



**US PRIVACY AND
CIVIL LIBERTIES
OVERSIGHT BOARD**

SEMI-ANNUAL REPORT

Working to ensure that efforts by the Executive Branch to protect the nation from terrorism appropriately safeguard privacy and civil liberties.

JUNE 2021

Privacy and Civil Liberties Oversight Board • [PCLOB.gov](https://www.pclob.gov) • info@pclob.gov

Privacy and Civil Liberties Oversight Board Semi Annual Report

June 2021

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Report Distribution

In accordance with Section 801 of the Implementing Recommendations of the 9/11 Commission Act of 2007, the Privacy and Civil Liberties Oversight Board is providing this Semi-Annual Report, which covers the period from July 2020 to April 2021, to the President and the Members of Congress listed below.

The Honorable Patrick Leahy
Chairman
U.S. Senate Committee on Appropriations

The Honorable Richard Shelby
Chairman
U.S. Senate Committee on Appropriations

The Honorable Rosa DeLauro
Chairwoman
U.S. House of Representatives Committee on Appropriations

The Honorable Kay Granger
Ranking Member
U.S. House of Representatives Committee on Appropriations

The Honorable Gary C. Peters
Chairman U.S. Senate Committee on
Homeland Security and Governmental Affairs

The Honorable Rob Portman
Ranking Member
U.S. Senate Committee on Homeland Security
and Governmental Affairs

The Honorable Mark Warner
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U.S. Senate Select Committee on Intelligence

The Honorable Marco Rubio
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The Honorable Adam Schiff
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U.S. House of Representatives Permanent
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The Honorable Devin Nunes
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The Honorable Richard Durbin
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The Honorable Chuck Grassley
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U.S. Senate Committee on the Judiciary

The Honorable Jerrold Nadler
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U.S. House of Representatives
Committee on the Judiciary

The Honorable Jim Jordan
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U.S. House of Representatives
Committee on the Judiciary

The Honorable Bennie G. Thompson
Chairman
U.S. House of Representatives Committee
on Homeland Security

The Honorable John Katko
Ranking Member
U.S. House of Representatives Committee
on Homeland Security

The Honorable Carolyn B. Maloney
Chairwoman
U.S. House of Representatives Committee
on Oversight and Reform

The Honorable James Comer
Ranking Member
U.S. House of Representatives Committee
on Oversight and Reform

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Executive Summary

The Board is an independent agency within the Executive Branch, established in its current form by the Implementing Recommendations of the 9/11 Commission Act of 2007.¹ The bipartisan, five-member Board is appointed by the President and confirmed by the Senate. The Board's mission is to ensure that the Executive Branch's efforts to prevent terrorism are balanced with the need to safeguard privacy and civil liberties.

Although the COVID-19 pandemic continued to disrupt many facets of life during the reporting period, the Board has adapted to the difficult and evolving circumstances. The Board's highest priority remains continuing to fulfill its oversight and advice functions while ensuring the health and safety of Board Members and staff, as well as the many stakeholders and government officials that have ongoing interactions with the Board. Rigorous health protocols have ensured continued access to the agency's Sensitive Compartmented Information Facility (SCIF), enabling the Board to make significant progress on classified projects. These protocols remain in place as the agency continues to assess the changing circumstances.

Oversight and Advice

During the reporting period, the Board completed three long-running examinations, provided advice in an ongoing engagement, and continued to work on additional oversight projects.

The Board completed its examination of counterterrorism activities under Executive Order (E.O.) 12333, which the previous Board initiated in 2015. This project included a publicly issued E.O. 12333 Capstone Document, as well as two classified deep-dives into specific counterterrorism-related activities by the CIA and NSA (and an additional CIA deep dive completed in 2018). The Capstone Document summarizes E.O. 12333 and provides, where possible, descriptions of the Board's work. It can be found on the Board's website: www.pcllob.gov. The subject of the Board's NSA deep dive, XKEYSCORE, was previously classified.

