



Privacy and Civil Liberties Oversight Board

# STRATEGIC PLAN 2019-2022

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

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Privacy and  
Civil Liberties  
Oversight Board  
PCLOB.gov  
info@pclob.gov

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# Table of Contents

Message from the Board .....	4
Executive Summary.....	6
Board History and Authorities.....	7
Key Challenges .....	10
Key Opportunities .....	10
Vision, Mission, and Values.....	12
Strategic Goals .....	13
Conclusion.....	27

## MESSAGE FROM THE BOARD

We are pleased to present the Privacy and Civil Liberties Oversight Board's Strategic Plan for Fiscal Years 2019-2022. This plan will guide our work to help ensure that efforts by the Executive Branch to protect the nation against terrorism appropriately protect privacy and civil liberties.

Nearly two decades after the terrorist attacks of September 11, 2001, terrorists continue to threaten the United States and its allies. Meeting this threat requires capable and empowered intelligence, law enforcement, and homeland security authorities, yet these increased authorities have the potential to affect individual privacy and civil liberties. Our agency's mission is rooted in the belief that as a nation we do not face a binary choice between protecting the homeland and safeguarding liberties, but rather that the government can and must provide security while respecting privacy.

This Plan summarizes our agency's past work and future strategic goals. From mid-2013 until early 2017, the Board experienced a period of rapid growth and completed significant oversight and advice projects. In January 2017, however, the Board entered a lengthy sub-quorum period during which it was unable to finalize existing projects or initiate new ones. In addition, in July 2016, the Board lost its Chairman, which limited its ability to hire new staff under existing statutory authorities.

In October 2018, the confirmation of two new part-time Board Members and a full-time Chairman restored the Board's quorum. This Strategic Plan establishes the following goals for this new phase:

- Providing timely advice that reflects an understanding of operational needs and expertise in privacy and civil liberties and that yields practicable recommendations.
- Conducting rigorous oversight of activities within the Board's jurisdiction that present significant implications for privacy and civil liberties.
- Offering insight about the effects of new and emerging technologies on government power and individual liberties.
- Effectively engaging outside stakeholders and the public in the Board's work, including by producing public reports where consistent with the protection of classified information, holding events, and receiving public input.
- Continuing to strengthen the Board's institutional capacity, with a focus on cybersecurity, fiscal management, and efficient use of shared-service providers.

The Board looks forward to working with other Executive Branch agencies, the Congress, outside experts, and the public as it pursues these goals in the years to come.

Adam I. Klein  
Chairman

Jane E. Nitze  
Board Member

Edward W. Felten  
Board Member

## EXECUTIVE SUMMARY

The Privacy and Civil Liberties Oversight Board is an independent agency within the Executive Branch. Its mission is to provide advice and conduct oversight to ensure that efforts by the Executive Branch to protect the nation from terrorism appropriately protect privacy and civil liberties. Three core values guide the Board's activities: integrity, transparency, and rigor. The Board anchors its work in the vision of a nation that simultaneously counters terrorism and protects privacy and civil liberties.

With this plan, the Board establishes five strategic goals to guide its work during Fiscal Years 2019-2022:

**Strategic Goal 1:** Provide effective and timely advice regarding the protection of privacy and civil liberties in the development and implementation of legislation, regulations, and policies related to efforts to protect the nation against terrorism.

**Strategic Goal 2:** Conduct effective oversight of Executive Branch authorities, policies, and activities related to efforts to protect the nation against terrorism to ensure appropriate protection of privacy and civil liberties.

**Strategic Goal 3:** Offer insights on the effects of new and emerging technologies on the balance between government power and privacy and civil liberties.

**Strategic Goal 4:** To the extent consistent with the protection of classified information and applicable law, promote transparency regarding Board activities and issues within the Board's jurisdiction.

**Strategic Goal 5:** Continue to strengthen the Board's institutional capacity.

This Strategic Plan describes the objectives associated with each goal, as well as the strategies the Board will use to achieve each objective.

## BOARD HISTORY AND AUTHORITIES

The Privacy and Civil Liberties Oversight Board was created on the recommendation of the National Commission on Terrorist Attacks Upon the United States, colloquially known as the 9/11 Commission, in its 2004 report. The Commission acknowledged that many of its recommendations “call[ed] for the government to increase its presence in our lives—for example, by creating standards for the issuance of forms of identification, by better securing our borders, by sharing information gathered by many different agencies,” and by consolidating authority over intelligence agencies under a new Director of National Intelligence.<sup>1</sup> Recognizing that “this shift of power and authority to the government” would require “an enhanced system of checks and balances to protect the precious liberties that are vital to our way of life,”<sup>2</sup> the Commission recommended that “there should be a board within the executive branch to oversee adherence to the guidelines we recommend and the commitment the government makes to defend our civil liberties.”<sup>3</sup>

Many of the Commission’s recommendations have been implemented by Congress and the Executive Branch, improving the government’s ability to detect and disrupt terrorist plots. In response to the Commission’s recommendation to create an oversight board, President George W. Bush created the President’s Board on Safeguarding Americans’ Civil Liberties in 2004. The President’s Board ceased to meet following the enactment later that year of the Intelligence Reform and Terrorism Prevention Act of 2004, which created a Privacy and Civil Liberties Oversight Board within the Executive Office of the President. Finally, in 2007, the Implementing Recommendations of the 9/11 Commission Act established the Board as an independent agency within the Executive Branch.

