



Audit of the Federal Bureau of Investigation's  
Execution of Its Woods Procedures for  
Applications Filed with the Foreign Intelligence  
Surveillance Court Relating to U.S. Persons



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# EXECUTIVE SUMMARY

## Audit of the Federal Bureau of Investigation's Execution of Its Woods Procedures for Applications Filed with the Foreign Intelligence Surveillance Court Relating to U.S. Persons

### Objectives

The Department of Justice (DOJ or Department) Office of the Inspector General (OIG) initiated this audit to evaluate the Federal Bureau of Investigation's (FBI) execution of and compliance with its factual accuracy review procedures ("Woods Procedures") for Foreign Intelligence Surveillance Act (FISA) applications. The OIG also assessed the DOJ National Security Division's (NSD) oversight of the FISA application accuracy process.

### Results in Brief

The FBI's Woods Procedures are designed to ensure FISA applications are "scrupulously accurate" and require agents to document support for all factual assertions contained in them. However, our audit found numerous instances where this did not occur. In March 2020, we issued a Management Advisory Memorandum (MAM) to report that our audit had identified Woods Procedures non-compliance in all 29 FISA applications we reviewed, which were approved by the Foreign Intelligence Surveillance Court (FISC) between fiscal years 2015 and 2019. DOJ thereafter notified the FISC of 209 errors in those applications, 4 of which DOJ deemed material. Our further audit work identified over 200 additional instances of Woods Procedures non-compliance—where Woods Files did not contain adequate supporting documentation for statements in the 29 applications—although the FBI and NSD subsequently confirmed the existence of available support elsewhere. We also identified at least 183 FISA applications for which the required Woods File was missing or incomplete.

The FBI and DOJ are implementing important reforms as a result of our prior FISA reports. However, we believe additional action is necessary to ensure rigorous supervisory review and to further strengthen Woods Procedures oversight to reduce the risk of erroneous information being included in FISA applications, which can lead to faulty probable cause determinations and infringement of U.S. persons' civil liberties.

### Recommendations

Our report contains 10 recommendations to the FBI and NSD to assist in further enhancing the execution of the Woods Procedures and ensuring the submission of accurate FISA applications. We requested a response to our draft report from the FBI and NSD, which can be found in Appendix 3 and Appendix 4, respectively. The FBI and NSD agreed with the recommendations and their responses provide information related to policy revisions and procedural enhancements that became effective in July 2021 following the OIG's December 2019 FISA Report and notification of findings of this audit, including those in our March 2020 MAM. This information was sufficient to close 5 of the 10 recommendations in this report.

### Audit Results

Court-authorized FISA physical search and/or electronic surveillance is, according to DOJ and FBI leadership, one of the most important authorities available to law enforcement to combat terrorism, clandestine intelligence activity, and other threats to national security. At the same time, physical search and/or electronic surveillance pursuant to FISA is one of DOJ's most intrusive investigative authorities, and the use of it unavoidably raises civil liberties concerns. Moreover, FISC proceedings are *ex parte*, meaning that unlike most court proceedings, the government is present but the government's counterparty is not, and FISA orders generally are not subject to scrutiny through subsequent adversarial proceedings. As a result, the FBI and NSD FISA application process is critical to ensuring that DOJ officials asked to authorize FISA applications, and judges on the FISC asked to approve them, have a complete and accurate set of facts in the FISA application on which they can rely.

The FBI adopted its Woods Procedures in 2001, following concerns raised by the FISC about inaccuracies in FISA applications, to help ensure that FISA applications are "scrupulously accurate." In December 2019, an OIG report examining four FISA applications targeting a U.S. person and

other aspects of the FBI's "Crossfire Hurricane" investigation identified significant errors or omissions in all four FISA applications—finding, among other things, that FBI personnel had failed to meet the FBI's scrupulously accurate standard and other requirements of the Woods Procedures. The OIG initiated this audit to determine whether the significant errors found in that December 2019 OIG report were indicative of a more widespread problem with Woods Procedures compliance.

### **FBI Failure to Comply with Its Woods Procedures**

On March 30, 2020, the OIG issued to the FBI and DOJ a MAM informing officials that our audit work to date had identified apparent errors or inadequately supported facts in each of the 25 FISA applications for which we were able to review the supporting Woods File, and that the FBI could not locate the original supporting Woods File for 4 applications. The OIG did not make judgments about the materiality or significance of any FISA application deficiencies identified during our review. Thereafter, the Department and FBI notified the FISC that the 29 applications contained a total of 209 errors, 4 of which they deemed to be material. These errors included the types of errors that the Woods Procedures are intended to identify before a FISA application is submitted to the FISC. Further, the OIG identified an additional 209 instances of Woods Procedures non-compliance because the Woods File did not include documentation supporting those statements of fact in the FISA applications as required by FBI policy, and was located only later, after FBI searches of its other holdings.

After receiving our initial findings in March 2020, the FBI conducted an inventory of all Woods Files for each FISA application associated with dockets from January 2015 to March 2020. Based on FBI documentation, we determined that out of the more than 7,000 FISA applications during that time, there were at least 183 instances (including the 4 that the OIG previously identified) where the required Woods File was missing, destroyed, or incomplete at the time of the FBI's inventory. Given the FBI's reliance upon its Woods Procedures to help ensure the accuracy of its FISA applications, we believe the missing Woods Files represent a significant lapse in the FBI's management of its FISA program.

### **Weaknesses in FBI Supervisory Review of Woods Files and Use of FBI and NSD Oversight Findings**

As designed, the Woods Procedures place significant responsibility on case agents to gather and document support for all facts in a FISA application. This manual process includes an inherent risk of human error, as well as other risks like confirmation bias. Therefore, it is crucial for the FBI and NSD to ensure adequate attention and effort is

given to other steps in the quality assurance process to mitigate these risks.

An important component of the FBI's quality assurance process is the responsible Supervisory Special Agent's (SSA) review of each Woods File. FBI policy requires SSAs to certify their review and confirm that the Woods File supports every factual assertion. However, we observed that the Woods Files generally did not contain evidence of the thoroughness or completeness of this supervisory review. The widespread Woods Procedures non-compliance that we identified in this audit raises serious questions about the adequacy and execution of the SSA review process in place at the time of the applications we reviewed.

We also have concerns with the FBI's and NSD's oversight efforts—specifically the need to be strategic, accountable, and timely. For instance, the FBI and NSD conduct periodic reviews designed to ensure FISA applications contain accurate information. However, as noted in our March 2020 MAM, we found that neither the FBI nor NSD used these tools to their full potential. We believe the FBI's decentralized oversight is a missed opportunity for ensuring accountability and efficacy of the Woods Procedures as a whole.

### **FBI and NSD Messaging Should Further Reinforce the Importance of Woods Procedure Compliance**

In response to the findings in our December 2019 FISA report and March 2020 MAM, the FBI Director publicly acknowledged the seriousness of the identified problems and announced numerous steps the FBI was undertaking to address them. However, we believe certain public statements from the FBI and NSD in 2020 failed to recognize the significant risks posed by systemic non-compliance with the Woods Procedures, and during our audit some FBI field personnel minimized the significance of Woods Procedures non-compliance. Although we understand that the FBI's and NSD's public statements were related to an order by the FISC directing an assessment of whether material misstatements or omissions invalidated the relevant FISC authorizations, we believe the FBI and NSD should continue to emphasize that any error is contrary to the DOJ's commitment to accuracy and completeness, and detrimental to the DOJ's mission.

We believe the best way to ensure accuracy and stakeholder confidence is to promote a culture that treats all FISA application errors as potentially serious. While we recognize the inevitability of occasional human error, mistakes of any magnitude demonstrate flaws in a process upon which the FBI, NSD, and the FISC rely to ensure accuracy and safeguard civil liberties. Further, a lack of confidence in the accuracy of the FBI's FISA applications could lead to restrictions or even revocation of this important national security tool.

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# Introduction

One of the most intrusive tools used by the Federal Bureau of Investigation (FBI) to investigate terrorism, espionage, and other threats to U.S. national security is court-authorized physical search and/or electronic surveillance pursuant to the Foreign Intelligence Surveillance Act of 1978 (FISA). This tool allows for the covert collection of foreign intelligence information from foreign powers or agents of foreign powers suspected of espionage or terrorism.<sup>1</sup>

FISA orders can be used to surveil U.S. persons; and in some cases, the surveillance will foreseeably collect information about the individual's constitutionally protected activities. Moreover, proceedings before the Foreign Intelligence Surveillance Court (FISC)—which is responsible for ruling on applications for FISA orders—are *ex parte*, meaning that unlike most court proceedings, the government is present but the government's counterparty is not.<sup>2</sup> In addition, unlike the use of other intrusive investigative techniques (such as wiretaps under Title III and traditional criminal search warrants) that are granted in *ex parte* hearings but can potentially be subject to later court challenge, FISA orders generally have not been subject to scrutiny through subsequent adversarial proceedings.

For these reasons, prior to seeking a FISA application, the FBI must certify that it cannot reasonably obtain the foreign intelligence information through normal investigative techniques. In addition, the FBI, in coordination with the Department of Justice (Department or DOJ), must weigh the need to protect individual privacy and civil liberties against the need of the United States to gather foreign intelligence.

## Overview of the FISA Application Process

To pursue physical search and/or electronic surveillance under FISA, the FBI case agent(s) works with attorneys from the Department's National Security Division (NSD) Office of Intelligence (OI). First, the FBI case agent prepares a FISA Request Form, which requires the FBI case agent to give a description of the facts and circumstances establishing probable cause and a justification for the use of FISA authority. The request must be approved at multiple levels within the FBI, including field office supervisors and attorneys, headquarters unit and section chiefs, and attorneys in the Office of the General Counsel (OGC) National Security and Cyber Law Branch (NSCLB). Once approved, the request is assigned to an NSD OI attorney who uses the information in the form, as well as any additional information obtained from the FBI case agent, to draft the FISA application. In most instances, once the FBI case agent affirms the accuracy of the information in the application, an NSD OI supervisor reviews and approves an advance or "read copy" of the application for submission to the FISC.

Then, the NSD OI attorney works with the FBI case agent to address any questions or comments from the FISC after which the final version of the application is typically given to the FBI case agent

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<sup>1</sup> 50 U.S.C. §§ 1801,1821 et seq.

<sup>2</sup> FISA created the FISC to review and authorize certain requests for electronic surveillance orders and physical search warrants by federal law enforcement and intelligence agencies.

for final FBI review. The final application must include a written certification by the FBI Director or Deputy Director, which includes that a significant purpose of the electronic surveillance and/or physical search is to obtain foreign intelligence information and that such information cannot be reasonably obtained by normal investigative techniques. Once this process is complete, the Attorney General (defined in the statute as the Attorney General, the Acting Attorney General, the Deputy Attorney General or, pursuant to the Attorney General's designation, the Assistant Attorney General for NSD) approves the FISA application.

After receiving final Department approval, the FISA application is submitted to the FISC. Specifically, NSD OI is responsible for filing all applications for court-authorized physical search and/or electronic surveillance pursuant to FISA and for representing the federal government before the FISC. In order for the FISC to issue a FISA order, the FISA application must establish probable cause to believe that the target is a foreign power or an agent of a foreign power, and that the target is using, or is about to use, the facilities or places at which electronic surveillance is directed or that the target owns, uses or possesses—or is about to own, use or possess—the property to be physically searched. The FISC may approve the physical search and/or electronic surveillance of a U.S. person for a period of up to 90 days, subject to renewal.

## Overview of the FBI's Woods Procedures

During its review of the application, the FISC relies on the government's declaration that the information supporting probable cause is factually sound. Therefore, it is imperative that the FISC has confidence in the accuracy of the FISA applications submitted on behalf of the FBI.

Since April 2001, the FBI has used the FISA Verification Procedures, also known as the "Woods Procedures," to minimize factual inaccuracies in FISA applications and to ensure that statements contained in such applications are "scrupulously accurate." The FBI instituted these procedures in response to concerns expressed by the FISC in November 2000 regarding errors identified in 75 FISA applications related to FBI counterterrorism investigations.

Specifically, the Woods Procedures were intended to ensure the accuracy of FISA applications in three key areas: (1) the specific facts supporting probable cause, (2) the existence and nature of any related criminal investigations or prosecutions involving the subject of the FISA application, and (3) the existence and nature of any prior or ongoing asset relationship between the subject and the FBI.<sup>3</sup> The Woods Procedures apply to all applications for electronic surveillance and/or physical searches under FISA, including the initial application and any renewals.<sup>4</sup>

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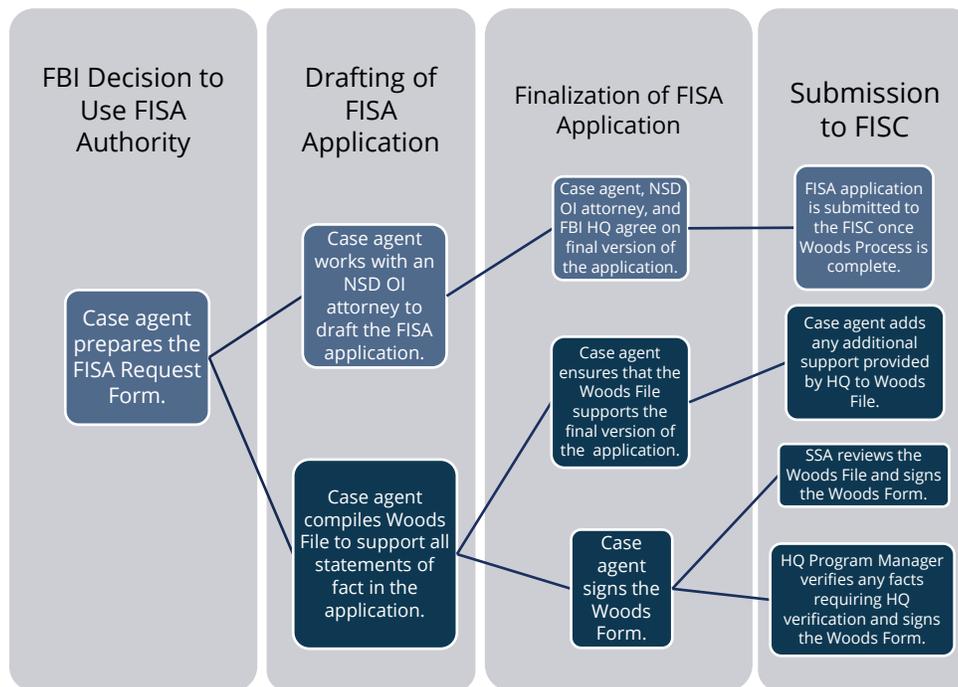
<sup>3</sup> According to the Woods Procedures, before filing an application with the FISC, FBI agents and supervisors are required to conduct certain records searches within FBI databases to determine whether the target is the subject of a past or current criminal investigation, or has a current or prior relationship with the FBI.

<sup>4</sup> Historically, the Woods Procedures were required only for applications for authorization to gather foreign intelligence by means of electronic surveillance (Title I of FISA, 50 U.S.C. § 1801, et seq.) or physical search (Title III, 50 U.S.C. § 1821, et seq.). As of July 6, 2021, the Woods Procedures are also applicable to applications for the use of pen register, trap and trace surveillance (Title IV, 50 U.S.C. § 1841, et seq.) or the production of business records (Title V, 50 U.S.C. § 1861, et seq.).

Figure 1 shows how the required steps of the Woods Procedures, in practice, fit within the FBI's process to prepare FISA applications.

Figure 1

Summary of the FBI's Process to Prepare FISA Applications and the Required Steps of the Woods Procedures



Note: The FISC may provide feedback or ask questions, which may result in revisions to the FISA application. Any such revisions would be subject to the Woods Procedures, where applicable.

Source: OIG depiction based upon FBI documentation and interviews.

The FBI relies on field personnel to ensure that all information included in the FISA application is accurate and complete. In accordance with the Woods Procedures, the FBI case agent is required to create and maintain an accuracy sub-file, known as a "Woods File," that contains: (1) supporting documentation for every factual assertion contained in the application; and (2) supporting documentation and the results of required database searches and other verifications, including confidential human source (CHS) file searches. When CHS reporting is used, case agents must verify source characterization statements—which provide the FISC with the FBI's assessment of the reliability of the source—with the CHS handling agent, the CHS handling agent's immediate supervisor, or other authorized individual; and document the verification in the Woods File. In the case of renewal applications, the case agent must re-verify the accuracy of each factual assertion that is carried over from the prior application, as well as verify and obtain supporting documentation for any new factual assertions.

In addition to the creation of a Woods File, a FISA Verification Form (or Woods Form) must be completed to confirm adherence to the Woods Procedures. Specifically, both the FBI case agent and the Supervisory Special Agent (SSA) are required to sign the Woods Form affirming that they have reviewed each factual statement in the application and verified that it is accurate and supported by documentation in the Woods File. The SSA affirms that he or she has reviewed the supporting documentation contained in the Woods File, provides this form to the FBI headquarters Program Manager, who must verify—under penalty of perjury—the accuracy of any facts that require FBI headquarters verification and provide the case agent with any necessary documentation for inclusion in the Woods File.<sup>5</sup> This form must be completed prior to the submission of an application to the FISC.

Despite the existence of the Woods Procedures, the DOJ Office of the Inspector General (OIG), in its December 2019 report examining four FISA applications targeting a U.S. person and other aspects of the FBI's "Crossfire Hurricane" investigation (December 2019 FISA Report), identified significant errors or omissions in all four FISA applications reviewed.<sup>6</sup> That review found that FBI personnel failed to meet the requirement in FBI policy to ensure all factual statements in a FISA application are "scrupulously accurate." Among other concerns, the report identified fundamental and serious errors in FBI agents' execution of the Woods Procedures, including numerous instances where the Woods File did not include supporting documentation for factual assertions contained in the FISA applications. Further, the report highlighted that the FBI had failed to follow other requirements of the Woods Procedures, including to re-verify factual assertions from previous applications that were repeated in renewal applications and verify the credibility and status of CHSs, as well as the accuracy of factual statements attributed to CHSs, with the CHS's handling agent. The report concluded that the FISC was not provided with complete and accurate information, which impacted the FISC's ability to evaluate probable cause in a meaningful manner before authorizing the physical search and/or electronic surveillance of a U.S. person. The FBI Director ordered over 40 corrective actions to address the OIG's recommendations in the report.