The Board also completed its examination of the Department of Treasury's Terrorist Finance Tracking Program, or TFTP. The examination resulted in classified PCLOB staff briefings to Treasury and to Congress, summarizing the program and the Board's recommendations to Treasury, and a public statement.²

Additionally, the Board concluded its examination of the DHS Data Framework in light of operational changes to that program.

¹ Pub. L. No. 110-53 § 801 (2007), codified at 42 U.S.C. § 2000ee.

² The Board's TFTP public statement can be found on the Board's website: <https://bit.ly/3dHxrmU>.

Work remains ongoing on additional oversight projects detailed in the Board's current agenda while the Board continues to consider future projects. Current projects include an examination of the FBI's use of open-source data, the Terrorist Watchlist, the FBI's querying of U.S. person information under Section 702 of the Foreign Intelligence Surveillance Act (FISA), and the use of facial recognition in aviation security. During the reporting period, the Board received briefings, information, and documents related to these ongoing projects.

Finally, the Board also provided advice in an ongoing engagement.

Operations and Management

The Board also had several significant operational accomplishments.

As a result of a concerted recruiting effort, the Board achieved its full mission and operational staffing level for the first time in 2020. (The Chairman has since resigned his position, and the term of another Board Member has expired. The Board, however, maintains a quorum of three Members.)

Information security remains a top priority for the agency. During the reporting period, two independent reviews of the Board's information security controls found the controls to be effective. The Board's annual Federal Information Security Management Act (FISMA) audit concluded that its internal controls were effective in protecting information resources, and an independent penetration test detected no critical or high vulnerabilities across the Board's network infrastructure.

The Board did not have SolarWinds software installed or otherwise in use on its networks in 2020. After the Federal Government's discovery of the vulnerability in SolarWinds software, the Board responded to DHS Emergency Directive 21-01 *Mitigate SolarWinds Orion Code Compromise* by validating software inventory and scanning network resources to detect any artifacts of the compromised software. The Board did not experience any cybersecurity incidents during the reporting period.

The Board also built upon its track record of sound financial management. During the reporting period, the Board issued its first Agency Financial Report (AFR), achieved a clean audit of its financial statements, and completed an internal controls assessment that found no waste, fraud, or abuse.³

The Board continues to focus on protecting sensitive and classified materials. The Chief Security Officer engages in government-wide efforts to modernize the security clearance process, which includes enrolling Board personnel in Continuous Evaluation.

³ The Agency Financial Report for Fiscal Year 2020 is posted on the Board's website: <https://bit.ly/3fUm7GF>.

Finally, by implementing and adhering to robust health protocols, the agency was able to continue to pursue its mission throughout the reporting period. As the challenges related to the pandemic continue into the next reporting period, the Board is well positioned to continue pursuing its vigorous oversight and advice agenda, despite these challenging circumstances.

Oversight and Advice

Oversight Function

Counterterrorism Activities under Executive Order 12333

In April 2021, the Board completed its examination of counterterrorism activities under Executive Order 12333, concluding six years of Board activities. The E.O. 12333 Capstone Document, published at the project's conclusion, provides a description of the Board's activities and of the Executive Order. It also includes a public statement from Members Ed Felten and Travis LeBlanc. During its examination, the Board conducted three deep dives into certain counterterrorism-related activities by the CIA and NSA, resulting in classified reports and recommendations provided to the agencies and to Congress.

The NSA deep-dive is an examination of the XKEYSCORE program, the subject of which was previously classified. All Board Members have written additional classified statements on this deep dive. Board Member Travis LeBlanc has also written a statement to be released to the public.⁴

Additionally, the Board provided advice in eight distinct engagements related to 12333 Attorney General Guidelines. Through these engagements, the Board has provided advice on every significant issuance of or revision to implementing procedures required by E.O. 12333 and approved by the Attorney General.

Terrorist Finance Tracking Program

During the reporting period, the Board also completed its examination of the Department of Treasury's Terrorist Finance Tracking Program, or TFTP.

The examination resulted in classified staff briefings to Treasury and to Congress, summarizing the program, the Board's recommendations to Treasury, and public statements by the Board and the Chairman.

⁴ Board Member LeBlanc's statement is expected to be released in late June, 2021.

