

UNCLASSIFIED – FOR OFFICIAL USE ONLY
Domestic Investigations and Operations Guide



**DOMESTIC INVESTIGATIONS
AND OPERATIONS GUIDE
FEDERAL BUREAU OF INVESTIGATION
RELEASED MARCH 31, 2020
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NOTICE OF SUPERSESSION AND UPDATE:

This document amends and supersedes the previous *Domestic Investigations and Operations Guide* (DIOG), released July 23, 2018 (updated June 11, 2019).

NOTE:

Due to an administrative error, the version of the DIOG released on September 17, 2021, prematurely included new requirements pertaining to the use of compulsory processes to obtain information from, or records of, members of the news media. As of October 25, 2021, those changes have been reverted to the previous release of the DIOG, dated March 31, 2020. The following subsections were impacted by this error: 4.2.3, 18.5.9.3.1, 18.6.4.3.4.3, 18.6.5.7, 18.6.6, 18.6.8.4.2.1, 18.6.8.4.2.8, 18.6.9.5.1, 18.6.9.5.2, 18.7.1.4. Additional updates about this topic are coming soon. Questions should be directed to CDCs or IPO.

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1 (U) SCOPE AND PURPOSE

1.1 (U) SCOPE

(U) The Domestic Investigations and Operations Guide (DIOG) applies to all investigative activities and intelligence collection activities conducted by the FBI within the United States, in the United States territories, or outside the territories of all countries. This policy document does not apply to investigative and intelligence collection activities of the FBI in foreign countries; those are governed by:

- A) (U) *The Attorney General's Guidelines for Extraterritorial FBI Operations and Criminal Investigations*:
- B) (U) *The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection* (those portions which were not superseded by *The Attorney General Guidelines for Domestic FBI Operations*):
- C) (U) *The Attorney General Guidelines on the Development and Operation of FBI Criminal Informants and Cooperative Witnesses in Extraterritorial Jurisdictions*:
- D) (U) *The Attorney General Procedure for Reporting and Use of Information Concerning Violations of Law and Authorization for Participation in Otherwise Illegal Activity in FBI Foreign Intelligence, Counterintelligence or International Terrorism Intelligence Investigations* (August 8, 1988); and
- E) (U) *Memorandum of Understanding Concerning Overseas and Domestic Activities of the Central Intelligence Agency and the Federal Bureau of Investigation* (2005).

(U//~~FOUO~~) Collectively, these guidelines and procedures are hereinafter referred to as the Extraterritorial Guidelines in the DIOG.

1.2 (U) PURPOSE

(U) The purpose of the DIOG is to standardize policies so that criminal, national security and foreign intelligence investigative activities are consistently and uniformly accomplished whenever possible (e.g., same approval, opening/closing, notification, and reporting requirements).

(U) This policy document also stresses the importance of oversight and self-regulation to ensure that all investigative and intelligence collection activities are conducted within Constitutional and statutory parameters and that civil liberties and privacy are protected.

(U) In addition to this policy document, each FBI Headquarters (FBIHQ) operational division has a policy guide (PG) or several PGs that supplement the DIOG. No policy or PG may contradict, alter, or otherwise modify the standards of the DIOG. A DIOG-related policy or PG must adhere to the standards, requirements and procedures established by the DIOG. Requests for DIOG modifications can be made to the Internal Policy Office (IPO) pursuant to DIOG Section 3.2.2 paragraphs (A), (B), (C) and (D). As a result, numerous FBI manuals, electronic communications, letterhead memoranda (LHM), and other policy documents are incorporated into the DIOG and operational division PGs, thus, consolidating FBI policy.

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2 (U) GENERAL AUTHORITIES AND PRINCIPLES

2.1 (U) AUTHORITY OF THE ATTORNEY GENERAL'S GUIDELINES FOR DOMESTIC FBI OPERATIONS

(U) The *Attorney General's Guidelines for Domestic FBI Operations, as revised by subsequent AG Orders and Memos (AGG-Dom)* apply to investigative and intelligence collection activities conducted by the FBI within the United States, in the United States territories, or outside the territories of all countries. They do not apply to investigative and intelligence collection activities of the FBI in foreign countries, which are governed by the Extraterritorial Guidelines discussed in DIOG Section 13. (AGG-Dom, Part I.A.)

(U) The AGG-Dom replaces the following six guidelines:

- A) (U) *The Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations* (May 30, 2002);
- B) (U) *The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection* (October 31, 2003);
- C) (U) *The Attorney General's Supplemental Guidelines for Collection, Retention, and Dissemination of Foreign Intelligence* (November 29, 2006);
- D) (U) *The Attorney General Procedure for Reporting and Use of Information Concerning Violations of Law and Authorization for Participation in Otherwise Illegal Activity in FBI Foreign Intelligence, Counterintelligence or International Terrorism Intelligence Investigations* (August 8, 1988);
- E) (U) *The Attorney General's Guidelines for Reporting on Civil Disorders and Demonstrations Involving a Federal Interest* (April 5, 1976); and
- F) (U) *The Attorney General's Procedures for Lawful, Warrantless Monitoring of Verbal Communications* (May 30, 2002) [only portion applicable to FBI repealed].

(U) Certain provisions of the existing guidelines that are repealed by the AGG-Dom currently apply in part to extraterritorial operations, including the *Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection*, and the *Attorney General Procedure for Reporting and Use of Information Concerning Violations of Law and Authorization for Participation in Otherwise Illegal Activity in FBI Foreign Intelligence, Counterintelligence or International Terrorism Intelligence Investigations*. To ensure that there is no gap in the existence of guidelines for extraterritorial operations, these existing guidelines will remain in effect in their application to extraterritorial operations notwithstanding the general repeal of these existing guidelines by the AGG-Dom.

(U) Also, the classified *Attorney General Guidelines for Extraterritorial FBI Operation and Criminal Investigations* (1993) will continue to apply to FBI criminal investigations, pending the execution of the new guidelines for extraterritorial operations. Finally, for national security and foreign intelligence investigations, FBI investigative activities will continue to be processed as set forth in the classified *Memorandum of Understanding Concerning Overseas and Domestic Activities of the Central Intelligence Agency and the Federal Bureau of Investigation* (2005).

2.2 (U) GENERAL FBI AUTHORITIES UNDER AGG-DOM

(U) The AGG-Dom recognizes four broad, general FBI authorities. (AGG-Dom, Part I.B.)

2.2.1 (U) CONDUCT INVESTIGATIONS AND COLLECT INTELLIGENCE AND EVIDENCE

(U) The FBI is authorized to collect intelligence and to conduct investigations to detect, obtain information about, and prevent and protect against federal crimes and threats to the national security and to collect foreign intelligence, as provided in the DIOG (AGG-Dom, Part II).

(U) By regulation, the Attorney General has directed the FBI to investigate violations of the laws of the United States and to collect evidence in investigations in which the United States is or may be a party in interest, except in investigations in which such responsibility is by statute or otherwise specifically assigned to another investigative agency. The FBI's authority to investigate and to collect evidence involving criminal drug laws of the United States is concurrent with such authority of the Drug Enforcement Administration (DEA) (28 CFR § 0.85[a]).

2.2.2 (U) PROVIDE INVESTIGATIVE ASSISTANCE

(U) The FBI is authorized to provide investigative assistance to other federal, state, local, or tribal agencies, and foreign agencies as provided in Section 12 of the DIOG (AGG-Dom, Part III).

2.2.3 (U) CONDUCT INTELLIGENCE ANALYSIS AND PLANNING

(U) The FBI is authorized to conduct intelligence analysis and planning as provided in Section 15 of the DIOG (AGG-Dom, Part IV).

2.2.4 (U) RETAIN AND SHARE INFORMATION

(U) The FBI is authorized to retain and to share information obtained pursuant to the AGG-Dom, as provided in Sections 12 and 14 of the DIOG (AGG-Dom, Part VI).

2.3 (U) FBI AS AN INTELLIGENCE AGENCY

(U) The FBI is an intelligence agency as well as a law enforcement agency. Its basic functions accordingly extend beyond limited investigations of discrete matters, and include broader analytic and planning functions. The FBI's responsibilities in this area derive from various administrative and statutory sources. See Executive Order 12333; 28 U.S.C. § 532 note (incorporating P.L. 108-458 §§ 2001-2003) and 534 note (incorporating P.L. 109-162 § 1107).

(U) Part IV of the AGG-Dom authorizes the FBI to engage in intelligence analysis and planning, drawing on all lawful sources of information. The functions authorized under that Part includes: (i) development of overviews and analyses concerning threats to and vulnerabilities of the United States and its interests; (ii) research and analysis to produce reports and assessments (see note below) concerning matters relevant to investigative activities or other authorized FBI activities; and (iii) the operation of intelligence systems that facilitate and support investigations through the compilation and analysis of data and information on an ongoing basis.

(U) *Note:* In the DIOG, the word “assessment” has two distinct meanings. The AGG-Dom authorizes as an investigative activity an “Assessment,” which requires an authorized purpose and clearly defined objective (s) as discussed in the DIOG Section 5. The United States Intelligence Community (USIC), however, also uses the word “assessment” to describe written intelligence products as discussed in the DIOG Section 15.6.1.2.

2.4 (U) FBI LEAD INVESTIGATIVE AUTHORITIES

2.4.1 (U) INTRODUCTION

(U//~~FOUO~~) The FBI’s primary investigative authority is derived from the authority of the Attorney General as provided in 28 U.S.C. §§ 509, 510, 533 and 534. Within this authority, the Attorney General may appoint officials to detect crimes against the United States and to conduct such other investigations regarding official matters under the control of the Department of Justice (DOJ) and the Department of State (DOS) as may be directed by the Attorney General (28 U.S.C. § 533). The Attorney General has delegated a number of his statutory authorities and granted other authorities to the Director of the FBI (28 CFR § 0.85[a]). Some of these authorities apply both inside and outside the United States.

