(U) SEMIANNUAL ASSESSMENT OF COMPLIANCE WITH PROCEDURES AND GUIDELINES ISSUED PURSUANT TO SECTION 702 OF THE FOREIGN INTELLIGENCE SURVEILLANCE ACT, SUBMITTED BY THE ATTORNEY GENERAL AND THE DIRECTOR OF NATIONAL INTELLIGENCE

(U) **Reporting Period: 01 December 2019 – 31 May 2020**

December 2021

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(U) SEMIANNUAL ASSESSMENT OF COMPLIANCE WITH PROCEDURES AND GUIDELINES ISSUED PURSUANT TO SECTION 702 OF THE FOREIGN INTELLIGENCE SURVEILLANCE ACT, SUBMITTED BY THE ATTORNEY GENERAL AND THE DIRECTOR OF NATIONAL INTELLIGENCE

December 2021

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(U) FACT SHEET

(U) Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of the Foreign Intelligence Surveillance Act (FISA) Joint Assessments

(U) This Fact Sheet provides an overview of the *Semiannual Assessments of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of the Foreign Intelligence Surveillance Act*. These assessments are commonly referred to as "joint assessments," and are submitted by the Attorney General and the Director of National Intelligence (DNI). As of December 2021, twenty-four joint assessments have been submitted.

(U) **Joint Assessment Basics:**

- *(U) Why is the joint assessment required?* The FISA Amendments Act of 2008 (50 U.S.C. § 1881a(m)(1)) requires the Attorney General and the DNI to assess compliance with certain procedures and guidelines issued pursuant to FISA Section 702.
- *(U) What period is covered by a joint assessment?* Each joint assessment covers a six-month period: 01 December through 31 May or 01 June through 30 November. This joint assessment covers the period from 01 December 2019 through 31 May 2020.
- *(U) Who receives it?* Each joint assessment is submitted to the following oversight entities: the Foreign Intelligence Surveillance Court (FISC), relevant congressional committees, and the Privacy and Civil Liberties Oversight Board (PCLOB).
- *(U) What is being assessed?* The Attorney General and the DNI jointly assess the Government's compliance with Attorney General Guidelines and with FISC-approved "targeting," "minimization," and "querying" procedures.
- *(U) What are targeting, minimization, and querying procedures?* Section 702 allows for the targeting of (i) non-United States persons (ii) reasonably believed to be located outside the United States (iii) to acquire foreign intelligence information. To ensure that all three requirements are appropriately met, Section 702 requires targeting procedures. Targeting is effectuated by tasking communications facilities (such as telephone numbers and electronic communications accounts) to U.S. electronic communications service providers. Section 702 also requires minimization procedures to minimize and protect any non-public information of United States persons that may be incidentally collected when appropriately targeting non-United States persons abroad for foreign intelligence information. Querying procedures set rules for using United States person and non-United States person identifiers to query Section 702-acquired information.
- *(U) What compliance and oversight efforts underlie the joint assessment?* Agencies employ extensive compliance measures to implement Section 702 in accordance with procedural, statutory, judicial, and constitutional requirements. A joint oversight team consisting of experts from the Department of Justice (DOJ) and the Office of the Director of National Intelligence (ODNI) oversees these measures. Each incident of non-compliance (*i.e.*, compliance incident) is documented, reviewed by the joint oversight team, remediated, and

reported to the FISC and relevant congressional committees. The joint assessment summarizes trends and assesses compliance (including calculating the compliance incident rate for the relevant reporting period) and may include recommendations to help prevent compliance incidents or increase transparency.

- *(U) What government agencies are involved with implementing Section 702?* The National Security Agency (NSA), the Federal Bureau of Investigation (FBI), the Central Intelligence Agency (CIA), and the National Counterterrorism Center (NCTC). Each joint assessment discusses how these agencies implement the authority.
- *(U) Why is the joint assessment classified?* The joint assessment is classified to allow the Government to provide the FISC, the congressional oversight committees, and the PCLOB a complete assessment of the Section 702 program, while at the same time protecting sources and methods. They are carefully redacted for public release in the interest of transparency.
- *(U) What is the format of the joint assessment?* The joint assessment generally contains an Executive Summary, five sections, and an Appendix. Sections 1 and 5 provide an introduction and conclusion. Section 2 details internal compliance efforts by the agencies that implement Section 702, interagency oversight, training efforts, and efforts to improve the implementation of Section 702. Section 3 compiles and presents data acquired from compliance reviews of the targeting and minimization procedures. Section 4 describes compliance trends. The joint assessment describes the extensive measures undertaken by the Government to ensure compliance with court-approved targeting, minimization, and querying procedures; to accurately identify, record, and correct errors; to take responsive actions to remove any erroneously obtained data; and to minimize the chances that mistakes will re-occur.
- *(U) What are the types of compliance incidents discussed?* Generally, the joint assessment groups incidents into six or seven categories. Categories 1-4 (tasking incidents, detasking incidents, notification delays, and documentation errors) discuss non-compliance with targeting procedures. Category 5 discusses incidents of non-compliance with minimization procedures, such as improper dissemination of information acquired pursuant to Section 702, and querying procedures, such as non-compliant queries of Section 702-acquired information using United States person identifiers. When appropriate, a category discussing incidents of overcollection is included. Additionally, the last category is a catch-all category for incidents that do not fall into one of the other categories. The actual number of the compliance incidents is classified; the percentage breakdown of those incidents is unclassified and reported in the joint assessment. Additionally, because Section 702 collection occurs with the assistance of U.S. electronic communications service providers who receive a Section 702(i) directive, the joint assessment includes a review of any compliance incidents by such service providers.

(*This 2-Page Fact Sheet is Unclassified When Separated from this Assessment.)*

(U) Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of the Foreign Intelligence Surveillance Act, Submitted by the Attorney General and the Director of National Intelligence

December 2021

(U) **Reporting Period: 01 December 2019 – 31 May 2020**

(U) EXECUTIVE SUMMARY

(U) The Foreign Intelligence Surveillance Act of 1978 (FISA), 50 U.S.C. § 1801 *et seq*., as amended, requires the Attorney General and the Director of National Intelligence (DNI) to assess compliance with certain procedures and guidelines issued pursuant to FISA Section 702 (hereinafter, "Section 702"), and to submit such assessments to the Foreign Intelligence Surveillance Court (FISC) and relevant congressional committees at least once every six months. Section 702 authorizes, subject to restrictions imposed by the statute and required targeting, minimization, and querying procedures, the targeting of non-United States persons reasonably believed to be located outside the United States in order to acquire foreign intelligence information. The present assessment sets forth the twenty-fourth joint compliance assessment of the Section 702 program. This assessment covers the period from 01 December 2019 through 31 May 2020 (hereinafter, the "reporting period") and accompanies the Semiannual Report of the Attorney General Concerning Acquisitions under Section 702 of the Foreign Intelligence Surveillance Act as required by Section 707(b)(1) of FISA (hereinafter, the "Section 707 Report"). The Department of Justice (DOJ) submitted the Section 707 Report on 04 September 2020; it covers the same reporting period as the joint assessment.

(U) This joint assessment is based upon the compliance assessment activities that have been conducted by a joint oversight team consisting of experts from DOJ's National Security Division (NSD) and the Office of the Director of National Intelligence (ODNI) (hereinafter, the "joint oversight team").

(U) This joint assessment finds that the agencies have continued to implement the procedures and follow the guidelines in a manner that reflects a focused and concerted effort by agency personnel to comply with the requirements of Section 702. The personnel involved in implementing the authorities are appropriately focused on directing their efforts at non-United States persons reasonably believed to be located outside the United States for the purpose of acquiring foreign intelligence information. Processes are in place to implement these authorities and to impose internal controls for compliance and verification purposes.

(U) However, notwithstanding a focused and concerted effort by Federal Bureau of Investigation (FBI) personnel to comply with the requirements of Section 702, misunderstandings regarding FBI's systems and FBI's querying procedures caused a large number of query errors. In particular, a single multifactor query at one field office accounted for a significant number of compliance incidents during this reporting period. Even so, the numbers of FBI query errors, and FBI compliance incidents overall, reported during this reporting period were significantly lower than they have been in the past few reporting periods.

(U) As the below metrics illustrate, this reporting period, almost half of which occurred during the coronavirus pandemic, saw a significant decrease in the total number of identified compliance incidents. At the time of writing this joint assessment, the joint oversight team is not able to determine to what extent these compliance trends reflect a decrease in the number of compliance incidents that occurred[1] – whether as a result of the coronavirus pandemic or other factors – as opposed to difficulties in discovering and reporting compliance incidents as a result of the pandemic. As it pertains to the latter, NSD and ODNI's onsite reviews were affected by the pandemic during the latter part of this reporting period. Specifically, during the latter part of the reporting period, NSD and ODNI postponed some of their onsite reviews at the National Security Agency (NSA); temporarily suspended their onsite reviews at the Central Intelligence Agency (CIA), FBI, and the National Counterterrorism Center (NCTC) (such reviews were ultimately conducted remotely instead); and suspended reviews at FBI field offices.

(U) During this reporting period, the overall compliance incident rate – calculated as the total number of compliance incidents reported during the relevant reporting period, expressed as a percentage of the average number of facilities tasked for acquisition on any given day during the reporting period – was 0.46 percent, which represents a significant decrease from the prior period (20.28 percent).[2]

(U) This assessment also includes the targeting compliance incident rate for NSA (see Figure 14, pg. 38), which represents the number of NSA targeting compliance incidents, expressed as a percentage of the average number of facilities tasked for acquisition during the reporting period. During this reporting period, the targeting compliance incident rate for NSA was 0.10 percent, a decrease from the prior reporting period (0.14 percent).

(U) Given that querying errors comprised a substantial number of compliance incidents during this and several prior reporting periods, this joint assessment also presents an additional metric that is designed to reflect FBI's rate of compliance with its procedures when conducting queries of unminimized Section 702-acquired information. This additional metric, the query error rate for FBI (see Figure 18, pg. 43), represents the total number of FBI query compliance incidents reported to the FISC during the reporting period, expressed as a percentage of the total number of

[1] ~~(TS//SI//NF)~~ The joint oversight team assesses that a number of factors related to the coronavirus pandemic may have contributed to a decrease in the actual number of compliance incidents during this reporting period. As one example, reduced travel during the pandemic likely resulted in fewer Section 702 targets traveling to the United States, thus reducing the likelihood that detasking delays would occur as a result of such travel. [redacted]

[2] (U) As explained in past joint assessments and detailed later in this current joint assessment, the overall compliance incident rate is an imperfect metric, in part because certain of the compliance incidents included in the numerator do not bear a meaningful relation to the targeting activities that form the denominator. For example, as detailed below, the number of FBI query errors is not related to the average number of facilities subject to acquisition.

FBI queries audited by NSD[3] in connection with the field office reviews during which NSD identified such FBI query compliance incidents.[4] During this reporting period, the query error rate for FBI was 0.82 percent, a significant decrease from the prior reporting period (36.59 percent).

(U) In recent years, FBI field office reviews (which occur onsite) have been responsible for discovering a significant portion of FBI's minimization and querying incidents that are reported in each joint assessment. Because FBI field office reviews were suspended during a portion of this reporting period, incidents that might typically be discovered by NSD during those field office reviews were not discovered while the reviews were suspended.[5] Some of the most significant errors identified as a result of these reviews have been those related to batch queries, a functionality available in an FBI system that permits users to query multiple identifiers in sequential queries as part of a single batch job. As a result of the batch query function, a single batch job may consist entirely or largely of noncompliant queries and therefore result in thousands of improper queries; as such, the discovery of a single noncompliant batch job can substantially affect both the overall and FBI query compliance incident rates. Just a handful of non-compliant batch queries have been responsible for the wide-ranging compliance incident rates over the last several reporting periods. Whether such a noncompliant batch job involving thousands of compliance incidents would or would not have been discovered during the portion of the reporting period in which FBI field office reviews were suspended is unknown. The fact that a single noncompliant batch job can cause thousands of compliance incidents, however, may explain why even though there was only a 21.63 percent decrease in queries audited by NSD, there was a 98.22 percent decrease in FBI query incidents identified in this reporting period.[6] However, NSD identified query compliance issues in each field office audited during this reporting period and during calendar year 2019. And, since NSD resumed remote query reviews in 2021, NSD has continued to identify query compliance incidents in each field office audited. FBI implemented certain remedial measures in fall 2019 to address query compliance issues and, since that time, the joint oversight team has continued to work with FBI to take additional corrective actions to address the query compliance issues. The remedial measures undertaken by FBI are discussed further below.

[3] (U) ODNI only participates in a select number of FBI field office reviews. Because NSD conducts primary oversight for field office reviews, NSD will be referenced in this context throughout the report, rather than the joint oversight team.

[4] ~~(S//NF)~~ The number of queries audited and included in this total are queries contained in query logs provided to NSD by FBI that were run in FBI [redacted] NSD has, in prior query audits, found that a small percentage of queries that were included in particular query logs were not run against unminimized FISA-acquired information, to include unminimized Section 702-acquired information.

[5] (U) Onsite field office reviews were suspended in March 2020, at the onset of the coronavirus pandemic and related travel restrictions in the United States. Thus, during this reporting period, NSD was conducting field office reviews for only a little more than three months. NSD resumed field office reviews remotely in February 2021, at which time NSD selected for sampling a range of historical queries conducted throughout 2020 by users in multiple FBI field offices.

[6] (U) FBI's minimization and querying incidents reported in this joint assessment were first reported to the FISC during this reporting period, but certain of those incidents were discovered in connection with field office reviews conducted during prior reporting periods.

(U) SECTION 1: INTRODUCTION

(U) FISA Section 702(m)(1)[7] requires the Attorney General and the Director of National Intelligence (DNI) to assess compliance with certain procedures and guidelines issued pursuant to Section 702 and to submit such assessments to the Foreign Intelligence Surveillance Court (FISC) and relevant congressional committees at least once every six months. To fulfill this requirement, a team of oversight personnel from the Department of Justice's (DOJ) National Security Division (NSD) and the Office of the Director of National Intelligence (ODNI) (hereinafter, the "joint oversight team") normally conducts compliance reviews to assess whether the authorities under Section 702 have been implemented in accordance with the applicable procedures and guidelines, discussed herein; however, as explained above, onsite compliance reviews during this reporting period were impacted by the coronavirus pandemic. This report sets forth NSD and ODNI's 24th joint compliance assessment, based on regular and modified oversight activities during this reporting period, under Section 702, covering the period 01 December 2019 through 31 May 2020 (hereinafter, the "reporting period").[8]

(U) Section 702 requires that the Attorney General, in consultation with the DNI, adopt targeting, minimization, and querying procedures, as well as guidelines. A primary purpose of the guidelines is to ensure compliance with the limitations set forth in subsection (b) of Section 702, which are as follows:

> An acquisition authorized under subsection (a) –
>
> (1) may not intentionally target any person known at the time of acquisition to be located in the United States;
>
> (2) may not intentionally target a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States;
>
> (3) may not intentionally target a United States person reasonably believed to be located outside the United States;
>
> (4) may not intentionally acquire any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States; and
>
> (5) shall be conducted in a manner consistent with the fourth amendment to the Constitution of the United States.

(U) The Attorney General's Guidelines for the Acquisition of Foreign Intelligence Information Pursuant to the Foreign Intelligence Surveillance Act of 1978, as amended (hereinafter, "the Attorney General's Acquisition Guidelines") were adopted by the Attorney General, in consultation with the DNI, on 05 August 2008.

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[7] (U) 50 U.S.C. §1881a(m)(1).

[8] (U) This report accompanies the Semiannual Report of the Attorney General Concerning Acquisitions under Section 702, which was previously submitted on 04 September 2020, as required by Section 707(b)(1) of FISA (hereinafter, the "Section 707 Report"). This 24th Joint Assessment covers the same reporting period as the 24th Section 707 Report.

(U) During this reporting period, the Government acquired foreign intelligence information under Attorney General and DNI authorized Section 702(h) certifications that targeted non-United States persons reasonably believed to be located outside the United States in order to acquire different types of foreign intelligence information. The foreign intelligence information must fall within a specific type (*i.e.*, category) of foreign intelligence information that has been authorized pursuant to the Section 702(h) certifications.[9] Four agencies are primarily involved in implementing Section 702: the National Security Agency (NSA), the Federal Bureau of Investigation (FBI), the Central Intelligence Agency (CIA), and the National Counterterrorism Center (NCTC). An overview of how these agencies implement the authority appears in the Appendix of this assessment.

(U) Section Two of this joint assessment provides a comprehensive overview of oversight measures the Government employs to ensure compliance with the targeting, minimization, and querying procedures, as well as the Attorney General's Acquisition Guidelines. Section Three compiles and presents data acquired from the joint oversight team's compliance reviews in order to provide insight into the overall scope of the Section 702 program, as well as trends in targeting, reporting, and the minimization of United States person information. Section Four describes compliance trends. All of the specific compliance incidents for the reporting period have been previously described in detail in the corresponding Section 707 Report. As with the prior joint assessments, some of those compliance incidents are analyzed here to determine whether there are patterns or trends that might indicate underlying causes that could be addressed through additional measures, and to assess whether the agency involved has implemented processes to prevent reoccurrences. Finally, this joint assessment contains an Appendix, which as noted above, includes a general description of the oversight at each agency.

(U) As noted above, FBI had a significant number of compliance incidents related to querying of Section 702-acquired information. FBI amended its 2018 querying procedures, which were in effect for the first six days of this reporting period, in response to concerns raised by the FISC and the Foreign Intelligence Surveillance Court of Review (FISC-R) regarding the sufficiency of those procedures. The FISC ultimately determined that FBI's amended querying procedures were adequate, and the joint oversight team engaged with FBI to implement those amended procedures and provided the FISC with periodic reporting regarding that implementation. FBI's

9 [redacted]

query-related compliance incidents are detailed below, along with the remedial measures FBI has taken and is taking to address them.

(U) The joint oversight team finds that the agencies have continued to implement their respective procedures and follow the guidelines in a manner that reflects a focused and concerted effort by agency personnel to comply with the requirements of Section 702 during this reporting period. However, notwithstanding a focused and concerted effort by FBI personnel to comply with the requirements of Section 702, misunderstandings regarding FBI's systems and FBI's querying procedures caused a large number of query errors.

(U) In its ongoing efforts to reduce the number of future compliance incidents, the Government will continue to focus on measures to improve (a) inter- and intra-agency communication, (b) training, and (c) systems used in the handling of Section 702-acquired data, including those systems needed to ensure that appropriate purge practices are followed and that certain disseminated reports are withdrawn as required. The joint oversight team will also continue to monitor agency practices to ensure appropriate remediation steps are taken to prevent, whenever possible, reoccurrences of the types of compliance incidents discussed herein and in the Section 707 Report. Each joint assessment provides, as appropriate, updates on these on-going efforts.

(U) SECTION 2: OVERSIGHT OF THE IMPLEMENTATION OF SECTION 702

(U) The implementation of Section 702 is a multi-agency effort. As described in detail in the Appendix, NSA and FBI each acquires certain types of data pursuant to their own Section 702 targeting procedures. NSA, FBI, CIA, and NCTC[10] each handles Section 702-acquired data in accordance with its own minimization and querying procedures.[11] There are differences in the way each agency implements its procedures resulting from unique provisions in the procedures themselves, differences in how these agencies utilize Section 702-acquired data, and efficiencies gained by leveraging existing agency-specific systems and processes to implement Section 702 authorities. Because of these differences in practice and procedure, there are corresponding differences in each agency's internal compliance programs and in the external NSD and ODNI oversight programs.

(U) The joint oversight team, consisting of members from NSD, the ODNI Office of Civil Liberties, Privacy, and Transparency (CLPT), the ODNI Office of General Counsel (OGC), and the ODNI Mission Integration Directorate Mission Performance, Analysis, and Collection (MPAC) Division, conducts independent Section 702 oversight activities. The team members play complementary roles in the review process. The following section describes the oversight activities of the joint oversight team, the results of which, in conjunction with the internal oversight conducted by the reviewed agencies, provide the basis for this joint assessment.

(U) I. Joint Oversight of NSA

(U) Under the process established by the Attorney General and DNI's certifications, all Section 702 targeting is initiated pursuant to NSA's targeting procedures. Additionally, NSA is responsible for conducting post-tasking checks of all Section 702-tasked communication facilities[12]

[10] (U) As discussed herein, CIA and NCTC receive Section 702-acquired data from NSA and FBI.

[11] (U) Each agency's Section 702 targeting, minimization, and querying procedures are approved by the Attorney General and reviewed by the FISC. The targeting, minimization, and querying procedures that were in effect during this assessment's reporting period were those approved as part of the 2018 and 2019 certifications. In October 2018, the FISC found that CIA, NCTC and NSA's querying procedures were sufficient but that FBI's querying procedures were not sufficient in certain respects. After the FISC's decision in October 2018 and a decision by the FISC-R in July 2019, the Government amended FBI's querying procedures and submitted those to the FISC in August 2019. The FISC approved the amended FBI querying procedures in September 2019. FBI's 2019 querying procedures were approved and went into effect on 06 December 2019, and were, therefore, effective for almost the entirety of this reporting period.

(U) On 08 October 2019, the DNI released, in redacted form, each of the 2018 minimization procedures and the 2018 querying procedures for NSA, FBI, CIA, and NCTC, as well the 2018 targeting procedures for NSA and FBI. On 04 September 2020, the DNI released, in redacted form, each of the 2019 minimization procedures and the 2019 querying procedures for NSA, FBI, CIA, and NCTC, as well the 2019 targeting procedures for NSA and FBI. The 2018 and 2019 procedures are posted on ODNI's *IC on the Record* website.

