

**Privacy and Civil Liberties Oversight
Board (PCLOB)**

2100 K Street, NW, Suite 500

Washington, DC 20427

APRIL - SEPTEMBER 2015

SEMI-ANNUAL REPORT



DAVID MEDINE, CHAIRMAN

RACHEL BRAND, BOARD MEMBER

ELISEBETH COLLINS, BOARD MEMBER

JAMES DEMPSEY, BOARD MEMBER

PATRICIA WALD, BOARD MEMBER

THIS PAGE INTENTIONALLY LEFT BLANK.



REPORT DISTRIBUTION

In accordance with Section 801, Implementing Recommendations of the 9/11 Commission Act, 42 U.S.C. § 2000ee, I am pleased to present the sixth Semi-Annual Report of the Privacy and Civil Liberties Oversight Board (“Board”). This Semi-Annual Report demonstrates the depth and breadth of the Board’s work during the reporting period.

This Semi-Annual Report covers the period from April 1 to September 30, 2015, and is being provided to the President and the following Members of Congress:

The Honorable Thad Cochran
Chairman, U.S. Senate Committee on Appropriations

The Honorable Barbara A. Mikulski
Vice Chairwoman, U.S. Senate Committee on Appropriations

The Honorable Ron Johnson
Chairman, U.S. Senate Committee on Homeland Security and Governmental Affairs

The Honorable Thomas R. Carper
Ranking Member, U.S. Senate Committee on Homeland Security and Governmental Affairs

The Honorable Richard Burr
Chairman, U.S. Senate Select Committee on Intelligence

The Honorable Dianne Feinstein
Vice Chairman, U.S. Senate Select Committee on Intelligence

The Honorable Charles Grassley
Chairman, U.S. Senate Committee on the Judiciary

The Honorable Patrick J. Leahy
Ranking Member, U.S. Senate Committee on the Judiciary

The Honorable Harold Rogers
Chairman, U.S. House of Representatives Committee on Appropriations

The Honorable Nita M. Lowey
Ranking Member, U.S. House of Representatives Committee on Appropriations

The Honorable Michael McCaul
Chairman, U.S. House of Representatives Committee on Homeland Security

The Honorable Bennie G. Thompson
Ranking Member, U.S. House of Representatives Committee on Homeland Security

The Honorable Devin Nunes
Chairman, U.S. House of Representatives Permanent Select Committee on Intelligence

The Honorable Adam Schiff
Ranking Member, U.S. House of Representatives Permanent Select Committee on Intelligence

The Honorable Robert Goodlatte
Chairman, U.S. House of Representatives Committee on the Judiciary

The Honorable John Conyers, Jr.
Ranking Member, U.S. House of
Representatives Committee on the
Judiciary

The Honorable Jason Chaffetz
Chairman, U.S. House of Representatives
Committee on Oversight and Government
Reform

The Honorable Elijah Cummings
Ranking Member, U.S. House of
Representatives Committee on Oversight
and Government Reform

The Board's Semi-Annual Reports are prepared to outline progress made during the reporting period, including updates on the Board's operation as an independent agency and descriptions of the Board's work in support of its mission, and provide information required by rule or law. The Board's Semi-Annual Reports are also available online at www.pclob.gov. Copies of other Board reports, additional news and

information are also available on the Board's website.

Inquiries may be directed to the Executive Director, Sharon Bradford Franklin at:

Privacy and Civil Liberties Oversight
Board

Attention: Sharon Bradford Franklin
2100 K Street, N.W., Suite 500
Washington, D.C. 20427

info@pclob.gov

(202) 331-1986.

A handwritten signature in cursive script that reads "David Medine".