2.4.2 (U) TERRORISM AND COUNTERTERRORISM INVESTIGATIONS

(U) The Attorney General has directed the FBI to exercise Lead Agency responsibility in investigating all crimes for which DOJ has primary or concurrent jurisdiction and which involve terrorist activities or acts in preparation of terrorist activities within the statutory jurisdiction of the United States. Within the United States, this includes the collection, coordination, analysis, management and dissemination of intelligence and criminal information, as appropriate. If another federal agency identifies an individual who is engaged in terrorist activities or acts in preparation of terrorist activities, the other agency is required to promptly notify the FBI. Terrorism, in this context, includes the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, to further political or social objectives (28 CFR § 0.85[I]). For a current list of legal authorities relating to the FBI’s investigative jurisdiction in terrorism investigations, see the [OGC Law Library](#).

(U//~~FOUO~~) DOJ guidance designates the FBI as Lead Agency for investigating explosives matters which, under the following protocol, demonstrate a possible nexus to international or domestic terrorism:

- A) (U//~~FOUO~~) The following factors are strong indicia of a nexus to terrorism and lead-agency jurisdiction is assigned based on these factors alone:
 - 1) (U//~~FOUO~~) an attack on a government building, mass transit, a power plant; or
 - 2) (U//~~FOUO~~) the use of a chemical, biological, radiological, or nuclear agents.
- B) (U//~~FOUO~~) Requires each agency to notify the other immediately when responding to an explosives incident and to share all relevant information that may serve to rule in or out a connection to terrorism; and
- C) (U//~~FOUO~~) Creates a process for the FBI/Joint Terrorism Task Force (JTTF) to identify an explosives incident as connected to terrorism when there is reliable evidence supporting that claim and establishes a process for shifting lead-agency jurisdiction to the JTTF until the issue

is resolved. (See *DOJ Memorandum, dated August 3, 2010, on "Protocol for Assigning Lead Agency Jurisdiction in Explosives Investigations."*)

2.4.2.1 (U) "FEDERAL CRIMES OF TERRORISM"

(U) Pursuant to the delegation in 28 CFR § 0.85(l), the FBI exercises the Attorney General's lead investigative responsibility under 18 U.S.C. § 2332b (f) for all "federal crimes of terrorism" as identified in that statute. Many of these statutes grant the FBI extraterritorial investigative responsibility (See the cited statute for the full particulars concerning elements of the offense, jurisdiction, etc.). Under 18 U.S.C. § 2332b(g)(5), the term "federal crime of terrorism" means an offense that is: (i) calculated to influence or affect the conduct of government by intimidation or coercion or to retaliate against government conduct; and (ii) violates a federal statute relating to:

- A) (U) Destruction of aircraft or aircraft facilities (18 U.S.C. § 32);
- B) (U) Violence at international airports (applies to offenses occurring outside the United States in certain situations) (18 U.S.C. § 37);
- C) (U) Arson within "special maritime and territorial jurisdiction (SMTJ) of the United States" (SMTJ is defined in 18 U.S.C. § 7) (18 U.S.C. § 81);
- D) (U) Prohibitions with respect to biological weapons (extraterritorial federal jurisdiction if offense committed by or against a United States national) (18 U.S.C. § 175);
- E) (U) Possession of biological agents or toxins by restricted persons (18 U.S.C. § 175b);
- F) (U) Variola virus (includes smallpox and other derivatives of the variola major virus) (applies to offenses occurring outside the United States in certain situations) (18 U.S.C. § 175c);
- G) (U) Prohibited activities regarding chemical weapons (applies to offenses occurring outside the United States in certain situations) (18 U.S.C. § 229) (E.O. 13128 directs any possible violation of this statute be referred to the FBI);
- H) (U) Congressional, Cabinet, and Supreme Court assassination, kidnapping and assault (18 U.S.C. § 351[a]-[d]) (18 U.S.C. § 351[g] directs that the FBI shall investigate violations of this statute);
- I) (U) Prohibited transactions involving nuclear materials (applies to offenses occurring outside the United States in certain situations) (18 U.S.C. § 831);
- J) (U) Participation in nuclear and weapons of mass destruction threats to the United States (extraterritorial federal jurisdiction) (18 U.S.C. § 832);
- K) (U) Importation, exportation, shipping, transport, transfer, receipt, or possession of plastic explosives that do not contain a detection agent (18 U.S.C. § 842[m] and [n]);
- L) (U) Arson or bombing of government property risking or causing death (18 U.S.C. § 844[f][2] or [3]) (18 U.S.C. § 846[a] grants FBI and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) concurrent authority to investigate violations of this statute). See Section 2.4.2.C above regarding DOJ Memorandum dated 08/03/2010 on ATF/FBI Lead Agency Jurisdiction;
- M) (U) Arson or bombing of property used in or affecting interstate or foreign commerce (18 U.S.C. § 844[i]) (18 U.S.C. § 846[a] grants FBI and ATF concurrent authority to investigate violations of this statute);

- N) (U) Killing or attempted killing during an attack on a federal facility with a dangerous weapon (18 U.S.C. § 930[c]):
- O) (U) Conspiracy within United States jurisdiction to murder, kidnap, or maim persons at any place outside the United States (18 U.S.C. § 956[a][1]):
- P) (U) Using a computer for unauthorized access, transmission, or retention of protected information (18 U.S.C. § 1030[a][1]) (18 U.S.C. § 1030[d][2] grants the FBI “primary authority” to investigate Section 1030[a][1] offenses involving espionage, foreign counterintelligence, information protected against unauthorized disclosure for reasons of national defense or foreign relations, or Restricted Data as defined in the Atomic Energy Act, except for offenses affecting United States Secret Service (USSS) duties under 18 U.S.C. § 3056[a]):
- Q) (U) Knowingly transmitting a program, information, code, or command and thereby intentionally causing damage, without authorization, to a protected computer (18 U.S.C. § 1030[a][5][A][i]):
- R) (U) Killing or attempted killing of officers or employees of the United States, including any member of the uniformed services (18 U.S.C. § 1114):
- S) (U) Murder or manslaughter of foreign officials, official guests, or internationally protected persons (applies to offenses occurring outside the United States in certain situations) (18 U.S.C. § 1116) (Attorney General may request military assistance in the course of enforcement of this section):
- T) (U) Hostage taking (applies to offenses occurring outside the United States in certain situations) (18 U.S.C. § 1203):
- U) (U) Willfully injuring or committing any depredation against government property or contracts (18 U.S.C. § 1361):
- V) (U) Destruction of communication lines, stations, or systems (18 U.S.C. § 1362):
- W) (U) Destruction or injury to buildings or property within special maritime and territorial jurisdiction of the United States (18 U.S.C. § 1363):
- X) (U) Destruction of \$100,000 or more of an “energy facility” property as defined in the statute (18 U.S.C. § 1366):
- Y) (U) Presidential and Presidential staff assassination, kidnapping, and assault (18 U.S.C. § 1751[a], [b], [c], or [d]) (extraterritorial jurisdiction) (Per 18 U.S.C. § 1751[i], 1751 violations must be investigated by the FBI; FBI may request assistance from any federal [including military], state, or local agency notwithstanding any statute, rule, or regulation to the contrary):
- Z) (U) Terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air (includes a school bus, charter, or sightseeing transportation; or any means of transport on land, water, or through the air) (18 U.S.C. § 1992):
- AA) (U) Destruction of national defense materials, premises, or utilities (18 U.S.C. § 2155):
- BB) (U) Production of defective national defense materials, premises, or utilities (18 U.S.C. § 2156):
- CC) (U) Violence against maritime navigation (18 U.S.C. § 2280):

- DD) (U) Violence against maritime fixed platforms (located on the continental shelf of the United States or located internationally in certain situations) (18 U.S.C. § 2281);
- EE) (U) Certain homicides and other violence against United States nationals occurring outside of the United States (18 U.S.C. § 2332);
- FF) (U) Use of weapons of mass destruction (WMD) (against a national of the United States while outside the United States; against certain persons or property within the United States; or by a national of the United States outside the United States) (18 U.S.C. § 2332a) (WMD defined in 18 U.S.C. § 2332a[c][2]);
- GG) (U) Acts of terrorism transcending national boundaries (includes murder, kidnapping, and other prohibited acts occurring inside and outside the United States under specified circumstances – including that the victim is a member of a uniform service; includes offenses committed in the United States territorial sea and airspace above and seabed below; includes offenses committed in special maritime and territorial jurisdiction of the United States as defined in 18 U.S.C. § 7) (18 U.S.C. § 2332b);
- HH) (U) Bombings of places of public use, government facilities, public transportation systems and infrastructure facilities (applies to offenses occurring inside or outside the United States in certain situations; does not apply to activities of armed forces during an armed conflict) (18 U.S.C. § 2332f);
- II) (U) Missile systems designed to destroy aircraft (applies to offenses occurring outside the United States in certain situations) (18 U.S.C. § 2332g);
- JJ) (U) Radiological dispersal devices (applies to offenses occurring outside the United States in certain situations) (18 U.S.C. § 2332h);
- KK) (U) Harboring or concealing terrorists (18 U.S.C. § 2339);
- LL) (U) Providing material support or resources to terrorists (18 U.S.C. § 2339A);
- MM) (U) Providing material support or resources to designated foreign terrorist organizations (extraterritorial federal jurisdiction) (18 U.S.C. § 2339B) ("The Attorney General shall conduct any investigation of a possible violation of this section, or of any license, order, or regulation issued pursuant to this section." 18 U.S.C. § 2339B[e][1]);
- NN) (U) Prohibitions against the financing of terrorism (applies to offenses occurring outside the United States in certain situations including on board a vessel flying the flag of the United States or an aircraft registered under the laws of the United States) (18 U.S.C. § 2339C) (See DOJ Memorandum dated May 13, 2005 on "Terrorist Financing Investigations");
- OO) (U) Relating to military-type training from a foreign terrorist organization (extraterritorial jurisdiction) (18 U.S.C. § 2339D);
- PP) (U) Torture applies only to torture committed outside the United States in certain situations; torture is defined in 18 U.S.C. § 2340 (18 U.S.C. § 2340A);
- QQ) (U) Prohibitions governing atomic weapons (applies to offenses occurring outside the United States in certain situations) (42 U.S.C. § 2122) (FBI shall investigate alleged or suspected violations per 42 U.S.C. § 2271[b]);
- RR) (U) Sabotage of nuclear facilities or fuel (42 U.S.C. § 2284) (FBI shall investigate alleged or suspected violations per 42 U.S.C. § 2271[b]);
- SS) (U) Aircraft piracy (applies to offenses occurring outside the United States in certain situations) (49 U.S.C. § 46502) (FBI shall investigate per 28 U.S.C. § 538);

- TT) (U) Assault on a flight crew with a dangerous weapon (applies to offenses occurring in the “special aircraft jurisdiction of the United States” as defined in 49 U.S.C. § 46501[2]): (second sentence of 49 U.S.C. § 46504) (FBI shall investigate per 28 U.S.C. § 538);
- UU) (U) Placement of an explosive or incendiary device on an aircraft (49 U.S.C. § 46505[b][3]) (FBI shall investigate per 28 U.S.C. § 538);
- VV) (U) Endangerment of human life on aircraft by means of weapons (49 U.S.C. § 46505[c]) (FBI shall investigate per 28 U.S.C. § 538);
- WW) (U) Application of certain criminal laws to acts on aircraft (if homicide or attempted homicide is involved) (applies to offenses occurring in the “special aircraft jurisdiction of the United States” as defined in 18 U.S.C. § 46501[2]): (49 U.S.C. § 46506) (FBI shall investigate per 28 U.S.C. § 538);
- XX) (U) Damage or destruction of interstate gas or hazardous liquid pipeline facility (49 U.S.C. § 60123[b]): and
- YY) (U) Section 1010A of the Controlled Substances Import and Export Act (relating to narco-terrorism).

