



PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

STRATEGIC PLAN

2016 - 2018

July 31, 2015



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MESSAGE FROM THE BOARD

We are pleased to present the Privacy and Civil Liberties Oversight Board's ("Board") Strategic Plan for the fiscal years 2016-2018. This plan will be the foundation for our initiatives to help ensure that the executive branch's counterterrorism actions appropriately protect privacy and civil liberties.

More than a decade after the September 11, 2001 terrorist attacks, the United States continues to face threats of terrorism. The executive branch's efforts to combat such threats are the focus of our work. While recognizing the critical importance of these counterterrorism activities, we also recognize the risk that some of these efforts may impact individuals' privacy and civil liberties. Our agency's mission is rooted in the belief that our nation can simultaneously protect both our security and our liberties.

This Strategic Plan builds on three years of this Board's experience. In our initial years, we have placed a priority on building our internal systems. Our status as an independent agency means that we must develop our own operational capacities, rather than relying on a parent agency's existing infrastructure. In the same period, however, we have vigorously pursued our mission. We focused our initial efforts on the privacy and civil liberties implications of two counterterrorism programs that involved collecting communications data. In 2014,

we completed comprehensive studies of these two programs and announced a short-term agenda.

We now look ahead to plan for 2016 through 2018. We establish goals for our oversight reviews, our advice to the President and other elements of the executive branch, and our strategies to inform Congress, the President, and the public. As a young agency, our Strategic Plan also reflects our continued focus on refining our own capabilities and internal procedures.

We thank the Board's staff for their efforts to develop this plan, and look forward to addressing together the critical issues before us.



David Medine
Chairman of the Board

Rachel L. Brand
Board Member

Elisebeth B. Collins
Board Member

James X. Dempsey
Board Member

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Board Member

EXECUTIVE SUMMARY

The Privacy and Civil Liberties Oversight Board is an independent agency within the executive branch. First established by statute in 2007, the Board began operations in 2012, after the Senate confirmed the Board's initial four members.

The Board's mission is to conduct oversight and provide advice 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. Three key 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 four strategic goals to support the agency's mission and guide its efforts through 2018:

Strategic Goal 1: Conduct effective oversight through reviews of executive branch counterterrorism authorities and activities to ensure appropriate protections for privacy and civil liberties.

Strategic Goal 2: Provide effective advice regarding the consideration of privacy and civil liberties in the development and implementation of counterterrorism legislation, regulation, and policies.

Strategic Goal 3: To the extent consistent with the protection of classified information, promote transparency regarding Board activities and the aspects of executive branch counterterrorism efforts that impact privacy and civil liberties.

Strategic Goal 4: Continue establishing the Board's administrative, management, and governance capabilities.

This strategic plan describes the objectives associated with each goal, as well as the strategies the Board will use to achieve such objectives.

AGENCY OVERVIEW

History

The Privacy and Civil Liberties Oversight Board was created upon the recommendation of the 9/11 Commission, whose 2004 report declared that preventing terrorism does not require sacrificing the values that make us strong. Liberty and security, the Commission wrote, need not be in opposition but instead can be mutually reinforcing:

We must find ways of reconciling security with liberty, since the success of one helps protect the other. The choice between security and liberty is a false choice, as nothing is more likely to endanger America's liberties than the success of a terrorist attack at home. Our history has shown us that insecurity threatens liberty. Yet, if our liberties are curtailed, we lose the values that we are struggling to defend.¹

Legal changes adopted after the September 11 attacks, the Commission noted, “vested substantial new powers” in

the government’s investigative agencies, prompting “concerns regarding the shifting balance of power to the government.”² The Commission found, however, that “there is no office within the government whose job it is to look across the government at the actions we are taking to protect ourselves to ensure that liberty concerns are appropriately considered.”³

To fill that gap, the 9/11 Commission unanimously recommended the creation of what is now the Board. In the words of the Commission: “At this time of increased and consolidated government authority, 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.”⁴

In 2007, Congress responded to this proposal through the Implementing Recommendations of the 9/11 Commission Act, which established the Board as an independent agency within the executive branch.⁵ The agency is led by a bipartisan, five-member Board, comprised of a full-time chairman and four part-time Board members, all of whom are appointed by the President,

¹THE 9/11 COMMISSION REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES, at 395 (2004).