## OIG Audit Approach

As a result of the findings discussed in the OIG's December 2019 FISA Report, the DOJ OIG initiated an audit to examine more broadly the FBI's execution of, and compliance with, its Woods Procedures and determine whether the significant errors found in the four applications of the OIG's December 2019 FISA Report were an anomaly or indicative of a more widespread problem with Woods Procedures compliance. The stated objectives of the audit were to evaluate the FBI's execution of and compliance with its Woods Procedures, as well as to assess NSD's oversight efforts in the FISA application accuracy process. For purposes of this audit, we focused on FISA applications for electronic surveillance and/or physical search of U.S. persons submitted to the FISC between

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<sup>5</sup> Due to the classified and sensitive investigative nature of some of the information in the FBI's holdings, access to that information can be extremely limited. Thus, a case agent may not be able to include in a Woods File certain factual support needed for a FISA application, but FBI headquarters personnel could verify and confirm the factual assertion is supported.

<sup>6</sup> DOJ OIG, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation*, Oversight & Review Report 20-012 (December 2019), [www.justice.gov/storage/120919-examination.pdf](http://www.justice.gov/storage/120919-examination.pdf).

October 2014 and September 2019 (fiscal years 2015 through 2019). According to data provided by the FBI, the FBI had 3,399 such FISA applications between October 1, 2014, and September 30, 2019.

To accomplish our objectives, we reviewed FBI and Department-level policies and guidance relevant to the FBI's FISA application process and execution of its Woods Procedures, including a 2001 memorandum outlining the FBI's Woods Procedures, the 2016 Standardized Minimization Procedures Policy Guide (FISA & SMP PG), and the 2009 joint NSD-FBI guidance memorandum on FISA application accuracy (2009 Accuracy Memorandum). In addition, we interviewed FBI officials, including personnel from NSCLB and case agents and SSAs in FBI field offices, as well as officials from NSD, including NSD OI's Operations and Oversight sections. Further, prior to the COVID-19 pandemic, we visited 8 FBI field offices of varying sizes and reviewed a judgmentally selected sample of 29 FISA applications (approved by the FISC between fiscal years 2015 and 2019) relating to U.S. persons and involving both counterterrorism and counterintelligence investigations. We also analyzed a sample of internal FBI and NSD OI accuracy reviews of FISA applications that were completed within our audit review period. Appendix I contains additional details about this audit's objectives, scope, and methodology.

In March 2020, the DOJ OIG issued a Management Advisory Memorandum to the FBI (March 2020 MAM), which was posted publicly, outlining the OIG's preliminary findings and highlighting our concern that the FBI had not executed its Woods Procedures in compliance with FBI policy.<sup>7</sup> We believed it was important to provide our preliminary results to the FBI prior to completion of the audit because this information could be used by the FBI in its ongoing efforts to address the recommendations included in our December 2019 FISA Report. In addition, we believed our preliminary results warranted additional recommended actions for the FBI to take.

On April 3, 2020, the FISC ordered the government to take certain actions in response to the preliminary findings contained in the March 2020 MAM. The Department and the FBI have since provided updates on their efforts to take these and other corrective actions in multiple filings to the FISC.<sup>8</sup> As part of this audit, we reviewed the Department and FBI's responses to the FISC, as well as additional documentation supporting those responses to the FISC. The Audit Results section of this report discusses the concerns identified in the March 2020 MAM and our subsequent work and findings. Following issuance of the OIG's December 2019 FISA Report and the March 2020 MAM, the FBI and NSD began taking a number of corrective actions to improve, among other matters, the accuracy of FISA applications, including the issuance of the 2021 Guidance to Ensure the Accuracy and Completeness of Federal Bureau of Investigation Applications under the Foreign Intelligence Surveillance Act (2021 Accuracy Memorandum) and an updated FISA & SMP PG, which both became effective in July 2021. Further, in their responses to our draft report, the FBI and NSD provided information related to these policy revisions and additional procedural enhancements. The FBI and NSD's responses can be found in Appendix 3 and Appendix 4, respectively. Our analysis of the

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<sup>7</sup> DOJ OIG, [Management Advisory Memorandum for the Director of the Federal Bureau of Investigation Regarding the Execution of Woods Procedures for Applications Filed with the Foreign Intelligence Surveillance Court Relating to U.S. Persons](https://www.oig.justice.gov/sites/default/files/reports/a20047.pdf), Audit Report 20-047 (March 2020), [www.oig.justice.gov/sites/default/files/reports/a20047.pdf](https://www.oig.justice.gov/sites/default/files/reports/a20047.pdf).

<sup>8</sup> Appendix 2 provides a timeline of all substantive FISC orders and DOJ and FBI responses related to FISA accuracy concerns since the OIG's December 2019 FISA Report.

responses, including the recent actions taken by the FBI and NSD and the impact on the status of the recommendations, can be found in Appendix 5.

## Audit Results

Approximately 20 years after implementing the Woods Procedures to address the FISC's concerns regarding the accuracy of FBI FISA applications, our review of 29 sampled FISA applications found that the FBI was not meeting the expectations of its own protocols. As we initially reported in our March 2020 MAM, we identified numerous instances of non-compliance with the Woods Procedures in the 25 Woods Files that were made available to us to review; and we reported that the FBI was unable to produce the original version of the remaining 4 Woods Files we requested.

Since issuing that March 2020 MAM, the FBI conducted an accuracy review of those 29 FISA applications; thereafter, the Department notified the FISC of 209 instances where the applications were inaccurate, unsupported, or omitted information. Further, additional OIG audit work determined there were another 209 instances where the Woods Files did not contain adequate documentation to support factual assertions in the sampled applications but where the FBI and NSD told us they had determined that appropriate support was subsequently located in other holdings. Thus, in total, there were over 400 instances of non-compliance with the Woods Procedures in connection with those 29 FISA applications. In addition, our review of FBI documentation determined that, out of the universe of over 7,000 FISA applications authorized between January 2015 and March 2020, there were at least 179 instances in which the Woods File required by FBI policy was missing in whole or in part, which are in addition to the 4 referenced in our March 2020 MAM.

We believe that these shortcomings occurred primarily because the FBI and NSD generally did not place sufficient emphasis or attention on the need for rigorous supervisory review of a completed Woods File and robust oversight of the Woods Procedures during the time period covered by our review. Further, certain public statements from FBI and NSD officials appeared to display a tolerance for error that is inconsistent with the FBI's policy that applications be scrupulously accurate.

The FBI and Department are implementing reforms to the FISA application process in response to the findings in our prior December 2019 FISA Report and our March 2020 MAM. We determined, however, that additional action is necessary to strengthen the supervision and oversight of the Woods Procedures and reduce the continued risk of erroneous information being included in applications. We believe the best way to ensure accuracy is to promote a culture within FISA-related activities that treats all errors as potentially serious. While we recognize the inevitability of occasional human error, mistakes of any magnitude demonstrate flaws in the process upon which the FBI, NSD, and the FISC rely to ensure accuracy and safeguard civil liberties. If the FBI falls short of its own standards for accuracy, it risks impinging on the civil liberties of U.S. persons, and adversely affecting its credibility with the FISC, Congress, and the public, which in turn could lead to restrictions or even revocation of its authorization to use this important investigative tool in support of its national security mission.

Figure 2 summarizes the results of our evaluation, including our review of the FBI's Woods File inventory effort initiated in response to our March 2020 MAM. The following sections further detail the non-compliance we identified.

Figure 2

<b>FBI's Non-Compliance with the Woods Procedures</b>
<p><b>209 Errors in FISA Applications</b></p> <p>The Department informed the FISC about 209 instances of unsupported, inaccurate, or omitted information associated with our sample of 29 FISA applications.</p>
<p><b>Additional 209 Woods Procedures Deficiencies</b></p> <p>The OIG identified an additional 209 instances within our sample of 29 FISA applications where the Woods File did not contain adequate documentation to support statements in the FISA application, as required by FBI policy. The FBI and NSD OI told the OIG that, for each of these instances, appropriate supporting documentation was later located in other holdings.</p>
<p><b>183 Missing or Incomplete Woods Files</b></p> <p>As reported in our March 2020 MAM, the OIG identified 4 instances of missing original Woods Files from our sample of 29 FISA applications reviewed. Based on the FBI's physical inventory of Woods Files following our March 2020 MAM, we subsequently identified at least an additional 179 instances where the Woods Files associated with the universe of FBI FISA applications from January 2015 to March 2020 were missing in whole or in part.</p>

Source: OIG

## FBI Compliance with Its Woods Procedures

To evaluate the FBI's compliance with its Woods Procedures, in early 2020, prior to the COVID-19 pandemic, we visited 8 FBI field offices of varying sizes and reviewed a judgmentally selected sample of 29 FISA applications for electronic surveillance and/or physical search of U.S. persons submitted to the FISC between October 2014 and September 2019 involving both counterterrorism and counterintelligence investigations. At each respective field office, we sought to review the associated Woods File of each selected application and determine whether the Woods File contained documentation to support the statements of fact in the application and whether the statements of fact in the application were accurate.

Our review consisted solely of assessing compliance with the Woods Procedures, which involved determining whether the contents of the Woods File supported the statements of fact in the application. We did not seek to determine whether support for the facts in the FISA application existed elsewhere (such as in the case file), or if relevant information had been omitted from the application. Moreover, we did not make judgments about whether the errors or concerns we identified were material, nor do we speculate as to whether the potential errors would have influenced the decision to file the application or the FISC's decision to approve the FISA application.

## Non-compliance with the Woods Procedures for the 29 FISA Applications Sampled by the OIG

As we reported in our March 2020 MAM, the OIG identified apparent errors or inadequately supported facts in all 25 FISA applications for which we reviewed a Woods File. In each of these applications, we identified factual assertions in the FISA applications that were: (a) incorrect based upon the supporting documentation in the Woods File, (b) not clearly corroborated by the supporting documentation in the Woods File, or (c) not supported by any documentation in the Woods File. Through contemporaneous follow-up with FBI case agents or supervisors when available, we were able to resolve some of the identified issues, as well as to confirm certain errors in the FISA applications. As a result, at the time of our March 2020 MAM, we had identified an average of about 20 issues per application reviewed, with a high of approximately 65 issues in 1 application and less than 5 issues in another application. For the additional four FISA applications within our sample, the FBI was unable to locate the original Woods Files and, in some cases, could not confirm whether a Woods File was ever completed.

Based upon this review, we concluded that the FBI did not execute its Woods Procedures in compliance with FBI policy and made two recommendations to the FBI, with which the FBI agreed.

Following issuance of our March 2020 MAM, the FISC directed the Department to address 5 specific points, including an assessment as to what extent the 29 applications reviewed by the OIG involved material misstatements or omissions and whether any such instances rendered invalid the FISC's authorization for that target in the reviewed docket or other dockets.<sup>9</sup> We have included in Appendix 2 a timeline of substantive FISC orders and DOJ court filings following the issuance of our December 2019 FISA Report and our March 2020 MAM.

Subsequently, the FBI and NSD OI requested and reviewed the OIG's preliminary notes of the errors identified from our review of the 25 applications.<sup>10</sup> In turn, FBI personnel from the eight field offices associated with our sample reviewed and responded to each of the OIG's notes. Additionally, the FBI directed its Chief Division Counsel (CDC) located in each of the 8 FBI field offices to execute an accuracy review for each of the 29 applications.<sup>11</sup> In conducting the CDC accuracy reviews, the FBI and NSD OI sought to determine whether the factual statements contained in the 29 FISA applications were supported by information contained in the Woods Files, the case files, or other FBI records or documentation.

The CDC accuracy reviews conducted for these 29 applications identified additional errors and concerns beyond those identified in the OIG's review. NSD OI then worked with the CDCs and, in

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<sup>9</sup> [FISC Order](#). Docket No. Misc. 19-02. April 3, 2020.

<sup>10</sup> We considered these notes preliminary because, due to unforeseen logistical challenges due to the COVID-19 pandemic, we were unable to follow up with case agents and/or supervisors for all applications within our sample to discuss the issues identified during our review.

<sup>11</sup> We use the term "CDC" throughout the report to signify a field office lawyer, which can also include an associate or assistant division counsel. The FBI uses CDC accuracy reviews as an oversight mechanism to ensure the accuracy of FISA applications. Historically, these reviews are executed on a limited number of active FISA applications every 6 months. CDC accuracy reviews are further discussed later in this report.

some cases, FBI field personnel to provide an assessment of the issues identified, including a determination of which issues should be reported to the FISC as errors and whether any of these errors were material to probable cause. In our work, as noted above, the OIG did not make any judgments about the materiality or significance of any FISA application deficiencies identified during our review.

### **Material and Non-Material Errors in the 29 FISA Applications that the Woods Procedures Were Intended to Identify Prior to Submission to the FISC**

In three separate filings with the FISC on June 15, July 29, and October 28, 2020, the Department and FBI provided the results after their assessment of the CDC accuracy reviews of the 29 FISA applications that the OIG had reviewed and in which we had identified numerous potential errors.<sup>12</sup> In total, the Department notified the FISC about 209 instances of unsupported or inaccurate statements, as well as omissions of fact, that it had identified in 27 of the 29 FISA applications. The Department and FBI further informed the FISC that 2 of the 29 FISA applications reviewed did not contain any inaccurate statements.<sup>13</sup> Of the total 209 errors reported to the FISC, 162 related to initial concerns identified in the OIG's review. The additional errors reported were identified by the FBI in its subsequent CDC accuracy reviews in response to the FISC's order.

Had the Woods Procedures been executed faithfully and carefully prior to the time the applications were filed, these incidences of erroneous information in the FISA applications could have been minimized through the retrieving of supporting documents, organizing of the information, and conducting of robust supervisory review. Indeed, we noted that numerous instances of the 209 unsupported, inaccurate, or omitted information reported to the FISC in the Department's June, July, and October 2020 filings originated with our initial concern that we could not locate supporting documentation or reconcile the information to evidence in the Woods Files.

The Department and FBI determined that 4 of the 209 identified errors were material errors. FBI policy and the 2009 Accuracy Memorandum define material facts as "those facts that are relevant to the outcome of the probable cause determination" and states that NSD OI determines whether a misstatement or omission is capable of influencing the FISC's probable cause determination. The Department further assessed that none of these 209 errors undermined or otherwise impacted the FISC's probable cause determinations.

The four reported material errors or omissions occurred in three different applications related to different targets. The material errors were:

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<sup>12</sup> In the June 15, 2020, filing, the Department and FBI reported on 14 of the 29 applications. The remaining 15 applications were included in the July 29, 2020, filing. The Department notified the FISC about additional errors in the October 28, 2020, filing.

<sup>13</sup> In the responses to the FISC, the Department and FBI indicated that 2 of the 29 FISA applications reviewed did not contain any inaccurate statements. However, we noted that, at the time of the OIG's review of these two applications, we identified issues with Woods Procedures compliance for both applications. Specifically, one application did not have a Woods File and the other contained statements for which the Woods File did not contain appropriate supporting documentation.

- Failing to include context to inform the reader of the application that certain remarks the target made about a particular organization were made, according to evidentiary support, to provoke a response from law enforcement personnel. Instead, the application simply stated that the target expressed support of the referenced organization.
- Describing the target's support for a specific *group*, where the evidence in the Woods File instead indicated the target supported a specific *cause*.
- Describing that the target used a financial account as of a certain date. NSD OI stated that it was not evident from the supporting documentation how recently the government had confirmed the target's use of the financial account, and certain evidence on the target's use of the financial account was several years prior to the date included in the application.
- Failing to include the required reliability statement for one of two CHSs referenced in the application.

A summary of the 205 errors that the Department and FBI determined were non-material, including the number of instances, category definitions, and examples, are provided in Figure 3.

Figure 3

Summary of 205 Errors Deemed Non-Material by the Department and FBI in Reports to the FISC

93	Deviation from Source Document	Non-material errors in which the factual assertion presented deviates from the supporting documentation in a way NSD OI assessed not to be capable of influencing the FISC's probable cause determination.
<p>Example: The FISA application quoted the target's social media post as citing a religious passage verbatim, while the Woods File supporting documentation indicated that the social media post was only the passage reference (not a direct quote of the passage itself).</p> <p>Example: The FISA application stated the target returned from a trip overseas from the specific country of counterintelligence threat concern, but the support in the Woods File stated that the target was returning from a country on a different continent.</p>		
42	Date Error	Non-material errors where a difference exists between the date in the application presented to the FISC and the relevant date in the supporting document, regardless of the amount of time between the two dates.
<p>Example: The FISA application stated that certain records were reviewed in November 2015, while the support in the Woods File indicated the review occurred in July 2015.</p>		
38	Typographical Error	Non-material errors where, in context, a typographical error has not also changed the meaning of the assertion presented for the FISC's consideration.
<p>Example: The FISA application contained a quote, "will be ready," that did not match the quote in the Woods File supporting document of "I'll be ready."</p>		
17	Unsupported Fact	Factual assertions that may be accurate but are not supported by documentation in the Woods File. In these instances, the field offices have been unable to identify documentary support for the factual assertions outside the Woods File.
<p>Example: The FISA application referenced information that came to a source from a family member of the subject. However, the Woods File documentation only supported that a source provided the information to the FBI, not that the subject's family member provided the information to the source.</p>		
15	Misidentified Source of Information	Non-material errors in which information attributed in an application to a particular source of information was identified in the supporting documentation as obtained through a different source of information.
<p>Example: The FISA application referred to information being obtained through an open-source review of social media, but the Woods File supporting document indicated that the information was obtained through human source reporting.</p>		

Source: OIG, FBI, NSD

While none of the 209 instances of unsupported, inaccurate, or omitted information identified as a result of our audit were assessed by the Department to have undermined or otherwise impacted the FISC's probable cause determinations in our sample of the 29 applications we reviewed, the errors indicate weaknesses in both the execution of, and the quality control mechanisms within, the Woods Procedures. Moreover, including frequent factual errors in numerous FISA applications,

even if they are later determined not to be material, risks undermining the FISC's and the public's confidence in the FBI's and DOJ's FISA process and the quality of the FBI's submissions.<sup>14</sup>

### **Factual Assertions in the 29 FISA Applications that Lacked Adequate Support in the Woods File but where the FBI Determined Other Holdings Supported Them**

In addition to the 209 instances noted above of unsupported, inaccurate, or omitted information associated with the 29 FISA applications, our results identified an additional 209 instances of non-compliance with the Woods Procedures based on NSD OI's review. Specifically, in these 209 instances, documentation to support factual assertions contained in the FISA applications was either missing from the Woods File or it was appropriate for the case agent to have provided more authoritative documentation to support the assertions in the application.<sup>15</sup> For each of these instances, the FBI and NSD OI subsequently confirmed the existence of available supporting documentation. Nevertheless, this documentation should have been included in the relevant Woods File, as it represented the best evidence available to support facts in the FISA applications and, therefore, would have best minimized the risk of error or misstatements of fact.