2.4.2.2 (U) ADDITIONAL OFFENSES NOT DEFINED AS “FEDERAL CRIMES OF TERRORISM”

(U) Title 18 U.S.C. § 2332b(f) expressly grants the Attorney General primary investigative authority for additional offenses not defined as “Federal Crimes of Terrorism.” These offenses are:

- A) (U) Congressional, Cabinet, and Supreme Court assaults (18 U.S.C. § 351[e]) (18 U.S.C. § 351[g]) directs that the FBI investigate violations of this statute);
- B) (U) Using mail, telephone, telegraph, or other instrument of interstate or foreign commerce to threaten to kill, injure, or intimidate any individual, or unlawfully to damage or destroy any building, vehicle, or other real or personal property by means of fire or explosive (18 U.S.C. § 844[e]): (18 U.S.C. § 846[a] grants FBI and ATF concurrent authority to investigate violations of this statute);
- C) (U) Damages or destroys by means of fire or explosive any building, vehicle, or other personal or real property, possessed, owned, or leased to the United States or any agency thereof, or any institution receiving federal financial assistance (18 U.S.C. § 844[f][1]) (18 U.S.C. § 846[a] grants FBI and ATF concurrent authority to investigate violations of this statute). See Section 2.4.2C above regarding DOJ Memorandum dated 08/03/2010 on ATF/FBI Lead Agency Jurisdiction;
- D) (U) Conspiracy within United States jurisdiction to damage or destroy property in a foreign country and belonging to a foreign country, or to any railroad, canal, bridge, airport, airfield, or other public utility, public conveyance, or public structure, or any religious, educational, or cultural property so situated (18 U.S.C. § 956[b]);
- E) (U) Destruction of \$5,000 or more of an “energy facility” property as defined in 18 U.S.C. § 1366(c) (18 U.S.C. § 1366[b]): and
- F) (U) Willful trespass upon, injury to, destruction of, or interference with fortifications, harbor defenses, or defensive sea areas (18 U.S.C. § 2152).

(U) Nothing in this section of the DIOG may be construed to interfere with the USSS under 18 U.S.C. § 3056.

2.4.2.3 (U//~~FOUO~~) NSPD-46/HSPD-15, “U.S. POLICY AND STRATEGY IN THE WAR ON TERROR”

(U//~~FOUO~~) Annex II (*Consolidation and Updating of Outdated Presidential Counterterrorism Documents*), dated January 10, 2007, to the classified *National Security Presidential Directive (NSPD) 46 Homeland Security Presidential Directive (HSPD) 15*, dated March 6, 2006, establishes FBI lead responsibilities, as well as those of other federal entities, in the “War on Terror.”

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(U//~~FOUO~~) Areas addressed in Annex II

Both NSPD-46/HSPD-15 and Annex II thereto are classified.

2.4.3 (U) COUNTERINTELLIGENCE AND ESPIONAGE INVESTIGATIONS

(U//~~FOUO~~) A representative list of federal statutes applicable to counterintelligence and espionage investigations appears below. For additional information, refer to the classified *Counterintelligence Division (CID) Policy Guide, 0717DPG* and the current list of espionage and counterintelligence authorities.

2.4.3.1 (U) ESPIONAGE INVESTIGATIONS OF PERSONS IN UNITED STATES DIPLOMATIC MISSIONS ABROAD

(U) Section 603 of the Intelligence Authorization Act of 1990 (P.L. 101-193) states that, subject to the authority of the Attorney General, “the FBI shall supervise the conduct of all investigations of violations of the espionage laws of the United States by persons employed by or assigned to United States diplomatic missions abroad. All departments and agencies shall provide appropriate assistance to the FBI in the conduct of such investigations.” Consult the *Attorney General Guidelines for FBI Supervision or Conduct of Espionage Investigations of U.S. Diplomatic Missions Personnel Abroad*, issued April 17, 1990.

2.4.3.2 (U) INVESTIGATIONS OF UNAUTHORIZED DISCLOSURE OF CLASSIFIED INFORMATION TO A FOREIGN POWER OR AGENT OF A FOREIGN POWER

(U) The National Security Act of 1947, as amended, establishes procedures for the coordination of counterintelligence activities (50 U.S.C. § 3381). Part of that statute requires that, absent extraordinary circumstances as approved by the President in writing on a case-by-case basis, the head of each executive branch department or agency must ensure that the FBI is “advised immediately of any information, regardless of its origin, which indicates that classified information is being, or may have been, disclosed in an unauthorized manner to a foreign power or an agent of a foreign power.”

2.4.4 (U) CRIMINAL INVESTIGATIONS

(U/~~FOUO~~) In addition to the statutes listed above and below, refer to the appropriate program/sub-program Criminal Investigative Division (CID) PG in the Policy Library for additional criminal jurisdiction information.

2.4.4.1 (U) INVESTIGATIONS OF AIRCRAFT PIRACY AND RELATED VIOLATIONS

(U) The FBI shall investigate any violation of 49 U.S.C. § 46314 (Entering aircraft or airport areas in violation of security requirements) or chapter 465 (Special aircraft jurisdiction of the United States) of Title 49, United States Code; (28 U.S.C. § 538)

2.4.4.2 (U) VIOLENT CRIMES AGAINST TRAVELERS

(U) The Attorney General and Director of the FBI shall assist state and local authorities in investigating and prosecuting a felony crime of violence in violation of the law of any State in which the victim appears to have been selected because he or she is a traveler from a foreign nation; (28 U.S.C. § 540A[b])

2.4.4.3 (U) FELONIOUS KILLINGS OF STATE AND LOCAL LAW ENFORCEMENT OFFICERS

(U) The FBI shall investigate any violation of 28 U.S.C. § 540; and

2.4.4.4 (U) INVESTIGATIONS OF SERIAL KILLINGS

(U) The FBI shall investigate any violation of 28 U.S.C. § 540B.

2.4.5 (U) AUTHORITY OF AN FBI SPECIAL AGENT

(U) An FBI Special Agent has the authority to:

- A) (U) *Investigate violations of the laws, including the criminal drug laws, of the United States (21 U.S.C. § 871; 28 U.S.C. §§ 533, 534 and 535; 28 CFR § 0.85);*
- B) (U) *Collect evidence in investigations in which the United States is or may be a party in interest (28 CFR § 0.85 [a]) as redelegated through exercise of the authority contained in 28 CFR § 0.138 to direct personnel in the FBI;*
- C) (U) *Make arrests (18 U.S.C. §§ 3052 and 3062);*
- D) (U) *Serve and execute arrest warrants and seize property under warrant; issue and/or serve administrative subpoenas; serve subpoenas issued by other proper authority; and make civil investigative demands (18 U.S.C. §§ 3052, 3107; 21 U.S.C. § 876; 15 U.S.C. § 1312);*
- E) (U) *Carry firearms (18 U.S.C. § 3052);*
- F) (U) *Administer oaths to witnesses attending to testify or depose in the course of investigations of frauds on or attempts to defraud the United States or irregularities or misconduct of employees or agents of the United States (5 U.S.C. § 303);*
- G) (U) *Seize property subject to seizure under the criminal and civil forfeiture laws of the United States (e.g., 18 U.S.C. §§ 981 and 982); and*
- H) (U) *Perform other duties imposed by law.*

(U) Note: For policy regarding agent's authority to intervene in non-federal crimes or make non-federal arrests, see Section 19.3.3.

2.5 (U) STATUS AS INTERNAL GUIDANCE

(U) The ~~AGG-Dom~~, this DIOG, and the various operational division PGs are set forth solely for the purpose of internal DOJ and FBI guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable by law by any party in any matter, civil or criminal, nor do they place any limitation on otherwise lawful investigative and litigative prerogatives of the DOJ and the FBI. (AGG-Dom, Part I.D.2.)

2.6 (U) DEPARTURE FROM THE AGG-DOM (AGG-DOM I.D.3)

2.6.1 (U) DEFINITION

(U//~~FOUO~~) A “departure” from the AGG-Dom is a deliberate deviation from a known requirement of the AGG-Dom. The word “deliberate” means the employee was aware of the AGG-Dom requirement and affirmatively chose to depart from it for operational reasons before the activity took place. Departures from the AGG-Dom may only be made in accordance with the guidance provided in this section.