The Board is comprised of a full-time Chairman and four part-time Members, each appointed by the President, with the advice and consent of the Senate, to staggered six-year terms. The Board’s statute requires that Members come from different political parties and be selected “on the basis of their professional qualifications, achievements, public stature, expertise in civil liberties and privacy, and relevant experience.”<sup>4</sup> In August 2012, the Senate confirmed the Board’s first four members, providing a quorum to commence operations and to begin standing up the agency. In 2013, Congress confirmed the Board’s first full-time Chairman.

From 2013-2016, the Board operated with a full complement of five Senate-confirmed Members. During that period, the Board held periodic public hearings, undertook significant oversight and advice projects, and issued several major public oversight reports, including reports on the call-records program operated under Section 215 of the USA Patriot Act and the electronic surveillance program operated under Section 702 of the Foreign Intelligence Surveillance Act. The current Board is grateful for the legacy of rigorous analysis, timeliness, and practicable policy recommendations established by the previous Board.

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<sup>1</sup> National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* 393-394 (2004).

<sup>2</sup> *Id.* at 394.

<sup>3</sup> *Id.* at 395.

<sup>4</sup> 42 U.S.C. § 2000ee(h)(2).

The Board lost its quorum after the departures of the Board's Chairman in mid-2016 and three part-time Members in early 2017, leaving it unable to initiate new projects or finalize work previously initiated. Despite the limitations imposed by sub-quorum status and the absence of a Chairman, Board staff and remaining Board Member Elisebeth Collins continued the Board's operations as an Executive Branch agency, carried forward efforts to develop the Board's institutional capacity, continued work on existing oversight and advice projects, and undertook new actions in Member Collins' individual official capacity. The current Board thanks Member Collins and the Board's staff for their efforts during the sub-quorum period.

At present, the Board has a quorum of three Senate-confirmed Members, one of whom serves as the full-time Chairman.

The Board's mission is to ensure that the Executive Branch's efforts to prevent terrorism are balanced with the need to protect privacy and civil liberties. Specifically, the Board's enabling statute, [42 U.S.C. § 2000ee](#), authorizes it to "analyze and review 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 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 from terrorism."

These purposes encompass two core functions: providing advice and conducting oversight.

Under the Board's advice function, Executive Branch agencies are able to consult with the Board at an early stage in the development of legislation, policies, programs, guidelines, or regulations, to ensure that privacy and civil liberties protections are appropriately considered in their design.<sup>5</sup>

In its oversight role, the Board is charged with continually reviewing (1) regulations, policies, procedures, and practices within the Board's jurisdiction to ensure that privacy and civil liberties are protected, and (2) other actions within the Board's jurisdiction to ensure that those actions appropriately protect privacy and civil liberties and are consistent with governing laws, regulations, and policies regarding privacy and civil liberties.<sup>6</sup>

The Board's statute makes transparency an inherent part of its mission. Specifically, the Board is required to inform the public about its work by holding public hearings, issuing public reports to the extent consistent with the protection of classified information and applicable law, providing semi-annual reports to the Congress, and appearing and testifying before Congress upon request.<sup>7</sup>

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<sup>5</sup> *Id.* § 2000ee(d)(1).

<sup>6</sup> *Id.* § 2000ee(d)(2). The Board is also charged with continually reviewing information-sharing practices within its jurisdiction.

<sup>7</sup> *Id.* § 2000ee(d)(4), (f).



The Board also has designated roles under the following authorities:

- [Executive Order 13636](#), Improving Critical Infrastructure Cybersecurity, issued in February 2013, calls upon multiple agencies to develop and implement a cybersecurity framework to minimize the risk of a cyberattack on critical infrastructure.<sup>8</sup> Section 5 of the Executive Order requires the Department of Homeland Security to consult with the Board in preparing a report recommending ways to mitigate the privacy and civil liberties risks created by cybersecurity measures adopted under the order. The report must be reviewed on an annual basis and revised as necessary.
- [Presidential Policy Directive 28 \(PPD-28\)](#), issued by President Barack Obama in 2014, articulates principles to guide why, whether, when, and how the United States conducts signals intelligence activities for authorized foreign intelligence and counterintelligence purposes.<sup>9</sup> In the directive, the President encourages the Board to provide him with an assessment of the implementation of any matters contained in the directive that fall within the Board’s mandate.