DHS Data Framework Project

In October 2020, the Board voted to conclude its DHS Data Framework oversight project. When the Board initiated the project in 2017, the Data Framework contained sensitive data and was intended to enable users to conduct classified queries for counterterrorism purposes. Since then, however, the Data Framework has evolved significantly. It has now transitioned to the DHS Data Services Branch, where it will be used for purposes unrelated to counterterrorism. DHS has conveyed to the Board that as part of this transition, DHS deleted all previously ingested data and that screening and vetting activity have ceased.

Other Active Oversight Projects

The Board continues to work on several other oversight projects. These projects examine activities that in part relate to data aggregation and access, the Terrorist Watchlist, the application of facial recognition technology in aviation security, and the FBI's use of open-source data. This work includes meetings and briefings (now telephonic and virtual) and obtaining and reviewing relevant documents. A detailed description of these project is available on the Board's website.⁵ The Board is also in the process of reviewing its current projects and considering potential new projects.

Advice Function

The Board continued to perform its advice function, which entails providing pre-decisional advice to agencies involved in efforts to protect the nation against terrorism. During the reporting period, the Board provided advice on two occasions related to one ongoing advice engagement.

Coordination of Executive Branch Privacy and Civil Liberties Activities

Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007 requires agencies' Privacy Officers to issue Semi-Annual Reports about their activities to their respective agency heads, Congress, and the Board. The Board regularly receives and reviews Section 803 reports from federal departments and agencies.

The Board's authorizing statute instructs the Board to advise covered agencies on their efforts to protect privacy and civil liberties and to coordinate those activities on relevant interagency matters. As such, the Board has regular interactions with agency Privacy Officers. Among other advantages, these interactions promote information sharing and privacy best practices. Board Members also attend and address meetings and events hosted by agency Privacy Officers.

⁵ PCLOB Projects, <https://www.pclob.gov/Projects>.

Organization and Management

During the reporting period, the Board continued to strengthen its institutional capacity, and bolster its workforce, cybersecurity posture, and financial controls. The Board had several significant accomplishments during the reporting period.

Workforce

As a result of a concerted recruiting effort, in the fall of 2020, the Board achieved full mission and operational staffing capacity for the first time since its inception. Key personnel hired in 2020 included new oversight attorneys and analysts, a full-time staff technologist, and an accountant. The Board also appointed a Chief Financial Officer in 2019.

Due to the recent expiration of a Board Member's term and the resignation of the Chairman on June 18, 2021, there are two open seats on the Board.⁶ In addition, the term of Board Member Travis LeBlanc ends on January 29, 2022.

The Board, however, maintains a quorum with three Board Members.

Further, the Board has experienced increased efficiency in HR services from its new HR service provider, resulting in an improved employee experience and fewer hours required for HR services. In the coming year, the Office of Human Resources will continue to focus on increasing efficiency in operations and recruitment, as well as promoting employee growth and development.

Information Technology Systems and Cybersecurity

During the reporting period, two independent reviews of the Board's information security posture found that its controls were effective.

The Board's annual FISMA audit concluded that its internal controls were effective in protecting information resources, and an independent penetration test detected no critical or high vulnerabilities across the Board's network infrastructure.

The Board did not have SolarWinds software installed or otherwise in use on its networks in 2020.

⁶ The term of Board Member Aditya Bamzai ended on January 29, 2020. The Board's statute enabled him to continue to serve in a holdover status until the Senate adjourned sine die ended on January 3, 2021. Former Chairman Adam Klein resigned his position on June 18, 2021.

After the federal government’s discovery of the vulnerability in SolarWinds software, the Board responded to DHS Emergency Directive 21-01 *Mitigate SolarWinds Orion Code Compromise* by validating software inventory and scanning network resources to detect any artifacts of the compromised software. The Board has not experienced any major cybersecurity incidents during the reporting period.

