



Assessment of Selected Data from the Annual Agency Freedom of Information Act Reports

March 16, 2011

Summary

An analysis of data from 25 key agencies shows Freedom of Information Act (FOIA) performance slightly improved in FY 2010, the first full year reported for the Obama administration. The picture emerging on FOIA implementation under President Obama is one of rebuilding openness, not of an immediate turn-around. Several trends have improved from previous years, although most indicators have not returned to the pre-Bush era of openness. In fact, most indicators of openness have not even returned to the average for the Bush years, a period known for secrecy.

It is not easy to turn the ship of state from a culture of secrecy to one of openness. By many indicators, the Obama administration inherited a neglected FOIA system that had been experiencing steady decline in key FOIA performance measure for years. It appears the Obama administration has begun to turn the tide on FOIA performance in 2010. However, the Obama administration will have to continue to improve FOIA performance for several years to approach the averages for the Bush administration or the last years of the Clinton administration.

Strengths

- The number of FOIA requests pending at the end of the fiscal year has dropped dramatically since 2008 – by more than half. Addressing backlogs was a high priority for the Obama administration and it appears that this emphasis has had an impact.
- The percentage of FOIA requests fully granted saw a slight increase after many years of decline
- The percentage of requests denied based on exemptions declined, continuing a decline begun in 2009
- Use of exemptions 2 (internal agency rules), 5 (inter-agency memos), both considered largely discretionary, along with 6 (personal privacy), 7c (personal privacy law enforcement), and 7e (techniques for prosecution) decreased from 2009

Weaknesses

- The use of these same exemptions – 2, 5, 6, 7c, 7e – is still higher than 2008 and most preceding years
- The percentage of requests fully granted remains well below its peak from 1998-2002

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1742 Connecticut Ave. NW
Washington, DC 20009

tel: 202.234.8494
fax: 202-234.8584

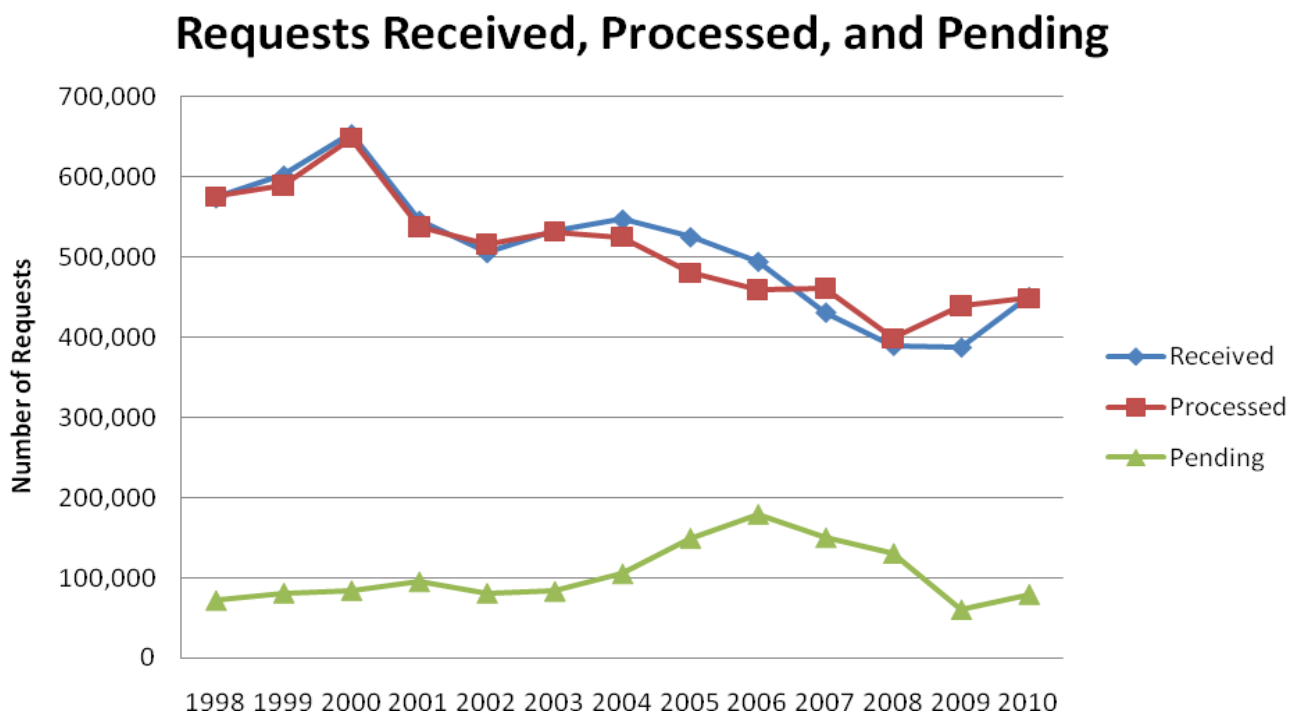
email: ombwatch@ombwatch.org
web: <http://www.ombwatch.org>