² *Id.* at 394.

³ *Id.* at 395.

⁴ *Id.* at 395.

⁵ See Pub. L. No. 110-53, § 801(a), 121 Stat. 266, 352-58 (2007). Under the Act, the new Board replaced an

earlier agency with the same name that was situated within the Executive Office of the President. See Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, § 1061(b), 118 Stat. 3638, 3684 (2004).

with the advice and consent of the Senate, for staggered six-year terms. No more than three Board members may be from the same political party, and the President must consult with the congressional leadership of the opposing party before appointing members who are not from the President's political party.⁶

Although the Board's authorizing statute was enacted in 2007, the Board did not come into existence as a practical matter until August 2012, when the Board's four part-time members were confirmed by the Senate, providing the Board with a quorum to begin activity. The Board's chairman, who is vested by statute with the exclusive power to hire staff, was confirmed in May 2013, enabling the Board to become fully operational.⁷

Since then, the Board has been building its operations and infrastructure while simultaneously pursuing its statutory mission — most notably playing a lead role in addressing pressing questions about the scope of surveillance carried out by the Intelligence Community.

Authority

The Board has two purposes under its authorizing statute:

(1)[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

(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.⁸

These purposes encompass two core functions: (1) conducting oversight and (2) providing advice.

In its oversight role, the Board is authorized to continually review the substance and implementation of executive branch regulations, policies, procedures, and information sharing practices relating to efforts to protect the nation from terrorism, in order to ensure that privacy and civil liberties are protected. The Board also is authorized to continually review any other actions of the executive branch relating to efforts to protect the nation from terrorism, in order to determine whether such actions appropriately protect privacy and civil liberties and whether they are consistent with governing laws, regulations, and policies regarding privacy and civil liberties.⁹

⁶ See 42 U.S.C. § 2000ee(h)(2).

⁷ See *id.* § 2000ee(j)(1). Before the chairman's Senate confirmation, the Board relied on a small number of detailees from other federal agencies to begin standing

up the Board as a functioning agency. See *id.* § 2000ee(j)(2).

⁸ See *id.* § 2000ee(c).

⁹ See *id.* § 2000ee(d)(2).

In its advice role, the Board is authorized to review proposed legislation, regulations, and policies related to efforts to protect the nation from terrorism (as well as the implementation of new and existing policies and legal authorities), in order to advise the President and the elements of the executive branch on ensuring that privacy and civil liberties are appropriately considered in the development and implementation of such legislation, regulations, and policies.¹⁰

The Board is also authorized, when appropriate, to make recommendations to the privacy and civil liberties officers of certain agencies with counterterrorism functions, and to coordinate the activities of those officers on relevant interagency matters.¹¹

Another duty of the Board under its authorizing statute is to inform the President, Congress, and the public about its own activities. Appearing and testifying before Congress is one of the Board's statutory functions.¹² Furthermore, the Board reports semiannually to the appropriate committees of Congress and the President on its major activities, findings, conclusions, and recommendations resulting from its advice and oversight

functions.¹³ To promote transparency to the public, the Board is directed to make its reports available to the public to the greatest extent that is consistent with the protection of classified information and applicable law, and to hold public hearings and otherwise inform the public of its activities.¹⁴ Furthermore, the Board conducts its activities consistent with the Government in the Sunshine Act and the Freedom of Information Act.¹⁵

When necessary to carry out its statutory duties, the Board is authorized to access all relevant executive agency records, documents, or other materials, including classified information, and to interview, take statements from, or take public testimony from any executive branch officer or employee. In addition, the Board may submit a written request to the Attorney General that the Attorney General require by subpoena that persons outside of the executive branch produce relevant information to the Board.¹⁶

In addition to the Board's authorizing statute, several other authorities discuss the Board's activities. In 2013, Executive Order 13636 directed the Board to consult with the Department of

¹⁰ See *id.* § 2000ee(d)(1).

