



**SOCIAL SECURITY**  
Office of the Inspector General

September 17, 2010

The Honorable Charles E. Grassley  
Ranking Member  
Senate Committee on Finance  
United States Senate  
Washington, D.C. 20510

Dear Senator Grassley:

The enclosed report addresses your August 23, 2010 letter asking that we determine the extent to which political appointees are made aware of *Freedom of Information Act* (FOIA) requests and have a role in request reviews or decision-making. Thank you for bringing your concerns to my attention. As you know, my office is committed to combating fraud, waste, and abuse in SSA's operations and programs.

The enclosed report highlights various facts pertaining to the issues raised in your letter. Specifically, we reviewed the Social Security Administration's (SSA) FOIA process, and interviewed FOIA analysts and coordinators to determine whether political appointees are made aware of information requests and if so, to what extent. We also reviewed pending, approved, and denied requests to determine whether political appointees were involved in the final decision for FOIA requests received.

To ensure SSA is aware of the information provided to your office, we are forwarding a copy of this report to the Agency. I have also sent a similar letter to Ranking Member Darrel Issa of the House Committee on Oversight and Government Reform. If you have any questions concerning this matter, please call me or have your staff contact Misha Kelly, Congressional and Intra-Governmental Liaison, at (202) 358-6319.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick P. O'Carroll, Jr." with a stylized flourish at the end.

Patrick P. O'Carroll, Jr.  
Inspector General

Enclosure

cc:  
Michael J. Astrue



SOCIAL SECURITY  
Office of the Inspector General

September 17, 2010

The Honorable Darrel Issa  
Ranking Member  
Committee on Oversight and Government Reform  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Issa:

The enclosed report addresses your August 23, 2010 letter asking that we determine the extent to which political appointees are made aware of *Freedom of Information Act* (FOIA) requests and have a role in request reviews or decision-making. Thank you for bringing your concerns to my attention. As you know, my office is committed to combating fraud, waste, and abuse in SSA's operations and programs.

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Enclosure

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Michael J. Astrue

# ***CONGRESSIONAL RESPONSE REPORT***

## ***Political Appointees' Role in the Social Security Administration's Freedom of Information Act Requests***

**A-15-10-20185**



**SEPTEMBER 2010**

## Mission

By conducting independent and objective audits, evaluations and investigations, we inspire public confidence in the integrity and security of SSA's programs and operations and protect them against fraud, waste and abuse. We provide timely, useful and reliable information and advice to Administration officials, Congress and the public.

## Authority

The Inspector General Act created independent audit and investigative units, called the Office of Inspector General (OIG). The mission of the OIG, as spelled out in the Act, is to:

- Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.
- Promote economy, effectiveness, and efficiency within the agency.
- Prevent and detect fraud, waste, and abuse in agency programs and operations.
- Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.
- Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.

To ensure objectivity, the IG Act empowers the IG with:

- Independence to determine what reviews to perform.
- Access to all information necessary for the reviews.
- Authority to publish findings and recommendations based on the reviews.

## Vision

We strive for continual improvement in SSA's programs, operations and management by proactively seeking new ways to prevent and deter fraud, waste and abuse. We commit to integrity and excellence by supporting an environment that provides a valuable public service while encouraging employee development and retention and fostering diversity and innovation.

## OBJECTIVE

Our objective was to determine the extent to which political appointees are made aware of *Freedom of Information Act* (FOIA) requests and have a role in request reviews or decision-making.

## BACKGROUND

### FOIA

In 1966, Congress passed the *Freedom of Information Act* (hereinafter FOIA or the Act),<sup>1</sup> in response to the public's desire to know more about Government activities. FOIA allows the public to request records from various Federal agencies. *The public* does not include Federal agencies, courts, or the Congress, but does include State agencies, individuals, corporations, and most other parties.<sup>2</sup> The Act requires that each Federal agency decide, within 20 working days after receiving a request for records, whether to comply with the request and immediately notify the requestor of the determination, why the determination was made, and of the person's right to appeal to the head of the agency any adverse determination.<sup>3</sup> The Act requires that the Social Security Administration (SSA) disclose any information in its records upon receiving a written request from the public, except for those records that are protected from disclosure.<sup>4</sup>

### SSA's Processing of FOIA Requests

The SSA's Office of Privacy and Disclosure (OPD) in the Office of the General Counsel (OGC) directs FOIA activities within SSA, which include

- developing FOIA policies and procedures,
- establishing national guidelines for handling FOIA requests,
- publishing the Annual Report on FOIA activities,

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<sup>1</sup> Public Law Number (Pub. L. No.) 89-487, 5 United States Code (U.S.C.) § 552.