David Medine
Chairman of the Board, on behalf of the
Board Members

TABLE OF CONTENTS

INTRODUCTION	1
BOARD AUTHORITIES.....	3
MAJOR ACTIVITIES: APRIL Through SEPTEMBER, 2015.....	5
ORGANIZATION, ADMINISTRATION, AND BUDGET.....	5
ORGANIZATIONAL COMPOSITION.....	5
1. WORKFORCE.....	5
2. RELOCATION OF BOARD'S OFFICES	5
3. INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS	6
4. RELATIONSHIP WITH OTHER FEDERAL AGENCIES FOR BOARD OPERATIONS.	6
ADMINISTRATION	7
AGENCY OPERATIONS.....	7
BUDGET	7
OVERSIGHT AND ADVICE ACTIVITIES	7
PUBLIC AND FEDERAL AGENCY OUTREACH	11
FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS	12
NEXT STEPS	12
ORGANIZATION, ADMINISTRATION AND BUDGET.....	12
OUTREACH	13
OVERSIGHT AND ADVICE ACTIVITIES	13
CONCLUSION	14

INTRODUCTION

HIGHLIGHTS OF BOARD ACTIVITIES

The Privacy and Civil Liberties Oversight Board is an independent agency within the executive branch. The mission of the Board is to ensure that efforts by the executive branch to protect the nation from terrorism are appropriately balanced with the need to protect privacy and civil liberties. The Board carries out this mission by conducting oversight and providing advice regarding counterterrorism authorities and activities.¹ This Semi-Annual Report covers the Board's activities between April and September 2015 (the "Reporting Period").

During the Reporting Period, the Board continued examining issues, programs, and activities outlined in the agenda publicly announced by the Board in July 2014. These include Presidential Policy Directive 28 ("PPD-28"),² cybersecurity, counterterrorism activities conducted under Executive Order 12333 ("E.O. 12333"),³ Efficacy, and Section 803 reports.⁴ The following summarizes some of the Board's efforts conducted during the Reporting Period. As the highlights below illustrate, the Board continues to conduct oversight of programs and

activities as they relate to the Board's statutory authorities.

Cybersecurity – The President's Executive Order 13636 ("E.O. 13636")⁵ on Improving Critical Infrastructure Cybersecurity, issued in February 2013, calls upon the Department of Homeland Security ("DHS") to consult with the Board in assessing agency cybersecurity information sharing programs. During the Reporting Period, DHS issued its 2015 Executive Order 13636 Privacy and Civil Liberties Assessment Report. The Board wrote a letter with feedback on the report that was subsequently made public through the Board's website. In addition, the Board commenced its participation in its third annual consultation with DHS and other agencies reporting under the Order regarding privacy and civil liberties policies and practices.

Efficacy – The Board continued its review of methodologies utilized by the Intelligence Community ("IC") to evaluate the efficacy of counterterrorism programs.

E.O. 12333 – The Board continued to examine counterterrorism activities conducted under E.O. 12333, which

¹ Pub. L. No. 108-458, § 1061(c) (2004), as amended by Pub. L. No. 110-53, § 801(a) (2007). Section 1061 is codified at 42 U.S.C. § 2000ee (hereinafter, the "Enabling Statute"). Citations to the Enabling Statute are to its codified version in the United States Code.

² PPD-28, Signals Intelligence Activities (Jan. 17, 2004).

³ E.O. 12333, United States Intelligence Activities (Dec. 4, 1981), as amended.

⁴ As discussed in the last Semi-Annual Report, the Board has completed its training project and held its defining privacy meeting, both of which will continue to inform the Board's work.

⁵ E.O. 13636, Improving Critical Infrastructure Cybersecurity (Feb. 12, 2013).

establishes the framework for the efforts of the IC, and the implications of these activities for privacy and civil liberties. On April 8, 2015, the Board adopted a project description outlining the E.O. 12333 project, which consists of a high-level public report explaining E.O. 12333 as well as select in-depth examinations of counterterrorism-related activities at the Central Intelligence Agency (“CIA”) and the National Security Agency (“NSA”). The Board selected two in-depth examinations for the CIA on July 1, 2015 and one for the NSA on November 5, 2015, shortly after the current Reporting Period ended. The Board received a significant amount of information about CIA and NSA activities pursuant to E.O. 12333 through Board- and staff-level briefings, and related factual and legal research.

PPD-28 – PPD-28 outlines principles for and limits on signals intelligence activities, including the protections to be provided to non-U.S. persons.⁶ It contains a provision encouraging the Board to provide the President with a report assessing the implementation of this Directive on Signals Intelligence. In response to the President’s request, the Board voted to provide this report and, toward that end, begin work on PPD-28 as an oversight project and approved a work plan for doing so. The project will commence during the next reporting period.

