose a revised draft at a following meeting, again for possible advancement to rulemaking. And I will, that's the end of the motion. I'll editorialize here to say like, I don't think any of us expect that it will be there again. It's just a matter of options.

MS. DE LA TORRE: I will move.

MS. URBAN: Thank you Ms. de la Torre. You may have a second?

MR. LE: I'll second.

MS. URBAN: Thank you, Mr. Le. Ms. Allen, would you please conduct the roll call vote?

MS. ALLEN: Yes, the motion is regarding 2B, the automated decision-making regulations as stated by the chair. Board member de la Torre?

MS. DE LA TORRE: Aye

MS. ALLEN: De la Torre aye. Board member Le?

MR. LE: Aye.

MS. ALLEN: Le aye. Board member Mactaggart?

MR. MACTAGGART: Aye.

MS. ALLEN: Mactaggart aye. Board member Worthe?

MR. WORTHE: Aye.

MS. ALLEN: Aye. And Chair Urban?

MS. URBAN: Aye.

MS. ALLEN: Urban aye. Madam Chair, you have five ayes and no noes.

MS. URBAN: Thank you Ms. Allen and thank you to the board. The motion carries with the vote of 5-0. I know we are all in need of lunch. I would just like to thank again this subcommittee and the staff and the board for such a thoughtful, robust discussion and the public for all of their helpful input during public comment. I look forward to the continued discussion of these important draft regulations. With that I am going to announce lunch. In order to do that, I'm going to take out of order on our agenda today. Agenda item number 10, which is a closed session and I hope board members are okay, kind of eating lunch in the closed session. The closed session pursuant to Government Code section 11126(e)(1) and 2(a), the board will now meet in the closed session to confer and receive advice from legal counsel regarding two matters. One is California Chamber of Commerce v. California Privacy Protection Agency, et al. The other is California Privacy Protection Agency et al v. the Superior Court of the State of California for the County of Sacramento and California Chamber of Commerce. The board will additionally meet and close session to discuss the executive director's annual review under authority of Government Code section 11126(a)(1). And I would just like to say that of course, we can't predict exactly how long the board will retire to close session. We won't come back before 2:15pm, so folks who are in the public meeting can know that they are fine leaving until 2:15pm. After that, we will return when we are done. And I will ask, and this is, excuse me, this public session will remain open I think with a sign to let everyone know that we're still away. And for the board

members, I would like to please invite you to leave this session and join the closed session zoom link for us to begin our discussion, and we can talk about timing and lunch in that session. Thank you all very much. And this meeting of the California Privacy Protection Agency Board is going into closed session. Thank you.

(Part 2)

MS. ALLEN: Okay, you may proceed.

MS. URBAN: Thank you very much, Ms. Allen. Thanks everyone. The California Privacy Protection Agency Board now returns from our closed session meeting back to open session. We're going to take items out of order, given that we do have a lot of business, and I was able to work with staff just before coming back to help order things. So, we will start this after lunch session, with agenda item number six. Agenda item number six is discussion and possible action to adopt a proposed regulation to establish the California Privacy Protection Agency's data broker registration fee. And that will be presented by Mr. Laird. Mr. Laird, please go ahead.

MR. LAIRD: Thank you and good afternoon to the board. I know it's been a long haul already. So, this is pretty straightforward. This is really, I would say, more of a procedural change than substantive. As the board may be aware, and I know Ms. Mahoney will be covering in her remarks later when she gives a legislative update. This October, the governor signed into effect SB 362, also known as the Delete Act, which does a number of things. But a component of the act is to move the existing data broker registry that has been hosted by the Department of Justice to-date, over to

our agency, beginning January 1st. With that registry exists a requirement to pay a registration fee, and DOJ has historically set that fee at $400, but that is set in regulation. As the memo attached with these materials explains, staff is recommending that we essentially just move the existing regulation into the CPPA's chapter and title of the California Code of Regulations to make it clear that the fee is now within our ambit, and part of our Agency's requirements. But beyond that, nothing else is changing. The fee amount is remaining the same. Although as Ms. Mahoney will cover in her remarks, SB 362 does then establish new elements required of data brokers beginning in 2026. So just previewing, there may be a need in the future to adjust that fee, but for the time being we are recommending that we keep it at the same level DOJ has. Finally, I'll just note, you'll notice I'm asking you to adopt this amendment to the regulations sort of without a formal comment period or anything of that nature. That's because the agency's ability to set the fees for the registry is exempt from the Administrative Procedures Act. And so essentially, all we need from the board today is adoption of the proposed changes, and that will then be filed with the Office of Administrative Law as a file in print, meaning essentially once the authority vests on January 1st, they will file it with the Secretary of State, and the change will go into effect automatically. So happy to take any questions, but again, I would emphasize that this really is more a procedural step than any sort of significant or substantive step for the agency.

MS. URBAN: Thank you very much, Mr. Laird. Any comments or questions from board members? All right. Seeing none, I will be

asking for a motion to adopt the proposed regulation to establish the California Privacy Protection Agency's data broker registration fee. Is there public comment on this item, Ms. Allen?

MS. ALLEN: This is for agenda item number six, since we're slightly out of order. And this is the action to propose to adopt data broker registration fee. If you would like to make a comment at this time, please raise your hand using the raise hand feature in Zoom, or by pressing star nine if you are on your phone. Again, this is for agenda item number six. Now chair, I'm seeing no hands.

MS. URBAN: Thank you very much, Ms. Allen. In that case, may I have a motion to adopt the proposed regulation to establish the California Privacy Protection Agency's data broker registration fee?

MR. WORTHE: So moved.

MS. URBAN: Thank you, Mr. Worthe. May I have a second?

MR. LE: I'll second.

MS. URBAN: Thank you, Mr. Le. The motion has been moved and seconded. Ms. Allen, can you please conduct the roll call vote?

MS. ALLEN: Yes. The motion is to adopt the data broker fee in agenda number six as stated by the chair. Board member de La Torre?

MS. DE LA TORRE: Aye.

MS. ALLEN: De la Torre aye. Board member Le?

MR. LE: Aye.

MS. ALLEN: Le aye. Board member Mactaggart?

MR. MACTAGGART: Aye.

MS. ALLEN: Mactaggart aye. Board member Worthe?

MR. WORTHE: Aye.

MS. ALLEN: Board member Worthe aye. And Chair Urban?

MS. URBAN: Aye.

MS. ALLEN: Chair Urban aye. Madam Chair, you have five ayes and no noes.

MS. URBAN: Thank you very much. The motion carries with a vote of 5-0, thank you, and is therefore adopted. Thank you very much, Mr. Laird. If you need nothing more from us on this item, I will move to the next. All right. We will now move to agenda item number three, which is regulations and proposals and priorities, including proposed updates to existing regulations. Our presenter will be Lisa Kim, senior policy counsel and advisor with the CPPA. This is part of our regularized calendar for this meeting is biannual regulations, proposals, and priorities. Although I suppose we have a number of items that meet that fall into that category today. It follows from its sister biannual item, which was discussed during our May 2023 meeting in which we discussed priorities and directed and delegated to staff to work on a number of topics. I want to thank Ms. Kim and her team for all the careful work on these and for taking the steps requested by the board in May. If you could turn your attention to the materials for this agenda item, I'll turn things over to Ms. Kim. Thank you.

MS. LISA KIM: Thank you, Chairperson Urban. So, as we are talking about item three, proposed updates to existing regulations for circulated two documents. The first is proposed revisions to the CCPA regulations, and within them you will see the proposals that we have made blue underline indicating any additions to the text. And red strike through any deletions to the text. Accompanying that proposed text language, we have a chart explaining the modifications and it sets forth all the map

modifications that we are making, except for non-substantive changes like typos, numbering, and lettering changes and corrections to section numbers, etcetera. There are two items that are marked and highlighted in gray, and they are marked with an asterisk. Those are items that we had identified for discussion today, but not all may require discussion, but we wanted to highlight these to make sure that the board was aware of them. The first gray item, or the first asterisk item is in section 7001. And this is the expanded definition of sensitive personal information, which I will use in short term to say SPI. So, what we did there is we added a new category to the statutory definition of sensitive personal information. Specifically, we added the personal information of consumers less than 16 years of age. The rest of the definition is a reiteration of Civil Code section 1798.140(a)(e), which is the definition of sensitive personal information in the statute. And it's included here for readability and ease of reference. This proposed change is made under authority in Civil Code section 1798.185(a)(1) that is to add, update, and harmonize the definition of sensitive personal information with a definition of sensitive data that is being used by other jurisdictions, specifically Connecticut, Delaware, Indiana, Iowa, Montana, Oregon, Tennessee, Texas, and Virginia. These other jurisdictions include within their definition of sensitive data language, such as personal data of a known child, personal data collected from a known child or a child's personal data. If the board supports this modification to SPI to add minor’s information, staff will adjust draft regulations on risk assessment, cybersecurity, and ADMT accordingly to the extent that it affects those drafts. Now, the

second item that we have highlighted in gray is section 7005, and this is for the consumer price index adjustments. We added this regulation to address the increases to monetary thresholds for various items in the CCPA based on the consumer price index. As the board knows, the law already requires increases to the penalty and fine amounts, the board per diem and the monetary threshold for meeting the definition of business to reflect increases in the CPI. It's noted in Civil Code section 1798.185(a)(5). The only question for the board is which inflation index the agency will use to calculate those increases. Since the CCPA does not specify which CPI to use, this regulation is necessary to identify which one will be used. The CPI that we selected is recommended by the Department of Finance, and it's also used by the Agency for changes to its annual budget. This change in the regulation will basically allow us to do a Section 100 change to update numbers every other year, and to remind the board that a Section 100 change is something that can happen more administratively and not require a full rulemaking package. And finally, I wanted to note a few topics that we are continuing to monitor and may suggest.