Backlogs

Since taking office, the Obama administration has placed a high priority on reducing backlogs. For the purposes of this report, backlogs are the number of FOIA requests pending at the end of a fiscal year. (A more refined definition of backlogs would be the number of requests pending at an agency that are beyond the statutory time period for a response. However, we do not have comparable data going back to 1998 so we are relying on “pending” serving as an approximation for “backlogs.”) The Justice Department and White House personnel have encouraged agencies to reduce backlogs. The December 2009 Open Government Directive called on agencies with significant backlogs to reduce them by 10 percent per year.

Between 1998 and 2006, government-wide pending requests more than doubled, jumping from 72,076 pending FOIA requests at the end of FY1998 to 178,937 requests still pending in FY2006. Much of the backlog increase occurred since 2003. Since 2007 the number of pending requests has continued to drop. The largest drop, however, started when the Obama administration came into office. In 2008 there were 130,359 requests pending, representing 33 percent of all processed requests. Agencies cut that number by more than half in 2009, when pending requests plummeted to 60,707 and just 16 percent of processed requests. The number did go up slightly in 2010 to 79,724 pending request, which were 18 percent of the requests processed.

As the chart below shows, pending requests are roughly the same as at the start of the Bush administration – even though the number of requests received and processed in 2010 is far lower than in the Clinton years. Presumably, the emphasis the Obama administration is placing on backlogs will result in a continued drop in FOIA backlogs.