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<sup>14</sup> The OIG's December 2019 FISA Report demonstrates the significant problems that can result from a lack of compliance with the Woods Procedures. For example, one of the Woods Procedures-based failures detailed in our December 2019 report concerned the failure to seek and document the handling agent's approval of the source characterization statement for Christopher Steele in the FISA applications, which we found overstated Steele's bona fides and gave the misimpression that Steele's past reporting to the FBI had been deemed sufficiently reliable by prosecutors to use in court and that more of his information had been corroborated than was actually the case. As detailed in our December 2019 report, the handling agent told us that had he been shown the source characterization statement, as required by the Woods Procedures, he would not have approved it. Given the importance of a source characterization statement to the FISC's determination of a source's reliability, the failure to comply with the Woods Procedures was a significant error on the part of the FBI case agents involved and their supervisors. Moreover, this issue compounded other serious problems with the subsequent FISA renewal applications, such as the FBI's continued reliance on Steele's information despite the fact that the Primary Sub-source, during his FBI interviews, had contradicted Steele's reporting on several critical issues.

<sup>15</sup> FBI policy states that the Woods File must contain copies of the "most authoritative documents" that exist to support each fact asserted in the FISA application. According to FBI policy, while there is some "latitude" as to what documents meet this requirement, the case agent "should endeavor to obtain the original documentation and/or best evidence of any given fact."

## Missing or Incomplete Woods Files

As noted in our March 2020 MAM, in addition to identifying concerns with the support for statements of fact in the FISA applications, we encountered 4 instances in our sample of 29 FISA applications where the FBI was unable to locate the original Woods File. In three of these instances, the FBI did not know if the Woods File had ever existed—despite the fact that FBI policy required the case agent to create and the supervisor to review a Woods File for each application before submission to the FISC. As a result, in our March 2020 MAM, we recommended that the FBI perform a physical inventory to ensure that Woods Files exist for every FISA application submitted to the FISC in all pending investigations.

The OIG found 4 instances in its sample of 29 FISA applications where the FBI was unable to locate the original Woods File.

On March 11, 2020, the then-FBI General Counsel directed each FBI field office to account for and document the location of the Woods File for each FISA application associated with dockets from January 2015 to March 2020. In addition, the then-FBI General Counsel instructed the field offices to certify that all Woods Files were accounted for and to remediate any instances where an appropriately maintained Woods File could not be located. The field offices were also instructed to identify any corrective actions they took when accounting for the Woods Files. For example, if a field office was unable to locate a Woods File, it would have to create a new Woods File by compiling documentation to support each statement of fact in the associated FISA application. If a field office located an incomplete Woods File, it would have to find and insert the missing supporting documentation into the file. In its November 2020 filing, the Department informed the FISC that the FBI had completed its accounting process for all Woods Files within the scope of the inventory effort; the FBI continues to provide remediation updates to NSD OI.

OIG analysis of FBI inventory efforts identified at least 179 additional Woods Files that required whole or partial reassembly.

To determine how many Woods Files were missing or incomplete at the time of the FBI's inventory, we requested and reviewed documentation submitted to NSCLB by the FBI's 56 field offices and National Security Branch.<sup>16</sup> Out of the FBI's stated universe of over 7,000 FISA applications for which Woods Files appeared to be required, we identified at least 179 instances (in addition to the 4 that the OIG previously identified) across 21 field offices where the respective field office reported the Woods File as missing or incomplete and requiring whole or partial reassembly.<sup>17</sup>

<sup>16</sup> Under certain circumstances, the FBI's National Security Branch is responsible for FISA applications and the associated Woods Files. Therefore, the FBI's National Security Branch also conducted an inventory of Woods Files and submitted the results of its efforts to NSCLB.

<sup>17</sup> The information provided by FBI field offices was contained in hundreds of files that varied in format and type of information provided. In light of these challenges, we believe the 179 instances are the minimum number of Woods Files that required some level of remediation based upon the information provided by the FBI. We were unable to determine from the FBI's documentation how many of these 179 instances, if any, were instances in which a required Woods File was never created.

From our review of the documentation provided to NSCLB by the field offices, we believe that a primary factor contributing to the missing or incomplete Woods Files is the FBI's lack of specific policy on the format, maintenance, and retention of Woods Files. Current FBI policy only requires the creation of Woods Files, not the retention of the files, including where they should be maintained and for how long they should be retained. Moreover, the policy affords the FBI case agent discretion on how to set up the Woods File.

Based upon our review of the Woods Files associated with our sample of 29 FISA applications, we found that FBI case agents compile Woods Files in various ways. For example, some FBI case agents create a separate hardcopy Woods File for each FISA application, including individual files for an initial application and each subsequent renewal application.<sup>18</sup> In contrast, other FBI personnel described the process of 'cannibalizing' a Woods File, which involves maintaining one Woods File that contains documentation to support an initial application and the subsequent renewal applications. FBI personnel told us that the statements of fact in renewal applications are often the same as those from each preceding application, which indicated to us that it was more efficient, in some instances, for FBI case agents who preferred this method to maintain one Woods File to support multiple related applications. However, in some instances, this method involved removing supporting documentation from the Woods File if the associated statement of fact was no longer in the most recent FISA application, which would cause problems if someone were using the derivative Woods File to find the supporting documentation for the statement of fact in an earlier application. Multiple FBI personnel from field offices we visited expressed the desire for a policy that details a single, uniform process for assembling a Woods File and cross-indexing to the facts in the application.

In addition to differences in the format of Woods Files, we observed confusion regarding the maintenance and retention of the files. Several FBI field personnel told us that guidance did not exist regarding where Woods Files were to be maintained, especially when the case or the case agent originally responsible for a FISA application transferred to another location. In FBI field office responses to NSCLB regarding the results of their inventory efforts, we identified numerous examples of this issue, where field offices indicated that Woods Files were likely misplaced due to the original case agent transferring to another field office. The provided FBI documentation also noted instances where field offices reported that the original Woods File was likely destroyed after the case was closed.

Based on the identification through our audit and the FBI's subsequent physical inventory of numerous incomplete or missing Woods Files, it is clear that existing FBI policy lacks the necessary guidance for FBI field offices to ensure that Woods Files are created, maintained, and retained appropriately for their intended purpose. The recently issued 2021 Accuracy Memorandum contains new guidance on the maintenance and retention of Woods Files. However, we believe it is important that these updates be incorporated into appropriate FBI policy to help ensure attention and adherence to these Woods File requirements. Further, in May 2021, an FBI official told us that FBI executive management prefers that Woods Files be maintained electronically, yet this preference

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<sup>18</sup> The hardcopy Woods Files we reviewed were in paper form and ranged from well-organized and methodical binders to a stack of papers. We were told that some Woods Files are maintained electronically, in whole or in part, in a "FISA Sub-file" within the FBI's case management system, though we did not observe electronic Woods Files during our review of the 29 FISA applications.

is not included in the 2021 Accuracy Memorandum. Therefore, we recommend that the FBI establish specific policy on the appropriate format and maintenance of Woods Files. In addition, we recommend that the FBI, in consultation with NSD and the FISC, determine how long it is necessary to retain Woods Files to ensure the accuracy and proper oversight of the FBI's FISA applications and promulgate guidance on the established requirement.<sup>19</sup>

### **Corrective Actions In Process by the FBI and Department**

As a result of the OIG's December 2019 FISA Report, the FBI Director ordered over 40 corrective actions to address the OIG's recommendations, including 12 that pertain to strengthening the FBI's FISA procedures and ensuring the accuracy and completeness of its FISA applications. Additionally, the FBI agreed with both recommendations in the March 2020 MAM. In a July 2020 statement, the FBI noted that "all 29 applications selected by the OIG for its audit predate the 40-plus corrective actions ordered by Director [Christopher] Wray in December 2019 to reform the FISA process," and stated, "the FBI remains confident these actions will fully address the findings and recommendations made by the DOJ-OIG." The FBI has since provided periodic updates to the FISC regarding its progress on these actions, which include: (1) updating the FBI's forms and checklists used during the preparation of FISA applications and Woods Files to ensure that all relevant information to the FISA request has been provided and verified by responsible parties; (2) formalizing the role of FBI attorneys in the legal review process for FISA applications; (3) developing and implementing new training for FBI personnel; (4) pursuing technological improvements to aid in consistency and accountability; and (5) identifying new audit, review, and compliance mechanisms to ensure that the changes to the FISA application process are effective. As part of these updates, the FBI outlined a plan to transition its case agents to serving as declarants in FISA applications before the FISC, and the FBI established a working group to address how this change would impact workflow and other policy and forms revisions.<sup>20</sup>

According to the FBI, the implementation of a new FISA management system to automate certain processes used to create Woods Files will enhance the accuracy and completeness of FISA applications. Further, the FBI believes these technological updates will make supporting documentation readily available to FBI personnel while drafting FISA applications and attesting to their accuracy. As mentioned previously, the FBI has a preference for maintaining Woods Files electronically, and we note that an electronically maintained Woods File could address confusion over the location of files, including in instances when cases are transferred among field offices or among FBI case agents.

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<sup>19</sup> In the FBI's response to the draft report, the FBI detailed its actions related to these two recommendations, which we believe adequately address the recommendations. Appendix 3 contains the FBI's response, and Appendix 5 provides the OIG's analysis of that response, including closure of the recommendations.

<sup>20</sup> Until recently, the FBI headquarters Program Manager acted as declarant to certify that the information in the FISA application is true and correct. However, this individual typically did not have the personal or in-depth case-level knowledge of the facts included in the application and, therefore, relied on the field office to confirm accuracy through the Woods Procedures and as certified in the Woods Form. The FBI notified us that it transitioned to field case agents as primary declarants on July 6, 2021.

In addition, the 2021 Accuracy Memorandum: (1) provides guidance on the procedures that must be followed to ensure the accuracy and completeness of FISA applications submitted to the FISC; (2) establishes the procedures for accuracy and completeness reviews conducted by NSD OI; and (3) defines the procedures for reporting errors, omissions, and unsupported facts to the FISC. The memorandum, among other items, provides guidance on the types of documentation required to support statements of fact in a FISA application, such as for CHS reporting, other FBI-generated information, and information received from a non-FBI entity. However, we found that the memorandum covers this guidance in the section pertaining to NSD OI's accuracy reviews, which, as discussed later in this report, are conducted on a sample of FISA applications, not every FISA application. Given the need for submitting accurate and complete FISA applications to the FISC coupled with the numerous instances of Woods Procedures non-compliance that we found, we believe it behooves the FBI to ensure the types of documentation required to be included in Woods Files are explicitly laid out in FBI policy. Therefore, we recommend that the FBI ensure its policy identifies the required types of documentation to be included in the Woods File as support for statements of fact in FISA applications.<sup>21</sup>

In various filings, the Department notified the FISC about steps NSD OI is taking towards achieving more meaningful oversight of FBI FISA applications. For instance, NSD OI no longer plans to give advance notice to the FBI of the FISA applications it will be reviewing as part of its regularly scheduled FBI field office accuracy reviews. Additionally, when conducting its accuracy reviews, NSD OI now assesses the adequacy of the FBI's Woods Files by noting instances where the necessary documentation to support statements of fact was not contained in the Woods File. Further, in May 2020, NSD OI began conducting reviews of a sample of FBI FISA applications in an effort to assess the completeness of each application and identify any material omissions of information that should be available to the FISC in its probable cause determinations.<sup>22</sup> As previously mentioned, our work focused on the review of the Woods Procedures, which are designed to ensure the accuracy of and support for FBI FISA applications; the Woods Procedures do not address the completeness of the factual information included in a FISA application. While NSD OI's completeness review process is new and time intensive, NSD OI officials stated such reviews have already proven useful and will eventually become a standard part of NSD OI's oversight process. We discuss additional NSD OI oversight efforts later in this report.

In August 2020, the then Attorney General announced supplemental reforms to enhance compliance, oversight, and accountability of FBI foreign intelligence activities, as well as to augment the internal compliance functions of the FBI. Specifically, the then Attorney General authorized the FBI to create an Office of Internal Auditing, the role of which would include conducting routine audits of the FBI's compliance with FISA and FISC orders and audits of measures taken by the FBI to ensure accuracy and completeness of FISA applications.<sup>23</sup>

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<sup>21</sup> In the FBI's response to the draft report, the FBI detailed its actions related to this recommendation, which we believe adequately addresses the recommendation. Appendix 3 contains the FBI's response, and Appendix 5 provides the OIG's analysis of that response, including closure of the recommendation.

<sup>22</sup> The 2021 Accuracy Memorandum summarizes the protocols for NSD OI's completeness reviews.

<sup>23</sup> William P. Barr, Attorney General, U.S. DOJ, memorandum for Deputy Attorney General, FBI Director,

*Continued*

While we acknowledge the efforts planned and taken to enhance the accuracy of FISA applications, we believe additional action is necessary to strengthen the Woods Procedures and reduce the continued risk of erroneous information being included in applications, which can lead to faulty probable cause determinations and the infringement on the civil liberties of U.S. persons. The following section discusses our concerns with the existing quality assurance process and underlying culture.

## **FBI and NSD Quality Control Efforts for FISA Applications and Culture Related to the FBI's Scrupulously Accurate Standard**

The FBI and NSD have established a tiered quality control process intended to ensure accurate FISA applications are submitted to the FISC—the creation of a Woods File, the supervisory review of the Woods File, and, if selected, accuracy reviews after the FISA application has been approved and executed. As a result of our audit work, we believe that the FBI has placed significant emphasis on the initial step in the process—the creation of a Woods File—without a commensurate level of emphasis on and attention to the subsequent supervisory and oversight steps. Further, as detailed below, we are concerned that certain FBI and NSD statements and actions seemed to minimize the significance of the FBI's lack of adherence to its Woods Procedures that is inconsistent with the FBI's policy that such applications be scrupulously accurate and statements issued by the FBI Director following the release of the December 2019 FISA Report.

### **The FBI Should Enhance Its Emphasis on and Attention to Supervisory Special Agents' Involvement in the Woods Procedures**

As previously detailed, the first step in the Woods Process requires the FBI case agent responsible for the FISA application to create and maintain a Woods File to support every factual assertion contained in the FISA application. The Woods Process then requires an FBI SSA's review of the Woods File.<sup>24</sup> According to the Woods Procedures, an SSA is to confirm that the Woods File contains documentation to support every factual assertion in the FISA application, and similar to the case agent, the SSA signs the Woods Form to certify completion of that task.

Creating a Woods File (whether for an initial or renewal FISA application) is a time-intensive, voluminous, and manual process, which a case agent must balance simultaneously with handling other time-sensitive investigative steps and the FISA approval process, including drafting the FISA application. Because this initial step relies on a manual process, there is inherent risk of human

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DOJ Inspector General, Assistant Attorney General for National Security, Assistant Attorney General for Administration, [Augmenting the Internal Compliance Functions of the Federal Bureau of Investigation](#), August 31, 2020.

<sup>24</sup> Herein and throughout the report, we use the term SSA to refer to an SSA directly supervising the work of a case agent responsible for creating, organizing, and referencing a Woods File. In most instances, these case agents and SSAs are FBI field office personnel, and this was the case for all of the applications we reviewed as part of this audit. However, there are instances in which investigations and FISA applications can originate in FBI headquarters; and in those instances, the responsible agents and SSAs are not considered field office personnel. In addition to SSAs responsible for reviewing Woods Files prepared by case agents, there are additional FBI headquarters personnel who may be involved in the lifecycle of a FISA application and also have the title of SSA but to whom this report refers to as a Program Manager.

error. The risk of human error is exacerbated by what FBI and NSD OI officials refer to as a significantly intensive FISA application process, as well as other cases and priorities competing for an agent's attention. Therefore, it is crucial that adequate attention and effort be given to subsequent steps in the quality assurance process.

According to FBI policy, SSAs must certify their review of the Woods File by signing the Woods Form. Beyond signing to certify review of the Woods File to confirm support for every factual assertion, FBI policy and the FISA Verification Form do not prescribe a procedure for conducting or documenting the SSA review. Unlike the case agent's initial execution of the Woods Procedures, which can be assessed by, for example, examining the completeness of the file and comparing the supporting documentation to the FISA application, the only documentation we identified concerning the SSA review was the signature on the Woods Form. We generally did not observe other indications of SSA review within the Woods Files that would allow us to assess the adequacy of those reviews, such as documented feedback to the case agent or a specific confirmation that the SSA had traced statements of fact to the supporting documentation. We were, therefore, unable to assess the thoroughness of the SSAs' reviews and whether the SSAs conducting supervisory reviews had, in fact, confirmed that the Woods File contained documentation to support every factual assertion in the FISA application, as required by FBI policy. Nonetheless, we believe the more than 400 total instances of Woods Procedures non-compliance associated with the 29 FISA applications we reviewed (209 errors reported to the FISC, 4 of which were material; and 209 additional instances of Woods Procedures non-compliance) necessarily raises serious questions about the adequacy and execution of any SSA review process that so frequently failed to detect and address identifiable errors.

We have similar questions about the adequacy and execution of the SSA review process based upon errors identified during CDC accuracy reviews and NSD OI accuracy reviews.<sup>25</sup> FBI policy recommends that SSAs prepare for an upcoming accuracy review by re-examining the Woods File to ensure it contains support for every statement of fact. While this is only recommended, the numerous errors identified in the CDC and NSD OI accuracy reviews we reviewed (and reported in our March 2020 MAM) indicate that either SSAs had not been conducting a subsequent review in advance of an accuracy review or such reviews were not robust and thorough.