MS. URBAN: Actually, sorry, Ms. Kim. Are those the gray topics?

MS. KIM: Those two are the gray topics.

MS. URBAN: Okay. If it's all right, I'd like to check with the board to see if they have comments on those, and then we can go into the other topics that you've highlighted. Are there comments or questions on sensitive personal information or the consumer price index? Mr. Mactaggart?

MR. MACTAGGART: Yeah, thank you. I'm a supporter of the

sensitive personal information. However, I'm very leery of including the words, you know, the personal consumer information of consumers less than 16 years of age. Our construct throughout the entire statute has both been with the actual knowledge that the consumer is less than 16 years of age. And if we suddenly put this in, it's going to be the first and only place that we have an age gate, and we're going, like, now we're going back into the whole ADC world of how do you know the kid's 16 or not, and yada-yada. And it's opens a whole can of worms. So, I would, I really would like us to put actual knowledge cause that's the standard we have in the statute.

MS. URBAN: Thank you. Mr. Mactaggart. Other thoughts on sensitive personal information? Yes, Ms. ,de la Torre?

MS. DE LA TORRE: I'm sorry. I just wanted to support that change. It makes sense.

MS. URBAN: Thank you, Ms. de la Torre. Ms. Kim, do you have, does the staff have a view on that, that you wanna talk about or prefer to--

MS. KIM: No. We'll take that into consideration, yes.

MS. URBAN: Okay. Alright. Thank you. Makes some sense to me. Thoughts on the consumer price index? I trust staff's judgment on this. I think it's a good idea to go with what the Department of Finance would like and just in general as a process perspective. So that seems fine. Alright. I apologize for interrupting you, Ms. Kim. I just wanted to be sure that we were able not, well, for me, it's 2:45, and I didn't want to lose track, so please.

MS. KIM: Not a problem at all. Yes. I just wanted to note a few additional topics that we are continuing to monitor and may

suggest additional regulations on in the future. The first is the opt-out preference signal. We are monitoring developments in the opt-out preference signals, such as Colorado's efforts of selecting compatible signals, as well as potential efforts by the W3C for standardization. Accordingly, we may propose updates to our regulations to provide more specificity for the opt-out preference signal in the future. Second, we have also been watching developments in the EU regarding companies charging consumers for more privacy preserving versions of their services. We believe that our law and regulations regarding financial incentives already addresses these kinds of situations, but we are monitoring to see if there's anything we want to recommend to enhance those protections. And finally, we may provide additional recommendations in the future as we continue to observe our laws application through our enforcement efforts. So, I just wanted to make those notes of these additional topics for the future. That's it.

MS. URBAN: Thank you, Ms. Kim. All right. Comments, questions on the draft from the board? Yes. Ms. de la Torre, and then Mr. Mactaggart.

MS. KIM: I believe you're muted. Ms. de La Torre.

MS. DE LA TORRE: Sorry. So, it is about the whole draft. The main feedback from me is that we continue to not address the need to have flexibility when it comes to data used for research purposes. There's no language to address these, I brought this up when we were in the process of approving the current rules. I understand it's difficult, but I think it's also important, and I would like to see that language included in the next draft that will be presented to us hopefully soon.

MS. URBAN: Thank you, Ms. de la Torre. Mr. Mactaggart.

MR. MACTAGGART: Thanks. And I would actually support that too. I it's a valid point. Sure. Urban, I don't want to take so much time, but I do think it's actually, I got a couple points I wouldn't mind bringing up because, and I think that I wouldn't mind if I could just go through them. So, Ms. Kim is very familiar with these in section 7003 the change to (d) which is the link being included on the platform page, the privacy link, I think the statute says before, so I love the fact, I like the change from May to shall, but I would love to have a concept in there of before the download so you know what you're putting on your phone. I'm just going to go quickly through these if that's okay, but I don't think they're necessarily just all wordsmithing. On the red line, page 13, this is 7004, I'd love, I've noticed something that happens. You go on a website, the pop-up comes up, and if you're just like, I don't want to deal with all the, you know, you click on a link on the page, you go to another page, it takes you and the pop-up disappears. And I'd love there to be wording saying, if that happens, it's not that you default it to saying, yes, I accepted your pop-up. You know, because sometimes they want you to do that kind of, it makes you go away for them. So, Ms. Kim, I just figured if you could just kind of put that in your future hopper. The insertion on page 14, which is again, that's 7044(c) acceptance of the broad terms of use. Actually, I forget that one. I won't talk about that. Sorry. In Privacy Policy 7011, I just wanted to point out that the statute says that websites homepage are every page that collects information. And so, I hadn't noticed this before, but that architecture, I think, would require the privacy policy to

have a conspicuous link on every single page. And I'm not sure that's what we want, but I definitely want to do not sell and do not share on every single page that collects information, but maybe not the privacy policy. I hadn't noticed that before, so I apologize. Chair Urban, if we approve this, is there no ability from, should I have all my changes, all my suggestions now before we--

MS. URBAN: So, I think that well, and Ms. Kim, maybe tell us what it is you need from us.

MR. MACTAGGART: You know, I'm about halfway through it. Maybe I'll just say it might be just easier for me to say them then--

MS. URBAN: Yeah, well, if the question is, will be opportunity to talk to staff and or to talk about it again, when they bring it forward, I think that's probably a question more than one of us have. So, is that correct, Ms. Kim?

MS. KIM: I'm going to defer this question to Phil to answer or Mr. Laird.

MR. LAIRD: Yes. I sort of like the other work streams we anticipate, especially if we are combining this with our other rulemaking efforts or initiatives at the moment into a single package, this will in fact come back to the board before the comment period.

MS. URBAN: Okay? Alright.

MR. MACTAGGART: Okay, then let me just not have all my little wordsmith-y things. The one point that I do, I would like to bring to the board's attention though, is so Mr. Soltani will remember right after this law passed in 2018. In 2019, there was a big effort to, we thought weaken it by weakening the definition of

security and integrity, which we were able to defeat in the legislature stop in 2019. But what's happened now in the regulations, and this is not a change, but I do want to highlight it again. So, if you go to page 49 of the red line, which is 7027, the request to limit use and disclosure of sensitive personal information, 7027 M2, unlike the statute, it includes two extra words. So, you're able to disclose not listen to the consumer about disclosing sensitive personal information if you're preventing detecting and investigating security incidents. And we took out the prevent and investigate because we were concerned that, hey, a business could just say, I need to, I'm sorry, I'm going to process your sensitive personal information. We're going to keep your information because I need to at some point prevent a problem or I might need to investigate it. So, I don't quite know why we included that. It also comes up a little later on 7050 for the service providers and contractors, 7050(a)(4). Again, we've inserted to prevent the, the two words prevent and investigate, which makes that loophole a lot wider than it was intended to be. So, I would just love it if you staff could kind of look at that and given that the statute is pretty prescriptive and given there was a lot of legislative history around us trying to fight to keep it, you know, tight, I don't love the fact that the regulations have now I think it was AB 1419 or something like that in 2019 to try to make it bigger. So, I will leave it with that. And then Ms. Kim, maybe you and I could give you some other comments later on.

MS. URBAN: Thank you.

MR. MACTAGGART: Changes a lot.

MS. URBAN: Thank you. On that last point just because I was

scrolling because I could, to catch up the prevent and investigate, those are not changes that staff is proposing. Now these are issues that you see in the regulations as they were past March, correct?

MR. MACTAGGART: That's correct. They were inserted. This is not this change. They were inserted. I've sort of been wondering if we could actually get a revision to that given that they're not supported in the statute. This is wider than the statute.

MS. URBAN: Okay. Thank you. Ms. de La Tore.

MS. DE LA TORRE: Just quickly I have some questions, but I was thinking I would just send them to Ms. Kim since this is coming back and that will be for an opportunity to maybe identify answers for them. Is that part of the process that we can see moving forward? Like when this comes back, if I have proposed the questions, then maybe we can have an opportunity to get those answers just seems more efficient.

MS. URBAN: Sure, absolutely. I think, you know, Mr. Mactaggart was focusing on the things he would like the board to also have in our minds. So, if there's anything that you would like the board to have in our minds, now would probably be a good time just because it would be a more efficient way for us to continue forward.

MS. DE LA TORRE: No, it's more questions. We didn't see this draft until I think, like 10 days ago and I just think that that might take more time that we have in this meeting. So more efficient for me will be just to submit the questions and then wait for the responders in the next meeting.

MS. URBAN: Okay. Alright. Other comments and questions on the rest of the draft? Alright. Then given the conversation that we've had around process, I believe that the approach we're looking at

would be something like the cybersecurity regulations, where we can still give one-way feedback. Staff would go ahead and be developing the package and then would come back to us when ready, taking into account what we've said today and one way feedback. If that's the case, then I will ask for a motion to direct staff to propose update regulations to formal rulemaking up through commencement of the 45-day public comment period considering the conversation today and to otherwise authorize staff to make additional changes where necessary to improve the text clarity or improve readability or otherwise ensure compliance with the Administrative Procedure Act and also to accept comment from individual board members in one-way communications. I want check with Mr. Laird to make sure I got that right.

MR. LAIRD: Yes, that's correct.

MS. DE LA TORRE: Thank you, Ms. de La Torre. I have a motion. Do I have a second?

MR. LE: I'll second.

MS. URBAN: Thank you, Mr. Le. So, the motion is on the table with a motion and a second. I'd like to ask if there's any public comments on this agenda item.

MS. ALLEN: Okay, great. We are on agenda item number three, Regulations Proposals and Priorities. If you have a public comment, please raise your hand using the Zoom 'Raise Hand' feature or star nine if you are on your phone. And this is for agenda item number three. And we do have one public comment at the moment. So, Elizabeth Magana, I am going to allow you to talk. I've unmuted you. You have three minutes. You may begin when you're ready.