¹¹ See *id.* § 2000ee(d)(3).

¹² See *id.* § 2000ee(d)(4).

¹³ See *id.* § 2000ee(e).

¹⁴ See *id.* 2000ee(f).

¹⁵ See 5 U.S.C. § 552; *id.* § 552b; 42 U.S.C. § 2000ee(l)(1).

¹⁶ See 42 U.S.C. § 2000ee(g)(1).

Homeland Security as it assesses the privacy and civil liberties risks associated with cybersecurity activities undertaken by federal agencies pursuant to that executive order.¹⁷ A 2014 Presidential Policy Directive (“PPD-28”) regarding signals intelligence encouraged the Board to provide the President with a report that assesses the implementation of any matters contained within the directive that fall within its mandate.¹⁸ In 2015, Congress passed the USA FREEDOM Act, which allows presiding judges of the Foreign Intelligence Surveillance Court to consider recommendations for individuals to serve as amicus curiae from any source, including Board members.¹⁹

Challenges

Shaped by these statutory and executive branch authorities, the Board’s structure and functions can create challenges. At times, the Board may need to reconcile its oversight function and its advice function as they relate to a particular agency. Additionally, as a bipartisan body with five independent members, the Board must coordinate multiple viewpoints and that coordination can lengthen the time for making decisions. Also, in its early years, the Board has faced operational challenges as a small,

new, and independent agency working to address significant agency-building needs with four part-time Board members and a startup budget.

Opportunities

The Board’s structure and functions also create distinct opportunities for the Board to ensure that civil liberties and privacy are appropriately considered and protected in the government’s efforts to prevent terrorism. The Board is uniquely positioned as an independent, bipartisan oversight and advice board with access to classified information. By offering its independent but informed views and analyses, the Board is able both to assist the executive branch in formulating policy regarding counterterrorism efforts, and to add an important voice to broader discussions about striking the right balance between liberty and security in those efforts.

¹⁷ See Exec. Order No. 13636, Improving Critical Infrastructure Cybersecurity, § 5 (Feb. 12, 2013).

¹⁸ See Presidential Policy Directive—Signals Intelligence Activities, § 5(b) (PPD-28) (Jan. 17, 2004).

¹⁹ See Uniting and Strengthening America By Fulfilling Rights and Ensuring Effective Discipline Over Monitoring Act of 2015, Pub. L. No. 114-23 § 401, 129 Stat. 268, 279-281 (2015).

VISION, MISSION, AND VALUES

VISION

A nation that simultaneously counters terrorism and protects privacy and civil liberties.

MISSION

The Board conducts oversight and provides advice 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 the executive branch's counterterrorism efforts on privacy and civil liberties and help to inform debate about their proper scope. In addition, the Board strives to make its own activities as transparent as possible, to foster confidence that it is approaching its mission with the care that

this mission deserves. 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.

Rigor – The Board strives for the highest standard of quality in its analysis and recommendations. When examining counterterrorism efforts, the Board takes care to understand those efforts in all of their complexity. In assessing whether such efforts are consistent with the law, the Board strives to be thorough and accurate. When recommending changes to those efforts, the Board seeks to consider fully the foreseeable impact of its recommendations.

2016-2018 STRATEGIC GOALS

Strategic Goal 1: Conduct effective oversight through reviews of executive branch counterterrorism authorities and activities to ensure appropriate protections for privacy and civil liberties.

Strategic Goal 2: Provide effective advice regarding the consideration of privacy and civil liberties in the development and implementation of counterterrorism legislation, regulation, and policies.

Strategic Goal 3: To the extent consistent with the protection of classified information, promote transparency regarding Board activities and the aspects of executive branch counterterrorism efforts that impact privacy and civil liberties.