2.6.2 (U) DEPARTURE FROM THE AGG-DOM IN ADVANCE

(U//~~FOUO~~) A departure from the AGG-Dom must be approved by the Director of the FBI, by the Deputy Director of the FBI, or by an Executive Assistant Director (EAD) designated by the Director. The Director of the FBI has designated the EAD National Security Branch (NSB) and the EAD Criminal Cyber Response and Services Branch (CCRSB) to grant departures from the AGG-Dom. Notice of the departure must be provided by Electronic Communication (EC) to the General Counsel (GC) and Internal Policy Office (IPO) using file number 333-HQ-C1629406. The Office of the General Counsel (OGC) must provide timely written notice of departures from the AGG-Dom to either the DOJ Criminal Division or National Security Division (NSD), whichever is appropriate, or to both, and the Criminal Division or NSD must notify the Attorney General and the Deputy Attorney General. Notwithstanding this paragraph, all activities in all circumstances must be carried out in a manner consistent with the Constitution and laws of the United States. (AGG-Dom, Part I.D.3.)

2.6.3 (U) EMERGENCY DEPARTURES FROM THE AGG-DOM

(U//~~FOUO~~) If a departure from the AGG-Dom is necessary without prior approval because of the immediacy or gravity of a threat to the safety of persons or property or to the national security, an FBI employee may, at his/her discretion, depart from the requirements of the AGG-Dom when the designated approving authority for the investigative activity cannot be contacted through reasonable means. The Director, the Deputy Director, or a designated EAD, the GC and IPO must be notified by EC of the departure as soon thereafter as practicable, but not more than 5 business days after the departure using file number 333-HQ-C1629406. The OGC must provide timely written notice of departures from the AGG-Dom to either the DOJ Criminal Division or NSD, whichever is appropriate, or to both of them, and the Criminal Division or NSD must notify the Attorney General and the Deputy Attorney General. Notwithstanding this paragraph, all activities in all circumstances must be carried out in a manner consistent with the Constitution and laws of the United States. (AGG-Dom, Part I.D.3.)

2.6.4 (U) RECORDS OF DEPARTURES FROM THE AGG-DOM

(U//~~FOUO~~) The OGC is responsible for maintaining records of all requests and approvals or denials of departures from the AGG-Dom. Records will be maintained in file number 333-HQ-C1629406.

2.7 (U) DEPARTURES FROM THE DIOG AND DIOG-RELATED POLICIES**2.7.1 (U) DEFINITION**

(U//~~FOUO~~) A “departure” from the DIOG is a deliberate deviation from a specific known requirement or action governed by the DIOG. The word “deliberate” means the employee was aware of the DIOG requirement and affirmatively chose to depart from it for operational reasons before the activity took place. Approval of a departure must be based upon a specific circumstance involving a specific administrative or operational need. An approval may be for the duration of an investigation or relate to a specific classification, cannot extend beyond the scope of authority of the approving official, and must be approved in accordance with the guidance provided in this subsection. (see DIOG-related policies)

(U//~~FOUO~~) DIOG related policy and policy guides (PG) must follow this departure review and approval process.

2.7.2 (U) DEPARTURE FROM THE DIOG AND DIOG-RELATED POLICIES

(U//~~FOUO~~) A request for a departure from the DIOG must be submitted with an EC using file number 333-HQ-C1629406 and must be approved by the appropriate operational program Assistant Director (AD) and the AD of OIC, with notice to the GC and IPO. The approving EC must document the scope; necessity; program-related value; specific circumstances that limit the departure’s application; and an evaluation of what, if any, risk the departure may create for systemic or unintended non-compliance with the DIOG or other policies. Notwithstanding this paragraph, all activities in all circumstances must be carried out in a manner consistent with the Constitution, laws of the United States, Executive Orders, Presidential Directives, Department of Justice guidelines, Office of the Director of National Intelligence policy directives and interagency agreements. (see DIOG-related policies)

(U//~~FOUO~~) OGC will review all departures from the DIOG. If OGC determines the departure from the DIOG also involves a departure from the AGG-Dom, OGC must provide timely written notice to DOJ in accordance with the provisions of Section I.D.3 of the AGG-Dom.

2.7.3 (U) EMERGENCY DEPARTURES FROM THE DIOG AND DIOG-RELATED PGs

(U//~~FOUO~~) FBI employees may conduct or engage in investigative activity that deviates from the requirements of the DIOG, including utilizing investigative methods, without prior approval, when the designated approving authority for the investigative activity (if any) cannot be contacted through reasonable means and in the judgment of the employee one of the following factors is present:

- A) (U ~~FOUO~~) *an immediate or grave threat to the safety of persons or property exists, or*
- B) (U ~~FOUO~~) *an immediate or grave threat to the national security exists, or*

C) (U ~~FOUO~~) a substantial likelihood exists that a delay will result in the loss of a significant investigative opportunity.¹

(U//~~FOUO~~) The appropriate operational program AD, the GC, OIC, and IPO must be notified of the emergency departure by EC using file number 333-HQ-C1629406 as soon as practicable, but no later than 5 business days after engaging in the activity or utilizing the investigative method. This documentation must also be filed in the applicable investigative file in which the activity or method was taken. OGC will review all departures from the DIOG. If OGC determines the departure from the DIOG also involves a departure from the AGG-Dom, OGC must provide timely written notice to DOJ in accordance with the provisions of Section I.D.3 of the AGG-Dom. Notwithstanding this paragraph, all activities in all circumstances must be carried out in a manner consistent with the Constitution, laws of the United States, Executive Orders, Presidential Directives, Department of Justice guidelines, Office of the Director of National Intelligence policy directives and interagency agreements.

2.7.4 (U) RECORDS OF DEPARTURES FROM THE DIOG AND DIOG-RELATED POLICIES

(U//~~FOUO~~) The OGC is responsible for maintaining records of all requests and approvals or denials of departures from the DIOG. Records will be maintained in file number 333-HQ-C1629406. (see DIOG-related policies)

2.8 (U) DISCOVERY OF NON-COMPLIANCE WITH DIOG AND DIOG-RELATED POLICIES REQUIREMENTS AFTER-THE-FACT

2.8.1 (U) SUBSTANTIAL NON-COMPLIANCE WITH THE DIOG AND DIOG-RELATED POLICIES

2.8.1.1 (U) SUBSTANTIAL NON-COMPLIANCE

(U//~~FOUO~~) “Substantial non-compliance” means non-compliance that is of significance to the matter and is more than a minor deviation from a DIOG requirement.² Non-compliance that relates solely to administrative or peripheral requirements is not substantial. While the examples listed below do not comprise an exhaustive list and are not required elements, substantial noncompliance specifically includes any of the following:

- A) (U//~~FOUO~~) The unauthorized use of an investigative method;
- B) (U//~~FOUO~~) The failure to obtain required supervisory approval;³ and
- C) (U//~~FOUO~~) Noncompliance that has a potential adverse effect upon a member of the public’s individual rights or liberties.

¹ (U//~~FOUO~~) This is not a permissible factor for departing from the AGG-Dom. Thus, this factor may only provide a basis for a departure from the DIOG that does not require a departure from the AGG-Dom.

² (U//~~FOUO~~) Departures from the AGG-Dom and the DIOG do not fall within the definition of “non-compliance” as used in this section. Departures are to be handled as described Sections 2.6 and 2.7 and should not be reported as “non-compliance” matters.

³ (U//~~FOUO~~) If supervisory approval was obtained pursuant to Section 2.7.3 (Emergency Departure from the DIOG), the failure to document this approval within 5 business days is a reportable “substantial non-compliance” matter.

(U//~~FOUO~~) **Example A:** During an Assessment, ASAC approval was not obtained before [redacted] to conduct surveillance.

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Because the approval was not obtained in advance nor was it done pursuant to an emergency situation as described in 2.7.3, this would be “substantial” non-compliance with DIOG sections 18.5.8.3.3 and 18.5.8.3.4 and must be reported to OIC as set forth in 2.8.2 below.

(U//~~FOUO~~) **Example B:** A new SSA arrives in a squad and discovers that his predecessor did not conduct file reviews in several of the squad’s predicated investigations for several months. This is “substantial non-compliance” and must be reported.

2.8.1.2 (U) OTHER NON-COMPLIANCE

(U//~~FOUO~~) An employee who discovers non-compliance that appears to be non-substantial must report the non-compliance to the Division Compliance Officer (DCO). Normally, non-compliance that is not “substantial” need not be reported to OIC. If there is uncertainty regarding whether a particular matter is substantial or not, the matter should be reported to OIC via EC using the “Report of Non-compliance with DIOG” template in Sentinel. Nevertheless, whenever non-compliance is discovered (whether reported or not), appropriate remedial action must be taken by the relevant employee(s) to correct the non-compliance, including implementing any preventative measures that would help eliminate possible future non-compliance.

(U//~~FOUO~~) **Example:** An SSA discovers that she conducted a file review 20 days late. This relates to an administrative requirement and, without more, is not “substantial” noncompliance and does not have to be reported to OIC. The SSA should, however, report the noncompliance to the DCO and take appropriate preventative measures to avoid recurrence.

2.8.2 (U) DOCUMENTATION OF SUBSTANTIAL NON-COMPLIANCE

(U//~~FOUO~~) Substantial non-compliance with the DIOG must be reported. The report should be submitted by the party committing the non-compliance, if at all possible. It must be reported via EC using the “Report of Non-Compliance with DIOG” template in Sentinel. The EC must include the following information:

- A) (U//~~FOUO~~) The relevant DIOG provision(s) involved;
- B) (U//~~FOUO~~) Description of the facts and circumstances (including dates) of the substantial non-compliance;
- C) (U//~~FOUO~~) The date the substantial non-compliance was discovered;
- D) (U//~~FOUO~~) Circumstances leading to the discovery of the substantial non-compliance;
- E) (U//~~FOUO~~) If the substantial non-compliance was the result of the failure to obtain appropriate supervisory approval, a statement as to whether that official, or the current official in the appropriate supervisory position, would have approved the action if a timely request had been made based on the facts and circumstances then known;
- F) (U//~~FOUO~~) Known adverse consequences, if any, attributable to the substantial non-compliance; and
- G) (U//~~FOUO~~) Corrective or remedial action(s) taken or planned to be taken to mitigate the substantial non-compliance, as well as to help prevent such occurrences in the future.

(U//~~FOUO~~) **Example:** An ASAC discovers that a Preliminary Investigation (PI) was extended without obtaining the proper approvals. The failure to obtain appropriate supervisory approval to extend the Preliminary Investigation must be reported, and the report must address all of the seven areas in A-G listed above.