[12] (U) Section 702 authorizes the targeting of non-United States persons reasonably believed to be located outside the United States. This *targeting* is effectuated by *tasking* communication facilities (*i.e.*, selectors), including but not limited to telephone numbers and electronic communications accounts, to Section 702 electronic communication service providers. The oversight review process, which is described in this joint assessment, applies to the tasking of every communication facility, regardless of the type of facility. A fuller description of the Section 702 targeting process may

(also referred to as selectors) once collection begins. NSA must also minimize its collection in accordance with its minimization procedures and must conduct queries in accordance with its querying procedures. Each of these responsibilities is detailed in the Appendix. Given its central role in the Section 702 process, NSA has devoted substantial oversight and compliance resources to monitoring its implementation of the Section 702 authorities. NSA's internal oversight and compliance mechanisms are further described in the Appendix.

(U) NSD and ODNI's joint oversight of NSA's implementation of Section 702 consists of periodic compliance reviews, which NSA's targeting procedures require,[13] as well as the investigation and reporting of specific compliance incidents. During this reporting period, onsite reviews were conducted at NSA on the dates shown in Figure 1.

(U) **Figure 1: NSA Reviews**

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Date of NSA Onsite Review	Targeting, Minimization, and Querying Reviewed
28 February 2020	01 December 2019 – 31 January 2020
19 June 2020	01 February 2020 – 31 May 2020

(U) Figure 1 is UNCLASSIFIED.

~~(S//NF)~~ Reports for each of these reviews document the relevant time period of the review, the number and types of communication facilities tasked, and the types of information that NSA relied upon, as well as provide a detailed summary of the findings for that reporting period. [redacted] with the Section 707 Report, as required by Section 707(b)(1)(F) of FISA; [redacted] were provided to the congressional committees with the subsequent Section 707 report.

(U) The joint oversight review process for NSA targeting begins well before the onsite review. Prior to each onsite review, NSA electronically sends the tasking record (known as a tasking sheet) for *each* facility tasked during the reporting period to NSD and ODNI. Members of the joint oversight team initially review the tasking sheets, with ODNI team members sending any questions they may have concerning the tasking sheets to NSD, who then prepares a detailed report of the findings, including any questions and requests for additional information. NSD shares this report with the ODNI members of the joint oversight team. During this initial review, the joint oversight team determines whether the tasking sheets meet the documentation standards required by NSA's targeting procedures and provide sufficient information to ascertain the basis for NSA's foreignness determinations. The joint oversight team also reviews whether the tasking was in conformance with the targeting procedures and statutory requirements (*i.e.*, that the target is a non-

be found in the Appendix. This assessment uses the terms facilities and selectors interchangeably and does not make a substantive distinction between the two terms.

[13] (U) NSA's targeting procedures require that the onsite reviews occur approximately every two months. Due to the coronavirus pandemic, NSD and ODNI did not conduct a planned onsite review during April 2020. Instead, the April 2020 onsite review was consolidated with the June 2020 onsite review.

United States person reasonably believed to be located outside the United States, and that the target is reasonably expected to possess, receive, and/or likely communicate foreign intelligence information related to the categories of foreign intelligence information specified in the certifications). For those tasking sheets that, on their face, meet the standards and provide sufficient information, no further supporting documentation is requested. The joint oversight team then identifies the tasking sheets that did not provide sufficient information and requests additional information.

(U) During the onsite review, the joint oversight team examines the cited documentation underlying these identified tasking sheets, together with NSA's Office of Compliance for Cyber and Operations (OCCO), NSA attorneys, and other NSA personnel, as required. The joint oversight team works with NSA to answer questions, identify issues, clarify ambiguous entries, and provide guidance on areas of potential improvement. Interaction continues following the onsite reviews in the form of electronic and telephonic exchanges to answer questions and clarify issues.

(U) The joint oversight team also reviews NSA's minimization of Section 702-acquired data. NSD currently reviews all of the serialized reports (ODNI reviews a sample) that NSA has disseminated and identified as containing Section 702-acquired United States person information. The team also reviews a sample of serialized reports that NSA has disseminated and identified as containing Section-702 acquired *non*-United States person information. NSD and ODNI also review a sample of NSA disseminations to certain foreign government partners made outside of its serialized reporting process. These disseminations consist of information that NSA has evaluated for foreign intelligence and minimized, but which may not have been translated into English.

(U) NSA's Section 702 querying procedures provide that any use of United States person identifiers as terms to identify and select Section 702-acquired data must be accompanied by a statement of facts establishing that the use of any such identifier as a selection term is reasonably likely to return foreign intelligence information, as defined in FISA. With respect to queries of Section 702-acquired *content* using a United States person identifier, the procedures provide that the United States person identifier must first be approved by NSA's OGC. The joint oversight team reviews all approved United States person identifiers to ensure compliance with NSA's querying procedures.[14] For each approved identifier, NSA also provides information detailing why the proposed use of the United States person identifier would be reasonably likely to return foreign intelligence information, the date that the United States person identifier was authorized to be used

[14] (U) On 30 April 2020, the DNI publicly released ODNI's seventh annual Transparency Report[s]*: Statistical Transparency Report Regarding Use of National Security Authorities for Calendar Year 2019* (hereinafter, the "CY2019 Transparency Report"). Pursuant to reporting requirements proscribed by the USA FREEDOM Act (*see* 50 U.S.C. § 1873(b)(2)(B)), the 2019 Transparency Report provided the "estimated number of search terms concerning a known United States person used to retrieve the unminimized contents of communications obtained under Section 702" (emphasis added) for the entire calendar year of 2019. The CY2019 Transparency Report only covers one month during this assessment's reporting period (December 2019 through May 2020). Subsequently, the DNI publicly released the CY2020 Transparency Report on 30 April 2021; the CY2020 Transparency Report covers the remaining months of this assessment's reporting period.

as a query term,[15] and any other relevant information. In addition, with respect to queries of Section 702-acquired *metadata* using a United States person identifier, NSA's querying procedures require that NSA analysts document the basis for each such metadata query prior to conducting the query. NSD reviews the documentation for 100 percent of such metadata queries that NSA provides to NSD.[16]

(U) Additionally, the joint oversight team investigates and reports incidents of noncompliance with NSA's targeting, minimization, and querying procedures, as well as with the Attorney General Acquisition Guidelines. While some of these incidents may be identified during the reviews, most are identified by NSA analysts or by NSA's internal compliance program. NSA is also required to report certain events that may not be incidents of non-compliance. For example, NSA is required to report *all* instances in which Section 702 acquisition continued while a targeted individual was in the United States, whether or not NSA had any knowledge of the target's travel to the United States.[17] The purpose of such reporting is to allow the joint oversight team to assess whether a compliance incident has occurred and to confirm that any necessary remedial action is taken. Investigations of these incidents sometimes result in requests for supplemental information. All compliance incidents identified by these investigations are reported to the congressional committees in the Section 707 Report and to the FISC.

(U) II. Joint Oversight of FBI

(U) FBI fulfills various roles in the implementation of Section 702, which are set forth in further detail in the Appendix. First, FBI is authorized under the certifications to acquire foreign intelligence information. Those acquisitions must be conducted pursuant to FBI's Section 702 targeting procedures.

~~(S//NF)~~ Second, FBI also [redacted] Pursuant to its own authority, FBI is authorized to [redacted] from electronic communication service providers by targeting facilities that NSA

[15] (U) NSA's Section 702 querying procedures provide that NSA may approve the use of a United States person identifier to query Section 702-acquired *content* for no longer than a period of one year and that such approvals may be renewed for periods up to one year.

[16] (U) Also pursuant to reporting requirements prescribed by the USA FREEDOM Act (*see* 50 U.S.C. § 1873(b)(2)(C)), the CY2019 Transparency Report provided the "estimated number of queries concerning a known United States person used to retrieve the unminimized noncontents [(*i.e.*, metadata)] information obtained under Section 702" (emphasis added) for the entire calendar year of 2019. The same statistics were provided in the CY2020 Transparency Report.

[17] (U) If NSA had no prior knowledge of the target's travel to the United States and, upon learning of the target's travel, "detasked" (*i.e.*, stopped collection against) the target's facility without delay, as is required by NSA's targeting procedures, the collection while the target was in the United States would not be considered a compliance incident under NSA's targeting procedures, although the collection would generally be subject to purge under the applicable minimization procedures. The joint oversight team carefully considers, and where appropriate, obtains additional facts regarding every reported detasking decision to ensure that NSA's tasking and detasking complied with its targeting procedures.

designates (hereinafter, "Designated Accounts"). FBI conveys [redacted] from the electronic communications service providers [redacted] for processing in accordance with the agencies' FISC-approved minimization procedures.

~~(S//NF)~~ Third, FBI may receive [redacted][18] unminimized Section 702-acquired communications. Such communications must be minimized pursuant to FBI's Section 702 minimization procedures. As described below, FBI has a process for nominating to NSA new facilities to be targeted pursuant to Section 702.

~~(S//NF)~~ NSD and ODNI's oversight program is designed to ensure FBI's compliance with statutory and procedural requirements for each of those three roles. The joint oversight team generally conducts monthly reviews at FBI headquarters of FBI's compliance with its targeting procedures and quarterly reviews at FBI headquarters of FBI's compliance with its minimization procedures. However, due to the coronavirus pandemic, the joint oversight team did not conduct onsite reviews at FBI headquarters after mid-March 2020. Instead, the joint oversight team conducted reviews of FBI's application of its targeting and minimization procedures remotely. As a result of FBI's reduced staffing due to the coronavirus pandemic, FBI was unable to gather the information necessary to finalize two of the reports before the production to Congress of the Section 707 Report; the remaining reports were subsequently finalized with the help of FBI and were provided to the congressional committees with subsequent Section 707 reports. For this reporting period, reviews were conducted during the dates shown in Figure 2.

(U) **Figure 2: FBI Reviews**

UNCLASSIFIED

Approximate Date of FBI Review	Targeting and Minimization Reviewed
04 and 05 February 2020 (onsite)	December 2019 targeting decisions
April 2020 (remote)	January 2020 targeting decisions
June 2020 (remote)	February and March 2020 targeting decisions; 01 December 2019 – 31 May 2020 minimization decisions
August 2020 (remote)	April and May 2020 targeting decisions

(U) Figure 2 is UNCLASSIFIED.

(U) In conducting targeting reviews, the joint oversight team reviews the targeting checklists completed by FBI analysts and supervisory personnel involved in the process, together with supporting documentation.[19] The joint oversight team also reviews a sample of other files to identify any other potential compliance issues. FBI analysts, supervisory personnel, and attorneys

[18] [redacted]

[19] ~~(S//NF)~~ If FBI's application of its targeting procedures to [redacted] returns information from the databases discussed in FBI's targeting procedures, then FBI provides a checklist that shows the results of its database queries. If FBI's database queries returned results that FBI identifies as relevant to the target's location or citizenship status, then FBI also provides the joint oversight team with supporting documentation. [redacted] During this reporting period, the joint oversight team reviewed a sample of checklists and supporting documentation provided by FBI for approved requests for which information is returned by FBI's database queries.

from FBI's National Security and Cyber Law Branch (NSCLB) are available to answer questions and provide supporting documentation. The joint oversight team provides guidance on areas of potential improvement.

(U) In conducting FBI minimization reviews, the joint oversight team reviews documents related to FBI's application of its Section 702 minimization procedures. The team reviews a sample of communications that FBI has marked in its systems as both meeting the retention standards and containing United States person information. The team also reviews all disseminations by the relevant FBI headquarters unit of information acquired under Section 702 that FBI identified as potentially containing non-publicly available information concerning unconsenting United States persons.

(U) During a portion of this reporting period, NSD conducted minimization and querying reviews at FBI field offices in order to review the retention, querying, and dissemination decisions made by FBI field office personnel with respect to Section 702-acquired data. NSD did not conduct any reviews at FBI field offices in April or May 2020 because it suspended its onsite reviews in March 2020 in response to the coronavirus pandemic. Subsequent to this reporting period, in February 2021, NSD resumed conducting remote reviews of queries of unminimized FISA collection conducted by some FBI field offices. In the reviews conducted prior to the pandemic, NSD reviewed a sample of retention decisions made by FBI personnel in connection with investigations involving the acquisition of data pursuant to Section 702 and a sample of disseminations of information acquired pursuant to Section 702 that FBI identified as potentially containing non-publicly available information concerning unconsenting United States persons. NSD also reviewed a sample of queries by FBI personnel in FBI systems that contain unminimized FISA-acquired information, including Section 702-acquired information. Those reviews evaluate whether the queries complied with the requirements in FBI's FISA minimization and querying procedures, including its Section 702 querying procedures. In addition, as a result of a Court-ordered reporting requirement first set forth in the FISC's *November 6, 2015 Memorandum Opinion and Order*[20] for queries conducted after 4 December 2015, as well as certain requirements in the FISA statute, NSD reviews those queries to determine if any such queries were conducted solely for the purpose of returning evidence of a crime. If such a query was conducted, NSD would seek additional information as to whether FBI personnel received and reviewed Section 702-acquired information of or concerning a United States person in response to such a query. Pursuant to the FISC's opinion and order, such queries must subsequently be reported to the FISC.

(U) As detailed in the attachments to the Attorney General's Section 707 Report, NSD conducted minimization and querying reviews at seven FBI field offices during this reporting period

[20] (U) The FISC's 6 November 2015 Opinion and Order approved the 2015 FISA Section 702 Certifications. On 19 April 2016, the DNI, in consultation with the Attorney General, released in redacted form, this *Opinion and Order* on the ODNI public website *IC on the Record*. This Court-ordered reporting requirement was carried forward in subsequent Section 702 FISC opinions.

~~(S//NF)~~ The title of the FISC's 6 November 6 2015 opinion is [redacted]

and reviewed cases involving Section 702-tasked facilities.[21] ODNI received written summaries regarding all of the reviews from NSD. Those reviews are further discussed in Section IV below.

~~(S//NF)~~ Separately, in order to evaluate FBI [redacted] acquisition [redacted] and provision of [redacted] the joint oversight team conducts an annual process review with FBI's technical personnel to ensure that those activities complied with applicable minimization procedures. While outside this reporting period, the most recent annual process review occurred in June 2021.

~~(S//NF)~~ As further described in detail in the Appendix, FBI nominates potential Section 702 [redacted] FBI has established internal compliance mechanisms and procedures to oversee proper implementation of its Section 702 authorities. Those processes are further described in the Appendix.

(U) Throughout the reporting period, the joint oversight team also investigates potential incidents of noncompliance with FBI's targeting, minimization, and querying procedures, the Attorney General's Acquisition Guidelines, or other agencies' procedures in which FBI is involved.[22] Those investigations are coordinated with FBI's Office of General Counsel (OGC) and may involve requests for further information; meetings with FBI legal, analytical, and/or technical personnel; or review of source documentation. Compliance incidents identified by those investigations are reported to the congressional committees in the Section 707 Report and to the FISC.

(U) III. Joint Oversight of CIA

(U) As further described in detail in the Appendix, although CIA does not directly engage in targeting or acquisition, it does nominate potential Section 702 targets to NSA. Because CIA nominates potential Section 702 targets to NSA, the joint oversight team typically conducts onsite visits at CIA,[23] and includes the results of those visits in the bimonthly NSA review reports discussed above. CIA has established internal compliance mechanisms and procedures to oversee proper implementation of its Section 702 authorities.

[21] ~~(S//NF)~~ During those field office reviews, NSD reviewed [redacted] cases involving Section 702-tasked facilities.

[22] (U) Insofar as FBI nominates facilities for tasking and reviews content that may indicate that a target is located in the United States or is a United States person, some investigations of possible noncompliance with NSA's targeting procedures can also involve FBI.

[23] (U) Due to the coronavirus pandemic, the joint oversight team did not conduct onsite reviews at CIA during this reporting period. Instead, the joint oversight team conducted reviews of CIA's application of its minimization and querying procedures remotely over a period of several weeks.

(U) The reviews also focus on CIA's application of its Section 702 minimization procedures and querying procedures.[24] Reports for each of those reviews have previously been provided to the congressional committees with the Section 707 Report, as required by Section 707(b)(1)(F) of FISA. For this reporting period, the joint oversight team conducted reviews of CIA's application of its minimization and querying procedures during the dates shown in Figure 3.

(U) **Figure 3: CIA Reviews**

UNCLASSIFIED

Approximate Dates of CIA Review	Minimization and Querying Reviewed
April – July 2020	01 December 2019 – 31 January 2020
July – August 2020	01 February 2020 – 31 March 2020
July – August 2020	01 April 2020 – 31 May 2020

(U) Figure 3 is UNCLASSIFIED.

(U) As a part of the typical onsite reviews, the joint oversight team examines documents related to CIA's retention, dissemination, and querying of Section 702-acquired data. The team reviews a sample of communications acquired under Section 702 and identified as containing United States person information that have been minimized and retained by CIA. Reviewers ensure that communications have been properly minimized and discuss with CIA personnel issues involving the proper application of CIA's minimization procedures. The team also reviews all disseminations of information acquired under Section 702 that CIA identified as potentially containing United States person information.[25] In addition, NSD reviews CIA's written foreign intelligence justifications for all queries using United States person identifiers of the content of unminimized Section 702-acquired communications to assess whether those queries were compliant with CIA's querying procedure requirements that such queries are reasonably likely to return foreign intelligence information, as defined by FISA.

~~(S//NF)~~ CIA may receive [redacted] unminimized Section 702-acquired communications. Such communications must be minimized pursuant to CIA's minimization procedures. Additionally, and as further described in detail in the Appendix, CIA nominates potential Section 702 targets to NSA. [redacted] the joint oversight team conducts onsite visits at CIA to review CIA's original source documentation [redacted] the results of those visits are included in the bimonthly NSA review reports discussed previously. CIA has established internal compliance mechanisms and procedures to oversee proper implementation of its Section 702 authorities. Those processes are further described in the Appendix.

[24] (U) The query requirements for CIA that were in effect during this reporting period are contained in CIA's Section 702 querying procedures for the 2018 and 2019 Certifications, which were posted on *IC on the Record* on 08 October 2019, and 04 September 2020, respectively.

(U) [25] ~~(S//NF)~~ Due to the sensitive nature of these disseminations, they must be reviewed in person at CIA. On 23 March 2021, and 24 March 2021, representatives from NSD and ODNI conducted an onsite review at CIA of the disseminations from this reporting period.

(U) In addition to the bimonthly reviews, the joint oversight team also investigates and reports incidents of noncompliance with CIA's minimization and querying procedures, the Attorney General Acquisition Guidelines, or other agencies' procedures in which CIA is involved.[26] Investigations are coordinated through CIA's FISA Program Office and CIA's Office of General Counsel (CIA OGC), and when necessary, may involve requests for further information, meetings with CIA legal, analytical and/or technical personnel, or the review of source documentation. All compliance incidents identified by those investigations are reported to the congressional committees in the Section 707 Report and to the FISC.

(U) IV. Joint Oversight of NCTC

~~(S//NF)~~ NCTC is authorized to receive unminimized Section 702 information and also has access to certain FBI systems containing minimized Section 702 information pertaining to counterterrorism. NCTC's processing, retention, and dissemination of such information is subject to its Section 702 minimization procedures. Unlike NSA, FBI, and CIA, NCTC does not directly engage in targeting or acquisition, nor does it nominate potential Section 702 targets to NSA. NCTC may receive [redacted] unminimized Section 702-acquired communications. Such communications must be minimized pursuant to NCTC's minimization procedures. NCTC has established internal compliance mechanisms and procedures to oversee proper implementation of its Section 702 authorities. As part of the joint oversight of NCTC's access, receipt, and processing of unminimized Section 702 information and minimized Section 702 information from FBI, the joint oversight team typically conducts onsite visits at NCTC, and the results of those visits are included in bimonthly NCTC review reports. However, due to the coronavirus pandemic, the joint oversight team conducted only one onsite review at NCTC during the review period. NSD and ODNI conducted the other two bimonthly reviews during the review period remotely.

(U) The reviews focus on NCTC's application of its Section 702 minimization procedures and querying procedures. Reports for each of those reviews have been provided to the congressional committees with the Section 707 Report, as required by Section 707(b)(1)(F) of FISA. For this reporting period, reviews of NCTC's application of its minimization and querying procedures were conducted on the dates shown in Figure 4.

(U) **Figure 4: NCTC Reviews**

UNCLASSIFIED

Approximate Date of NCTC Review	Minimization and Querying Reviewed
23 January 2020 (onsite)	01 November 2019 – 31 December 2019
March 2020 (remote)	01 January 2020 – 29 February 2020
May 2020 (remote)	01 March 2020 – 30 April 2020

(U) Figure 4 is UNCLASSIFIED.

(U) As a part of the reviews, the joint oversight team examines documents related to NCTC's retention, dissemination, and querying of Section 702-acquired data. The team reviews all

[26] (U) Insofar as CIA nominates facilities for tasking and reviews content that may indicate that a target is located in the United States or is a United States person, some investigations of possible non-compliance with NSA's targeting procedures can also involve CIA.

communications acquired under Section 702 that have been minimized and retained by NCTC, irrespective of whether it contains United States person information. Reviewers ensure that communications have been properly minimized and discuss with personnel issues involving the proper application of NCTC's minimization procedures. The team also reviews all NCTC disseminations of information acquired under Section 702. In addition, the joint oversight team reviews NCTC's written foreign intelligence justifications for all queries of the content of unminimized Section 702-acquired communications.

