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OFFICE OF MANAGEMENT AND BUDGET
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THE DIRECTOR

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MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Shaun Donovan
Director

SUBJECT: Role and Designation of Senior Agency Officials for Privacy

This Memorandum revises policies on the role and designation of the Senior Agency Official for Privacy (SAOP), as required by Executive Order 13719, *Establishment of the Federal Privacy Council*.¹ In particular, this Memorandum revises Office of Management and Budget (OMB) guidance on the SAOP's role and responsibilities in light of significant changes in law, policy, and technology that have occurred since OMB last issued guidance in this area. In addition, this Memorandum requires agencies to reassess their agency-wide privacy program and report to OMB on their implementation efforts within 60 days.

Background

On February 9, 2016, the President issued Executive Order 13719, *Establishment of the Federal Privacy Council*,² creating the Federal Privacy Council to serve as the principal inter-agency forum to ensure the effective, efficient, and consistent implementation of privacy policy government-wide. In the Executive Order, the President reinforced the principle that protecting privacy is fundamental to the successful accomplishment of the Government's mission. Moreover, the President stated that the proper functioning of Government requires the public's trust. In order to maintain that trust the Government must strive to uphold the highest standards for creating, collecting, using, processing, storing, maintaining, disseminating, disclosing, and disposing of personally identifiable information (PII).³

In the decade since OMB first required agencies to designate an SAOP, innovations in technology and advancements in information analytics have led to the ability to create, collect, use, process, store, maintain, disseminate, disclose, and dispose of an unprecedented amount of PII. Agencies' use of these technologies presents complex questions and has led to new

¹ Exec. Order No. 13719, Establishment of the Federal Privacy Council, 81 Fed. Reg. 7685 (Feb. 12, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-02-12/pdf/2016-03141.pdf>.

² *Id.*

³ The term "personally identifiable information" means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual. OMB Circular No. A-130, Managing Information as a Strategic Resource (July 28, 2016), available at <https://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a130/a130revised.pdf>.

challenges when protecting privacy. To help ensure that agencies are able to answer these complex questions and meet the new challenges while delivering on agency missions, each agency shall now reassess the structure and resources of its privacy program and the agency's current SAOP designation.

Designation of the SAOP

The head of the agency is ultimately responsible for ensuring that privacy interests are protected and that PII is managed responsibly within the agency. To ensure that agencies effectively carry out the privacy-related functions described in law and OMB policies, Executive Order 13719 requires the head of each agency to designate or re-designate an SAOP who has agency-wide responsibility and accountability for the agency's privacy program. The role and designation of the SAOP shall be governed by the following requirements:

- ***Position.*** The SAOP shall be a senior official at the Deputy Assistant Secretary or equivalent level who serves in a central leadership position at the agency, has visibility into relevant agency operations, and is positioned highly enough within the agency to regularly engage with other agency leadership, including the head of the agency.⁴
- ***Expertise.*** The SAOP shall have the necessary skills, knowledge, and expertise to lead and direct the agency's privacy program and carry out the privacy-related functions described in law and OMB policies.
- ***Authority.*** The SAOP shall have the necessary authority at the agency to lead and direct the agency's privacy program and carry out the privacy-related functions described in law and OMB policies.

When determining whom to designate as the SAOP, agencies should be aware of applicable law.⁵ Moreover, agencies should recognize that privacy and security are independent and separate disciplines. While privacy and security require coordination, they often raise distinct concerns and require different expertise and different approaches. The distinction between privacy and security is one of the reasons that the Executive Branch has established a Federal Privacy Council independent from the Chief Information Officers Council.

⁴ In cases where the head of an agency wishes to designate an official who meets the other criteria in this Memorandum but who is not at the Deputy Assistant Secretary or equivalent level, the agency shall consult with OMB prior to making the designation.

⁵ See, e.g., Consolidated Appropriations Act of 2005, Pub. L. No. 108-447, § 522, 118 Stat. 2809, 3268 (2004); Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, § 803, 121 Stat. 266, 360, 42 U.S.C. § 2000ee-1(f) (2007); Homeland Security Act of 2002, Pub. L. No. 107-296, § 222, 116 Stat. 2135, 2155, 6 U.S.C. § 142 (2002); and Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, § 1174, 119 Stat. 2960, 3124 (2006).

Responsibilities of the SAOP

Each agency shall develop, implement, document, maintain, and oversee an agency-wide privacy program that includes people, processes, and technologies.⁶ The privacy program shall be led by an SAOP who is responsible for ensuring compliance with applicable privacy requirements, developing and evaluating privacy policy, and managing privacy risks consistent with the agency's mission.