Strategic Goal 4: Continue establishing the Board's administrative, management, and governance capabilities.

The following sections explain the Board's plan to accomplish these strategic goals. Each section begins with a summary of the Board's plan to accomplish one of the goals. Next, the sections state the Board's strategic objectives, which provide additional detail about the intended outcomes or anticipated impact related to a goal. Finally, the sections specify the Board's strategies to achieve its objectives over the next three years.

STRATEGIC GOAL 1

Conduct effective oversight through reviews of executive branch counterterrorism authorities and activities to ensure appropriate protections for privacy and civil liberties.

SUMMARY

Through oversight, the Board reviews existing counterterrorism regulations, policies, procedures, and activities to determine whether they are consistent with governing laws, regulations, and policies regarding privacy and civil liberties and to ensure the protection of privacy and civil liberties. When appropriate, the Board may recommend steps to improve such protection.

Oversight is a critical mechanism for the Board to accomplish its mission. Recognizing both the constraints on its own resources and the impact of its inquiries on other agencies' resources, the Board will focus its oversight reviews on priority areas. At the same time, the Board seeks to oversee a diverse set of issues and executive branch agencies and components, so that the Board can develop and apply a range of knowledge and expertise.

To make its oversight effective, the Board aims to provide reviews and recommendations that are credible, implementable, and constructive. Key strategies to achieve this objective include applying the Board's core values of integrity and rigor and refining the Board's oversight procedures.

OBJECTIVE 1.1

Review a portfolio of issues that focus on priority areas and are diverse.

Strategies to Accomplish Objective 1.1

- Conduct regular outreach to the executive branch, Congress, other government and non-government entities, and the public to assist the Board in identifying authorities and activities for potential review.
- Refine and apply the Board's procedures for selecting oversight projects.
- Ensure that the Board's oversight reviews relate to agencies and components both outside and inside the Intelligence Community.
- Ensure that the Board's oversight reviews relate to civil liberties concerns, in addition to privacy concerns.

OBJECTIVE 1.2

Provide oversight reviews and recommendations that are credible, implementable, and constructive.

Strategies to Accomplish Objective 1.2

- Review executive branch regulations, policies, procedures, and activities with rigor and integrity.
- Ensure that any Board recommendations are constructive by considering the feasibility of implementation and communicating the recommendations clearly.
- Promote and monitor implementation of Board recommendations.
- Refine and apply written procedures that describe the Board's approach to conducting oversight reviews, including the Board's means for designating particular projects as "oversight" or "advice."

STRATEGIC GOAL 2

Provide effective advice regarding the consideration of privacy and civil liberties in the development and implementation of counterterrorism legislation, regulations, and policies.

SUMMARY

The Board provides advice to the President and executive branch departments, agencies, and elements to ensure that privacy and civil liberties are appropriately considered in the development and implementation of legislation, regulations, and policies related to efforts to protect the nation against terrorism. Especially if provided early in the policymaking process, advice can be a particularly effective tool for assisting the executive branch in balancing the need to protect the nation from terrorism with the need to protect privacy and civil liberties.

Over the next three years, the Board seeks to increase its opportunities to provide advice. Additionally, the Board aims to provide advice that is credible, implementable, and constructive. Strategies to accomplish both of these objectives include conducting analyses with rigor and integrity, providing advice that is timely, and developing written procedures that describe how the Board provides advice.

As outlined in statute, the Board will also continue to support and provide guidance to agency privacy and civil liberties officers.

OBJECTIVE 2.1

Expand opportunities for the Board to provide advice to the President and executive branch departments, agencies, and elements regarding the consideration of privacy and civil liberties in the development and implementation of counterterrorism authorities.

OBJECTIVE 2.2

Provide credible, implementable, and constructive advice to the President and executive branch departments, agencies, and elements.

Strategies to Accomplish Objectives 2.1 and 2.2

- Develop the relationships necessary for the Board to engage with the executive branch early in the consideration of new authorities or proposals to retain or enhance existing governmental powers.
- 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.