(U) In addition to the bimonthly reviews, the joint oversight team also investigates and reports incidents of noncompliance with NCTC's minimization and querying procedures or other agencies' procedures in which NCTC is involved.[27] Investigations are coordinated through the NCTC Compliance and Transparency Group and NCTC Legal, a forward deployed component of the ODNI OGC, and when necessary, may involve requests for further information; meetings with NCTC legal, analytical, and/or technical personnel; or the review of source documentation. All compliance incidents identified by those investigations are reported to the congressional committees in the Section 707 Report and to the FISC.

(U) V. Interagency / Programmatic Oversight

(U) Because the implementation and oversight of the Government's Section 702 authorities are multi-agency efforts, investigations of particular compliance incidents may involve more than one agency. The resolution of particular compliance incidents can provide lessons learned for all agencies. Robust communication among the agencies is required for each to effectively implement its authorities, gather foreign intelligence information, and comply with all legal requirements. For those reasons, NSD and ODNI generally lead calls and meetings on relevant compliance topics, including calls or meetings with representatives from all agencies implementing Section 702 authorities, so as to address interagency issues affecting compliance with the statute and applicable procedures. Additionally, during a portion of this reporting period, NSD and ODNI conducted weekly telephone calls with NSA to address certain outstanding compliance matters and work through the process of understanding those matters and reporting incidents to the FISC.

(U) NSD and ODNI's programmatic oversight also involves efforts to proactively minimize the number of incidents of noncompliance. For example, NSD and ODNI have required agencies to provide a demonstration to the joint oversight team of new or substantially revised systems involved in Section 702 targeting, minimization, or querying prior to implementation. NSD and ODNI personnel also continue to work with the agencies to review and, where appropriate, seek modifications of their targeting, minimization, and querying procedures in an effort to enhance the Government's collection of foreign intelligence information, civil liberties protections, and compliance.

[27] (U) Insofar as NCTC reviews content that may indicate that a target is located in the United States or is a United States person, some investigations of possible noncompliance with NSA's targeting procedures can also involve NCTC.

(U) VI. Training

(U) In addition to specific instructions to personnel directly involved in certain incidents of noncompliance discussed in Section 4, the agencies and the joint oversight team have continued their training efforts to ensure compliance with the targeting, minimization, and querying procedures. During this reporting period, NSA continued to administer the compliance training course dated November 2016.[28] All NSA personnel who require access to Section 702 data are required to complete this course on an annual basis in order to gain or maintain that access. Additionally, NSA continued providing training on a more informal and ad hoc basis by issuing training reminders and compliance advisories to analysts concerning new or updated guidance to maintain compliance with the Section 702 procedures. Those training reminders and compliance advisories are e-mailed to individual analysts and targeting adjudicators and maintained on internal agency websites[29] where personnel can obtain information about specific types of Section 702-related issues and compliance matters.

(U) During this reporting period, FBI similarly continued implementing its online training programs regarding Section 702 nominations, minimization, and other related requirements; however, in March 2020, the in-person training was suspended due to the pandemic. Completion of those FBI online training programs is required of all FBI personnel who request access to Section 702 information. NSD and FBI also conducted in-person trainings at multiple FBI field offices. For example, during this reporting period, prior to March 2020, NSD and FBI continued to provide additional focused training at FBI field offices on the Section 702 querying procedures, including training FBI field personnel on the application of the querying standard. NSD training at FBI field offices also included training on the reporting requirement from the FISC's *November 6, 2015 Memorandum Opinion and Order* regarding the 2015 FISA Section 702 Certifications. As discussed above, this reporting requirement applies to queries conducted after 04 December 2015, which were conducted solely for the purpose of returning evidence of a crime and returned Section 702-acquired information of or concerning a United States person that was reviewed by FBI personnel.

(U) As part of its efforts to address certain issues causing the large number of non-compliant queries, in June 2018, and in November 2019, FBI worked with NSD and ODNI to develop updated guidance on the query provisions in FBI's procedures. This enhanced training on the query restrictions in FBI's procedures was designed to address misunderstandings regarding the query standard and how to avoid non-compliant queries. More recently, FBI developed training focused on the query provisions in its Section 702 querying procedures, including system changes designed

[28] (U) NSA released the transcript associated with this training, dated August 2016, in response to a Freedom of Information Act (FOIA) case filed in the U.S. District Court, Southern District of New York, ACLU v. National Security Agency, et al. (hereinafter, the "ACLU FOIA"). The transcript was posted, in redacted form, on ODNI's *IC on the Record* on 22 August 2017. The transcript is titled, *OVSC1203: FISA Amendments Act Section 702* (Document 17, NSA's Training on FISA Amendments Act Section 702). The November 2016 training is in the process of being revised, with an expected rollout in 2022.

[29] (U) These documents were posted, in redacted form, on ODNI's *IC on the Record* on 23 August 2017, in response to the aforementioned ACLU FOIA case: *NSA's 702 Targeting Review Guidance* (Document 10), *NSA's 702 Practical Applications Training* (Document 11), *NSA's 702 Training for NSA Adjudicators* (Document 12), and *NSA's 702 Adjudication Checklist* (Document 13).

to address aspects of the 2018 amended querying procedures. This training was mandatory for FBI personnel who are authorized to access unminimized Section 702-acquired information. FBI conducted this training between November and December 2019. Users who did not complete this training by mid-December 2019 had their access to unminimized Section 702-acquired information temporarily suspended until they took the training.

(U) During this reporting period, CIA provided targeted FISA training to attorneys it embeds with CIA operational personnel who regularly address FISA matters, and continued to provide FISA training to any attorney beginning an assignment that may involve the provision of legal advice on FISA matters. Additionally, CIA has a required training program for anyone handling unminimized Section 702-acquired data that provides hands-on experience with handling and minimizing Section 702-acquired data, as well as the Section 702 nomination process; during this reporting period, CIA continued to implement this training, which is required for all personnel who nominate facilities to NSA and/or minimize Section 702-acquired communications. Furthermore, CIA has issued guidance to its personnel about how to properly conduct United States person queries that are reasonably likely to return foreign intelligence information.[30]

(U) During this reporting period, NCTC provided training on NCTC's Section 702 minimization and querying procedures to all of its personnel who will have access to unminimized Section 702-acquired information. NCTC uses a training tracking system through which NCTC can verify that its users have received the appropriate Section 702 training before being given access to unminimized Section 702-acquired information. In addition, NCTC conducts audits of personnel at NCTC who accessed unminimized Section 702-acquired information in its system to confirm that those personnel who access unminimized Section 702-acquired information have received training on NCTC's Section 702 minimization and querying procedures.

[30] (U) *See USP Query Guidance for Personnel with Access to Unminimized FISA Section 702 Data*. As discussed in the previous joint assessment, in response to the aforementioned ACLU FOIA case, CIA's guidance document was posted, in redacted form, on ODNI's *IC on the Record* on 11 April 2017, *see* Document 15 "CIA's United States Person Query Guidelines for Personnel."

(U) SECTION 3: TRENDS IN SECTION 702 TARGETING AND MINIMIZATION

(U) In conducting the above-described oversight program, NSD, ODNI, and the agencies have collected a substantial amount of data regarding the implementation of Section 702. In this section, a comprehensive collection of this data has been compiled in order to identify overall trends in the agencies' targeting, minimization, and compliance.

~~(S//NF)~~ ~~(U)~~ This reporting period was disrupted by the coronavirus pandemic. This section and Section 4 report trends compared with the previous reporting period. The joint assessment team believes many of the changes during this reporting period, as compared to previous reporting periods, are attributable, at least in part, [redacted]

(U) I. Trends in NSA Targeting and Minimization

(U) NSA provides to the joint oversight team the average approximate number of facilities that were under collection on any given day during the reporting period. Because the actual number of facilities tasked remains classified,[31] the figure charting the average number of facilities under collection is classified as well. Since the inception of the program, the total number of facilities under collection during each reporting period has steadily increased with the exception of two reporting periods that experienced minor decreases.[32]

[31] (U) The provided number of facilities, on average, subject to acquisition during the reporting period remains classified and is different from the unclassified estimated number of targets affected by Section 702 released by the ODNI in its *CY2019 Transparency Report and CY2020 Transparency Report*. The classified numbers estimate the number of *facilities* subject to Section 702 acquisition, whereas the unclassified numbers provided in the Transparency Report estimate the number of Section 702 *targets*. As noted in the Transparency Report, the number of 702 "targets" reflects an estimate of the number of known users of particular facilities, subject to intelligence collection under those Certifications. The classified number of facilities account for those facilities subject to Section 702 acquisition *during the current six month reporting period*, whereas the Transparency Report estimates the number of targets affected by Section 702 *during the calendar year*.

[32] (U) Both reporting periods in which the total number of facilities under collection decreased occurred prior to the reporting periods reflected in Figure 5.

(U) **Figure 5: Average Number of Facilities under Collection**

[redacted]

(U) Figure 5 is classified ~~SECRET~~ [redacted]

~~(TS//SI//NF)~~ NSA reports that, on average, approximately [redacted] facilities[33] were under collection pursuant to the applicable certifications on any given day during the reporting period. This represents a 9.5 percent increase from the approximately [redacted] facilities under collection on any given day in the last reporting period. The 9.5 percent increase is relatively low compared with recent reporting periods; over the previous five reporting periods, the percentage increase ranged from 15.4 percent to 24.4 percent. [redacted]

[redacted]

[33] ~~(TS//SI//NF)~~ The Government counts the tasking of [redacted] to ensure consistency with how it counts other tasked facilities. Depending on the number [redacted] in a given reporting period, counting [redacted] could potentially skew the numbers and percentages in such a way that the statistics provided would no longer function as a barometer for the overall health of the Section 702 program.

[redacted]

(U) The above statistics describe the *average* number of facilities under collection at any given time during the reporting period. The total number of *newly* tasked facilities during the reporting period provides another useful metric.[34] Figure 6 charts the average monthly numbers of newly tasked facilities from 2015 through November 2019 and the total monthly numbers of newly tasked facilities from December 2019 through May 2020.

(U) **Figure 6: New Taskings by Month (Yearly Average for 2015 through November 2019)**

[redacted]

(U) Figure 6 is classified ~~SECRE~~ [redacted]

~~(S//SI//NF)~~ NSA provided documentation of approximately [redacted] new taskings during the reporting period. As noted elsewhere in this report, the decline from the [redacted] taskings reported for the previous reporting period [redacted] As shown in Figure 6, the number of new taskings in April and May fell substantially to approximately 2016 tasking levels. Unlike the last several reporting periods, the increase in the number of newly tasked facilities from December 2019 through March 2020 was largely driven by increases in the number of tasked electronic communication accounts. From June 2019 through November 2019, NSA tasked an average of approximately [redacted] electronic communication accounts per month. From December 2019 through March 2020, NSA tasked an average of approximately [redacted] electronic

[34] (U) The term "newly tasked facilities" refers to any facility that was added to collection under a certification. This term includes any facility added to collection pursuant to the Section 702 targeting procedures; some of these newly tasked facilities are facilities that had been previously tasked for collection, were detasked, and were then retasked.

communication accounts per month – an increase of approximately [redacted] taskings per month. In comparison, over the same time period, telephony facilities only increased by an average of approximately [redacted] taskings per month.

(U) With respect to minimization, NSA identified to the joint oversight team the number of serialized reports NSA generated based upon minimized Section 702-acquired data and provided NSD and ODNI access to all reports NSA identified as containing United States person information. Figure 7 contains the classified number of serialized reports and reports identified as containing United States person information over the last 10 reporting periods. The NSD and ODNI reviews revealed that the United States person information was at least initially masked in the vast majority of circumstances.[35] The number of serialized reports NSA has identified as containing United States person information decreased when compared with the previous reporting period.

[35] (U) NSA generally "masks" United States person information by replacing the name or other identifying information of the United States person with a generic term, such as "United States person #1." Agencies may request that NSA "unmask" the United States person identity. Prior to such unmasking, NSA must determine that the United States person's identity meets the applicable standards in NSA's minimization procedures.

(U) **Figure 7: Total Disseminated NSA Serialized Reports Based Upon Section 702-Acquired Data and Number of Such Reports NSA Identified as Containing United States Person Information**[36]

(U) Figure 7 is classified ~~SECRET//NOFORN.~~

~~(S//NF)~~ For this reporting period NSA identified to NSD and ODNI approximately [redacted] serialized reports based upon minimized Section 702-acquired data. The number of serialized reports identified as containing United States person information decreased from [redacted] in the prior reporting period, to the current [redacted] [37]

[36] ~~(S//NF)~~ In the course of preparing this report, NSD and ODNI identified a formatting error that resulted in the incorrect reporting of the number of NSA reports identified as containing United States person information for June 1, 2017 through November 30, 2017 in the prior joint assessment. The correct number is [redacted]

[37] (U) NSA does not maintain records that allow it to readily determine, in the case of a report that includes information from several sources, from which source a reference to a United States person was derived. Accordingly, the references to United States person identities may have resulted from collection pursuant to Section 702 or from other authorized signals intelligence activity conducted by NSA that was reported in conjunction with information acquired under Section 702. Thus, the number provided above is assessed to likely be over-inclusive. NSA has previously provided this explanation in its Annual Review pursuant to Section 702(l)(3) that is provided to Congress.

(U) II. Trends in FBI Targeting

(U) Under Section 702, NSA designates and submits facilities to FBI for acquisition of communications from certain facilities (hereinafter, "Designated Accounts") that have been previously approved for Section 702 acquisition under NSA's targeting procedures. FBI applies its own targeting procedures with regard to these Designated Accounts. FBI reports to the joint oversight team the specific number of facilities designated by NSA and the number of such Designated Accounts.[38] As detailed below, the number of Designated Accounts decreased from the prior reporting period, which may be due, at least in part, to the coronavirus pandemic.[39]

(U) As Figure 8 details, FBI approves the vast majority of Designated Accounts and the percentage of approved Designated Accounts has been consistently high across reporting periods. The high level of approval can be attributed to the fact that the Designated Accounts have already been evaluated and found to meet NSA's targeting procedures. FBI may not approve NSA's request for acquisition of a Designated Account for several reasons, including withdrawal of the request because the potential data to be acquired is no longer of foreign intelligence interest, or because FBI has uncovered information causing NSA and/or FBI to question whether the user or users of the Designated Account are non-United States persons located outside the United States. Historically, the joint oversight team notes that for those accounts not approved by FBI, only a small portion[40] were rejected on the basis that they were ineligible for Section 702 collection.

(U) The yearly average of Designated Accounts approved by FBI increased each year from 2015 through November 2019. The number of Designated Accounts approved by FBI each month in this reporting period has varied. NSD and ODNI have continued to track the number of Designated Accounts approved by FBI and will incorporate this information into future joint assessments.

~~(S//NF)~~ Outside of this reporting period, NSA identified that a technical error caused it to not identify for NSD and ODNI approximately [redacted] serialized reports as containing United States person information. The [redacted] serialized reports are included in the [redacted] figure.

38 [redacted]

39 [redacted]

40 [redacted]

~~(S//NF)~~ **Figure 8:** [redacted]

[redacted]

(U) Figure 8 is classified ~~SECRET//NOFORN~~.

~~(S//SI//NF)~~ FBI reports that NSA designated approximately [redacted] accounts [redacted] during the reporting period – an average of approximately [redacted] Designated Accounts per month.[41] FBI approved approximately [redacted][42] requests [redacted] These are decreases from the previous reporting period in which NSA designated approximately [redacted] accounts [redacted] and FBI approved approximately [redacted] requests. Figure 8 shows that both numbers declined substantially in April and May 2020, likely due, at least in part, to the pandemic. In addition, Figure 8 illustrates that in these same months FBI approved more requests [redacted]

[41] [redacted]

(U)[42] ~~(S//NF)~~ As previously noted, beginning with the joint assessment covering the reporting period December 2017 through May 2018, the Government changed its counting methodology to ensure statistical accuracy for the number of Designated Accounts approved.

[redacted] than the number of accounts designated by NSA; this reflects FBI's continued processing of requests submitted by NSA in prior months.

(U) III. Trends in CIA Minimization

(U) CIA only identifies for NSD and ODNI disseminations of Section 702-acquired United States person information. Figure 9 compiles the number of such disseminations of reports containing United States person information identified in the last 10 reporting periods (June 2015 through November 2015 through the current period of December 2019 through May 2020). While the number of CIA-identified disseminations containing United States person information has fluctuated over the years, those fluctuations have generally been incremental whether upward or downward.

(U) **Figure 9: Disseminations Identified by CIA as Containing Minimized Section 702-Acquired United States Person Information (Excluding Certain Disseminations to NCTC)**

[redacted]

(U) Figure 9 is classified ~~SECRET//NOFORN~~.

~~(S//NF)~~ During this reporting period, CIA identified approximately [redacted] disseminations of Section 702-acquired data containing minimized United States person information. [redacted] and as reported in prior joint assessments, CIA also permits some [redacted] As noted above, due to

CIA initially cancelling all in-person visits in response to the coronavirus pandemic, NSD and ODNI were unable to review the referenced disseminations [redacted] to ensure compliance with CIA's minimization procedures during this reporting period. NSD and ODNI reviewed these [redacted] during a review that took place after the reporting period.

(U) CIA also tracks the number of files its personnel determine are appropriate for broader access and longer-term retention. CIA's minimization procedures must be applied to those files before they are retained or transferred to systems with broader access.[43] Figure 10 details the total number of files that were either retained or transferred, as well as the number of those retained or transferred files that contain identified United States person information. This current assessment reports the total number of files CIA transferred from December 2019 through May 2020. For reference, however, the number of files retained from prior assessment periods is also displayed in Figure 10. The percentage of retained or transferred files identified by CIA as potentially containing United States person information has remained consistently low.[44]

[43] ~~(S//NF)~~ [redacted] In making those retention decisions, CIA personnel are required to identify any files potentially containing United States person information.

[44] ~~(S//NF)~~ For this reporting period, CIA analysts transferred a total of approximately [redacted] (2.7 percent) of which were identified by CIA as containing a communication with potential United States person information.

(U) **Figure 10: Total CIA Files Retained or Transferred and Total CIA Files that Were Retained or Transferred which Contained Potential United States Person Information**[45]

(U) Figure 10 is classified ~~SECRET//NOFORN~~.

(U) IV. Trends in NCTC Minimization

(U) Beginning with the reporting period covering June 2017 through November 2017, the joint assessment now includes statistics regarding the total number of disseminations identified by NCTC as containing Section 702-acquired information. This number is classified and reported in Figure 11. Starting in November 2018, NCTC identified and provided to NSD and ODNI only disseminations containing minimized United States person information. Because NCTC only began obtaining unminimized Section 702-aquired data after the FISC approval of such in April 2017, there are only six six-month periods to report in this assessment.[46] This current joint assessment reports that the number of disseminations containing minimized United States person information, while low, increased from the previous reporting period.

[45] [redacted]

[46] ~~(S//NF)~~ The FISC's April 2017 opinion approved NCTC's 2016 minimization procedures allowing NCTC to obtain unminimized Section 702-acquired information. NCTC began receiving unminimized Section 702-acquired information on [redacted] May [redacted]

(U) **Figure 11: Disseminations Identified by NCTC as Containing Minimized Section 702-Acquired Information**

(U) Figure 11 is classified ~~SECRET//NOFORN.~~

~~(S//NF)~~ During this reporting period, NCTC identified and provided to NSD and ODNI approximately [redacted] disseminations of Section 702-acquired data containing minimized United States person information. This represented a 47.5 percent increase in disseminations containing minimized United States person information when compared to the previous reporting period.

(U) SECTION 4: COMPLIANCE ASSESSMENT – FINDINGS

(U) The joint oversight team finds that during this reporting period, the agencies have continued to implement their procedures and follow the guidelines in a manner that reflects a focused and concerted effort by agency personnel to comply with the requirements of Section 702. The personnel involved in implementing the Section 702 authorities are appropriately directing their efforts at non-United States persons reasonably believed to be located outside the United States for the purpose of acquiring foreign intelligence information. Processes have been put in place to implement these authorities and to impose internal controls for compliance and verification purposes.

(U) However, notwithstanding a focused and concerted effort by FBI personnel to comply with the requirements of Section 702, misunderstandings regarding FBI's systems and FBI's querying requirements continued to cause a large number of query errors. While the number of FBI compliance incidents decreased substantially compared to the previous reporting period, this assessment still reports a large number of FBI compliance incidents related to querying, and, in particular, FBI's use of "batch queries."[47] Although reported to the FISC during this reporting period, some of these query incidents occurred prior to certain remedial steps taken by the FBI in late 2019. In addition, these query incidents occurred prior to the FBI's implementation in 2021 of significant corrective measures to prevent the query compliance issues. These corrective measures are addressed further below.

(U) FBI amended its querying procedures in 2019 in response to concerns raised by the FISC and the FISC-R regarding the sufficiency of those procedures with respect to FBI's queries. The FISC ultimately determined that FBI's amended querying procedures were adequate, and the joint oversight team engaged with FBI to implement those amended procedures and provided the FISC with periodic reporting regarding that implementation, including with respect to systemic changes and additional training of FBI personnel.[48] These incidents and remedial measures are detailed below and will be updated in future assessments, as appropriate.

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[47] ~~(S//NF)~~ The number of FBI minimization and querying errors for the current reporting period was [redacted] compared to the [redacted] minimization and querying errors in the previous reporting period.

[48] (U) On 08 October 2019, the ODNI posted, on *IC on the Record*, documents related to the 2018 certifications, including the FISC's October 2018 opinion, the FISC-R's July 2019 opinion, the FISC's September 2019 opinion, and FBI's amended querying procedures, dated August 2019. Specifically, in its October 2018 opinion, the FISC found that certain parts of FBI's procedures concerning the querying of United States persons were not sufficient. The Government appealed this decision to the FISC-R, which affirmed the FISC's decision in part. The Government subsequently submitted amended FBI querying procedures to address the issues raised by the FISC and the FISC-R, and the FISC found that the amended procedures were sufficient.

