

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
 DF-46 (REV 10/20)

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|--|------------------------------|---|---|
| Fiscal Year 2022-23 | Business Unit 1703 | Department California Privacy Protection Agency | Priority No. 1 |
| Budget Request Name 1703-001-BCP-2022-GB | | Program Click or tap here to enter text. | Subprogram Click or tap here to enter text. |

Budget Request Description
 Consumer Privacy Implementation and Enforcement

Budget Request Summary

The California Privacy Protection Agency (Agency) is requesting 34.0 positions in fiscal year 2022-23 and ongoing to provide the initial staff resources to allow the Agency to start up and fulfill its immediate statutory responsibilities. The Agency is responsible for the administrative implementation and enforcement of the nation's first comprehensive consumer privacy law. This proposal will provide a business plan to utilize the existing appropriation of \$10 million General Fund in ongoing authority for these statutorily-required activities.

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|--|---|--|
| Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Code Section(s) to be Added/Amended/Repealed Click or tap here to enter text. | |
| Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i> | Department CIO Click or tap here to enter text. | Date Click or tap to enter a date. |

For IT requests, specify the project number, the most recent project approval document (FSR, SPR, S1BA, S2AA, S3SD, S4PRA), and the approval date.

Project No. Click or tap here to enter text. **Project Approval Document:** Click or tap here to enter text.

Approval Date: Click or tap to enter a date.

If proposal affects another department, does other department concur with proposal? Yes No
Attach comments of affected department, signed and dated by the department director or designee.

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|--|--------------------------|---|--------------------------|
| Prepared By Vongayi Chitambira | Date 1/10/2022 | Reviewed By Ashkan Soltani | Date 1/10/2022 |
| Department Director N/A | Date 1/10/2022 | Agency Secretary Ashkan Soltani | Date 1/10/2022 |

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE Dept. of Technology

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|----------------------------------|---|
| PPBA Kimberly Harbison | Date submitted to the Legislature 1/10/2022 |
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A. Budget Request Summary

The California Privacy Protection Agency (Agency) is requesting 34.0 positions in fiscal year 2022-23 and ongoing to provide the initial staff resources to allow the Agency to start up and fulfill its immediate statutory responsibilities. The Agency is responsible for the administrative implementation and enforcement of the nation's first comprehensive consumer privacy law. This proposal will provide a business plan to utilize the existing annual appropriation of \$10 million General Fund in ongoing authority for these statutorily-required activities.

B. Background/History

In November of 2020, voters approved Proposition 24, The California Privacy Rights Act of 2020 (CPRA).

The CPRA cements California's place as the nation's leader in consumer privacy by amending and extending the California Consumer Privacy Act of 2018 (CCPA), the first comprehensive consumer privacy law in the United States. The new law is intended to "protect consumers' rights, including the constitutional right of privacy." To this end, it gives consumers various rights to limit and control businesses' collection and sharing of personal information and imposes on businesses various disclosure, security, and other responsibilities. For example, the law grants consumers rights to opt out from certain business uses of personal information, to delete or correct personal information held by businesses, to correct inaccuracies in or delete personal information held by businesses, and limit businesses' use of "sensitive personal information" such as precise geolocation, race, ethnicity, and health information. (Civil Code, § 1798.105-121.) The CPRA directs that the "rights of consumers and the responsibilities of businesses should be implemented with the goal of strengthening consumer privacy, while giving attention to the impact on business and innovation." (CPRA, § 3(C)(1).)

The CPRA affects all California consumers and a wide swath of California businesses: it applies to any business that has \$25 million in gross revenues, or sells or shares the personal information of 100,000 or more California consumers, or derives 50 percent or more of its annual revenue from selling or sharing consumers' personal information. (Civil Code, § 1798.140(d).)

To implement the law, the CPRA established the Agency, governed by a five-member board (Board) (Civil Code, § 1798.199.10(a)), and overseen by an Executive Director. (Civil Code, § 1798.199.30.) The CPRA directly appropriated, from the State General Fund, \$5 million for 2020-21 and \$10 million per fiscal year thereafter, for expenditure to support the operations of the Agency. (Civil Code, § 1798.199.95(a).)