- Conduct analyses with rigor and integrity.
- Provide timely responses to requests for advice.
- Ensure that any Board recommendations are constructive by considering the feasibility of implementation and communicating the recommendations clearly.
- Promote and monitor implementation of Board recommendations.
- Refine and apply written procedures that describe the Board’s approach to providing advice, including the Board’s means for designating particular projects as “oversight” or “advice” and its approach to handling pre-decisional, deliberative information.

OBJECTIVE 2.3

Support and provide guidance to agency privacy and civil liberties officers.

Strategies to Accomplish Objective 2.3

- Continue providing guidance to agency privacy and civil liberty officers to help their semiannual reports better inform Congress, agency heads, and the Board about agency privacy and civil liberties activities.
- Engage regularly with agency privacy and civil liberties officers to identify and develop additional opportunities for inter-agency coordination or other collaboration.

STRATEGIC GOAL 3

To the extent consistent with the protection of classified information, promote transparency regarding the Board's activities and the aspects of executive branch counterterrorism efforts that impact privacy and civil liberties.

SUMMARY

Transparency is one of the three key values that guide the Board's work. The Board recognizes that national security concerns necessitate the protection of certain information and that some of its reports may require classified annexes or need to be classified in their entirety. At the same time, 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. The Board will advance transparency both through its own actions and by encouraging and supporting other agencies' actions to increase government transparency, in a manner consistent with national security.

OBJECTIVE 3.1

Inform the public about the Board's activities and promote transparency to the public about federal counterterrorism authorities and activities, to the extent that is consistent with national security.

Strategies to Accomplish Objective 3.1

- Conduct regular public hearings and public meetings regarding the Board's activities.
- Conduct regular meetings with government and non-government entities regarding the Board's activities.
- Make the Board's reports publicly available to the greatest extent that is consistent with the protection of classified information and applicable law.
- Where appropriate, request "public interest" declassification of information pursuant to Executive Order 13526 on Classified National Security Information.
- In a manner consistent with the protection of classified information, identify publicly the subjects of the Board's oversight reviews.
- 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 federal counterterrorism authorities and activities to the extent consistent with national security.

OBJECTIVE 3.2

Regularly inform Congress and the President about the Board's activities.

Strategies to Accomplish Objective 3.2

- Maintain open communication regarding the Board's activities, including its oversight and advice functions.
- Provide regular briefings, as well as semiannual reports, appearances, and testimony.

STRATEGIC GOAL 4

Continue establishing the Board’s administrative, management, and governance capabilities.

SUMMARY

The Board’s success depends on a strong organizational foundation. As the Board matures, a critical priority is strengthening its core operating practices. To achieve this objective, the Board will continue developing and applying internal policies and procedures. These policies and procedures will ensure that the Board can operate effectively, efficiently, and in a manner that respects its bipartisan, multi-member structure; arrive at clear decisions that reflect the judgment of the Board; and comply with applicable statutes and regulations.

The Board’s need to review and analyze counterterrorism authorities and activities requires that it conduct its work in a secure environment with access to classified information and resources. Thus, the Board has identified two strategic objectives that focus on institutionalizing risk-based security policies and ensuring compliance with mandated requirements and best practices for physical security and cybersecurity.

A skilled and motivated workforce and effective use of the Board’s limited resources are also essential for the Board to achieve its mission. Through two other strategic objectives, the Board will continue to focus on developing its workforce and strategically managing its resources.

The Board’s last strategic objective regards its required relocation. The Board’s current office space is scheduled for demolition in late 2016. Thorough planning for a seamless relocation will ensure continuity in the Board’s operations.

OBJECTIVE 4.1

Strengthen the Board’s core operating practices.

Strategies to Accomplish Objective 4.1

- Continue identifying ways in which the Board can accomplish its mission more effectively and efficiently.
- Continue refining and applying key internal policies and procedures that will guide Board members and staff as they carry out the Board’s mission.