2.8.3 (U) REPORTING AUTHORITIES

(U//~~FOUO~~) If the substantial non-compliance occurred in a field office, the EC must be approved by the DCO and addressed to the ADIC/SAC. If the substantial non-compliance occurred at FBI Headquarters (FBIHQ), the EC must be approved by the DCO and addressed to the employee's Assistant Director. A copy of the EC must be provided to the Office of Integrity and Compliance (OIC) and to the Office of the General Counsel (OGC) using file number 319O-HQ-A1561245-OIC. In addition, if the ADIC/SAC or AD assesses that the non-compliance appears to reflect intentional or willful misconduct; it must be reported separately by EC to the Internal Affairs Section of the Inspection Division.

2.8.4 (U) ROLE OF OIC AND OGC

(U//~~FOUO~~) OGC will review all reports of substantial non-compliance to determine whether any further action is required in the particular matter. OIC will analyze substantial non-compliance reports to determine whether any trends exist in the data and will develop strategies to reduce the occurrences of substantial non-compliance. Based upon OIC's analysis of these reports, if OIC discovers a systemic problem of non-compliance with the AGG-Dom or DIOG involving intelligence activities, either division or FBI wide, OIC must notify OGC/NSCLB of this systemic problem.

(U//~~FOUO~~) **Example A:** An IA discovers that a mail cover was used in an Assessment. Because mail covers are not permitted to be used in Assessments, this must be reported as a "substantial" non-compliance with the DIOG.

(U//~~FOUO~~) **Example B:** An SSA determines that a Type 1 & 2 Assessment was opened based solely on the exercise of First Amendment rights. While no supervisory approval was required to open the Type 1 & 2 Assessment, this must be reported as "substantial" non-compliance because opening an Assessment based solely on the exercise of First Amendment rights affects an individual's rights and liberties.

2.8.4.1 (U) DISCONTINUATION OF REPORTING

(U//~~FOUO~~) If OIC determines that a sufficient amount of data has been received regarding a particular substantial non-compliance issue to identify a systemic trend, the OIC AD may eliminate the reporting requirement by providing written notification to the field and headquarters divisions indicating that the reporting of a particular substantial non-compliance matter to OIC is no longer necessary or required. OIC must coordinate with OGC and IPO before written notification is provided to field and headquarters divisions to ensure no reporting obligations outside the FBI will be affected, and to ensure all logical data collection pertaining to the substantial non-compliance has been acquired. The OIC written notification must be documented in case file number 319O-HQ-A1561245-OIC.

2.8.5 **(U) POTENTIAL IOB MATTERS INVOLVING THE REPORTS OF SUBSTANTIAL NON-COMPLIANCE**

(U//~~FOUO~~) If the substantial non-compliance is also a potential IOB matter, the matter must be reported in accordance with the requirements and procedures for reporting potential IOB matters to OGC/NSCLB. See DIOG Section 4. No additional reporting of the incident needs to be made to OIC under this section.

2.8.6 **(U) REPORTING NON-COMPLIANCE WITH POLICY GUIDES**

(U//~~FOUO~~) Substantial non-compliance with DIOG-related Policy/Program Guides must be reported by EC or subsequent form to the SAC/ADIC, with a copy to the pertinent Headquarters Program Manager, and to the OIC, OGC, and the IPO using file number 319O-HQ-A1561245-OIC.

2.8.7 **(U) REPORTING NON-COMPLIANCE WITH OTHER FBI POLICIES AND PROCEDURES (OUTSIDE THE DIOG)**

(U//~~FOUO~~) Nothing in this section is intended to alter, limit, or restrict existing policies that require non-compliance to be reported in areas not covered by the DIOG. Employees remain responsible to report those other matters. Additional information can be found on the Office of Integrity and Compliance's Intranet site.

2.9 **(U) OTHER FBI ACTIVITIES NOT LIMITED BY AGG-DOM**

(U) The AGG-Dom applies to FBI domestic investigative activities and do not limit other authorized activities of the FBI. The authority for such other activities may be derived from the authority of the Attorney General as provided in federal statutes, guidelines, or Executive Orders. The scope and approval of these other authorized activities are addressed in the policies that govern the activity and these policies must be relied on when engaging in such activities. Examples of authorized FBI activities not governed by the AGG-Dom include, but are not limited to, the FBI's responsibilities to conduct background checks and inquiries concerning applicants and employees under federal personnel security programs (e.g., background investigations), FBI physical building security issues, Office of Professional Responsibility/personnel issues, certain administrative claims/civil actions, the FBI's maintenance and operation of national criminal records systems and preparation of national crime statistics, and the forensic assistance and administration functions of the FBI Laboratory. (AGG-Dom, Part I.D.4.) FBI employees must be cognizant that the authority underpinning these responsibilities cannot be utilized to further the objectives of FBI activities governed by the AGG-Dom without recognizing and mitigating the potential negative impact on public trust and the privacy and civil liberties of the affected person(s). For instance, FBI employees should not conduct or participate in the personnel security related background interview of an applicant to further the objectives of a separate criminal investigation of the applicant without appropriately considering sensitivities and the potential impact(s) upon public trust. Likewise, a strategic or defensive intelligence briefing provided to a federal official cannot be designed as an intelligence or evidence collection platform directed at that official, unless significant operational considerations preclude other means to achieve the intelligence or investigative activity.

(U) FBI employees may simultaneously obtain information relating to matters outside of the FBI's primary investigative responsibility. For example, information relating to violations of state or local law or foreign law may be simultaneously obtained in the course of investigating federal crimes or threats to the national security or in collecting foreign intelligence. Neither the AGG-Dom nor the DIOG bar the acquisition of such information in the course of authorized investigative activities, the retention of such information, or its dissemination as appropriate to the responsible authorities in other jurisdictions. (See Section 14; AGG-Dom, Part II and Part VI.B)

2.10 (U) USE OF CLASSIFIED INVESTIGATIVE TECHNOLOGIES

(U) Inappropriate use of classified investigative technologies may risk the compromise of such technologies. Hence, in an investigation relating to activities in violation of federal criminal law that does not concern a threat to the national security or foreign intelligence, the use of such technologies must be in conformity with the Procedures for the Use of Classified Investigative Technologies in Criminal Cases (AGG-Dom, Part V.B.2), *Domestic Technical Assistance (DTA) Policy Guide*, 0554DPG, and any other FBI policies concerning such technology use.

2.11 (U) APPLICATION OF AGG-DOM AND DIOG

(U//~~FOUO~~) The AGG-Dom and DIOG apply to all FBI domestic investigations and operations conducted by an “FBI employee” or an FBI confidential human source (CHS), when operating pursuant to the tasking or instructions of an FBI employee. The term “FBI employee” includes, but is not limited to, an operational/administrative professional staff person, intelligence analyst, special agent, task force officer (TFO), task force member (TFM), task force participant (TFP), detailee, and FBI contractor. Both an “FBI employee” and a CHS, when operating pursuant to the tasking or instructions of an FBI employee, are bound by the AGG-Dom and DIOG. In the DIOG, “FBI employee” includes all personnel descriptions, if not otherwise prohibited by law or policy. For example, if the DIOG states that the “FBI employee” is responsible for a particular investigative activity, the supervisor has the flexibility to assign that responsibility to any person bound by the AGG-Dom and DIOG (e.g., agent, intelligence analyst, task force officer), if not otherwise prohibited by law or policy.

(U//~~FOUO~~) TFOs, TFM, TFPs, detailees, and FBI contractors are defined as “FBI employees” for purposes of application of the AGG-Dom and DIOG. However, for overt representational purposes, TFOs, TFM, TFPs, detailees and FBI contractors should identify themselves as employees of their parent agency and, if appropriate and necessary, affiliated with a particular FBI investigative entity, such as the JTTF, etc. A CHS is likewise bound by the AGG-Dom, DIOG, *AGG-CHS*, and other applicable CHS policies when operating pursuant to the tasking or instructions of an FBI employee; however, the FBI CHS is not an employee of the FBI.

(U//~~FOUO~~) TFOs, TFM, TFPs, detailees, and FBI contractors are defined as “FBI employees” only for purposes of the AGG-Dom and DIOG. This inclusive definition does not define federal employment for purposes of the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2401, and 2671 et seq.; the Federal Employees Compensation Act, 5 U.S.C. § 8101 et seq.; the Intergovernmental Personnel Act, 5 U.S.C. § 3374 et seq., or any other law.

2.12 (U) JOINT INVESTIGATIONS

(U//~~FOUO~~) In joint investigations, the policy and procedures for conducting any investigative method or investigative activity by employees or CHSs are usually governed by FBI policy. Similarly, employees from other agencies who are participating in a joint investigation with the FBI are generally governed by their agencies' policies regarding approvals. If, however, the FBI has assumed supervision and oversight of another agency's employee (e.g., a full time JTTF Task Force Officer), then FBI policy regarding investigative methods or investigative activity controls. Similarly, if another agency has assumed supervision and oversight of a FBI employee, unless otherwise delineated by MOU, the other agency's policy regarding investigative methods or investigative activity controls.

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3 (U) CORE VALUES, ROLES, AND RESPONSIBILITIES

3.1 (U) THE FBI'S CORE VALUES

(U) The FBI's core values guide and further our mission and help us achieve our many goals. The values do not exhaust the many goals we wish to achieve, but they encapsulate the goals as well as can be done in a few words. The FBI's core values must be fully understood, practiced, shared, vigorously defended, and preserved. The values are:

- A) (U) Rigorous obedience to the Constitution of the United States
- B) (U) Respect for the dignity of all those we protect
- C) (U) Compassion
- D) (U) Fairness
- E) (U) Uncompromising personal integrity and institutional integrity
- F) (U) Accountability by accepting responsibility for our actions and decisions and their consequences
- G) (U) Leadership, by example, both personal and professional
- H) (U) Diversity

(U) By observing these core values, we achieve a high level of excellence in performing the FBI's national security and criminal investigative functions as well as the trust of the American people. Our individual and institutional rigorous obedience to constitutional principles and guarantees is more important than the outcome of any single interview, search for evidence, or investigation. Respect for the dignity of all reminds us to wield law enforcement powers with restraint and to avoid placing our self interest above that of those we serve. Fairness and compassion ensure that we treat everyone with the highest regard for constitutional, civil, and human rights. Personal and institutional integrity reinforce each other and are owed to our Nation in exchange for the sacred trust and great authority conferred upon us. Our institution strength lies in our diversity.