Section 803 Reports – The Board continued working with agency privacy

and civil liberties officers to identify practical changes to their reporting under Section 803 of the 9/11 Commission Act⁷ designed to make those reports more informative and accessible. Eight federal departments and agencies are required to submit “Section 803 reports” to Congress and the Board on a semi-annual basis covering the activities of privacy and civil liberties officers.

Other Activities – The Board also conducted activities related to recruiting and hiring for key staff positions, institutionalizing its operations, and developing policies to govern the Board’s IT systems and other internal operations. Nonetheless, as a new and small agency, the Board continues to face administrative and operational challenges, which the Board will continue to address in FY 2016.

⁶ The term “U.S. persons” includes United States citizens, United States permanent residents, and virtually all United States corporations.

⁷ Pub. L. No. 110-53, § 803 (2007).

BOARD AUTHORITIES

Congress established the Board to serve two essential purposes:

1) Conduct oversight by analyzing and reviewing actions the executive branch takes to protect the Nation from terrorism, ensuring that the need for such actions is balanced with the need to protect privacy and civil liberties; and

2) Providing advice to ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the Nation against terrorism.⁸

Under the heading of *advice and counsel*, Congress charged the Board with reviewing proposed legislation, regulations, and policies related to efforts to protect the Nation from terrorism, and advising the President and the departments, agencies, and components of the executive branch to ensure that privacy and civil liberties are appropriately considered in the development and implementation of such legislation, regulations, policies, and guidelines.⁹ Congress, under the heading of *oversight*, also charged the Board with continually reviewing the regulations, policies, and procedures, of the executive branch, as well as its other actions to

protect the Nation from terrorism, to see that such actions (i) appropriately protect privacy and civil liberties; and (ii) are consistent with governing laws, regulations, and policies regarding privacy and civil liberties.¹⁰

Under its Enabling Statute, the Board must periodically submit, not less than semiannually, (a) a report describing its major activities during the preceding period; and (b) information on the Board's findings, conclusions, and recommendations in connection with its advice and oversight functions. The Board endeavors to keep Congress updated on Board activities and work with Congress on issues within the Board's jurisdiction.

In addition, the President asked that the Board provide expert assistance in connection with E.O. 13636, Improving Critical Infrastructure Cybersecurity. E.O. 13636 provides that DHS shall consult with the Board in producing a report that assesses, and recommends steps to mitigate, the privacy and civil liberties risks associated with the cybersecurity programs undertaken by federal agencies under the Order. Board Members and staff coordinated and consulted with DHS and other participating agencies in connection with the second cybersecurity report that was released in April 2015, which was a substantial improvement over the prior year.

⁸ 42 U.S.C. § 2000ee(c).

⁹ *Id.* § 2000ee(d)(1).

¹⁰ *Id.* § 2000ee(d)(2)

The President invited the Board to play a second consultative role when he issued PPD-28, a Presidential Policy Directive on Signals Intelligence, on January 17, 2014. PPD-28 provides that in connection with the Nation's signals intelligence activities, all persons should be treated with dignity and respect, regardless of their nationality or wherever they might reside, and all persons have legitimate privacy interests in the handling of their personal information. PPD-28 further provides that U.S. signals intelligence activities must include appropriate safeguards for the personal information of all individuals, regardless of their nationality or where they reside. Section 5 of PPD-28 encourages the Board to provide the President with a report that assesses the implementation of any matters contained within the directive that fall within its mandate. The Board has indicated that it will provide the requested assessment, and, as described below, has already begun engagement with the IC on this effort.

During the Reporting Period, Congress passed the USA FREEDOM Act,¹¹ which authorizes the Foreign Intelligence Surveillance Court to consider recommendations made by Members of the Board for individuals to serve as *amicus curiae* in certain cases.