In December 2016, after conferring with representatives from all elements of the Intelligence Community (IC), the Board completed a classified report on PPD-28 and submitted it to the National Security Council. An unclassified version of that report was released to the public last year.

- [Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007 \(“Section 803”\)](#) requires certain Executive Branch departments, agencies, and elements to designate at least one senior official as a privacy and civil liberties officer (“P/CL officer”).<sup>10</sup> Each agency’s P/CL officer must issue semi-annual reports on the discharge of each of his or her functions under the statute.<sup>11</sup> These Section 803 Reports are to be submitted to the head of the P/CL officer’s agency, designated congressional committees, and the Board.<sup>12</sup> To the greatest extent possible, the reports must be in unclassified form and made available to the public.<sup>13</sup>

In June 2016, the Board released a set of recommendations to help federal agencies improve the reports they file under Section 803. Board staff have conducted ongoing engagement with agency P/CL offices as they implement the Board’s recommendations.

In addition to receiving and reviewing the P/CL officers’ semi-annual reports, the Board is directed by its enabling statute to make recommendations, when appropriate, to P/CL officers

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<sup>8</sup> E.O. 13636, Improving Critical Infrastructure Cybersecurity (Feb. 12, 2013).

<sup>9</sup> PPD-28, Signals Intelligence Activities (Jan. 17, 2014).

<sup>10</sup> Pub. L. No. 110-53 § 803 (2007), codified at 42 U.S.C. § 2000ee-1(a). The entities covered are the Office of the Director of National Intelligence, the Central Intelligence Agency, the National Security Agency, the Federal Bureau of Investigation, and the Departments of Defense, Health and Human Services, Homeland Security, Justice, and Treasury.

<sup>11</sup> *Id.* § 2000ee-1(f). Before its amendment in 2014, the statute required quarterly reports.

<sup>12</sup> *Id.* § 2000ee-1(f)(1)(A).

<sup>13</sup> *Id.* § 2000ee-1(f)(1)(B), (g)(1).

regarding their activities and to coordinate their activities on relevant interagency matters.<sup>14</sup> Congress has also identified the Board as a source of recommendations for individuals to serve as amici curiae to the Foreign Intelligence Surveillance Court.<sup>15</sup>

Finally, two recent statutory changes effected by the FISA Amendments Reauthorization Act of 2017 have enhanced the Board's capacity to operate as a freestanding federal agency. First, the Act empowers Board Members to exercise hiring authority in the absence of a Chairman; previously, the Board was unable to hire when the Chairman position was vacant. Second, the Act exempts the Board from the Government in the Sunshine Act, enabling Board Members to confer efficiently and flexibly while preserving the significant transparency requirements in the Board's enabling statute. These legislative actions strengthen the Board's institutional capacity and enable it to execute its mission in an efficient and transparent manner.

## KEY CHALLENGES

As the Board emerges from a lengthy sub-quorum period, it faces certain institutional challenges. Projects approved by the previous Board, which could not be finalized in the absence of a quorum, await review and disposition by the newly confirmed Board Members. Some may require additional work before they can be concluded. Resources invested in projects approved by the previous Board will have to be balanced against the potential value of new projects that respond to intervening developments and present-day realities.

On the organizational side, the most significant challenge facing the Board is the attrition experienced by its workforce during the sub-quorum period. With its quorum restored, the Board is focused on hiring and has several active job postings. The Board also remains focused on cybersecurity and fiscal management. The agency recently completed its first FISMA audit and is currently undergoing its first-ever financial audit. The Board views these audit processes as first steps in an ongoing process of self-evaluation and continual improvement, with the goal of attaining a consistent standard of excellence in each area. Finally, the agency's small size requires it to use shared-service providers within the federal government for procurement, human resources, financial management, and other critical functions. The Board will continue working to ensure that its use of shared-service providers delivers both cost-efficiency and satisfactory services that enable the Board to carry out its statutory mission.

## KEY OPPORTUNITIES

With its quorum restored, the Board sees many opportunities for rigorous oversight, constructive engagement with other Executive Branch agencies through its advice function, and informative public outreach and transparency. Key legislative milestones—the recent reauthorization of Section 702 of FISA in January 2018 and the upcoming sunset of Section 215 of the USA PATRIOT Act in December 2019—provide opportunities for the Board to re-engage

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<sup>14</sup> *Id.* § 2000ee(d)(3). In addition, the Board may designate new departments, agencies, or elements of the Executive Branch for coverage by the requirements of Section 803. *See id.* § 2000ee-1(a).

<sup>15</sup> USA FREEDOM Act, Pub. L. No. 114-23, 129 Stat. 268, § 401(i)(1) (2015).

on issues where it previously has contributed to policymaking and public discourse. The Board anticipates that such engagement may occur through both its oversight and advice functions.

