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# U.S. Department of Justice Office of the Inspector General

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## Report to Congress on Implementation of Section 1001 of the USA PATRIOT Act

*(as required by Section 1001(3) of Public Law 107-56)*

March 2017

Section 1001 of the USA PATRIOT Act (Patriot Act), Public Law 107-56, directs the Office of the Inspector General (OIG) of the U.S. Department of Justice (DOJ or Department) to undertake a series of actions related to claims of civil rights or civil liberties violations allegedly committed by DOJ employees. It also requires the OIG to provide semiannual reports to Congress on the implementation of the OIG's responsibilities under Section 1001. This report summarizes the OIG's Section 1001-related activities from July 1, 2016, through December 31, 2016.

## I. INTRODUCTION

The OIG is an independent entity within the DOJ that reports to both the Attorney General and Congress. The OIG's mission is to investigate allegations of waste, fraud, and abuse in DOJ programs and personnel, and to promote economy and efficiency in DOJ operations.

The OIG has jurisdiction to review programs and personnel in all DOJ components, including the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), the Federal Bureau of Prisons (BOP), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the U.S. Marshals Service (USMS), and the U.S. Attorneys' Offices.<sup>1</sup>

The OIG consists of the Immediate Office of the Inspector General and the following divisions and offices:

- **Audit Division** conducts independent audits of Department programs, computer systems, financial statements, and DOJ-awarded grants and contracts.
- **Evaluation and Inspections Division** conducts program and management reviews that involve on-site inspection, statistical analysis, and other techniques to review Department programs and activities.
- **Investigations Division** investigates allegations of bribery, fraud, abuse, civil rights violations, and violations of other criminal laws and administrative procedures that govern Department employees, contractors, and grantees.

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<sup>1</sup> The OIG has authority to investigate allegations of criminal wrongdoing or administrative misconduct by any Department employee, except for "allegations of misconduct involving Department attorneys, investigators, or law enforcement personnel, where the allegations relate to the exercise of the authority of an attorney to investigate, litigate, or provide legal advice." 5 U.S.C. App. 3 § 8E(b)(2)-(3).

- **Oversight and Review Division** blends the skills of attorneys, investigators, and program analysts to investigate or review high profile or sensitive matters involving Department programs or employees.
- **Management and Planning Division** provides planning, budget, finance, personnel, training, procurement, automated data processing, computer network communications, and general support services for the OIG.
- **Office of General Counsel** provides legal advice to OIG management and staff. In addition, the office drafts memoranda on issues of law; prepares administrative subpoenas; represents the OIG in personnel, contractual, and legal matters; and responds to Freedom of Information Act requests.

The OIG has a staff of more than 460 employees, about half of whom are based in Washington, D.C., while the rest work from 16 Investigations Division field and area offices and 6 Audit Division regional offices located throughout the country.

## II. SECTION 1001 OF THE PATRIOT ACT

Section 1001 of the Patriot Act provides the following:

The Inspector General of the Department of Justice shall designate one official who shall –

- (1) review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department of Justice;
- (2) make public through the Internet, radio, television, and newspaper advertisements information on the responsibilities and functions of, and how to contact, the official; and
- (3) submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on a semi-annual basis a report on the implementation of this subsection and detailing any abuses described in paragraph (1), including a description of the use of funds appropriations used to carry out this subsection.

### III. CIVIL RIGHTS AND CIVIL LIBERTIES COMPLAINTS

Section 1001 requires the OIG to “review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department of Justice.”

The OIG’s Investigations Division manages the OIG’s Section 1001 investigative responsibilities. The two units with primary responsibility for coordinating these activities are Operations Branch I and Operations Branch II, each of which is directed by a Special Agent in Charge and two Assistant Special Agents in Charge (ASAC).<sup>2</sup> In addition, these units are supported by Investigative Specialists and other staff assigned to the Investigative Support Branch, who divide their time between Section 1001 and other responsibilities.

