



PRIVACY & CIVIL LIBERTIES OVERSIGHT BOARD

Sub-Quorum Authorities and Operations When the Position of Chair is Vacant Policy 102-01

October 23, 2024

Section 1. Summary of Changes

This document updates, consolidates, and revises:

- I. Memorandum, Guidance for Sub-Quorum Periods, dated January 17, 2017;
- II. General Counsel Memorandum for Record, dated July 12, 2018; and,
- III. Memorandum, Sub-Quorum Titles and Functions, dated October 20, 2017.

Section 2. Purpose

- I. The intent of this policy is to clarify and further delegate and delineate authority for the PCLOB to engage in its various mission-related activities and administrative support functions, as well as outline limitations on its authorities when the PCLOB lacks the statutory quorum of three Members, and for when the position of Chair is vacant even though there is a quorum of Members.

Section 3. Applicability

- I. This policy shall be effective on the date below and shall not be retroactive.
- II. This document is an internal agency procedure. Nothing herein creates any legal or enforceable rights, benefits, obligations, or liabilities, whether substantive or procedural, for any parties over and above those that already exist in applicable law.
- III. A majority of a quorate Board may waive, change, or grant exceptions to this policy, consistent with controlling law and regulations.

Section 4. Definitions

All definitions contained in 42 U.S.C. §§ 2000ee, et seq, and 6 C.F.R. §§ 1000, et seq, are hereby incorporated unless otherwise specified.

- I. *Acting Director* means the Executive Director, or another designated staff member in the absence of an Executive Director, who in the event of all Board Member positions becoming vacant, is delegated authority of the Board as head of agency to conduct internal activities and management, other than those expressly proscribed or limited by law.
- II. *PCLOB* or *Board* means the Privacy and Civil Liberties Oversight Board created pursuant to 42 U.S.C. § 2000ee.
- III. *Board Member* or *Member* means any of the individual Members of the Board, including the Chair.

- IV. *Chair* means the Chair of the Board as described by 42 U.S.C. §§ 2000ee.
- V. *Executive Director* means the individual appointed by the Chair, or the Board in the absence of a Chair, to act as the Executive Director with the authority outlined in 6 C.F.R. § 1000.5(c) and pursuant to 42 U.S.C. § 2000ee.
- VI. *General Counsel* means the individual appointed by the Chair, or the Board in the absence of a Chair, to act as the chief legal officer of the Board with the authority outlined in 6 C.F.R. § 1000.5(d).
- VII. *Head of Agency* means Members of the Board collectively.
- VIII. *Staff Member* or *Staff* means any employee, including an intern or an employee of another Executive Branch department or agency detailed to the Board, except where these procedures specify a particular position.

Section 5. Individual Member Authorities

- I. Members during Sub-Quorum.
 - A. Individual Board Members continue to possess all authority to act in their individual official capacity, including the authority to provide individual advice to the President, Executive Branch, and Congress, and to provide testimony to Congress when requested.
 - B. Notwithstanding Sections 6-8, in all respects, Staff, including the Executive Director and the General Counsel, remain subject to the supervision of the remaining Board Members. If the Executive Director or General Counsel position is vacant, the remaining Board Members may assign to one or more Staff Members those responsibilities formerly assigned to such positions.
 - C. All authorities of the Chair pursuant to 6 C.F.R. 1000.5, shall revert to the remaining Members unless otherwise delegated by the remaining Members pursuant to Section 8. III.
- II. Members' Authorities When the Position of Chair is Vacant.
 - A. The Board retains its statutory authority, in the absence of a Chair, to hire staff upon the unanimous agreement of all remaining Members, even if only one Member remains.

Section 6. Sub-Quorum Staff Authorities

Unless otherwise restricted by a quorum of the Board prior to a sub-quorum period, or the unanimous action of the remaining Board Member(s) during a sub-quorum period, PCLOB Staff may continue to perform the following functions during a sub-quorum period:

I. Advice and Oversight.

- A. Request documents from, and work with, Executive Branch departments and agencies on projects initiated before the loss of a quorum, so long as within the scope of that authorization. However, requests for agency cooperation to the head of a department or agency is not authorized. Any disputes should be handled through the General Counsel to the appropriate counterparts.
- B. Interview, take statements, receive briefings, and obtain public testimony for projects initiated before the loss of quorum.
- C. Issue advice and oversight reports as a “Staff Report” based on projects initiated before the loss of a quorum under the following conditions:
 - 1. The project was properly initiated by a Board with quorum;
 - 2. The remaining Board Members unanimously approve; and
 - 3. The project report shall make it clear that a quorum of the Board did not vote or approve the report.
- D. If no Board Members remain, PCLOB Staff may not issue advice or oversight reports.