(U) We who enforce the law must not merely obey it. We have an obligation to set a moral example that those whom we protect can follow. Because the FBI's success in accomplishing its mission is directly related to the support and cooperation of those we protect, these core values are the fiber that holds together the vitality of our institution.

3.1.1 (U) COMPLIANCE

(U) All FBI personnel must fully comply with all laws, rules, and regulations governing FBI investigations, operations, programs and activities, including those set forth in the *ACIG-Dom*. We cannot, do not, and will not countenance disregard for the law for the sake of expediency in anything we do. The FBI expects its personnel to ascertain the laws and regulations that govern the activities in which they engage and to acquire sufficient knowledge of those laws, rules, and regulations to understand their requirements, and to conform their professional and personal conduct accordingly. Under no circumstances will expediency justify disregard for the law. FBI policy must be consistent with Constitutional, legal, and regulatory requirements. Additionally, the FBI must provide sufficient training to affected personnel and ensure that appropriate oversight monitoring mechanisms are in place.

(U//~~FOUO~~) In general, the FBI requires employees to report known or suspected failures to adhere to the law, rules or regulations by themselves or other employees, to any supervisor in the employees' chain of command; any Division Compliance Officer; any Office of the General Counsel (OGC) Attorney; any Inspection Division personnel; any FBI Office of Integrity and Compliance (OIC) staff; or any person designated to receive disclosures pursuant to the FBI Whistleblower Protection Regulation (28 Code of Federal Regulations § 27.1), including the Department of Justice (DOJ) Inspector General. For specific requirements and procedures for reporting "departures" and "non-compliance" with the AGG-Dom on the DIOG, see DIOG Section 2.

3.2 (U) INVESTIGATIVE AUTHORITY, ROLES AND RESPONSIBILITY OF THE DIRECTOR'S OFFICE

3.2.1 (U) DIRECTOR'S AUTHORITY, ROLES AND RESPONSIBILITY

(U//~~FOUO~~) The Director's authority is derived from a number of statutory and regulatory sources. For example, Sections 531 through 540a of Title 28, United States Code (U.S.C.), provide for the appointment of the Director and enumerate some of his powers. More importantly, with regard to promulgation of the DIOG, Section 301 of Title 5, U.S.C., authorizes the head of an Executive department to "prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property." The Attorney General, as head of the DOJ, has delegated the authority in Section 301 to the Director in a variety of orders and regulations. Foremost among these delegations are Subpart P and Section 0.137 of Title 28, Code of Federal Regulations (CFR). This DIOG is promulgated under the authority thus delegated.

(U//~~FOUO~~) The Director's role and responsibilities under the AGG-Dom and DIOG, include, among others, the approval or denial of departures from the AGG-Dom, Undisclosed Participation (UDP) (see DIOG Section 16) and Sensitive Operations Review Committee (SORC) matters (see DIOG Section 10).

3.2.2 (U) DEPUTY DIRECTOR'S AUTHORITY, ROLES AND RESPONSIBILITY

(U//~~FOUO~~) The Deputy Director is the proponent of the DIOG, and in that position has oversight regarding compliance with the DIOG and subordinate implementing procedural directives and divisional specific PGs. The Deputy Director is also responsible for the development and the delivery of necessary training and the execution of the monitoring and auditing processes.

(U//~~FOUO~~) The Deputy Director works through the Internal Policy Office (IPO) to ensure the following:

- A) (U//~~FOUO~~) The DIOG is updated as necessary to comply with changes in the law, rules, or regulations;
- B) (U//~~FOUO~~) The DIOG is continually reviewed, clarified, and updated based upon a number of factors, to include new or revised statutory requirements, executive orders, Attorney General Guidelines, and identified policy gaps or compliance issues. Therefore, the IPO, which is responsible for all FBI policy matters, coordinates with FBIHQ divisions and field offices to make policy revisions to the DIOG and the PGs whenever necessary and appropriate;

- C) (U//~~FOUO~~) Existing and proposed investigative and administrative policies and PGs comply with the standards established in the AGG-Dom and DIOG. On behalf of the Deputy Director, the IPO has the authority, following coordination with the OIC and OGC, to modify or remove any provision of existing or proposed investigative or administrative policies or PGs determined to violate, contradict, or otherwise modify the intent or purpose of any provision or standard established in the AGG-Dom or DIOG; and
- D) (U//~~FOUO~~) If the IPO makes any changes to the DIOG or other policy pursuant to DIOG Sections 3.2.2.B and/or 3.2.2.C above, the IPO will immediately advise by e-mail all FBIHQ Division Policy Officers (DPO) and field office policy officers (FPO) of such changes and all DPOs and FPOs must further advise their respective FBI employees of such changes. The electronic version of the DIOG maintained in the IPO's Policy Library is the official current policy of the FBI.

3.3 (U) SPECIAL AGENT/TASK FORCE OFFICER (TFO)/TASK FORCE MEMBER (TFM)/TASK FORCE PARTICIPANT (TFP)/FBI CONTRACTOR/OTHERS - ROLES AND RESPONSIBILITIES

3.3.1 (U) ROLES AND RESPONSIBILITIES

(U//~~FOUO~~) Special agents, TFO, TFM, TFP, FBI contractors and others bound by the AGG-Dom and DIOG must:

3.3.1.1 (U) TRAINING

(U//~~FOUO~~) Obtain training on the DIOG standards relevant to his/her position and perform activities consistent with those standards;

3.3.1.2 (U) INVESTIGATIVE ACTIVITY

(U//~~FOUO~~) Ensure all investigative activity complies with the Constitution, Federal law, executive orders, Presidential Directives, AGG-Dom, other Attorney General Guidelines (AGG), Treaties, Memoranda of Agreement/Understanding, the DIOG, and any other applicable legal and policy requirements (if an agent, TFO, or other individual is unsure of the legality of any action, he/she must consult with his/her supervisor, the Chief Division Counsel (CDC) or OGC);

3.3.1.3 (U) PRIVACY AND CIVIL LIBERTIES

(U//~~FOUO~~) Ensure that civil liberties and privacy are protected throughout the Assessment or investigative process;

3.3.1.4 (U) PROTECT RIGHTS

(U//~~FOUO~~) Conduct no investigative activity based solely on the exercise of First Amendment rights (i.e., the free exercise of speech, religion, assembly, press or petition) or on the race, ethnicity, gender, national origin, religion, disabilities, sexual orientation, or gender identity of the subject (See DIOG Section 4). Must carry out their operations consistent with their legal obligations to members of the public with disabilities under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794 and the implementing regulations for federally conducted activities. Must not unlawfully discriminate against

anyone with a disability and must treat persons with disabilities with professionalism and respect.

3.3.1.5 (U) COMPLIANCE

(U//~~FOUO~~) Ensure compliance with the DIOG, including standards for opening, conducting, and closing an investigative activity; collection activity; or use of an investigative method, as provided in DIOG section 18;

3.3.1.6 (U) REPORT NON-COMPLIANCE

(U//~~FOUO~~) Comply with the law, rules, or regulations, and report any non-compliance concern to the proper authority. For specific requirements and procedures for reporting departures and non-compliance with the AGG-Dom and the DIOG, see DIOG Sections 2.6 - 2.8;

3.3.1.7 (U) ASSIST VICTIMS

(U//~~FOUO~~) Identify victims who have suffered direct physical, emotional, or financial harm as result of the commission of federal crimes, offer the FBI's assistance to victims of these crimes, and provide victims' contact information to the responsible FBI victim specialist (VS). The VS is thereafter responsible for keeping victims updated on the status of the investigation to the extent permitted by law, regulation, or policy, unless the victim has opted not to receive assistance. The FBI's responsibility for assisting victims is continuous as long as there is an open investigation. Comprehensive requirements pertaining to the mandatory provision of services to victims are located in the *Victim Services Policy Guide (1010PG)*;

3.3.1.8 (U) OBTAIN APPROVAL

(U//~~FOUO~~) Ensure appropriate supervisory approval is obtained for investigative activity as required in the DIOG. Obtain and document oral approval as specified in Section 3.5.2.2 below. Self-approval of DIOG activities is not permitted. See “No Self-Approval Rule” set forth in Section 3.5.2.3 below;

3.3.1.9 (U) ATTRIBUTE INFORMATION TO ORIGINATOR IN REPORTS

(U//~~FOUO~~) Ensure that if the originator of information reported to the FBI characterizes an individual, group, or activity in a certain way, FBI records (i.e., 302s, ECs, LHM_s, etc.) reflect that another party, and not the FBI, is the originator of the characterization. Example: An FBI document should state: “The complainant advised that the subject was prejudiced and motivated by ethnic bias” rather than “The subject was prejudiced and motivated by ethnic bias.”

3.3.1.10 (U) SERVE AS INVESTIGATION (“CASE”) MANAGER

(U//~~FOUO~~) If assigned responsibility for an investigation, manage all aspects of that investigation, until it is assigned to another person. It is the case manager's responsibility to ensure compliance with all applicable laws, rules, regulations, and guidelines, both investigative and administrative, from the opening of the investigation through disposition of the evidence, until the investigation is assigned to another person. If assigned as a co-case agent, co-case manager, or if assigned case-related activities or duties, it is that employee's responsibility to ensure compliance with all applicable laws, rules, regulations, and

guidelines, both investigative and administrative, from the opening of the investigation through disposition of the evidence, until the investigation is assigned to another person or the case related activity requirement(s) ends.

3.3.1.11 (U) CREATE AND MAINTAIN RECORDS/FILES

(U//~~FOUO~~) Create and maintain authentic, reliable, and trustworthy records, establish files, set leads, supervise investigations, index documents, and retain and share information, as specified in DIOG Section 14 and Appendix J;

3.3.1.12 (U) INDEX DOCUMENTS

(U//~~FOUO~~) If assigned responsibility for an investigation, index information in documents. Current guidance for indexing documents may be found in DIOG Appendix J, the Sentinel homepage and on the IMD Intranet site.