The Investigations Division receives civil rights and civil liberties complaints via mail, e-mail, telephone, and facsimile. Upon receipt, Division ASACs review the complaints and assign an initial disposition to each matter, and Investigative Specialists enter the complaints alleging a violation within the investigative jurisdiction of the OIG or another federal agency into an OIG database. Serious civil rights and civil liberties allegations relating to actions of DOJ employees or contractors are typically assigned to an OIG Investigations Division field office, where special agents conduct investigations of criminal violations and administrative misconduct.<sup>3</sup> Occasionally, complaints are assigned to the OIG’s Oversight and Review Division for investigation.

Given the number of complaints the OIG receives compared to its limited resources, the OIG does not investigate all allegations of misconduct against DOJ employees. The OIG refers many complaints involving DOJ employees to internal affairs offices in DOJ components such as the FBI Inspection Division, the DEA Office of Professional Responsibility, and the BOP Office of Internal Affairs. In certain referrals, the OIG requires the components to report the results of their investigations to the OIG. In most cases, the OIG notifies the complainant of the referral.

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<sup>2</sup> These units also coordinate the OIG’s review of allegations of misconduct by Department employees: the Operations Branch I has primary responsibility for matters involving the BOP, USMS, and the U.S. Attorneys’ Offices; the Operations Branch II has primary responsibility for matters involving the FBI, DEA, and ATF.

<sup>3</sup> The OIG can pursue an allegation either criminally or administratively. Many OIG investigations begin with allegations of criminal activity but, as is the case for any law enforcement agency, do not result in prosecution. When this occurs, the OIG may continue the investigation and treat the matter as a case for potential administrative discipline. The OIG’s ability to handle matters criminally or administratively helps to ensure that a matter can be pursued administratively even if a prosecutor declines to prosecute a matter.

Many complaints the OIG receives involve matters outside its jurisdiction, and when those matters identify a specific issue for investigation, the OIG forwards them to the appropriate investigative entity. For example, complaints of mistreatment by airport security staff or by the Border Patrol are sent to the Department of Homeland Security OIG. The DOJ OIG also has forwarded complaints to the Offices of Inspectors General at the Department of Health and Human Services, the Department of Veterans Affairs, and the Department of Education. Allegations related to the authority of a DOJ attorney to litigate, investigate, or provide legal advice are referred to the DOJ Office of Professional Responsibility. Allegations related solely to state and local law enforcement or government officials that raise a federal civil rights concern are forwarded to the DOJ Civil Rights Division.

When an allegation received from any source involves a potential violation of federal civil rights statutes by a DOJ employee, the OIG discusses the complaint with the DOJ Civil Rights Division for possible prosecution. In some cases, the Civil Rights Division accepts the case and requests additional investigation by either the OIG or the FBI. In other cases, the Civil Rights Division declines prosecution and either the OIG or the appropriate DOJ internal affairs office reviews the case for possible administrative misconduct.

#### **A. Complaints Processed During This Reporting Period**

Between July 1, 2016, and December 31, 2016, the period covered by this report, the OIG processed **507** new civil rights or civil liberties complaints.<sup>4</sup>

Of these complaints, **461** did not fall within the OIG's jurisdiction or did not warrant further investigation. The vast majority (432) of these complaints involved allegations against agencies or entities outside the DOJ, including other federal agencies, local governments, or private businesses. When possible, the OIG referred those complaints to the appropriate entity or advised complainants of the entity with jurisdiction over their allegations. Some complaints (29) raised allegations that were not suitable for investigation by the OIG and could not be referred to another agency for investigation, generally because the complaints failed to identify a subject or agency.

The OIG found that the remaining **46** of the 507 complaints it received involved DOJ employees or DOJ components and included allegations that required further review. The OIG determined that **38** of these complaints raised management issues generally unrelated to the OIG's Section 1001 duties

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<sup>4</sup> These complaints include all matters in which the complainant made any mention of a civil rights or civil liberties violation, even if the allegation was not within the OIG's jurisdiction. One of these complaints was received prior to the start of this report's reporting period and is included here because, due to a clerical error, it was not included in our September 2016 report on the OIG's Section 1001-related responsibilities.

and, consequently, referred these complaints to DOJ components for appropriate handling. Examples of complaints in this category included allegations by federal prisoners about the general prison conditions, and by others that the FBI did not initiate an investigation into particular allegations.