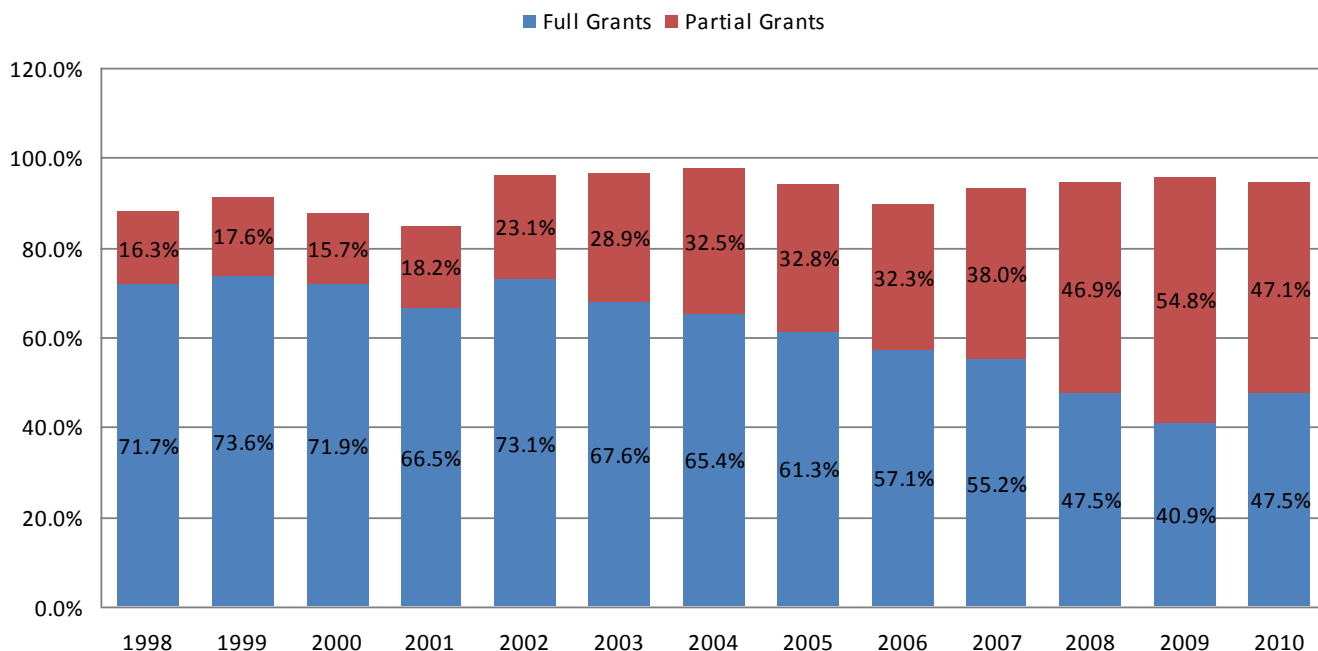
Granting of FOIA Requests

The 2010 annual report represents the first full year of the Obama administration. Overall, the Obama administration granted, in full or in part, 95 percent of all FOIA requests processed in 2010, which is higher than the average of the Clinton (89 percent) or Bush (93 percent) administration years included in this review. However, the Obama administration is relying more heavily on partial releases than full releases, compared to the previous administrations' averages. But it is important to note that in 2010 the percentage of full releases increased for the first time in almost 10 years.

The percentage of FOIA requests fully granted remains far below the average Clinton (72 percent) and Bush (63 percent) administration years included in this review. However, the trend line within the Bush years was a steady decline in the number of fully granted FOIA requests. In 2001, two-thirds of all FOIA requests that were processed were fully granted. By 2008, slightly less than half were fully granted.

In 2009 the percentage of fully granted FOIA requests dropped once more to 41 percent of all processed FOIAs. However, in 2010 it increased back to 48 percent; this is the largest year-over-year increase going back to 1998.

Requests Fully and Partially Granted as Percent of Processed*



* The number processed excludes those denied for non-statutory exemptions

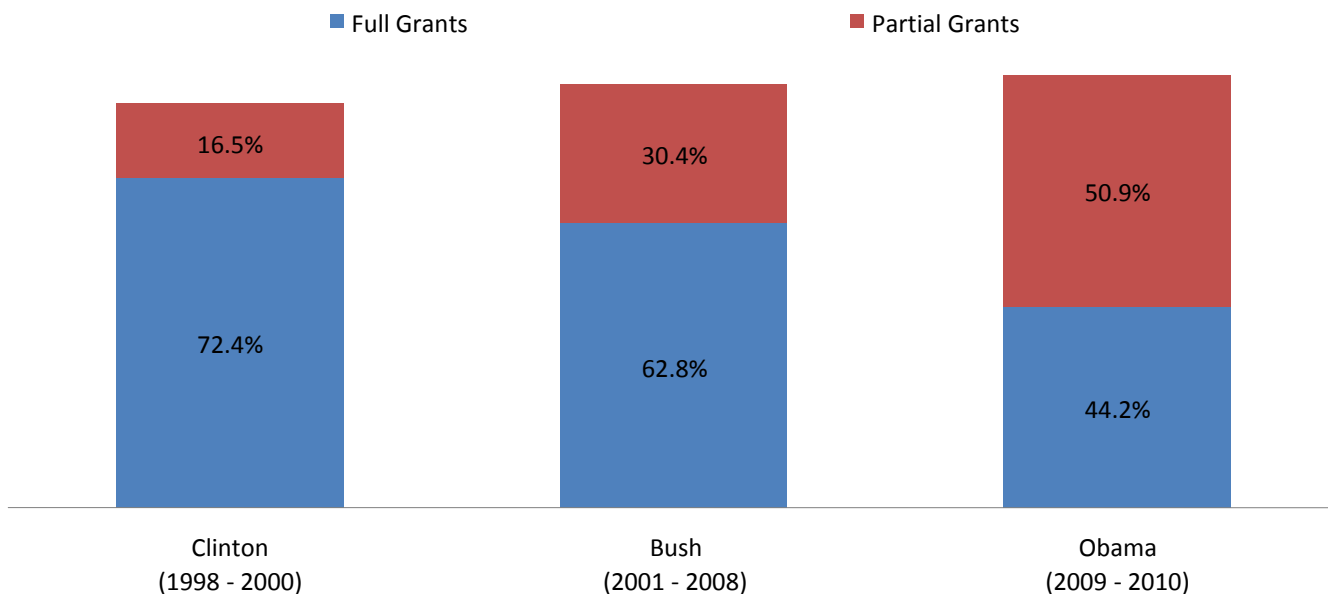
Partially granted FOIA requests can be viewed as either good or bad news. On the good news side is the fact that the entire record was not withheld, and the administration disclosed some elements related to a particular FOIA request – for instance, by redacting a person's Social

Security Number from a record. On the bad news side is the fact that this approach can be used to provide information that is not useful to the requestor but still pumps up overall disclosure numbers under FOIA – i.e., redacting all useful information from a record but still counting it as a "partial" disclosure.