3.3.1.13 (U) SEEK FEDERAL PROSECUTION

(U//~~FOUO~~) Prefer Federal prosecution rather than state/local prosecution. Protect the FBI's resources and interests when discussing investigations with the United States Attorney's Office (USAO) by accurately representing the time and effort spent on an investigation. The USAO should be aware of this information prior to deciding whether he/she will decline prosecution in favor of handling by local authorities. Criminal investigations conducted by the FBI are designed to obtain evidence for prosecution in Federal court and not in state or local courts; and

3.3.1.14 (U) RETAIN ORIGINAL NOTES MADE DURING AN INVESTIGATION

(U//~~FOUO~~) Retain in the investigative file (1A envelope) the following types of material developed when interviewing witnesses:

- A) (U) Statements signed by the witness.
- B) (U) Written statements, unsigned by the witness, but approved or adopted in any manner by the witness.
- C) (U) Original notes of interview with prospective witnesses and/or suspects and subjects. In any interview in which preparation of an FD-302 is required (i.e., an interview in which it is anticipated the results will become the subject of court testimony), the handwritten notes must be retained. If interview notes are typed into a mobile electronic device (e.g., a laptop or an electronic tablet), the electronic notes must either be printed or saved to a removable electronic storage media in accordance with the Mobile Devices and Mobile Applications Policy Guide (1061PG) and Policy Directive 0247D, Removable Electronic Storage (RES) Media Protection, and retained in the same manner as original handwritten notes.
- D) (U) Dictating the results of an interview onto an audio tape/media in lieu of taking handwritten interview notes may be viewed by a court as "original notes" and, therefore, the audio tape/media must be retained. In such circumstances, the audio tape/media becomes the "original note" material. Conversely, an audio tape/media used for dictation from handwritten interview notes for transcription to a final FD-302 is not "original note" material and the audio tape need not be retained.
- E) (U) An FBI employee's notes made to record his/her own finding, must always be retained. Such notes include, but are not limited to, accountant's work papers and notes

covering matters such as crime scene searches, laboratory examinations, and fingerprint examinations. If there is a question whether notes must be retained, resolve the question in favor of retaining the notes.

(U) See also DIOG Section 18.5.6.4.15 (Interview Documentation).

(U) *Note:* For the purpose of this note retention policy, an interview and an interrogation are analogous.

(U//~~FOUO~~) All original handwritten interview notes must be retained as "original note material" in the 1A section of a file. The original handwritten notes may be scanned, but the physical original handwritten notes must be retained regardless of whether or not the notes are scanned. Also see *Importing Nontransitory Records into Sentinel and Preserving Certain Investigative Nontransitory Records in Original Formats (1001D)*.

3.3.2 (U) DEFINITIONS OF TASK FORCE OFFICER (TFO), TASK FORCE MEMBER (TFM), AND TASK FORCE PARTICIPANT (TFP)

(U//~~FOUO~~) In some situations, the sponsoring agency of a TFO, a TFM, or a TFP⁴ is required to enter into a memorandum of understanding (MOU) with the FBI that governs the activities of the task force. For purposes of the DIOG, "TFO", "TFM", and "TFP" are defined as follows:

3.3.2.1 (U) TASK FORCE OFFICER

(U//~~FOUO~~) An individual is a TFO when all of the following apply:

- A) (U//~~FOUO~~) The individual is a certified federal, state, local, territorial, or tribal law enforcement officer.
- B) (U//~~FOUO~~) The individual is authorized to carry a firearm.
- C) (U//~~FOUO~~) The individual is currently deputized under either Title 21 or Title 18 of the U.S.C.
- D) (U//~~FOUO~~) The individual is eligible and has initiated the FBI's process for obtaining federal law enforcement credentials.
- E) (U//~~FOUO~~) The individual is assigned under the supervision of an FBI-led task force.
- F) (U//~~FOUO~~) The individual has initiated a request for a security clearance issued by the FBI. *Note:* If the TFO fails to complete the security clearance process, he or she must be removed as a TFO.
- G) (U//~~FOUO~~) The individual is authorized to have access to FBI facilities.

(U//~~FOUO~~) An FBI TFO is mandated to attend all DIOG related training, and is bound by all rules, regulations, and policies set forth in the DIOG when acting in the capacity as an FBI TFO.

3.3.2.2 (U) TASK FORCE MEMBER

(U//~~FOUO~~) An individual is a TFM when all of the following apply:

- A) (U//~~FOUO~~) The individual is an employee of a federal, state, local, territorial, or tribal agency.
- B) (U//~~FOUO~~) The individual is assigned under the supervision of an FBI-led task force.

⁴ (U) A TFO, a TFM, or a TFP must follow their own agency's deadly force policy; however, a TFO, a TFM, or a TFP is bound by the *FBI's Less-Than-Lethal Devices Policy Guide*, 0517DPC.

C) (U//~~FOUO~~) The individual has a security clearance recognized by the FBI that is currently active.

D) (U//~~FOUO~~) The individual is authorized to have access to FBI facilities.

(U//~~FOUO~~) An FBI TFM is mandated to attend all DIOG-related training and is bound by all rules, regulations, and policies set forth in the DIOG when acting in the capacity as an FBI TFM.

3.3.2.3 (U) TASK FORCE PARTICIPANT

(U//~~FOUO~~) An individual is a TFP when all of the following apply:

- A) (U//~~FOUO~~) The individual is an employee of a federal, state, local, territorial, or tribal agency⁵.
- B) (U//~~FOUO~~) The individual does not otherwise qualify as a TFO or a TFM.
- C) (U//~~FOUO~~) The individual has been approved as a TFP by the supervisor responsible for the task force, and the approval has been documented in the appropriate task force file.

Example: A civilian employee of another federal agency may have a particular expertise that is needed by the task force, but the employee does not satisfy the requirements to be a TFO (e.g., not a sworn law enforcement officer) or a TFM (e.g., does not have a security clearance).

(U//~~FOUO~~) When participating as an FBI TFP, the TFP is bound by the rules, regulations, and policies set forth in the DIOG. DIOG-related training for a TFP may be required by the head of the field office/FBIHQ division that governs the activities of the task force.

3.4 (U) INTELLIGENCE ANALYSTS (IA) AND PROFESSIONAL INVESTIGATIVE STAFF⁶

3.4.1 (U) ROLES AND RESPONSIBILITIES

3.4.1.1 (U) INTELLIGENCE ANALYSTS

(U) IAs review and analyze internal and public information to identify its intelligence value; prepare and disseminate intelligence products; identify new sources of information; and communicate with other members of the intelligence and law enforcement communities to gain a better understanding of threats, sources of information, operations, missions, and intelligence requirements. The roles and responsibilities of IAs further investigative operations by identifying emerging threats and trends; enhancing collection capabilities in the field and at FBIHQ; and assessing and communicating to investigators, relevant FBI entities, and members of the intelligence and law enforcement communities real-time, analytic

⁵ (U//~~FOUO~~) While persons or entities in the private sector may be asked or may volunteer to assist in FBI investigations, they cannot be TFPs on FBI-led task forces.

⁶ This subsection does not include guidance on [redacted] position. See the [redacted] for information on the position.

judgments regarding specific threats. IAs may provide support to investigative and intelligence operations as set forth in this subsection.

3.4.1.2 (U) PROFESSIONAL INVESTIGATIVE STAFF

(U) Professional investigative staff includes forensic accountants, staff operations specialists (SOS), nonagent computer scientists, nonagent Computer Analysis and Response Team members, operational support technicians (OST), language analysts (LA), and contract linguists. Oftentimes, professional investigative staff may be asked to participate in investigative or intelligence operations and/or provide administrative support to FBIHQ operational units and/or field office squads. Professional investigative staff may provide support to investigative and intelligence operations as set forth in this subsection.

(U) For the specific roles and responsibilities of Language Analysts and Contract Linguists, see the *Foreign Language Program Policy Directive and Policy Guide (0645DPG)*, subsection 3.5.1.

(U) For the specific roles and responsibilities of SOSs, see the *Intelligence Program Policy Guide (1150PG)*, subsection 2.23.

3.4.2 (U) INVESTIGATIVE OR INTELLIGENCE ACTIVITIES

(U//~~FOUO~~) When involved in investigative or intelligence activities, IAs and professional investigative staff are bound by the AGG-Dom, other applicable investigative AG Guidelines, and the DIOG.

3.4.2.1 (U) TRAINING

(U//~~FOUO~~) IAs and professional investigative staff must obtain training on the DIOG standards relevant to their respective positions, and must perform activities consistent with those standards.

3.4.2.2 (U) INVESTIGATIVE ACTIVITIES

(U//~~FOUO~~) IAs and professional investigative staff must ensure that all investigative and intelligence activities in which they are involved comply with the Constitution, federal law, executive orders, Presidential directives, the AGG-Dom, other AGGs, treaties, memorandums of agreement (MOA)/memorandums of understanding (MOU), the DIOG, and applicable policy directives (PD) and policy guides (PG). If an IA or a professional investigative staff employee is unsure of the legality of any action, he or she must consult with his or her supervisor, the chief division counsel (CDC), or the Office of General Counsel (OGC).

(U//~~FOUO~~) IAs and professional investigative staff must ensure that briefing materials, presentations, and reports are produced and disseminated in accordance with FBI policies and must ensure that proper protocols and dissemination controls are used in accordance with the DIOG and other FBI information-sharing policies.

3.4.2.3 (U) ASSIGNMENT AS CASE MANAGERS AND PARTICIPANTS

(U) IAs may be assigned as case managers or co-case managers for Type 3 and Type 4 Assessments. For additional requirements on opening Type 3 and Type 4 Assessments, see subsections 5.6.3.2.8 and 5.6.3.3.7. The case management responsibilities in Type 5 Assessments can be found in Section 3 of the *Confidential Human Source Policy Guide (CHSPG) (1162PG)*.