The OIG identified a total of **8** complaints warranting further investigation to determine whether Section 1001-related abuses occurred. The OIG referred these 8 complaints to the appropriate DOJ components for further investigation. The next section of this report describes the substance of these 8 complaints. Notably, none of the complaints processed during this reporting period specifically alleged misconduct by DOJ employees relating to the use of authorities contained in the Patriot Act.

The following is a synopsis of the new complaints processed during this reporting period involving DOJ employees or components, including allegations requiring further review:

Complaints processed	<b>507</b>
Complaints not within OIG's jurisdiction or not warranting further review	<b>461</b>
Total complaints within OIG's jurisdiction warranting review	<b>46</b>
Management issues referred to DOJ components for handling	<b>38</b>
Possible Section 1001 complaints warranting investigation by OIG	<b>0</b>
Possible Section 1001 complaints warranting investigation by DOJ components	<b>8</b>

## **B. Section 1001 Complaints**

### **1. Investigations Opened During This Reporting Period**

During this reporting period, the OIG referred 7 Section 1001-related complaints to the BOP for investigation, 6 of which remain pending. The OIG also referred 1 Section 1001-related complaint to the FBI for investigation, which has been completed. The OIG has requested that, upon completion of the investigation of each referred complaint, these components provide the OIG a copy of the investigative report.

### **a. Continuing BOP Investigations**

- A BOP inmate alleged that BOP staff verbally threatened him, spit chewing tobacco in his food, causing him to go on a food strike, refused him access to the law library and recreational time, and tampered with his food because they believed he had possessed an ISIS flag and was a radical Muslim with ISIS sympathies.<sup>5</sup>
- A BOP inmate alleged that he and other Muslim prisoners have been harassed and retaliated against by a BOP employee ever since the inmate settled a lawsuit with the BOP regarding Muslim inmates' right to wear their pants above the ankle.
- A BOP inmate alleged that he has experienced constant discrimination and humiliation by BOP staff because of his religious beliefs. The inmate specifically alleged that he was prohibited from participating in congregational prayers, and that a correctional officer made several derogatory remarks about Islam and intentionally disrupted the inmate's prayers.
- A BOP inmate alleged that all Ramadan participants at the inmate's institution have been subjected to harassment and prejudice by being targeted for full body pat down searches without cause and being subjected to inappropriate remarks about their religion.
- A BOP inmate alleged that a BOP cook denied his request to work in food service based solely on the inmate's religious beliefs, and did not allow Muslim inmates participating in Ramadan to prepare their own food, even though doing so had been approved by the Food Services Administrator.
- A BOP inmate alleged that a BOP employee yelled at him when he tried to enter the chapel at his designated worship time and also prevented other inmates from entering the chapel. The inmate also alleged that the same employee humiliated and yelled at Muslims in the cafeteria for wearing their kufis, which, according to the inmate, is permitted by BOP.

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<sup>5</sup> This complaint was received by the OIG and referred to BOP for investigation in May 2016, prior to the start of this report's reporting period. It is included here because, due to a clerical error, it was not included in our September 2016 report on the OIG's Section 1001-related responsibilities.



**b. Completed BOP Investigation**

- A BOP inmate alleged that correctional officers refused to serve him his Ramadan meals, took two rolls of his toilet paper and threw them, verbally abused him and other African American inmates, and threatened to remove him from his cell so they could administer a “prostate exam.” During the BOP’s investigation, the inmate refused to provide a statement and the correctional officers each denied the allegations against them. BOP determined that the allegations were not substantiated and closed its investigation.

**c. Completed FBI Investigation**

- The OIG received a complaint from an attorney representing a Muslim individual alleging that an FBI Task Force Officer (TFO) went to the individual’s residence and attempted to question him, thereby disregarding prior instructions from the attorney and the individual to cease contacting the individual directly. The FBI Inspection Division, Internal Investigations Section reviewed the allegation and determined that it did not warrant the opening of an FBI inquiry, and it directed its field office to review the complaint information and counsel the TFO if it deemed such counseling necessary.

**2. Pending Investigations Opened During Previous Reporting Periods**

**a. Complaints Referred to BOP**

The OIG referred the following 8 complaints to the BOP for investigation during a prior reporting period; the investigations remain open. The OIG has requested that BOP provide a copy of its investigative report upon completion of the investigation of each referred complaint.