<sup>2</sup> 20 Code of Federal Regulations (C.F.R.) § 401.130.

<sup>3</sup> 5 U.S.C. § 552(a)(6).

<sup>4</sup> There are nine exemptions to the FOIA. 5 U.S.C. § 552(b).

- reviewing FOIA and *Privacy Act*<sup>5</sup> requests and appeals to determine the proper disclosure of records, and
- responding to FOIA requests.

The Deputy Executive Director of OPD is the SSA Freedom of Information Officer. Only the Deputy Executive Director, or his or her designee, may determine whether to release or withhold SSA records, including records in field offices and installations, in response to FOIA requests, except as otherwise provided by regulation.<sup>6</sup> Under SSA's regulations, an appeal of a denial of a FOIA request should be sent to the Commissioner or his designee.<sup>7</sup> The Commissioner has delegated this authority to the General Counsel, who re-delegated it to the Executive Director of OPD.<sup>8</sup>

The Executive Director and Deputy Executive Director of OPD report to the General Counsel of SSA. The General Counsel of SSA is a political appointee; however, he is currently serving overseas in another capacity. The individual acting for the General Counsel of SSA is not a political appointee. Furthermore, the Executive Director and Deputy Executive Director of OPD are not political appointees. There are no other political appointees in OGC.

In Fiscal Year (FY) 2009, SSA processed 31,551 FOIA requests. Of those, 26,344 requests were fully granted, 3,085 were partially granted, 1,447 were denied based on an exemption,<sup>9</sup> and 675 were denied on a basis other than an exemption.<sup>10</sup> SSA FOIA requests are processed in SSA's *Electronic Freedom of Information Act* (eFOIA) system by either OPD or the Division of Earning Records Operations (DERO). In addition, staff in the Division of Direct Service Operations (DDSO) has been trained to assist in processing FOIA requests when backlogs become unmanageable. They

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<sup>5</sup> 5 U.S.C. § 552a. SSA's regulations on handling FOIA may be found at 20 C.F.R. Part 402, and those dealing with the Privacy Act are located at 20 C.F.R. Part 401. "The purpose of the Privacy Act is to balance the government's need to maintain information about individuals with the rights of individuals to be protected against unwarranted invasions of their personal privacy stemming from federal agencies' collection, maintenance, use, and disclosure of personal information about them." SSA fulfills its administrative and program responsibilities, and responsibilities for disclosing records the general public is entitled to have under FOIA.

<sup>6</sup> 20 C.F.R. § 402.125

<sup>7</sup> 20 C.F.R. § 402.200

<sup>8</sup> The OGC delegation is dated December 26, 2002. Before OPD existed in OGC, its predecessor organization had a similar delegation dating from September 29, 1997.

<sup>9</sup> FOIA exemptions are specific aspects of data that are not granted to a requestor. In general, FOIA permits an agency to withhold classified information, internal personnel rules, information that is prohibited by statute from disclosure, trade secrets and confidential financial information, deliberative and privileged documents, personal information about living individuals that would constitute an unwarranted invasion of personal privacy, and investigative records. 5 U.S.C. § 552(b).

<sup>10</sup> Other exemptions which result in the Agency making a decision not to release records in response to a FOIA request are procedural reasons. For example, the requested records could not be located.

have assisted in processing FOIA requests in the past; however, for the past several years the FOIA workload has not warranted assistance from the DDSO. Both DERO and DDSO are organizations within SSA's Office of Operations. The Deputy Commissioner for Operations and subordinate management officials over DERO and DDSO are career positions.