MS. ELIZABETH MAGAÑA: Firstly, thank you to the board and the

staff for your work. My name is Liz Magaña, and I'm commenting today on behalf of Privacy4Cars. I plan on providing staff with the red line of our proposed modifications, which I'll read into the record now. Our recommendations are the result of filing thousands of DSRs for consumers seeking greater privacy in their vehicles. We propose one, adding three more examples of dark patterns under section 7004. For example, businesses shall not ask consumers to fill a web form multiple times when a single form with multiple sub requests is possible, nor limit the number of sub requests they can file per day. For example, a business that requires a consumer to submit one web form for a request to access shall not require the consumer to wait 24 hours before submitting another web form for a request to delete. Secondly, businesses that require the consumer to call a toll-free telephone number to submit a request shall ensure their customer support has the knowledge to accurately address privacy related inquiries. Thirdly, businesses that receive a request from an authorized agent on behalf of a consumer shall not contact the consumer to instruct them to resubmit in their individual capacity. Our second proposal is adding language under section 7011(f). Firstly, instructions on how the business will compensate the consumer for the cost of a notarized affidavit to verify their identity. Secondly, instructions on how an authorized agent can simultaneously make a request and submit documentation proving their authority to submit such a request under the CCPA on the consumer's behalf. Our third proposal is adding language under section 7020(f). Provide the consumer with information on how to submit the request or remedy and deficiencies with the request only if subsection one is impractical. For example, the business may ask

the consumer to submit a web form in order to create a ticket and initiate the request, whereas the consumer before had emailed. Lastly, our proposal is adding language under section 7060(c). Match the identifying information provided by the consumer to the personal information of the consumer already maintained by the business or use the third party identity verification service that complies with the section before requesting additional information. Lastly, I'd like to quickly announce that Privacy4Cars has developed a new opt-out mechanism known as opt-out code that made Colorado's shortlist. For more information, please visit optoutcode.com. Thank you so much for this opportunity to make this comment.

MS. URBAN: Thank you, Elizabeth Magaña. Ms. Allen, is there further?

MS. ALLEN: Alright if there are any other members of the public who would like to make a public comment on agenda item number three, regulation proposals and priorities, please raise your hand using the Zoom 'Raise Hand' feature or pressing star nine on your phone. Chair Urban, I see no other hands this time.

MS. URBAN: Thank you very much, Ms. Allen. In that case, we have a motion on the table and a second and I would like to ask Ms. Allen to please conduct the roll call vote.

MS. ALLEN: Yes. The motion is on agenda item number three, Regulations Proposals and Priorities as previously stated by the chair. Board member de La Torre?

MS. DE LA TORRE: Aye.

MS. ALLEN: De La Torre aye. Board member Le?

MR. LE: Aye.

MS. ALLEN: Le aye. Board member Mactaggart?

MR. MACTAGGART: Aye.

MS. ALLEN: Mactaggart aye. Board member Worthe?

MR. WORTHE: Aye.

MS. ALLEN: Worthe aye. Chair Urban?

MS. URBAN: Aye.

MS. ALLEN: Urban aye. Madam Chair, you have five ayes and no noes.

MS. URBAN: Thank you very much. The motion carries with a vote of 5-0. Ms. Kim, thank you very much and thanks to everybody in Legal Division who I know we're working on this, and we look forward to the next time that we see this. So, thank you very much. With that, we will move to agenda item number four. Agenda item number four covers discussion and possible action regarding proposed insurance regulations pursuant to Civil Code 1798.185(a)(21). Ms. Kim will be presenting this issue as well. The item reflects work overseen by the Rulemaking Process Subcommittee, which was originally Ms. de La Tore and Mr. Thompson. Well, Mr. Thompson was on the board and now Ms. de La Tore and myself. At Civil Code section 1798.185(a)(21), the CPPA directs us to review an existing insurance code provisions and regulations relating to consumer privacy other than those relating to rates and pricing to determine whether any provisions of the insurance code provide greater protection than the provisions of the CCPA. And then after the review to adopt a regulation that applies only the more protective provisions of this title, the CCPA to the insurance companies. So, I thank Mr. Thompson and Ms. de la Torre and staff before I came aboard for their work on this and staff for all the

work on this topic. And I will turn it over to Ms. Kim.

MS. KIM: Thank you, Chairperson Urban. So, I'm back on item number four. To ground our discussion today, I want to provide the board with some background before engaging in the actual draft text of the re proposed regulations. So first, I'll speak to the agency's mandate to adopt regulations in this space. Second, I'll provide some background regarding California laws that apply to the insurance industry. Third, I'll explain the differences in scope between California insurance law and the CCPA. And then finally, I'll walk the board through the language of the proposed regulations and what they are intending to accomplish. As part of that discussion, I'll also cover some recent developments in the adoption of a new model law that would apply to insurance companies and how that would impact our recommended course of action. I do think this background will help the board understand the legal landscape that we are dealing with, and we'll also inform the board's discussion on this agenda item. So, starting with the first aspect, which is the agency's mandate to adopt regulations in this space. Can we have the next slide? As Chairperson Urban mentioned, Civil Code section 1798.1855(a)(21) directs the Agency to review existing insurance code provisions and regulations to determine whether the CCPA provides greater protection to consumers' privacy than existing insurance law. And upon completing its review, the Agency is directed to adopt regulations that apply the more privacy protective provisions of the CCPA to insurance companies. As a way of background, when we talk about the California Insurance Code and regulations, we are basically referring to two things. First, it's the statute, which is commonly referred to as the Insurance

Information and Privacy Protection Act, the IIPPA, and it's found at Insurance Code section 791 et seq. Also, we are referring to regulations that implement the IIPPA and the Graham-Leach-Bliley Act, which is the federal law that applies to financial institutions, including insurance companies. So those regulations are commonly referred to the PNPI regulations, which stands for privacy of non-public personal information. As you know, the CCPA does not apply to personal information that is collected, process sold or disclosed subject to the GLBA. And because the PNPI regulations implement the GLBA conduct subject to the PNPI regulations may fall outside of the scope of the CCPA. So, this is important to keep in mind as we go through the overlapping scope of the IIPPA and the CCPA. So, with this background, I'd like to walk the board through a few slides that explain the differences in scope between the insurance code and the CCPA. Understanding these differences in scope is essential to understanding which law is more privacy protective than the other. Next slide. So, this slide covers which consumers are covered under the two different laws. As you can see from the Venn diagram, the CCPA as a whole is more privacy protective because it covers more consumers than the IIPPA. The CCPA gives rights to all California residents, while the IIPPA applies only to those California residents that are involved in insurance transactions. So, however, there are some consumers that would be covered by the IIPPA, but not the CCPA and specifically that's non-California residents involved in property and casualty insurance transactions. The next slide. The next slide covers which businesses are covered. Now, not surprisingly, we see that the CCPA covers more businesses than the IIPPA. The CCPA applies to all

entities that meet the definition of business. While the IIPPA applies to insurance institutions, agents, and insurance support organizations that collect and maintain information about insurance transactions. Given that many of these insurance related companies collect a significant amount of personal information, we presume that many of them would fall within the CCPA definition of IIPPA. However, we recognize that smaller companies, particularly ones that just provide insurance support services, may fall outside of the CCPA's threshold requirements for a business. Next slide. Now finally, we're looking at this last slide that demonstrates how the CCPA covers more personal information than the IIPPA. As you know, CPA's definition of personal information is very broad. It covers all information that is reasonably capable of being associated with or linked to a particular consumer or household. In contrast, the IIPPA applies to individually identifiable information gathered in connection with insurance transaction from which judgements can be made. And the rest of the statute goes on to say, judgments can be made about an individual's character, habit, advocations, finances, occupation, general reputation, credit, health, and any other personal characteristics. However, there's a significant amount of personal information that the IIPPA covers that the CCPA may not cover. As mentioned earlier, insurance companies are subject to the GLPA and also thus the PNPI regulations. They're also subject to the Fair Credit Reporting Act. So, some information processed in accordance with those laws may be outside the scope of the CCPA, and thus that is why the Venn diagram sort of demonstrates that there is a portion that falls outside of the CCPA jurisdiction. So, one last thing before getting into the text of the regulations. I

wanted to update you that we understand that the National Association of Insurance Commissioners, which goes by NAIC, is currently working to adopt a new model law that would significantly expand the privacy protections insurance companies are required to give consumers. In case you didn't know, model laws by the NAIC are often passed in their entirety by state legislatures. In fact, California's current insurance code is based on a previous NAIC model law. We understand that the NAIC is pretty far along in the process and the California Department of Insurance is actively involved in the drafting of this new model law. And we anticipate the NAIC potentially adopting this new model law in the second half of next year, and that the new model law could then be subsequently adopted by the California legislature soon after that. So given that the model law may significantly change any specific analysis of privacy provisions in the CCPA and the IIPPA, as well as the fact that the model law may be adopted before we finish our rulemaking process, we have focused our draft regulations on clarifying that the CCPA applies where the IIPPA's jurisdiction ends. So, the first regulation, and if you'd like to take a look at the draft text that was provided to the board, the first regulation defines an insurance company to make clear who the regulation applies to. The second regulation makes clear that when the insurance company also meets the definition of business, they shall comply with the CCPA with regard to any information that is not subject to the IIPPA. So, we plan to work with the California Department of Insurance to add examples that further demonstrate how the CCPA would apply to situations where the insurance code would not apply. One benefit of these regulations that we've

suggested or proposed is that they would be future proof to apply even if the model law is adopted, to the extent that there are specific provisions in the model law that would be less protective than the CCPA, we can revisit them at a later time. And that is our recommendation as staff. I'm happy to take any questions that the board may have.

MS. URBAN: Thank you, Ms. Kim. Questions or comments from the board? Yes, Mr. Worthe?

MR. WORTHE: Mine is just more general. Are there under any other industries that we need to look at in this regard? Or is it just the insurance industry that has this conflicting policy?