- A BOP inmate alleged that while being transported to an outside hospital, a correctional officer threatened him and called him religiously derogatory names; another correctional officer left him outside in the cold for 10-15 minutes, denied him use of the bathroom, and inappropriately squeezed his handcuff; and a third correctional officer made reference to killing him.
- A BOP inmate alleged that after he refused orders to “cuff up” and instead laid down on the floor of his cell, correctional

officers entered the cell and began kicking him in the side and stomach while calling him a derogatory racial and religious name. The inmate further alleged that he was subsequently placed in the Special Housing Unit (SHU), where he was denied medical care and placed in restraints for an extended period of time.

- A BOP inmate alleged that a correctional officer yelled, used obscenities, and made insulting comments about the inmate's hijab during a medical trip.
- A BOP inmate alleged that a BOP employee made racially disparaging comments about various inmates and called two inmates "terrorists" based on their religious affiliation.
- A BOP inmate alleged that a correctional officer confiscated a news article containing contact information for the American Jewish Council and asked why a Muslim inmate would want to contact a Jewish group. The inmate further alleged that another correctional officer harassed him for reporting the incident; that the first correctional officer later stated, "this is what you get for being Muslim"; and that another inmate heard that correctional officer saying how the prison staff will "get" the inmate.
- A BOP inmate alleged that he has been the victim of retaliation, fabricated incident reports, excessive force, medical neglect, and has had his legal property and religious items thrown out because he is Muslim and because of his foreign political affiliations.
- A BOP inmate alleged that a cook has discriminated against Muslim inmates by removing their names from a religious meal program, removing items frequently purchased by inmates from the commissary inventory, and refusing to provide inmates in the religious meal program desserts that are wrapped and protected from contamination.
- Several BOP inmates alleged that BOP staff locked rooms containing microwaves so that Muslim inmates would not have access when they broke Ramadan fast. The inmates also alleged that they were not permitted to worship in the chapel and instead had to worship in the gymnasium.

### **3. Previously Opened Investigations Completed During This Reporting Period**

#### **a. BOP Investigations**

The BOP completed investigations of 6 Section 1001-related complaints that were referred by the OIG in prior reporting periods. The BOP provided the OIG with copies of its investigative reports upon completion of their investigations.

- A BOP inmate alleged that after he filed a grievance against a BOP chaplain for allegedly interfering with his right to practice the Islamic faith, the chaplain then accused the inmate of “starting a terrorist cell,” resulting in the inmate being placed in segregated housing. The inmate also alleged that after filing another grievance alleging retaliation, he was again sent to segregated housing. Additionally, the inmate alleged that after an internal investigation at the prison determined that the allegations against him were false, the BOP took no action against the staff and instead transferred the inmate twice, leaving him thousands of miles from his family. The BOP interviewed the Chaplain, who characterized the inmate as vocal and hostile when expressing his demands, and stated that he attempted to encourage the other inmates to follow his directions. The Chaplain stated that when he advised the inmate that certain demands could not be met, the inmate threatened a disturbance, and the Chaplain therefore shared his concerns about the potential effect on the facility’s security with a Captain and a Special Investigative Agent (SIA). The Chaplain stated that he never had a personal issue with the inmate, that he took no further action with respect to the inmate, and that he did not have him transferred. The BOP also interviewed the Captain and the SIA. The Captain stated that he did not recall the inmate or the incidents at issue. The SIA told the BOP that in response to the Chaplain’s concerns about security, the inmate was placed in the SHU, interviewed by the FBI, and transferred. Records relating to the inmate’s transfer noted a conflict with a staff member and referenced the inmate’s placement in the SHU. BOP determined that the investigation revealed insufficient evidence to support the allegation of retaliation by the Chaplain and closed the investigation as unsubstantiated.
- A BOP inmate alleged that during Ramadan two correctional officers intentionally delivered his breakfast two hours late, made derogatory comments against Muslims, threw milk on

him, and destroyed his property, including Islamic literature. BOP interviewed the inmate, who provided a statement that was consistent with his prior allegations. The inmate refused to complete an affidavit. BOP interviewed both correctional officers, who each denied the specific allegations against them and denied ever having discriminated against Muslim inmates. No video footage was available to be reviewed for the time period in question, and the Lieutenant's log indicated that meals for Muslim inmates arrived at the units on time. BOP determined that the allegations were not substantiated and closed its investigation.