## OPD

OPD processes the most complex FOIA requests SSA receives, as well as all Agency appeals. OPD analysts thoroughly research each request for various reasons. In many instances, the material being requested may be voluminous or an issue may be complex and necessitate research and consultation with other SSA components. Before responding to these requests, OPD must often request materials from other SSA components and, in some cases, obtain a legal review. In FY 2009, OPD processed approximately 10 percent of all FOIA requests.

## DERO

DERO primarily processes requests for copies of the Social Security number (SSN) applications and Numident<sup>11</sup> records of deceased individuals and requests for full SSN records. In FY 2009, DERO processed approximately 90 percent of all FOIA requests.

## eFOIA System

In 1996, Congress amended FOIA<sup>12</sup> to provide for public access to electronic information. In 2006, OPD sponsored the implementation of the eFOIA system to provide an automated means for OPD and DERO to process and track FOIA requests.

All FOIA requests are captured in the eFOIA system. EFOIA is an Internet-based application that enables users to request Social Security records through the SSA Website. Paper requests, such as mail, hardcopies of faxes, and email are scanned into eFOIA, whereas requests submitted through the Internet go directly into eFOIA. As soon as a request is entered into the system, or a person submits an online request, eFOIA generates a notification or acknowledgment letter. This letter confirms receipt of a request, provides a reference number specifically assigned to a requester's case, and provides contact information for status inquiries.

There are two avenues to request records through eFOIA.

- **DERO Request** - Customers can request a copy of a deceased individual's original application for a Social Security card (SS-5), or a copy of a deceased individual's computer extract or Numident record of the original application for a Social Security card.

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<sup>11</sup> The Numident, an electronic component of SSA's record systems, provides numberholder identifying information, such as name, date of birth, date of death, mother's maiden name, etc.

<sup>12</sup> Pub. L. No. 104-231. *Electronic Freedom of Information Act (EFOIA) Amendments of 1996*.

- OPD Request - Customers can submit FOIA requests for all other Social Security records.

## FOIA Requests Through Political Filter

A recent news report<sup>13</sup> alleged that the Department of Homeland Security detoured hundreds of FOIA requests for Federal records to senior political advisers for highly unusual scrutiny, probing for information about the requesters, and delaying disclosures deemed too politically sensitive. As a result, the Ranking Member of the Senate Committee on Finance and the House Committee on Oversight and Government Reform, in an August 23, 2010 letter, requested that the SSA Office of the Inspector General (OIG) conduct an inquiry to determine whether SSA is also engaged in political filtering of information requests. As of September 17, 2010, there were 10 political appointees at SSA. See Appendix C for the list of SSA Political Appointees.

To meet this request, we interviewed individuals in OPD and DERO to gain an understanding of SSA's FOIA request process. We also interviewed FOIA Analysts and Coordinators to determine the extent to which political appointees were involved in processing FOIA requests. Furthermore, we reviewed completed requests that were either granted or denied and requests that were pending completion as of August 31, 2010. See Appendix B for details of our scope, methodology, and sample results.

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<sup>13</sup> Ted Bridis, *Homeland Security Info Request through Political Filter*, Associated Press, July 22, 2010.



# Results of Review

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We determined that SSA political appointees were sometimes made aware of or reviewed information requests; however, we found no evidence of FOIA information requests being detoured, unusually scrutinized, delayed, or hindered by SSA political appointees. Our results are based on (1) understanding SSA's FOIA process, (2) interviewing OPD analysts and FOIA coordinators, and (3) reviewing pending FOIA requests.

## SSA FOIA Process

We interviewed OPD and DERO executive staff to gain an understanding of the FOIA request process. Specifically, we inquired as to how FOIA requests are received, processed, and completed. Furthermore, we inquired to what extent political appointees played a role in the process.

Based on our interviews, we determined there are two avenues to file a request through the eFOIA Internet application. DERO handles requests for a deceased individual's Social Security record, and OPD handles all other requests for Social Security records. SSA devised this 2-track process to allow faster processing of record requests for deceased individuals.

FOIA requests are received through eFOIA, mail, hardcopies of faxes, and email requests. Once received, OPD or DERO reviews the request and determines whether the information can be given to the requester. The requester is then notified whether the request has been granted or denied. During these interviews, OIG was informed that it is possible that political appointees were made aware of FOIA requests but did not have a role in making a decision to grant or deny the information.