Nearly every year since 1998 the number of partially granted FOIA requests has gone up. However, the largest increase was in 2009 when the number jumped 41 percent, going from 106,977 partial releases in 2008 to 113,942 in 2009. In 2010, the number fell to 109,848, a 12 percent drop, the largest single year drop within the years being studied.

Even though the number of partially granted FOIA requests dropped in 2010, it still amounted to 47 percent of FOIA requests processed. This is significantly higher than the average Clinton (17 percent) and Bush (30 percent) years.

Requests Fully and Partially Granted as Percent of Processed*



* The number processed excludes those denied for non-statutory exemptions

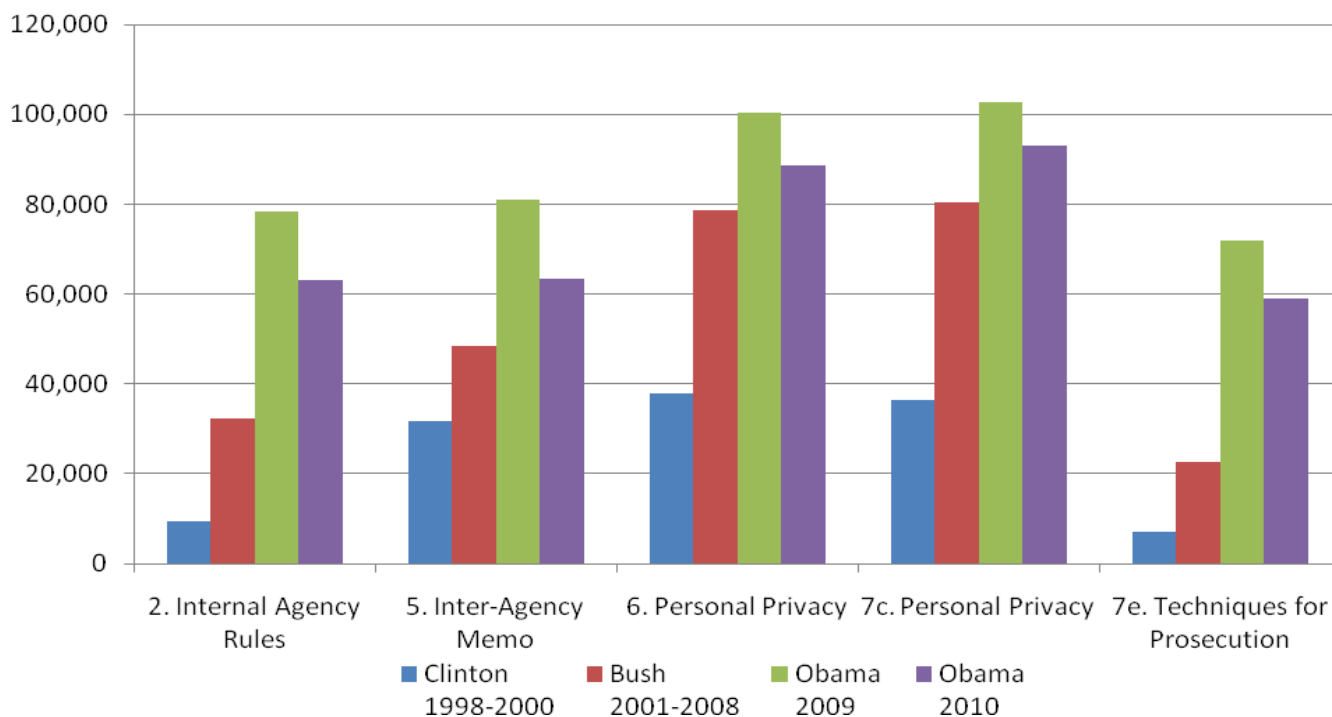
Use of Exemptions

Agencies are required to justify withholding based on a set of exemptions defined by law. The statutory exemptions are:

- 1: National Security
- 2: Internal Agency Rules
- 3: Other Statutory Exemptions
- 4: Proprietary Information, Trade Secrets
- 5: Inter-Agency Memoranda
- 6: Personal Privacy
- 7: Law Enforcement Records
 - 7a: Law Enforcement Proceedings
 - 7b: Depriving the Right to a Fair Trial
 - 7c: Personal Privacy
 - 7d. Identify Confidential Source
 - 7e: Techniques for Prosecution
 - 7f: Endanger Life or Safety
- 8: Financial Institution Reports
- 9: Oil and Gas Well Data

Total use of exemptions in 2010 dropped 13 percent from 2009. The use of exemptions 1, 2, 5, 6, 7b, 7c, 7e, and 9 decreased from 2009, while the use of exemptions 3, 4, 7a, 7d, 7f, and 8 increased. Each of the most widely-claimed exemptions – exemptions 2, 5, 6, 7c, and 7e – decreased considerably, with drops ranging from 9 to 22 percent. These five exemptions account for more than 85 percent of all reasons for withholding; all other exemptions are used much less frequently. Even as such, use of these exemptions continued to be much higher than in 2008 or most previous years.

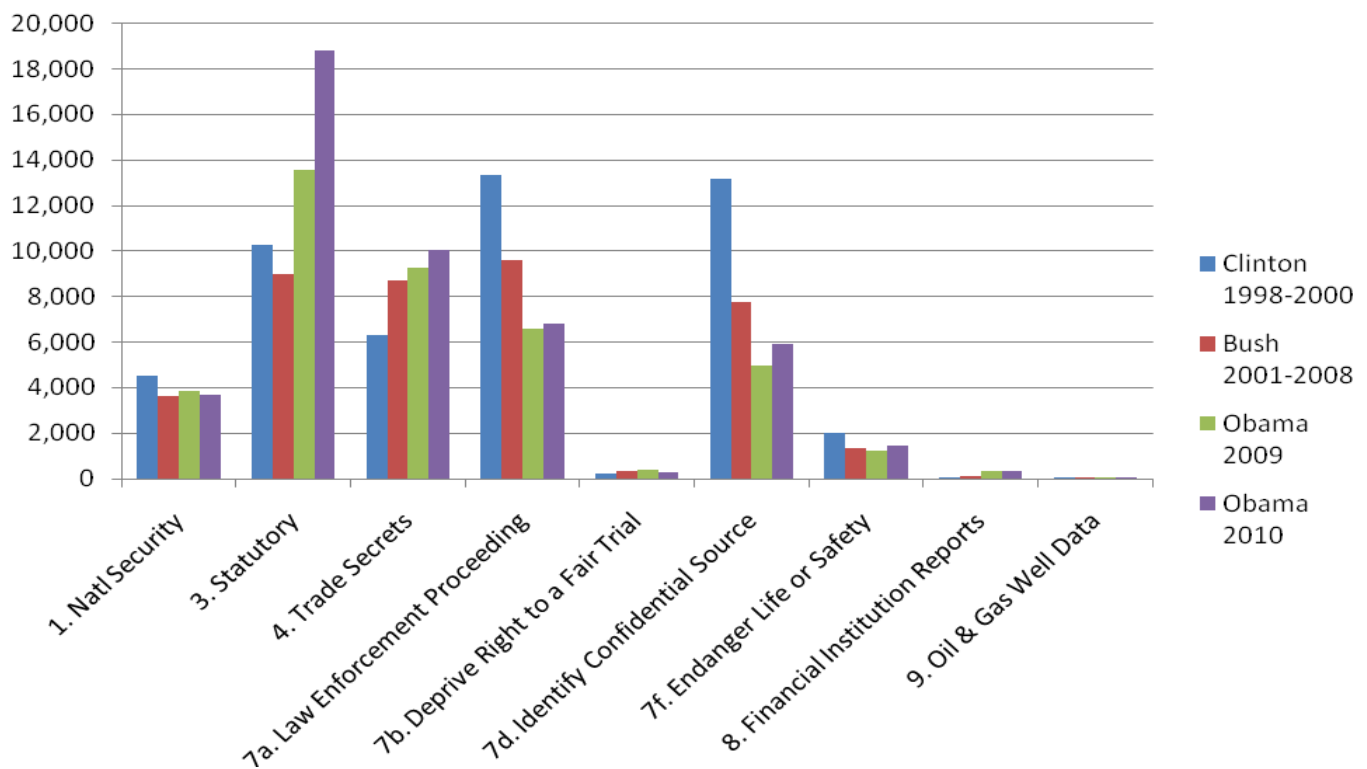
Use of FOIA Exemptions



Open government experts scrutinize exemptions 2 and 5 especially closely because they are considered to be the most discretionary. While disclosing information sensitive for personal privacy or trade secrets reasons might harm citizens, disclosing internal agency rules or inter-agency memoranda could only harm the government. Claims under exemptions 2 and 5 decreased from their 2009 peak, but are still higher than 2008 and every previous year except 2007, and well above both the Clinton and Bush averages.

In 2010, Exemption 3 (Other Statutory Exemptions) was the fast growing exemption. It grew 39 percent over 2009, reaching 18,833 requests, the largest number of denials for Exemption 3 for any year under this study.

Use of FOIA Exemptions



Methodology

These data come from the Annual Freedom of Information Act (FOIA) reports filed by federal agencies with the Department of Justice and are based on a fiscal year. For data from 1998 to 2007, we have used a compilation of annual FOIA reports prepared by the Coalition of Journalists for Open Government.¹ Our analysis covers 25 federal agencies including most cabinet-level departments,² the list of agencies is at the end of this analysis.

¹ "An Opportunity Lost: An in-depth analysis of FOIA performance from 1998 to 2007," Coalition of Journalists for Open Government, July 3, 2008,

² The Departments of Health and Human Services and Veterans Affairs are excluded, as is the Social Security Administration, because a considerable proportion of their FOIA requests are filed as joint Privacy Act requests seeking information about the requester, which are processed differently than other FOIA requests.