Another opportunity for Board engagement stems from the potential impact of emerging technologies on government power and individual liberties. The Board anticipates that its independence, bipartisan composition, and ability to take a broad, long-term view equip it well to inform the public debate and support policymakers' consideration of the implications of these technologies. The Board stands ready to engage with the Intelligence Community and other agencies undertaking programs within the Board's jurisdiction as they consider these issues. Ideally, such advice would be sought at an early stage in the life-cycle of new programs, enabling potential privacy and civil liberties issues to be identified and mitigated before they arise.

Finally, transparency and public engagement are priorities for the Board as it enters its next phase. The Board anticipates considering input from the public, Congress, outside experts, and other relevant stakeholders as it develops its oversight agenda. Going forward, the Board hopes to find effective ways of soliciting public input and informing the public through its work.

## VISION, MISSION, AND VALUES

### Vision

A nation that counters terrorism while safeguarding privacy and civil liberties.

### Mission

The Board provides advice and conducts oversight 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.

### Values

Three key values guide the Board's work:

**Integrity** – As an agency whose power lies in its persuasiveness, the Board regards the preservation of its integrity and credibility as paramount. The Board approaches its activities with objectivity and good faith. The Board strives to treat Executive Branch agencies and other outside parties with evenhandedness and respect, and to evaluate a wide range of data, viewpoints, and considerations.

**Transparency** – The Board aims to foster understanding of the impact of efforts to protect the nation from terrorism on privacy and civil liberties. In addition, the Board strives to conduct its own activities responsibly and transparently, to foster confidence in its management of authorities, resources, and information. The Board promotes transparency by holding public hearings and issuing public reports, to the greatest extent that is consistent with the protection of classified information and applicable law, and by soliciting input from the public and outside experts.

**Rigor** – The Board strives for the highest standard of quality in its analysis and recommendations. When examining government programs, the Board takes care to understand those efforts in all of their complexity. In assessing whether such efforts are consistent with the law and appropriately protect privacy and civil liberties, the Board strives to be thorough and accurate and to account for the impact of new and emerging technologies and institutional reforms. When recommending changes to those efforts, the Board seeks to consider fully the foreseeable impact of its recommendations.

## STRATEGIC GOALS FOR FISCAL YEARS 2019-2022

**Strategic Goal 1:** Provide effective and timely advice regarding the protection of privacy and civil liberties in the development and implementation of legislation, regulations, and policies related to efforts to protect the nation against terrorism.

**Strategic Goal 2:** Conduct effective oversight of Executive Branch authorities, policies, and activities related to efforts to protect the nation against terrorism to ensure appropriate protection of privacy and civil liberties.

**Strategic Goal 3:** Offer insights on the effects of new and emerging technologies on the balance between government power and privacy and civil liberties.

**Strategic Goal 4:** To the extent consistent with the protection of classified information and applicable law, promote transparency regarding Board activities and issues within the Board's jurisdiction.

**Strategic Goal 5:** Continue to strengthen the Board's institutional capacity.

**Strategic Goal 1:** Provide effective and timely **advice** regarding the protection of privacy and civil liberties in the development and implementation of legislation, regulations, and policies related to efforts to protect the nation against terrorism.

Under its advice function, the Board is required to advise the President and Executive Branch departments and agencies to ensure that laws, regulations, policies, and programs related to efforts to protect the nation from terrorism are appropriately balanced against the need to protect privacy and civil liberties and are subject to appropriate guidelines and oversight.<sup>16</sup>

The Board seeks to provide constructive, practicable, and timely advice to agencies that request it. Agencies' willingness to seek advice depends on the Board's ability to understand their operational challenges and institutional context, in addition to the Board's expertise in privacy and civil liberties, and to safeguard the information with which the Board is entrusted. Conversely, the Board's ability to provide informed advice depends on early consultation—ideally at the earliest possible point in the development of a new initiative—and on forthcoming, collaborative engagement by the requesting agency. With these prerequisites in mind, the Board is committed to generating practicable, timely advice.

Experience suggests that the Board's advice function is valued by Executive Branch agencies, including agencies within the Intelligence Community. For example, the Board has provided or is currently providing advice on every significant revision by an IC component of its Attorney-General-approved Guidelines for handling U.S.-person information under Executive Order 12333.<sup>17</sup> The Board looks forward to continuing this constructive interaction and raising awareness of its advice function among agencies or agency components beyond the IC.

## **OBJECTIVE 1.1**

Continue to serve as a trusted source of advice to the President and Executive Branch departments, agencies, and elements on how to ensure efforts to protect the nation from terrorism appropriately protect privacy and civil liberties.

