



# **PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD**

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**SEMI-ANNUAL REPORT**  
*MARCH 2013- SEPTEMBER 2013*

November 3, 2013

In accordance with Section 801 of the Implementing Recommendations of the 9/11 Commission Act, 42 U.S.C. § 2000ee, I am pleased to present the second semi-annual report of the Privacy and Civil Liberties Oversight Board. This report is being provided to the President and the following Members of Congress:

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

The Honorable Richard Shelby  
Ranking Member, U.S. Senate Committee on Appropriations

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

The Honorable Tom Coburn  
Ranking Member, U.S. Senate Committee on Homeland Security and Governmental Affairs

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

The Honorable Saxby Chambliss  
Vice Chairman, U.S. Senate Select Committee on Intelligence

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

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

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

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

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

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

The Honorable Mike Rogers  
Chairman, U.S. House of Representatives Permanent Select Committee on Intelligence

The Honorable C.A. “Dutch” Ruppertsberger  
Ranking Member, U.S. House of Representatives Permanent Select Committee on Intelligence

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

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

The Honorable Darrell E. Issa  
Chairman, U.S. House of Representatives Committee on Oversight and Government Reform

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

Inquiries relating to this report may be directed to Diane Janosek, Chief Legal Officer, at [diane.janosek@pclub.gov](mailto:diane.janosek@pclub.gov) or at (202) 331-4084.

Sincerely,

David Medine  
Chairman, on behalf of the Board

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**Privacy and Civil Liberties Oversight Board**

**David Medine, Chairman**

**Rachel Brand**

**Elisebeth Collins Cook**

**James Dempsey**

**Patricia Wald**

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## PRIVACY & CIVIL LIBERTIES OVERSIGHT BOARD

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### SEMI-ANNUAL REPORT MARCH 2013-SEPTEMBER 2013

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## I. EXECUTIVE SUMMARY

The Privacy and Civil Liberties Oversight Board (Board) is pleased to submit its second semi-annual report, as required by law. This report covers the Board's major activities from March 2013 to September 2013.

The Board is an independent agency within the executive branch established by the Implementing Recommendations of the 9/11 Commission Act,<sup>1</sup> signed into law in August 2007. The Board is comprised of four part-time members and a full-time chairman and has two primary purposes:

- 1) To analyze and review actions the executive branch takes to protect the United States from terrorism, ensuring that the need for such actions is balanced with the need to protect privacy and civil liberties; and
- 2) To ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the Nation against terrorism.<sup>2</sup>

During the reporting period, the Board continued to build the organizational and administrative capabilities necessary to establish itself as an independent executive branch agency; conducted broad outreach within the federal government and to entities in the private sector, including companies, academics, and non-profit advocacy groups; and fully entered into its operational phase by commencing in-depth reviews of the government's activities under two authorities that have attracted substantial policymaker and public interest.

- *Organization and Administration.* During this reporting period, the Board continued to address significant administrative matters necessary to function effectively as an independent federal agency and to comply with applicable laws. Specifically, the Board moved into its office space, procured and installed unclassified and classified information technology and telecommunications capabilities, established a website ([www.pclob.gov](http://www.pclob.gov)), and acquired necessary administrative and security support. The Board also focused on financial management activities, including development of its FY2014 budget and refinement of a staffing plan. The Board made its first two direct hires (an Executive Director and an Attorney-Advisor). The Board continued to develop the policies and procedures necessary to establish for itself a solid footing as a federal agency, adopting or

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<sup>1</sup> Pub. L. 110-53, § 801(a).

<sup>2</sup> Pub. L. 108-458, § 1061(c) *as amended by* Pub. L. 110-53, § 801(a). Section 1061 is codified at 42 U.S.C. § 2000ee.

drafting policies on telework, pre-publication review, and Freedom of Information Act (FOIA), Sunshine Act, and the Privacy Act.