The Agency is the first agency with administrative power focused on privacy in the United States and has a broad mandate. The CPRA vests the Agency with the "full administrative power, authority, and jurisdiction to implement and enforce" the law. (Civil Code, § 1798.199.10(a).) The Agency's responsibilities include (but are not limited to) engaging in rulemaking, investigating violations, assessing penalties, cooperating with other jurisdictions, (Civil Code, § 1798.199.40.), and promoting public awareness including providing guidance to consumers and businesses on complex matters relating to online privacy, cybersecurity, and automated decision making. The Agency and the Office of the Attorney General will share enforcement powers under the law, see Civil Code, §§ 1798.199.45–90 beginning as early as July 1, 2023 (Civil Code, § 1798.185 (d).)

The CPRA directs the Agency to fulfill a wide variety of responsibilities involving complex and constantly changing business, social, and technological issues. (Civil Code, § 1798.199.140(a)-(l).) These responsibilities include:

- (a) Administering, implementing, and enforcing through administrative actions the CCPA;
- (b) Engaging in extensive rulemaking to adopt, amend, and rescind regulations that implement the CCPA;

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- (c) Protecting the fundamental privacy rights of natural persons with respect to the use of their personal information;
- (d) Promoting public awareness and understanding of the risks, rules, responsibilities, safeguards, and rights in relation to the collection, use, sale and disclosure of personal information, including the rights of minors with respect to their own information, and providing public reports summarizing the risk assessments filed with the Agency;
- (e) Providing guidance to consumers regarding their rights under the law;
- (f) Providing guidance to businesses regarding their responsibilities under the law;
- (g) Providing technical assistance and advice to the Legislature, upon request, with respect to privacy-related legislation;
- (h) Monitoring relevant developments relating to the protection of personal information, and in particular, the development of information and communication technologies and commercial practices;
- (i) Cooperating with other agencies with jurisdiction over privacy laws and with data processing authorities in California, other states, territories, and countries to confirm consistent application of privacy protections;
- (k) Soliciting, reviewing, and approving applications for grants to promote and protect consumer privacy, educate children in online privacy, and fund cooperative programs with international law enforcement agencies to combat data breaches; and
- (l) Performing all other acts necessary or appropriate in the exercise of its power, authority, and jurisdiction, and seek to balance the goals of strengthening consumer privacy while giving attention to the impact on businesses.

With regard to rulemaking, the Agency is directed to adopt an extensive initial rulemaking package by July 1, 2022. It will undertake administrative enforcement starting as early as July 1, 2023. (Civil Code, § 1798.185(d).)

The Agency's Board was appointed in March 2021. The Agency then established an Architectural Revolving Fund account from the initial \$5 million appropriation in 2020-21 with the expectation that it will explore physical offices at the conclusion of the COVID-19 Pandemic. The Agency also entered into, or is in the process of entering into, Interagency Agreements (IAAs) with the Department of General Services (DGS) and the Department of Consumer Affairs (DCA) for human resources, finance and budget, and information technology services. The Business, Consumer Services, and Housing Agency (BSCH) has provided extensive support. In September 2021, The California Office of the Attorney General (OAG) began to provide legal services and some limited administrative services on a fee-for-service basis, as contemplated by the CPRA. (Civil Code, § 1798.199.95(c).)

Staffing levels are currently scant. As directed by the CPRA, the Board hired an Executive Director in October 2021. The agency currently has two employees in addition to the Executive Director: a Deputy Director of Administration who was hired December 2021 and a retired annuitant serving half-time as an Attorney IV. The resources requested in this proposal will provide critically-needed positions for CPPA to carry out its statutory mandates.

C. State Level Consideration

This proposal is consistent with the intent of Proposition 24, which directs that the Agency be established, that it undertake a wide range of responsibilities to protect California consumers' privacy, and that it begin its work immediately. To meet these objectives, the Agency must succeed at implementing its mission given to it by the CPRA. CPPA responsibilities include:

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- 1) Rulemaking in a highly complicated, technical, sometimes-contested, and nuanced area;
- 2) Supporting awareness across California's diverse population on issues related to privacy and data security, including the new rights provided to them by the law; and
- 3) Preparing for meaningful administrative enforcement of those rights.