### Strategies for Accomplishing Objective 1.1

- Continue to provide advice on revisions to Attorney-General-approved Guidelines under Executive Order 12333 and other significant policies referred to the Board by Intelligence Community elements.
- Raise awareness of the Board's advice function among agencies and components outside of the Intelligence Community.
- Work with relevant agencies to identify opportunities for sustained consultation on emerging technologies and other developments with broad, long-term implications for

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<sup>16</sup> 42 U.S.C. § 2000ee(d)(1).

<sup>17</sup> See Executive Order 12333, § 2.3.

protecting the nation against terrorism and preserving privacy and civil liberties.

## **OBJECTIVE 1.2**

Ensure that Board advice is constructive, practicable, and timely.

### Strategies for Accomplishing Objective 1.2

- Provide timely responses to requests for advice.
- Provide advice that is cognizant of operational and institutional challenges. To that end, maintain expertise about efforts to protect the nation against terrorism and about privacy and civil liberties.
- Encourage Executive Branch agencies to seek the Board's input as early as possible in the consideration of new legislation, regulations, policies, programs, guidelines, or proposals to retain or enhance existing governmental powers.
- Ensure clear communication and effective, respectful collaboration between other agencies and Board Members and staff.
- Safeguard classified information and respect appropriate privileges and confidences.
- Conduct regular outreach to the Executive Branch, Congress, other government and non-government entities, and the public to assist the Board in identifying potential advice engagements and to maintain Board expertise.
- Conduct advice projects with rigor and integrity.
- Ensure that any Board recommendations are practicable by considering the feasibility of implementation and communicating the recommendations clearly.
- Ensure that the Board's advice accounts for the implications of new and emerging technologies and changes in laws and institutional practices.
- Monitor and, where consistent with the protection of classified information and other law, report on the implementation of Board recommendations.

## **OBJECTIVE 1.3**

Maintain and strengthen the Board's collaboration with agency privacy and civil liberties officers.

### Strategies for Accomplishing Objective 1.3

- Engage regularly with agency privacy and civil liberties officers to identify and develop additional opportunities for inter-agency coordination or other collaboration.
- Continue to support agency privacy and civil liberty officers' efforts to ensure that their semi-annual reports are as useful as possible to Congress, agency heads, and the Board.



**Strategic Goal 2:** Conduct effective **oversight** of Executive Branch authorities, policies, and activities related to efforts to protect the nation against terrorism to ensure appropriate protection of privacy and civil liberties.

Under its oversight function, the Board is required to “continually review” Executive Branch regulations, policies, procedures, information-sharing practices, and other actions related to efforts to protect the nation from terrorism to ensure that they appropriately protect privacy and civil liberties and comport with governing laws, regulations, and policies relating to privacy and civil liberties.<sup>18</sup>

Given the broad range of potential topics within the Board’s jurisdiction, the Board faces the challenge of identifying and focusing its oversight reviews on priority areas. Upon recovering a quorum in October 2018, the Board inherited oversight projects that had been previously approved but could not be finalized during the sub-quorum period. Some of these projects may require additional work before they can be concluded. The Board is conscious that resources invested in projects approved by the previous Board will have to be balanced against the potential value of new projects that respond to intervening developments and present-day realities. However, the Board intends to thoroughly review all previously approved projects and bring each to an appropriate conclusion.

Going forward, the Board will seek input from Congress, outside experts, other governmental and non-governmental stakeholders, and the public as it develops its future oversight agenda. Several criteria will be relevant in identifying and prioritizing potential oversight projects: timeliness and relevance to policymakers; the scale of a topic’s potential effect on privacy and civil liberties; future trends, including emerging technologies and institutional changes; and breadth of focus, with projects potentially examining activities both inside and outside of the Intelligence Community.

Certain topics, which have featured in the Board’s past work, will remain priority areas. These include programs involving large-scale data collection and analysis affecting Americans, whether directly or incidentally, and major authorities that have been the subject of past Board reviews, such as Sections 215 and 702.

Another important priority, as discussed in Strategic Goal 3, is the potential effects of emerging technologies on Americans’ privacy and civil liberties. The Board also intends to periodically review the status of recommendations made in past Board reports.

For Board oversight to be effective, its reviews must be professional and fact-based, and its recommendations must be practicable given institutional context and operational need. All oversight reviews will reflect the Board’s core values of rigor, integrity, and respect for the Board’s counterpart agencies.

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<sup>18</sup> *Id.* § 2000ee(d)(2).

## **OBJECTIVE 2.1**

Build and execute a diverse portfolio of oversight projects related to efforts to protect the nation against terrorism and their implications for privacy and civil liberties.