- *Outreach.* The Board consulted with the White House, Congressional Committees and Members of Congress, federal agencies, academics, industry representatives, and non-profit and advocacy groups through informational sessions and briefings. In so doing, the Board dramatically increased its baseline knowledge of U.S. Government counter-terrorism programs, while also delving more deeply into surveillance programs operated pursuant to Section 215 of the USA PATRIOT Act and Section 702 of the Foreign Intelligence Surveillance Act. The Board held a public meeting on March 5, 2013, to discuss its recent activities, and on July 9, 2013, the Board held a public workshop designed to foster public awareness about the above-mentioned surveillance programs.
- *Operational Activity.* While the Board had already begun during the last reporting period to examine the government's activities operated pursuant to Section 702 of the Foreign Intelligence Surveillance Act, that review and the review of the telephony metadata program under Section 215, took on added urgency after the unauthorized disclosure of classified information by Edward Snowden. Chairman Medine took office at the end of May 2013, just days before the unauthorized disclosures began. Shortly thereafter, the Board requested and was given a high-level classified briefing concerning the programs, the first of several. In early June, the Board met with the President and his senior staff, and it received letters from a group of 13 Senators and the Democratic leader of the House of Representatives – all of whom requested that the Board review the leaked surveillance programs and produce a public report.

As part of its study of the surveillance programs, the Board has received a number of classified briefings and has reviewed decisions of the Foreign Intelligence Surveillance Court. The Board planned a public hearing for November 4 to hear from: federal government agencies involved with the 702 and 215 programs; a former Foreign Intelligence Surveillance Court judge and litigants before the court; a former Member of Congress who served on the House intelligence committee; a former senior Justice Department official with extensive experience in FISA matters; and academics and other experts.

While the Board has focused on its study of these two surveillance programs as its first priority, it also worked on other issues, including calling for the updating of agencies' guidelines approved by the Attorney General under Executive Order 12333 and assessing the process by which federal agencies submit Section 803 privacy and civil liberties reports to the Board.

## II. INTRODUCTION

The Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Commission Act),<sup>3</sup> which created the Privacy and Civil Liberties Oversight Board as an independent agency within the executive branch, requires the Board to report not less than semi-annually to the President and Congress. By law, the report must include:<sup>4</sup>

- (a) a description of the major activities of the Board during the preceding period;
- (b) information on the findings, conclusions, and recommendations of the Board resulting from its advice and oversight functions;
- (c) the minority views on any findings, conclusions, and recommendations of the Board resulting from its advice and oversight functions;
- (d) each proposal reviewed by the Board that:
  - (i) the Board advised against implementation; and
  - (ii) notwithstanding such advice, actions were taken to implement; and
- (e) for the preceding period, any requests for the issuance of a subpoena that were modified or denied by the Attorney General.

During the reporting period, the Board continued the work necessary to establish a solid organizational and administrative foundation for itself as a new, independent agency. In addition, through a series of informational briefings, the Board continued to reach out to relevant Committees of Congress and Members of Congress, the White House, federal agencies, academics, industry representatives, non-profit and advocacy groups, and the public to increase the awareness of the Board's status and mission and to obtain a fuller understanding of the scope of the government's counterterrorism programs. During these outreach activities, the Board solicited recommendations as to what should be its areas of focus and how it should interact with other entities within the executive branch. The Board continued to participate in the executive branch policy development processes managed by the Office of Management and Budget.

The Board is pleased to report that, while still understaffed, it has achieved enough of an initial foundational capability to allow it to function as an independent executive branch agency and to delve more deeply into a review of government collection and surveillance programs operated

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<sup>3</sup> Pub. L. 110-53, § 801(a).

<sup>4</sup> Pub. L. 108-458, § 1061(e)(2), *as amended by* Pub. L. 110-53, § 801(a).

pursuant to Section 215 of the USA PATRIOT Act and Section 702 of the Foreign Intelligence Surveillance Act.

### III. HISTORY AND MISSION

#### A. History

The Board today is in its third iteration. In July 2004, the National Commission on Terrorist Attacks on the United States (9/11 Commission)<sup>5</sup> recommended that “there should be a board within the Executive Branch to oversee adherence to the guidelines . . . and the commitment the government makes to defend our civil liberties.”<sup>6</sup> In August 2004, President George W. Bush created the President’s Board on Safeguarding Americans’ Civil Liberties (President’s Board) by Executive Order.<sup>7</sup> The President’s Board was chaired by the Deputy Attorney General and consisted of 22 representatives from the Departments of State, Defense, Justice, Treasury, Health and Human Services, and Homeland Security; the Office of Management and Budget; and the Intelligence Community. During its tenure, the President’s Board met six times.