II. Congressional Support.

- A. Brief congressional committees, Members, and staff on any past or ongoing projects or other PCLOB activities.
- B. Complete other congressional and interagency reports (e.g., responses to Government Accountability Office or Congressional Budget Office), if practicable, but must include a notation that there is no quorum, and the report is being issued by Board Members in their official, individual capacities, or at the Staff-level, if the remaining Members unanimously approve Staff-level guidance or no Board Members remain.

III. Staff Roles. All designations, responsibilities, and authorities otherwise provided for in PLCOB-D-2022-10 (Board Delegations) remain in effect. This includes such actions as preparing budget estimates and justifications, handling and settlement of litigation, security clearance processing, and the publishing of Systems of Record Notices in the Federal Register. Development of new internal guidelines by Staff is authorized, but official policies may not be finalized until approved by a quorate Board.

Section 7. Sub-Quorum Prohibitions.

Although individual Board Members may take actions in their individual official capacity, including providing their individual advice to other elements of the Executive Branch, the General Counsel has determined that the following actions may not be taken on behalf of the Board as a whole:

I. Advice.

- A. Issue Board advice on proposed legislation, regulations, and policies.
- B. Issue Board advice on the implementation of new and existing legislation, regulations, and policies.
- C. Provide Board advice to the Executive Branch on the development and implementation of such legislation, regulations, policies, and guidelines.
- D. Issue Board advice related to implementation of an Executive Order.

II. Oversight.

- A. Issue Board reports on regulations, policies, and procedures, or the implementation thereof, by elements of the Executive Branch, relating to efforts to protect the nation against terrorism.
- B. Issue Board reports on information sharing practices of the Executive Branch, relating to efforts to protect the Nation against terrorism.
- C. Issue Board reports on other actions of the Executive Branch related to counterterrorism activities.
- D. Issue Board reports related to implementation of an Executive Order.

III. Other Reports.

- A. Issue comments on Section 803 Reports from privacy and civil liberties officers.
- B. Submit the Semi-Annual Report and Strategic Plan to Congress. In lieu of the Semi-Annual Report to Congress, Staff shall submit a short statement that the Board does not have a quorum and cannot file the report until such time as the Board regains a quorum.

IV. Subpoena. Request a subpoena from the Attorney General.**Section 8. Additional Provisions**

- I. During a sub-quorum period, all Board Members and Staff receive the same compensation to which they are entitled when the Board had a quorum, subject to statute, and direction from the Office of Personnel Management (OPM).
- II. Acting Director.
 - A. Should all Members' terms expire, prior to departure, the final Member shall designate the Executive Director or any other Staff Member as "Acting Director."¹
 - B. The Acting Director shall have all delegable authority of the Board to conduct internal activities and management necessary to ensure the continuity of operations of the agency, other than those expressly proscribed or limited by law. Such delegated authority includes the ability to:
 - 1. supervise and provide evaluations for any other personnel in the PCLOB, including those that would otherwise report to the Board;
 - 2. procure such services as are necessary to maintain operations, including consultants, so long as under \$500,000;
 - 3. provide for appropriate changes to human resources documents, including changes in title, granting awards, and other appropriate actions;
 - 4. coordinate with agencies providing management or support to PCLOB, such as OPM, the Office of Management and Budget, Office of Special Counsel, Merit Systems Protection Board, Equal Employment Opportunity Commission, etc.; and
 - 5. accept detailees to the Board from other federal agencies, and approve the detail of Board employees to other agencies.
 - C. Nothing in this policy purports to give the Acting Director the authority of a Member, or to speak as head of agency for any mission-related purposes.
 - D. Upon the swearing-in of a new Member, the Acting Director's authorities shall be automatically terminated. No ratification of prior actions shall be necessary by the new Member.
- III. Authorities of Executive Director in Absence of the Chair. Should the position of Chair become vacant, the following authorities shall be redelegated to the Executive Director, who remains subject to the supervision of the remaining Board Members. By unanimous vote of the remaining Board Members (in an inquorate Board), or by majority vote of a quorate Board, any of these authorities may revert to the Board. Thereafter the remaining

¹ In the absence of a designated Acting Director, the order of succession shall be: (1) Executive Director; (2) General Counsel; (3) Deputy Executive Director for Mission; (4) Deputy Executive Director for Operations; (5) the individual serving in an acting capacity in positions (1)-(4), in that order.