MS. KIM: I can answer that. According to the statute of what we are supposed to look at the insurance industry has specifically called us for us to do this analysis.

MS. URBAN: There are carve-outs in 1798.145 that touch on certain financial and health laws like HIPPA. So, but this is the only one that requires us to do this particular regulation. Other questions or comments from board members? All right. Oh, sorry, Mr. Mactaggart. Ms. de la Torre, you came off mute?

MS. DE LA TORRE: Oh, I was just going move the moment you--

MS. URBAN: Oh, okay. Alright then the motion I would ask to put on the table is may I have a motion to direct staff to advance these proposed insurance regulations to formal rulemaking up through commencement of the 45-day public comment period, and to otherwise authorize staff to make additional changes, where necessary, to improve the text clarity, to incorporate feedback from the California Department of Insurance-- I guess if they have more, sorry, let me start over. Commenting on my own draft here.

May I have a motion to direct staff to advance these proposed insurance regulations to formal rulemaking up through commencement of the 45-day public comment period, and to otherwise authorize staff to make additional changes where necessary to incorporate feedback provided by the California Department of Insurance to improve the text's clarity and/or the text's readability, and to otherwise ensure compliance with the Administrative Procedures Act.

MS. DE LA TORRE: I move.

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

MR. LE: I'll second.

MS. URBAN: Thank you, Mr. Le. I have a motion and a second, and at this point, I would like to ask if there's public comments on this item?

MS. ALLEN: Sure. Okay. We are on agenda item number four, Discussion of Possible Action Regarding Proposed Insurance Regulations. If you have a public comment, please raise your hand using the 'Raise Hand' feature of Zoom or pressing star nine. If you are joining us via phone. Again, this is for agenda item number four, possible action regarding proposed insurance regulations. Okay. We have Dietrich. I am going to allow you to talk. You are now unmuted. You have three minutes. Begin when you're ready. Dietrich, are you there? I'm trying to mute you and unmute you again, see if it works. All right. Can you hear me? Dietrich? You have three minutes. Okay. Dietrich, we can't hear you, but if you would like to join us maybe via phone, we have the phone number listed on the public website under the agenda, and you can join us that way. And then hit star nine if you're having trouble connecting here. I'm going mute you for now and go to the second

commenter, but please rejoin if you would like to comment. Okay. Let's move on. Elizabeth Magaña, I'm going to unmute you and allow you to talk. You'll have three minutes. You may begin when you're ready.

MS. MAGAÑA: Hello again. This is Liz Magaña. I'm making this comment on behalf of Privac4Cars. We just wanted to flag for the board's attention what we believe to be a major data security concern in the automotive industry, insurance industry. When a consumer has a total loss accident and the insurance company settles the claim, the carrier ends up owning the vehicle and a treasure trove of personal data is towed away. This includes phone records, text messages, geolocation, and much more. Unfortunately, the majority of insurers fail to follow the National Institute of Standards and Technology 00-888, which is also referred to as the guidelines for media sanitization, the Environmental and Protection Agencies Responsible recycling standard for electronics recyclers, nor the National Association of Insurance Commissioners Standards for Safeguarding customer information, which has been adopted in California under California Code Regulations Title section 2689.15. This particular section requires insurance companies to design their information security program to (a) ensure the security and confidentiality of customer information (b) protect against any anticipated threats or hazards to the security or integrity of such information and (c) protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer. Leaving unencrypted personal information of consumers in vehicles does not seem consistent with the above requirement. Additionally, California law also requires

an insurance company to notify any California resident whose unencrypted personal information was acquired or reasonably believed to have been acquired by an unauthorized person. We are unaware of any insurance company that discloses to its customers whose cars are now stored in a total loss yard that their unencrypted personal information may be accessed by unauthorized users. We respectfully ask that the CPPA Board and staff keep these concerns in mind. Thank you so much for your time.

MS. URBAN: Thank you, Liz Magaña. Ms. Allen, is there further public comment?

MS. ALLEN: If you would like to comment on this agenda item, agenda item number four regarding proposed insurance regulations, please raise your hand using the 'Raise Hand' feature in Zoom or pressing star nine on your telephone. Chair Urban, I see no other hands.

MS. URBAN: Thank you very much Ms. Allen. I'm attentive to the fact that Dietrich from DOI, which I assume is Department of Insurance, wasn't able to speak so that we could hear. So, before we vote on the motion, I just wanted to emphasize that incorporated in the motion is requesting or directing and empowering staff to take feedback from the Department of Insurance. And this isn't in the motion, but I would just ask staff to report back to us any relevant feedback they think is appropriate when they bring it back. With that, with the motion on the table, Ms. Allen, would you please conduct the roll call vote?

MS. ALLEN: Yes. The motion is for agenda item number four, Discussion of Possible Action Regarding Proposed Insurance Regulations as previously stated by the chair. Board member de la

Torre?

MS. DE LA TORRE: Aye.

MS. ALLEN: De la Torre aye. Board member Le?

MR. LE: Aye.

MS. ALLEN: Le aye. Board member Mactaggart?

MR. MACTAGGART: Aye.

MS. ALLEN: Mactaggart aye. Board member Worthe?

MR. WORTHE: Aye.

MS. ALLEN: Worthe aye. Chair Urban?

MS. URBAN: Aye.

MS. ALLEN: Urban aye. Madam Chair, you have five ayes and no noes.

MS. URBAN: Thank you very much. The motion carries with a vote of 5-0. Because we have taken things out of order, I need to, if with your indulgence, remind myself of what we've covered thus far on the agenda. I believe we have covered all of the regulation related items, and thus, I just wanted to briefly return to the point that Mr. Laird made at the top of the meeting, which is that staff would like to be able to roll regulations together as appropriate in order to most efficiently receive economic input and so forth. I think everything's sort of eligible for that we've talked about today, with the exception of the data broker registration fee, which we went ahead and approved, and I think staff is aware of our expectations with regard to, for example, the automated decision making technologies. But I wanted to mention that to see if anyone wanted to discuss it further before we move to our next item. Okay, thanks very much to everyone. Our next item is the legislative update. I'm just trying to find the name of it.

I apologize, Ms. Mahoney. Hopefully you can. Number seven. Oh, number seven. Number five.

MR. LAIRD: Item five. Yes.

MS. URBAN: Okay. I thought it would-- yes. Okay. Start over. Apologies to everybody. Our next item or I will next call agenda item number five, which is legislation update and agency proposals for legislation from Maureen Mahoney, our Deputy Director of Policy and Legislation. This is item number five, is an item from our regularized calendar, expected annually at the end of each year. It is the legislation update that Ms. Mahoney has for us in presentation of any Agency proposals for legislation that Ms. Mahoney, our Deputy Director of Policy and Legislation and staff recommend to us. Ms. Mahoney, I'm sorry for the slightly stilted and tripping introduction of you, but please go ahead.

MS. MAUREEN MAHONEY: Thank you, Chairperson Urban, board members for this item. I'll do four things. First, I'll provide an update on federal legislation, particularly children's privacy legislation. Next, I'll provide a more detailed overview of two California bills from earlier this year. First, SB 362, the Delete Act. I'll go over the agency's work towards implementation for that one. And then provide an overview of SB 544, which amended the Bagley-Keene Open Meeting Act. Both of those bills go into effect January 1, 2024, and will affect the Agency. And then finally we'll look to next year with a bill proposal with respect to op preference signals for your consideration. And then also I'm a little bit under the weather so appreciate your patience with me. So first, turning to federal legislation, ADPPA, the federal comprehensive privacy bill introduced in the house last year that

the Agency opposed at that time and its current form over concerns about the bill's potential impact on California's privacy protections that has not been reintroduced in Congress. Our understanding is that it's possible it could be refiled soon, but it's political prospects are unclear at the moment. And we'll keep a close eye on reintroduction. It appears more likely that kids' privacy could move in the short term in the Senate. As you know, the Senate Commerce Committee advanced the Children and Teens Online Privacy Protection Act, known as COPA 2.0 and the Kids' Online Safety Act, known as KOSA this summer out of that committee on a bipartisan basis. And now the Senate is preparing both bills for a potential advancement out of that chamber. The bills are still under negotiation. We may see new drafts. Language is in Flux and the path through the house for these bills is still not yet clear, given that chamber has been emphasizing, focusing on a more comprehensive privacy bill, not just kids. COPA 2.0 in short updates and expands the existing federal kids' privacy law. Expanding COPA's opt-in requirement for kids 13 to 16 has deletion in correction rights, data, minimization of purpose limitation prohibition on certain behavioral advertising and just the threshold. The bill does not currently propose to amend COPA's existing preemption language with respect to kids' online information. If the scope of COPA is expanded, including the teens, it could implicate more consumers and could impact more CCPA rights and responsibilities. For KOSA, this bill directs covered platforms to assess and mitigate harms to minors defined us under 17 online requires cover platforms to provide consumer friendly tools for managing the online experience of minors, including those that

limit the ability of other individuals to communicate with a minor and prevent other users from viewing the minors personal data. With respect to preemption, KOSA's current language is largely silent on preemption, so how it would affect the agency would be a fact specific determination. And so, staff doesn't recommend taking a formal position. On these bills at this time, given that events are continuing to unfold. But we'll leave that to the board's discretion. And lastly, with respect to federal legislation, specifically the bill HR 1165, a federal partisan bill to update the fair Wily acts that advance of the House Financial Services Committee earlier this year that I mentioned at an earlier meeting. And that would seek to add sweeping preemption language to the financial privacy law. We're monitoring the house as of this date. We have not heard anything about potential floor movement of that bill. One last item. As you may be aware, there has been a lot of discussion and interest in AI regulation, which may overlap with some of the work the agency discussed today. There are no specific developments at this time, but we will continually track. So next, I'll move to California legislation first SB 362. But by way of background for the first time the summer, the agency took positions on several California bills that directly affect the work of the agency and its operations. I really appreciate the work of the board with respect to this legislation. Just to wrap up upon the vote of the board, the agency took a formal position in support of four privacy bills, three of which SB 362 AB 947, with respect to immigration and citizenship status and AB 1194. With respect to reproductive privacy were signed into law. I've been asked to provide an update on the agency's implementation of SB 362. The two