- A BOP inmate alleged that he was discriminated against because of his religious identification, that a correctional officer searched his cell and confiscated his property on this basis, and that the officer refused to wear rubber gloves when handling inmates' food during Ramadan. The inmate further alleged that he was confined to a segregated housing unit because of his discrimination complaints, and that other BOP staff members discriminated and retaliated against him in similar ways. BOP attempted to interview the inmate, who stated that his allegations were true but otherwise refused to provide a statement or answer questions because he was being transferred. A review of the inmate's disciplinary history revealed that he was placed in the SHU and received other sanctions for threatening bodily harm to staff. The correctional officers each denied the allegations against them and denied discriminating against or retaliating against the inmate. BOP determined that the allegations were not substantiated and closed its investigation.
- A BOP inmate alleged that BOP did not base transfer decisions on consistent standards of behavior, which resulted in the unfair treatment of a Muslim inmate and more favorable transfer locations for non-Muslim inmates. The inmate refused to provide an affidavit or statement to BOP, saying that his complaint was against the BOP and not against a particular person. BOP determined that the allegations were not substantiated and closed its investigation.
- A BOP inmate alleged that he is being discriminated against by staff and other inmates, and that he requested to be placed in "protective custody" because of their hostile and threatening comments about Muslim inmates. The inmate also alleged that both his incoming and outgoing mail is tampered with, and that he has been unable to get a job of his choice in prison. BOP

interviewed the inmate, who described his allegations but did not identify any specific staff members who he believed to be responsible, and did not provide any additional evidence of mail tampering. The BOP investigation identified records that confirmed the inmate had been placed in the SHU pursuant to a protective custody request, but the subsequent investigation concluded that no threat existed towards the inmate and he was returned to the general population. BOP investigators also identified a separate prior investigation into an alleged incident of staff misconduct that was similar to an incident the inmate had described, but that investigation did not substantiate the allegations. Finally, the BOP determined that the inmate had been officially identified, based on the threat he was deemed to pose to safety and security, as requiring additional caution by staff when making work assignments, and also as requiring additional monitoring of his outside communications, including his mail. BOP determined that the allegations were not substantiated and closed its investigation.

- A BOP inmate alleged that during a “shakedown” he saw a correctional officer search another inmate’s cell and destroy his personal property, including religious documents, and used a racial epithet when the complainant objected. The correctional officer then allegedly went to the complainant’s cell and disposed of the complainant’s legal documents and other personal property. The BOP interviewed both inmates, each of whom repeated their allegations. They further alleged that, prior to the cell searches, the correctional officer had locked the law library to deny them access and used profanity towards them. Additionally, one of the inmates alleged that the correctional officer later retaliated against him for filing a complaint by delaying a visit from the inmate’s brother. The BOP also interviewed the subject correctional officer and two correctional officer witnesses. The subject correctional officer confirmed that he had had a disagreement with one of the inmates about appropriate clothing, and that he had conducted random searches of both inmates’ cells. However, he stated that he did not recall locking the law library, he denied that the searches were retaliatory, and he denied removing personal items or legal documents from the cells. He also denied using profanity, delaying any family visits, and all other allegations against him. The first correctional officer witness stated that the subject officer had in fact locked the law library to deny one of the inmates access, but that he had done so to enforce unit rules and regulations and in response to the inmate refusing to

follow his directives. This witness also stated that the subject officer had neither used profanity nor removed personal property or legal documents during the cell searches. The second witness officer told the BOP that the subject officer had not intentionally delayed any family visits. BOP determined that the allegations were not substantiated and closed its investigation.

#### **IV. OTHER ACTIVITIES RELATED TO POTENTIAL CIVIL RIGHTS AND CIVIL LIBERTIES ISSUES**

The OIG conducts other reviews that go beyond the explicit requirements of Section 1001 in order to implement more fully its civil rights and civil liberties oversight responsibilities. The OIG has completed or is conducting several such reviews that relate to the OIG's duties under Section 1001. These reviews are discussed in this section of the report.