Although the 2021 Accuracy Memorandum was developed to help ensure the accuracy and completeness of FISA applications at each stage of the FISA process, we found that the memorandum focuses primarily on the FBI case agent—giving the FBI case agent explicit direction on the expectation and criteria for compiling support required in the Woods File and stating that the FBI case agent is ultimately responsible for the accuracy and completeness of a FISA application. The memorandum is absent of substantive guidance on the supervisory role in the process. To help meet the FBI's scrupulously accurate standard, it is imperative that the FBI place adequate emphasis and attention to the supervisory element of the quality assurance process. Therefore, we recommend that the FBI develop and implement policy that describes the expectations for supervisory review of Woods Files. Specifically, this policy should clearly convey the requirement for

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<sup>25</sup> CDC and NSD OI accuracy reviews are discussed in more detail in the following section of this report.

reviewers to confirm support for all statements of fact in each application and provide for better evidence of the supervisory review process that goes beyond simply signing the Woods Form.

In addition to placing more emphasis and attention on SSA involvement in the Woods Process, we believe adding an element of independence in these initial steps (the creation of the Woods File and SSA review of the file) could be considered to enhance the effectiveness of the Woods Procedures. Case agents and SSAs are the subject matter experts of an investigation and know the facts and details surrounding the case and target, and as such are likely to complete the Woods Process most efficiently. However, because of their connection to the investigation, they are also more susceptible to factors, like confirmation bias, that could lead them to believe statements of fact are supportable without having actually or fully confirmed them with supporting documentation. As previously discussed, we identified numerous instances where the Woods File did not contain sufficient documentation to support statements of fact, including instances where our originating concern of missing support resulted in NSD OI's determination that the statement of fact was inaccurate. Therefore, we also recommend that the FBI—as part of its efforts to enhance its policies for supervision during the Woods Procedures—consider options for incorporating an element of independent verification of the Woods File during the FISA application process. We believe that incorporating an element of independence could help the FBI meet its scrupulously accurate standard by reducing the risk of factors, like confirmation bias, that could inadvertently lead to non-compliance with the Woods Procedures.

### **The FBI and NSD Should Further Enhance Existing Oversight Mechanisms**

Internal oversight, like supervision, is an integral piece of the quality assurance process. Effective internal oversight should not only include the identification of errors or weaknesses in quality assurance but also the determination of what is causing the errors or weaknesses. However, we believe the FBI and NSD have not used their existing internal oversight roles and mechanisms to their full potential, and this less than optimal oversight has resulted in submission to the FISC of FISA applications that do not meet the FBI's scrupulously accurate standard. In our March 2020 MAM, we recommended that the FBI institute a requirement that it, in coordination with NSD, systematically and regularly examine the results of past and future accuracy reviews to identify patterns or trends in identified errors so that the FBI can enhance training to improve agents' performance in completing the Woods Procedures, or improve policies to help ensure the accuracy of FISA applications.

The following sections discuss our additional concerns with FBI and NSD oversight, two types of which are summarized in Figure 4.

Figure 4

Summary of FBI CDC and NSD OI Accuracy Reviews

	FBI CDC Accuracy Reviews <sup>a</sup>	NSD OI Accuracy Reviews <sup>b</sup>
Conducted by:	CDC in each FBI field office	Attorneys in NSD OI
How often conducted:	Every 6 months	Annually
Number of FISA applications reviewed:	1-2 active FISA applications per FBI field office	At least 1 FISA application each in 25-30 FBI field offices
Completed reports submitted to:	FBI NSCLB	Applicable FBI field office, FBI NSCLB, and FBI Office of Integrity and Compliance

<sup>a</sup> An FBI field office is exempt from its CDC accuracy reporting requirement for a review period if NSD OI has already conducted an accuracy review during that period.

<sup>b</sup> According to NSD OI, the NSD OI Accuracy Reviews are also sent to the FBI's recently established Office of Internal Auditing.

Source: OIG Analysis of FBI and NSD OI Processes

**FBI Oversight Efforts Need Improvement**

The 2009 Accuracy Memorandum does not require the FBI to share with NSD all misstatements or omissions identified during the CDC accuracy reviews, but rather only requires FBI CDCs to report those misstatements or omissions that the FBI believes are potentially material. Further, this guidance states that “NSD OI determines, in consultation with the FBI, whether a misstatement or omission of fact identified during an accuracy review is material.” As we detailed in our March 2020 MAM, the 34 CDC and NSD OI accuracy review reports that we reviewed indicate that none of the approximately 390 identified issues were deemed to be material.<sup>26</sup> Further, we were told by NSD OI that the FBI had not asked NSD OI to weigh in on materiality determinations nor had NSD OI formally received CDC accuracy review results.

In March 2021, NSD OI officials informed us that the FBI is now sending NSD OI the results of the FBI CDC accuracy reviews. However, these officials said that the FBI is sending the results in batches—for example, NSD OI received all the reports for the second half of calendar year (CY) 2020 in two separate submissions—one in December 2020 and the other in February 2021. The NSD OI officials’ statements indicated that they would prefer to receive the results after each CDC accuracy review is completed. We believe that because of NSD OI’s central role in materiality determinations, NSD OI’s prompt receipt of each CDC accuracy review can help strengthen the oversight efforts of FISA application accuracy and ensure prompt notification to the FISC of reportable misstatements or omissions of fact. While the recently issued 2021 Accuracy Memorandum states that the CDC accuracy review results must be timely transmitted to all appropriate personnel, including NSD OI personnel, we believe the use of “timely” does not ensure NSD OI personnel will receive the results

<sup>26</sup> The 34 CDC and NSD OI accuracy review reports were largely associated with FISA applications of U.S. persons other than those in our sample; only 1 of the reports pertained to a FISA application in our sample.

as soon as the reviews are completed. Therefore, we recommend that the FBI provide NSD OI the results of the CDC accuracy reviews as they are completed and incorporate this requirement into appropriate FBI policy.

Further, following the issuance of the March 2020 MAM, we reviewed the individual deficiencies noted in a sample of 22 completed CDC accuracy review reports and were often unable to determine if actions were taken to remedy the identified errors. NSCLB officials told us that after the completion of a CDC accuracy review, each field office is responsible for, among other things, ensuring that identified errors are addressed and, if necessary, implementing training for the field office. While some of the CDC accuracy review reports indicated corrective actions were taken, the primary focus throughout the reports was on identifying and detailing errors rather than the remedy or corrective action. Therefore, we recommend that the FBI enhance the CDC accuracy review process to ensure necessary corrective actions are, in fact, taken to address the deficiencies identified in CDC accuracy reviews and that these actions are documented.

Finally, we found that the FBI does not have a designated entity that is responsible for ensuring accountability and efficacy of the Woods Procedures across the FBI, which limits the effectiveness of the FBI's internal oversight abilities. For example, as previously discussed, we identified concerns with the thoroughness of SSA reviews of the Woods Files and a policy gap with the retention of Woods Files. We believe that had the FBI been actively monitoring the field offices' compliance with the Woods Procedures, the FBI could have internally identified these concerns. In addition, as noted in our March 2020 MAM, while the FBI positioned NSCLB in the role of custodian for both the CDC and NSD OI accuracy review results, we found NSCLB did not have a process to evaluate performance of individuals involved in and accountable for FISA applications. Moreover, we determined that NSCLB did not examine the CDC and NSD OI accuracy review results to identify trends or contribute to an evaluation of the efficacy of quality assurance mechanisms intended to ensure that FISA applications were "scrupulously accurate." Therefore, we recommend that the FBI designate a headquarters entity with responsibility for ensuring accountability and efficacy of the Woods Procedures across the FBI.

### **NSD OI Oversight Efforts Need Improvement**

As noted in our March 2020 MAM, an NSD official emphasized NSD OI's trends reports as an important tool—stating that the trends reports include observations on the categories and types of errors identified in the NSD OI accuracy reviews, and that the review results are used to train new and experienced NSD OI attorneys on FISA application writing and to communicate notable issues as well as best practices. We reviewed the four available trends reports from calendar years (CY) 2014 to 2019, as summarized in Figure 5.

Figure 5

Overview of Trends Reports Issued and Time Period Covered

Date Issued	Period Covered	Recommendations?	Timeframe of Issuance
November 2015	CY 2014	No	~11 Months
November 2019	CYs 2016-2017	Yes	~2 Years
April 2020	CY 2018	Yes	~16 months
April 2021	CY 2019	Yes	~16 months

Note: NSD OI did not issue a trends report for CY 2015, and the trends report for CY 2020 has not yet been issued.

Source: OIG review of NSD OI trends reports

We found that the NSD OI trends reports concisely summarized statistical findings from the NSD OI accuracy reviews and categorized the types of errors found. The three most recent NSD OI trends reports also included recommendations to the FBI, which mirror weaknesses brought forth by the OIG to the FBI and NSD prior to and subsequently in our December 2019 FISA Report and March 2020 MAM. However, the NSD OI trends reports do not provide a strategic assessment of the findings or attempt to address why the errors were occurring.

In addition, an NSD OI official told us that there is not a formal process to follow-up with the FBI to ensure the issues included in the NSD OI accuracy review reports are addressed, and an NSD official told us that NSD OI does not plan to follow-up on the recommendations included in the trends reports because NSD OI does not have the authority to direct the FBI to take corrective action. Instead, this official stated that NSD OI will use the results of its future accuracy reviews to evaluate if the FBI implemented corrective actions that addressed the recommendations.

According to NSD OI officials, the limited availability of NSD OI personnel contributed to delays in completing and issuing the trends reports, as did the need for all individual underlying reports to be fully completed. While we acknowledge the impact that these circumstances can play, we believe the amount of time that elapsed from the period under review to the issuance of the trends reports—approximately 16 months to 2 years for each of the last three reports—is not commensurate with the importance of the insights and recommendations such an oversight mechanism is capable of producing.

In our view, to improve the accuracy of FBI FISA applications, NSD OI's oversight efforts should be more strategic and timely and require greater accountability. Absent these three elements, the aforementioned NSD OI activities have the potential of sending a message to the FBI that NSD OI's oversight of the FBI's FISA activities is not critical or high priority, and thus that compliance is not a high priority, either. Therefore, we recommend that NSD ensure NSD OI's oversight efforts (such as its trends report activities) incorporate a timely, strategic assessment of identified errors from

accuracy reviews, including analysis of potential underlying causes, and actively monitor FBI efforts to address NSD OI's recommendations.

### **The FBI and NSD Should Further Reinforce the FBI's Scrupulously Accurate Standard and the Importance of Strict Compliance with the Woods Procedures**

We concluded that the above-mentioned weaknesses in the quality assurance process for FBI FISA applications, both in terms of the faithfulness of the execution of the Woods Procedures and the FBI's and NSD's use of established internal oversight mechanisms, resulted in applications being submitted to the FISC during the time period of our audit that did not meet the FBI's own scrupulously accurate standard. As noted previously, in response to the findings in our December 2019 FISA Report and March 2020 MAM, the FBI agreed with all of our findings, and the FBI Director announced numerous steps the FBI is taking to address those issues. Further, following release of our December 2019 FISA Report, the FBI Director issued a public statement acknowledging the seriousness of the problems identified in the report and the importance of addressing them.

However, certain FBI and NSD public statements in 2020 in response to the Woods Procedures concerns appeared to display a tolerance for error that is inconsistent with the FBI's policy that applications be scrupulously accurate. We believe these statements could have better emphasized that improvements in the FBI's adherence to its Woods Procedures would help ensure that the FBI was meeting its scrupulously accurate standard. By instead focusing on the FBI's and NSD's conclusions that the numerous errors identified in the 29 FISA applications were largely non-material and did not undermine the FISC's probable cause determinations, we believe that the FBI and NSD's messaging did not convey the seriousness of the identified systemic non-compliance with the Woods Procedures and the correlated risk, which is the increased likelihood for errors. We understand that such public statements were made in connection with responding to a FISC court order requiring an analysis of materiality, but we believe the statements risked sending a mixed message to FBI personnel and the public regarding the importance that the FBI places on compliance with the Woods Procedures and the associated "scrupulously accurate" standard. For example:

- Following the June 15, 2020, response to the FISC, the FBI provided a press statement that referenced the FBI's "dedicat[ion] to the continued, ongoing improvement of the FISA process to ensure all factual assertions contained in FISA applications are accurate and complete," and then highlighted its assessment that out of the approximately 2,651 factual assertions contained in the first 14 FISA applications reviewed, "29 [errors] were assessed to be minor spelling or date discrepancies between an assertion in the application and the supporting documentation" and "only 1 of the 64 factual assertions flagged was assessed to be material but—**most importantly—was assessed to not have impacted the FISC's probable cause determination**" (emphasis in original).<sup>27</sup>

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<sup>27</sup> As previously mentioned, the June 15, 2020, response to the FISC focused on 14 of the 29 FISA applications we had reviewed. The FBI subsequently responded to the FISC on July 29, 2020, addressing the remaining 15 FISA applications in the OIG's sample.

- On July 30, 2020, following the Department’s review of the remaining applications, the FBI issued a press statement that again referenced the FBI’s “dedicat[ion] to the continued, ongoing improvement of the FISA process to ensure all factual assertions contained in FISA applications are accurate and complete,” while highlighting that “DOJ and FBI discovered only two material errors [in the 29 FISA applications] but—most importantly—**neither of these errors is assessed to have undermined or otherwise impacted the FISC’s probable cause determinations**” (emphasis in original). The statement went on to state that “Within these thousands of facts, there were approximately 201 non-material errors found, across the 29 applications. These include minor typographical errors, such as misspelled words, and slight date inaccuracies.”<sup>28</sup> However, the statement did not mention that the majority of the FISA application errors—124 of these 201—involved errors beyond minor typographical mistakes and date errors, including deviations from source documentation, misidentified sources of information, and unsupported facts.
- On August 3, 2020, the then Assistant Attorney General for National Security issued a statement that noted NSD’s commitment “to improving the FISA process to ensure that we use these tools consistent with the law and our obligations to the FISA Court” and also said: “We are pleased that our review of these applications concluded that all contained sufficient basis for probable cause and uncovered only two material errors, neither of which invalidated the authorizations granted by the [FISC].”<sup>29</sup> The only reference to the Woods Procedures issues detailed in the OIG’s March 2020 MAM was in a background section of the release, and which noted that “[t]he Department was able to resolve many of the potential issues identified by the OIG.”

We had similar concerns with updates to the FISC on the FBI’s Woods File inventory efforts. As part of the FBI’s inventory efforts, the FBI OGC instructed field offices to document the location of the Woods Files and, when a Woods File was found to not be appropriately maintained, to remedy the deficiency. Beginning in June 2020, the FBI reported to the FISC on the FBI’s progress of efforts to account for and ensure the proper maintenance of Woods Files. In the November 30, 2020, filing with the FISC, the Department reported that the FBI had accounted for all of its Woods Files. However, in each of the updates to the FISC, the FBI did not include the number of instances where an FBI field office undertook remedial actions because a Woods File was not properly maintained. As noted earlier, we identified at least 179 instances of incomplete or missing Woods Files uncovered by the physical inventory. The FBI official overseeing the inventory efforts told us that if a Woods File was found to be incomplete but the field office was able to compile a new Woods File prior to the deadline imposed by NSCLB, the Department’s response to the FISC would indicate that the Woods File was “accounted for,” without reference to any actions recently taken to comply with the Woods Procedures. Therefore, we believe the FBI could have provided the FISC more specific information depicting the condition of the FBI’s Woods File inventory prior to its remediation efforts.

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<sup>28</sup> At the time of the July 29, 2020, response to the FISC, there were 201 non-material errors reported. Additional errors were reported in the October 28, 2020, filing.

<sup>29</sup> DOJ Office of Public Affairs, Press Release, “[Statement of Assistant Attorney General for National Security John C. Demers on the Public Release of the Department’s Findings with Respect to the 29 FISA Applications that Were the Subject of the March 2020 OIG Preliminary Report](#),” August 3, 2020.

As such, the information provided to the FISC was not sufficiently precise to enable the FISC to assess the FBI's non-compliance with its Woods Procedures.

According to DOJ and FBI leadership, court-authorized physical search and/or electronic surveillance pursuant to FISA is among the most important authorities available to law enforcement to combat terrorism, clandestine intelligence activity, and other threats to national security. We appreciate the significance of FISA as a tool in national security investigations and recognize the importance of informing the public that, in this instance, the FBI and NSD concluded that none of the identified errors in the FISA applications impacted the FISC's previous probable cause findings. However, we believe that it is important that the FBI ensures consistent messaging about the importance of rigorous adherence to the Woods Procedures and does not send messages that appear inconsistent with the FBI Director's messaging to the FBI workforce and the public about the importance of the FBI's compliance with its policies and procedures and adherence to its "scrupulously accurate" standard.

Indeed, during our fieldwork, we observed the tendency of some FBI field personnel to minimize the significance of Woods Procedures non-compliance. While not widespread across all FBI field offices, we received certain responses to our notes on our file reviews that seemed dismissive of the weaknesses we identified related to compliance with the Woods Procedures. We found these responses particularly concerning because they were made after the FBI developed new training modules for FBI personnel following the OIG's December 2019 FISA Report. That training was designed, in part, to address issues identified in the FBI's FISA accuracy process.<sup>30</sup> For example, one FBI field office's response stated:

While we all understand the extreme importance of presenting accurate facts to any court on material issues, there is a concern that we are allowing our efforts to be diverted from that very important goal and instead diverted to the creation of picture perfect Woods binders that literally support every granular fact in the application regardless of whether it is material to probable cause.