### Strategies for Accomplishing Objective 2.1

- Conduct regular outreach to Executive Branch agencies involved in efforts to protect the nation against terrorism, Congress, other governmental and non-governmental stakeholders, and the public, to inform the Board as it develops its oversight agenda.
- Prioritize oversight projects so as to effectively use the Board's resources, using such criteria as timeliness and relevance to policymakers, potential effect on privacy and civil liberties, future trends, and diversity of subject matter.
- Continue to monitor areas where past Board oversight has yielded constructive results.
- Ensure that the Board considers oversight projects related to agencies and components both outside and inside the Intelligence Community.
- Ensure that the Board's oversight portfolio engages with long-term, systemic trends as well as narrower, short-term reviews of specific programs or authorities.

## **OBJECTIVE 2.2**

Conduct professional, fact-based oversight that yields practicable and constructive findings and recommendations.

### Strategies for Accomplishing Objective 2.2

- Review Executive Branch regulations, policies, procedures, and activities with rigor and integrity.
- Ensure that recommendations are constructive and practicable in view of institutional context and operational needs.
- Ensure that recommendations account for the implications of new and emerging technologies and changes in laws and institutional practices.
- Periodically review the status of recommendations made in past Board reports.
- Ensure that all oversight reviews reflect the Board's core values of rigor, integrity, and respect for the Board's counterpart agencies.

**Strategic Goal 3:** Offer insights on the effects of **new and emerging technologies** on the balance between government power and privacy and civil liberties.

In recent decades, digital technologies have dramatically expanded governments' ability to collect, store, and analyze data for national-security purposes. Many such technologies are already in use as part of efforts to protect the nation against terrorism, including programs that have been the subject of past Board reviews. Public examples include the Board's reports on the collection of telephone call records under Section 215 of the USA PATRIOT Act and the electronic surveillance program operated under Section 702 of the Foreign Intelligence Surveillance Act. Others remain classified.

This trend is only accelerating. New technologies now being developed and, in some cases, already deployed raise important questions for the balance between government capabilities and Americans' privacy and civil liberties. Facial recognition, machine learning and other forms of artificial intelligence, and biometrics, for example, are being rolled out in a variety of commercial and governmental applications, according to public news reports.

Americans are fortunate to be protected by a national-security apparatus in which the rule of law is embedded in institutional culture and enforced by overlapping legal, oversight, and transparency mechanisms dispersed across all three branches of government. Nonetheless, given the potential implications of these technologies for privacy and civil liberties, their potential deployment should be accompanied by rigorous, independent consideration of privacy and civil liberties concerns, taking into account the views of stakeholders inside and outside of government.

### **OBJECTIVE 3.1**

Rigorously analyze the potential implications of new and emerging technologies for efforts to protect the nation against terrorism and the preservation of privacy and civil liberties.

#### Strategies for Accomplishing Objective 3.1

- Solicit input on new technologies and their implications for privacy and civil liberties from experts and stakeholders inside and outside of government, including through public events and other forms of public engagement.
- Identify and conduct oversight projects that relate to the use of emerging technologies to protect the nation against terrorism, where such efforts raise significant concern for privacy and civil liberties.
- Provide thoughtful, technically-informed guidance on these issues through the Board's advice function.

## **OBJECTIVE 3.2**

Ensure that the Board receives the technical input needed to conduct effective oversight and provide informed advice on issues related to emerging technologies.

### Strategies for Accomplishing Objective 3.2

- Receive input through unclassified channels, including public events and written comments, from expert technologists outside of government.
- Seek to hire at least one full-time technical expert to participate in oversight and advice projects.
- Appoint a cleared technical expert to serve as a Technology Scholar, if needed.
- Seek to ensure that Board engagement with other Executive Branch agencies includes contact with technical experts and operators, in addition to legal and privacy officials.

**Strategic Goal 4:** To the extent consistent with the protection of classified information and applicable law, promote **transparency** regarding Board activities and issues within the Board’s jurisdiction.

The Board is committed to ensuring that its work is available and useful to the public. The Board’s enabling statute requires the Board, where consistent with the protection of classified information, to “make its reports, including its reports to Congress, available to the public” and to “hold public hearings and otherwise inform the public of its activities.”<sup>19</sup> The Board intends to hold regular public events, beginning with a public forum on February 8, 2018, at which the Board will hear from outside experts on issues relevant to the Board’s mission. These channels and other forms of public engagement will enable the Board to provide as much information as possible about its performance of its statutory oversight and advice functions. In addition, the Board will seek to identify publicly the subjects of its oversight reviews, to the extent consistent with the protection of classified information, and the Board may request “public interest” declassification of information where necessary and appropriate.

In its oversight reports and advice projects, the Board will also encourage other Executive Branch agencies to take appropriate and responsible measures to increase transparency and better inform the public about relevant authorities and activities.