- **Policy Making.** The SAOP shall have a central policy-making role in the agency's development and evaluation of legislative, regulatory, and other policy proposals that have privacy implications. In this role, the SAOP shall ensure that the agency considers and addresses the privacy implications of all agency regulations and policies, and shall lead the agency's evaluation of the privacy implications of legislative proposals, congressional testimony, and other materials pursuant to OMB Circular No. A-19.⁷
- **Compliance.** The SAOP shall have a central role in overseeing, coordinating, and facilitating the agency's privacy compliance efforts. In this role, the SAOP shall ensure that the agency complies with applicable privacy requirements in law, regulation, and policy. Relevant authorities include, but are not limited to, the Privacy Act of 1974;⁸ the Paperwork Reduction Act of 1995;⁹ the E-Government Act of 2002;¹⁰ the Health Insurance Portability and Accountability Act of 1996;¹¹ OMB Circular A-130;¹² Privacy Act Implementation: Guidelines and Responsibilities;¹³ OMB Circular A-108;¹⁴ OMB's Final Guidance Interpreting the Provisions of Public Law 100-503, the Computer Matching and Privacy Protection Act of 1988;¹⁵ and OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002.¹⁶

⁶ For information about the general requirements for agency privacy programs, see OMB Circular No. A-130, Managing Information as a Strategic Resource (July 28, 2016), *available at* <https://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a130/a130revised.pdf>.

⁷ See OMB Circular No. A-19, Legislative Coordination and Clearance (Sept. 20, 1979), *available at* https://www.whitehouse.gov/omb/circulars_a019/.

⁸ 5 U.S.C. § 552a.

⁹ 44 U.S.C. chapter 35.

¹⁰ 44 U.S.C. § 3501 note.

¹¹ Pub. L. No. 104-191.

¹² OMB Circular No. A-130, Managing Information as a Strategic Resource (July 28, 2016), *available at* <https://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a130/a130revised.pdf>.

¹³ Privacy Act Implementation: Guidelines and Responsibilities, 40 Fed. Reg. 28,948 (July 9, 1975), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/implementation_guidelines.pdf.

¹⁴ At the time of the issuance of this Memorandum, OMB Circular No. A-108 is forthcoming. Agencies shall continue to apply the requirements in Appendix I of the 2000 version of Circular No. A-130 regarding review, reporting, and publication pertaining to the Privacy Act until OMB issues Circular A-108.

¹⁵ Final Guidance Interpreting the Provisions of Public Law 100-503, the Computer Matching and Privacy Protection Act of 1988, 54 Fed. Reg. 25,818 (June 19, 1989), *available at* https://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/final_guidance_pl100-503.pdf.

¹⁶ OMB Memorandum M-03-22, *OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002* (Sept. 26, 2003), *available at* http://www.whitehouse.gov/omb/memoranda_m03-22.

- **Risk Management.** The SAOP shall manage privacy risks associated with any agency activities that involve the creation, collection, use, processing, storage, maintenance, dissemination, disclosure, and disposal of PII by programs and information systems. The SAOP's review of privacy risks shall begin at the earliest planning and development stages of agency actions and policies that involve PII, and continue throughout the life cycle of the programs or information systems. Appropriately managing privacy risks may require agencies to take steps beyond those required in law, regulation, and policy.

If the SAOP's agency is listed in Section 4(b) of Executive Order 13719 or designated by the Chair of the Federal Privacy Council, the SAOP shall serve on the Federal Privacy Council.¹⁷

At the discretion of the SAOP and consistent with applicable law, other qualified agency personnel may perform particular privacy functions that are assigned to the SAOP. In addition, agencies shall consider establishing privacy programs and privacy officials at sub-agencies, components, or programs where there is a need for privacy leadership in support of the SAOP. In all cases, however, the SAOP shall retain responsibility and accountability for the agency's privacy program, including privacy functions performed by officials at sub-agencies, components, or programs.

Resources of the SAOP and Privacy Program

Agencies shall identify and plan for the financial, human, information, and infrastructural resources that are necessary to carry out the privacy-related functions described in law and OMB policies. When assessing the resource needs of the SAOP and the privacy program, the agency shall consider factors such as the agency's:

- Size and structure, including the agency's geographic presence;
- Mission, and the volume, sensitivity, and uses of PII to support that mission;
- Privacy risks associated with the creation, collection, use, processing, storage, maintenance, dissemination, disclosure, and disposal of PII; and
- Information resources, including planned investments in information technologies that will be used to create, collect, use, process, store, maintain, disseminate, disclose, and dispose of PII.

Implementation

Within 60 days of the issuance of this Memorandum, the head of each agency shall assess the management, structure, and operation of the agency's privacy program, and, if necessary, designate or re-designate a new official to serve as the SAOP. The agency shall report the name, title, and contact information of the SAOP to OMB on the MAX website of the Federal Privacy Council and shall update this information whenever changes occur. In addition, OMB will ask the agency to provide additional information about the role and designation of the SAOP, and the structure and resources of the agency's privacy program, as part of annual reporting under the Federal Information Security Modernization Act of 2014.¹⁸

¹⁷ See *supra* note 1.

¹⁸ 44 U.S.C. chapter 35.

This Memorandum rescinds and replaces OMB Memorandum M-05-08, *Designation of Senior Agency Officials for Privacy* (Feb. 11, 2005). Agencies should consult OMB Circular No. A-130 for definitions of terms used in this Memorandum.¹⁹ If agencies have specific questions about this Memorandum, they may contact OMB at privacy-oira@omb.eop.gov.

Agencies shall implement this Memorandum consistent with applicable law. This Memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees or agents, or any other person.

¹⁹ OMB Circular No. A-130, Managing Information as a Strategic Resource (July 28, 2016), *available at* <https://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a130/a130revised.pdf>.