The President’s Board ceased to meet upon the enactment of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA),<sup>8</sup> which created the Privacy and Civil Liberties Oversight Board within the Executive Office of the President.<sup>9</sup> As chartered under IRTPA, the Board was comprised of two Board members (the Chairman and Vice Chairman) appointed by the President by and with the advice and consent of the Senate, and three additional Board members appointed by the President.<sup>10</sup>

In 2007, the 9/11 Commission Act<sup>11</sup> reconstituted the Board in its current form as an independent agency within the executive branch. The Act required that all five Board members be appointed by the President, by and with the advice and consent of the Senate, for staggered six-year terms. With the reconstitution of the Board, the 9/11 Commission Act terminated, effective January 30, 2008, the terms of the individuals then serving as Board members within the Executive Office of the President. From that time until August 2012, the Board did not exist. Then, in August 2012,

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<sup>5</sup> The 9/11 Commission was a bipartisan panel established to “prepare a full and complete account of the circumstances surrounding the September 11, 2001 terrorist attacks” and provide “recommendations designed to guard against future attacks.” See *Nat’l Comm’n on Terrorist Attacks on the United States*, available at <http://9-11commission.gov/about/index.htm>.

<sup>6</sup> THE 9/11 COMMISSION REPORT 395 (2004).

<sup>7</sup> Executive Order 13353, *Establishing the President’s Board on Safeguarding American’s Civil Liberties* (Aug. 27, 2004).

<sup>8</sup> Pub. L. 108-458.

<sup>9</sup> *Id.*, § 1061.

<sup>10</sup> IRTPA, § 1061(e)(1).

<sup>11</sup> Pub. L. 110-52, § 801(a).

the Board's current four part-time members were confirmed by the Senate, providing the reconstituted Board with its first members and a quorum to begin operations. Thus, the Board today is in its third iteration with all new Board members.<sup>12</sup>

## B. Mission

The Board is vested with two fundamental authorities: (1) to analyze and review actions the executive branch takes to protect the Nation from terrorism, ensuring the need for such actions is balanced with the need to protect privacy and civil liberties; and (2) to ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the Nation against terrorism.<sup>13</sup>

The functions of the Board include providing advice to the President and executive branch agencies and departments on policy development and implementation; overseeing certain actions, regulations, policies, and procedures of the executive branch (including information sharing practices) to ensure that privacy and civil liberties are protected; and, when appropriate, coordinating the activities of federal agency privacy and civil liberties officers on relevant interagency matters.

When necessary to carry out its statutory duties, the Board is authorized to access all relevant executive agency records, reports, audits, reviews, documents, papers, recommendations, or other relevant materials, including classified information, and interview, take statements from, or take public testimony from any executive branch officer or employee. In addition, the Board may

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<sup>12</sup> The Board's four part-time members were confirmed by the Senate on August 2, 2012, and were appointed by the President and sworn into office later that month for the following terms:

- Rachel L. Brand, for a term ending January 29, 2017;
- Elisebeth Collins Cook, for a term ending January 29, 2014;
- James X. Dempsey, for a term ending January 29, 2016; and
- Patricia M. Wald, for a term ending January 29, 2013. Patricia Wald's term was extended through the end of the 113th Session pursuant to the holdover provisions set forth in IRTPA, § 1061(h)(4)(B), *as amended by* Pub. L. 11-53, § 801(a). The President submitted her re-nomination to the U.S. Senate on March 21, 2013. The Senate Committee on the Judiciary approved her nomination on September 26, 2013, and it is currently pending consideration by the full Senate.

The Board's Chairman and its only full-time member, David Medine, was re-nominated by the President on January 22, 2013. David Medine's nomination was confirmed by the Senate on May 7, 2013, and he was appointed, and then sworn in on May 29, 2013, for a term ending January 29, 2018.

<sup>13</sup> IRTPA, § 1061(c), *as amended by* Pub. L. 110-53, § 801(a).

request that the Attorney General require, by subpoena, persons (other than departments, agencies, and elements of the executive branch) to produce relevant information.<sup>14</sup>

The Board must conduct official business in accordance with the Government in the Sunshine Act,<sup>15</sup> which requires that the public be provided notice of any meetings at which the Board deliberates to determine official action. The Board also is subject to the Freedom of Information Act,<sup>16</sup> including its requirements to make certain information available to the public through a website.<sup>17</sup>

In addition to those authorities and responsibilities contained in the Board's enabling legislation, the President's Executive Order 13636 dated February 12, 2013, *Improving Critical Infrastructure Cybersecurity*, provides that the Department of Homeland Security (DHS) shall consult with the Board in producing a report that assesses the privacy and civil liberties risks associated with the activities undertaken by federal agencies under the Order.<sup>18</sup> The DHS report will be finalized in calendar year 2014 and the Board will participate through consultation.

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<sup>14</sup> IRPTA, § 1061(g), *as amended by* Pub. L. 110-53, § 801(a).