main provisions of this measure are that it transfers the data broker registry from the Department of Justice to the agency effective January 1, 2024, and task the agency with establishing an accessible deletion mechanism by January 1, 2026, that allows the consumer to delete their personal information held by all registered data brokers in a single step. So, in terms of implementation, obviously you know, the biggest thing that we're dealing with is a transfer of the data broker registry over to the agency by January 1. So, the Agency first has to set a fee through regulation for data broker registration, which we already did. And the agency also has to provide a means for data brokers to register with us. So, to provide the required information, pay the fee, and data brokers would need to register with agency by January 31st, 2024. So due to necessary procurement and implementation timelines, for things like backend payment processing, the agency will pursue a simplified implementation of the data broker registry, similar to how the Department of Justice operated the registry in their first year. This will allow manual registration by data brokers and paper check processing during the 31-day registration window spanning January 1 to January 31, 2024. And we'll then create a page on our website where the registration information provided by data brokers will be accessible to the public pursuant to law. We're working to bring on staff in the near future to assist with the data broker registry. We're also assessing fiscal year 2024 through 25 resource needs for planning and implementation of the accessible deletion mechanism. And we'll continue to work with the Department of Finance and the California Department of Technology on the development of that mechanism. And then lastly, I'll point out that

the legal team is taking the lead on implementation, you know, particularly Mr. Laird. So, if there are additional questions, I may need his help as well.

MS. URBAN: Thank you, Ms. Mahoney. Is that the updates?

MS. MAHONEY: Then I want to go over SB 544.

MS. URBAN: What is that? Sorry?

MS. MAHONEY: That's the Bagley-Keene Open Meeting Act.

MS. URBAN: Okay. Thank you. The numbers just swirl in my head. I apologize. Go ahead. So just-- and tell me if this will make sense to you. I thought maybe we would pause for questions or comments on the updates and then talk about the proposal. Okay. Go ahead. Thank you.

MS. MAHONEY: Okay, so I'll go through this last update. So, SB 544 amended the Bagley-Keene Open Meeting Act, and that dealt with the issue of the board's remote participation in meetings. The agency took a support of amended position on the bill seeking amendments to allow for fully remote online meetings. Those amendments were not taken, in fact more restrictive amendments were taken. So, I'd like to provide an overview of the bill as a passed, which is fairly complicated. And I have a slide deck to help present these amendments. Liz, would you mind sharing? So just as a preliminary note, some of you may be wondering why we're meeting exclusively online after having hybrid meetings. For the last two meetings this summer provision was added to a budget bill, SB 143, that extended the Pandemic Era online meeting rules to the end of this calendar year. Unfortunately, that means this will be our last online only board meeting for the foreseeable future, January 1, 2024, through January 1, 2026, new guidance will be in effect the

bill sunsets in 2026 with the idea that stakeholders will see how this new guidance works and the new amendments give the Agency and board members several choices with respect to meetings. There are four main options that I'll go through. Next slide please. Option one. This is kind of the old school way the board can hold fully in-person meetings without remote public participation. All participating board members must participate in person and then the public would attend in person. Staff and guests can still participate remotely if necessary without triggering additional teleconferencing requirements. And of course, all of the notice and transparency requirements under Bagley Keen that we have to comply with are still in effect. Well, this is an option for us. As you know, we've received many compelling comments from Californians about the benefits of providing remote public participation. For example, next slide, please. Option two. This is kind of the way we've typically handled things so far when we've had in-person meetings. So, the board can hold in-person meetings with remote public participation without triggering additional requirements. So, all participating board members would participate in person. Staff, guests and the public can appear by telephone or teleconference. Of course, the existing notice and transparency requirements still apply. And then where we start triggering additional teleconferencing requirements is if board members participate remotely from their homes. So, I'll describe that in the next slide. So, option three starts to get a little bit more complicated. So, the board can hold hybrid meetings with a quorum of at least three board members participating in person with a remote option for up to two board members and the public. If the

agency takes this approach, there are some additional requirements. So, board members participating remotely have to keep their cameras on during the open portion of a meeting, and they have to be visible on camera unless it's technologically impractical, such as due to lack of reliable internet connectivity. And even then, the member must announce the reason for their non-appearance when they turn off their camera. Board members participating remotely also must disclose whether there are any individuals 18 and over in the room at the remote location and the general nature of their relationship. Remote options for the public must be equivalent to the way in which the board members are participating. For example, if board members participating by video conference, the public has to be able to participate that way as well. All votes have to be by roll call. And then if the remote public access goes down and it can't be restored, then we have to end the meeting and provide notice of that to the public. And then the last option, getting more complicated and feel free, the board can also hold hybrid meetings with one or more board members participating in person. Up to two board members can participate remotely. Additional members can count towards the in-person forum while participating remotely under certain circumstances. And the public has to be able to participate remotely as well. So, getting into the ways in which a member participating from a remote location can contribute to the in-person quorum. That's the case if the member has a need related to a physical or mental disability that's not otherwise reasonably accommodated, pursuant to the Federal Americans with Disability Act of 1990, and the board member notifies the board at the earliest opportunity possible, including at the start of the meeting of

their need to participate remotely, and they have to provide a general description of the circumstances relating to their need to participate remotely. Then the board has to take action to approve it and request that general description of the circumstances for each meeting in which the member seeks to participate remotely. But the board can't require the member to provide a description that exceeds 20 words or disclose any medical diagnosis or disability or disclose personal medical information that's already exempt under existing losses, such as the confidentiality of Medical Information Act. And then all the other requirements of option three still apply. Members participating remotely have to be on camera. That's not to be our roll call. If the internet is down, we have to adjourn if we can't get it back up. And that concludes my updates.

MS. URBAN: Thank you very much, Ms. Mahoney. So, before we go to the proposal, I wanted to see if board members had thoughts or questions on the updates. And I wanted to thank Ms. Mahoney for putting together this very helpful update for us in a very active space, very active legislative space. So, thank you so much for tracking all of this and updating us so thoroughly. Comments or questions from board members? I will spare everyone my continued and known thoughts about SB 544. And you can refer to my op-ed if you would like to hear my sort of general thoughts on accessibility and including and inclusive board meetings. So, I will. Everyone's heard those before. Thank you again Ms. Mahoney. So, with that, shall we turn to the memorandum that you provided for us today? And a little bit of background on the staff's, what I understand to be staff's proposed legislative proposal from the agency.

MS. MAHONEY: Yeah, so turning to the bill proposal, so

consistent with the process adopted last year for taking positions on bills and adopting legislative proposals. Staff have put together a proposal for your consideration to require browsers to include a feature that allows consumers to use opt-out preference signals. So, if the board approve staff's recommendation, staff would propose the idea to lawmakers to consider taking up the bill in 2024, work with them to develop legislation and sponsor and support such legislation. And then to give a bit of a sense of timing to currently the California legislatures in recess, it'll resume in early January. The policy bill introduction deadline is February 16th. Bills introduced this year have to advance out of the first house by May 24. Need to clear the legislature by August 31st, and the governor has till the end of September to make determination. And if adopted bills typically go into effect January 1 of the following year. So, Agency staff have informally gotten feedback on the proposal with key legislative staff, which was positive. We've also consulted with agency's legal staff be before putting this proposal before the board. So briefly under the CCPA, businesses are required, as you know, to honor a browser. Privacy signals as napped out of sale. It makes it much easier for consumers to exercise their rights. But to exercise this right, consumers either have to use a browser that supports the op-top preferred signal, or take extra steps to find and download and set up a browser plugin created by third party developers and only a few browsers [inaudible] Firefox Duct Go and Brave currently offer native support for these signals. And they make up a very, you know, small percentage of the market share. Google Chrome. But Microsoft Edge, Apple, Safari they make up for the vast majority of

the market share are decline to offer these signals. So, to make it easier for consumers exercise rights, we recommend that the board support this legislative proposal to require browser vendors and other platforms or devices as defined by regulation to include a feature that allows users to exercise their California privacy rights through opt-out preference signals as defined by regulation and direct staff to find an author, work with them to develop legislation based on the proposal and sponsor and support such legislation.

MS. URBAN: Thank you, Ms. Mahoney. Comments and questions from the board. Ms. de La Torre, could you come off mute please, Ms. de La Torre?

MS. DE LA TORRE: As it was mentioned, we did vote on supporting some particular bills last year. At that time, I asked that we develop our policy around what we support, and we don't support. The only statement that we have right now is what directly affects the work of the, we are effectively picking some privacy, right? Privacy bills that we support and some that we don't. And I think that's fair. But I would like to re-state my request to have a statement that's more concrete so that we not perceive as arbitrary in terms of what we support, and we don't support. I was hoping that will come today. If it is not available today, maybe we could see on next meeting that definition. I'm sure that the staff already has some form of criteria, but I would like to see the criteria get approved. The second piece is in terms of the request to sponsor a bill. It's very different. Sponsoring a bill is very different from supporting a bill. It's a significant commitment of resources for the agency. I don't have an understanding of what

commitment might be. I know that we are not part of the GO process, so if we do support the bill, it doesn't have to go through their office to be determined whether it's something that they will pursue or not. I imagine that we'll have to draft it, we'll have to testify, etcetera. So, I would like to have an understanding of what commitment of resources any sponsoring of bills entails. And the second piece that I would like also to see is an analysis on the potential for litigation and whether that litigation will end up with effort that will be potentially really significant being not effective. And this goes to what a member, Mactaggart mentioned before, because we had a recent experience with the age appropriate design code. So, I'm generally supportive of the idea. I just want to know what resources we're committing and whether there is going to be an effective enactment on the other side that is resilient to litigation before I vote.