While the Agency is being established, it is concurrently working to meet its immediate rulemaking and public awareness responsibilities and to prepare for its upcoming enforcement responsibilities. To successfully develop its capacities and fulfill the mission entrusted to it by the people of California, the Agency needs to move rapidly to hire staff and establish its administrative functions.

D. Justification

CPPA requires position authority to hire permanent staff to establish its administrative functions and fulfill its statutory obligations. Its first rulemaking package is due on July 1, 2022, with enforcement to follow in July 1, 2023. The Agency's public awareness responsibilities are ongoing. The resources requested in this budget change proposal are required both to undertake the work required to fulfill these responsibilities and to build the Agency from the ground up.

Given the breadth of the Agency's responsibilities, the importance of its work to broad constituencies across the state, and the economic impact of its implementing law, it is vital that the new agency come into being with strong administrative support and with the necessary expertise to fulfill its legal mandate. The Business, Consumer Services, and Housing Agency has been an exceptional partner to the new agency, and the IAAs established with DGS, DCA, and the OAG provides some basic services. But these are short-term solutions, and insufficient to meet the Agency's ongoing responsibilities.

The breadth, complexity, and constancy of the Agency's work requires staff with sufficient expertise and commitment to execute that work effectively. The Agency's mandated workload is significant, spanning regulatory rulemaking, auditing, enforcement, public outreach, and other duties. It has jurisdiction over a notably complex and fast-moving business, social, political, and technical area. The Agency's Executive Director and staff must be able to successfully work with the Board to develop regulatory, enforcement, and administrative processes, and to staff the new agency, all within an especially complex environment.

Staffing the Agency with sufficient expertise and support staff is critical both to the Agency's ability to fulfill its immediate responsibilities and to its ability to fulfill its responsibilities over time. The CPRA directs the Agency immediately to begin rulemaking on more than twenty complex, often technical, topics (many with multiple components), involving, inter alia, consumer opt-out preference signals, the treatment of consumer personal information and sensitive personal information, cybersecurity auditing, geolocation, and automated decision-making. (Civil Code, § 1798.185(a)(1)-(22)). Beyond this immediate effort, the Agency's work will remain substantial and complex for the foreseeable future. The CPRA directs the Agency to engage in rulemaking on an ongoing basis to adjust requirements as necessary to accommodate the rapid technological, social, and business developments under its jurisdiction. (See, e.g., Civil Code, §§ 1798.185(a)(1) and 1798.185(a)(19)(A)). The Agency's responsibilities to support public awareness and provide guidance to businesses are also continuous, and will also have to be continually updated and refreshed. Similarly, the Agency's enforcement activities will require expert staff who can understand, interpret, and respond to a constantly changing business, technical, and social environment.

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In order to secure adequate resources to build out the new agency and meet its obligations, the following functions and subsequent staff are being requested. Initially, while following state recommendations concerning the ongoing pandemic, the Agency will maintain a full telework setting without the need for a physical office. Over time, the Agency may pursue a physical office but will follow recent state recommendations on supporting telework when possible. This 'remote first' approach has been factored into the present budget planning.

The resource allocation plan will follow a staged multi-year approach to accommodate the current functions provided through IAAs with DGS and DCA. As the Agency has only minimal staff, it was necessary to establish annual contracts for IT, Legal, Procurement, HR, Budgeting, and Accounting with DCA and DGS. As the Agency was envisioned to be an independent agency, it may be prudent to move these services in house in the future. In addition, some of the Agency's priorities and functions will shift from primarily rulemaking in 2021-22, to a combination of rulemaking and enforcement in 2022-23. The third leg of the agency's stool, public awareness and stakeholder engagement, operated by the Division of Public Affairs, will need to begin immediately and persist throughout the Agency's function.

The following sections provide an overview of the Agency's core functions and the staff resources that will be required to support these functions in carrying out the agency's mission:

1. EXECUTIVE FUNCTION

The executive office will include an Executive Director and specialized staff who will oversee the day-to-day operations and support research, rulemaking, and auditing activities of the Agency. The executive office will seek guidance from and provide support to the Board for the policy direction and enforcement resolution of the Agency. CPPA requests 6.0 positions for the Executive Function.