<sup>15</sup> 5 U.S.C. § 552b. The Sunshine Act requires that these meetings be open to the public, unless the Board decides, by majority vote, to close the meeting based on one of permitted bases for closing a meeting in the Sunshine Act.

<sup>16</sup> 5 U.S.C. § 552; 42 U.S.C. § 2000ee(1)(1).

<sup>17</sup> 5 U.S.C. § 552(a)(2).

<sup>18</sup> Executive Order 13636, *Improving Critical Infrastructure Cybersecurity* (Feb. 12, 2013).

#### IV. MAJOR ACTIVITIES: MARCH 2013 – SEPTEMBER 2013

##### A. Organization, Administration and Budget

###### *Organization*

As a new independent agency, the Board continued to address a variety of organizational and administrative matters during the reporting period. These included moving into permanent office space, procuring information technology and telecommunications support, developing an FY2014 budget, identifying personnel and security requirements, adopting required operational policies and procedures, and addressing myriad other issues that are required for the functioning of the agency.

During the reporting period, the Board:

- worked with both the General Service Administration (GSA) Financial and Payroll Services Division under a fee-for-service arrangement and the Board's Resource Management Officer at the Office of Management and Budget to develop a budget as part of the President's FY2014 budget submission to Congress;
- continued to engage the services of two support personnel (a Chief Administrative Officer and a Chief Legal Officer) as detailees from the Office of the Director of National Intelligence and National Security Agency, respectively;
- hired two staff members: an Executive Director and an Attorney-Advisor;
- obtained by contract an administrative support staff member;
- continued to seek additional detailees to support the Board's mission;<sup>19</sup>
- acquired necessary security clearances for the Chairman and two new staff members;
- adopted several policies related to the Board's internal operations;
- continued fee-for-service agreements with the General Services Administration (GSA) for human resources and financial services support;
- secured the acquisition of information technology services;
- established a website;

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<sup>19</sup> IRTPA, § 1061(j)(1), *as amended by* Pub. L. 110-53, § 801(a). The law allows for a federal employee to be detailed to the Board from other federal agencies.

- secured agreements with GSA and others for occupancy of fully furnished and equipped office space that meets the security requirements applicable to an agency that regularly handles classified information; and
- worked with the two other federal agency building occupants and the building owner to ensure the smooth changeover from the Department of State to DHS Federal Protective Service for the complete re-provision of building security services and alarm equipment.

### *Administration*

Due to its status as a federal agency, the Board must comply with numerous statutes, regulations, and executive orders, as well as develop its own implementing policies and procedures. During the reporting period the Board:

- Adopted an Ethics in Government Program policy on May 22, 2013.
- Adopted Standards of Ethical Conduct on May 22, 2013.
- Adopted a Final Rule on the Organization and Delegation of Powers and Duties, published in the Federal Register on June 5, 2013, at 78 Fed. Reg. 33689. This rulemaking delegated certain operational authorities to the Chairman and other staff and is available at 6 C.F.R. part 1000.
- In accordance with the Privacy Act of 1974, published a system of records notice (SORN) in the Federal Register on June 28, 2013, at 78 Fed. Reg. 39020.
- Received public comments in response to a Notice of Proposed Rulemaking for its Freedom of Information Act, Privacy Act and Sunshine Act procedures. The comment period, as announced in the Federal Register at 78 Fed. Reg. 28532, closed July 15, 2013, and the Board has reviewed the comments received and is finalizing the rule.
- Adopted a telework policy on September 5, 2013.

The Board also continued to work on becoming appropriately integrated into the executive branch's legislative coordination and clearance process, as specified in Office of Management and Budget Circular A-19, which offers one mechanism by which the Board can fulfill its mandate to provide advice and counsel to the executive branch on privacy and civil liberties.

## *Budget*

Although the Board's authorizing legislation was enacted in 2007, the Board did not begin operations until the end of FY2012. Only the Chairman, who was not confirmed until May 2013, has statutory authority to hire permanent staff. At present, the Board's staff consists of two permanent hires (Executive Director and an Attorney-Adviser, both of whom began work in September 2013), two senior employees on detail from other federal agencies (Chief Administrative Officer and Chief Legal Officer), and a contracted administrative support staff member.