OBJECTIVE 4.2

Continue to identify, develop, and maintain best practices for the security and protection of the Board's facilities, personnel, and information.

Strategies to Accomplish Objective 4.2

- Coordinate with the appropriate agencies to maintain an accredited facility for the processing, storage, use, and discussion of classified information, including Sensitive Compartmented Information.
- Maintain and advance a Personnel Security Program.
- Coordinate with the Intelligence Community and adhere to all security requirements to ensure classified information systems are protected in accordance with established policies and procedures.
- Continue to develop and implement staff training and education regarding physical, personnel, and information security requirements.

OBJECTIVE 4.3

Deliver reliable, effective, and secure technology solutions needed to fulfill the Board's mission.

Strategies to Accomplish Objective 4.3

- Create a resilient, agile, and secure infrastructure through the Federal Risk Management Framework.
- Acquire cost-effective technology using strategically sourced tools leveraging federal Lines of Business services and General Services Administration ("GSA") and other contracts and purchase agreements.
- Advance knowledge management, collaboration, and information sharing through information technology to facilitate the Board's business and records management.
- Mature and expand access to secure mobile and cloud-based services in support of the Office of Management and Budget's Cloud First Initiative.
- Reduce risk through compliance, risk assessment, vulnerability management, continuous monitoring, threat analysis, and on-going user education awareness and training.
- Collaborate with federal partners on cybersecurity solutions, threat indicators, and best practices.
- Implement training, awareness, and education programs to promote an enriched information technology and cybersecurity environment.

OBJECTIVE 4.4

Recruit and retain talent, develop a diverse, highly qualified workforce, and promote a culture dedicated to mission success.

Strategies to Accomplish Objective 4.4

- Recruit highly qualified permanent staff and detailees from other federal agencies.
- Promote adaptation to new priorities.
- Develop and implement personnel policies, guidance, and workforce plans that inspire and motivate employees and support mission success.

OBJECTIVE 4.5

Effectively and efficiently manage Board resources.

Strategies to Accomplish Objective 4.5

- Strategically align resources with current and future goals and objectives.
- Continue agency-wide planning that is linked and responsive to the budget development process.
- To ensure that the Board's operations are maintained without interruption, implement shared services agreements with other agencies, as appropriate, for support services that are not managed "in-house."

OBJECTIVE 4.6

Relocate the Board's staff, property, and operations to a new physical location in 2016.

Strategies to Accomplish Objective 4.6

- Procure and, if necessary, build-out a new location that meets security standards and requirements.
- Physically relocate staff, property, and business operations in a manner that minimally impacts the Board's mission, including by working with GSA and/or other appropriate agencies in setting up the necessary agreements or contracts.
- Transition classified and unclassified technology and other systems utilizing agreements with the appropriate agencies.

CONCLUSION

This plan will guide the Board's efforts to advance its mission effectively and efficiently. Through its 2016-2018 goals and objectives, the Board aims to focus on oversight, advice, and transparency priorities, while managing institutional risks and challenges.

This document outlines the challenges and the opportunities that the Board's structure and functions create. The Board also faces the risk that unanticipated circumstances or events may require modification of its goals and priorities. The Board seeks to maintain the flexibility to adapt to any such external changes, including changes in the law, the development of new counterterrorism activities, or new information regarding existing counterterrorism activities.

Through prioritization and flexibility, the Board intends to deliver analyses and recommendations that the executive branch can apply to counterterrorism authorities and activities. The Board's ability to advance its mission through these analyses and recommendations depends, in large part, on its credibility and ability to gain the cooperation of the executive branch. Thus, the Board will continue developing its relationships with executive branch agencies and other entities. To ensure a strong foundation for its activities, the Board will also continue building the agency's operational underpinnings. These efforts will include developing key policies and procedures and finding new office space.

Over the next three years, the Board looks forward to further input from and collaboration with the executive branch, Congress, other government and non-government entities, and the public as it works to accomplish its strategic goals and objectives.