MS. URBAN: Thank you, Ms. de La Torre. Ms. Mahoney, do you want to respond? I see Mr. Le is here as well.

MS. MAHONEY: Yes. So, these are all very good questions with respect to a fuller description of the types of bills with which the agency will weigh in on. We flushed out a bit in the board handbook but also to continue to work to provide more specificity there. Happy to discuss further at the next meeting. In terms of time commitment, agree that sponsoring Bill is a very large time commitment. And that's why staff wanted to focus on this one bill rather than, you know, moving forward with several ideas that we're excited about. So, you know, we'll play a significant role in developing the legislation. You know, we'll answer questions from staffers and other stakeholders. Work to get support for the Bill,

testify, as you mentioned. But I think it makes sense for the agency to play this role given how closely tied this proposal is to the agency's goals in terms of making it easier for consumers to exercise their privacy preferences. And then I'll also point out that we did a lot of similar work, where behind the scenes, you know, after we supported SB 362 to help shape that. So, there is some precedent for the agency getting more involved in legislation. With respect to the legal analysis, our legal team has performed an initial analysis, is comfortable recommending that the board approve this proposal and have pointed to precedents for similar legislation such as seatbelt laws that require a mobile manufacturers to include these important safety features. 911 rules, you know, the FCC requirements that all telecom providers transmit 911 calls to a public safety answering point, even if the caller's not a subscriber. And importantly, we're not seeking to require default. Consumers would still need to make a choice to enable them, but we think this proposal has value for consumers. And I'm not sure, Phil, if you want to--

MS. DE LA TORRE: I appreciate that, and I'm generally supportive. I just would like to see that analysis in some written form provided to the board before we are asked to vote. And I think that there's a perfect opportunity in January to come back and make sure that you give us that kind of analysis in written form and then ask us to vote.

MS. URBAN: Can I pause with a process question here to Ms. de La Torre's point? Mr. Laird or Ms. Mahoney, could you let us know what staff would need for you to pursue this? I don't have in my mind exactly the legislative schedule, and if we were to wait with

some general approval that it could make us miss the legislative cycle or something.

MS. DE LA TORRE: We don't, we don't. They don't start until January. We'll definitely be within the cycle. That's why I'm asking.

MS. URBAN: Thank you, Ms. de la Torre. Mr. Worthe.

MR. WORTHE: Yeah, I'm less concerned about the legislative process. I'm more concerned about the understanding the legal process that we're probably going to face with these groups. So that would be helpful to understand that before we sign up for it. So, you know if you already have it, great. If not, let's get something on somebody on board to help us develop a realistic plan of what we should expect coming our way if we pursue this.

MS. URBAN: Thank you, Mr. Worthe. Additional comments or questions? And Mr. Laird, do you have further that you wanted to say?

MR. LAIRD: Sure, just a couple points I'll make. And that is, first of all as you know, the legislature has its own office of legislative council who reviews bills and kind of for exactly these issues. And so, they would be doing an independent analysis before any, well, either before or during the legislature's own pursuit. And obviously, there would have to be a legislature involved to sponsor and carry the bill. Beyond that, I'll just say too you know, at this point, this is at a conceptual stage in terms of litigation risk. I mean, to me there's an open question of sort of who would actually be responsible for enforcing. I think we assume our agency, but depending on how the bill shakes out, if there isn't a responsibility in our agency to enforce it, then obviously

it doesn't carry litigation risk against the agency itself.

MS. DE LA TORRE: I just want to point that I'm very supportive of the idea. I just want to be able to make that decision on commitment of resources with a little bit more information.

MS. URBAN: Thank you Ms. de La Torre. Mr. Mactaggart.

MR. MACTAGGART: Really quickly, I support the idea of having some kind of process, you know in place to think about it, but I also support the notion of increasing privacy through legislative means. That's why we put in the amendment process that we did. And I'll just make the same pitch I always do. If we have effective enforcement of the do not sell, do not share buttons on every single page that collects your information as per statute. We won't have to do this because I think the browser and device manufacturer will rush to implement this so that they don't have to have a world where every single page that collects your information displays this button cause they'll be so horrified that they'll want to have this provision that allows the 135(b) exemption to take place. But anyway, I support the notion, that's just me wasting your time.

MS. URBAN: No, thank you, Mr. Mactaggart. No, it's important because as ever, we have a substantive question which is shaped by procedural question. And we have a procedural question as well. Ms. Mahoney.

MS. MAHONEY: I just wanted to point out, you know, the reason why staff made the recommendation that we did in order to allow staff to develop the legislation, work with legislators and support and sponsor the bill is because it'd be more difficult to find one of those legislators if it's not clear whether or not that at the end of this process the agency would support. So, it's directly

related to the potential success of this proposal. In terms of timeline, you know, the bill introduction deadline is in February. But getting language to alleged counsel is in January. Again, you know, we're already in December. So, these are the reasons why we recommended a faster timeline.

MS. DE LA TORRE: And I think that there might be a middle ground. I wouldn't want to impede the process if there is a need to propose language in January, least allow the agency to go ahead and do that. But I also am mindful of the limited resources that we have that are tax funded, and I want to make sure that we invest them in things that are pragmatically helpful. And Mr. Mactaggart just mentioned there's another path to potentially get into the same place that wouldn't necessarily require the legislature, which is an uncertain process, by the way. I mean, we could invest significant resources from the agency and not have a loan on the other side. So, I think there's no need for that delay in terms of preparing that language if the agency would like to shop that around. But I don't want to vote without knowing the resources that we are committing. And some actual analysis on the viability of the law one once it goes into place, because this is one that anticipate we'll have litigation around. And so, I just want to be mindful of the resources that we have and how we invest them.

MS. URBAN: Thank you Ms. de la Torre, and Mr. Mactaggart and everything. I would suggest perhaps something. Like that middle. So, what I'm hearing is a little bit of a chicken and an egg issue. It seems to me we don't have the ability as a regulatory agency of actually sponsoring or carrying legislation. What we can do is have the board and thus the Agency support legislation that legislators

would, of course, be the ones to actually carry it. And given these timelines for the legislative process, I'm wondering if, and it sounds to me like people are supportive in principle, I'm wondering if it would be acceptable to the board and would also give staff what is needed in a practical sense if we were to approve this in principle. And to be clear that we are authorizing staff to work with the legislature in advance putting together what the actual bill would look like but also to expect that we would be informed of any legal issues that staff needs us to know that come through the legislative counsel's office or otherwise before we finally, sorry, that we expect that goes back because I see this, the chicken and egg thing, right? If I'm a legislator, I want to know in principle at least about support before I move forward. But I completely understand what Ms. de la Torre is mentioning as well.

MS. DE LA TORRE: And I just want to highlight –

MS. URBAN: Before we get to this, I just want to ask if that would work as a practical sense from Mr. Laird and Ms. Mahoney. All right. Sorry, Ms. de la Torre. Go ahead.

MS. DE LA TORRE: Yeah, I just want to highlight there's a big difference between supporting legislation, that is a very low commitment in terms of resources and sponsoring. And I think that I understand what we're talking about. This is sponsoring, and I'm not against voting to sponsor legislation, but I believe that we should be providing more information before we are asked to commit the resources that will go into that. It's not just saying I support the bill. We'll have to find somebody who will carry it, and we will have to draft it. And it's a much bigger commitment.

MS. URBAN: I understand. Okay.

MS. DE LA TORRE: And it's not common that agencies will take that step. It's not unheard of, but it's certainly not common and it typically happens only when the GO office approves it. We won't have to seek that approval because of the way we're created. So I just want to be mindful of taking that role that the deal will have on other proposals and considering the commitment at the board level.

MS. MAHONEY: And then I would just like to add, I mean, in my experience with sponsoring, it definitely differs. The workload differs depending on the author and the agreements of the division of workloads between them. So, it can vary.

MS. DE LA TORRE: So why don't we maybe we have a motion around reaching out and trying to identify a sponsor and start that initial commitment, and then we can come back in January with that full analysis and just vote on supporting the bill forward?

MS. URBAN: Well, I do think in principle, I'm not opposed, I just want to be sure Ms. Mahoney is able to help us sort of help her since we are supportive in principle and what is necessary from us, Ms. Mahoney, in order to get to the place that Ms. de la Torre is describing, for example, I just want to be sure that we're not arming you with our sense that in principle we really support this, if that's going to be helpful in terms of moving things forward before January.

MS. MAHONEY: You know, obviously staff's recommendation would be to have the delegation, you know, for staff to work with the author and be able to support the bill and sponsor. That would be the ideal situation. But, you know, I understand that this is our first time putting forward bill language. So, my goal is to get

some sort of agreement moving forward to go ahead with this proposal.

MS. URBAN: Thank you, Ms. Mahoney. Mr. Le?

MR. LE: Yeah, I mean, I'm going to be honest, like, I do this a lot and most of the time you're trying to finalize the language and get the people on board in November if you're trying to do a bill properly and have time to build a coalition and support, obviously, you know, you have spot bills, you have things figured out last minute. But you know, I think what would be helpful is like if we did develop this legislation, right? If there was a mandate to require companies not pro like inhibit consumers from expressing their opt-out signals through their browser architecture, you know, would the board support it? I know we don't have the language, but I just don't see an author willing to put their name on it and spend their staff resources if we don't, if, you know, the CPPA is going to be like, no, we don't actually like it in January or whatever board meeting. So, you know, we aren't going to give, if we don't come a decision on how we feel about the legislation, at least in concept, I don't think it's going to be super helpful for Ms. Mahoney in saying like, you know, if we get this done, the board's going to support it.