During the first two fiscal years that the Board has been in operation (2012 and 2013), it operated under a "placeholder" budget of approximately \$900,000 per year.<sup>20</sup> Since the Board only began operating the last month of FY2012, and since it had two-year funding, most of its FY2012 funds were available for use during FY2013. This carryover funding allowed the Board, a new independent agency with no existing infrastructure or support mechanisms, to identify appropriate office space and to acquire IT, logistics, HR, legal, payroll, and other operational support required to stand up and run a federal agency.

FY2014 is the first year that the Board was included as part of the President's budget with a budget request based on an actual, if conservative, estimate of what would be needed for actual Board operations (\$3.1M).

### **B. Outreach and Meetings**

Since March 1, 2013, the Board has engaged in the following activities:

1. On March 5, 2013, conducted its second public meeting, at which it approved a notice of proposed rulemaking on FOIA and related statutes, adopted various required procedures or policies, and provided an update on its agenda and operations.<sup>21</sup>
2. Met with officials of the Department of Justice (DOJ), Office of the Director of National Intelligence (ODNI), Federal Bureau of Investigation (FBI), and the National Security Agency (NSA) on several occasions to discuss the operation and oversight of programs under Section 215 of the USA PATRIOT Act (telephone metadata) and Section 702 of

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<sup>20</sup> Pub. L. 110-53, § 801(a) authorized \$5,000,000 for Fiscal Year 2008, \$6,650,000 for Fiscal Year 2009, \$8,300,000 for Fiscal Year 2010, and \$10,000,000 for Fiscal Year 2011). Pub. L. 112-74; Pub. L. 113-6 then appropriated funds for the Board for Fiscal Years 2012 and 2013 (\$900,000 for each Fiscal Year).

<sup>21</sup> The public announcement of this open meeting was made in the Federal Register at 78 Fed. Reg. 12802, and the minutes are available at: <http://www.pcllob.gov/meetings-and-events/5-march-2013-public-meeting>.

the Foreign Intelligence Surveillance Act. These discussions covered collection, use and dissemination practices, compliance measures, including internal and external oversight, and the implementation guidelines governing collection and use of intelligence pursuant to Sections 215 and 702. These discussions commenced prior to June 2013 as part of the Board's basic oversight responsibilities, and then evolved, after the Snowden leaks, into a more in-depth review of the programs operated pursuant to Sections 215 and 702. The review, which is intended to culminate in a public report as requested by the President and Members of Congress, is addressing the history, legality, necessity, and effectiveness of these programs. The Board also met with private sector firms regarding their views of these programs.

3. Held a closed meeting on June 19, 2013, to discuss classified information relating to Sections 215 and 702.<sup>22</sup>
4. On June 21, 2013, at the President's invitation, met with the President and his senior staff. The Board members informed the President that the Board was undertaking a review of the recently revealed surveillance programs as a top priority. They recommended that every effort be made to publicly disclose the legal rationale for the programs in order to enhance the public debate about the legality and propriety of the programs.<sup>23</sup>
5. Presented at a panel at the annual Intelligence Community Legal Conference on May 1, 2013, which is attended by legal counsel and privacy and civil liberties officers from across the intelligence community. Board members answered questions about the Board's activities, "early impressions," and issues such as cybersecurity and the intersection of technology and privacy.
6. Participated in a meeting on April 30, 2013 of the Privacy and Civil Liberties Subcommittee of the Information Sharing and Access Interagency Policy Committee,

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<sup>22</sup> This closed meeting followed the procedures of the Government in the Sunshine Act, 5 U.S.C. § 552b; the public announcement was made in the Federal Register at 78 Fed. Reg. 36279.

<sup>23</sup> The White House's public acknowledgements of the meeting are located on its website at: <http://www.whitehouse.gov/the-press-office/2013/08/09/background-president-s-statement-reforms-nsa-programs> and <http://www.whitehouse.gov/the-press-office/2013/07/23/statement-press-secretary-amash-amendment>. The Board issued a statement on June 21, 2013 following the meeting with President Obama. It is accessible at: [www.pclob.gov/newsroom](http://www.pclob.gov/newsroom). On May 23, 2013, President Obama stated, when at the National Defense University, that "[we] finally hav[e] a strong Privacy and Civil Liberties [Oversight] Board to review those issues where our counterterrorism efforts and our values may come into tension." See The White House webpage for the full speech at <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university>.

which is under the aegis of the White House National Security staff. The meeting included discussion of optimal ways for the Board to coordinate with federal government agency privacy and civil liberties officers. The Board desires to work with these officers on current and emerging issues that they may identify in the course of their activities. The Board is evaluating at what stage in the development of agency policies the Board can most effectively be integrated.