The FY 2016 Intelligence Authorization Act, which passed as part of the recent omnibus bill, contained a provision ("Section 305") that amended the Board's Enabling Statute as follows: "Nothing in this section shall be construed to authorize the Board, or any agent thereof, to gain access to information regarding an activity covered by section 503(a) of the National Security Act of 1947 (50 U.S.C. 3093(a))." Section 305 is a narrow exception to the Board's statutory right of access to information limited to a specific category of matters, covert actions.

¹¹ Pub. L. No. 114-23, § 401 (2015).

MAJOR ACTIVITIES: APRIL THROUGH SEPTEMBER, 2015

During the Reporting Period, the Board has continued to establish foundational agency policies and practices, and focused on three areas:

- Organizational composition, administration, and budget;
- Oversight and advice activities; and
- Outreach to members of the public, Congress, and federal agencies.

ORGANIZATION, ADMINISTRATION, AND BUDGET

ORGANIZATIONAL COMPOSITION

1. WORKFORCE

The Board continued its hiring efforts with the goal of “right-sizing” the agency. New hires include a Chief Information Officer, Acquisition/Finance Officer, Systems Administrator, Counselor, and, just after the Reporting Period ended, a Public Affairs/Legislative Affairs Officer.

The Board has sought to retain a workforce that is engaged, well prepared, and equipped with the right skill sets required to achieve its mission objectives. As outlined in the Board’s FY 2016 budget request, once approved, the Board will seek to fill the 12 positions requested through a blended process of leveraging detailed staff from other federal government organizations as well as recruited staff as permanent cadre.

2. RELOCATION OF BOARD’S OFFICES

One of the significant challenges the Board has faced is the process of procuring new office space for its mandatory physical move in FY 2016. The Board is currently occupying leased space through the General Services Administration (“GSA”) in Northwest D.C., which is scheduled for demolition in the latter part of 2016. The Board must ensure that its new offices meet requirements as a Sensitive Compartmented Information Facility (“SCIF”). The Board cannot perform its core statutory mission without having a dedicated SCIF in which to review, analyze, and report on classified counterterrorism programs, and perform its oversight and advisory roles. The programs overseen by the Board are often highly classified and require appropriate protective measures, storage, and custodianship of said information. Unfortunately, SCIF space is limited in the Washington metro area.

The Board has been working with GSA to explore cost-effective options, while keeping both the Office of Management and Budget (“OMB”) and congressional Appropriations Committee staff members informed throughout the process. After consultation with the congressional staff members, the Board has worked with GSA to identify and select a GSA backfill space for its permanent relocation. This office space is located at Vermont Avenue in Northwest Washington, D.C.

The Board's FY 2016 budget request will provide the resources necessary to 1) continue to "right-size" its staff and operational budget in order to more effectively and efficiently address its statutory authorities; and 2) appropriately address all funding requirements in connection with the new office space SCIF build out, and other requirements associated with the move. The Board's new space is unlikely to be ready by the time the Board must vacate its current space, so the Board will likely need to temporarily move into interim space. The Board will ensure that it continues to operate efficiently and that it mitigates move costs wherever possible. The Board will continue to provide updates on the progress of its move.

3. INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS

In 2015, the robustness of the Board's security architecture and efforts to meet federal compliance requirements has significantly improved.

Specifically, the Board has refined and implemented a rigorous Information Security Architecture to include implementation of all "30-day Sprint" requirements from OMB following the OPM system compromises, two-factor authentication using PIV cards, initial capabilities for Continuous Monitoring and Diagnostics, and submission of the Board's first annual Federal Information Security Management Act ("FISMA")¹² report. The team has also made significant progress implementing the Risk Management Framework by completing two of three System Security

Plans ("SSPs") for PCLOB systems. The third SSP will be completed in FY 2016. In FY 2016, the Board will continue to make progress on the Cyber Security Cross Agency Priority ("CAP") goals established by OMB and to support the planning and execution of the Board's forthcoming office relocation.

A key challenge the Board faces in implementing the CAP goals in FY 2016 is the cost of the Trusted Internet Connection/Managed Trusted Internet Protocol Service ("MTIPS") services. As a micro-agency, the Board does not have the buying power to leverage significantly discounted rates. To that end, the Board is working with DHS and TIC/MTIPS providers to integrate TIC/MTIPS capabilities in a cost effective manner once the IT architecture has been transitioned to the new office location.