MS. DE LA TORRE: So, I think that Mr. Le comments might have offered the solution here. Maybe we vote to support the concept of the legislation and then we don't necessarily need to vote to sponsor it, right? And then when we have the information, we can make that decision because if this was a proposal to just support a bill that we know somebody's going to present and sponsor, I will not be asking for an analysis on resources on our end, because that

has very low impact in terms of resources.

MS. URBAN: Thank you, Ms. de la Torre. In that case, what are reactions to a motion to approve staff's legislative proposal to require browser vendors, et cetera, to include this feature in concept with the understanding that the board will be informed as to updates in January?

MS. DE LA TORRE: I think that could work. We could go to support the concept of the bill and then take back this once we get a report on resources and visibility.

MS. URBAN: Mr. Le, I've just asked because you're the other legislative appointee.

MR. LE: I mean, that's fine. I think that's the best we can do today. Yeah.

MS. URBAN: Okay. Thank you, Mr. Le. Ms. Mahoney, would that help support the endeavor?

MS. MAHONEY: So just to be clear, let's see, so at the next meeting, would I be expected just to provide an update, or would there be a need for another?

MS. URBAN: So, I think that Mr. Worthe and I, at least we're nodding about the update. So, in my view, and this is my view on the fly would be that we want to give you the tools that you need to explore this in a concrete way and help the legislature understand our support of the concept and that you would bring back to us things that have come up that we need to know about. So, for example, Ms. de La Torre asked about costs and what it would take in terms of resources Mr. Worthe mentioned or followed on Ms. de la Torre the question about any sort of legal impediments that we haven't anticipated yet in order to be sure that we agree that

we're on the right track.

MS. MAHONEY: Okay, that sounds entirely reasonable. My assumption this whole time would be that I'd be providing plenty of updates and information to the board moving forward.

MS. URBAN: Okay. Let me see if I can put that together. So that we have something in front of us. I would ask for a motion to approve staff's legislative proposal to require browser vendors and other platforms or devices as defined by regulation to include a feature that allows users to exercise their California privacy rights through opt-out preference signals as defined by regulation in concept, that this is the plan that we in concept support, and to direct staff to pursue the legislative proposal with the California legislature coming back to update the board on necessary topics that we've discussed today.

MS. DE LA TORRE: I'd like to move.

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

MR. WORTHE: Second.

MS. URBAN: Thank you, Mr. Worthe. I have a motion and a second. Ms. Allen, could you please find out if we have public comments on this item?

MS. ALLEN: Sure. This is for agenda item number five, Legislation Update and Agency Proposals. If you would like to make a comment at this time, please raise your hand using the 'Raise Hand' feature of Zoom or pressing star nine on your phone. Again, this is for agenda item number five, Legislative Update and Agency Proposal. We have one public comment at the moment, so Matt Schwartz, I am going to go ahead and unmute you and allow you to talk. You have three minutes. Go ahead and start when you're ready.

MR. MATT SCHWARTZ: Good afternoon, once again. My name is Matt Schwartz, Policy Analyst at Consumer Reports. And thank you to the board for the opportunity to comment. Consumer Reports supports the CPPA's staff draft memo and its recommendation for the board to support legislation that would require browser vendors and other platforms and devices to include a feature that allows users to exercise their California privacy rights through opt-out preference signals. Consumer Reports is a firm believer in the utility of universal opt-out tools. We think they make it far easier for consumers to effectuate their rights under privacy laws. Consumer reports has previously conducted research into the usability of opt-out rights prior to the existence of universal opt-out tools. And we found that consumers struggle to complete opt-out requests. And we've also found that companies often erect burdensome opt-out processes that have the effect of reducing take-up. For those reasons, CR has played a key role in the development and implementation of universal opt-out tools, particularly global privacy control, which is now considered a legally binding opt-out mechanism. Under CCPA, we've advocated for universal opt-out provisions to be included in privacy legislation around the country, and we've been excited to see universal opt-out become a more standard facet of privacy legislation. Most recently, we supported the California Delete Act, which allows consumers to universally delete their information held by all of the state's registered data brokers at once. Despite, or perhaps because of the fact that we know that these types of tools work and that consumers tend to enthusiastically adopt them, when presented the opportunity, several of the major browser vendors and operating

systems do not natively support universal opt-out mechanisms, which severely limit the reach of these technologies. Of course, many of these entities plainly benefit from suppressing opt-out choices since in many cases, greater adoption of opt-outs would reduce their own ability to track or otherwise monetize consumers' data and maintain a competitive advantage in the marketplace. In any case, the status quo means that many consumers might not even realize that they have the ability to take control of their privacy in a more systemic manner. We think that legislation requiring browser vendors and other platforms to at least present consumers with the choice to operationalize their privacy rights via universal mechanisms would absolutely advance the purposes of CCPA and give consumers more choices over the treatment of their personal information. And we think that the board should support this rulemaking or support this undertaking. Thank you very much.

MS. URBAN: Thank you very much, Matt Schwartz. Ms. Allen, is there further public comment?

MS. ALLEN: At this point, if you would like to make a comment on agenda item number five, Legislative Update and Agency Proposals, please go ahead and raise your hand using the raise hand feature of Zoom or pressing star nine. Chair Urban, at this time, I'm not seeing any more hands.

MS. URBAN: Thank you very much, Ms. Allen. In that case, I would ask you to please conduct the roll call vote on the motion as stated and seconded.

MS. ALLEN: Great. The motion is for agenda five as previously stated by the chair. Board member de la Torre?

MS. DE LA TORRE: Aye.

MS. ALLEN: De la Torre Aye. Board member Le?

MR. LE: Aye.

MS. ALLEN: Le aye. Board member Mactaggart?

MR. MACTAGGART: Aye.

MS. ALLEN: Mactaggart aye. Board member Worthe?

MR. WORTHE: Aye.

MS. ALLEN: Worthe aye. Chair Urban?

MS. URBAN: Aye.

MS. ALLEN: Urban Aye. Madame Chair, you have five ayes and no noes.

MS. URBAN: Thank you very much. The motion carries with the vote of 5-0. Yes, Mr. Worthe?

MR. WORTHE: I just think this might be a good jumping off point for me. I don't want to have to depart during the middle of an item.

MS. URBAN: Of course. Alright. Thank you so much, Mr. Worthe.

MR. WORTHE: Thank you all.

MS. URBAN: Alright. Thank you.

MR. WORTHE: Have a good holiday too.

MS. URBAN: You too. Happy holidays. Thank you. And thank you very much, Ms. Mahoney and everyone who's been working on this, and we will look forward to what comes next. With that, we will move to agenda item number seven, which is an item regarding the California Privacy Protection Agency's inter-governmental engagement and priorities. This item is responsive to board discussion regarding updates on CPPA engagement, which we've talked about in previous board meetings. I believe Ms. de La Torre mentioned this in our September meeting. And this will also be presented by Ms. Mahoney.

Ms. Mahoney, please go ahead.

MS. MAHONEY: Thank you, Chairperson and members of the board. As you know, our statute directs us to work with privacy authorities and other jurisdictions to work towards consistency and privacy protections. Where possible, under this direction, our agency regularly participates in national and international forums that relate to our authority. So, in this item, first I'll go over an update on multi-state engagement and then international engagement, including looking to next year. So, with respect to multi-state privacy laws, we've been actively engaging now approximately 13 states have comprehensive privacy laws. Seven states, including California, require businesses to honor browser privacy signals. As an opt out of sales subjective discussion of the earlier item, we expect this activity to continue next year and perhaps expand this fall state such as Maine, Massachusetts, New Hampshire, Wisconsin, Pennsylvania, and Michigan. Worked on privacy legislation in many cases during recess to prepare to move bills quickly at the start of the New Year. So mostly states go into session in January. I expect that over 20 states will seriously consider privacy legislation next year, and that many of these bills will be adopted. We have will continue to engage by sharing California's privacy framework. I also expect the next year there'll be a lot of legislative interest in ADM and AI. On the state level, staff participated in a multi-state working group this fall to hear about different approaches to AI and ADM and we'll continue to share the draft ADM and risk assessment. Drafts as they evolve to widely encourage consistency as legislators can consider bills on these topics. And we expect to continue to step up our

policy engagement in the coming years we build capacity. So, onto international engagement. We followed a similar approach as directed by statute. We're now a member of several international bodies, the Global Privacy Assembly and network of over a hundred data production authorities. Staff attended the annual GPA meeting this fall. We're also a member of the Asia Pacific Privacy Authorities, a similar organization for a subset organizations in the Asia Pacific region. A PBA meets twice yearly. The staff have not attended in person largely because of conflicts with board meetings, but we've attended remotely and provided updates at the last three meeting in video conference. We're also members of the Global Privacy Enforcement Network, which facilitates coordination on privacy enforcement initiatives. And lastly, we're in the process of applying to the I Bureau American Network of Data Protection that to suggestion of board member de la Torre. I wanted to go into a bit more detail on the Global Privacy Assembly meeting. Cause it was a very productive trip, our main goal was to introduce our new head of enforcement, Mike Macko, to set the stage for future collaborations as appropriate. But we also have a lot of value to add to the European framework. From a policy perspective, there's a lot of interest in aspects of California law that make it easier for consumers to exercise their privacy rights. Specifically, the global opt-out, the New Delete Act. We highlighted these policies to the French German, Spanish, the Central Authority, the Federal Trade Commission, among others, also connected with the British Canadians, Norwegians, and Japanese. Executive director Soltani also recently traveled to Europe. To further build on these discussions, have an opportunity to present

the California privacy perspective to a number of senior EU policy makers. He was able to meet with the UR European Data Protection Supervisor and the European Data Protection for the French Canal and the OECD to further encourage consistency. So, looking ahead to the future the next GPA meeting will be in Jersey in the Channel Islands next fall. We expect that APBA will hold a meeting this summer which we'll likely want to participate in either remotely or in person. And I'm happy to share more information about meetings for the ABER American Network as it become available. Per the request of the board, I plan to provide an annual update at a regular meeting on staff's priorities and plan activities for intergovernmental engagement and invite input and feedback from the board and provide follow-up information if necessary. Similar to the process for domestic conferences staff, sports, board members, attending meetings of international bodies. But we are looking to have a process in place, so we request the board members to notify staff if there's a meeting of an international body of which the agency's a member that they would like to attend. And then we can coordinate the chairperson and manage logistics to ensure that we're complying with existing law, including that no more than two board members are planning to go. And the goals are to comply with existing law and to streamline the process for this engagement. And this concludes my update.