Board Members may redelegate the authority by unanimous vote of an inquorate Board, or majority vote of a quorate Board.

- A. All delegations to the Chair pursuant to 6 C.F.R. § 1000.5(b). If a quorum remains, the Executive Director shall set the agenda for Board meetings, in consultation with the remaining Board Members. Any Board Member may add an item to the agenda. At the direction, or with the approval of a majority of the remaining Board Members, the Executive Director shall schedule votes, and shall circulate all materials and proposals to Board Members in advance of Board meetings. The most senior Board Member by date of appointment shall convene Board meetings in the absence of the Chair. The Executive Director shall ensure that every vote and official act of the Board required by law to be recorded is accurately and promptly recorded by the General Counsel
- B. Appointing Authority. The Executive Director shall be delegated the role of Appointing Authority under the Board's Hiring and Compensation Policy (July 18, 2022), except that the Board must give its statutory, unanimous approval prior to extending an offer of employment to any applicant. The Executive Director shall submit to remaining Board Members the application materials of individuals being recommended for employment. Board Members shall have ten (10) business days to interview the candidate and review application materials; thereafter, the General Counsel shall circulate the application for notational vote, or with the unanimous agreement of the remaining Board Members, the Executive Director shall add it to the agenda for a Board meeting. Board Members who did not have the opportunity to interview the candidate during the initial ten business days may do so during the ten (10) calendar days allotted for notational voting.
 - 1. This delegation of Appointing Authority authorities does not extend to the discretion, under section IV.B.3 of the Hiring and Compensation Policy, to appoint an Executive Director or General Counsel in the event of a split decision by the Board Members.
 - 2. The Executive Director shall obtain the approval of a majority of the remaining Board Members before accepting any detailees to the Board (at any level), and prior to approving detailees of Board employees to other agencies (at any level).
- C. Other Delegations. The Executive Director shall also be delegated the authorities of the Chair under PCLOB-D-2022-10 (Board Delegations); PCLOB Policy on Awards (2019-09); PCLOB Policy 307-01 (Recruitment and Retention); PCLOB Policy 2019-04 (Policy on Credit Hours and Compensatory Time); PCLOB Policy 2019-05 (Transportation Subsidy Program); PCLOB Telework Policy (2013-008); PCLOB Policy on Compensation and Promotion (2016-004); PCLOB Policy on Continuity of Operations (2019-01); PCLOB Insider Threat Policy (2019-02); PCLOB Absence and Leave Policy (2019-08); and PCLOB Policy 301-01 Managing Employee Conduct and Performance (except Sections 7.II.2.C(5); 8.VI.F). See Appendix A.

- D. Under no circumstance shall the Executive Director have the authority to amend or reverse a policy, decision, or action that was previously approved by a quorate Board.
- E. If, following absence of the Chair, the terms of the remaining Members expire, the authorities delegated to the Executive Director in this subsection shall be assigned to the Acting Director, consistent with subsection 8.II.

Section 9. Legal Notes.

- I. In accordance with 5 U.S.C. § 3349c, the Federal Vacancies Reform Act of 1998 does not apply to the PCLOB.
- II. Executive Order 13472, Executive Branch Responsibilities with Respect to Orders of Succession, 2008)

APPENDIX A²

Authorities Delegated to the Executive Director in the Absence of a Chair Subject to the Terms of this Policy.