4. RELATIONSHIP WITH OTHER FEDERAL AGENCIES FOR BOARD OPERATIONS

Although the Board is an independent agency, it has established numerous interagency agreements, and other arrangements through which it obtains support from other federal agencies to meet needs such as facility security, personnel security, classified information systems support, finance and payroll service, human resources, and acquisitions. As an example, the Board renewed its "fee-for-service" agreements with GSA for the Board's acquisition, leasing, human resource services, payroll, and security services. The Board also renewed its fee-for-service agreement with the United States Department of

¹² Pub. L. No. 107-347 (2002).

Agriculture for financial services, which was previously with GSA; and with DHS for building security, guard services, and computer monitoring.

ADMINISTRATION

AGENCY OPERATIONS

As an independent federal agency, the Board must comply with a large number of statutes, regulations, executive orders, and executive branch policies, many of which require that the Board also develop its own implementing policies and procedures. The Board is committed to establishing policies and procedures that will guide Board Members and staff as they carry out the Board's mission. The Board is also committed to submitting required reports and improving agency infrastructure.

For example, the Board has issued its FY 2016 – 2018 strategic plan, which sets out its goals and objectives as an agency; made substantial progress on finalizing an agency records schedule; posted the agency's plan for a lapse in appropriations; and continued to develop internal policies and procedures.

BUDGET

The Board has jurisdiction to review existing and proposed federal counterterrorism programs to ensure they include adequate safeguards for privacy and civil liberties. Many of these programs are conducted by the seventeen different agencies that comprise the IC, whose cumulative budget request for FY 2015 was approximately \$45.6 billion (excluding funding required to support overseas contingency operations). By

contrast, the Board's FY 2015 appropriated budget was \$7.5 million.

The Board continued to ensure full operational capability, with a focus on policy development, strong information technology infrastructure, managing business associated functions, and preparing for its mandatory 2016 office move.

The Board is committed to making investments that will support its efforts on key priorities, mission growth, innovative key technologies, and modernizing its internal IT and business systems.

Furthermore, it remains essential that the Board continue to keep abreast of the technological advances and capacity of those agencies over which it has oversight.

As noted in the discussion of the Board's authorities, there are current and emerging requirements for the Board that will have financial implications in the near term. These include E.O. 13636 on Cybersecurity and PPD-28 on Signals Intelligence Activities.

OVERSIGHT AND ADVICE ACTIVITIES

During the Reporting Period, the Board focused on the following oversight and advice priorities:

- Examining oversight issues within the Board's counterterrorism jurisdiction, including certain items from the Board's July 2014 agenda (PPD-28, cybersecurity, counterterrorism activities conducted under E.O. 12333,

Efficacy, and Section 803 reports);

- Providing advice and guidance to the executive branch to ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to counterterrorism.

Specific examples of the Board's work have included:

Advice Function – Shortly after the Reporting Period ended, the Board adopted a new policy outlining its advice function. The policy formalizes how the Board will exercise its advice process and is intended to encourage federal agencies developing counterterrorism programs to engage with the Board in early stages of the process when a new agency policy, rule, or regulation is being developed.

One of the Board's key responsibilities is its "advice function," which provides a mechanism for it to engage in discussions with the IC and to provide input about how privacy and civil liberties should be considered in the development of new policies, rules, and regulations. If considered early in the policy-making process, privacy and civil liberties concerns can often be incorporated into the structure of new policies, rules, and regulations. The Board's new policy provides a clear path for federal agencies to seek the Board's input early on, or for the Board to offer proactive advice—when there is still time for the agency to consider the Board's advice. The policy also clarifies the Board's statutory reporting requirement including the circumstances under which the Board must report to Congress or the President when an agency does not take

the Board's recommendations into account.

The Board's new policy is designed to specify how the PCLOB engages with other agencies pursuant to its advice function, and thereby strengthen federal agency engagement and promote this important aspect of the Board's mission.

The policy also reflects the Board's statutory mandate to inform the public—while protecting classified and other legally protected information—and the need to respect other agencies' decision-making processes. By adopting this policy, the Board seeks to be transparent about its activities, while recognizing that the development of good policy requires open and frank discussions among decision makers.