We noted numerous other instances where errors or questions the OIG identified were described by FBI personnel as "not an error" or "facially immaterial." However, there were 30 instances where FBI field personnel initially determined that the potential inaccuracy we identified was not an error, yet NSD OI ultimately determined it was an error, which was thereafter reported to the FISC. In one

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<sup>30</sup> In the Department's January 10, 2020, filing with the FISC, the FBI discussed corrective actions to improve FISA accuracy, including interim training that places emphasis on the critical importance of ensuring accuracy, transparency, and completeness in all FISA applications. The FBI stated that this training would be completed by February 14, 2020. In the June 30, 2020, filing with the FISC, the FBI reported that it had developed new FISA-related training to highlight how updates to the process addressed issues identified during the OIG's December 2019 FISA Report. "FISA Forms Training" was delivered in person at FBI headquarters and six field offices and subsequently made virtually available to FBI personnel, while FBI personnel were instructed to take "CHS Checklist" training by March 27, 2020. The FBI also reported two additional trainings for FBI personnel: Case Study Training, which incorporated lessons learned from the December 2019 FISA Report, and FISA Process Training, required for all personnel who work on national security or FISA-related matters. According to the FBI, these trainings were made available on April 30, 2020, and were to be completed by required personnel by June 30, 2020.

instance that was ultimately determined to be a material omission of fact by NSD OI, the FBI field office's initial response dismissed our note and stated that the issue was "subjective" and "not material to probable cause." Such responses from FBI field personnel are particularly concerning because FBI field offices have the primary responsibility for identifying and reporting application inaccuracies; if FBI field personnel do not recognize the importance of FISA application accuracy and the potential consequences of inaccurate statements, then there is greater risk that the FBI may not bring such issues to the attention of NSD OI and the FISC, even when they are material.

While in this case the FBI and NSD concluded that the over 200 errors identified errors in the 29 sampled FISA applications did not impact probable cause determinations, a failure to adhere to the Woods Procedures and a lack of emphasis on the "scrupulously accurate" standard could easily lead to errors that do impact probable cause—and therefore potentially call into question the legal basis for the government's use of highly intrusive FISA warrants. Indeed, the OIG's December 2019 FISA Report demonstrates the significant problems that can result from a lack of compliance with the Woods Procedures and inadequate supervisory review and oversight in the FISA application process. As a result of the OIG's findings in that report, DOJ assessed that the material misstatements and omissions uncovered in at least two of the four FISA applications approved by the FISC had resulted in the surveillance of a U.S. citizen despite there being "insufficient predication to establish probable cause."

Therefore, we recommend that the FBI ensure its leadership makes additional efforts to communicate and emphasize to its workforce the importance of adhering to the FBI's established accuracy benchmark for FISA applications—i.e., the scrupulously accurate standard—and that every step of the quality assurance process be rigorously completed. We recommend that NSD also make additional efforts to confirm to its oversight staff the importance of the FBI's accuracy standards and of strict compliance with the Woods Procedures.<sup>31</sup>

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<sup>31</sup> In their responses to the draft report, both FBI and NSD detailed their actions related to these recommendations, which we believe adequately addresses the recommendations. Appendices 3 and 4 contain the responses from the FBI and NSD, and Appendix 5 provides the OIG's analysis of those responses, including closure of the recommendations.

## Conclusion and Recommendations

The FBI points to its Woods Procedures to instill in the FISC and other stakeholders confidence in the reliability and accuracy of the information contained in FBI FISA applications. This is particularly important because FISC proceedings are *ex parte* (the government is the only party present in court proceedings), and unlike other intrusive surveillance tools such as wiretaps under Title III and traditional search warrants, FISA applications generally are not subject to scrutiny through subsequent adversarial proceedings. However, the OIG's December 2019 FISA Report identified Woods Files deficiencies and critical errors in the FISA applications associated with the FBI's Crossfire Hurricane investigation and revealed the significant problems that can result from a lack of compliance with the Woods Procedures and inadequate supervisory review and oversight in the FISA application process.

In the present audit, conducted after the release of the OIG's December 2019 FISA Report, we found that the FBI did not faithfully comply with its Woods Procedures or meet its "scrupulously accurate" standard for the 29 pre-2020 FISA applications we reviewed. Following the issuance of our March 2020 MAM, the Department notified the FISC of more than 200 instances of unsupported, inaccurate, or omitted information in those applications—errors the Woods Procedures are intended to identify before a FISA application is submitted to the FISC. Further, the OIG identified more than 200 additional instances where the Woods File did not contain adequate documentation to support statements in the 29 FISA applications; although in these instances, the FBI and NSD OI told the OIG that appropriate supporting documentation was later located in other holdings. We also determined that there were at least 183 FISA applications for which a Woods File was either missing or incomplete.

We believe these shortcomings occurred primarily because the FBI and NSD generally did not place enough emphasis or attention on the need for rigorous SSA review and robust oversight. Although the FBI and Department are implementing reforms to the FISA application process, we believe additional action is necessary to strengthen the Woods Procedures and reduce the risk of erroneous information being included in FISA applications, which can lead to faulty probable cause determinations and the infringement of U.S. persons' civil liberties.

With the issuance of the March 2020 MAM earlier in our audit, we made two recommendations to the FBI: (1) institute a requirement that it, in coordination with NSD, systematically and regularly examine the results of past and future accuracy reviews to identify patterns or trends in identified errors so that the FBI can enhance training to improve agents' performance in completing the Woods Procedures, or improve policies to help ensure the accuracy of FISA applications; and (2) perform a physical inventory to ensure that Woods Files exist for every FISA application submitted to the FISC in all pending investigations. FBI and NSD officials have provided status updates to the first recommendation as part of the other ongoing FISA process enhancements described above. Therefore, we consider this recommendation open, and upon issuance of this report, we will begin formal follow-up activities with the FBI on this recommendation. We consider the second recommendation closed because as detailed previously in the section detailing the missing and incomplete Woods Files, the FBI completed its physical inventory and provided information to the FISC.

In addition to the two recommendations in our March 2020 MAM, we recommend that the FBI:

1. Establish specific policy on the appropriate format and maintenance of Woods Files.
2. In consultation with NSD and the FISC, determine how long it is necessary to retain Woods Files to ensure the accuracy and proper oversight of the FBI's FISA applications and promulgate guidance on the established requirement.
3. Ensure its policy identifies the required types of documentation to be included in the Woods File as support for statements of fact in FISA applications.
4. Develop and implement policy that describes the expectations for supervisory review of Woods Files. Specifically, this policy should clearly convey the requirement for reviewers to confirm support for all statements of fact in each application and provide for better evidence of the supervisory review process that goes beyond simply signing the Woods Form. As part of this policy modification, the FBI should also consider options for incorporating an element of independent verification of the Woods File during the FISA application process.
5. Provide NSD OI the results of the CDC accuracy reviews as they are completed and incorporate this requirement into appropriate FBI policy.
6. Enhance the CDC accuracy review process to ensure necessary corrective actions are, in fact, taken to address deficiencies identified in CDC accuracy reviews and that these actions are documented.
7. Designate a headquarters entity with responsibility for ensuring accountability and efficacy of the Woods Procedures across the FBI.
8. Ensure its leadership makes additional efforts to communicate and emphasize to its workforce the importance of adhering to the FBI's established accuracy benchmark for FISA applications—i.e., the scrupulously accurate standard—and that every step of the quality assurance process be rigorously completed.

We recommend that NSD:

9. Ensure NSD OI's oversight efforts (such as its trends report activities) incorporate a timely, strategic assessment of identified errors from accuracy reviews, including analysis of potential underlying causes, and actively monitor FBI efforts to address NSD OI's recommendations.
10. Make additional efforts to confirm to its oversight staff the importance of the FBI's accuracy standards and of strict compliance with the Woods Procedures.

# APPENDIX 1: Objectives, Scope, and Methodology

## Objectives

The objectives of our audit were to evaluate the FBI's execution of and compliance with its Woods Procedures, which were established to help ensure the accuracy of FISA applications submitted to the FISC, as well as to assess NSD's oversight efforts in the FISA application accuracy process.

## Scope and Methodology

To accomplish our objectives, we reviewed FBI and Department-level policies and guidance relevant to the FBI's FISA application process and execution of its Woods Procedures, including a 2001 memorandum outlining the FBI's Woods Procedures, the 2016 Standardized Minimization Procedures Policy Guide (FISA & SMP PG), the 2009 joint NSD-FBI guidance memorandum on FISA application accuracy (2009 Accuracy Memorandum), and the updated 2009 Accuracy Memorandum, effective July 6, 2021 (2021 Accuracy Memorandum). In addition, the FBI provided us a universe of FISA applications involving physical search and/or electronic surveillance of U.S. persons submitted to the FISC between October 2014 and September 2019 (fiscal years 2015 through 2019). According to this data, the FBI had 3,399 such FISA applications during this time. Using a judgmental sampling design, we selected 29 FISA applications from 8 FBI field offices to evaluate the FBI's execution of and compliance with its Woods Procedures. Each of the 29 FISA applications we selected was subject to the Woods Procedures and, thus, required a Woods File. In selecting our sample, we ensured there was a mix of FISA applications that involved FBI counterterrorism and counterintelligence investigations, and the proportion of each within our sample roughly modeled the ratio of the case types within the universe of FBI FISA applications. At the time of our review, the period of court-authorized physical search and/or electronic surveillance on all applications within our sample had been completed, and no such physical search and/or electronic surveillance pursuant to these 29 applications was active.

We conducted fieldwork at the eight FBI field offices. While on-site, we reviewed the selected FISA applications and attempted to trace the statements of fact in those applications to the associated Woods File, noting any potential issues. Our review consisted solely of determining whether the contents of the Woods File supported the statements of fact in the application; our review did not seek to determine whether support or contrary evidence existed elsewhere (such as in the case file) for the facts in the FISA application. Following our review of the applications, we discussed our potential issues with the relevant FBI case agent or SSA if available. Through these discussions, we were able to resolve some of our initial concerns. While we stayed alert for instances where the FBI did not include in each FISA application information relevant to the probable cause determinations, our focus during this audit was determining whether the FBI had supported the statements of fact in FISA applications with documentation maintained in each application's associated Woods File. Moreover, we did not make judgments about the materiality or significance of any errors or unsupported facts identified during our review.

In addition to our work at FBI field offices, we interviewed personnel from the FBI's NSCLB and NSD OI's Operations and Oversight sections. Further, we reviewed 35 CDC and NSD accuracy review

reports, covering the period from October 2014 to September 2019, originating from the 8 field offices where we conducted fieldwork and addressing a total of 44 U.S. Person FISA applications. One of these applications was also included among the 29 FISA applications that we reviewed.

We also reviewed the FBI and NSD OI's responses to our notes from our review of the 29 FISA applications, as well as the various FISC orders and the Department's and FBI's responses to those orders. Further, we obtained and reviewed FBI documentation associated with the FBI's Woods File inventory efforts. In addition, we reviewed FBI and Department efforts to take corrective action to address concerns raised in the OIG's December 2019 FISA Report, the OIG's March 2020 MAM, and in FISC Orders.

Due to the travel and logistical challenges of working with classified materials throughout the COVID-19 global pandemic, we did not expand our initial sample to include additional FISA applications or field office locations. Additionally, we were unable to conduct our intended in-depth review of renewal applications due to the COVID-19 global pandemic; and thus, we do not have results on renewals beyond what was previously stated in our March 2020 MAM.

### **Statement on Compliance with Generally Accepted Government Auditing Standards**

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

### **Internal Controls**

In this audit, we performed testing of internal controls significant within the context of our audit objectives. We did not evaluate the internal controls of the FBI or NSD to provide assurance on their internal control structure as a whole. FBI and NSD management are responsible for the establishment and maintenance of their respective internal controls in accordance with 50 U.S.C. Chapter 36. Because we do not express an opinion on the FBI's or NSD's internal control structures as a whole, we offer this statement solely for the information and use of the FBI and NSD.<sup>32</sup>

In planning and performing our audit, we identified several underlying internal control principles within each of the five internal control components that were significant to the audit objectives, including management's identification, analysis, and response to risks related to achieving defined objectives, as well as management's use of quality information to achieve objectives.<sup>33</sup> We assessed the design and operating effectiveness of these internal controls and identified deficiencies that we believe could affect the FBI's ability to effectively and efficiently comply with its Woods Procedures requirements that help ensure the accuracy of FISA applications submitted to the FISC for

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<sup>32</sup> This restriction is not intended to limit the distribution of this report, which is a matter of public record.

<sup>33</sup> [Standards for Control in the Federal Government](#) (GAO Green Book) lists the internal control components as control environment, risk assessment, control activities, information and communication, and monitoring.

U.S. persons, as well as NSD's oversight efforts related to the accuracy of FBI FISA applications. The internal control deficiencies we found are discussed in the Audit Results section of this report. However, because our review was limited, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit.

## **Compliance with Laws and Regulations**

In this audit, we tested, as appropriate given our audit objectives and scope, selected transactions, records, procedures, and practices, to obtain reasonable assurance that FBI's and NSD's management complied with federal laws and regulations for which non-compliance, in our judgment, could have a material effect on the results of our audit. Our audit included examining, on a test basis, the FBI's and NSD's compliance with the following law that could have a material effect on the FBI's and NSD's operations:

- 50 U.S.C. Chapter 36 – Foreign Intelligence Surveillance Act

This testing included interviewing auditee personnel, analyzing data, assessing internal control procedures, and examining procedural practices. However, nothing came to our attention that caused us to believe that the FBI and NSD were not in compliance with the aforementioned law.

## **Sample-Based Testing**

To accomplish our audit objectives, we performed sample-based testing from more than 700 FISA applications relating to U.S. Persons submitted by 8 field offices during our scope of October 1, 2014 to September 30, 2019. In this effort, we employed a judgmental sampling design to obtain broad exposure to numerous facets of the areas we reviewed. This non-statistical sample design did not allow projection of the test results to the universe from which the samples were selected.

## **Computer-Processed Data**

During our audit, we obtained information from the FBI's FISA Management System. We did not test the reliability of this system as a whole; therefore, any findings identified involving information from this system were verified with documentation from other sources.

## APPENDIX 2: Timeline of FISC Filings

December 2019	9	<b>OIG issues Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation.</b>
	17	<b>FISC Order:</b> In response to the OIG's December 2019 FISA Report, the FISC orders the government to inform the FISC of "what it has done, and plans to do, to ensure that the statement of facts in each FBI application accurately and completely reflects information possessed by the FBI that is material to any issue presented by the application."
January 2020		<b>Response to the Court's Order Dated December 17, 2019:</b> The government notifies the FISC of its plan to implement measures to ensure the accuracy and completeness of FBI FISA applications, including 12 FISA-specific corrective actions related to: (1) FISA standards and procedures, (2) training, and (3) audits and reviews.
	10	<b>FISC Order Appointing an Amicus Curiae:</b> The FISC appoints an amicus curiae to assess the government's response to the December 17 order.
	15	<b>Letter Brief of Amicus Curiae:</b> The amicus curiae concludes that the FBI's corrective actions are insufficient and proposes additional corrective actions.
	31	<b>Response to the Amicus's Letter Brief Dated January 15, 2020:</b> The government notifies the FISC of additional corrective measures the FBI and DOJ will implement based on recommendations made by the amicus curiae, including a transition to the use of field agents as declarants in FISA applications and consistent messaging from leadership about compliance.
March 2020	5	<b>FISC Corrected Opinion and Order:</b> The FISC orders the government to provide additional information responsive to the FISC's concerns in the following areas: (1) improvements to procedures for preparing FISA applications, (2) improvements to training and other efforts to institutionalize importance of accuracy and completeness, and (3) oversight.
	31	<b>OIG issues Management Advisory Memorandum for the FBI regarding the FBI's Execution of its Woods Procedures.</b>
April 2020	3	<b>FISC Order:</b> The FISC orders the government to take certain steps in response to the OIG's preliminary findings, including an assessment as to what extent the 29 FISA applications reviewed by the OIG involved material misstatements or omissions, and whether any such instances render invalid authorizations granted by the FISC. The FISC also orders the government to report on the progress of efforts to account for and ensure the proper maintenance of Woods Files.
		<b>Response to the Court's Corrected Opinion and Order Dated March 5, 2020 and Update to the Government's January 10, 2020 Response:</b> The government provides an update on corrective actions undertaken by the FBI, including updates regarding: (1) the verification of confidential human source reporting, (2) responsibilities of FBI OGC throughout the FISA process, (3) technological improvements to the FISA application process, (4) the transition to field office agents serving as declarants, (5) NSD OI oversight mechanisms, and (6) efforts to ensure the accuracy of applications under Titles IV and V of FISA.
	30	<b>Supplemental Response to the Court's Order Dated December 17, 2019; the Court's Scheduling Order Dated January 17, 2020; and the Court's Corrected Opinion and Order Dated March 5, 2020:</b> The government provides an update regarding certain training, technological, and internal messaging corrective actions undertaken by the FBI.