Policy	Section	Authority
6 C.F.R. §1000.5(b) ("Delegations of Authority")	§1000.5(b)(1)	"Exercise control over the Board's management and functioning"
	§1000.5(b)(2)	"Implement and execute the Board's budget"
	§1000.5(b)(3)	"Develop and effectively use staff support to carry out the functions of the Board, including, but not limited to, the supervision and removal of Board employees and the assignment and distribution of work among staff"
	§1000.5(b)(4)	"Convene and preside at all meetings of the Board and ensure that every vote and official act of the Board required by law to be recorded is accurately and promptly recorded by the General Counsel" except as provided in Section 8.III.A of this policy.
	§1000.5(b)(5)	"Redelegate to one or more Board staff persons those responsibilities of the Executive Director or General Counsel under this part, in the event that either position is unfilled"
	§1000.5(b)(6)	"Authorize any officer or employee of the Board to perform a function vested in, delegated, or otherwise designated to the Chair"
PCLOB Policy on Awards (2019-09)	III.B	"Serve as the Granting Official for any monetary award, non-monetary award, or award for cost-saving disclosures" to staff subject to any limitations as may be established by the remaining Board Members.
Hiring and Compensation Policy (July 18, 2022)	IV.A	"Pursuant to 42 U.S.C. 2000ee(j)(1), the Chair, in accordance with the rules described in this policy and any other rules that may be adopted by the Board in its discretion, shall appoint and fix the

² In this document, all references to "Chairman" in existing PCLOB policies have been changed to "Chair." This appendix is intended only to document the authorities delegated to the Executive Director under this policy.

		compensation of Board personnel as may be necessary to enable the Board to carry out its functions” except that the Board must give its statutory, unanimous approval prior to extending an offer of employment to any applicant.
	IV.B	As Appointing Authority, “propose Executive Director and General Counsel candidates to the Board for approval prior to such appointment.” Such authority does not extend to subsection IV.B.3.
	IV.C	As Appointing Authority, “appoint and fix the compensation of ... Counselor[s],” upon notice of selection by the Member for whom the Counselor will work.
	V.A.	Serve as the Appointing Authority, except that the Board must give its statutory, unanimous approval prior to extending an offer of employment to any applicant.
	VII.A.	“Subject to this policy and any other rules that may be adopted by the Board in its discretion, may set position classifications and compensation for Board employees.”
	VII.C.	“in consultation with the [detailee’s] employing agency, may determine that reimbursement is appropriate under the circumstances of the detail assignment and shall enter into an agreement providing for the terms of such reimbursement with the employing agency.”
PCLOB-D-2022-10 (Board Delegations)	Organization Chart	<p>“Authority to develop, revise, and restructure the [PCLOB] organizational chart, with stipulated conditions, provided Chair shall:</p> <p>(1) Ensure that the organizational chart maintains all Board Members collectively as the head of agency and assigns each Board Member a Counselor;</p> <p>(2) Retain the Executive Director, General Counsel, and EEO Director as a direct report to the Board;</p>

		<p>(3) Consult with Board Members regularly on changes or updates to the organizational chart, circulating copies for review and comment as needed and briefing Board Members on organizational needs;</p> <p>(4) Provide changes or updates of the organizational chart to the Board for approval; and</p> <p>(5) Make the chart public in Board administrative filings where appropriate and practicable.”</p>
	Policies/Procedures	<p>“(1) Supervise staff in preparing, drafting, and revising the Board's policies and procedures, ensuring that they move quickly and in priority order;</p> <p>(2) Prior to Board vote, circulate near-final drafts of new or revised policies and procedures to the Board for review and comment, as well as any policies or procedures that the Chair believes should be rescinded;</p> <p>(3) Update Board Members regularly on the progress of policies and procedures, including at Board meetings or otherwise as appropriate, and coordinate staff briefings requested by Board Members or deemed necessary for them;</p> <p>(4) Ensure, in consultation with the General Counsel, that other guidance memoranda or documents prepared by staff are consistent with Board policies and procedures, including determining whether such guidance memoranda or documents should instead be policies or procedures themselves;</p> <p>(5) Direct the General Counsel, with the assistance of other senior staff as necessary, to review the Board's policies and procedures annually to determine whether any updates are necessary; and</p> <p>(6) Seek staff input on policies and procedures as deemed necessary.”</p>
	CUI Senior Agency Official	<p>Duties under 32 C.F.R. §2002.4 (“[R]esponsible...for implementation of the CUI Program within that agency”).)</p>