Cybersecurity – The Board's principal work on cybersecurity has centered on its role under E.O. 13636. The Order directs DHS to consult with the Board in developing a report assessing the privacy and civil liberties implications of cybersecurity information sharing and recommending ways to mitigate threats to privacy and civil liberties. At the beginning of the Reporting Period, DHS issued its second E.O. 13636 report. In response to the report, the Board wrote a letter to DHS commending DHS and the other reporting agencies for their early engagement, standardized report format, and improved reporting. Toward the end of the Reporting Period, the Board commenced its participation in its third annual consultation with DHS and other agencies reporting under the Order regarding privacy and civil liberties policies and practices through interagency meetings.

E.O. 12333 – The Board continued its review of counterterrorism activities conducted by the IC under E.O. 12333.

In April 2015, the Board adopted and issued a project description memorializing its approach to this project in the coming year. The Board explained that it would select specific counterterrorism-related activities conducted under E.O. 12333 by the CIA and NSA, and would conduct in-depth examinations of those activities, leading to written reports. The Board further explained that it would issue a public report that describes E.O. 12333 at a high level, focusing on how the legal framework established by the executive order and its implementing procedures governs the collection, use, retention, and dissemination of information concerning U.S. persons. As appropriate, the Board noted, it would draw upon its in-depth CIA and NSA examinations, as well as information gathered from other IC elements, to inform this public report.

In connection with these efforts, the Board and its staff received overview briefings from IC elements on their counterterrorism activities, including the privacy and civil liberties protections established under the framework of the executive order. Board staff also reviewed and analyzed E.O. 12333 implementing procedures of IC elements. In May 2015, the Board held a public meeting at the National Constitution Center in Philadelphia, at which the Board examined the history, constitutional implications, and oversight of counterterrorism activities conducted under E.O. 12333. During the Reporting Period, the Board also received public comments on E.O. 12333.

The Board held two closed meetings, one in July and one in November, in which the Board Members deliberated and voted on matters relating to the in-depth examinations.

In July, the Board voted to approve two in-depth examinations of CIA activities conducted under E.O. 12333. Board staff has subsequently attended briefings and demonstrations, as well as obtained relevant documents, related to the examinations.

The Board also received a series of briefings from the NSA on its E.O. 12333 activities. Board staff held follow-up sessions with NSA personnel on the topics covered and on the agency's E.O. 12333 implementing procedures. Just after the conclusion of the Reporting Period, the Board voted to approve one in-depth examination of an NSA activity conducted under E.O. 12333. Board staff are currently engaging with NSA staff to gather additional information and documents in support of this examination.

Board staff also began work developing the Board's public report on E.O. 12333, described above.

During the Reporting Period, Board staff briefed the House and Senate Intelligence Committees—and shortly after the Reporting Period ended, briefed the House and Senate Judiciary Committees—on the progress of the E.O. 12333 project and will continue to do so on a regular basis.

PPD-28 – As described above, PPD-28 was issued by the President in January 2014, outlining principles for and limits on signals intelligence activities. It includes a provision encouraging the

Board to provide the President with a report assessing the implementation of this Directive. In advance of the two-year anniversary of the Directive, the Board has commenced an oversight project designed to assess the implementation of PPD-28 as it relates to counterterrorism efforts and the protection of privacy and civil liberties. The Board plans to prioritize its oversight engagement with the NSA, CIA, and FBI, and to collect more limited information from the remaining IC elements.

Section 803 Reports – The Board has continued its efforts to enhance reporting on significant privacy and civil liberties issues at federal agencies involved in terrorism prevention. Under Section 803 of the 9/11 Commission Act of 2007, eight federal departments and agencies must designate a senior official as the agency’s privacy and civil liberties officer. These officers are directed to provide advice to agency leadership, conduct reviews of agency activities, and ensure that the agency has adequate procedures to respond to complaints alleging privacy or civil liberties violations. The officers also are required to submit semiannual reports on their activities to the Board, designated congressional committees, and make those reports available to the public to the greatest extent possible.