The Board also looks forward to continuing its tradition of constructive interaction with Congress, and will work to ensure that its work and expertise is useful to the Legislative Branch as it exercises its lawmaking and oversight functions. The Board will employ both formal and informal mechanisms to inform Congress about its work. The Board’s statute requires the Board to submit semi-annual reports to designated Committees of the Congress and to publish these reports to the extent consistent with the protection of classified information and applicable law. In December 2018, the Board resumed the practice of providing these semi-annual reports, which it was unable to issue during its sub-quorum period. The statute also requires Board Members to “appear and testify before Congress upon request.”<sup>20</sup> Board Members have testified in the past on matters within the Board’s expertise, such as Section 702 of the Foreign Intelligence Surveillance Act, and stand ready to do so in the future. In addition to these formal channels, Board Members and staff will continue to meet periodically with Members of Congress and congressional staff to update them on the Board’s work and receive input on the Board’s activities and agenda.

Board Members will also seek opportunities to engage directly with the American public and outside stakeholders to receive input from to a diversity of viewpoints. To foster a better understanding of its mission and work, Board Members and staff plan to continue Board Members’ past practice of speaking at events 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. Board Members also look forward to meeting with representatives of non-governmental organizations, the private sector, and other

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<sup>19</sup> *Id.* § 2000ee(f)(2).

<sup>20</sup> *Id.* § 2000ee(d)(4).

entities with interest in issues within the Board’s jurisdiction. Going forward, the Board plans to develop effective approaches for receiving input from members of the public and outside experts.

Finally, the Board will identify appropriate opportunities for international engagement. Two Board Members participated in the U.S. delegation to the second Annual Review under the U.S.-EU Privacy Shield agreement in October 2018. While Board Members look forward to continuing to participate in the Privacy Shield process, the Board also hopes to engage with counterparts undertaking comparable oversight of national-security authorities. This will enable a mutually informative discussion of challenges facing oversight entities, variation between legal systems and oversight structures, and best practices.

#### **OBJECTIVE 4.1**

Ensure that the Board’s work is available and useful to the public and other stakeholders.

##### Strategies for Accomplishing Objective 4.1

- Issue public reports, to the extent consistent with the protection of classified information and applicable law.
- Hold regular public events to inform the public about the Board’s work, to the extent consistent with the protection of classified information.
- Identify publicly the subjects of the Board’s oversight reviews, where consistent with the protection of classified information.
- Where possible, provide to the public information about the Board’s implementation of its statutory advice function.
- Further develop the resources available to the public through the Board’s website.
- Encourage and support other agencies’ efforts to increase transparency and inform the public about authorities and activities within the Board’s jurisdiction.
- Where appropriate, request “public interest” declassification of information pursuant to Executive Order 13526 on Classified National Security Information.
- Pursue transparency in a manner that safeguards classified information and respects appropriate privileges and confidences.

#### **OBJECTIVE 4.2**

Maintain regular and constructive interaction with Congress, through both formal and informal channels.

#### Strategies for Accomplishing Objective 4.2

- Provide semi-annual reports to the designated congressional committees.
- Provide testimony to Congress on issues within the Board's expertise.
- Prioritize efforts to meet periodically with Members of Congress and congressional staff to update them on the Board's work and receive input on the Board's activities and agenda.

#### **OBJECTIVE 4.3**

Engage directly with the public about the Board's work and issues within the Board's jurisdiction.

#### Strategies for Accomplishing Objective 4.3

- Identify appropriate opportunities to speak at events hosted by other government agencies and by other groups and organizations, including bar associations, business organizations, educational institutions, and non-governmental organizations.
- Meet regularly with representatives of non-governmental organizations, the private sector, and other entities with interest in issues within the Board's jurisdiction.
- Develop effective approaches for receiving input from members of the public and outside experts.

#### **OBJECTIVE 4.4**

Identify appropriate opportunities for international engagement.

#### Strategies for Accomplishing Objective 4.4

- Continue to participate upon request in consultations related to the U.S.-EU Privacy Shield agreement.
- Engage as appropriate with counterparts undertaking oversight of national-security authorities in countries with comparable commitments to the rule of law.

## Strategic Goal 5: Continue to strengthen the Board's institutional capacity.

The Board's ability to operate as a freestanding federal agency depends on maintaining strong administrative, managerial, and organizational capabilities. As a small agency, the Board must execute non-mission activities, including human resources, financial management, and cybersecurity, with fewer staff than most federal agencies. The Board continues to develop approaches that will allow it to achieve a standard of excellence in these non-mission activities in a manner consistent with its very small size and limited workforce. One of the ways the Board seeks to reconcile its small size with this panoply of non-mission responsibilities is by using shared-service providers: other federal agencies that contract with the Board to handle non-mission tasks. Going forward, the Board plans to review its shared-service arrangements to ensure that each delivers excellent performance, responsiveness, and value for taxpayer dollars.