## Interviewing OPD Analysts and FOIA Coordinators

There are 23 FOIA Analysts in OPD. We interviewed 22 of 23 OPD analysts. These Analysts work with the 38 FOIA Coordinators.<sup>14</sup> Each Associate Commissioner, Regional Commissioner, and Program Service Center (PSC) Director has designated a FOIA Coordinator to serve as the focal point for FOIA activities under his/her jurisdiction. Therefore, we interviewed 9 of 38 FOIA Coordinators to gain an understanding of their responsibilities. Specifically, we inquired about the process of

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<sup>14</sup> FOIA Coordinators serve as the focal point for FOIA activities under his/her jurisdiction. FOIA Coordinators' responsibilities include (1) providing technical guidance to staff on FOIA matters and to serve as liaison with the FOIA Officers on disclosure policy matters; (2) coordinating the handling of FOIA requests, searching for requested documents and providing them to OPD, and identifying concerns about disclosure; (3) maintaining or collecting data for SSA's Annual Report to the Attorney General on FOIA activity; (4) coordinating the development and implementation of procedures for maintaining records of FOIA requests; and (5) coordinating training activities on FOIA matters. The nine FOIA Coordinators we interviewed are located in SSA components where political appointees are assigned. The remaining 29 did not work in components that had a political appointee.

compiling the requested information; whether political appointees are notified of information requests; and to what extent, if any, they play a role in the decision to grant FOIA requests. In addition, we reviewed FOIA requests recently completed by the analysts we interviewed. Specifically, we reviewed 76 FOIA requests—37 approved requests and 39 denied requests.

Based on these interviews, we found that all OPD requests in eFOIA are determined to be either fast track, simple, or complex requests. Fast track requests<sup>15</sup> can be worked immediately without assignment to an analyst. Simple requests are assigned to an analyst by a supervisor but are focused on a narrow request, such as an application for an SSN. Complex requests<sup>16</sup> require further development to determine the feasibility of providing the requested data. The analyst will work with a FOIA coordinator in the appropriate SSA component. Once the FOIA coordinator gathers the necessary information, it is forwarded to the analyst. The analyst reviews the compiled information, sends the request for approval by the Executive and Deputy Executive Directors of OPD and, when legal review is needed, to the Office of General Law. Whether approved or denied, the analyst makes a determination and prepares a response to the requestor.

We determined that OPD analysts and FOIA coordinators were not aware of any political appointee’s involvement in the decision of whether to release a FOIA request.

### Reviewing Pending FOIA Requests

To determine whether there was evidence from which we could identify instances where political appointees may have hindered the processing of information requests, we reviewed a selection of pending FOIA requests older than 20 days to determine the reason for their pending status. We reviewed FOIA requests from 21 to 364 days old. In total, we reviewed 41 pending FOIA requests that consisted of 11 appeals and 30 Fast Track/Simple/Complex requests (10 requests that were 21 to 89 days old and 20 that were 90 to 364 days old). Table 1 shows a breakdown of pending requests:

<b>Table 1 - Aging of Pending Requests as of August 31, 2010</b>					
<b>Days Pending</b>	<b>21-59</b>	<b>60-89</b>	<b>90-179</b>	<b>180-364</b>	<b>Total Requests</b>
Appeals	8	1	2	0	11
Fast Track/Simple/Complex	166	49	18	2	235
<b>Total Pending Requests Greater Than 20 Days</b>	<b>174</b>	<b>50</b>	<b>20</b>	<b>2</b>	<b>246</b>

<sup>15</sup> Examples of fast track requests include address (whereabouts), claims file (deceased), death information, genealogical information, and information in claim file for living person.

<sup>16</sup> Examples of complex requests include appeal council working papers, appeals, congress (Senator or Member of the House), contract information, national organizations, and personnel documents.

Based on our review of the pending FOIA requests, we determined the following reasons that requests were not completed within the 20-day timeframe.

- Ascertaining what was requested.
- Complexity of the request.
- Voluminous amounts of data to be retrieved.

Based on our review of the pending requests, we determined the requests were not older than 20 days due to political appointees hindering the processing of information requests.