May 2020	22	<b>Supplemental Response to the Court's Order Dated December 17, 2019 and Corrected Opinion and Order Dated March 5, 2020; and Partial Response to the Court's Order Dated April 3, 2020:</b> The government provides an update regarding the FBI's efforts to: (1) enhance protocols to ensure the accuracy of applications under Titles IV and V of FISA, (2) identify and propose audit, review, and compliance mechanisms, and (3) use the results of accuracy reviews to improve performance.
	29	<b>Letter / Government's Second Thirty-Day Update:</b> The government provides its second update regarding technological improvements to the FBI's FISA application process.
June 2020	15	<b>Supplemental Response to the Court's Order Dated April 3, 2020, and Motion for Extension of Time:</b> The FBI and NSD provide the FISC with the results of their assessment of 14 of 29 FISA applications, which identifies 1 material misstatement or omission and 63 nonmaterial errors. The government also provides an update on the FBI's Woods File inventory efforts.
	30	<b>Response to the Court's Corrected Opinion and Order Dated March 5, 2020 and Update to the Government's January 10, 2020 and January 31, 2020 Responses:</b> The government provides its assessment of the efficacy of the FBI's revised FISA Request and Verification Forms and other reform measures, including the Confidential Human Source Checklist and FISA-related training.
July 2020	29	<b>Supplemental Response to the Court's Order Dated April 3, 2020:</b> The FBI and NSD provide the FISC with the results of their assessment of the remaining 15 of 29 FISA applications, which identifies 1 material misstatement and 138 nonmaterial errors. The government also provides an update on the FBI's Woods File inventory efforts.
	31	<b>Supplemental Response to the Court's Order Dated December 17, 2019 and Corrected Opinion and Order Dated March 5, 2020; and Partial Response to the Court's Order Dated April 3, 2020:</b> The government provides an update regarding the FBI's efforts to (1) enhance the accuracy of applications pursuant to Title IV and V of FISA, and (2) identify and propose audit, review, and compliance mechanisms to ensure the efficacy of changes to the FISA process.
August 2020	31	<b>Update in Response to the Court's March 5, 2020 Order:</b> The government provides its third update regarding technological improvements to the FBI's FISA application process.
	29	<b>Letter from the Chief of the Oversight Section:</b> The government provides an update regarding the FBI's Woods File inventory efforts and the transition to having field agents serve as declarants. The FBI reports it has accounted for 99.9% of its Woods Files.
September 2020	27	<b>Letter from the Chief of the Oversight Section:</b> The government notifies the FISC of 4 additional nonmaterial errors and 2 material errors identified in certain applications reviewed by the OIG. The government also provides additional information in response to questions posed by the FISC regarding specific findings discussed in the June 15 and July 29 filings.
	27	<b>Supplemental Response to the Court's Order Dated December 17, 2019 and Corrected Opinion and Order Dated March 5, 2020; and Partial Response to the Court's Order Dated April 3, 2020:</b> The government provides an update regarding the FBI's efforts to (1) enhance the accuracy of applications pursuant to Title IV and V of FISA and (2) identify and propose audit, review, and compliance mechanisms to ensure the efficacy of changes to the FISA process.
October 2020	13	<b>Letter from the Chief of the Oversight Section:</b> The government provides an update regarding its Woods File inventory efforts. The FBI reports that the FBI has accounted for 100% of its approximately 7,146 Woods Files. The government also provides its fourth update regarding technological improvements to the FBI's FISA application process.
	30	<b>Letter from the Chief of the Oversight Section:</b> The government provides an update regarding the progress toward changing current practice to require FBI field agents to serve as declarants on FISA applications.
November 2020	25	<b>Letter from the Chief of the Oversight Section:</b> The government provides an update regarding the progress of efforts to account for and ensure the proper maintenance of Woods Files. The FBI reports it has accounted for 100% of its approximately 7,146 Woods Files.
	29	
January 2021		

March 2021

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**Update in Response to the Court's March 5, 2020 Order:** The government provides its fifth update regarding technological improvements to the FBI's FISA application process.

12

**Response to the Court's Corrected Opinion and Order Dated March 5, 2020:** NSD provides its semi-annual report on its oversight reviews for the period August 25, 2020 to February 24, 2021, during which it conducted 9 accuracy reviews covering 30 FISA applications and 8 completeness reviews covering 42 applications.

**Supplemental Response to the Court's Order Dated December 17, 2019 and Corrected Opinion and Order Dated March 5, 2020; and Partial Response to the Court's Order Dated April 3, 2020:** The government provides an update regarding the FBI's efforts to (1) enhance the accuracy of applications pursuant to Title IV and V of FISA and (2) identify and propose audit, review, and compliance mechanisms to ensure the efficacy of changes to the FISA process.

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**Supplemental Response to the Court's Order Dated April 3, 2020:** The government provides an update regarding the FBI's efforts to account for, and ensure the proper maintenance of, its Woods Files and an update on other corrective actions undertaken by the FBI.

Source: OIG analysis of relevant filings under FISC Docket No. Misc. 19-02, In Re Accuracy Concerns Regarding FBI Matters Submitted to the FISC. For a complete list of public filings under this docket, and access to the filings listed above, see the FISC (<https://www.fisc.uscourts.gov/docket/misc-19-02>) and DOJ (<https://www.justice.gov/nsd/fisa>) websites.

# APPENDIX 3: The Federal Bureau of Investigation's Response to the Draft Audit Report



U.S. Department of Justice  
Federal Bureau of Investigation

Washington, DC 20535

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*Office of the General Counsel*

September 10, 2021

Michael E. Horowitz  
Inspector General  
Department of Justice

Re: Recommendations from the Office of Inspector General

Dear Inspector General Horowitz:

Thank you for the opportunity to review and respond to your report, *Audit of the Federal Bureau of Investigation's Execution of Its Woods Procedures for Applications Filed with the Foreign Intelligence Surveillance Court Relating to U.S. Persons* (Audit Report). Foreign Intelligence Surveillance Act (FISA) authorities are critical national security tools, and the Federal Bureau of Investigation (FBI) remains committed to rigor in the FISA process.

In this letter, I outline a number of reforms the FBI has implemented to its FISA program, many of which were completed as part of the corrective actions ordered by Director Wray<sup>1</sup> in response to your office's *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation*, and were in place prior to the issuance of the Audit Report. Not only does the FBI accept your recommendations in full, but the actions discussed below have gone even further.

**Woods Files Maintenance.** In Recommendation 1, you recommend establishing a specific policy governing the appropriate format and maintenance of FISA accuracy subfiles, commonly referred to as Woods Files. Important changes have already been made. Prior to receiving the Audit Report, the FBI enhanced its policy concerning the creation and maintenance of Woods Files. Specifically, on July 6, 2021, the FBI published a revised Foreign Intelligence Surveillance Act and Standard Minimization Procedures Policy Guide (FISA & SMP PG) which governs the creation and maintenance of Woods Files by:

- Requiring that the Woods Files be maintained electronically unless otherwise prohibited (e.g., higher classification);
- Mandating separate Woods Files for each initiation, amendment, and renewal application;
- Providing guidance to address circumstances in which FISAs are transferred between offices to ensure the Woods Files subfiles are reviewed and in compliance; and
- Requiring the maintenance of the Woods Files pursuant to the established record retention schedule for the correlated main case file.

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<sup>1</sup> Letter from Director Wray to Inspector General Horowitz (December 6, 2019).

To improve efficiency and facilitate enhanced oversight, the FBI deployed a new electronic Woods File capability within its case management system in July 2021. Known as the Electronic Woods Capability (EWC), it provides personnel with a streamlined, consistent way to organize documents into the Woods File and also generates an index which can be used for accuracy and completeness reviews. Because the EWC enables the creation of Woods Files that can be easily exported in whole or part and remotely reviewed, the FBI believes this new functionality supports oversight functions of the FBI's Office of the General Counsel (OGC) National Security and Cyber Law Branch (NSCLB), the Office of Internal Auditing (OIA), and the Department of Justice's National Security Division (NSD) Office of Intelligence (OI).

In Recommendation 2, you propose that the FBI, in consultation with NSD and the Foreign Intelligence Surveillance Court (FISC), determine how long it is necessary to retain Woods Files to ensure the accuracy and proper oversight of FISA applications and then promulgate related guidance. The FBI has determined the retention schedule and promulgated related guidance and the FISA & SMP PG now includes direction to maintain the Woods File pursuant to the retention schedule of the correlated case file. By way of background, the FBI's obligation to retain records is governed by federal law and implemented by the National Archives and Records Administration's record schedules, as well as FBI policies. To the extent the FBI retains a Woods File, it must be consistent with the legal and policy framework applying to federal records. In considering the applicable schedule that should apply, the FBI consulted with NSD and included language related to the retention in the 2021 Guidance to Ensure the Accuracy and Completeness of Federal Bureau of Investigation Applications under the Foreign Intelligence Surveillance Act (2021 Accuracy Memo). The 2021 Accuracy Memo, which was submitted to the FISC, explicitly clarifies that, as a subfile of the main case, the Woods File must be maintained pursuant to the retention requirements of the main case.

**Documents within the Woods Files.** In Recommendation 3, you state that the FBI should ensure its policy identifies the required types of documentation to be included in the Woods Files as support for statements of fact in FISA applications. The FBI has done so. Prior to receiving the Audit Report, and as informed by discussions with your office that suggested additional clarity related to the documentation requirements would be helpful for personnel, the FBI reviewed its existing policy and considered whether additional language and examples in the May 2021 training discussed below or within the July 2021 policy revision were needed. As discussed, it is important that Woods Files include the most appropriate authoritative documents to support facts contained in the corresponding FISA applications. The FBI recognizes that it is also necessary for personnel to understand which statements within an application require supporting documents because they are factual assertions, as opposed to assessments, summaries, or conclusions. In order to provide additional guidance, the FBI consulted with NSD and incorporated new language in the 2021 Accuracy Memo such that it now requires FBI personnel to identify—such as by numbering—factual assertions within the application that require supporting documentation. The assigned OI attorney will then confirm that all relevant factual assertions have been identified. By adopting this approach, NSD and the FBI have ensured that personnel have a common understanding as to which factual assertions require supporting documentation in the Woods File.

Because the type of documentation required to support a fact may vary widely depending on the source of the fact (e.g., is the FBI referring to information from a confidential human source or from a federal agency partner's report), the FISA & SMP PG includes specific sections about the types of documentation that should be considered and included in the Woods Files. In addition to

the revised FISA & SMP PG, which has been provided to your office, additional examples about the required types of documentation can be provided upon request.

Beginning in May 2021, the FBI provided mandatory training to its national security workforce on the new requirements for Woods Files and the EWC.

**Supervisory Review of Woods Files.** In Recommendation 4, you advise that the FBI should develop and implement a policy that describes the expectations for the supervisory review of Woods Files. Specifically, this policy should clearly convey the requirement for reviewers to confirm support for all statements of fact in each application and provide for better evidence of the supervisory review process that goes beyond simply signing the Woods Form. The FBI agrees and has done so. While the FBI's previous process for completing the Woods File review, also known as the verification process, included a supervisor's review of the Woods File and a signature from the supervisor, the FBI has added several critical steps over the last two years to increase supervisory engagement. As of July 6, 2021, supervisors must:

- Review each factual assertion and its corresponding supporting documentation in the accuracy subfile, regardless of whether it is an initiation or renewal;
- Ensure that subordinates adhere to all FISA accuracy and documentation requirements; and,
- Attest to the provision of all information to OI that might reasonably call into question the accuracy of the information in the application or otherwise raise doubts about the probable cause findings or the relationship to a foreign power.

In addition, you recommended that, as part of this policy modification, the FBI should also consider options for incorporating an element of independent verification of Woods Files during the FISA application process. The FBI is evaluating options, in addition to the types of reviews already mandated, such as accuracy and completeness reviews. The FBI believes that the review undertaken by the OIA, as discussed further below in response to Recommendation 7, will identify ways that independent verification can be adopted moving forward.

**Chief Division Counsel Accuracy Reviews.** In Recommendation 5, you state that the FBI should provide NSD OI the results of the Chief Division Counsel (CDC) accuracy reviews as they are completed and incorporate this requirement in the appropriate FBI policy. And in Recommendation 6, you propose that the CDC accuracy review process should be enhanced to ensure necessary corrective actions are, in fact, taken to address deficiencies identified and that these actions are documented. As discussed above, the FBI agrees and has done so. Specifically, the revised FISA & SMP PG continues to direct CDCs to provide the results of their semiannual accuracy reviews to NSCLB, which is directed by policy to then provide the reviews to NSD OI. Further, the policy includes guidance about the steps that CDCs must take when the reviews result in findings of potential misstatements or errors. While the FBI previously only provided the results of the reviews to NSD OI, in March 2020, the FBI began also providing the underlying substantive data related to the reviews. More recently, in December 2020, the FBI began providing information related to completed CDC reviews to NSD OI on a rolling basis.

As part of these recommendations, your office highlighted aspects of the FBI's modifications of the FISA process that were completed as part of the corrective actions ordered by Director Wray. Pursuant to these corrective actions, the FBI had already begun to further enhance

accuracy and completeness by expanding the protocols for CDC reviews. For example, these improvements included:

- Requiring CDC reviews include verification that each identified fact within an application is supported by the appropriate authoritative document;
- Mandating that part of the CDC review includes inspection of the associated Woods File and that this inspection identifies and directs action in any instance the Woods File is not adherent to policy;
- Changing the selection criteria for CDC reviews so that NSCLB identifies the applications for reviews based on an established matrix; this precludes the CDCs self-selecting the Woods Files to review;
- Adding documentation requirements to the reviews so that CDCs must document each corrective action taken in response to the review's results;
- Requiring NSCLB provide analysis to the CDCs on the results of their reviews, as well as incorporate the results into trends analysis and additional training, as appropriate; and,
- Including FISA Business Records and Pen Register Trap and Trace applications within those reviewed by CDCs.

**Ensuring Accountability and Efficacy of the Woods Procedures.** In Recommendation 7, you propose that the FBI should designate a headquarters entity with responsibility for ensuring accountability and efficacy of the Woods Procedures across the FBI. We accept this recommendation, and have directed that the OIA, in consultation with OGC and other appropriate divisions, undertake an evaluation of the existing Woods Procedures which, as mentioned, have changed since your office reviewed them as part of this Audit Report. OIA, along with the Office of Integrity and Compliance and the Inspection Division, among other divisions, reports directly to the Associate Deputy Director, who is the accountable executive in this regard.

As part of its auditing and analysis, OIA will incorporate findings from the FBI's two recent Woods inventories. The first, as referenced in your Audit Report, occurred in 2020, and the second was completed in 2021. In the earlier review, the FBI inventoried all Woods Files for physical search and electronic surveillance FISA applications docketed from January 2015 to March 2020 to ensure that they were maintained pursuant to then-existing policy. The latter review inventoried Woods Files for all physical search and electronic surveillance FISA applications docketed from March 2020 to March 2021.

In addition, in response to your recommendation, the OIA will examine what an independent verification within the Woods process within drafting an application might entail, as mentioned in response to Recommendation 4. The FBI will ensure that NSD OI and your office are updated on our efforts.

**Communication to the Workforce.** In Recommendation 8, you state that the FBI should ensure its leadership makes additional efforts to communicate and emphasize to our workforce the importance of adhering to the FBI's established accuracy benchmark for FISA applications—i.e., the scrupulously accurate standard—and that every step of the quality assurance process be rigorously completed. The FBI embraces this recommendation, and has been consistently making such efforts, even prior to receiving the Audit Report.

A few illustrative (but not exhaustive) recent communications are summarized below. Moving forward, FBI leadership is committed to continued, unambiguous communication to its workforce on this topic.

- On July 6, 2021, in connection with the effective date of many FISA reforms as discussed above, the FBI Deputy Director sent a message to the entire FBI workforce stating: “[t]he FBI’s FISA program is essential to our mission and we have made crucial progress over the last eighteen months. We will continue to implement and review further changes, where necessary, to meet our obligations within FISA-authorized operations. We must continue to do the right thing, in the right way, across all aspects of our work and that includes these improvements to our FISA processes”;
- On June 23, 2021, the FBI General Counsel and Executive Assistant Directors of the National Security Branch; the Criminal, Cyber, Response and Services Branch; and the Information and Technology Branch sent a joint message to FBI Special Agents in Charge and other FBI national security personnel highlighting the new requirement for electronic Woods Files and reminding FBI employees that “[the] Director has expressed a strong commitment to implementing substantial FISA reforms in response to the 2019–2020 Inspector General’s reports”;
- On June 2, 2021, the FBI Deputy Director met with all FBI senior leaders across the organization to discuss several recent FISA reforms. At that time, the Deputy Director reiterated his continuing commitment to improving accuracy and completeness in the FBI’s FISA processes;
- On May 12, 2021, the FBI Deputy Director sent a message to all FBI personnel advising of new policy changes and training related to the FBI’s FISA reforms. In doing so, the Deputy Director stated that the changes further improved the FBI’s FISA program and complemented previous efforts to respond to your office’s *Review of Four FISA Applications and Other Aspects of the FBI’s Crossfire Hurricane Investigation* report. The Deputy Director also emphasized that the “reforms and initiatives are essential steps in meeting the FBI’s obligation to exercise FISA authorized operations with unquestionable accuracy and rigor”; and
- On or about May 12, 2021, the FBI Training Division launched the updated FISA Process Rigor Virtual Academy course and mandated successful completion to personnel who work on national security matters, handle FISA applications, and/or may access FISA-acquired information. The content was developed by NSCLB, and the General Counsel sponsored the course, which included the following messages intended to reemphasize to the FBI workforce the importance of accuracy and completeness in the FISA process:
  - FISA provides a mechanism for the lawful use of some of the most intrusive intelligence investigative techniques in pursuit of foreign intelligence while protecting the rights of U.S. persons. The FISA process requires the FBI to submit accurate and complete information in its applications to the FISC indicating the facts contained in the application support the required legal determinations;
  - Material omissions or misstatements of fact jeopardize not only the FISC order at issue, but also the government’s ability to use evidence acquired or derived from the FISC order later in a criminal prosecution. An accumulation of non-material errors or omissions also could jeopardize the FISA, as collectively such

- errors may undermine the required legal determinations. Errors also undermine the confidence placed in the FBI by the FISC, Congress, and the public; and
- In December 2019, your office publicly released the *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* report. Among other findings, your office found that FBI personnel fell far short of the requirement in FBI policy that they ensure that all factual statements in a FISA application are “scrupulously accurate.” Your office identified multiple instances in which factual assertions relied upon in the relevant applications were inaccurate, incomplete, or unsupported by appropriate documentation, based upon information the FBI had in its possession at the time the application was filed.

These messages are only a few recent examples, but they reflect the concerted effort that FBI leadership has undertaken to reinforce to our workforce the importance of strict compliance and accuracy in the FISA process. While we agree with your recommendation to continue such messaging, we do not agree with the Audit Report's assertion that other messages that addressed materiality “appeared to display a tolerance for error.” The FBI certainly did not intend to display tolerance for error. Rather, the FBI examined the legal concept of materiality at the express direction of the FISC. The FBI's sustained and unambiguous messages, which cascade down from FBI leadership through supervisory chains-of-command, have been supplemented with training courses and direct workforce emails. FBI leadership's commitment to emphasize the importance of scrupulous accuracy will continue unabated, and the FBI believes they have been effective at significantly improving the FBI's Woods Procedures compliance.

The FBI appreciates your office's review and the recommendations you set forth in the Audit Report, as well as your continued focus on the FISA process and FBI's significant and ongoing improvements. In the coming months, the FBI looks forward to providing more updates to you and your office on our work and the positive results associated with the implementation of the Director's corrective actions.