Building a workforce equipped with the skills to achieve its mission remains a top priority as the Board addresses the residual effects of the recently concluded sub-quorum period. After the resignation of its previous Chairman on July 1, 2016, the Board was unable to hire new staff members, though it was able to accept detailees from other federal agencies. The FISA Amendments Reauthorization Act of 2017, enacted in January 2018, empowered Board Members to exercise the Chairman's hiring authority in the absence of a Chairman.<sup>21</sup> Despite this legislative change, the Board's staff experienced attrition during the sub-quorum period. Accordingly, the Board anticipates significant hiring activity during Fiscal Year 2019. As it recruits new staff members, the Board will work to ensure that its staff encompasses a broad range of professional backgrounds, including experience in intelligence, counterterrorism, privacy and civil liberties, oversight and investigations, and technology.

Continuing to strengthen the Board's fiscal management is another top priority. During the sub-quorum period, the Board implemented its first internal financial controls and began its first financial audit, key steps for the Board's continued development of its fiscal management. As a relatively young agency, Board will use the results of this first audit to strengthen its financial management and accounting practices, involving its shared-service providers where necessary. The Board views the audit process as the first step in an ongoing process of self-evaluation and continual improvement, with the goal of attaining a consistent standard of excellence in financial management. The Board also plans to retain a full-time internal controls officer to implement the internal controls developed during the sub-quorum period.

Security is another priority for Board management. The Board's work takes place in a Sensitive Compartmented Information Facility and Board staff hold Top Secret security clearances. The Board is committed to protecting the information with which it is entrusted and achieving the highest standards of personnel and information security, including by participating in Intelligence Community working groups and initiatives related to securing classified information. The Board has also invested time and resources in strengthening its cybersecurity posture. Among other steps, the Board recently underwent its first FISMA audit and is using the results of that audit to implement further enhancements.

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<sup>21</sup> See *id.* § 2000ee(j)(2).



Finally, as a relatively new agency, the Board continues to take steps to refine its internal policies and governance processes. During the sub-quorum period, Board staff and former Member Collins worked to update internal policies and procedures. Going forward, the Board plans to continue refining policies and procedures to strengthen and memorialize the Board's internal practices.

### **OBJECTIVE 5.1**

Optimize the Board's use of shared-service providers.

#### Strategies for Accomplishing Objective 5.1

- Review the Board's shared-service arrangements to ensure that each delivers excellent performance, responsiveness, and value for taxpayer dollars.

### **OBJECTIVE 5.2**

Recruit and retain a workforce equipped with the skills to achieve the Board's mission.

#### Strategies for Accomplishing Objective 5.2

- Recruit highly qualified permanent staff and receive detailees from other federal agencies.
- Maintain human-resources practices, policies, guidance, and workforce plans that inspire and motivate employees and support mission success.
- Sustain a positive and professional workplace environment.

### **OBJECTIVE 5.3**

Continue to strengthen the Board's financial management capabilities and ensure responsible stewardship of taxpayer funds.

#### Strategies for Accomplishing Objective 5.3

- Undergo regular financial audits, using results to further refine internal controls and accounting practices.
- Retain a full-time internal controls officer to administer the Board's financial controls.
- Continue to conduct agency-wide planning that is linked and responsive to the budget process.

## **OBJECTIVE 5.4**

Maintain a high standard of personnel and information security.

### Strategies for Accomplishing Objective 5.4

- Achieve the highest standards of security for the Board’s cleared personnel, physical space, and classified systems.
- Leverage the Board’s recently concluded FISMA audit to further refine cybersecurity practices, policies, and documentation, and conduct annual FISMA audits going forward.
- Continue to implement the Cybersecurity Cross-Agency Priorities, including continuous monitoring, anti-phishing defenses, and malware defenses.
- Regularly train staff on cybersecurity, counterintelligence, and physical security threats.
- Collaborate with federal partners on cybersecurity solutions, threat indicators, and best practices.

## **OBJECTIVE 5.5**

Continue to refine the Board’s internal policies and governance processes.

### Strategies for Accomplishing Objective 5.5

- Review and finalize needed internal policies and procedures to regularize and memorialize the Board’s internal practices.

## CONCLUSION

The Board's aspirations for the next four years rest on the foundation laid by past Board Members and staff. The work carried out by former Chairman David Medine and former Members Rachel Brand, Elisebeth Collins, James Dempsey, and Patricia Wald, and by past and present members of the Board's staff, informed the public, refined the balance between government power and privacy and civil liberties, and established a legacy of independence and rigor that will guide the Board in the future.

Thanks to the efforts of past Members and staff, the Board is well-positioned to carry out its statutory mission during the period covered by this Strategic Plan. With its quorum restored, the Board can now exercise the full panoply of authorities conferred by its statute and initiate new oversight and advice projects that address important issues related to efforts to protect the nation against terrorism, privacy, and civil liberties.

The Board looks forward to engaging with other Executive Branch agencies, Congress, the public, and other stakeholders as it carries out its statutory mission over the next four years.