## Conclusion

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We determined that SSA's political appointees were sometimes made aware of or reviewed information requests; however, we found no evidence of FOIA information requests being detoured, unusually scrutinized, delayed, or hindered by the Agency's political appointees.

# Appendices

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APPENDIX A – Acronyms

APPENDIX B – Scope and Methodology

APPENDIX C – SSA Political Appointees

## Acronyms

C.F.R.	Code of Federal Regulations
DDSO	Division of Direct Service Operations
DERO	Division of Earnings Records Operations
eFOIA	Electronic <i>Freedom of Information Act</i> System
FOIA	<i>Freedom of Information Act</i>
FY	Fiscal Year
OGC	Office of the General Counsel
OIG	Office of the Inspector General
OPD	Office of Privacy and Disclosure
Pub. L. No.	Public Law Number
SSA	Social Security Administration
SSN	Social Security Number
U.S.C.	United States Code

# Scope and Methodology

On August 23, 2010, the Ranking Members of the Senate Committee on Finance and the House Committee on Oversight and Government Reform requested that we conduct an inquiry to determine whether, and if so, the extent to which political appointees are made aware of information requests and have a role in request reviews or decision-making. To complete our objective, we:

- Reviewed Federal laws, regulations, and the Social Security Administration's (SSA) policies and procedures related to *Freedom of Information Act* (FOIA) requests.
- Interviewed personnel in the Office of Privacy and Disclosure (OPD), Division of Earnings Records Operations (DERO), and Office of Public Inquiry to gain an understanding of the FOIA request process.
- Identified SSA's Political Appointees.
- Identified the FOIA Coordinators in each SSA component that had a political appointee. Interviewed these FOIA Coordinators to ascertain to what extent political appointees were involved in responding to information requests.
- Reviewed 76 completed FOIA requests (37 granted and 39 denied) from the file cabinets of OPD analysts to determine whether political appointees were involved in the review or decision-making process.
- Reviewed an aging of OPD FOIA requests that are pending. We identified the FOIA requests that were more than 20 days old to:
  - Determine why the request was not completed within 20 days.
  - Determine whether the 20-day requirement was exceeded because of political appointees.
  - Review 100 percent of Fast Track/Simple/Complex requests that were 90 to 364 days old.
  - Review a sample of Fast Track/Simple/Complex requests that were 21 to 89 days old.
  - Review 100 percent of appeal requests.

- Reviewed a sample of 41 pending OPD FOIA requests to determine whether involvement of political appointees caused the request to exceed 20 days. Specifically, we:
  - Reviewed all Fast Track/Simple/Complex OPD FOIA requests that were 90 to 364 days old. There were 20 of these requests.
  - Randomly sampled pending FOIA Fast Track/Simple/Complex requests that were 21 to 89 days old. The sampling population for this group was 215 pending requests. We randomly sampled 10 from this population.
  - Reviewed all appeal requests that were 21 to 179 days old. There were 11 of these requests.
- Provided SSA a draft of this report for review and addressed all technical comments provided.

We determined that the data used in this review were sufficiently reliable given the audit objective and intended use of the data. The entity responsible for FOIA is under the Office of the General Counsel, Office of Privacy and Disclosure, and the Office of Central Operations, Office of Earnings Operations, Division of Earnings Record Operations. Our field work was conducted at SSA Headquarters in August and September 2010.

We conducted this review 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.



## SSA Political Appointees

Below is a list of political appointees at the Social Security Administration (SSA).

Political Appointee Title	SSA Office
Commissioner of Social Security	Office of the Commissioner
Inspector General	Office of the Inspector General
Chief Information Officer	Office of the Chief Information Officer
General Counsel	Office of the General Counsel
Deputy Commissioner for Communications	Office of Communications
Associate Chief Information Officer for Vision and Strategy	Office of the Chief Information Officer
Associate Commissioner for Retirement Policy	Office of Retirement and Disability Policy
Deputy Commissioner for Legislation and Congressional Affairs	Office of Legislation and Congressional Affairs
Associate Commissioner for External Affairs	Office of Communications
Senior Advisor to the Deputy Commissioner for Legislation and Congressional Affairs	Office of Legislation and Congressional Affairs

In 1994, a Social Security Advisory Board was created. The law provided that the Advisory Board be bipartisan with members who were appointed by the President, Speaker of the House, and President pro tempore of the Senate. This Board advises the Commissioner of Social Security on policies related to the Old-Age, Survivors and Disability Insurance and Supplemental Security Income programs. This above list of political appointees does not include the six members of SSA's Advisory Board. This is because the Advisory Board functions as a separate entity whose *Freedom of Information Act* (FOIA) responsibilities are mutually exclusive of SSA's FOIA process.