(U) Subsequently, while outside this reporting period, the FISC revisited FBI's non-compliant queries in its December 2019 opinion authorizing the 2019 Section 702 certifications, and its November 2020 opinion authorizing the 2020 Section 702 certifications; these opinions and other documents related to the 2019 and 2020 Section 702 certifications were released on 04 September 2020 and 26 April 2021, respectively, on *IC on the Record*. As it pertained to FBI's querying procedures, the FISC's opinion regarding the 2019 Section 702 certifications found that FBI was following its schedule for implementing the training and system modifications necessary to comply with its querying procedures. The FISC's opinion regarding the 2020 Section 702 certifications found that FBI's querying

(U) As noted in prior joint assessments, in the cooperative environment the implementing agencies have established, an action by one agency can result in an incident of noncompliance with another agency's procedures. For example, an "NSA compliance incident" could be caused by typographical errors contained in another agency's nomination to NSA for tasking.

(U) Each compliance incident for this current reporting period is described in detail in the corresponding Section 707 Report. This joint assessment does not reiterate the compliance incidents set forth in the Section 707 Report. It does, however, examine those incidents to assess broader implications and to determine whether the agency's corrective measures address those implications.

(U) Even a small number of incidents can have the potential of carrying broader implications, and a small number of actions can result in numerous incidents also having broad implications, as is the case for FBI "batch" querying incidents. Thus, the joint assessment provides NSD and ODNI's analysis of compliance incidents in an effort to identify existing patterns or trends that might identify underlying causes of those incidents. The joint oversight team then considers whether and how those underlying causes could be addressed through additional remedial or proactive measures and assesses whether the agency involved has implemented appropriate procedures to prevent recurrences. The joint oversight team continues to assist in the development of such measures, some of which are detailed below, especially as it pertains to investigating whether additional and/or new system automation may assist in preventing compliance incidents.

(U) I. Compliance Incidents – General

(U) A. Statistical Data Relating To Compliance Incidents

~~(S//NF)~~ As noted in the Section 707 Report, during this reporting period, there were a total of [redacted] compliance incidents that involved noncompliance with NSA's targeting, minimization, or querying procedures and [redacted] compliance incidents involving noncompliance with FBI's targeting, minimization, and querying procedures.[49] In addition, during this reporting period, there were [redacted] incidents of noncompliance with CIA's minimization and querying procedures and no incidents of noncompliance with NCTC's minimization and querying procedures. There were no identified instances of noncompliance by an electronic communication service provider issued a directive pursuant to Section 702(i) of FISA.

procedures were sufficient, but the Court expressed continued concern about FBI's practices involving United States person query terms.

[49] (U) As is discussed in the Section 707 report and below, some compliance incidents involve more than one element of the IC. Incidents have therefore been grouped not by the agency "at fault" but instead by the set of procedures such actions violated.

(U) Figure 12 puts those compliance incidents in the context of the average number of facilities subject to acquisition on any given day[50] during the reporting period.

(U) **Figure 12: Overall Compliance Incident Rate**

~~SECRET~~ [redacted]

(U) Total compliance incidents during reporting period (01 December 2019 – 31 May 2020)	[redacted]
(U) Number of facilities on average subject to acquisition during the reporting period	
(U) Overall compliance incident rate: number of incidents divided by average number of facilities subject to acquisition	(U) 0.46 percent

(U) Figure 12 is classified ~~SECRET~~ [redacted]

(U) The 0.46 percent overall compliance incident rate represents a substantial decrease from the 20.28 percent overall compliance incident rate in the prior reporting period. While this is an improvement over prior reporting periods, as with the previous incident rate, the current reporting period's overall compliance incident rate was predominantly impacted by FBI personnel misunderstanding the query standard in FBI's querying procedures. These incidents – including the remedies – are discussed in detail below. As discussed above and detailed below, the manner in which this overall compliance incident rate is calculated results in an imperfect measure of the error rate for the Section 702 program during this reporting period. Additionally, as noted elsewhere, a significant portion of this reporting period occurred during the coronavirus pandemic, and the joint oversight team is not able to determine to what extent the decrease in the overall compliance incident rate reflects a decrease in the actual number of compliance incidents – whether as a result of the pandemic or improvements in compliance – as opposed to difficulties in discovering and reporting compliance incidents.

(U) As discussed below, notification delays are incidents in which the notification requirement contained in the targeting procedures was not satisfied. Substantive compliance incidents are not captured in this metric. If a compliance incident involved both a substantive error (for example, a tasking or detasking error) and the failure to meet the notification requirement, the substantive error was counted separately from the notification delay. For the majority of these notification delays, the only incident of non-compliance was the failure to comply with the

[50] [redacted]

notification requirement. Accordingly, the joint oversight team determined that another valuable measure is to compare the overall compliance incident rate excluding notification delays. If the notification delay incidents are not included in the calculation, the overall compliance incident rate for this reporting period decreases slightly to 0.44 percent. The comparable incident rates in the previous two reporting periods were 20.24 percent and 6.9 percent, respectively.

(U) The joint oversight team assesses that the compliance incident rate – with and without the notification delay incidents – remained low and is a result of training, internal processes designed to identify and remediate potential compliance issues, and a continued focus by internal and external oversight personnel to ensure compliance with the applicable targeting, minimization, and querying procedures. As it pertains to FBI querying incidents, the joint oversight team identified a significant number of non-compliant queries, though far fewer than in prior reporting periods. The joint oversight team believes that the suspension of NSD's FBI field office reviews in March 2020 was likely a significant factor in the decrease in identified incidents.[51] Notably, NSD conducted far fewer query audits than in past years. For example, in 2020, NSD conducted query audits of only six field offices, whereas NSD conducted query audits of 27 field offices in 2019 and 29 field offices in 2018. In addition, because certain FBI systems permit users to conduct multiple queries as part of a single batch job, a single action can result in thousands of improper queries; as such, the discovery of a single noncompliant batch job can substantially affect both the overall and FBI query compliance incident rates. Whether such a noncompliant batch job would or would not have been discovered in the temporarily suspended FBI field office reviews is unknown. As a result, the joint oversight team is unable to evaluate how FBI's compliance with its querying procedures during this reporting period compares to other reporting periods. NSD and ODNI do assess, however, that query issues were a pervasive compliance challenge during the period of time covered by this joint assessment based on the results of NSD's audits conducted during this and prior reporting periods, as well as the results of NSD's remote audits in 2021, which reviewed historical queries conducted throughout 2020. The joint oversight team continues to work with FBI to reduce non-compliant queries and improve training and guidance regarding this issue.

(U) As explained in previous assessments, the joint oversight team periodically evaluates how and what data it collects to provide for more meaningful statistics. For example, the team considers whether there are other means of comparison – whether with the currently tracked actions or by implementing the tracking of certain other data – that could provide a better understanding of overall compliance. The joint assessment has traditionally compared the number of compliance incidents (*i.e.*, the "numerator") to targeting activity during the reporting period, which is reflected as the average number of tasked facilities (*i.e.*, the "denominator").

(U) While tracking this rate over consecutive years allows one to discern general trends as to how the Section 702 program is functioning overall from a compliance standpoint, it remains an imperfect proxy. A flaw with using this particular proxy is that certain types of incidents included in the numerator do not bear a relation to the targeting activity in the denominator. For example,

[51] (U) NSD generally conducts onsite reviews at FBI field offices. However, in response to the coronavirus pandemic, NSD temporarily suspended its onsite reviews in or about the middle of March 2020. NSD began conducting remote reviews in February 2021. Therefore, during this reporting period, NSD only conducted field office reviews between December 2019 and mid-March 2020.

assessing a delayed detasking incident (which is an incident resulting from non-compliance with targeting procedures) as contained in the numerator to the average number of tasked facilities as contained in the denominator compares closely similar factors – both are directly related to tasking and must meet the requirements of the targeting procedures. However, the factors are not similar when comparing an improper dissemination incident or an improper query (which are incidents resulting from non-compliance with minimization and querying procedures) to the average number of tasked facilities. Minimization and querying incidents implicate the requirements of the minimization and querying procedures, whereas the tasking of a facility implicates the requirements of the targeting procedures. In addition, the number of query and dissemination incidents that can occur in a reporting period are largely independent from the number of facilities tasked during a period, as queries and disseminations can involve facilities that are no longer tasked – or were never tasked – pursuant to Section 702, and multiple queries or disseminations can be made in relation to a single facility. Conceivably, minimization incidents should be compared to the number of total minimization actions, but we are currently unable to count or track minimization actions in that manner. Adding to the dissimilarity is that multiple agencies' (NSA, FBI, CIA, and NCTC) incidents – as well as incidents by service providers – are counted in the overall compliance incident rate, but only two agencies (NSA and FBI) actually conduct targeting activity pursuant to their respective targeting procedures, and only NSA's targeting activities are included in the denominator.

(U) As with prior reporting periods, the number of compliance incidents in the numerator that do not bear a relation to the denominator (in particular, FBI query errors) outweighs the number of compliance incidents that do bear a relation to the denominator (*e.g.*, NSA targeting errors). Accordingly, readers should understand that the 0.46 percent overall compliance incident rate is an imperfect representation of the error rate for the Section 702 program during this reporting period.

(U) This assessment also provides an additional metric: the NSA targeting compliance incident rate (see Figures 15 and 16). Additionally, the joint oversight team has decided that, because FBI query errors comprised a substantial number of the incidents reported during this reporting period, this assessment includes – and, depending on the type of errors that were reported during the applicable period, potentially future assessments will include – a query error rate for FBI (see Figure 18).

(U) Separating the targeting errors from the minimization and query errors allows for another layer of evaluation. We provide these additional metrics to advance the understanding of the incidents' impact and the causes of those incidents. These metrics are provided after an explanation of the categories of compliance incidents so that the new metrics can better be understood.

(U) Notwithstanding the issues discussed above, the current assessment provides the overall compliance incident rates in Figures 12 and 13 so that readers can see the size of the movements as compared to historical periods in order to place the number of FBI query errors reported during this

reporting period in the context of a rate that has been used historically, as these query errors were the driving factor in the rate movements over the last few reporting periods.[52]

(U) **B. NSA's Compliance Incidents: Categories and Number of Incidents**

(U) As it has been historically, most of the compliance incidents occurring during this reporting period – excluding FBI querying incidents – involved non-compliance with NSA's targeting, minimization, or querying procedures. This largely reflects the centrality of NSA's targeting, minimization, and querying efforts in the Government's implementation of the Section 702 authority. The compliance incidents involving NSA's targeting, minimization, or querying procedures have generally fallen into the categories below. However, in some instances, an incident may involve more than one category of noncompliance.

(U) Incidents of non-compliance with NSA's Targeting Procedures:

- (U) *Tasking Issues.* This category involves incidents where noncompliance with the targeting procedures resulted in an error in the initial tasking of the facility.
- (U) *Detasking Issues.* This category involves incidents in which the facility was properly tasked in accordance with the targeting procedures, but errors in the detasking of the facility caused noncompliance with the targeting procedures.
- (U) *Overcollection*. This category involves incidents in which NSA's collection systems, in the process of attempting to acquire the communications of properly tasked facilities, also acquired data regarding untasked facilities, resulting in "overcollection."
- (U) *Notification Delays*. This category involves incidents in which a notification requirement contained in the targeting procedures was not satisfied.[53]
- (U) *Documentation Issues.* This category involves incidents where the determination to target a facility was not properly documented as required by the targeting procedures.

(U) Incidents of non-compliance with NSA's Minimization and Querying Procedures:

- (U) *Minimization and Querying Issues.* This category involves incidents relating to NSA's non-compliance with its minimization and querying procedures.

(U) *Other Issues.* This category involves incidents that do not fall into one of the six above categories. In these instances, the joint oversight team will assess each incident to determine if it resulted from non-compliance with NSA's targeting, minimization, or querying procedures and account for those incidents accordingly.

[52] (U) Note that because of the imperfections described above, and because FBI query errors are only one factor in the overall compliance incident rate, a period-on-period comparison of the rate will still not provide an entirely accurate measure of the increase in FBI query errors.

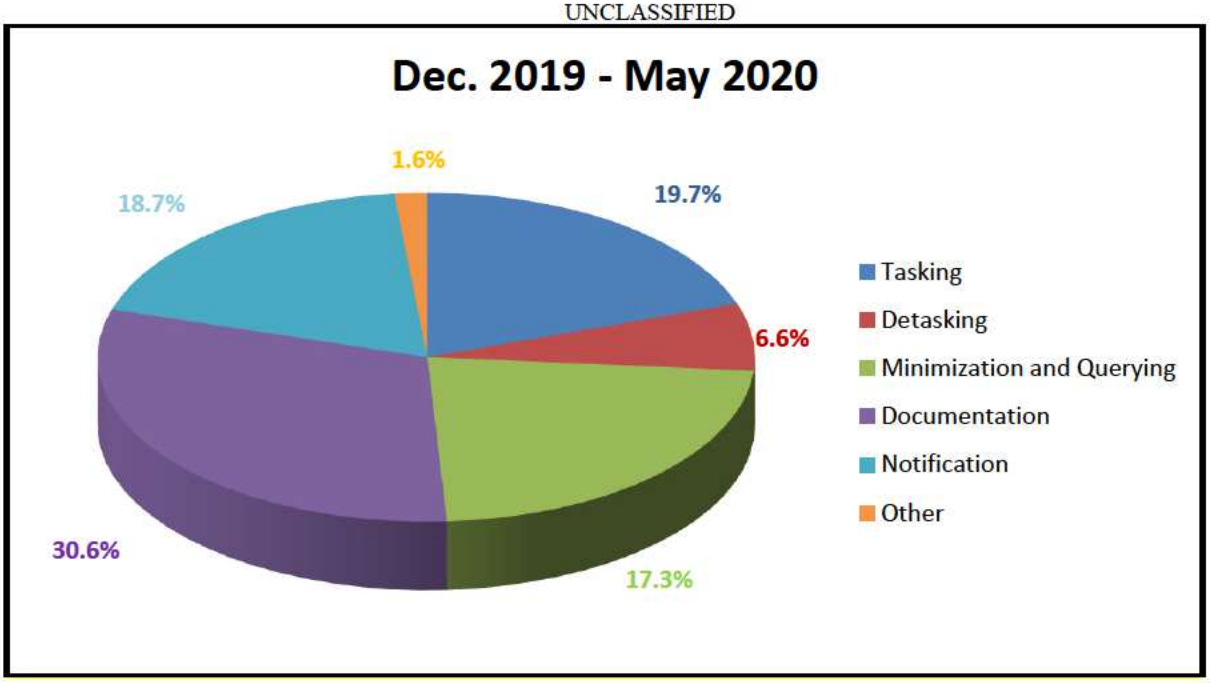
[53] (U) A compliance incident may involve both a failure to meet the notification requirement and a substantive error (for example, a tasking or detasking error). However, in those instances, the substantive error was counted separate from the notification delay. For the majority of delayed notification incidents, the only incident of non-compliance was the failure to comply with the notification requirement.

(U) While the above categories specifically pertain to NSA incidents, FBI's targeting incidents categories and all other agencies' minimization and querying incidents categories generally align to those NSA categories. Because only NSA and FBI are permitted to target pursuant to Section 702, only NSA and FBI have targeting procedures (which have been publicly released). All four agencies have minimization and querying procedures (which have been publicly released). Compliance incidents by FBI, CIA, and NCTC are discussed in their respective sections below.

(U) These categories are helpful for purposes of reporting and understanding the compliance incidents. Because the actual number of incidents remains classified, Figure 13A depicts the percentage of NSA compliance incidents in each category that occurred during this reporting period, whereas Figure 13B provides that actual classified number of NSA incidents.

(U) **Figure 13A: Percentage Breakdown of Compliance Incidents Involving NSA's Targeting, Minimization, and Querying Procedures**

UNCLASSIFIED



(U) Figure 13A is UNCLASSIFIED

While accurately depicted on the pie chart, the minimization and querying percentage in Figure 13A was mislabeled. It should read 22.7% rather than 17.3%.

(U) **Figure 13B: Number of Compliance Incidents Involving NSA's Targeting, Minimization, and Querying Procedures**

(U) Figure 13B is classified ~~SECRET//NOFORN~~

(U) As Figures 13A and 13B demonstrate, during this reporting period, documentation errors accounted for the largest portion of incidents across all categories. Minimization and querying incidents and tasking errors accounted for the second and third largest percentage of incidents, respectively, followed by notification delays. Tracking the proportion of incidents allows for the joint oversight team to identify trends and to address the non-compliance with appropriate remedies. Being able to do so is important for a variety reasons, especially as it pertains to more substantive tasking and detasking compliance incidents that can (but do not always) involve collection involving a facility used by a United States person or an individual located in the United States. Furthermore, the joint oversight team also focuses on incidents of noncompliance with minimization and querying procedures because these types of incidents may involve information concerning United States persons.

~~(S//NF)~~ More specifically, the number of tasking incidents decreased from [redacted]; detasking incidents decreased from [redacted]; minimization and querying incidents decreased from [redacted]; documentation incidents increased from [redacted]; and "other" category incidents decreased from [redacted] The number of notification delays decreased from [redacted] There were zero overcollection incidents in this period.

(U) As mentioned above, separating the targeting errors from the minimization and querying errors allows for another layer of evaluation as opposed to comparing all of the errors together. By narrowing the focus on errors implicating NSA's targeting procedures, Figure 14 provides the NSA targeting compliance incident rate for this current reporting period. This metric compares similar

factors: NSA's number of "targeting incidents" (*i.e.*, the "numerator") to NSA's targeting activity of the number of average tasked facilities (*i.e.*, the "denominator"). The number of NSA's "targeting incidents" includes the following categories of incidents that implicate NSA's targeting procedures: tasking errors, detasking delays, documentation errors, notification delays, and overcollection incidents. As explained above, incidents that fall under the "other issues" category may be included as well if those constituted errors in following NSA's targeting procedures.

(U) **Figure 14: NSA Targeting Compliance Incident Rate**

~~SECRET~~[redacted]

(U) NSA compliance incidents relating to NSA's targeting procedures, during reporting period (01 December 2019 – 31 May 2020)	[redacted]
(U) Number of facilities on average subject to acquisition during the reporting period	
(U) NSA targeting compliance incident rate: number of targeting incidents divided by average number of facilities tasked to acquisition	(U) 0.10 percent

(U) Figure 14 is classified ~~SECRET~~[redacted]

(U) This NSA targeting compliance incident rate percentage, in and of itself, does not provide a full measure of compliance in the program. A single incident, for example, may involve multiple facilities. Also, a single action may result in numerous incidents. Furthermore, other incidents, such as notification delays (described further below) may occur with frequency, but have limited significance with respect to United States persons.

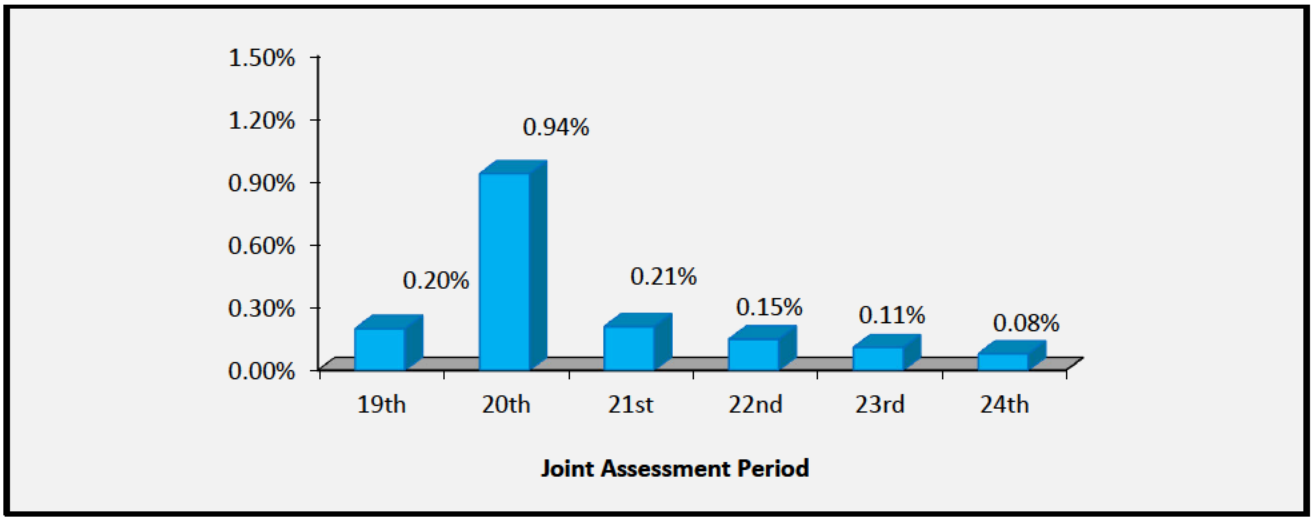
(U) The joint oversight team has determined that excluding NSA's notification delays incidents from NSA's targeting compliance incident rate provides another measure of compliance.[54] Thus, Figure 15 shows an adjusted NSA targeting compliance incident rate of 0.08 percent, not including notification delay errors (as compared to 0.10 percent of NSA targeting compliance incident rate, including notification errors).[55] As Figure 15 shows, NSA's targeting compliance incident rate (not including notification delays) during this reporting period was at its lowest level since the inclusion of this statistic.