When agencies process FOIA requests, the results fall into one of four categories: 1) Full Grant; 2) Partial Grant and Partial Denial; 3) Full Denial Based on Exemptions; or 4) Full Denial Based on Other Reasons. Full and partial granting of a FOIA request means that the requestor either received everything that was requested or a portion thereof. Full denial based on exemptions means the requestor did not receive any records because of one of the exemptions that exist in FOIA. Full denial based on other reasons means that the requestor did not receive any records requested because of fee-related reasons or because an agency determined it did not have the records, the request was not reasonably described, the request was withdrawn, the request was duplicate, or the request was generally improper under FOIA.

For this analysis, we have removed the denials for other reasons from the number of requests processed by the agency when assessing the percentage of requests that have been approved or denied. This adjustment does not mean that denials for other reasons are not a potential area of concern. Increased problems with fees or claims that FOIA requests aren't reasonably described could indicate other problems with FOIA implementation at agencies. However, by removing these requests, we can obtain a better understanding of how agencies are acting on requests that were fully processed.

Additional constraints on the data include:

- Reporting guidelines were changed in 2008 to exclude joint FOIA/Privacy Act requests; prior to 2008 these requests were included in the data. This has a particularly large impact on number of FOIA requests received and processed by the Department of Health and Human Services, the Department of Veterans Affairs, and the Social Security Administration. Accordingly, we have excluded data from these agencies for consistency purposes across the years.
- Government agencies and their activities have changed during the period examined (e.g. the Department of Homeland Security was created in 2003).
- Reporting guidelines were changed in 2008 to require agencies to report backlogged requests (i.e., requests pending but past the statutory deadlines). Prior to 2008, only total pending requests were reported. Thus this report indicates the number of pending requests, not backlogged requests.
- These data, while important, are not the only useful indicators of FOIA performance.

Department and Agencies Covered in this Study

Department of Agriculture	Central Intelligence Agency
Department of Commerce	Consumer Product Safety Commission
Department of Defense	Equal Employment Opportunity Commission
Department of Education	Environmental Protection Agency
Department of Energy	General Services Administration
Department of Homeland Security (after 2003)	National Archives and Records Administration
Department of Housing and Urban Development	National Aeronautics and Space Administration
Department of the Interior	National Labor Relations Board
Department of Justice	Nuclear Regulatory Commission
Department of Labor	National Science Foundation
Department of State	Securities and Exchange Commission
Department of Transportation	Small Business Administration
Department of the Treasury	