## ***DISTRIBUTION SCHEDULE***

Commissioner of Social Security

Chairman and Ranking Member, Committee on Ways and Means

Chief of Staff, Committee on Ways and Means

Chairman and Ranking Minority Member, Subcommittee on Social Security

Majority and Minority Staff Director, Subcommittee on Social Security

Chairman and Ranking Minority Member, Committee on the Budget, House of Representatives

Chairman and Ranking Minority Member, Committee on Oversight and Government Reform

Chairman and Ranking Minority Member, Committee on Appropriations, House of Representatives

Chairman and Ranking Minority, Subcommittee on Labor, Health and Human Services, Education and Related Agencies, Committee on Appropriations, House of Representatives

Chairman and Ranking Minority Member, Committee on Appropriations, U.S. Senate

Chairman and Ranking Minority Member, Subcommittee on Labor, Health and Human Services, Education and Related Agencies, Committee on Appropriations, U.S. Senate

Chairman and Ranking Minority Member, Committee on Finance

Chairman and Ranking Minority Member, Subcommittee on Social Security Pensions and Family Policy

Chairman and Ranking Minority Member, Senate Special Committee on Aging

Social Security Advisory Board

## **Overview of the Office of the Inspector General**

The Office of the Inspector General (OIG) is comprised of an Office of Audit (OA), Office of Investigations (OI), Office of the Counsel to the Inspector General (OCIG), Office of External Relations (OER), and Office of Technology and Resource Management (OTRM). To ensure compliance with policies and procedures, internal controls, and professional standards, the OIG also has a comprehensive Professional Responsibility and Quality Assurance program.

### **Office of Audit**

OA conducts financial and performance audits of the Social Security Administration's (SSA) programs and operations and makes recommendations to ensure program objectives are achieved effectively and efficiently. Financial audits assess whether SSA's financial statements fairly present SSA's financial position, results of operations, and cash flow. Performance audits review the economy, efficiency, and effectiveness of SSA's programs and operations. OA also conducts short-term management reviews and program evaluations on issues of concern to SSA, Congress, and the general public.

### **Office of Investigations**

OI conducts investigations related to fraud, waste, abuse, and mismanagement in SSA programs and operations. This includes wrongdoing by applicants, beneficiaries, contractors, third parties, or SSA employees performing their official duties. This office serves as liaison to the Department of Justice on all matters relating to the investigation of SSA programs and personnel. OI also conducts joint investigations with other Federal, State, and local law enforcement agencies.

### **Office of the Counsel to the Inspector General**

OCIG provides independent legal advice and counsel to the IG on various matters, including statutes, regulations, legislation, and policy directives. OCIG also advises the IG on investigative procedures and techniques, as well as on legal implications and conclusions to be drawn from audit and investigative material. Also, OCIG administers the Civil Monetary Penalty program.

### **Office of External Relations**

OER manages OIG's external and public affairs programs, and serves as the principal advisor on news releases and in providing information to the various news reporting services. OER develops OIG's media and public information policies, directs OIG's external and public affairs programs, and serves as the primary contact for those seeking information about OIG. OER prepares OIG publications, speeches, and presentations to internal and external organizations, and responds to Congressional correspondence.

### **Office of Technology and Resource Management**

OTRM supports OIG by providing information management and systems security. OTRM also coordinates OIG's budget, procurement, telecommunications, facilities, and human resources. In addition, OTRM is the focal point for OIG's strategic planning function, and the development and monitoring of performance measures. In addition, OTRM receives and assigns for action allegations of criminal and administrative violations of Social Security laws, identifies fugitives receiving benefit payments from SSA, and provides technological assistance to investigations.