[54] (U) Notification delays are violations of the notification requirement contained in the targeting procedures. Substantive compliance incidents are not captured in this metric. If a compliance incident involved both a substantive error (for example, a tasking or detasking error) and the failure to meet the notification requirement, the substantive error was counted separately from the notification delay. For the majority of the notification delays, the only incident of non-compliance was the failure to comply with the notification requirement.

[55] (U) As described in prior joint assessments, the increase from 0.20 percent in the 19th reporting period to 0.94 percent in the 20th reporting period was primarily a result of one NSA office's misunderstanding regarding how a targeting tool functioned, which resulted in an abnormally large number of targeting incidents.

(U) **Figure 15: NSA Targeting Compliance Incident Rate (as the number of incidents divided by the average number of facilities tasked), *not* Including Notification Delays**

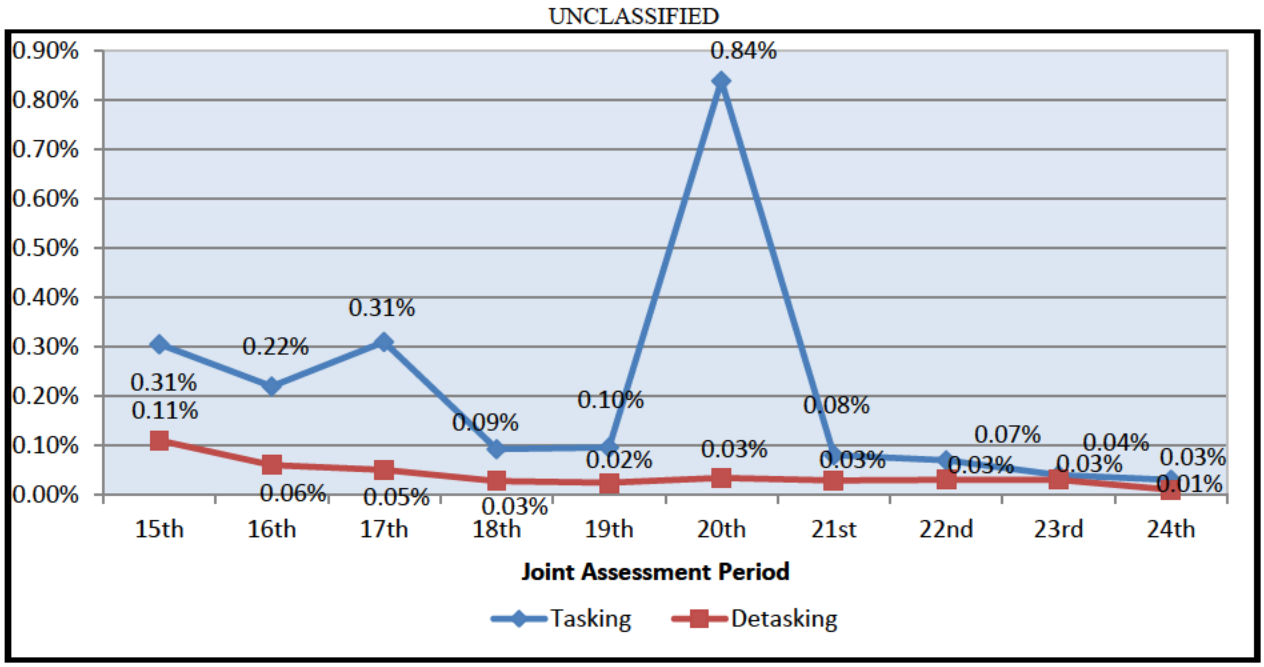
UNCLASSIFIED



(U) Figure 15 is UNCLASSIFIED.

(U) Whereas Figure 15 depicts NSA targeting incidents by combining all targeting incidents, except for notification delays, Figure 16 depicts NSA's compliance incident rates individually for tasking and detasking incidents. Figure 16 separates those types of incidents for more granularity and understanding of the trends for each. As previously calculated and reported, the tasking and detasking incident rate is compared to the average number of facilities on collection for the given reporting period. While these tasking and detasking incidents are grouped in a single chart for a comparison, the tasking and detasking incidents are not relational to each other (*i.e.,* an increase or decrease in the rate of tasking incidents does not result in an increase or decrease in the detasking incident rate).

(U) **Figure 16: Tasking and Detasking Incident Compliance Rates**



(U) Figure 16 is UNCLASSIFIED.

(U) It is important to note that, while Figure 16 provides a visual into trends of non-compliance, the non-compliance rate is less than 1 percent. The tasking and detasking incident compliance rate has varied by fractions of a percentage point as compared to the average size of the collection.[56] The tasking incident rate decreased to 0.03 percent during this reporting period, which comports with its historically low rate.[57] The tasking compliance incident rate involving facilities used by United States persons remained almost zero. Detasking errors more often involve delays in detasking a facility that the Government learns is used by a United States person or an individual located in the United States, who may or may not have been the targeted user. The percentage of compliance incidents involving detasking incidents has remained consistently low. The detasking compliance incident rate involving facilities used by United States persons was also close to zero.

[56] (U) Tasking errors cover a variety of incidents, ranging from the tasking of an account that the Government should have reasonably known was used by a United States person or an individual located in the United States to typographical errors in the initial tasking of the account that affect no United States persons or persons located in the United States. Detasking errors more often involve delays in detasking a facility that the Government learns is used by a United States person or an individual located in the United States, who may or may not have been the targeted user. In addition, a single detasking delay may involve multiple facilities that were not timely detasked.

[redacted]

[57] (U) As previously noted, the increase in the tasking incident rate reported in the 20th Joint Assessment was primarily due to a single NSA targeting office misunderstanding how to use a targeting tool.

(U) **C. FBI: Number of Compliance Incidents**

(U) The total number of compliance incidents identified relating to FBI's targeting procedures substantially decreased as compared to the last period. The number of errors relating to FBI's minimization and querying procedures also significantly decreased this reporting period. The joint oversight team believes that the temporary suspension of NSD's FBI field office reviews starting in mid-March 2020, due to the coronavirus pandemic, and the potentially related non-identification of extremely large batch query errors were significant factors in this decrease. In recent years, FBI field office reviews have been responsible for discovering a significant portion of FBI's minimization and querying incidents that are reported in each joint assessment. Because FBI field office reviews were suspended during a portion of this reporting period, incidents that would typically be discovered by NSD during those field office reviews would not have been discovered while the reviews were suspended.[58]

(U) Figure 17 shows the classified number of incidents for the last 10 reporting periods. The joint oversight team assesses that the increase in identified FBI errors beginning in the 19th reporting period is attributable to various factors. In particular, NSD increased its focus on reviewing FBI querying practices; this focus resulted in NSD's increased experience in evaluating those types of FBI queries and NSD's increased knowledge of FBI systems storing Section 702-acquired information. The joint oversight team believes that this increased focus and experience, along with other factors, resulted in NSD identifying a larger number of non-compliant queries.

[58] ~~(S//NF)~~ During this reporting period, [redacted] incidents of non-compliance with FBI's targeting, minimization, or querying procedures were identified. Most of these incidents pertain to non-compliant queries, and in particular, one compliance error comprised [redacted] or about 37 percent, of the [redacted] incidents. The FBI system in which the non-compliant batch queries were conducted was FBI[redacted]

(U) Figure 17: Number of Compliance Incidents Involving FBI's Targeting, Minimization, and Querying Procedures

(U) Figure 17 is classified ~~SECRET//NOFORN~~.

(U) In light of the joint oversight team's decision to provide the NSA targeting compliance incident rate above, the joint oversight team determined that it would also increase transparency to include a metric representing the FBI targeting compliance incident rate. During this reporting period, the FBI targeting compliance incident rate was 0.007 percent, a slight increase from the previous period (0.005 percent).[59] Historically, this rate has remained well-below one percent. The joint oversight team assesses that FBI's compliance with respect to targeting is a result of its training, systems, and processes.

(U) As discussed above, the joint oversight team has decided to provide a metric depicting FBI's query error rate. Figure 18 provides the FBI query compliance incident rate, which is

[59] ~~(S//NF)~~ The FBI targeting compliance incident rate is calculated as the total number of FBI targeting errors reported during the reporting period, expressed as a percentage of the total number of facilities for which FBI approved a request [redacted] during the reporting period. As noted above, the joint oversight team does not review all such approved requests. The joint oversight team only reviews checklists and supporting documentation relating to approved requests for which information was returned by FBI's database queries. In addition, during this reporting period, the joint oversight team only reviewed checklists and supporting documentation for a sample of such approved requests.

calculated as the total number of FBI query compliance incidents reported by NSD to the FISC during the reporting period, expressed as a percentage of the total number of FBI queries audited by NSD in connection with the field office reviews during which NSD identified the FBI query compliance incidents reported to the FISC during the reporting period. As noted above, due to the pandemic, NSD had suspended its query reviews during a significant portion of this reporting period, and only conducted such reviews between December 2019 and early-March 2020.

(U) **Figure 18: FBI Query Compliance Incident Rate**

~~SECRET//NOFORN~~

(U) FBI query compliance incidents reported to the FISC during the reporting period (01 December 2019 – 31 May 2020)	[redacted]
(U) Number of FBI queries audited by NSD in connection with field office reviews during which NSD identified the FBI query compliance incidents reported to the FISC during the reporting period[60]	
(U) FBI query compliance incident rate: number of query incidents reported, divided by number of queries audited	(U) 0.82 percent

(U) Figure 18 is classified ~~SECRET//NOFORN~~.

(U) The FBI compliance incident rate of 0.82 percent is a significant decrease from the 36.59 percent incident rate reported in the prior reporting period. While the total number of queries audited by NSD decreased by 21.63 percent, a decrease attributable to the temporary suspension of reviews due to the pandemic, the FBI query compliance incident rate decreased by 98.22 percent. The joint oversight team assesses that the difference between these two decreases is likely attributable to the fact that a certain FBI system permits users to conduct multiple queries as part of a single batch job, such that a single action can result in thousands of improper queries; therefore, the discovery of a single noncompliant batch query can substantially affect both the overall and FBI compliance incident rates. While, as discussed below, a batch query error was found in this reporting period, no identified batch query incidents in this reporting period involved thousands of queries, as was the case in the prior reporting periods. Even without large scale batch queries during this period, NSD identified query compliance issues in each field office audited during this reporting period and during calendar year 2019.[61] And, since NSD resumed its query audits in 2021, NSD has continued to identify query compliance incidents during each field office remote audit. FBI implemented certain remedial measures in fall 2019 to address query compliance issues and, since that time, the joint oversight team has continued to work with FBI to take additional

[60] (U) This number also includes the number of FBI queries audited by NSD in connection with any field office reviews completed by NSD during this reporting period for which no FBI query compliance incidents were discovered.

[61] (U) In 2018, NSD identified query compliance incidents in 26 of 29 field offices audited. In 2019, query errors were identified in all 27 field offices audited, and in 2020, query errors were identified in all six offices audited.

corrective actions to address the query compliance issues. The remedial measures undertaken by FBI are discussed further below.

(U) In connection with its reviews at FBI field offices, NSD reviews a sample of queries conducted by FBI personnel in FBI systems that contain unminimized FISA-acquired information, including Section 702-acquired information. FBI provides NSD with logs of all the queries conducted in its systems during a given three-month period preceding the relevant field office review. NSD reviews the query logs and then consults with FBI personnel to obtain additional facts regarding the queries that were conducted. It is possible that some of the queries in the logs provided by FBI were not run against Section 702-acquired data, as NSD's query audits are designed to review compliance with FBI's query requirements in all of its applicable FISA procedures.[62] The FBI query error rate may also include identical queries that were conducted multiple times. For example, if NSD discovered that the same improper query was conducted on two separate occasions, those would be counted as two compliance incidents.

(U) In addition, as described below in Section III, certain of the query errors reported during this reporting period were discovered through National Security Reviews (NSRs) conducted by NSD, rather than through minimization or query reviews. As part of these NSRs, NSD reviews a sample of FBI predicated investigations and assessments opened under the FBI Attorney General Guidelines for Domestic Operations and determines whether there is sufficient predication to support the investigations and whether the assessments had authorized purposes. For example, NSD may identify that FBI conducted queries for an assessment that lacked an authorized purpose. Because that assessment lacked an authorized purpose, it can no longer be said that the query conducted in furtherance of that assessment is reasonably likely to retrieve foreign intelligence information or evidence of a crime. For instance, if NSD discovers that an assessment lacked an authorized purpose because it was solely based on First Amendment-protected activity, then any query made in furtherance of that assessment will not satisfy the querying standard. If NSD discovers improper queries during an NSR, NSD will ask FBI to provide logs of all the queries conducted in connection with the relevant national security assessment. The number of such improper queries is included in the numerator of the FBI query compliance incident rate, and the total number of queries documented in the query logs conducted against FISA-acquired information in relation to the assessment is included in the denominator.

(U) Neither the number of incidents reported in Figure 17, nor the FBI query compliance incident rate in Figure 18, is based on the number of compliance incidents that *occurred* during a given reporting period. Rather, each is based on the number of incidents that were *reported* to the FISC as compliance incidents during the reporting period. There may be delays in resolving and reporting compliance incidents after they are first identified, in part, because of delays in the Government's investigation while FBI gathers the relevant facts, or while FBI and NSD discuss whether the facts of a matter constitute a compliance incident. Incidents that occur during a given reporting period may, accordingly, be reported over multiple assessments, and the number of

[62] (U) FBI personnel may elect to run queries against FISA Titles I, III, and V but not against Section 702-acquired information. The query logs reviewed by NSD for its query audits include queries of information acquired pursuant to all FISA authorities, and the joint assessment team has not attempted to identify and exclude any queries that were included in the query logs but not run against Section 702-acquired information.

incidents reported in a given assessment may include incidents that occurred during multiple periods. The number of query compliance incidents reported in Figure 17, and the FBI query compliance incident rate in Figure 18, may, therefore, include queries audited by NSD during the reporting period for a prior joint assessment.

(U) In addition, because of the delays in resolving and reporting certain compliance incidents, incidents discovered at a single field office review may be reported during different reporting periods. When that occurs, the total number of FBI queries audited by NSD in connection with the relevant field office review is included in the denominator of the FBI query compliance incident rate for both reporting periods, even though the total number of FBI query compliance incidents discovered as a result of auditing those queries is split between reporting periods. There were two field office reviews for which some, but not all, of the FBI query compliance incidents were reported during this reporting period.

(U) Although each of the metrics in Figure 17 and Figure 18 has limitations, the joint oversight team believes that they nevertheless provide informative measures of FBI's compliance with its querying procedures.

(U) **D. CIA and NCTC: Number of Compliance Incidents**

~~(S//NF)~~ There were [redacted] incidents during this reporting period that involved CIA's minimization and querying procedures,[63] an increase from the [redacted] incidents reported in the previous reporting period. The joint oversight team assesses, however, that this is not a reflection on CIA compliance overall. CIA still maintains a strong compliance record as a result of training, systems, and processes that were implemented when and have been in place since the Section 702 program was developed to ensure compliance with its minimization and querying procedures and the work of its internal oversight team.

~~(S//NF)~~ There were no incidents during this reporting period that involved NCTC's minimization and querying procedures, which is a decrease from the [redacted] incidents during the previous reporting period.[64] The joint oversight team assesses that NCTC's overall compliance is a result of its training, systems, and process that were implemented when NCTC was authorized to receive certain unminimized Section 702-acquired information.

(U) Figure 19 provides the classified number of minimization and querying errors that involved CIA for the last 10 reporting periods and NCTC for reporting periods beginning with the 19th assessment period.

[63] (U) Recall that CIA does not have targeting procedures and may not target. Because CIA only has minimization and querying procedures, errors can only occur as it pertains to its minimization and querying procedures.

[64] (U) Recall that NCTC does not have targeting procedures and may not target. Because NCTC only has minimization and querying procedures, errors can only occur as it pertains to its minimization and querying procedures.

(U) **Figure 19: Number of Compliance Incidents Involving CIA's or NCTC's Minimization and Querying Procedures**

(U) Figure 19 is classified ~~SECRET//NOFORN~~.

(U) **E. Service Providers: Number of Compliance Incidents**

(U) Finally, there were no incidents of non-compliance caused by errors made by communications service providers in this reporting period, which represents a decrease from the single incident reported in the prior reporting period. The joint oversight team assesses that the historically low number of errors by the communications service providers is the result of continuous efforts by the Government and providers to ensure that lawful intercept systems effectively comply with the law while protecting the privacy of the providers' customers.

(U) II. Review of Compliance Incidents – NSA Targeting, Minimization, and Querying Procedures

(U) As with the prior joint assessment, this joint assessment takes a broad approach and discusses the trends, patterns, and underlying causes of the compliance incidents reported in the Section 707 Report. The Section 707 Report provides further details regarding each individual incident and information on applicable remedial and mitigating actions. For each individual incident in the Section 707 Report, details are provided as to how any erroneously acquired, disseminated, or queried information was handled through various purge, recall, and deletion processes. Information is also provided about personnel remediation and, when applicable, wider training efforts to address incidents. In certain instances, processes or technical tools are adjusted, as appropriate, to remedy the incidents, to mitigate impact, and to reduce the potential for future incidents.

(U) The joint oversight team believes that analyzing the trends of those incidents, especially in regard to their causes, helps the agencies focus resources, avoid future incidents, and improve

overall compliance. The joint assessment primarily focuses on incidents involving NSA's targeting, minimization, and querying procedures, the volume and nature of which are better-suited to detecting such patterns and trends. The following subsections examine incidents of non-compliance involving NSA's targeting, minimization, and querying procedures.

(U) The NSA compliance incident rate for this reporting period (calculated as the total number of compliance incidents involving NSA's Section 702 procedures, *divided by* the average number of tasked facilities) is 0.13 percent and represents a decrease from the NSA compliance incident rate of 0.20 percent in the previous reporting period.

(U) Most of those incidents did not involve United States persons, and instead involved matters such as typographical or other tasking errors, detasking delays with respect to facilities used by non-United States persons who may have entered the United States, or improper queries which were not reasonably likely to return foreign intelligence information due to their design. Regardless of United States person status, robust oversight is conducted to ensure compliance with all aspects of the targeting and minimization procedures; all identified incidents are reported to the FISC and to the Congress, and all incidents are required to be appropriately remedied. As with all incidents, the joint oversight team works closely with NSA to identify causes of incidents in an effort to prevent future incidents, regardless of United States person status.

(U) In the subsections that follow,[65] this joint assessment examines some of the underlying causes of incidents of non-compliance. This joint assessment first begins by examining and explaining incidents impacting United States persons' privacy interests, even though those incidents represent a minority of the overall incidents, followed by a discussion of other types of human errors and communication issues.

(U) A. The Impact of Compliance Incidents on United States Persons

(U) A primary concern of the joint oversight team is the impact of certain compliance incidents on United States persons.[66] United States persons were primarily impacted by (1) tasking errors that led to the tasking of facilities used by United States persons, and (2) delays in detasking facilities after NSA learned that the user of the facility was a United States person. United States persons were also impacted by minimization and querying errors during this reporting period, which are detailed below. While the number of incidents involving United States persons remains low, due to their importance, these incidents are highlighted in this subsection.

[65] (U) Although ODNI and DOJ strive to maintain consistency in the headings of these subsections, these headings may change with each joint assessment, depending on the incidents that occurred during that reporting period and the respective underlying causes.

[66] (U) The Section 707 Report discusses every incident of non-compliance with the targeting, minimization, and querying procedures and how any erroneously acquired, disseminated, or queried United States person information was remediated through various purge, recall, and deletion processes.

(U) *(1) Tasking Errors Impacting United States Persons*

(U) ~~(S//NF)~~ During this reporting period, 4.1 percent of the total number of tasking errors identified involved instances where facilities used by United States persons were tasked pursuant to Section 702.[67] This percentage represents a slight increase from the last reporting period. All of the tasking errors in this reporting period impacting United States persons involved the tasking of facilities where the Government knew or should have known that at least one user of the facility was a United States person. These incidents represent isolated instances of insufficient due diligence, or other oversights, and did not involve an intentional effort to target a United States person. The majority of these tasking errors involved situations where an analyst made an erroneous assessment, overlooked information, and/or conducted insufficient research prior to tasking a facility and, as a result, inadvertently tasked a facility used by a United States person. In all of the incidents, personnel were reminded of the Section 702 tasking requirements, use of any applicable collection was restricted in NSA's systems, and any applicable collection was purged as required by NSA's targeting and minimization procedures.

~~(TS//SI//NF)~~ For example, one incident was caused by a misunderstanding of the tasking requirements as they pertained to United States persons [redacted]

[67] ~~(S//NF)~~ Note that this is 4.1 percent of tasking errors. As described above, the overall tasking compliance incident rate involving United States persons was close to zero. There were [redacted] tasking errors during this reporting period that involved facilities used by United States persons, [redacted] ewer than the [redacted] such incidents in the prior reporting period. [redacted]

[68] [redacted]

[redacted]

(U) *(2) Delays in Detasking Impacting United States Persons*

(U) During this reporting period, 4.9 percent of detasking delays involved facilities used by a United States person. This percentage represents a slight decrease from the last reporting period.[69] The detasking delay incidents impacting United States persons in this reporting period were caused by unintentional human errors (such as misunderstandings of the detasking requirements or instances of poor interagency communication). One such detasking delay is described above because it involved both a tasking error and a detasking delay. In all of the incidents, personnel were reminded of the Section 702 tasking requirements, any applicable collection was purged, and no reporting was identified based on the collection.