The Board’s information technology (IT) staff also remains focused on strengthening the agency’s cybersecurity posture while maintaining infrastructure and strategies to support the COVID-19 remote work environment. To that end, the Board’s IT staff completed the Office of Management and Budget IPv6 transition mandate, implementing IPv6 capabilities on all network endpoints. The IT team also transitioned its telecommunication contract from Networx to Enterprise Infrastructure Services, which will save the agency more than \$100,000 annually.

The Board continues to leverage shared-service providers and contractor support to enhance its boundary protection. IT staff implemented, maintained, and documented technical controls to comply with federal standards and DHS’s Cross-Agency Priority Goals for cybersecurity. These goals include managing asset security, protecting networks and data, and limiting personnel access. In the coming months, the Board will continue to focus its efforts on the cybersecurity Cross-Agency Priorities.

Financial Controls and Contracting

During the reporting period, the Board issued its first financial report, achieved a clean audit of its financial statements, and completed an internal controls assessment that found no waste, fraud, or abuse.

The Board issued its first-ever Agency Financial Report (AFR) in November 2020, highlighting financial and performance metrics, assessing the Board’s financial controls, and demonstrating the Board’s stewardship of appropriated funds. Through the issuance of the AFR, the Board satisfied all relevant statutory reporting requirements and demonstrated its effective financial management.

In addition, the independent audit of the Board’s fiscal year 2020 financial statements resulted in an unmodified (“clean”) audit opinion for the second consecutive year. The audit report noted no material weaknesses or significant deficiencies.

Finally, the Board completed its second assessment of the agency’s internal controls, which found no fraud, waste, or abuse. These results provide reasonable assurance that the Board’s financial stewardship meets the requirements of the Federal Managers’ Financial Integrity Act. These accomplishments are a testament to the Board’s commitment to achieving excellence despite the agency’s small size.

Protecting Classified and Sensitive Information

The Board also continues to pursue excellence in the protection of classified and sensitive information. During the reporting period, the Board's insider threat program was implemented to the standards required by Executive Order 1358.

The Board also made significant progress in transitioning its security portfolio to the Defense Counterintelligence and Security Agency (DCSA), resulting in improved services for the agency. The Chief Security Officer enrolled all Board personnel in the modernized Continuous Evaluation process for security clearances with DCSA, and submitted 50% of the workforce for enrollment in the Office of the Director of National Intelligence's effort to reform personnel security clearances as part of the Trusted Workforce 2.0 program. The Board will remain focused on protecting classified information and implementing best practices in its security program moving forward.

Outreach to the Public, Congress, and Other Federal Agencies

The Board is committed to ensuring that its work is available, relevant, and informative for the public, Congress, and other federal agencies. The Board's statute requires it to "hold public hearings and otherwise inform the public of its activities, as appropriate and in a manner consistent with the protection of classified information and applicable law."⁷

The Board strives to be a valuable resource to Congress through its work and written reports, briefings, and testimony on matters within the Board's jurisdiction. During the reporting period, Board Members and staff conducted several briefings to Capitol Hill staff to provide updates on the Board's work and, upon request, to provide technical assistance on legislative matters. Board Members continue to remain available to testify about matters within its jurisdiction.

To foster a better understanding of its mission and work, Board Members and staff continued to speak at events, including webinars, hosted by other government agencies, as well as by a variety of groups and organizations, including bar associations, business organizations, educational institutions, and non-governmental organizations.

While many of these interactions were virtual during the last reporting period, Board Members and staff also continued their past practice of meeting with representatives of non-governmental organizations, the private sector, international counterparts, and other entities with interest in issues within the Board's jurisdiction.

⁷ 42 U.S.C. § 2000ee(f)(2).

Conclusion

Despite the many challenges our nation has faced during the COVID-19 pandemic, the Board has continued to work to fulfill its statutory mission, pursuing work on its oversight and advice projects that address important issues related to efforts to protect the nation against terrorism while safeguarding privacy and civil liberties.

The Board looks forward to engaging with Congress, the public, and other stakeholders as it continues to identify future oversight projects and transparency initiatives.

The Board appreciates the continued collaborative efforts of Congress, the Executive Branch, nongovernmental organizations, private-sector entities, and members of the public who have engaged with the Board in support of its mission.