The Board has been working with agency privacy and civil liberties officers to identify practical changes to their “Section 803 reports,” to make those reports more accessible and informative. During the previous reporting period, Board staff analyzed the statutory requirements of Section 803 and surveyed existing reports to identify potential areas for improvement. Staff

consulted on these issues with personnel from the eight departments and agencies required to file Section 803 reports: the Office of the Director of National Intelligence (“ODNI”), the CIA, and the Departments of Defense, Health and Human Services, Homeland Security, Justice, State, and Treasury. These meetings were held in coordination with the White House Office of Science and Technology Policy, which has made improving the accessibility of Section 803 reports a goal of the Administration’s Second Open Government National Action Plan.

The Board’s staff produced a draft set of recommendations for agency privacy and civil liberties officers on the enhancement of their Section 803 reports. Board staff are now in the process of soliciting feedback from privacy and civil liberties officers on these draft recommendations. The goal is to help the Board and the public better understand the types of privacy and civil liberties issues that agencies are grappling with in their efforts to protect the nation against terrorism.

Efficacy – During the Reporting Period, the Board continued to work with ODNI on assessing the manner in which the IC measures the value and effectiveness of their counterterrorism activities. Specifically, Board staff worked with several offices to discuss how effectiveness is measured both quantitatively and qualitatively across components.

Information Sharing – The staff has synthesized publicly available material and talked with ODNI staff to learn more about the development and use of the

Information Sharing Environment Privacy Guidelines.

Next Projects – The Board is working toward identifying potential new oversight projects to begin once the current E.O. 12333 project is completed.

PUBLIC, CONGRESSIONAL, AND FEDERAL AGENCY OUTREACH

As the Board executes its statutory mission, it continues to ensure, to the extent possible consistent with the protection of classified information, that its work and reports be transparent to the public. The Board fulfills its statutory mandate through extensive outreach and Board meetings, hearings, and events that are open to the public, and by disseminating its findings to the public, as appropriate. Board Members and staff frequently participate in events hosted by other government agencies and a variety of groups and organizations, including bar associations, business organizations, educational institutions, and non-governmental organizations, to foster a better understanding of its mission and role.

Board Members and staff have also met periodically with Members of Congress and congressional staff. These meetings have covered issues ranging from the Board's budget requirements and upcoming move to the Board's work examining counterterrorism activities under E.O. 12333.

The Board works closely with a variety of other government agencies to seek their input as the Board develops its priorities, and to promote productive working relationships. In particular, Board staff meet with agency privacy and civil liberties officers on a quarterly basis to exchange updates and discuss issues. The Board has developed a new policy which is designed to clarify how the agency operates under its advice function, which will strengthen federal agency engagement and promote this important aspect of the Board's mission.

These engagements both within government and outside the government assist the Board in making informed decisions as it develops its agenda.

FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

The Board's Enabling Statute requires that the Board, in its Semi-Annual Reports, provide information on the findings, conclusions, and recommendations of the Board resulting from its advice and oversight functions, as well as the minority views in this respect.¹³ The Enabling Statute also requires the Board to identify each proposal reviewed under subsection (d)(1) that—

(i) the Board advised against implementation; and

(ii) notwithstanding such advice, actions were taken to implement.¹⁴

Finally, the Enabling Statute requires the Board to identify for the preceding period, any requests submitted to the Attorney General for the issuance of subpoenas that were modified or denied.¹⁵

A. Findings, Conclusions, and Recommendations

For the Reporting Period, the Board has no items to report under this section.

B. Each proposal reviewed by the Board that: (i) the Board advised against implementation; and (ii) notwithstanding this advice, actions were taken to implement.

For the Reporting Period, the Board has no items to report under this section.

C. Requests for the issuance of subpoenas that were modified or denied by the Attorney General.

For the Reporting Period, the Board has no items to report under this section.

NEXT STEPS

The Board expects the following priorities to guide its focus and efforts for FY 2016:

ORGANIZATION, ADMINISTRATION AND BUDGET

- Continue to develop, update, and apply internal policies and procedures governing the Board's operations;
- Continue to integrate the Board into the ongoing business of the federal government as a full participant in interagency processes;
- Enhance and promote public access and participation in the Board's activities to the extent possible consistent with the protection of classified information;

¹³ 42 U.S.C. § 2000ee(e)(2).