(U) **B. Effect of Human Error**

(U) Unlike in the immediately prior section, which focused exclusively on incidents impacting United States persons, this section addresses incidents that impacted *both* United States persons and non-United States persons. Each of the agencies has established processes to both reduce human errors and to identify such errors when they occur. Some human errors, such as those resulting from misunderstanding the rules and procedures, can be mitigated with additional training and guidance. These processes and trainings have helped to limit such errors, but some categories of human errors are unlikely to be entirely eliminated.

(U) *(1) Tasking & Detasking Errors*

(U) This section discusses some of the common types and causes of tasking errors and detasking delays from this reporting period, along with the corresponding compliance trends.[70] The majority of the detasking delays during this reporting period involved (i) non-United States persons who either traveled to the United States or appeared to have traveled to the United States, or (ii) unexplained indications that a Section 702-tasked account appeared to have been accessed from within the United States.

- (U) "Foreignness determination" errors – Certain tasking errors result from NSA not properly establishing a sufficient basis to assess that a target was located outside the United States (otherwise referred to as the "foreignness determination") or not sufficiently addressing conflicting information that calls into question whether a target was located outside the United States. During this reporting period, approximately 23 percent of tasking errors were the result of insufficient foreignness determinations, an

[69] ~~(S//NF)~~ Note that this is approximately 4.9 percent of detasking incidents. As described above, the overall detasking compliance incident rate involving United States persons was close to zero. There were [redacted] detasking delays in this reporting period that involved facilities used by United States persons. [redacted] This is [redacted] in the prior reporting period.

[redacted]

increase from the previous reporting period's 12 percent.[71] Certain of these incidents involved the failure to conduct a necessary foreignness check prior to tasking, or involved too long of a delay between the necessary foreignness checks and the tasking of the facility. In many of these incidents, NSA advised that it acquired no data from the erroneous tasking. However, in the instance data was acquired, it was purged.

- (U) "Foreign intelligence information purpose" errors – Certain tasking errors result from NSA's failure to establish a valid "foreign intelligence information purpose" for the tasking (*i.e.*, that the targeted user is not reasonably expected to possess or receive, and/or is not likely communicate foreign intelligence information as defined in 50 U.S.C. § 1801(e)) in relation to the categories of foreign intelligence information specified in the Section 702 certifications. During this reporting period, approximately 16 percent of tasking errors were the result of NSA not having a sufficient foreign intelligence purpose for the tasking, an increase from the previous reporting period's 11 percent.[72] In all of the instances, at the time of tasking, NSA had sufficiently established that the users were non-United States persons located outside the United States. Any erroneously collected information was purged, and no reporting was identified.

- (U) Typographical errors – Certain tasking errors result from typographical or similar errors. During this reporting period, approximately 21 percent of the tasking errors involved typographical or similar errors, a decrease from the previous reporting period's 39 percent. The majority of these errors were caused by CIA. In all but one of the incidents, NSA advised that there was no indication that the incorrectly tasked facilities were used by a United States person or by someone in the United States.[73] NSA and CIA advised that each had completed any required purges.

- (U) Incorrect providers – Certain tasking errors result from NSA inadvertently tasking a facility to an incorrect provider. During this reporting period, 3 percent of tasking errors involved tasking a facility to an incorrect provider, a slight decrease from the previous reporting period's 4 percent. Each of NSA, CIA, and FBI advised that it completed any required purges, and that it has identified no reporting based on this collection.

- (U) Incomplete Detaskings – Certain detasking delays result from NSA detasking (or another agency requesting that NSA detask) some, but not all, of a target's facilities. During this reporting period, 22 percent of the detasking delays involved such incidents where certain of a targets facilities were not timely detasked, an increase from the prior reporting period's 15 percent. Again, any data acquired as a result of such detasking errors was purged.

71 [redacted]

72 [redacted]

73 [redacted]

- (U) Facilities that Do Not Exist – In addition, during this reporting period, approximately 10 percent of the detasking delays were the result of the relevant provider indicating that a tasked facility did not exist, but NSA did not promptly detask the facility. One such incident involved a potentially widespread misunderstanding of NSA's targeting procedures.[74] Specifically, while investigating an unrelated matter, NSA discovered that certain NSA analysts may not have understood their responsibilities with respect to Section 702-tasked facilities that providers have indicated do not exist. In March 2020, NSA issued revised guidance to its personnel to address the relevant misunderstanding and implemented changes to its systems to mitigate the likelihood of these types of incidents reoccurring.

(U) *(2) Minimization and Querying Errors*

(U) NSA's minimization procedures have various requirements, including rules regarding under what circumstances Section 702-acquired information may be *disseminated*, and rules regarding how long unminimized Section 702-acquired information may be *retained*. NSA's querying procedures also have various requirements, including rules regarding *querying* unminimized Section 702-acquired information. Particular issues of non-compliance with minimization and querying procedures are detailed below.

(U) Querying Rules: During this reporting period, NSA's querying procedures included two principle restrictions on querying unminimized Section 702 collection.

1) NSA's Section 702 querying procedures in effect during this reporting period required that queries of unminimized Section 702 collection *must be designed in a manner "reasonably likely to return foreign intelligence information."* For example, if a query does not meet this standard due to a typographical or comparable error in the construction of the query term,[75] it constituted a compliance incident, regardless of whether the query term used a non-United States person identifier or a United States person identifier.
2) Although NSA's Section 702 querying procedures in effect during this reporting period permitted queries of unminimized Section 702 content using United States person identifiers, such queries *must be approved by NSA OGC*. If an NSA analyst used a United States person identifier that had not been approved by NSA OGC to query Section 702-acquired data, it constituted a compliance incident.

(U) During this reporting period, NSA minimization and querying incidents accounted for 23 percent of all NSA incidents of noncompliance, as compared to 29 percent in the previous reporting period; during this reporting period, there was also a significant decrease in the number of minimization and querying incidents.[76]

[74] [redacted]

[75] (U) For example, this type of query error occurs when an analyst mistakenly inserts an "or" instead of an "and" in constructing a Boolean query, resulting in an improperly tailored query that would potentially receive overly broad results and was unlikely to retrieve foreign intelligence information.

[76] ~~(S//NF)~~ Minimization and querying incidents decreased to [redacted] incidents in the previous reporting period.

(U) As with prior joint assessments, query incidents remain the cause of most compliance incidents involving NSA's minimization and querying procedures. In the previous reporting period, approximately 88 percent of incidents of noncompliance with NSA's minimization and querying procedures involved improper queries. During this reporting period, out of all of NSA's minimization and querying errors, approximately 91 percent involved improper queries, of which:

- Approximately 55.3 percent of the minimization and querying errors involved queries that were not reasonably likely to return foreign intelligence information,[77] which represents an increase from the previous reporting period's 50.1 percent. However, while the percentage of the total increased, the actual number of queries that were not reasonably likely to return foreign intelligence information decreased during this period. Some of the errors were caused by NSA analysts incorrectly formatting a query or conducting a query without sufficient limiting criteria; other errors were caused by analysts using identifiers with an insufficient connection to a Section 702 target or to a foreign intelligence purpose.[78] NSA advised that the relevant personnel had been reminded of the query requirements and that all query results had been deleted or aged-off.
- Approximately 35.5 percent of the minimization and querying errors involved NSA analysts conducting queries using a United States person identifier without approval, which represents a slight decrease from last reporting period's 38.6 percent (the actual number of such queries also decreased during this reporting period).[79]

(U) The joint oversight team assesses that NSA's overall training and guidance to its personnel has contributed to its overall compliance with its querying procedures, although individuals continue to make mistakes. The joint oversight team has reviewed the human errors that caused the minimization and querying errors during this reporting period and has not identified any discernible patterns in the types or causes of these errors.

(U) As with previous reporting periods, there were no identified NSA incidents of an analyst intentionally running improper queries.

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[77] ~~(TS//SI//NF)~~ There were [redacted] such non-compliant queries during this reporting period, compared to [redacted] in the previous reporting period.

[78] [redacted]

[79] ~~(TS//SI//NF)~~ There were [redacted] United States person query incidents involving NSA during this reporting period, compared to [redacted] in the previous reporting period. All [redacted] incidents involved NSA analysts using United States person identifiers that had not been approved to query Section 702-acquired data. In one example, [redacted] had not been approved as query terms in accordance with NSA's Section 702 querying procedures. NSA advised that the relevant personnel have been reminded of the Section 702 query requirements.

(U) Dissemination Rules: NSA's minimization procedures set forth requirements for the dissemination of United States person information. In the current reporting period, incidents involving NSA's dissemination of United States person information that did not meet the dissemination standard in NSA's minimization procedures represented approximately 8 percent of the total number of minimization and querying incidents (compared to 9 percent of minimization and querying incidents during the last reporting period).[80] Improper disseminations of United States person information are usually the result of a human error oversight, generally because United States person information that is not necessary to understand foreign intelligence information is included in the dissemination. For example, in one instance, NSA issued a report on September 4, 2019, that included the name of a United States person whose identity was not necessary to understand foreign intelligence information. The error occurred because an NSA analyst had attempted to redact the United States person identity in the report by using a particular feature in a software tool. However, based on the way the software tool was utilized, it was possible for recipients to remove the redaction and view the United States person identity. NSA recalled the report and did not reissue it. NSA advised that the relevant personnel have been reminded of the Section 702 dissemination requirements. In another instance, the error occurred because disseminations of United States person information were distributed to a broader group of recipients than is permitted by NSA's minimization procedures. The joint oversight team has reviewed the human errors that caused the dissemination errors during this reporting period and has not identified any discernible patterns in the types or causes of these errors.

(U) As was the case with NSA querying incidents, there were no identified NSA incidents of an analyst intentionally violating the dissemination rules.

~~(TS//SI//NF)~~ Retention Rules: During this reporting period, there were [redacted] incidents in which NSA improperly retained information acquired pursuant to Section 702, either because it should have been purged or because it was retained longer than permitted by NSA's minimization procedures.[81] These incidents primarily involved NSA system errors, including human errors in system coding. For example, NSA discovered that FISA information subject to purge was improperly retained in an NSA system [redacted] NSA has deleted the improperly retained records [redacted]

[80] ~~(S//NF)~~ There were [redacted] incidents involving NSA's dissemination of United States person information that did not meet the dissemination standard in NSA's minimization procedures, compared to [redacted] in the previous reporting period.

[81] ~~(TS//SI//NF)~~ There were [redacted] incidents involving the retention of unminimized Section 702-acquired data beyond the period permitted by NSA's Section 702 minimization procedures, and [redacted] incidents involving the failure to conduct post-targeting analysis, as required by the targeting procedures

[redacted]

(U) *(3) Other Errors*[82]

(U) Documentation Errors: NSA's targeting procedures require that for each tasked facility NSA document the source of the "foreignness determination" and identify the foreign power or foreign territory about which NSA expects to obtain foreign intelligence information. The targeting procedures also require a written explanation of the basis for its assessment, at the time of targeting, that the target is expected to possess, receive, and/or is likely to communicate foreign intelligence information concerning the foreign power or foreign territory that is covered by the certification under which the accounts were tasked ("foreign intelligence purpose"). The number of documentation errors increased to approximately 30.1 percent of the total number of compliance incidents in this period, from 14.7 percent in the prior reporting period.[83] In all of these incidents, while the actual tasking of each facility was appropriate, the analyst failed to sufficiently document the "foreignness determination" or the "foreign intelligence purpose" on the tasking sheet, or the Section 702(h) certification to which the facility was tasked was not appropriate based on the documented foreign intelligence purpose. In each of these incidents, NSA issued reminders to the targeting officer to review the tasking sheet data thoroughly prior to submission and to select the appropriate certification based on the foreign intelligence they expected to receive from the user.

(U) Notification Delays: Notification errors remained relatively high, accounting for 19 percent of all NSA compliance incidents in this reporting period, a slight increase from 18 percent in the last reporting period.[84] [redacted]

~~(TS//SI//NF)~~ Post-Targeting Analysis: NSA's targeting procedures require that "After a person has been targeted for acquisition by NSA, NSA will conduct post-targeting analysis . . . designed to detect those occasions when a person who when targeted was reasonably believed to be located outside the United States is located in the United States." During this reporting period, there were [redacted] incidents involving the failure to satisfy the requirements for post-targeting analysis in NSA's targeting procedures.

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[82] ~~(TS//SI//NF)~~ In addition to the incidents discussed below, there was one incident involving NSA's failure to purge Section 702-acquired information that was required to be purged pursuant to NSA's Section 702 targeting procedures. There were also [redacted] incidents involving NSA analysts improperly storing or accessing Section 702-acquired data.

[83] ~~(S//NF)~~ [redacted] incidents resulted from documentation errors, representing an increase from the last reporting period, [redacted] The number of documentation errors resulting from the tasking of a facility to a different DNI/AG Section 702(h) certification than intended remained high but decreased [redacted] in the prior reporting period.

[84] ~~(TS//SI//NF)~~ There were [redacted] reporting delays in this reporting period. In [redacted] of the incidents, the only violation was a failure to provide the required notice to NSD. These reporting delays ranged from one to 148 business days, with an average delay of approximately six business days and a median delay of approximately two business days.

(U) C. Inter-Agency and Intra-Agency Communications

(U) Section 702 compliance requires good communication and coordination within and between agencies. In order to ensure targeting decisions are made based on the totality of the circumstances and after the exercise of due diligence, those involved in the targeting decision must communicate the relevant facts to each other. Analysts also must have access to the necessary records that inform such decisions. Good communication among analysts is needed to ensure that facilities are promptly detasked when it is determined that the Government has lost its reasonable basis for assessing that the facility is used by a non-United States person reasonably believed to be located outside the United States for the purpose of acquiring foreign intelligence information. Furthermore, query rules regarding United States person identifiers and dissemination decisions regarding United States person information require inter- and intra-agency communications regarding who the Government has determined to be a United States person.

(U) In this reporting period, approximately 14.6 percent of the detasking delays were attributable to miscommunications or delays in communicating relevant facts.[85] This is similar to the last reporting period (15 percent) and, thus, the joint oversight team assesses that there is still room to improve agency communication. The detasking delays caused by miscommunication typically involved travel or possible travel of non-United States persons to the United States. Further, none of the tasking errors involved situations in which intra-agency miscommunications resulted in the erroneous tasking of a facility.

(U) The joint oversight team assesses that agencies should continue their training efforts to ensure that appropriate protocols continue to be utilized. As part of its ongoing oversight efforts, the joint oversight team will also continue to monitor NSA, CIA, FBI, and NCTC's Section 702 activities and practices to ensure that the agencies maintain efficient and effective channels of communication.

(U) III. Review of Compliance Incidents – FBI Targeting, Minimization, and Querying Procedures

(U) There was a significant decrease in the number of incidents involving noncompliance with FBI's targeting, minimization, and querying procedures. However, as with the previous reporting period, a large majority of those incidents involved querying errors.[86] Most of the querying incidents were caused by personnel misunderstanding the application of the query standard in the context of batch queries.

[85] ~~(S//NF)~~ There were [redacted] such incidents in this reporting period, a slight reduction from the [redacted] reported in the previous period. [redacted]

[86] ~~(S//NF)~~ As noted above, [redacted] compliance incidents involved violations of FBI's targeting, minimization, or querying procedures. The substantial decrease is likely due in part to the suspension of NSD's minimization and querying reviews at FBI field offices, and in part to FBI's efforts to provide training and resources to reduce query errors. Out of the total FBI compliance incidents for this reporting period, only [redacted] were targeting errors, [redacted] were minimization errors, and the remaining [redacted] were querying errors.

(U) **A. Targeting Incidents**

~~(S//NF)~~ During this reporting period, there were [redacted] incidents involving non-compliance with FBI's targeting procedures, [redacted] from the previous reporting period.[87] In all [redacted] cases, FBI personnel approved a request to [redacted] from a Designated Account prior to completing all searches of FBI systems required by FBI's targeting procedures. In all [redacted] incidents, FBI conducted additional searches after the review and advised that it had no information indicating that the Designated Accounts were used by a United States person or by someone located in the United States, thus, the accounts remained tasked. In all of the incidents, FBI personnel were reminded of the Section 702 requirements for tasking, including completing all the required searches in FBI systems.

(U) **B. Minimization and Querying Incidents**

(U) With respect to FBI's minimization and querying procedures, the total number of compliance incidents decreased substantially from the previous reporting period.[88] As discussed above, the joint oversight team believes that the reduction in compliance incidents is, in part, due to the suspension of reviews at FBI field offices.[89] In addition to discussing the query incidents, this assessment discusses other errors involving noncompliance with FBI's minimization procedures. Details about remedial actions are provided below.

(U) *(1) Batch Query Errors*

(U) During prior reporting periods, NSD identified noncompliant batch queries conducted by FBI personnel that resulted in thousands of noncompliant queries due to a single decision by a user. During this reporting period, NSD identified a batch job involving queries of large numbers of identifiers, including United States person identifiers, without having a reasonable expectation that such queries were likely to return foreign intelligence information or evidence of a crime. Because certain FBI systems permit users to conduct multiple queries as part of a single batch job, a single action can result in thousands of improper queries. For example, if a user wanted to conduct a query based on 100 e-mail accounts that had been in contact with a FISA target, the user could use the batch query tool, which would result in 100 queries being conducted using each e-mail account as a query term. In these incidents, although the FBI analysts conducted the queries for work-related purposes, such as attempts to investigate threats, the analysts misunderstood the application

[87] [redacted]

[88] ~~(S//NF)~~ The number of minimization and querying errors for the current reporting period was [redacted] compared to [redacted] in the previous reporting period.

[89] (U) In response to the coronavirus pandemic, NSD and ODNI temporarily suspended reviews at FBI field offices during a portion of this reporting period. In recent years, these field office reviews had been responsible for discovering a significant portion of FBI's minimization and querying incidents that are reported in each Section 707 Report. As a result, incidents that would typically be discovered by NSD during those field office reviews were not discovered during the portion of this reporting period when such reviews had been suspended. FBI's minimization and querying incidents discussed in this joint assessment were first reported to the FISC during this reporting period, but certain of those incidents were discovered in connection with field office reviews conducted during prior reporting periods. In February 2021, NSD resumed its audits of queries conducted by FBI personnel; these audits are being conducted remotely due to the pandemic. Any incidents discovered will be discussed in future joint assessments.

of the query requirements. Thus, as the FISC explained in its October 2018 opinion, "a single improper decision or assessment resulted in the use of query terms corresponding to a large number of individuals, including U.S. persons."

~~(S//NF)~~ Approximately 37 percent of all FBI compliance incidents during this reporting period were the result of a single improper querying decision.[90] Specifically, an FBI intelligence analyst (IA) conducted approximately [redacted] queries in [redacted] using the names and other identifiers of individuals, including United States persons, whom FBI had identified as potential sources because they were linguists who had applied to work at FBI but were not ultimately hired. The IA advised that she conducted these queries in order to find out whether FBI had any derogatory information about these individuals, which would assist FBI in deciding whether or not to approach the individuals as potential sources. The IA further advised that, prior to conducting these queries, she had no reason to suspect that any of the queries would return foreign intelligence information or evidence of a crime. The IA indicated that she had conducted these queries as a result of an initiative directed from an FBI Headquarters component to FBI field offices, and NSD is aware of at least one other field office where similar queries were conducted.

~~(S//NF)~~ ~~(U)~~ Although reported to the FISC during this reporting period, the underlying batch error that caused these incidents was conducted earlier in 2019, prior to a number of remedial steps taken by FBI in late 2019, 2020, and 2021. For example, to address these types of batch query compliance incidents where a single improper decision or assessment by FBI personnel results in noncompliant queries corresponding to a large number of individuals, FBI (subsequent to this reporting period) imposed a requirement that individual queries conducted using the batch query tool in [redacted] of 100 or more identifiers require FBI attorney approval prior to the queries being conducted. This change became effective in [redacted] as of June 2021. Further remedial steps applicable to all queries, including batch query incidents, are discussed in a subsection below.

(U) *(2) Other Query Errors Caused by Misunderstandings of the Query Standard*

(U) During this reporting period, after batch queries are removed, most of the improper query incidents resulted from FBI personnel misunderstanding the querying rules even though the queries were conducted for work-management purposes or work-related purposes. These queries were not, however, reasonably likely to retrieve foreign intelligence information or evidence of a crime and, thus, constituted incidents. In most of the instances, FBI personnel did not fully understand the application of the query rules; however, it appears that in at least one instance, FBI personnel explained that they did not recall why they ran the query.

(U) For example, some of the improper queries involved FBI personnel conducting queries, including using United States person identifiers, to research prospective FBI employees without a reasonable basis to believe the queries would be likely to return foreign intelligence information or evidence of a crime.[91] These and other similar query compliance incidents during this period were

[90] ~~(S//NF)~~ The largest single FBI compliance incident involved [redacted] improper batch queries of unminimized FISA-acquired information in [redacted]. [redacted]

[91] ~~(S//NF)~~ In one incident, an FBI operational support technician conducted approximately [redacted] queries in [redacted] using identifiers associated with task force officers who were FBI bomb technician candidates and close personal contacts

due to personnel conducting queries to vet individuals or entities for any derogatory information. NSD has observed this common scenario in numerous query compliance incidents in this and prior and subsequent reporting periods. These types of queries can impact United States persons. For this category of incidents, NSD has concluded that there is no specific factual basis, absent additional information, to believe that the query is reasonably likely to retrieve foreign intelligence information or evidence of a crime from raw FISA collection, and, therefore, the queries do not meet the justification component of the querying standard.