2. LEGAL DIVISION

The Agency's Legal Division will include General Counsel, supporting attorneys, and legal staff. The Agency reviewed similarly-sized departments and agencies with comparably complex functions or responsibilities to determine the requested positions that are necessary to meet CPPA's initial legal needs.

The General Counsel will act as the Agency's principal legal advisor and work with the Board and the Executive Director in the formulation, administration, and implementation of departmental policies and procedures. The General Counsel will serve as the primary contact on all legal issues before the Governor's Office, the Legislature, the Office of the Attorney General, control agencies, and others. This position will also manage the legal unit operations and staff, review attorneys' legal work, distribute assignments, and manage caseloads for legal staff. CPPA requests 9.0 positions for the Legal Division.

3. ENFORCEMENT DIVISION

The Enforcement Division will carry the Agency's responsibility for handling the administrative actions associated with enforcing the provisions of California's consumer privacy laws that fall under the jurisdiction of the Agency, including providing support and advice to the Executive Director and the Chief Privacy Auditor on the investigative, auditing, and enforcement activities of the Agency. The enforcement division will lead in handling cases governed by the Administrative Procedures Act that the Agency brings before the Office of Administrative Hearings. CPPA requests 1.0 position for the Enforcement Division.

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4. POLICY/LEGISLATIVE AFFAIRS DIVISION

The Policy and Legislative Affairs Division will be responsible for providing legislative and policy analysis and liaising with the Legislature on policy matters, including responding to legislative requests for advice under Civil Service Code § 1798.199.140(g). The Division will monitor and anticipate relevant political and policy developments impacting the Agency and develop strategies and recommendations in response. The Division will represent the Agency as needed in meetings and policy engagements with local officials, legislators, and key stakeholders including to "cooperate with other agencies with jurisdiction over privacy laws and with data processing authorities in California, other states, territories, and countries to ensure consistent application of privacy protections." as required under Civil Service Code § 1798.199.140(i). Members of this office will attend legislative hearings and represent the Agency as needed. This team will track, analyze, and develop bill analyses on behalf of the Agency. They will provide technical assistance to legislative offices and bill sponsors regarding legislation, interact with authors of bills that impact the Agency, and monitor the daily file for floor actions and scheduled events. CPPA requests 3.0 positions for the Policy and Legislative Division.

5. PUBLIC AFFAIRS DIVISION

The External Affairs Division will be responsible for developing the Agency's public engagement and awareness plans, communications and media strategies, internal and external publications, and educational efforts. This Division will be responsible for organizing the Agency's public awareness and educational efforts required by Civil Service Code § 1798.199.140(d)-(f), and for the overall communications and outreach activities of the Agency with its internal and external stakeholders. In addition, the Division will develop and execute public affairs strategies to support the goals and objectives of the Agency. The Division's primary responsibilities will include media relations, communications, web services, social media, and development of key publications and educational tools to raise public awareness on complex issues of consumer privacy, data security, automated decision-making, and artificial intelligence. CPPA requests 7.0 positions for the Public Affairs Division.

6. ADMINISTRATIVE DIVISION

The Administrative Division will provide services to guarantee the timely and efficient execution of the Agency's day-to-day operations and administrative oversight. The Administration Division will include three key functions: Information Services, Human Resources, and Financial Management. To create an efficient and effective division and to determine the appropriate staffing level for the Administration Division, the Agency looked to similarly sized departments and determined the requested positions were necessary to meet the Department's initial administrative needs while relying on contracted services from DGS and DCA. CPPA requests 8.0 positions for the Administrative Division.

E. Outcomes and Accountability

The Agency is working through its contracted entities to continue immediate recruitment and hiring of staff to establish critical administrative functions to fulfil its statutory obligations and carry out the will of the voters.

The first rulemaking package for the Agency is due on July 1, 2022.

Enforcement of regulations will commence on July 1, 2023.

The resources requested in this proposal are critically-needed to enable the Agency to build the necessary administrative and enforcement structure for this agency to carry out its broad

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mandates, which include (but are not limited to) rulemaking, investigating violations, assessing penalties, cooperating with other jurisdictions, and promoting public awareness including providing guidance to consumers and businesses on complex matters relating to online privacy, cybersecurity, and automated decision making.

F. Analysis of All Feasible Alternatives

Alternative 1: Approve the request for 34.0 positions beginning in 2022-23 to provide the initial resources to allow the Agency to start up and fulfill its immediate statutory responsibilities.