7. Conducted an all-day public workshop on July 9, 2013, to seek input from invited experts, academics and advocacy organizations as to the legal bases for the government's surveillance programs and to identify potential options to address privacy and civil liberties concerns.<sup>24</sup> The full agenda for the workshop appears at Attachment A of this report. Approximately 200 people attended, plus national and international news media.<sup>25</sup> The workshop included an opportunity for public comments,<sup>26</sup> and the Board also encouraged comments or written statements for the record on [www.regulations.gov](http://www.regulations.gov). As of September 30, 2013, the Board had received fifty comments.<sup>27</sup> The public comment period is currently scheduled to remain open until November 14, 2013.
8. Met with several Members of Congress and staff regarding the Board's roles, responsibilities and budget, and also regarding potential legislation concerning the 702 and 215 surveillance programs and the operations of the FISC.
9. Engaged in follow-up meetings with the ODNI and DHS on the Implementation of the National Counterterrorism Center (NCTC) Guidelines and met with the Program Manager for the Information Sharing Environment (ISE) and staff regarding the Board's role in providing oversight for the ISE.
10. Met with DHS, DOJ and FBI officials on privacy and civil liberties issues related to federal government support to State and local fusion centers and the Nationwide Suspicious Activity Reporting Program.
11. Participated in several meetings with members of privacy and civil liberties advocacy organizations.

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<sup>24</sup> The public announcement of this workshop was made in the Federal Register at 78 Fed. Reg. 39020, and 78 Fed. Reg. 40778.

<sup>25</sup> See C-SPAN at <http://www.c-spanvideo.org/event/221275>.

<sup>26</sup> The full transcript of the workshop is available at:  
<http://www.pcllob.gov/All%20Documents/July%2009,%202013%20Workshop%20Transcript.pdf>

<sup>27</sup> All public comments are viewable at  
<http://www.regulations.gov/#!documentDetail;D=PCLOB-2013-0005-0006>, and all comments posted will remain viewable after the comment period ends.

12. Requested and received a preliminary briefing on the government's domestic uses of unmanned vehicles (drones) and the legal justifications for their use in targeted killings of non U.S. citizens abroad.
13. Planned a public hearing for October 4, 2013, to hear from current and former government officials and outside experts, with a focus on proposed changes to the activities conducted under Section 215 and Section 702 and to the operations of the FISC. Due to the lapse in appropriations and the resulting unavailability of government witnesses, the Board rescheduled the hearing for November 4, 2013.

### **C. Operational Activities**

The Board's primary operational focus during the reporting period was on reviewing the federal government surveillance programs conducted pursuant to Section 215 of the USA PATRIOT ACT and Section 702 of FISA Amendments Act. The Board is in the process of completing its research and is drafting a public report. The Board's report will consider recommendations for change to the Section 215 and 702 programs and to the operation of the Foreign Intelligence Surveillance Court (FISC). The report is a top priority for the Board.

In addition, the Board has continued to evaluate other areas of focus and address its statutory mandate as follows:

1. *Working with privacy and civil liberty officers.* Pursuant to 42 U.S.C. § 2000e(d)(3), the Board's functions include: (a) receiving and reviewing reports and other information from the privacy and civil liberties officers; (b) making recommendations regarding their activities; and (c) as appropriate, coordinating their activities on interagency matters.<sup>28</sup> During the reporting period, the Board has continued its engagement with privacy and civil liberties officers at ODNI, DHS, DOJ and the Department of Defense (DOD). The Board anticipates that upon conclusion of its report on Sections 215 and 702, it will continue to expand its activities in this area.
2. *Receiving and reviewing quarterly Section 803 Reports:* Eight federal agencies are required by statute to submit to the Board for its review quarterly reports<sup>29</sup> on the number of public or internal complaints they receive, the type of advice and response that

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<sup>28</sup> For example, the Chairman participated in a joint DOD/Commodities Future Trading Commission (CFTC) program on "Designing Privacy into an Interconnected World" on August 28, 2013.