~~(S//NF)~~ During this reporting period, NSD observed multiple query incidents involving FBI looking for derogatory information about individuals. For example, in one review NSD conducted, NSD identified [redacted] query compliance incidents involving three categories of individuals. The first category consisted of individuals who had been subjected to a limited background investigation because they had requested to participate in FBI's "Citizens Academy" – a program for business, religious, civic, and community leaders designed to foster a greater understanding of the role of federal law enforcement in the community through discussion and education, according to FBI's website. Candidates are nominated by FBI employees, former Citizens Academy graduates, and community leaders, and participants are selected by the special agent in charge of the local FBI field office. The second category consisted of individuals who had been subjected to a limited background investigation because they needed to enter the field office in order to perform a particular service, such as a repair. The third category (referred to as "walk-in complaints") consisted of individuals who entered the field office seeking to provide a tip or to report that they were the victim of a crime. The technical information specialist advised that he conducted these queries in order to determine whether FBI had any derogatory information regarding the individuals. In another example, NSD's audits revealed that FBI personnel conducted queries of individuals whom FBI was considering approaching as sources, [redacted]. In addition, the batch query incident discussed above was run for the same purpose of vetting individuals to determine if there was any derogatory information in FBI holdings.

(U) ~~(S//NF)~~ In one query incident, FBI queried the names of a local political party to determine if the party had connections to foreign intelligence. This query was not reasonably likely to retrieve foreign intelligence information.

(U) In addition, NSD's query audits revealed noncompliant queries of complainants who provided tips to the FBI. FBI personnel also conducted queries that, while reasonably likely to return foreign intelligence information, were overly broad as constructed.[92] In all of the above

reported by other FBI personnel; the queries were conducted to determine if there was any derogatory information about these individuals. [redacted] The FBI employee who conducted the query advised that, to the best of her knowledge, the queries did not return any unminimized FISA-acquired information.

[92] ~~(S//NF)~~ An IA conducted approximately [redacted] queries in [redacted] using only the name of a U.S. congressman. [redacted] The 707 Report describes the specific facts that led the IA to conduct these queries. These queries retrieved unminimized FISA-acquired information, including Section 702-acquired products that were opened. FBI advised that no unminimized FISA-acquired information was disseminated or used in any other way. NSD and ODNI assess, based on these facts, that these queries were not compliant because they were overly broad as constructed (*i.e.*, queried the U.S. congressman's name with no limiters).

incidents, FBI personnel misunderstood the application of the query rules, and they were subsequently reminded of how to correctly apply the query rules.

(U) *(3) Other Query Errors Caused by Lack of Awareness that a Query Would Run against FISA-Acquired Data*

(U) In other incidents, FBI personnel advised that they did not appreciate that queries would be running against unminimized FISA-acquired information and, thus, would be subject to the query standard. This is particularly the case with respect to query incidents that have been identified with queries run in a specific FBI database that contains non-FISA acquired and unminimized FISA-acquired information. As a result, for these queries, FBI personnel did not think to apply the query standard to their proposed queries before conducting queries in that particular FBI database, or failed to opt out of conducting queries against unminimized FISA-acquired information.

~~(S//NF)~~ A change that FBI has (subsequent to this reporting period) implemented to make [redacted] a default opt-out for searches of FISA-acquired information is designed to prevent this type of incident. At the time these queries were conducted, [redacted] was configured to automatically include FISA datasets – including data acquired pursuant to Titles I, III, and V as well as Section 702 of FISA – and any other datasets the user was authorized to access unless personnel intentionally excluded such data. Pursuant to a change FBI has implemented, a user will now have to intentionally decide to opt-in to unminimized FISA datasets if the user wants to query those datasets. This change to [redacted] became effective on 29 June 2021.

(U) *(4) Errors related to Queries Conducted Solely for an Evidence of a Crime Purpose*

~~(S//NF)~~ Additionally, there were [redacted] incidents involving violations of the requirement[93] that the Government promptly submit in writing a report concerning each instance in which FBI personnel receive and review Section 702-acquired information that FBI identifies as concerning a United States person in response to a query that is not designed to find and extract foreign intelligence information.[94] Further, Section 702(f)(2)(A) provides that FBI may not access the contents of communications acquired pursuant to Section 702 that were retrieved pursuant to a query made using a United States person query term that was not designed to find and extract foreign intelligence information unless FBI applies for an order from the FISC, based on probable cause, and the FISC enters an order approving the application. In these instances, NSD determined that these queries had been conducted solely to find and extract evidence of a crime as part of predicated criminal investigations. The [redacted] incidents were discovered by NSD while conducting oversight reviews at five FBI field offices. Of the [redacted] incidents, [redacted] occurred at one field office, many of which related to public corruption or embezzlement investigations unrelated to foreign intelligence activity. Subsequent investigation by FBI into these queries revealed that they returned Section 702-acquired information, and NSD presumed that such information was reviewed by FBI

[93] (U) This requirement is not contained in FBI's querying procedures. Rather, it is contained in each of the FISC's opinions approving the relevant annual certifications, beginning with the November 6, 2015 Opinion and Order approving the 2015 FISA Section 702 Certifications.

[94] [redacted]

personnel absent specific information to the contrary. The system that was involved with these particular incidents was configured, at the time of the incidents, to preview content of responsive information for users when they executed a query.[95] Subsequent to when these queries were conducted, FBI reconfigured the system at issue so that it no longer presents a preview of the content of unminimized Section 702-acquired information in response to a query. The users who executed these queries were unaware of the particular requirements of Section 702(f)(2), and of an option provided by the system to indicate that their queries were being run solely to extract evidence of a crime in support of a predicated criminal investigation. Because the queries were run using United States person query terms in order to find and extract evidence of a crime in support of predicated criminal investigations, and because NSD had to presume, because of this system design issue, that FBI personnel reviewed the Section 702-acquired information without first obtaining an order from the FISC, NSD reported these incidents to the FISC as potential violations of Section 702(f)(2)(A) of FISA. In these incidents, NSD reminded the personnel about the query requirements in FBI's Section 702 query procedures and FBI's FISA minimization procedures, and discussed these requirements with other personnel during NSD's training conducted for the field offices.

(U) In addition, to the reconfiguration of the system at issue as noted above, if the user seeks to access Section 702-acquired content returned from a query, the system will force the user to complete the query in another FBI system. That other FBI system requires the user to answer a question in a pop-up box that asks whether the query is being done only to retrieve evidence of a crime. An information icon also is provided, providing the user with information relating to the requirements of Section 702(f)(2) of FISA. FBI designed the radio buttons, however, to automatically default the answer to this question in the system to "No." If a user proceeds from that default "No," they are able to select from a series of pre-populated justifications for their query, or select "other" and provide their own, written justification. Once the system receives that justification from the user, it allows the user to access the contents of the Section 702-acquired information. If, however, the user answers "Yes" to the question as to whether it is a query being done to retrieve evidence of a crime, the user is provided with three drop-down justifications for their query: "Court Order," "Exigent Circumstances," or "Neither." If a user selects "Court Order" or "Exigent Circumstances," she is allowed to proceed to access the contents of the Section 702-

[95] ~~(S//NF)~~ For queries in [redacted] during the reporting period, although FBI was able to confirm whether or not a user reviewed the contents of Section 702-acquired information returned by a query (*e.g.*, by opening the product(s) containing the Section 702-acquired information), the manner in which [redacted] was configured did not allow FBI to confirm whether a user was exposed to content that is previewed for the user on their computer screen in response to a query. With limited exceptions involving highly sensitive collections, query results returned to a [redacted] user would have generally included a 100 character context (or summary) field for each search result, which could include information from FISA-acquired products. When presented, this summary field consists of the 100 characters surrounding the individual search "hit" (*e.g.*, the query term) within the individual product. As a result, a [redacted] user could be exposed to FISA-acquired information in response to a query without actually clicking on the actual FISA-acquired product. Further, individual [redacted] users have the ability to customize the number of search results that appear on each screen page that the query returns (*e.g.*, 25, 50, 100 results per page) and have the ability to change those preferences at any time. During the reporting period, [redacted] was not designed to log how far down a user scrolls through search results on an individual screen, or to automatically report how many, or which, pages of search results an individual user clicks through. Accordingly, without any additional information (*e.g.*, the user remembers not reviewing the query results or the user set up his/her user preferences to not have the summary field displayed when the query results are returned), NSD presumed that the users would have viewed the content of the 702-acquired information in the summary field.

acquired information. At that same time, an alert is sent to FBI's NSCLB, which then conducts additional research into the nature of the query, and coordinates as necessary with NSD. If the user selects "Neither," she is prevented from accessing the contents of the Section 702-acquired information, and provided with an alert that instructs her that she either needs to obtain an order from the FISC or have exigent circumstances to be able to review the contents of the Section 702-acquired information. This alert also directs the user to contact NSCLB or her field office Chief Division Counsel with any questions. Although outside this reporting period, the FBI changed the system design pertaining to the question of whether the query is being done only to retrieve evidence of a crime. The system has now been reconfigured to eliminate a default answer, so that FBI personnel must affirmatively indicate whether or not a query is being conducted solely to retrieve evidence of a crime before they may proceed to conduct a query.

(U) *(5) Errors related to Queries Conducted in Connection with National Security Assessments*

(U) In addition to the minimization reviews conducted by NSD described above in Section II, NSD also conducted NSRs at FBI field offices during this reporting period. As noted above, during an NSR, team members review, among other things, a sampling of each office's national security assessments to verify that they were opened for an authorized purpose – that the basis for the assessment was not arbitrary or groundless speculation, nor based solely on the exercise of First Amendment protected activities or on the race, ethnicity, national origin, or religion of the subject. *See generally* Attorney General Guidelines for Domestic Operations (AGG-DOM) at 10, 13, 16-19, Section II. While FBI personnel may query FBI systems containing unminimized Section 702 data as part of an assessment, any queries involving assessments that lacked an authorized purpose would necessarily be improper, as such queries would not be reasonably likely to return foreign intelligence information or evidence of a crime.

~~(S//NF)~~ During this reporting period, there were [redacted] improper queries conducted in connection with assessments that NSD determined lacked an authorized purpose. For example, in 2016 and 2017, an FBI analyst conducted queries related to an assessment opened based on a witness's report that a vehicle driven by an individual of Middle Eastern descent sped into the parking lot and began honking the horn. A second individual of Middle Eastern descent came out of the apartment complex, and the individuals began loading boxes into a second vehicle. The witness reported that some of the boxes were labeled "Drano," and that there were also "white containers which appeared to be upside down with black screw tops in the box." The witness stated that the individuals acted very quickly. As a result of a 2019 review that revealed the above, NSD assessed that these facts were insufficient to establish an authorized purpose for the assessment, and thus the [redacted] queries related to this assessment lacked a proper authorized purpose. In this instance, the assessment was closed at the time of NSD's oversight review. When NSD discovers closed assessments which lack an authorized purpose, it notes for FBI that any information obtained in the course of those assessments may have to be destroyed. The decision to destroy any such information is made on a case-by-case basis by FBI. Although the error in these assessments arose from a misapplication of the Attorney General Guidelines, as opposed to a misunderstanding of the FBI query procedures requirement for an authorized purpose, the joint oversight team will continue to closely monitor incidents such as these that may have particularly acute impacts on the privacy and civil liberties of United States persons.

(U) *(6) Other FBI Errors Caused by Misunderstanding or Lack of Awareness*

(U) During this reporting period, there were a modest number of incidents that involved non-compliance with the provisions of FBI's minimization procedures concerning establishment of a review team for a target charged with a crime pursuant to the United States Code.[96] As soon as FBI knows that a target is charged with such a crime, FBI's minimization procedures require that FBI follow certain steps, including establishing a review team of monitor(s). The member(s) of the review team must be individuals who have no role in the prosecution, and the monitor(s) initially assess and review the Section 702-acquired information to determine whether the communications are attorney-client privileged. Failure to timely establish such a review team constitutes a compliance incident. With respect to such incidents in this reporting period, the joint oversight team assesses that one set of incidents was the result of a misunderstanding of the process required to establish a review team, while the other set of incidents was the result of a miscommunication between the FBI division conducting the investigation and FBI Headquarters. In these incidents, the relevant personnel have been reminded about the requirements in FBI's Section 702 minimization procedures regarding attorney-client communications, including the review team requirements.

(U)

~~(S//NF)~~ Additionally, there was one incident where FBI personnel improperly disseminated United States person information acquired pursuant to Section 702.[97] The dissemination did not comply with section III.C.1.c, section IV.A, or section IV.B of FBI's Section 702 minimization procedures, in that the United States person information did not reasonably appear to be foreign intelligence information, to be necessary to understand foreign intelligence information or assess its importance, or to be evidence of a crime.

(U) **C. Remedial Steps Taken to Address Query Errors**

(U) The joint oversight team has worked with FBI to address the query compliance issues through training, guidance, and system changes.

(U) Historical Remedial Measures

(U) For example, in June 2018, FBI, in consultation with the joint oversight team, issued guidance to all components where personnel had access to unminimized FISA-acquired information. This guidance explained the query standard and how to apply it. The guidance also discussed compliance issues involving the application of the query standard, including issues relating to queries run using the "batch" job function. Additional emphasis was provided concerning issues involving queries run against unminimized 702-acquired information to find and extract only evidence of a crime (and not foreign intelligence information). Each FBI field office was instructed to train their personnel on the June 2018 guidance. In January 2019, FBI and NSD conducted joint training for all FBI NSCLB personnel and all field office legal personnel, on FBI's querying procedures. FBI field office legal personnel were instructed to provide this training to all personnel with access to unminimized FISA-acquired information. In fall 2019, FBI, in

[96] [redacted]

[97] ~~(S//NF)~~ The relevant personnel were reminded about the requirements in FBI's Section 702 minimization procedures. [redacted]

consultation with NSD, developed and deployed mandatory training for FBI personnel on the query standard and on the system changes FBI made to address the query issues. All personnel with access to unminimized FISA-acquired information were required to complete the training by mid-December 2019, and all personnel who subsequently require such access must first complete this training prior to being granted access. In addition, prior to the temporary suspension of NSD query audits in March 2020, NSD generally conducted query training during field office query audits. This training occurred during one on one sessions with the individuals being audited and as part of a larger group training at the field office. This training included, among other things, multiple hypothetical examples derived from actual query incidents, as well as guidance on how to use FBI's systems to allow FBI to better track and comply with requirements involving queries run against unminimized 702-acquired information.

(U) As part of FBI's Section 702 amended querying procedures that were adopted by the Attorney General in 2019, the amended procedures instituted recordkeeping and documentation requirements for United States person queries and, in response the FISC ordered the Government to periodically update the FISC on FBI's implementation of the new requirements. Between September and November 2019, FBI implemented changes to FBI systems storing unminimized FISA-acquired information that were necessary to comply with the amended procedures. Among other things, these changes require FBI personnel to provide a justification, explaining how their query meets the query standard when running queries of United States person query terms and when they seek to access Section 702-acquired contents returned by such queries. All query terms and justifications are logged for oversight purposes. In addition, FBI, in consultation with NSD, developed and deployed new training, as detailed above, for FBI personnel on the query standard and on the system changes.

(U) *Recent Training and Guidance*

(U) As noted above, in 2021, NSD resumed remote query audits of FBI users at multiple FBI field offices as well as FBI Headquarters. Those audits have sampled queries conducted in 2020 and 2021 and have revealed additional query compliance incidents. As a result of the findings from NSD's audits and observations of the FISC related to these query incidents, NSD, in consultation with ODNI, developed guidance on the query standard for FBI personnel. This guidance document is designed to supplement existing and planned training on the querying standard; provides a robust explanation of the query standard; and explains the specific requirements imposed by Section 702(f)(2). The guidance document also includes multiple examples of the application of the guidance to particular factual scenarios. On 01 November 2021, NSD provided this guidance document to FBI, and FBI will provide this guidance document to all users with access to raw FISA-acquired information. NSD anticipates that this additional guidance document will facilitate the correct application of the querying standard. Additionally, based on the above guidance regarding the querying standard, FBI is undertaking additional training for FBI personnel focused specifically on querying requirements in combination with the below-described changes to FBI's systems used to query unminimized Section 702-acquired information in order to more adequately address the query compliance issues. FBI plans to develop relevant training before the end of calendar year 2021. FBI will require all personnel with access to unminimized FISA-acquired information to verify that they have completed the required training.

(U) Recent Technical Changes

(U) As detailed above, in June 2021, FBI took additional steps to address the batch query compliance incidents and instances where users do not intend to query unminimized FISA-acquired information but fail to opt-out of such datasets. In addition, FBI plans to redesign its systems that contain unminimized Section 702-acquired information to include a requirement that users write a case-specific justification for United States person queries that return Section 702 contents if they want to access the contents. Historically, users have been able to choose prepopulated justifications from a drop-down menu in lieu of entering a free text justification in certain circumstances. The joint oversight team assesses that user understanding of the querying standard can be enhanced if users are required to write their own case-specific justification for a Section 702 query in addition to choosing from a drop-down menu, because the user will be required to demonstrate that user's understanding of the querying standard. The joint oversight team also assesses that reviewing these case-specific justifications will enable both internal FBI overseers and external overseers at NSD and ODNI to better determine whether FBI personnel understand the querying standard. Because some of FBI's remedial measures did not come into effect until the end of June 2021, the joint oversight team, however, is unable, at this time, to assess the overall effectiveness of FBI's recent remedial measures, including the planned training and the recently issued guidance. The joint oversight team will provide updates on its assessment in future joint assessments.

(U) IV. Review of Compliance Incidents – CIA Minimization and Querying Procedures

(U) During this reporting period, there were a small number of incidents involving noncompliance with CIA's querying procedures.[98] All of these incidents involved queries of Section 702-acquired information that were not reasonably likely to retrieve foreign intelligence information.[99]

~~(S//OC/NF)~~ For example, [redacted] Despite this instruction, the analyst inadvertently designed the query to include CIA's 702 FISA collection. Although these queries returned unminimized 702-acquired information, the

[98] ~~(S//NF)~~ CIA receives unminimized communications from selectors that it nominates to NSA for targeting [redacted]

[99] ~~(S//NF)~~ There were [redacted] instances of noncompliance with CIA's querying procedures during the reporting period. In each of these incidents, CIA analysts queried the identifiers of subjects of various investigations, but the queries were not reasonably likely to return foreign intelligence information. [redacted]

[100] [redacted]

analyst advised that he/she did not disseminate or otherwise use any such information. CIA advised that the analyst at issue has been reminded of the requirements for querying United States person identifiers into Section 702-acquired content and to exercise care when performing these queries.

(U) V. Review of Compliance Incidents – NCTC Minimization and Querying Procedures

(U) During the reporting period, there were no incidents involving violations of NCTC's minimization or querying procedures.

(U) VI. Review of Compliance Incidents – Provider Errors

(U) ~~(S//NF)~~ During the reporting period, there were no reported instances of non-compliance by a "specified person" (*i.e.,* a provider) to whom the Attorney General and DNI have issued directives pursuant to Section 702(i) of FISA.

(U) SECTION 5: CONCLUSION

(U) During this reporting period, the joint oversight team found that the agencies continued to implement the procedures and follow the guidelines in a manner that reflects a focused and concerted effort by agency personnel to comply with the requirements of Section 702. Nevertheless, a continued focus is needed to address the underlying causes of the incidents that did occur, especially those incidents relating to improper queries. The joint oversight team assesses that such focus should emphasize maintaining close monitoring of collection activities and continued personnel training. Additionally, as part of its ongoing oversight responsibilities, the joint oversight team and the agencies' internal oversight regimes will continue to monitor the efficacy of measures to address the causes of compliance incidents during the next reporting period.

APPENDIX

APPENDIX

(U) IMPLEMENTATION OF SECTION 702 AUTHORITIES – OVERVIEW

(U) I. Overview – NSA

(U) The National Security Agency (NSA) seeks to acquire foreign intelligence information concerning specific targets under each Section 702 certification from or with the assistance of electronic communication service providers, as defined in Section 701(b)(4) of the Foreign Intelligence Surveillance Act of 1978, as amended (FISA).[1] As required by Section 702, those targets must be non-United States persons[2] reasonably believed to be located outside the United States.

~~(S//NF)~~ During this reporting period, NSA conducted foreign intelligence analysis to identify targets of foreign intelligence interest that fell within one of the following certifications:

[redacted]

(U) As affirmed in affidavits filed with the FISC, NSA believes that the non-United States persons reasonably believed to be outside the United States who are targeted under these

[1] (U) Specifically, Section 701(b)(4) provides:

> The term 'electronic communication service provider' means – (A) a telecommunications carrier, as that term is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153); (B) a provider of electronic communication service, as that term is defined in section 2510 of title 18, United States Code; (C) a provider of a remote computing service, as that term is defined in section 2711 of title 18, United States Code; (D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored; or (E) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), or (D).

[2] (U) Section 101(i) of FISA defines "United States person" as follows:

> a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section101(a)(20) of the Immigration and Nationality Act [8 U.S.C. § 1101(a)(20)]), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3).

[3] [redacted]

[4] [redacted]

certifications will either possess foreign intelligence information about the persons, groups, or entities covered by the certifications or are likely to receive or communicate foreign intelligence information concerning these persons, groups, or entities. This requirement is reinforced by the Attorney General's Acquisition Guidelines, which provide that an individual may not be targeted unless a significant purpose of the targeting is to acquire foreign intelligence information that the person possesses, is reasonably expected to receive, and/or is likely to communicate.

(U) Under NSA's FISC-approved targeting procedures, NSA targets a particular non-United States person reasonably believed to be located outside the United States by tasking facilities used by that person who possesses or who is likely to communicate or receive foreign intelligence information. A facility (also known as a "selector") is a specific communications identifier tasked to acquire foreign intelligence information that is to, from, or about a target. A "facility" could be a telephone number or an identifier related to a form of electronic communication, such as an e-mail address.[5] In order to acquire foreign intelligence information from or with the assistance of an electronic communications service provider, NSA first uses the identification of a facility to acquire the relevant communications. Then, after applying its targeting procedures (further discussed below) and other internal reviews and approvals, NSA "tasks" that facility in the relevant tasking system. The facilities are in turn provided to electronic communication service providers who have been served with the required directives under the certifications.