MS. URBAN: Thank you very much, Ms. Mahoney. And thanks to Ms. de la Torre for suggesting this in the way that she did because I think it helped us sort of bundle some really exciting news and some sort of process thoughts into an efficient agenda item. Are there comments or questions from the board? No? Okay. In that case

Ms. Allen, would you mind asking if there's public comments on this item?

MS. ALLEN: Sure. We are discussing agenda item number seven, which is about CPPA, intergovernmental engagement updates and priorities. If you'd like to make a public comment on this item, please go ahead and raise your hand using the Zoom 'Raise Hand' feature or press star nine if you have dialed in on the phone. Again, this is for agenda item number seven, CPPA Intergovernmental Engagement. Chair Urban, I'm seeing no hands.

MS. URBAN: Thank you very much, Ms. Allen. With that, I would actually like to take one last item out of order and move to agenda item number nine, which is future agenda items. In part because I think it follows nicely from the discussion we've had thus far. And in part because I want to give the public the opportunity to offer us any thoughts off the agenda at the end of the meeting. So as a reminder, this is our agenda item for discussion of future agenda items. And it allows both the board and the public to suggest things for future board meeting agendas. Although we can't discuss them in detail, we can propose them. And I'm keeping a list and say a little bit maybe about why you propose it. There are a number of different kinds of agenda items that members have proposed. We just had one that Ms. de la Torre had proposed. I know Mr. Mactaggart has used this time, from time to propose that we discuss potential regulations and so forth. And so, let's have that discussion now. I will first run through my list that I have right now. One is of course the legislative proposal updates we recently spoke about with Ms. Mahoney under agenda item number seven. Another is the regulation updates and requests for board feedback and votes as

appropriate. Discussed with the regulations we've discussed today, the draft regulations. On our regularized calendar for January, we have our regular board briefing on what's called the January 10 budget from the governor in order to have an update on that and provide thoughts to staff. And we have relatedly a direction, an item to direct the staff on spring budget changes and priorities to feed into that process. Just so we can look out a little bit further on the regularized calendar for March we have a public affairs annual awareness re report and priorities on that. It would be good to check in on that. And we know that we will probably have some regulation to talk about in one or both of those meetings. I'd also like to remind everybody that we will be doing our next stage of strategic planning. We did not schedule it for today, given the very intense amount of substance on regulations and so forth, we needed to talk about. The rulemaking process subcommittee, Ms. de La Torre, and I will have an update at the appropriate time. And we will be talking about the chief privacy auditor position again at the appropriate time. So that is my sort of list that I've kept so far. And my pen is ready to add things. Ms. de la Torre? Please unmute yourself.

MS. DE LA TORRE: I have nothing to add. Thank you for keeping the list. But I do have a question. The board book that the agency's working on, and it was referred to today as where the description of what directly affects the work of the agency is. Do we expect that to be in front of us in the January meeting? I know we might not be able to commit, but is that the timing that we have in mind for that?

MS. URBAN: I'm not certain. But Ms. Mahoney mentioned the

handbook, which is something that I forgot. And let me just make sure that I have it on my list because we will, as I'm sure, I remember handbook has been with staff for feedback from board members. And so that will come back at the appropriate time. And I would expect not too long from now, I just want to leave staff some ability to help juggle.

MS. DE LA TORRE: But do we have a general idea meeting Mr. Laird? I mean, without committing, is that kind of –

MS. URBAN: Mr. Laird, I mean, is there any problem I'm not seeing with saying January or maybe March for these things?

MR. LAIRD: And I'm sorry, I want to make sure I'm not misunderstanding the item. Can you please state it again?

MS. URBAN: Well, I should say there are two potential parts. One is the handbook, which has a variety of different aspects that people have commented on, and then Ms. de la Torre asks a specifically about more detail on when something affects the agency.

MS. DE LA TORRE: Well, I'm just asking about the handbook. When's the handbook –

MR. LAIRD: The handbook for January. We'll be prepared to bring it back at that stage.

MS. DE LA TORRE: Perfect. Thank you. That was helpful.

MS. URBAN: Thank you, Ms. de La Torre. Mr. Mactaggart?

MR. MACTAGGART: Yeah, super quick. I just would love to add to the list of eventual rules. And I think it's just worth bringing up in public. The notion that the 185 A7 gives us the responsibility to promulgate regulations around deletion. And I think it would be a neat feature for people to say, I'd like to be able to delete

some poor parts of my information, not all of it. So, I could delete, you know, where I've been for the last month, but not necessarily my whole account. That's just, if we could just add a list, that's probably a Ms. Kim thing. Thank you.

MS. URBAN: Thank you, Mr. Mactaggart. And I have it on the list. Other potential agenda items from board members. All right, well, we have a strong list. We have a robust list. With that, Ms. Allen may I ask if there's public comments on this item?

MS. ALLEN: Sure. We are on agenda item number nine, future agenda items. If you would like to make a public comment, please raise your hand using the raise hand feature of Zoom or STAR nine on your phone. And we do have one public comment at this time. So, Nicole Smith, I'm going to go ahead and allow you to talk and unmute you. And you have three minutes. You can begin when you're ready.

MS. SMITH: All right. Thank you so much for the board and all of your work that you've put into this marathon meeting. I'll make this very quick since the hour is very late. A couple of years ago, and this is pre COVID, this is actually pre GDPR, when Kamala Harris was our State Attorney General, I was at a meeting in DC of the IAPP, the International Association of Privacy Professionals. And one of the former members of either EU Parliament or EU Commission, was on a panel and made a comment that California, with all of its legislative activity in the privacy field may qualify in the near future as a region that has adequate data privacy laws. And that's a concept of adequacy decision, which allows the free transfer of data. And that was huge at the time. I don't think many people paid that much attention to it, because there was, at the

time, no CPPA that could take the lead on that. But if we had an adequacy decision that would allow for the free flow of data between EU and US companies, and certainly for Silicon Valley and any company that does data processing with all of the security and vendor vetting, third party vetting that we do, it would lower the barrier and make the ease of data exchange a lot better for California companies. So, I encourage the CPPA to consider that perhaps not in the immediate future, but at some time looking for an adequacy decision from the EU because they've already sent signals that they would be amenable to this and it would be a tremendous boom for California corporations that adhere to all of these laws and are very critical about sharing data with third parties. We're very careful and, you know, we're minding our P's and Q's and it would be great to have an adequacy decision. That's it. Thank you so much.

MS. URBAN: Thank you very much, Nicole Smith. Ms. Allen, is there further public comment?

MS. ALLEN: All right, this is for agenda item number nine, future comments or future agenda items. If anyone has a public comment, please raise your hand using raise hand feature of Zoom or press star nine on your phone. Chair Urban, at this time, there's no other hands.

MS. URBAN: Thank you very much, Ms. Allen. With that then we will travel back one agenda item to request public comments on items that, or on issues and items that are not on the agenda. As a reminder, this is an item that is available for the public specifically, to bring up topics that are not on the agenda for today. Before we proceed with public comment, please do note that

the only action the board can take in response is to listen to comments and consider whether it will discuss the topic at a future meeting. No other action can be taken on the item at this meeting. We do not intend to seem non-responsive. Following these guidelines is critical to ensure that the Bagley-Keene Open Meeting Act is followed and to avoid compromising the commenter's goals or the board's mission. So, with that, I would ask Ms. Allen to let us know if there is public comment on items on the agenda.

MS. ALLEN: Yep. This is agenda item number eight, public comment, and items not the agenda. If you would like to make a public comment, please raise your hand using the Zoom raise hand feature or pressing star nine on the phone. Again, last call. This is agenda item number eight, public comment on items not on the agenda. If you would like to make a public comment, please indicate so now. Chair Urban, I see no hands.

MS. URBAN: Thank you very much, Ms. Allen. With that, we will move to our final agenda item, which is adjournment. I would like to reiterate our last speakers, thanks to the board and to the staff and to the public for an attentive, substantive and thoughtful meeting with some very complex topics underway. And thank everybody for that and look forward to seeing you when we again meet. With that, our final agenda item is adjournment. And with the thanks and a wish for very warm, bright, and happy holidays to all, may I have a motion to adjourn the meeting?

MR. LE: I will make that motion.

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

MS. DE LA TORRE: I second.

MS. URBAN: Thank you, Ms. de la Torre. Ms. Allen, there is a

motion on the table and seconded to adjourn the meeting. Could you please conduct the roll call vote?

MS. ALLEN: Yes. The motion is for adjournment. Board member de la Torre?

MS. DE LA TORRE: Aye.

MS. ALLEN: de la Torre, aye. Board member Le?

MR. LE: Aye.

MS. ALLEN: Le, aye. Board member Mactaggart?

MR. MACTAGGART: Aye.

MS. ALLEN: Mactaggart, aye. Board member Worthe? Chair Urban?

MS. URBAN: Aye.

MS. ALLEN: Chair Urban, aye. Madam Chair, you have four ayes and one nothing.

MS. URBAN: Thank you very much, Ms. Allen and to the board. With a vote of four to nothing, this meeting of the California Privacy Protection Agency Board is hereby adjourned. Thank you very much everyone.

(end of recording)