<sup>29</sup> See 42 U.S.C. § 2000ee-1(f)(1)(A)(iii). The relevant section in Pub. L. 110-53 is Section 803 and therefore these reports are referred to as "Section 803 Reports."

resulted, the nature of the complaints, and their disposition.<sup>30</sup> The Board has been receiving quarterly reports from the DOD, ODNI, Department of Treasury (Treasury), and DHS. The Section 803 reports for the most part are not informative as they contain mainly quantitative information but little narrative on the kinds of complaints received or the basis for their disposition. On August 2, 2013, the Board sent certain agencies that are statutorily required to submit Section 803 reports a written reminder of their obligation to submit their quarterly reports and a request that they identify their agencies' Section 803 official. As of September 2013, five agencies had responded to the Board's request.<sup>31</sup> The Board, in consultation with the agencies' Section 803 officials, plans to examine how the reports could be made more useful and informative. Next steps include meeting with Section 803 officials to ensure compliance with reporting requirements and to discuss development of a more functional quarterly report. The Board will also consider exercising its authority to expand the number of agencies required to submit Section 803 reports.

3. *Agency guidelines on United States persons approved by the Attorney General:* On August 22, 2013, the Board sent a letter to the Attorney General and the Director of National Intelligence regarding the responsibility of these officials pursuant to Executive Order 12333, as amended, to ensure that the collection, retention and dissemination of U.S. persons information occurs in accordance with Attorney General approved agency guidelines.<sup>32</sup> The Board noted that several agencies and departments are operating under Guidelines that "have not comprehensively been updated, in some cases in almost three decades, despite dramatic changes in information use and technology." The Board urged

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<sup>30</sup> Pursuant to the statute, Section 803 reports are to be submitted no less than quarterly, and the content of the report must include:

- Information on the number of privacy and civil liberties reviews undertaken;
- The type of advice provided and the response given to such advice;
- The number and nature of the complaints received by the Department or Agency alleging a violation of privacy and civil liberties; and
- A summary of the disposition of such complaints, the reviews and inquiries conducted, and the impact of the activities of the Privacy and Civil Liberties Officer.

<sup>31</sup> Reports have been received from DOJ, DOD, Treasury, DHS, and ODNI. As of September 30, 2013, reports had not been received from the Department of State, Central Intelligence Agency (CIA), and Department of Health and Human Services (HHS). HHS, however, did send a letter, dated August 26, 2013 stating that HHS is in the process of identifying its Section 803 official, and that it will prepare a Section 803 Report at the conclusion of FY13 that will cover the entire 12 month period, and it will be submitted to the Board. Also, the CIA advised that its report had been mailed but it had not been received prior to the close of the reporting period.

<sup>32</sup> See Section 2.3 of Executive Order 12333 as amended *United States Intelligence Activities*, July 20, 2008. This letter and additional correspondence are available at:

<http://www.pcllob.gov/SiteAssets/newsroom/PCLOB%20DNI%20AG%2012333%20Guidelines%20Letter.pdf>

the Attorney General and the Director of National Intelligence to take steps to resolve this. The ODNI advised the Board that the executive branch would brief the Board on plans for updating specific guidelines.

4. *Transparency and Training*: Prior to the Board's decision to review the federal government surveillance programs conducted pursuant to Sections 215 and 702, the Board identified two areas of interest that cut across the federal government: transparency and training. At the Board's March 5, 2013, open meeting, the Board stated that further Board involvement in these issues would be warranted and consistent with its statutory mandate.<sup>33</sup> With respect to transparency, the Board notes that the intelligence community has undertaken to declassify a variety of documents as part of its response to the unauthorized disclosures regarding the Section 215 and 702 programs, resulting in some greater transparency about certain counterterrorism-related operations and activities. The Board is evaluating transparency considerations as part of its review of the Section 215 and 702 programs and intends to remain engaged in this area in the future. As to training, the Board observed that privacy and civil liberties training for analysts, agents, and other personnel was consistently cited by agencies as an important element of the privacy and civil liberties protections that they have established around the collection and use of information. The Board plans to evaluate these training programs in the near future.

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<sup>33</sup> The Board has posted the minutes of this open meeting on its website and the minutes are available at: <http://www.pclob.gov/meetings-and-events/5-march-2013-public-meeting>.

## V. FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

### A. Findings, conclusions, and recommendations of the Board resulting from its advice and oversight functions

During the reporting period, the bulk of the Board's attention was focused on fact finding and evaluation of privacy and civil liberties concerns related to the federal government's surveillance programs operated pursuant to Section 215 of the USA PATRIOT Act and Section 702 of the FISA Amendments Act. During the next reporting period, the Board will issue a final public report which will include findings, conclusions and recommendations resulting from its extensive review of these programs.

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

For the period March 2013 to September 2013, the Board has no items to report under this section.

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

For the period March 2013 to September 2013, the Board has no items to report under this section.