Pros: The Agency will be adequately resourced to establish the initial structure necessary to fulfill its statutory mandates.

This does not require any additional state spending; this proposal implements a spending plan for the funding appropriated in the law effectuated by Proposition 24.

Cons: Increases the size of state government.

Alternative 2: Deny the request.

Pros: No increase to the size of state government.

Cons: CPPA cannot fulfill its responsibilities under Proposition 24.

Lack of privacy protections for Californians.

Lack of certainty for regulated entities.

G. Implementation Plan

Upon approval of this proposal, the Agency will work with its contracted entities to recruit and hire the necessary staff to carry out its responsibilities. The balance of the \$10 million not expended on personal services will be used to establish contracts as necessary to start up critical administrative functions so the Agency will be able to meet statutory mandates, including implementation of regulations by July 1, 2022 and enforcement of the regulations beginning July 1, 2023.

H. Supplemental Information

Not applicable.

I. Recommendation

Approve the request for 34.0 positions beginning in 2022-23 to provide the initial resources to allow the Agency to start up and fulfill its immediate statutory responsibilities.

BCP Fiscal Detail Sheet

BCP Title: Consumer Privacy Implementation and Enforcement

BR Name: 1703-001-BCP-2022-GB

Budget Request Summary

Personal Services

| Personal Services | FY22 Current Year | FY22 Budget Year | FY22 BY+1 | FY22 BY+2 | FY22 BY+3 | FY22 BY+4 |
|------------------------|-------------------------|------------------------|--------------|--------------|--------------|--------------|
| Positions - Permanent | 0.0 | 34.0 | 34.0 | 34.0 | 34.0 | 34.0 |
| Total Positions | 0.0 | 34.0 | 34.0 | 34.0 | 34.0 | 34.0 |

Fund Summary

Fund Source

| Fund Source | FY22 Current Year | FY22 Budget Year | FY22 BY+1 | FY22 BY+2 | FY22 BY+3 | FY22 BY+4 |
|--|-------------------------|------------------------|--------------|--------------|--------------|--------------|
| Total State Operations Expenditures | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |

Program Summary

Program Funding

| Program Funding | FY22 Current Year | FY22 Budget Year | FY22 BY+1 | FY22 BY+2 | FY22 BY+3 | FY22 BY+4 |
|---------------------------|-------------------------|------------------------|--------------|--------------|--------------|--------------|
| Total All Programs | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |

Personal Services Details

Positions

| Positions | FY22 Current Year | FY22 Budget Year | FY22 BY+1 | FY22 BY+2 | FY22 BY+3 | FY22 BY+4 |
|--|-------------------------|------------------------|--------------|--------------|--------------|--------------|
| 0080 - Executive Director (Eff. 07-01-2022) | 0.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| 1138 - Office Techn (Gen) (Eff. 07-01-2022) | 0.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| 4800 - Staff Svcs Mgr I (Eff. 07-01-2022) | 0.0 | 4.0 | 4.0 | 4.0 | 4.0 | 4.0 |
| 4801 - Staff Svcs Mgr II (Supvry) (Eff. 07-01-2022) | 0.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 |
| 5393 - Assoc Govtl Program Analyst (Eff. 07-01-2022) | 0.0 | 9.0 | 9.0 | 9.0 | 9.0 | 9.0 |
| 5595 - Info Officer II (Eff. 07-01-2022) | 0.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| 5778 - Atty (Eff. 07-01-2022) | 0.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| 5780 - Atty IV (Eff. 07-01-2022) | 0.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| 5795 - Atty III (Eff. 07-01-2022) | 0.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 |
| 5871 - Assistant Chief Counsel (Eff. 07-01-2022) | 0.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| 7500 - - C.E.A. - A (Eff. 07-01-2022) | 0.0 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 |
| 7500 - - C.E.A. - B (Eff. 07-01-2022) | 0.0 | 5.0 | 5.0 | 5.0 | 5.0 | 5.0 |
| 7500 - - C.E.A. - C (Eff. 07-01-2022) | 0.0 | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 |
| Total Positions | 0.0 | 34.0 | 34.0 | 34.0 | 34.0 | 34.0 |