Sincerely,



Jason A. Jones  
General Counsel  
Federal Bureau of Investigation

# APPENDIX 4: The National Security Division's Response to the Draft Audit Report



U.S. Department of Justice

National Security Division

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Washington, D.C. 20530

September 10, 2021

The Honorable Michael E. Horowitz  
Inspector General  
Office of the Inspector General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Dear Inspector General Horowitz:

The National Security Division (NSD) appreciates the work that the Office of the Inspector General (OIG) undertook as part of its “Audit of the Federal Bureau of Investigation’s Execution of Its Woods Procedures for Applications Filed with the Foreign Intelligence Surveillance Court Relating to U.S. Persons.” This work led to a Management Advisory Memorandum (MAM) in March 2020 and to the audit report of the same title (Audit Report) of which your office recently provided a draft for NSD’s review and comment. NSD’s comments to the draft report are detailed below and via the more detailed memorandum from my staff to yours enclosed with this letter (Response Memorandum).

At the outset, I note that reviews of this nature are especially important because the *Foreign Intelligence Surveillance Act* (FISA) is an essential intelligence-gathering tool that is invaluable in the fight against international terrorism, espionage, and other national security threats. NSD is committed to ensuring that FISA applications the Government submits to the Foreign Intelligence Surveillance Court (FISC) are complete and accurate. NSD views this as a critical responsibility as NSD discharges its duties to the FISC and to the American people.

As part of its work on this audit, OIG reviewed aspects of NSD’s work that assist the FBI in ensuring the accuracy of FISA applications. This led OIG to direct two recommendations to NSD in the Audit Report. The first recommendation directed to NSD (Recommendation 9) is based on OIG’s recognition of the important role NSD’s oversight activities play in monitoring the FBI’s compliance with accuracy requirements. Specifically, OIG recommends that NSD “incorporate a timely, strategic assessment of identified errors” that NSD discovers as part of its accuracy reviews of FBI FISA applications. NSD concurs and is already in the process of implementing related enhancements as explained more fully in the Response Memorandum. We believe this should allow your office to designate Recommendation 9 as resolved and to close the recommendation upon NSD providing documentation reflecting these efforts as more fully described in the Response Memorandum.

The second recommendation directed toward NSD (Recommendation 10) is that NSD should “[m]ake additional efforts to confirm to its oversight staff the importance of the FBI’s accuracy standards and of strict compliance with the Woods Procedures.” It appears from the Audit Report that OIG concluded that a single statement made by the then-Assistant Attorney General for National Security, separated from the context in which it was issued, suggests that NSD might tolerate error in FISA applications. As such, OIG posits, NSD should make additional efforts to confirm the importance of accuracy in FISA applications. As noted, NSD considers accuracy in FISA applications to be critical, and NSD takes seriously its role and responsibility in assisting the FBI in meeting its obligation to that end. NSD has adhered to this position for years. Accordingly, NSD does not agree with the factual foundation upon which OIG bases Recommendation 10.

Notwithstanding NSD’s conclusion that Recommendation 10 is insufficiently predicated, NSD nonetheless concurs with this recommendation on its face and on more general grounds. Since the issuance of the MAM, NSD has continued to emphasize the importance of strict adherence to the accuracy procedures through, among other things, messaging from leadership, training improvements, and recently issued guidance, and NSD anticipates continuing to do so into the future. Specifically, as outlined to your staff and in the Response Memorandum, NSD has made additional efforts since OIG issued its MAM to confirm to NSD’s Office of Intelligence attorneys, including its oversight staff, that ensuring the FBI follows its accuracy standards and strictly follows relevant procedures is essential. NSD has also developed accuracy-related guidance for NSD’s Office of Intelligence and FBI personnel that is designed to facilitate compliance with the accuracy procedures and has delivered mandatory training to NSD’s Office of Intelligence attorneys on the accuracy guidance. This training is an example of the ongoing efforts that have been put in place to ensure that the importance of strict adherence to the accuracy procedures is continually emphasized to NSD’s Office of Intelligence attorneys. We believe these efforts, as detailed in the Response Memorandum, should justify your office issuing this recommendation as closed.

NSD is dedicated to ensuring that all applications submitted to the FISC meet the highest standards of accuracy. I am proud of the work that NSD’s Office of Intelligence does in its work related to FISA and its representation before the FISC. I look forward to NSD continuing to strengthen its oversight efforts and assist the FBI in ensuring FISA application accuracy.

Sincerely,



Mark J. Lesko  
Acting Assistant Attorney General  
National Security Division  
U.S. Department of Justice

Enclosure.



U.S. Department of Justice

National Security Division

Washington, D.C. 20530

**MEMORANDUM**

TO: Audit Division, Office of the Inspector General

FROM: Office of Intelligence, National Security Division

DATE: September 10, 2021

SUBJECT: *OIG's Draft Audit Report: Audit of the Federal Bureau of Investigation's Execution of Its Woods Procedures for Applications Filed with the Foreign Intelligence Surveillance Court Relating to U.S. Persons*

NSD's Office of Intelligence (OI) submits this memorandum to document its efforts to address Recommendations 9 and 10 from the draft Office of the Inspector General (OIG) report entitled *Audit of the Federal Bureau of Investigation's Execution of Its Woods Procedures for Applications Filed with the Foreign Intelligence Surveillance Court Relating to U.S. Persons* (OIG Report).

\* \* \*

**Recommendation 10:** *Make additional efforts to confirm to its oversight staff the importance of the FBI's accuracy standards and of strict compliance with the Woods Procedures.*

**NSD Brief Response:** NSD submits that the operational improvements, messaging, and training discussed below confirm that OI continuously emphasizes the importance of accuracy in applications submitted to the Foreign Intelligence Surveillance Court (FISC). This emphasis includes strict compliance with the accuracy procedures. Further, OI has put in place mechanisms to ensure this emphasis is maintained. Accordingly, based on the actions described herein and the additional documentation of these actions provided separately, NSD requests that OIG close this recommendation upon issuance.

**Discussion:**

As described in the OIG Report, following issuance of the OIG's March 2020 Management Advisory Memorandum (MAM), NSD and FBI reviewed the OIG's initial findings from its audit of the 29 FISA applications, as well as the results of FBI accuracy reviews of the FISA applications. Further, in response to a FISC Order, NSD and FBI submitted filings to the FISC detailing any errors, omissions, or unsupported facts concerning the 29 FISA applications, as well as OI's legal assessments as to whether the errors, omissions, or unsupported facts invalidated the applicable legal authorizations.

These FISC filings included legal judgments regarding the materiality of identified errors and omissions. As the OIG Report notes, and as reflected in the government's redacted, publicly available filings, there were few material errors identified, and none of the errors, omissions, and unsupported facts invalidated probable cause in the underlying applications. In addition, there were numerous instances in which the OIG at the time of its audit identified missing documentation in the Woods files to supports facts in the 29 applications, and in many of those instances, the FBI was later able to find the required documentation for the facts.

At the time of the FISC submission and public release of the government's filings in 2020, NSD leadership made a public statement summarizing the legal findings regarding the 2019 FISA applications. The OIG's Report suggests that this public statement risked sending a mixed message and created an appearance that NSD tolerated error. NSD believes that OIG failed to credit sufficiently the context within which this statement was made and, in so doing, could lead a reader to misconstrue the purpose and impact of the statement.

NSD is required to analyze errors and omissions in the context of the legal standard for materiality that is applied under Rule 13 of the FISC's Rules of Procedure.<sup>1</sup> In addition to materiality, NSD analyzes whether an identified error, omission, or unsupported fact invalidated the applicable legal authorization. NSD's differentiation between material and non-material errors and summaries of such findings are an integral part of NSD's practice before the FISC.

NSD's summary of the findings from the government's legal submissions to the FISC for public transparency purposes was not meant to suggest that NSD did not consider as serious the identified non-material errors in the 29 applications or instances where FBI lacked documentary support for a fact in the Woods file. Indeed, as detailed throughout this response, NSD believes its historical and ongoing practices establish both that NSD does not tolerate errors in submissions to the FISC and that NSD has emphasized strict compliance with the accuracy procedures through messaging, training, and guidance.

#### **A. Messaging**

Messaging emphasizing the significance of OIG's findings regarding accuracy has been delivered by OI leadership at all levels before and, more relevant to OIG closing this recommendation, after issuance of the OIG's March 2020 MAM.

For example, the Deputy Assistant Attorney General for OI (DAAG-OI) sent an email to all OI attorneys in March 2020 following issuance of the MAM. Of note, the email directed all OI attorneys to review the MAM and advised OI attorneys that, "It is critical that when you are talking to your agents when working on FISA applications that you remind them of the

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<sup>1</sup> OI's obligation to ensure that applications are accurate and complete and to identify and correct any shortcomings does not derive from policy but rather from OI's obligations representing the Government in *ex parte* proceedings before the FISC, as well as pursuant to Rule 13 of the Court's Rules of Procedure. Although OI only indirectly assesses FBI's compliance with its internal accuracy procedures (previously known as the Woods procedures), OI has consistently emphasized to the FBI the need to strictly adhere to those procedures in order to fully meet OI's obligations to the Court. OI has done so in a variety of ways and over a long period of time. Moreover, as described herein, OI recently has instituted additional steps to further strengthen the mechanisms for ensuring accuracy in FBI's filings before the FISC, including updating NSD and the FBI's joint accuracy guidance.

requirement relating to maintaining an accuracy sub-file and that documentary support must exist for every fact, including sub-facts within sentences.”

Subsequently, in June 2020 and July 2020, the DAAG-OI communicated directly with all OI attorneys following the Government’s submissions assessing the results of the accuracy reviews for the 29 cases audited by the OIG. Those email messages described OI’s conclusions in detail as well as the number and types of errors in these applications that were identified by the accuracy reviews. These email messages also emphasized the role to be played by OI attorneys in helping the FBI avoid even non-material errors of the types identified in these 29 applications. In particular, the email in July 2020 recommended that OI attorneys talk to their agents about the types of errors, including non-material errors.

Most recently, the DAAG-OI communicated directly with all OI attorneys in August 2021, reminding attorneys that “it is critical that we and FBI strictly comply with all aspects of the accuracy procedures and” the new requirements imposed by the recently-issued 2021 Accuracy Memorandum. This message emphasized that the goal is to ensure “that the accuracy procedures are strictly adhered to” and that attorneys should remind FBI agents with whom they are working on FISA applications or as part of oversight reviews of “the importance of rigorously adhering to the 2021 Accuracy Guidance and all aspects of the accuracy procedures, including the requirement to maintain an accuracy subfile that has sufficient documentation for the facts in the FISA application...to help avoid any errors in an application.” Further, this message invited OI personnel to provide internal feedback regarding the effectiveness of recent accuracy-related process improvements, so that OI can evaluate those improvements and adjust strategically as appropriate.

In another example, OI’s Oversight Section communicated with all OI attorneys in August 2020, describing in detail all omissions or misstatements identified in the 29 applications discussed in the March 2020 MAM. The discussion of nonmaterial errors included representative examples, as well as notes regarding the factual deviations or differences underlying the errors. This served to emphasize drafting practices that might avoid the inadvertent introduction of an error.

The more recent, post-MAM communications discussed above built upon prior communications along the same lines. Those communications were precipitated by other recent OIG work. For example, in January 2020, an OI unit chief sent multiple e-mails to the OI attorneys in an operational unit involved in preparing FBI FISA applications emphasizing the need to track all misstatements or omissions discovered as a result of the FBI interim accuracy measures then in place following the OIG’s 2019 report, *Review of Four FISA Applications and Other Aspects of the FBI’s Crossfire Hurricane Investigation* (December 2019 OIG Report). In February 2020, the Chief of OI’s Operations Section communicated with all OI attorneys specifically regarding steps to be taken to ensure completeness and accuracy in describing confidential human source (CHS) reliability and reporting in FISA applications. This guidance noted that issues had been uncovered as a result of the 2019 report related to CHSs and CHS reporting, emphasized the need for diligent inquiry regarding any possible derogatory information, and stressed the importance of having case agents communicate with CHS handlers to confirm both the accuracy of source reporting, as well as CHS reliability information.

## **B. Operational Improvements**

In April 2020, OI standardized the process whereby attorneys initially communicate with agents who have submitted a request to initiate or renew FISA authorities. This initial communication included a memorandum to the case agent that emphasizes the *ex parte* nature of proceedings before the FISC and that underscores importance of accuracy and completeness throughout the FISA process. This memorandum referred to, and was accompanied by, the February 11, 2009, NSD-FBI memorandum, *Guidance to Ensure the Accuracy of Federal Bureau of Investigation (FBI) Applications under the Foreign Intelligence Surveillance Act (FISA)* (the 2009 Accuracy Memorandum).<sup>2</sup> Further, through the memorandum, OI encourages case agents to ensure that the case agent's accuracy subfile is complete and that the application is accurate.

Through the memorandum rolled out in April 2020, OI also identified what OI assessed to be common issues that arise during the application drafting process. These issues included, but were not limited to, whether the target previously served as a CHS or had a reporting relationship with other government agencies, the significance of statements by a target that might raise doubts about the target's status as a foreign power or agent of a foreign power, and the basis for the background and reliability of any CHSs whose reporting is being relied upon in the application. This introductory message was recently updated to reflect issuance of the 2021 Accuracy Memorandum. NSD assesses that this change ensures that OI attorneys, and FBI personnel with whom they work, are reminded of the importance of accuracy and best practices to ensure accuracy in FISA applications, each time the drafting process begins. This process change, which is a permanent change to OI's practice, means that both the OI attorney and FBI agent are in contact with the 2021 Accuracy Memorandum during the drafting of each application.

The 2021 Accuracy Memorandum is itself an important enhancement. OI incorporated into the 2021 Accuracy Memorandum lessons learned from OI and FBI's prior experience with the 2009 Accuracy Memorandum, the December 2019 OIG Report, and the findings from the OIG's March 2020 MAM. *See* 2021 Accuracy Memorandum at 2. The 2021 Accuracy Memorandum makes clear that "all submissions to the FISC must contain factual assertions believed to be accurate at the time of the submission and supported by authoritative documentation in the FBI's possession." *Id.* at 2. The memorandum details the responsibilities of FBI and OI during the drafting process to ensure accuracy, details the documentation that must be included in the accuracy subfile, and includes guidance about drafting FISA applications to facilitate accuracy and completeness. *Id.* at 4-11. The memorandum also includes guidance that agents should follow "as they construct their accuracy subfiles." *Id.* at 12-20. Notably, the guidance makes clear that "[e]ach initiation and renewal application for FISA authority must be

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<sup>2</sup> The 2009 Accuracy Memorandum was replaced by revised accuracy guidance in 2021. In May 2021, NSD and FBI jointly issued updated accuracy guidance titled, *2021 Guidance to Ensure the Accuracy and Completeness of Federal Bureau of Investigation Applications under the Foreign Intelligence Surveillance Act* (the 2021 Accuracy Memorandum). The 2021 memorandum reflects OI's and the FBI's commitment to ensuring accurate and complete applications without any tolerance for error. The 2021 Accuracy Memorandum focuses explicitly on responsibilities of FBI and OI personnel respectively during the drafting process to ensure the accuracy and completeness of applications submitted by the FBI.

supported by a separate accuracy subfile,” and “[a]ccuracy subfiles must be retained by the relevant FBI component as a permanent part of the investigative case file.” *Id.* at 13. The detailed guidance from the 2021 Accuracy Memorandum that OI attorneys and FBI agents will come into contact with during the drafting of each FISA application and during accuracy or completeness reviews of FISA applications will serve as an ongoing reminder of the need to ensure accurate and complete FISA applications, maintain a complete accuracy subfile, and report any identified errors, even if non-material or from an expired case, to the FISC.

Additionally, with regard to OI’s strategic approach to continuing oversight of the accuracy process, the 2021 Accuracy Memorandum incorporates an initial requirement for both NSD and the FBI to review the effectiveness of the memorandum’s provisions following its implementation through the end of calendar year 2022 and thereafter on five-year intervals. No such required review appeared in the 2009 Memorandum. OI established this mandatory review to ensure that OI has an opportunity at appropriate intervals to reassess the effectiveness of the 2021 Accuracy Memorandum’s procedures and make future improvements if warranted based on those assessments.

### **C. Training and Continued Messaging Regarding the Importance of Accuracy**

In January 2020, OI delivered updated training to all OI attorneys to highlight potential accuracy pitfalls, specifically emphasizing lessons learned from the OIG’s December 2019 OIG Report. This training, titled “Accuracy and Completeness,” is mandatory for new personnel joining OI and is dedicated to the issues at which this recommendation is targeted. This mandatory training contains the same information delivered in the January 2020 training, including specific citation to the December 2019 OIG Report to emphasize the OIG’s findings and the importance of accuracy and completeness. This training also includes discussion of the 2021 Accuracy Memorandum. OI anticipates updating this training as appropriate in the future.

In January 2021, the DOJ Professional Responsibility Advisory Office delivered training to all OI attorneys emphasizing, in part, the professional responsibility obligations that require OI to ensure the accuracy of information presented in applications filed with the Court. This training in turn has been incorporated into the mandatory training delivered to new attorneys joining all OI sections.

In June 2021, in anticipation of the issuance of the 2021 Accuracy Memorandum, OI held mandatory office-wide training focusing, in part, on the multiple provisions in the new memorandum designed to ensure the accuracy of information in all applications submitted to the Court. With regard specifically to this training, OI intends to deliver training to all personnel regarding the provisions of the 2021 Accuracy Memorandum on an annual basis. This training will be mandatory for all OI personnel and will ensure that OI attorneys are continually reminded of the accuracy process, procedures, and policies and the need to strictly adhere to the accuracy procedures. In September 2021, NSD memorialized this annual training requirement through the training workplans issued to attorneys in all three of OI’s sections, and NSD’s Director of Training and Workforce Development will be responsible for ensuring compliance with this annual training requirement for OI attorneys.

Finally, as the OIG has noted in its report, OI drafts trends reports based on its findings from its minimization, query, and accuracy reviews at FBI field offices. Historically, when OI has completed these trends reports, OI has sent them to all attorneys in OI for review to understand the issues that have been identified. Going forward, OI will ensure that when

providing OI attorneys with these trends reports, OI leadership will include a message, reminding attorneys of the need to strictly adhere to the accuracy procedures, 2021 Accuracy Memorandum, and related policies. Though not a significant departure from past practice, even this sort of relatively minor effort, combined with the significant efforts implemented recently as described above, further serves to reinforce the importance of the accuracy standards and strict compliance with all applicable guidance.