## V. NEXT STEPS

The Board expects the following priorities to guide its activities for the next six months:

- ✓ Conclude its review and issue a public report on privacy and civil liberties concerns related to federal government surveillance programs operated pursuant to Section 215 of the USA PATRIOT ACT and Section 702 of the FISA Amendments Act.
- ✓ Coordinate and consult with DHS as it prepares its required 2014 report pursuant to the President's Executive Order 13636, *Improving Critical Infrastructure Cybersecurity*, to ensure that privacy and civil liberties are considered.
- ✓ Coordinate with the executive branch as it responds to the Board's suggestion to expedite the updating of guidelines required under Executive Order 12333, and work with the executive branch to develop an appropriate process for the Board to be engaged in the development of those guidelines.
- ✓ Continue to address agency submission of Section 803 reports and recommend ways to make those reports more meaningful.
- ✓ Pursue its cross-cutting reviews of privacy and civil liberties training and of transparency.
- ✓ Develop means of appropriately integrating the Board into the executive branch's development of counterterrorism policies and programs to ensure that privacy and civil liberties are appropriately considered, as required under the statute establishing the Board.

## **V. CONCLUSION**

In its previous report, the Board said that it was shifting its focus from organizational and administrative start-up activities to the fulfillment of the advice and oversight responsibilities that comprise its substantive mandate. Over this reporting period, the Board followed through on its commitment and made significant progress in initiating its oversight responsibilities, particularly through its examination of programs operated pursuant to Section 215 of the USA PATRIOT Act and Section 702 of the Foreign Intelligence Surveillance Act. In addition, the Board was able to exercise its oversight responsibility by urging the updating of agency guidelines approved by the Attorney General, in accordance with Executive Order 12333 as amended, and by asking for greater substance in the required agency Section 803 reports.

The Board is grateful to the federal agencies, congressional staff, industry representatives, advocacy groups, and members of the public who have engaged with the Board during this reporting period, and the Board plans to continue to strengthen these relationships in furtherance of the Board's mission as it moves forward to protect privacy and civil liberties.

**ATTACHMENT A**

**AGENDA OF PUBLIC WORKSHOP**

**HELD ON JULY 9, 2013**



## **PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD**

*Workshop Regarding Surveillance Programs Operated Pursuant to Section 215 of the USA PATRIOT Act and Section 702 of the Foreign Intelligence Surveillance Act*

**July 9, 2013**

**Renaissance Mayflower Hotel – Grand Ballroom  
1127 Connecticut Ave NW, Washington DC**

### **AGENDA**

**09:00**           **Doors Open**

**09:30 – 09:45**   **Introductory Remarks (David Medine, PCLOB Chairman)**

**09:45 – 11:30**   **Panel I: Legal/Constitutional Perspective**  
**Facilitators: Rachel Brand and Patricia Wald, Board Members**

**Panel Members:**

- **Steven Bradbury (Formerly DOJ Office of Legal Counsel)**
- **Jameel Jaffer (ACLU)**
- **Kate Martin (Center for National Security Studies)**
- **Hon. James Robertson, Ret. (formerly District Court and Foreign Intelligence Surveillance Court)**
- **Kenneth Wainstein (formerly DOJ National Security Division/ White House Homeland Security Advisor)**

**12:30 – 2:00**   **Panel II: Role of Technology**  
**Facilitators: James Dempsey and David Medine, Board Members**

**Panel Members:**

- **Steven Bellovin (Columbia University Computer Science Department)**
- **Marc Rotenberg (Electronic Privacy Information Center)**
- **Ashkan Soltani (Independent Researcher and Consultant)**
- **Daniel Weitzner (MIT Computer Science and Artificial Intelligence Lab)**

- 2:00 – 2:15**      **Break**
- 2:15 – 4:00**      **Panel III: Policy Perspective**  
**Facilitators: Elisebeth Collins Cook and David Medine, Board Members**
- Panel Members:**
- **James Baker (formerly DOJ Office of Intelligence and Policy Review)**
  - **Michael Davidson (formerly Senate Legal Counsel)**
  - **Sharon Bradford Franklin (The Constitution Project)**
  - **Elizabeth Goitein (Brennan Center for Justice)**
  - **Greg Nojeim (Center for Democracy and Technology)**
  - **Nathan Sales (George Mason School of Law)**
- 4:00 – 4:10**      **Break**
- 4:10 – 4:30**      **Open for Public Comment**
- 4:30**              **Closing Comments (David Medine, PCLOB Chairman)**

*\*Affiliations are listed for identification purposes only.*