##### **A. FBI's Involvement in the National Security Agency's Bulk Telephony Metadata Collection Program**

The OIG is reviewing the FBI's use of information derived from the National Security Agency's (NSA) collection of telephony metadata obtained from certain telecommunications service providers under Section 215 of the Patriot Act. The review will examine the FBI's procedures for receiving, processing, and disseminating leads the NSA develops from the metadata, and any changes that have been made to these procedures over time. The review will also examine how FBI field offices respond to leads, and the scope and type of information field offices collect as a result of any investigative activity that is initiated. In addition, the review will examine the role the leads have had in FBI counterterrorism efforts.

##### **B. DEA's Use of Administrative Subpoenas**

The OIG is examining the DEA's use of administrative subpoenas to obtain broad collections of data or information. The review will address the legal authority for the acquisition or use of these data collections; the existence and effectiveness of any policies and procedural safeguards established with respect to the collection, use, and retention of the data; the creation, dissemination, and usefulness of any products generated from the data; and the use of "parallel construction" or other techniques to protect the confidentiality of these programs.

##### **C. FBI's Use of Section 215 Orders in 2012 through 2014**

As described in prior reports on the OIG's implementation of Section 1001 of the Patriot Act, in June 2016 the OIG provided a classified report

concerning Section 215 of the Patriot Act to relevant Congressional oversight committees and to Department leadership. The report specifically examined the FBI's use of the investigative authority granted by Section 215 between 2012 and 2014. In September 2016, the report was released to the public following the completion of a classification review by the FBI and the Intelligence Community. The public report contains redactions of information that those agencies determined to be classified.

Section 215 is often referred to as the Foreign Intelligence Surveillance Act (FISA) "business records" provision. As described in the public report, from 2012 through 2014 the DOJ, on behalf of the FBI, submitted 561 Section 215 applications to the FISA Court, all of which were approved. We found that while the number of business records orders obtained by the FBI increased significantly between 2007 and 2012 - an increase that was largely driven by the refusal of several communications providers to produce electronic transactional records in response to FBI National Security Letters — the number of Section 215 orders peaked in 2012 with 212 orders and has declined annually since that time. We further found the orders were used far more frequently in counterintelligence cases than as a counterterrorism or cyber tool.

Our report also analyzed the timeliness of the Section 215 process, both generally and at each stage of the approval process. We found that the median time needed to obtain business records orders during our review period, from initiation of a request by a field office until issuance of the order by the FISA Court, was 115 days. Agents described the process to us as lengthy and said the delay in obtaining orders often had a negative impact on their investigations, a point emphasized in particular by agents who conduct cyber investigations. However, agents also told us consistently that Section 215 orders continued to be a valuable investigative tool. As with our previous reviews, the majority of agents we interviewed did not identify any major case developments that resulted from use of the records obtained in response to the orders, but told us that the material produced was valuable as a building block of their investigations.

The report also examined three compliance incidents that affected numerous business records orders between 2012 and 2014. These incidents included the systemic overproduction of full and partial e-mail subject lines by two providers, a system-wide error in an FBI database, and a third incident the details of which remain mostly classified.

The report also examined the progress the DOJ and FBI have made addressing three recommendations in the OIG's March 2008 and May 2015 reports concerning minimization procedures for information obtained under Section 215 authority. Based on the information obtained during this current review, we closed those recommendations.

The report made one new recommendation: based upon the concerns expressed by agents about the time needed to obtain Section 215 orders, we recommended that the FBI and the DOJ continue to pursue ways to make the business records process more efficient, particularly for applications related to cyber cases. The FBI and the DOJ agreed with the recommendation.

## **V. EXPENSE OF IMPLEMENTING SECTION 1001**

Section 1001 requires the OIG to include in this report “a description of the use of funds appropriations used to carry out this subsection.”

During this reporting period, the OIG spent approximately \$222,228 in personnel costs and \$100 in miscellaneous costs, for a total of \$222,328 to implement its responsibilities under Section 1001. The total personnel and miscellaneous costs reflect the time and funds spent by OIG special agents, attorneys, auditors, inspectors, program analysts, and paralegals who have worked directly on investigating Section 1001-related complaints, conducting special reviews, implementing the OIG’s responsibilities under Section 1001, and overseeing such activities.