Section 702 – Safeguards Implemented Since 2018 Reauthorization

SEPARATE QUERY PROCEDURES
The 2018 reauthorization includes a new requirement for the Attorney General (AG) and Director of National Intelligence (DNI) to adopt procedures, reviewed and approved by the Foreign Intelligence Surveillance Court (FISC), governing how agencies query unminimized information acquired via Section 702.

RESTRICTIONS ON FBI’S “EVIDENCE OF A CRIME” QUERIES
The 2018 reauthorization includes a new requirement for FBI to obtain a court order (called an “OJ order”) before an analyst is permitted to review the contents returned by a U.S. person query when the purpose of the query is to retrieve evidence of a crime in a non-national security related FBI criminal investigation.

NOTIFICATION TO CONGRESS IF NSA RESTARTS “ABOUTS” COLLECTION
Since 2017, when NSA ended “abouts” collection, all Section 702 collection must be “to” or “from” the target of the collection. The 2018 reauthorization requires that NSA must inform Congress 30 days prior to resuming “abouts” collection with an emergency exception provision.

LIMITING 702’S USE IN CRIMINAL PROCEEDINGS
The 2018 reauthorization includes new restrictions on the U.S. government’s use of Section 702 information in a criminal proceeding, except where FBI has obtained a court order or in the case of certain serious crimes like murder or child exploitation.

FBI COMPLIANCE CHANGES IMPLEMENTED SINCE 2020
1. Established the Office of Internal Auditing.
2. Updated its policies, training, and technology to address the root causes of several compliance challenges:
   - Requiring analysts to “opt-in” before their queries run against Section 702-acquired information; and
   - Requiring prior legal approval for batch jobs that result in 100 or more queries; and
   - Clarifying guidance and enhancing training regarding the query standard; and
   - Documenting case-specific justifications before reviewing contents returned by a U.S. person query.
3. Requiring pre-approved for sensitive queries, including personal approval by the Deputy Director for certain sensitive queries.

ADDITIONAL TRANSPARENCY ACTIVITIES
The 2018 reauthorization increases transparency by directing the DNI to publicly release significant or novel FISC opinions and agency minimization procedures. It also expands Congressional reporting, directing the AG to provide the total number of subjects targeted by electronic surveillance, as well as requiring FBI to report to Congress the number of times the FBI opens a criminal investigation into a U.S. person based in whole, or in part, on Section 702-acquired information.

ADDITIONAL PRIVACY & CIVIL LIBERTIES SAFEGUARDS
The 2018 reauthorization requires Privacy and Civil Liberties officers for NSA and FBI, allows the Privacy and Civil Liberties Oversight Board to exercise oversight functions even if the Chair is vacant, and permits the FISC to compensate amici and technical experts.

Section 702 – Current Safeguards for Civil Liberties and Privacy

POLICIES & PROCESSES
In addition to the FISC approved Targeting, Minimization, and Query Procedures, each Agency has strengthened its policies and technology implementing internal controls that provide more detailed directions to analysts on how to handle Section 702 information.

TARGETING POLICIES:
Two pairs of Eyes: NSA and FBI, only the agencies with Targeting Procedures, each have at least two personnel review before a selector can be tasked for collection under Section 702.

Post Testing Reviews: All agencies receiving Section 702 information conduct initial and subsequent reviews of the collection to ensure that the targeted selector is and continues to be likely to produce foreign intelligence information and is not used by a U.S. person or a person in the U.S.

NSA USP QUERY POLICIES & TECHNOLOGY:
- The NSA Office of the General Counsel must approve all U.S. person query terms prior to the query of Section 702 contents.
- NSA issued additional guidance for reviewing and approving sensitive query terms.

TRAINING & ACCESS
Access to Section 702 information is limited to personnel with mission need who have completed mandatory training and who have been specifically granted access to the system(s) that store the information.

TRAINING
Personnel must complete training on how to use Section 702, information, as well as a instruction on the appropriate use of intelligence systems and privacy protections to retain access to raw Section 702 information.

EXPERT RESOURCES
Each agency designates FISA-trained attorneys to answer questions related to technical, policy, operational aspects of the program, as well as expert compliance personnel to assist analysts.

TRANSPARENCY
To enhance public understanding of the IC, ODNI and DOJ provide the public with a broad range of information on intelligence activities and authorities — including Section 702. No other agency provides more transparency about its intelligence activities.

The IC has published all historic FISC opinions with significant interpretations of law spanning the last 20 years, along with Section 702 procedures for Targeting, Querying, and Minimization.

ODNI publishes the Annual Statistical Transparency Report each April, which provides not only statutorily required information, but also other information that the DNI has determined can be released regarding the IC’s use of national security authorities.

ODNI, FBI, CIA, and NSA have statutory Privacy and Civil Liberties Officers who produce semi-annual public reports on their activities.

OVERSIGHT & ACCOUNTABILITY
All three branches of the Government play a key role in overseeing the Section 702 program. This oversight structure helps refine policies, train, and technology to ensure agencies are operating in the most compliant way possible.

DOJ reviews documentation and justification for all new targeting decisions. ODNI and DOJ perform joint 60-day reviews of the documentation and justification for new NSA targeting decisions, U.S. person queries, and denominations. The Targeting, Querying, and Minimization Procedures for each element are reviewed annually by the FISC.

Every six months, the intelligence and oversight committees in Congress are provided with a semiannual report by the Attorney General describing all identified compliance incidents, as well as a Joint Assessment by DOJ and ODNI that identifies trends and remedial efforts.

Reports of intentional violations, which are very rare, are referred for investigation and further action—up to and including suspension, loss of security clearance, or termination.