	Contracts	<p>“Handle all contracts, procurements, acquisitions, intergovernmental agreements, and other related purchase or service orders, and:</p> <ul style="list-style-type: none"> • Ensure that all contracts with an annual obligation of \$250,000 or less be reviewed by the Senior Acquisitions Officer and the General Counsel, as well as any other relevant subject matter experts; • Review all contracts with an annual obligation above \$250,000; • Inform the Board of all contracts with an annual obligation above \$500,000; • Direct the Senior Procurement Executive to provide the Board with a list of all PCLOB contracts on a semiannual basis; and • Raise any contract-related issues with the Board that the Chair determines may have a significant impact on the operations of the Board.”
	42 U.S.C. §2000ee(j); 6 C.F.R. § 1000.5(b)(3); PCLOB Hiring policy.	“Authority to Approve and Sign Personnel Actions”
PCLOB Policy 307-01 (Recruitment and Retention)	6.II	“May approve incentive requests for all positions; or [d]etermines whether to approve any incentive requests for employees whose salary is or would be at the equivalent of GS-15 or higher or any incentive requests initiated by the Executive Director.”
	12.III	Receive semi-annual reports from the CHCO “on the use and value of the incentive programs, and “recommendations for their current use”.
PCLOB Policy 2019-04 (Policy on Credit Hours and Compensatory Time)	IV.D	“The Chair, in consultation with the HR Specialist, shall set the core hours.”

	IV.E	“If the employee's direct supervisor denies a request to work under a flexible work schedule, the employee may request a review of the denial by the Chair (or, if the Chair position is vacant, then the Board, or if there is less than a quorum of Members without a Chair, then the remaining Board Members), who will consult with the HR Specialist in rendering a decision.”
	VI.B	“If the employee's supervisor denies a request to earn compensatory time the employee may request a review of the denial by the Chair (or, if the Chair position is vacant, then the Board, or if there is less than a quorum of Members without a Chair, then the remaining Board Members), who will consult with the HR Specialist in rendering a decision.”
	VI.E	“Compensatory time off may only be paid out only [sic] if failure to use the compensatory time off was due to an exigency of service beyond the employee's control. An exigency of service must be established prior by the Chair.”
PCLOB Policy 2019-05 (Transportation Subsidy Program)	XII.A.	“to implement other transportation, parking, or travel benefits that are authorized by federal laws and regulations, such as pre-tax benefits generally available to federal employees.”
PCLOB Telework Policy (2013-008)	IV.B	“If a participant has been officially disciplined for being absent without permission or other workplace infractions, the TMO can exclude him/her from eligibility to telework based upon his/her discretion as to what is in the best interest of the Board. The participant can appeal the eligibility exclusion determination to the Chair within 30 days of the TMO’s determination. The Chair’s decision is final.”

PCLOB Policy on Compensation and Promotion (2016-004)	IV.A.	“The Chair (or, in the event the Chair position is vacant, then the Board) may, consistent with this policy, increase an employee’s base compensation based upon a Within Grade Increase, Quality Step Increase, or Promotion.”
PCLOB Policy on Continuity of Operations (2019-01)	III.2	“The Chair is the Board’s Continuity Coordinator. The Chair will assign personnel to the COOP Team.”
PCLOB Insider Threat Policy (2019-02)	IV.A.	“The Chair (or, in the absence of a Chair, the remaining Board Members) will serve as the senior official (“Senior Agency Official”) responsible for establishing an insider threat detection and prevention program and a process to gather, integrate, analyze, and respond to information indicative of potential insider threats.”
PCLOB Absence and Leave Policy (2019-08)	I.C.	“The Chair may prudentially adopt absence and leave rules to supplement those imposed by statute.”
PCLOB Policy 301-01 Managing Employee Conduct and Performance	7.II.2.C(2)	“The supervisor’s immediate superior shall generally be the Deciding Official. However, given the small size of the PCLOB, the second-line supervisor may be a Member of the Board. Two alternatives are acceptable with OGC consultation: i. The Chair shall designate the immediate supervisor who shall act as both Proposing and Deciding Officials. ii. The Chair shall designate a different management official as the Deciding Official.”
	7.II.2.C(3)	“If the Chair (or a majority of the Board in the absence of a Chair) determines it is inappropriate for the employee’s supervisor to be the Proposing Official, the Chair may designate a separate management official to act as Proposing Official.”
	9.I.F.	“If an employee’s security clearance is suspended or revoked, the CSO shall notify the Chair. Any specific information regarding the underlying reasons for the action shall be limited to

		<p>the Chair, though the Board as a whole should be notified about the overall action. If it pertains to a particular Counselor, the specific Board Member may also be read-in. If the Chair's Counselor's security clearance is suspended or revoked, the CSO shall notify the Chair and the next most senior Board Member. A majority vote of the Board may expand the provision of information to the entire Board.”</p>
--	--	---