(U) After information is collected from those tasked facilities, it is subject to FISC-approved minimization procedures. NSA's minimization procedures set forth specific measures NSA must take when it acquires, retains, and/or disseminates non-publicly available information about United States persons. All collection of Section 702 information is routed to NSA. However, NSA's minimization procedures also permit the provision of unminimized communications to the Central Intelligence Agency (CIA), Federal Bureau of Investigation (FBI), and the National Counterterrorism Center (NCTC) relating to targets identified by these agencies that have been the subject of NSA acquisition under the certifications. The unminimized communications sent to CIA, FBI, and NCTC, in accordance with NSA's targeting and minimization procedures, must in turn be processed by CIA, FBI, and NCTC in accordance with their respective FISC-approved Section 702 minimization procedures.[6]

(U) NSA's targeting procedures address, among other subjects, the manner in which NSA will determine that a person targeted under Section 702 is a non-United States person reasonably believed to be located outside the United States, the post-targeting analysis conducted on the facilities, and the documentation required.

5 [redacted]

6 [redacted]

(U) A. Pre-Tasking Location

(U) 1. Telephone Numbers

~~(S//SI//NF)~~ For telephone numbers, NSA analysts [redacted]

(U) 2. Electronic Communications Identifiers

~~(S//SI//NF)~~ For electronic communications identifiers, NSA analysts [redacted]

(U) B. Pre-Tasking Determination of United States Person Status

[redacted]

7 [redacted]

8 (U) Analysts also check this system as part of the "post-targeting" analysis described below.

9 [redacted]

[redacted]

(U) **C. Post-Tasking Checks**

[redacted]

(~~S~~ [redacted]) NSA also requires that tasking analysts review information collected from the facilities they have tasked. With respect to NSA's review of [redacted][11] a notification e-mail is sent to the tasking team upon initial collection for the facility. NSA analysts are expected to review this collection within five business days to confirm that the user of the facility is the intended target, that the target remains appropriate to the certification cited, and that the target remains outside the United States. Analysts are then responsible to review traffic on an on-going basis to ensure that the facility remains appropriate under the authority. [redacted] Should traffic not be viewed at least once every 30 business days, a notice is sent to the tasking team and their management, who then have the responsibility to follow up.

(U) **D. Documentation**

(~~S//NF~~) The procedures provide that analysts will document in the tasking database a citation to the information leading them to reasonably believe that a targeted person is located outside the United States. The citation is a reference that includes the source of the information, [redacted] enabling oversight personnel to locate and review the information that led the analyst to his/her reasonable

10 [redacted]

11 [redacted]

belief. Analysts must also identify the foreign power or foreign territory about which they expect the proposed targeting will obtain foreign intelligence information.

~~(S//NF)~~ NSA [redacted] an existing database tool, for use by its analysts for Section 702 tasking and documentation purposes. [redacted] to assist analysts as they conduct their work. This tool has been modified over time to accommodate the requirements of Section 702, to include, for example, certain fields and features for targeting, documentation, and oversight purposes. Accordingly, the tool allows analysts to document the required citation to NSA records on which NSA relied to form the reasonable belief that the target was located outside the United States. [redacted] The tool has fields for the certification under which the target falls, and for the foreign power as to which the analyst expects to collect foreign intelligence information. Analysts fill out various fields [redacted] each facility, as appropriate, including the citation to the information on which the analyst relied in making the foreignness determination.

(U) NSA's targeting procedures also require analysts to identify the foreign power or foreign territory about which they expect the proposed targeting will obtain foreign intelligence information and provide a written explanation of the basis for their assessment, at the time of targeting, that the target possesses, is expected to receive, and/or is likely to communicate foreign intelligence information concerning that foreign power or foreign territory.

(U) NSA also includes the targeting rationale (TAR) in the tasking record, which requires the targeting analyst to briefly state why targeting for a particular facility was requested. The intent of the TAR is to memorialize why the analyst is requesting targeting, and provides a linkage between the user of the facility and the foreign intelligence purpose covered by the certification under which it is being tasked. The joint oversight team assesses that the TAR has improved the oversight team's ability to understand NSA's foreign intelligence purpose in tasking facilities.

~~(S//NF)~~ [redacted] Entries are reviewed before a tasking can be finalized. Records from this tool are maintained and compiled for oversight purposes. For each facility, a record can be compiled and printed showing certain relevant fields, such as: the facility, the certification, the citation to the record or records relied upon by the analyst, [redacted] the analyst's foreignness explanation, the targeting rationale, [redacted] These records, referred to as "tasking sheets," are reviewed by the Department of Justice's National Security Division (NSD), and also provided to the Office of the Director of National Intelligence (ODNI), as part of the oversight process.

~~(S//NF)~~ The source records cited on these tasking sheets are contained in a variety of NSA data repositories. These records are maintained by NSA and, when requested by the joint team, are produced to verify determinations recorded on the tasking sheets. Other source records may consist of "lead information" from other agencies, such as disseminated intelligence reports or lead information [redacted]

(U) **F. Internal Procedures**

(U) NSA has instituted internal training programs, access control procedures, standard operating procedures, compliance incident reporting measures, and similar processes to implement the requirements of the targeting procedures. Only analysts who have received certain types of training and authorizations are provided access to the Section 702 program data. These analysts must complete an NSA OGC and OCCO training program; review the targeting, minimization, and querying procedures as well as other documents filed with the certifications; and pass a competency test. The databases NSA analysts use are subject to audit and review by OCCO. For guidance, analysts consult standard operating procedures, supervisors, OCCO personnel, and NSA OGC attorneys.

(U) NSA's targeting and minimization procedures also require NSA to conduct oversight activities and make any necessary reports, including those relating to incidents of non-compliance, to NSA's Office of the Inspector General (OIG) and NSA OGC. NSA's OCCO reviews all Section 702 taskings and conducts spots checks of disseminations based in whole or in part on Section 702-acquired information. The Directorate of Operations Information and Intelligence Analysis organization also maintains and updates an NSA internal website regarding the implementation of, and compliance with, the Section 702 authorities.

(U) NSA has established standard operating procedures for incident tracking and reporting to NSD and ODNI. Compliance officers work with NSA analysts and CIA and FBI points of contact, as necessary, to compile incident reports that are forwarded to both NSA OGC and OIG. NSA OGC forwards the incidents to NSD and ODNI.

(U) On a more programmatic level, under the guidance and direction of the Compliance Group, NSA has implemented and maintains a Comprehensive Mission Compliance Program (CMCP) designed to effect verifiable conformance with the laws and policies that afford privacy protections during NSA missions. The Compliance Group complements and reinforces the intelligence oversight program of NSA's OIG and oversight responsibilities of NSA OGC.

(U) A key component of the CMCP is an effort to manage, organize, and maintain the authorities, policies, and compliance requirements that govern NSA mission activities. This effort,

known as "Rules Management," focuses on two key components: (1) the processes necessary to better govern, maintain, and understand the authorities granted to NSA; and (2) technological solutions to support (and simplify) Rules Management activities. The Authorities Integration Group coordinates NSA's use of the Verification of Accuracy process originally developed for other FISA programs to provide an increased level of confidence that factual representations to the FISC or other external decision makers are accurate and based on an ongoing, shared understanding among operational, technical, legal, policy, and compliance officials within NSA. NSA has also developed a Verification of Interpretation review to help ensure that NSA and its external overseers have a shared understanding of key terms in Court orders, minimization procedures, and other documents that govern NSA's FISA activities. The Compliance Group conducts the Mission Compliance Risk Assessment (MCRA) that assesses the risk of non-compliance with the rules designed to protect privacy and to safeguard information. Risks are assessed annually by authority and/or function for SIGINT and Cybersecurity Missions. The results are used to inform management decisions, priorities, and resource allocations regarding the NSA/CSS Comprehensive Mission Compliance Program (CMCP).

(U) II. Overview – CIA

(U) A. CIA's Role in Targeting

~~(S//NF)~~ Although CIA does not target or acquire communications pursuant to Section 702, CIA has put in place a process, in consultation with NSA, FBI, NSD, and ODNI, to identify foreign intelligence targets to NSA. Based on its foreign intelligence analysis, CIA may "nominate" a facility to NSA for potential acquisition under one of the Section 702(h) certifications. The nomination provides NSA with the basis for CIA's assessment [redacted]

~~(S//NF)~~ [redacted]

12 [redacted]

[redacted] Nominations are reviewed and approved by a targeting officer's first line manager, a component legal officer, a senior operational manager, and the FISA Program Office prior to export to NSA.[13] [redacted]

~~(S//NF)~~ The FISA Program Office was established in December 2010 [redacted] and is charged with providing strategic direction for the management and oversight of CIA's FISA collection programs, including the retention and dissemination of foreign intelligence information acquired pursuant to Section 702. This group is responsible for overall strategic direction and policy, programmatic external focus, and interaction with counterparts of NSD, ODNI, NSA, and FBI. In addition, the office leads the day-to-day FISA compliance efforts [redacted] The primary responsibilities of the FISA Program Office are to provide strategic direction for data handling and management of FISA/702 data, as well as to ensure that all Section 702 collection is properly tasked and that CIA is complying with all compliance and purge requirements.

(U) **B. Oversight and Compliance**

(U) CIA's FISA compliance program is managed by its FISA Program Office in coordination with CIA OGC. CIA provides small group training to personnel who nominate facilities to NSA and/or minimize Section 702-acquired communications. Access to unminimized Section 702-acquired communications is limited to trained personnel. CIA attorneys embedded with operational elements that have access to unminimized Section 702-acquired information also respond to inquiries regarding nomination, minimization, and querying questions. Identified incidents of noncompliance with CIA's minimization and querying procedures are generally reported to NSD and ODNI by CIA OGC.

(U)

[13] ~~(S//NF)~~ This nomination approval process was the one in place during the reporting period. However, on 21 October 2021, CIA's nominations process was revised to require approval by only the targeting officer's first line manager and the FISA Program Office. Throughout the process, both component legal officers and CIA's FISA attorneys are available for consultation regarding whether the nomination is in compliance with Section 702 of FISA and NSA's targeting procedures. The Government assesses this change eliminates redundancy in CIA's nomination process.

(U) III. Overview – NCTC

(U) A. NCTC's Handling of Section 702 data

~~(S//NF)~~ NCTC does not target or acquire communications pursuant to Section 702. In addition, NCTC does not currently have a process in place to identify or nominate foreign intelligence targets to NSA. However, like CIA and FBI, NCTC may request to be [redacted] on unminimized data (pertaining to counterterrorism) from Section 702 facilities already tasked by NSA. NCTC applies its Section 702 minimization and querying procedures to Section 702 [redacted] data.

~~(S//NF)~~ NCTC, in consultation with NSD, developed an electronic and data storage system, known as [redacted] to retain and process unminimized FBI-collected FISA-acquired information in accordance with NCTC's Standard Minimization Procedures for Information Acquired by the Federal Bureau of Investigation Pursuant to Title I, Title III, or Section 704 or 705(b) of FISA. In consultation with NSD, ODNI, NSA, and FBI, NCTC modified [redacted] to (i) provide additional compliance capabilities in support of [redacted] FISA Section 702-acquired counterterrorism data and (ii) monitor compliance with NCTC's minimization and querying procedures for Section 702-acquired counterterrorism data. In addition to documenting compliance with the Section 702 minimization and querying procedures requirements, [redacted] also documents the requests for [redacted] of Section 702-acquired information. This documentation includes the foreign intelligence justification (pertaining to counterterrorism) for [redacted] the facility and supervisory concurrence with an analyst's request.

~~(S//NF)~~ [redacted] communications from Section 702 tasked facilities are stored within [redacted] where only properly trained and authorized analysts are able to query them. As a supplement to the requirements of NCTC's minimization and querying procedures, NCTC's internal business process requires that NCTC analysts provide a written justification for each query, as well as a written justification for each minimization action to mark a product as meeting the retention standard in order to document how the query or minimization was compliant with the standards in NCTC's minimization or querying procedures, as applicable. By internal policy, all [redacted] requests and minimization actions must be reviewed and approved [redacted] by the analyst's supervisor.

(U) ~~(S//NF)~~ NCTC personnel may disseminate Section 702-acquired information of or concerning an unconsenting United States person if that information meets the standard for dissemination pursuant to Section D of NCTC's minimization procedures.

~~(S//NF)~~ [redacted] NCTC's Compliance and Transparency Group (hereinafter, "NCTC Compliance") within the Office of Data Strategy and Compliance (ODSC) conducts periodic reviews of Section 702 query logs and minimization logs, as well as NCTC Section 702 disseminations in order to verify compliance with NCTC's minimization procedures and identify the need for system modifications, enhancements, or improvements to training materials or analyst work aids.

[redacted]

[redacted]

~~(S//NF)~~ [redacted]

Pursuant to Section A.6 of NCTC's minimization procedures, [redacted]

(U) **B. Oversight and Compliance**

(U) NCTC's FISA compliance program is managed by NCTC Compliance in coordination with NCTC Legal. NCTC provides training to all NCTC personnel who may access unminimized FISA-acquired information. Access to unminimized Section 702-acquired communications is limited to trained personnel. NCTC compliance personnel and attorneys also respond to inquiries regarding minimization and querying questions. Identified incidents of noncompliance with NCTC's minimization procedures and querying procedures are reported to NSD and ODNI generally by NCTC Compliance or NCTC Legal personnel.

~~(S//NF)~~ NCTC Compliance was established in the fall of 2014 and is charged with providing strategic direction for the management and oversight of NCTC's access to and use of all datasets pursuant to executive order, statute, interagency agreement, applicable IC policy, and internal policy. This includes management and oversight of NCTC's FISA programs, including the retention and dissemination of foreign intelligence information acquired pursuant to Section 702. This group is responsible for overall strategic direction and policy, programmatic external focus, and interaction with counterparts of NSD, ODNI, NSA, FBI, and CIA. In addition, the office leads the day-to-day FISA compliance efforts within NCTC. NCTC Compliance is responsible for providing strategic direction and internal oversight for data handling and management of Section 702 data, as well as administering and implementing NCTC Section 702 training, ensuring that all NCTC Section 702 collection is properly [redacted] minimized and disseminated, and that NCTC is complying with all minimization and querying procedures requirements.

(U) IV. Overview – FBI

(U) A. FBI's Role in Targeting – Nomination for Acquiring In-Transit Communications

~~(S//NF)~~ Like CIA, FBI has developed a formal nomination process to identify foreign intelligence targets to NSA for the acquisition of communications. including information underlying the basis for the foreignness determination and the foreign intelligence interest. FBI nominations are reviewed by FBI operational and legal personnel prior to export

~~(S//NF)~~ FBI targeting procedures require that NSA first apply its own targeting procedures to determine that the user of the Designated Account is a person reasonably believed to be outside the United States and is not a United States person. NSA is also responsible for determining that a significant purpose of the acquisition it requests is to obtain foreign intelligence information. After NSA designates accounts as being appropriate for FBI must then apply its own, additional procedures, which require FBI to review NSA's conclusion of foreignness

~~(S//NF)~~ More specifically, after FBI obtains the tasking sheet from NSA, it reviews the information provided by NSA regarding the location of the person and the non-United States person status of the person.

[redacted]

~~(S//NF)~~ Unless FBI locates information indicating that the user is a United States person or is located inside the United States [redacted]

~~(S//NF)~~ If FBI identifies information indicating that NSA's determination that the target is a non-United States person reasonably believed to be outside the United States may be incorrect, FBI provides this information to NSA and does not approve [redacted]

(U) **C. Documentation**

~~(S//NF)~~ The targeting procedures require that FBI retain the information [redacted] in accordance with its records retention policies [redacted] FBI uses a multi-page checklist for each Designated Account to record the results of its targeting process, as laid out in its standard operating procedures, commencing with [redacted] extending through [redacted]

[redacted] and culminating in approval or disapproval of the acquisition. In addition, FBI's standard operating procedures call for [redacted] depending on the circumstances, which are maintained by FBI with the applicable checklist. FBI also retains with each checklist any relevant communications [redacted] regarding its review [redacted] information. Additional checklists have been created to capture information on requests withdrawn by [redacted] or not approved by FBI.

(U) **D. Implementation, Oversight, and Compliance**

~~(S//NF)~~ FBI's implementation and compliance activities are overseen by FBI OGC, particularly the National Security and Cyber Law Branch (NSCLB), as well as FBI's Technology and Data Innovation Section (TDI), FBI's [redacted] and FBI's Inspection Division (INSD). [redacted] TDI has the lead responsibility in FBI for [redacted] requests [redacted] TDI personnel are trained on FBI's targeting procedures and FBI's detailed set of standard operating procedures that govern its processing of requests [redacted] TDI also has the lead responsibility for facilitating FBI's nominations to NSA [redacted] TDI, NSCLB, NSD, and ODNI have all worked on training FBI personnel to ensure that FBI nominations and post-tasking review comply with NSA's targeting procedures. With respect to minimization, FBI has created a mandatory online training that all FBI agents and analysts must complete prior to gaining access to unminimized Section 702-acquired data in FBI [redacted] In addition, NSD conducts training on the Section 702 minimization procedures at multiple FBI field offices each year.[14]

(U) ~~(S//NF)~~ FBI's targeting procedures require periodic reviews by NSD and ODNI at least once every 60 days. FBI must also report incidents of non-compliance with FBI targeting procedures to NSD and ODNI within five business days of learning of the incident. TDI and NSCLB are the lead FBI elements in ensuring that NSD and ODNI received all appropriate information with regard to these two requirements.

(U) **V. Overview – Minimization and Querying**

(U) After a facility has been tasked for collection, non-publicly available information collected as a result of these taskings that concerns United States persons must be minimized; if the Government queries that collection, it must follow specific query rules. The FISC-approved minimization procedures require such minimization in the acquisition, retention, and dissemination of foreign intelligence information. The FISC-approved querying procedures set rules for using United States person and non-United States person identifiers to query unminimized Section 702-acquired information. Prior to the FISA Amendments Reauthorization Act of 2017 codification, the

[14] (U) As noted above, onsite field office reviews were suspended in March 2020. NSD resumed field office reviews remotely in February 2021. Thus, NSD only conducted onsite training at field offices for a portion of this reporting period.

minimization procedures contained querying rules. The 2018 certifications were the first certifications to contain the newly required querying procedures.

(U) As a general matter, minimization procedures under Section 702 are similar in most respects to minimization under other FISA orders. For example, the Section 702 minimization procedures, like those under certain other FISA court orders, allow for sharing of certain unminimized Section 702 information among NSA, FBI, CIA and NCTC. Similarly, the procedures for each agency require special handling of intercepted communications that are between attorneys and clients, as well as foreign intelligence information concerning United States persons that is disseminated to foreign governments.

(U) Section 702 minimization procedures do, however, impose additional obligations or restrictions as compared with the minimization procedures associated with authorities granted under Titles I and III of FISA. For example, the Section 702 minimization procedures require, with limited exceptions, the purge of any communications acquired through the targeting of a person who at the time of targeting was reasonably believed to be a non-United States person located outside the United States, but is in fact located inside the United States at the time the communication is acquired, or was in fact a United States person at the time of targeting.

(U) NSA, CIA, NCTC, and FBI have created systems to track the purging of information from their systems. CIA, NCTC, and FBI receive incident notifications from NSA to document when NSA has identified Section 702 information that NSA is required to purge according to its procedures, so that CIA and FBI can meet their respective obligations.

(U) With passage of the FISA Amendments Reauthorization Act of 2017, Congress amended Section 702 to require that querying procedures be adopted by the Attorney General, in consultation with the DNI. Section 702(f)(1) requires that the querying procedures be consistent with the Fourth Amendment and that they include a technical procedure whereby a record is kept of each United States person term used for a query. Congress added other requirements in Section 702(f), which pertain to accessing certain results of queries conducted by FBI. Specifically, under Section 702(f)(2)(A), an order from the FISC is now required before FBI can review the contents of a query using a United States person query term when the query was not designed to find and extract foreign intelligence information and was performed in connection with a predicated criminal investigation that does not relate to national security.

(U) Queries may be conducted in two types of unminimized Section 702-acquired information: (i) Section 702-acquired *content* and (ii) Section 702-acquired *metadata*. Query terms may be date-bound, and may include alphanumeric strings, such as telephone numbers, email addresses, or terms, such as a name, that can be used individually or in combination with one another. Pursuant to FISC-approved procedures, an agency can only query Section 702 information if the query is reasonably likely to retrieve foreign intelligence information or, in the case of FBI, evidence of a crime. This standard applies to all Section 702 queries, regardless of whether the term concerns a United States person or non-United States person.

(U) The agencies have similar querying procedures. For example, the agencies' procedures require a written statement of facts justifying that the use of any such identifier as a query selection

term of Section 702-acquired content is reasonably likely to retrieve foreign intelligence information or, in the instance of FBI, evidence of a crime. Some querying rules are unique to individual agencies. For example, NSA's Section 702 querying procedures also require that any United States person query term used to identify and select unminimized section 702-acquired content must first be approved by NSA's Office of General Counsel and that such an approval include a statement of facts establishing that the use of any such identifier as a selection term is reasonably likely to retrieve foreign intelligence information. In addition, with respect to queries of Section 702-acquired metadata using a United States person identifier, NSA's querying procedures require that NSA analysts document the basis for each metadata query prior to conducting the query.