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**Recommendation 9:** *Ensure NSD OI's oversight efforts (such as its trends report activities) incorporate a timely, strategic assessment of identified errors from accuracy reviews, including analysis of potential underlying causes, and actively monitor FBI efforts to address NSD OI's recommendations.*

**NSD Brief Response:** OI expects that its forthcoming 2020 annual trends report will include a strategic assessment of identified errors from accuracy reviews, including analysis of potential underlying causes. Further, this annual trends report will not need to be held pending resolution of other issues. If future reports were to be held pending resolution of other issues contained in the report, OI would expect to distribute its strategic assessment of identified accuracy-related errors even before the unrelated aspects of the report are resolved and the full report issued. Finally, OI will monitor the FBI's efforts in addressing OI's recommendations as part of OI's regular oversight activities.

**Discussion:**

OI's annual trends reports are a significant, but by no means the only, way through which OI communicates its accuracy review findings to FBI. OI's accuracy review findings consist of immediate out-briefs of the initial results of OI's accuracy reviews to FBI field personnel and leadership, discussion of the accuracy findings with applicable line attorneys and supervisors, and email communications shortly after the conclusion of an accuracy review to FBI personnel in the field, consisting typically of the relevant field agent and chief division counsel, as well as the applicable attorney from the FBI's National Security and Cyber Law Branch. These contemporaneous communications are then supplemented by (i) written reports generated by OI regarding the oversight review findings on an individual field office basis and delivered to the applicable FBI field office and FBI Headquarters offices, (ii) inclusion of the results of those reviews in OI's annual trends reports, and (iii) in direct response to a FISC order – inclusion of those results in bi-annual filings with the FISC. The individual field office oversight review reports provide the basis for OI's annual trends reports.

Recommendation 9 contemplates improvements to timeliness and substance. The timing of the issuance of annual trends reports depends largely on resolution of issues having nothing to do with accuracy (e.g., non-compliant queries or minimization errors conducted by FBI and identified by NSD during its field office audits). In recognition of the value that more prompt dissemination of the accuracy-related aspects of the annual trends report could provide to the FBI, these portions of future annual trends reports will be separated out from other minimization review findings and distributed even before the rest of the report is ready should resolution of the

rest of the report risk delaying issuance of the report. That said, the 2020 annual trends report will include all of OI's oversight review findings, as there are no open issues to resolve and the report is currently being finalized.

With respect to substance, Recommendation 9 contemplates OI improving its strategic assessments in the annual trends reports related to its accuracy review findings and that OI actively monitor FBI's efforts to address OI's recommendations in the trends reports. Although NSD believes that it has included strategic assessments in these trends reports and as part of other accuracy-related training and messaging, NSD agrees with OIG and will use its trends reports to document and distribute its strategic assessments, such as analyzing potential root causes of errors. By including additional strategic analysis of OI's accuracy review findings in the trends reports, this may aid FBI in identifying ways to reduce errors in FISA applications or improve its accuracy-related processes. To the extent OI makes recommendations in the accuracy review trends reports, OI will actively monitor FBI's efforts to address OI's recommendations.

OI's efforts at strategic assessments are also reflected in, and will be bolstered by, multiple new or expanded provisions of the 2021 Accuracy Memorandum. Based on OI's historical analysis of root causes of accuracy issues based on OI's experience from conducting accuracy reviews and its other identification of accuracy-related issues, the 2021 Accuracy Memorandum includes provisions for the documentation of negative facts or inferences, provisions designed to reduce inadvertent errors during the drafting process (2021 Accuracy Memorandum at 6-11), guidance emphasizing the need to critically assess previous information based on case developments, and multiple hypothetical examples to illustrate ways in which omissions or inaccuracies may be inadvertently introduced in an application. In addition, historically, OI's accuracy-related training, internal meetings with OI personnel who draft FISA applications, and internal messaging all have incorporated strategic assessments to help FBI avoid errors in FISA applications. OI's ongoing practice will continue to be informed by the findings of accuracy reviews, incorporating lessons learned from strategic analyses of root causes of accuracy issues.<sup>3</sup>

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<sup>3</sup> For example, OI's Oversight section communicated with all OI attorneys in August 2020, describing in detail the omissions or misstatements identified in the 29 applications and assessed by OI to be material, as well as a description of the number and type of errors that were determined to be nonmaterial. The discussion of nonmaterial errors included representative examples as well as notes regarding the factual deviations or differences underlying the errors, all to emphasize drafting practices that might avoid the inadvertent introduction of an error, irrespective of materiality.

## **APPENDIX 5: Office of the Inspector General Analysis and Summary of Actions Necessary to Close the Audit Report**

The Office of the Inspector General (OIG) provided a draft of this audit report to the Federal Bureau of Investigation (FBI) and the National Security Division (NSD). The responses from the FBI and NSD are incorporated in Appendices 3 and 4 of this final report. In response to our audit report, the FBI stated that it accepted all our recommendations in full, and NSD concurred with our recommendations. Therefore, the status of the audit report is resolved. Both responses discussed several actions already taken, as well as additional planned measures to address our findings. The following provides the OIG analysis of the response and a summary of actions necessary to close the report.

### **Recommendations for the FBI:**

**1. Establish specific policy on the appropriate format and maintenance of Woods Files.**

Closed. According to the FBI's response, it accepts all of our recommendations, including this recommendation to establish specific policy on the appropriate format and maintenance of Woods Files. According to the FBI, it recently enhanced its Foreign Intelligence Surveillance Act and Standard Minimization Procedures Policy Guide (FISA & SMP PG) regarding the creation and maintenance of Woods Files; this policy became effective on July 6, 2021. The FBI also stated that in July 2021 it deployed a new electronic Woods File capability within its case management system, which it believes will provide personnel with a streamlined, consistent way to organize documents into the Woods File and will also generate an index to be used for accuracy and completeness review efforts.

We reviewed the revised FISA & SMP PG and confirmed that it provides guidance on the format and maintenance of Woods Files, including requirements that the files be maintained electronically unless otherwise prohibited and maintaining separate files for each initiation and renewal FISA application, as well as guidance to address circumstances where FISA applications are transferred between offices. We believe the FBI's actions adequately address our recommendation. Therefore, this recommendation is closed.

**2. In consultation with NSD and the FISC, determine how long it is necessary to retain Woods Files to ensure the accuracy and proper oversight of the FBI's FISA applications and promulgate guidance on the established requirement.**

Closed. According to the FBI's response, it accepts all of our recommendations, including this recommendation related to the retention of Woods Files. In its response, the FBI noted that it had consulted with NSD and included language related to the retention of Woods Files in the 2021 Accuracy Memorandum. This was noted in the body of our report along with our recommendation to incorporate this guidance into official policy to help ensure attention and adherence to these Woods File requirements. According to the FBI's response, its FISA & SMP PG now includes direction on the retention of Woods Files. As noted in recommendation 1 above, this policy became effective July 6, 2021.

We reviewed the revised FISA & SMP PG and confirmed that it now provides clear guidance that Woods Files are to be retained according to the established retention schedule of the associated case files. We believe the FBI's actions adequately address our recommendation. Therefore, this recommendation is closed.

**3. Ensure its policy identifies the required types of documentation to be included in the Woods File as support for statements of fact in FISA applications.**

Closed. The FBI concurred with this recommendation. In its response, the FBI described its efforts to ensure that personnel have a common understanding as to which factual assertions require supporting documentation and stated that the revised FISA & SMP PG includes specific sections about the types of documentation that should be considered and included in the Woods Files.

We reviewed the revised policy, which describes, for example, the FBI's expectations for authoritative documents supporting FISA-acquired information, intelligence assessments, and open source reporting, as well as statements involving negative inferences or the absence of information. We believe the FBI's actions adequately address our recommendation. Therefore, this recommendation is closed.

**4. Develop and implement policy that describes the expectations for supervisory review of Woods Files. Specifically, this policy should clearly convey the requirement for reviewers to confirm support for all statements of fact in each application and provide for better evidence of the supervisory review process that goes beyond simply signing the Woods Form. As part of this policy modification, the FBI should also consider options for incorporating an element of independent verification of the Woods File during the FISA application process.**

Resolved. The FBI agreed with this recommendation. In its response, the FBI stated that it developed and implemented policy that describes the expectations for supervisory review of the Woods Files. Specifically, the FBI stated that it added several critical steps to increase supervisory engagement, which became effective July 6, 2021. The FBI also stated that it is evaluating options for incorporating an element of independent verification of Woods Files during the FISA application process.

We reviewed the revised FISA & SMP PG and concluded that the policy still falls short of addressing our concerns regarding supervisory review of the Woods Files. Specifically, we found that the revised policy does not clearly convey the requirement for reviewers to confirm support for every statement of fact. Instead, the revised policy, like the previous policy, requires reviewers to complete the FISA Verification Form, which is where the FBI's critical steps cited in its response are found. Further, since at least May 2011, the FISA Verification Form has simply required the supervisor to sign the form as confirmation of his/her review of the Woods File, including that it contains supporting documentation for every factual assertion within the FISA application. Therefore, there has been no significant change in the process a supervisor uses to conduct and document the review of each factual assertion and related supporting documentation. However, the errors and Woods Procedure

non-compliance we found is well established in our report, along with an acknowledgement of the inevitability of human error. It is this potential for human error and the extraordinary nature of FISA authority that make even more crucial the need to ensure that rigorous supervisory review is exercised. As a result, we believe more emphasis on the expectations for supervisory review of the Woods Files needs to be incorporated into FBI policy, including a process for better documenting the supervisory review procedures.

This recommendation can be closed when we receive evidence that the FBI has developed and implemented policy that describes the expectations for supervisory review of Woods Files, including clearly conveying the requirement for reviewers to confirm support for all statements of fact in each application and providing for better evidence of the supervisory review process that goes beyond simply signing the Woods Form. In addition, the actions to close this recommendation include evidence of the FBI's evaluation of options for incorporating an element of independent verification of Woods Files during the FISA application process.

**5. Provide NSD OI the results of the CDC accuracy reviews as they are completed and incorporate this requirement into appropriate FBI policy.**

Resolved. The FBI agreed with this recommendation. In its response, the FBI stated that the revised FISA & SMP PG continues to direct its Chief Division Counsel (CDC) in each field office to provide the National Security and Cyber Law Branch (NSCLB) the results of their semiannual accuracy reviews and that NSCLB provides the results to NSD's Office of Intelligence (OI). The FBI also stated that in December 2020, it began providing the completed CDC accuracy reviews to NSD OI on a rolling basis.

We reviewed the prior and revised FISA & SMP PG. According to the prior policy, the CDCs were responsible for reporting all potentially material misstatements and omissions to various FBI personnel, including NSCLB attorneys, and NSD OI. Although the FBI's response appears to indicate that the FBI had been providing NSD OI the results of the CDC accuracy reviews, we found, as noted in our March 2020 MAM, that this had not been occurring. However, as noted in our report, NSD OI is now receiving these reports. We confirmed that the revised policy continues to require CDCs to provide NSCLB the results of the reviews. As noted in the FBI's response, the revised policy now requires that NSCLB, in turn, provide the review results to NSD OI. However, the revised FISA & SMP PG does not specify when the results should be provided from NSCLB to NSD OI.

This recommendation can be closed when we receive evidence that the FBI has incorporated into policy the requirement to provide NSD OI the results of the CDC accuracy reviews as they are completed and has provided such information to NSD OI as dictated by the new policy.

- 6. Enhance the CDC accuracy review process to ensure necessary corrective actions are, in fact, taken to address deficiencies identified in CDC accuracy reviews and that these actions are documented.**

Resolved. The FBI agreed with this recommendation. In its response, the FBI stated that it expanded the protocols for CDC reviews to further enhance accuracy and completeness of its FISA applications. The FBI stated that these improvements include the requirement for CDCs to identify and direct action in any instance a Woods File is not adherent to policy and to document each corrective action taken in response to the reviews' results. However, the FBI did not provide the guidance in which these protocols are memorialized. While we confirmed that the revised FISA & SMP PG includes the requirement that CDCs must report all potentially material misstatements or omissions to various FBI personnel, including the case agent, squad supervisor, and NSCLB, the revised policy does not include the expanded protocols, including those related to documenting corrective actions.

This recommendation can be closed when we receive evidence that the FBI enhanced the CDC accuracy review process to ensure necessary corrective actions are, in fact, taken to address deficiencies identified in CDC accuracy reviews and that these actions are documented.

- 7. Designate a headquarters entity with responsibility for ensuring accountability and efficacy of the Woods Procedures across the FBI.**

Resolved. The FBI accepted this recommendation. In its response, the FBI stated that the Associate Deputy Director is the accountable executive for ensuring the accountability and efficacy of the Woods Procedures. The FBI further stated that in consultation with the Office of the General Counsel and other appropriate divisions, the Office of Internal Auditing (OIA), which reports to the Associate Deputy Director, was directed to undertake an evaluation of the existing Woods Procedures.<sup>34</sup> The FBI stated that as part of this evaluation, OIA will incorporate findings from the FBI's two recent Woods File inventory efforts and, as mentioned in response to Recommendation Number 4, examine what an independent verification within the Woods Process might entail. While we acknowledge the FBI's efforts to undertake this evaluation, it is unclear from the FBI's response whether this is a one-time evaluation or whether the FBI intends to designate a headquarters entity to consistently ensure the accountability and efficacy of the Woods Procedures across the FBI.

This recommendation can be closed when we receive evidence that the FBI has fully addressed our recommendation to designate a headquarters entity to ensure the accountability and efficacy of the Woods Procedures across the FBI, including the results of OIA's evaluation of the existing Woods Procedures that incorporated the findings from the

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<sup>34</sup> As noted in our report, in August 2020, the then Attorney General announced supplemental reforms to enhance compliance, oversight, and accountability of FBI foreign intelligence activities, as well as to augment the internal compliance functions of the FBI. These reforms included authorization for the FBI to create OIA.

FBI's inventory efforts and the potential for incorporating an element of independent verification in the process.

- 8. Ensure its leadership makes additional efforts to communicate and emphasize to its workforce the importance of adhering to the FBI's established accuracy benchmark for FISA applications—i.e., the scrupulously accurate standard—and that every step of the quality assurance process be rigorously completed.**

Closed. The FBI stated that it embraced this recommendation. In its response, the FBI summarized recent communications with FBI personnel and provided examples of what the FBI describes as its leadership's commitment to continued, unambiguous communication to its workforce about FISA accuracy and new policy changes. In addition, the FBI stated that in May 2021, the FBI Training Division launched an updated FISA Process Rigor Virtual Academy course and required all personnel who work on national security and FISA-related matters to successfully complete the course.

We reviewed documentation subsequently provided by the FBI and confirmed that on three separate occasions between May 2021 and July 2021, the FBI Deputy Director delivered messages to FBI personnel about new policy changes and training and also highlighted the FBI's obligation to exercise FISA authorized operations with unquestionable accuracy and rigor. We also reviewed the training slides from the updated FISA Process Rigor Virtual Academy course and confirmed that the training stresses the importance of completeness and accuracy throughout the FISA process. Further, we confirmed that the FBI requires all personnel working on national security and FISA-related matters to complete the course biennially, which was recently changed to an annual requirement. We believe the FBI's actions adequately address our recommendation. Therefore, this recommendation is closed.

Recommendations for NSD:

- 9. Ensure NSD OI's oversight efforts (such as its trends report activities) incorporate a timely, strategic assessment of identified errors from accuracy reviews, including analysis of potential underlying causes, and actively monitor FBI efforts to address NSD OI's recommendations.**

Resolved. NSD concurred with this recommendation. In its response, NSD stated that it will use its trends reports to document and distribute its strategic assessments, such as analyzing potential root causes of errors. NSD stated that by including additional strategic analysis, the FBI may identify ways to reduce errors in FISA applications or improve its accuracy-related processes. NSD also stated that it will actively monitor the FBI's efforts to address any recommendations made in NSD OI's trends reports. Regarding timeliness, NSD's response stated that it recognizes the value that more prompt dissemination of the accuracy-related aspects of the annual trends report could provide to the FBI. NSD stated, therefore, that if the issuance of trends reports will be delayed due to the resolution of other

minimization review findings, NSD will distribute the accuracy-related aspects separately and prior to issuance of the full annual trends report.

This recommendation can be closed when we receive evidence that NSD ensured NSD OI's oversight efforts (such as its trends report activities) incorporate a timely, strategic assessment of identified errors from accuracy reviews including analysis of potential underlying causes, and actively monitor FBI efforts to address NSD OI's recommendations.

**10. Make additional efforts to confirm to its oversight staff the importance of the FBI's accuracy standards and of strict compliance with the Woods Procedures.**

Closed. NSD concurred with this recommendation. In its response, NSD described operational improvements and messaging and training to its staff that emphasize strict compliance with the Woods Procedures. For example, NSD stated that it, in coordination with the FBI, issued the 2021 Accuracy Memorandum, which includes a requirement for both the FBI and NSD to periodically review the effectiveness of the memorandum's provisions. In addition, NSD stated that the Deputy Assistant Attorney General for NSD OI (DAAG-OI) sent staff several emails regarding the importance of the role NSD OI plays in helping the FBI submit accurate FISA applications. Further, NSD stated that multiple iterations of training have occurred since the OIG's December 2019 FISA report. In particular, NSD stated that in June 2021, in anticipation of the 2021 Accuracy Memorandum's issuance, NSD OI held mandatory office-wide training that focused, in part, on the multiple provisions in the 2021 Accuracy Memorandum. NSD stated that this training will be mandatory for all NSD OI personnel on an annual basis going forward and will ensure NSD OI attorneys are continually reminded of the accuracy process, procedures, and policies and the need to strictly adhere to the accuracy procedures.

We reviewed the various documentation provided by NSD, including the 2021 Accuracy Memorandum and evidence of other operational improvements, the DAAG-OI's messaging, and the training-related efforts and ongoing requirement. We believe NSD's efforts adequately address the recommendation. Therefore, this recommendation is closed.