¹⁵ *Id.* § 2000ee(e)(2)(E).

¹⁴ *Id.* § 2000ee(e)(2)(D).

- Work with the executive and legislative branch to ensure the Board's budgets for FY 2016 and FY 2017 are sufficient to support the Board's operations and to hire necessary staff to ensure operational success;
- Begin the design and construction phases for the Board's new office space for its required physical move in late FY 2016 and ensuring that the new location meets SCIF requirements;
- Continue to recruit and hire staff with the required skill sets in order to balance workload requirements against available resources once the Board's FY 2016 budget has been appropriated;
- Manage and continue to develop the Board's IT infrastructure and solutions that will advance the Board's mission and improve the overall operating efficiency;
- Ensure the security of classified information and information systems through annual assessment of information security and related program policies, procedures, and monitoring practices; and
- Continue to build, secure, and maintain the Board's information systems to ensure seamless support to the Board's mission while ensuring implementation of the FISMA mandates throughout the infrastructure relocation.

OUTREACH

- Support and provide guidance to federal agencies and, in particular, privacy civil rights/civil liberties officers to promote appropriate consideration of privacy and civil liberties in counterterrorism activities and authorities;
- Continue to maintain lines of communication with non-governmental organizations and private sector stakeholders, including holding additional public meetings or forums;
- Continue to post materials and information online for the benefit of federal agencies and to educate the general public and specialized audiences about privacy and civil liberties concerns related to government efforts to protect the nation against terrorism;
- Develop a capability to respond to the media and general public regarding specific plans and projects pending before the Board, and to execute public outreach programs that advance Board goals; and
- Engage with Congress to discuss the Board's work examining the privacy and civil liberties implications of counterterrorism activities.

OVERSIGHT AND ADVICE ACTIVITIES

In July 2014, the Board identified certain issues as part of its short term agenda, including: PPD-28, E.O. 12333,

training, cybersecurity, defining privacy, Section 803 reports, and Efficacy. As discussed in the prior Semi-Annual Report, the Board's initial phase of work on two of these issues – the review of training and the public forum on defining privacy – has been completed. Going forward, the Board's efforts on these two issues will continue, but will be incorporated into the Board's work on other ongoing projects.

Over the next Reporting Period, the Board will continue its work on other issues identified in July 2014 for its short term agenda. This will include continuing the Board's review of counterterrorism activities conducted under E.O.12333 and consulting with DHS and other participating agencies pursuant to E.O. 13636 on critical infrastructure cybersecurity.

The Board will also continue to identify additional programs and issues for review, and will refine its system for prioritizing which issues to address. The process for identifying new programs and issues includes outreach to federal agencies, Congress, non-governmental organizations, and private sector stakeholders. As the Board's staff identify issues and conduct background research, the Board will evaluate the various proposals and assess which ones to prioritize. Thereafter, the Board will conduct oversight of the counterterrorism programs identified by the Board as priority areas, and issue reports as appropriate.

The Board, in exercising its advice function, will continue to consult with the appropriate agencies that are developing new counterterrorism programs, or modifying existing ones, to ensure that these programs include appropriate safeguards for privacy and civil liberties.

CONCLUSION

The Board continued work on several projects, detailed in this report, as well as fulfilling its advice and oversight responsibilities under its substantive mandate. With the additional staff that the Board has hired over the last few periods, the Board has made significant progress in expanding its ability to provide oversight and advice to the executive branch, but the Board continues to face serious administrative and financial constraints. In particular, the Board is still understaffed, and must be responsive to the immediate need to prepare for its mandatory FY 2016 physical move.

The Board appreciates all of the collaboration and collective efforts of Congress, the executive branch, advocacy groups, industry representatives, and members of the public who have engaged with the Board during this Reporting Period. The Board will continue to strengthen these relationships in furtherance of its statutory mandate as it moves forward in its efforts to ensure that counterterrorism programs include adequate safeguards to protect privacy and civil liberties.