IAs and professional investigative staff employees may be assigned as case participants for other Assessments and in predicated investigations; however, IAs and professional investigative staff

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3.4.2.4 **(U//~~FOUO~~) USE AND APPROVAL REQUIREMENTS OF AUTHORIZED INVESTIGATIVE METHODS**

3.4.2.4.1 **(U//~~FOUO~~) METHODS AVAILABLE PRIOR TO OPENING AN ASSESSMENT AND DURING AN ASSESSMENT**

(U//~~FOUO~~) Only the following investigative methods, as set forth in subsection 5.1.1, may be used by an IA or a professional investigative staff employee prior to opening an Assessment or in an Assessment assigned to them:

- A. (U//~~FOUO~~) Subsection 5.1.1.1., “Public Information” (except that they may not be approved to attend religious services or events or activities of sensitive organizations (see subsection 18.5.1.3.1))
- B. (U//~~FOUO~~) Subsection 5.1.1.2, “Records or Information – FBI and DOJ”
- C. (U//~~FOUO~~) Subsection 5.1.1.3, “Records or Information – Other Federal, State, Local, Tribal, or Foreign Government Agency”
- D. (U//~~FOUO~~) Subsection 5.1.1.4, “Online Services and Resources” (see Appendix L)
- E. (U//~~FOUO~~) Subsection 5.1.1.5, “Clarifying Interview” of the complainant or the person who initially furnished the information. A clarifying interview is limited for the sole purpose of eliminating confusion in the original allegation or information provided. It is not intended to be an “interview” as described in 18.5.6.
- F. (U//~~FOUO~~) Subsection 5.1.1.6, “Information Voluntarily Provided by Government or Private Entities” (except that they may not perform consent searches. Instead, such searches must be performed by SAs or TFOs).

(U//~~FOUO~~) In Type 5 Assessments (only), IAs are permitted to use the investigative methods as set forth in DIOG subsection 5.6.3.4.8 and in Section 3 of the CHSPQ.

3.4.2.4.2 **(U//~~FOUO~~) ASSISTING SAs/TFOs IN THE USE OF OTHER INVESTIGATIVE METHODS IN ASSESSMENTS, PRELIMINARY INVESTIGATIONS, AND FULL INVESTIGATIONS**

(U//~~FOUO~~) If requested by an SA or TFO, IAs and professional investigative staff employees may assist SAs or TFOs in the use of investigative methods beyond those outlined in subsection 3.4.2.4.1. However, in some circumstances, it would be inappropriate or unsafe for an IA or a professional investigative staff employee to assist an SA or TFO in the use of investigative methods beyond those outlined in subsection 3.4.2.4.1. Therefore, the SA or TFO is responsible for exercising sound judgment in determining whether to request an IA or professional investigative staff employee to assist in the use of an investigative method beyond those outlined in subsection 3.4.2.4.1, as well as in determining whether the use of such methods requires the physical presence of an SA or TFO.

(U//~~FOUO~~) **Example 1:** An SA may request an IA or professional investigative staff employee to electronically serve an administrative subpoena for telephone subscriber records in a drug investigation.

(U//~~FOUO~~) **Example 2:** An SA may request a language specialist to accompany and participate with him or her in an office interview of a human trafficking victim who speaks a foreign language. A different determination concerning the language specialist’s assistance would likely be made if the interview were to take place at an unsafe location.

(U//~~FOUO~~) (Note: See CHSPG, Section 2, for guidance regarding contact with, or debriefing of, a Potential CHS or CHS).

3.4.2.5 (U) PRIVACY AND CIVIL LIBERTIES

(U//~~FOUO~~) IAs and professional investigative staff must ensure that civil liberties and privacy are protected throughout the Assessment or investigative process.

3.4.2.6 (U) PROTECT RIGHTS

(U//~~FOUO~~) IAs and professional investigative staff must not conduct investigative activity based solely on the exercise of First Amendment rights (i.e., the free exercise of speech, religion, assembly, press, or petition) or on the race, ethnicity, gender, national origin, religion, disabilities, sexual orientation, or gender identity of the subject. (See DIOG Section 4.)

3.4.2.7 (U) COMPLIANCE

(U//~~FOUO~~) IAs and professional investigative staff must ensure compliance with the DIOG, including standards for opening, conducting, and closing investigative activities; collection activities; or the use of investigative methods, as provided in DIOG section 18.

3.4.2.8 (U) REPORT NONCOMPLIANCE

(U//~~FOUO~~) IAs and professional investigative staff must comply with laws, rules, and regulations, and must report any noncompliance concerns to the proper authorities. For specific requirements and procedures for reporting departures and noncompliance with the AGG-Dom and the DIOG, see DIOG subsections 2.6 through 2.8.

3.4.2.9 (U) ASSIST VICTIMS

(U//~~FOUO~~) IAs and professional investigative staff may assist agents and TFOs in identifying victims who have suffered direct physical, emotional, or financial harm as a result of the commission of federal crimes by providing victim contact information to the responsible FBI victim specialist (VS). The VS is thereafter responsible for keeping victims updated on the status of the investigation—to the extent permitted by laws, regulations, or policies, unless the victim has opted to not receive assistance. The FBI's responsibility for assisting victims is continuous, as long as there is an open investigation. Comprehensive requirements pertaining to the mandatory provision of services to victims are located in the Victim Services Policy Guide (1010PG).

3.4.2.10 (U) OBTAIN APPROVAL

(U//~~FOUO~~) Ensure appropriate supervisory approval is obtained for investigative activity, as required in the DIOG. Obtain and document oral approval as specified in this subsection and in

subsection 3.5.2.2 below. Self-approval of DIOG activities is not permitted. See subsection 3.5.2.3 below.

3.4.2.11 (U) ATTRIBUTE INFORMATION TO ORIGINATOR IN REPORTS

(U//~~FOUO~~) Ensure that if the originator of information reported to the FBI characterizes an individual, a group, or an activity in a certain way, FBI records (e.g., FD-302s, electronic communications [EC], and letterhead memorandums [LHM]) reflect that another party, and not the FBI, is the originator of the characterization.

(U//~~FOUO~~) **Example:** An FBI document should state: “The complainant advised that the subject was prejudiced and motivated by ethnic bias” rather than “The subject was prejudiced and motivated by ethnic bias.”

3.4.2.12 (U) SERVE AS ASSESSMENT (“CASE”) MANAGER

(U//~~FOUO~~) If an IA is assigned responsibility for a Type 3, a Type 4, or a Type 5⁷ Assessment, he or she is to manage all aspects of that Assessment until it is assigned to another person. It is the IA's responsibility to ensure compliance with all applicable laws, rules, regulations, and guidelines, both investigative and administrative, from the opening of the Assessment through disposition of the evidence, until the Assessment is assigned to another person or the case-related activity requirement(s) ends.

3.4.2.13 (U) CREATE AND MAINTAIN RECORDS AND FILES

(U//~~FOUO~~) Create and maintain authentic, reliable, and trustworthy records; establish files; set leads; index documents; and retain and share information, as specified in DIOG Section 14 and Appendix J. Ensure the proper storage, handling, and maintenance of accumulated data or documents. Original notes taken while participating in an interview, as well as substantive e-communications, must be preserved in accordance with DIOG subsections 3.3.1.14 and 3.3.1.15.

3.4.2.14 (U) INDEX DOCUMENTS

(U//~~FOUO~~) If assigned responsibility for an Assessment, IAs and professional investigative staff must index information in documents. Current guidance for indexing documents may be found in DIOG Appendix J, the Sentinel homepage, and on the Information Management Division (IMD) BuNet site.

3.5 (U) SUPERVISOR ROLES AND RESPONSIBILITIES

3.5.1 (U) SUPERVISOR DEFINED

(U) The term “supervisor” as used in the DIOG includes (whether in a Field Office or FBIHQ) the following positions, or a person acting in such capacity:

- A) (U) Supervisory Special Agent (SSA)
- B) (U) Supervisory Senior Resident Agent (SSRA)
- C) (U) Supervisory Intelligence Analyst (SIA)

⁷ (U//~~FOUO~~) Per DIOG subsection 5.6.3.4.1.3, an IA is not permitted to be the case manager for the recruitment phase of a Type 5 Assessment.

- D) (U) Senior Supervisory Intelligence Analyst (SSIA)
- E) (U) Legal Attaché (LEGAT)
- F) (U) Deputy Legal Attaché (DLAT)
- G) (U) Unit Chief (UC)
- H) (U) Assistant Special Agent in Charge (ASAC)
- I) (U) Assistant Section Chief (ASC)
- J) (U) Section Chief (SC)
- K) (U) Special Agent in Charge (SAC)
- L) (U) Deputy Assistant Director (DAD)
- M) (U) Assistant Director (AD)
- N) (U) Assistant Director in Charge (ADIC)
- O) (U) Associate Executive Assistant Director (A/EAD)
- P) (U) Executive Assistant Director (EAD)
- Q) (U) Associate Deputy Director (ADD)
- R) (U) Deputy Director (DD)

(U) The term “supervisor” is also intended to include any other FBI supervisory or managerial position that is not specifically listed above but is equal in rank and/or responsibility to these listed positions. (*Note:* TFOs/TFMs cannot be supervisors.)

(U//~~FOUO~~) The official position equivalents between the field offices and FBIHQ are outlined below. In general, an equivalent position at either the field or FBIHQ may exercise DIOG authority, unless the DIOG specifically limits a given authority, or whenever a specific position is assigned the authority as part of its responsibilities (e.g., SSIA, ASAC). The equivalent positions are:

- A) (U//~~FOUO~~) Field Office Analyst or Special Agent = FBIHQ Analyst or Special Agent
- B) (U//~~FOUO~~) Field Office SIA = FBIHQ SIA
- C) (U//~~FOUO~~) CDC = FBIHQ OGC General Attorney
- D) (U//~~FOUO~~) Field Office SSA = FBIHQ SSA
- E) (U//~~FOUO~~) Field Office ASAC = FBIHQ UC
- F) (U//~~FOUO~~) SAC = FBIHQ SC
- G) (U//~~FOUO~~) ADIC = FBIHQ AD

3.5.2 (U) SUPERVISOR RESPONSIBILITIES

3.5.2.1 (U) APPROVAL/REVIEW OF INVESTIGATIVE OR COLLECTION ACTIVITIES

(U//~~FOUO~~) Anyone in a supervisory role who approves/reviews investigative or collection activity must determine whether the standards for opening, approving, conducting, and closing an investigative activity, collection activity or investigative method, as provided in the DIOG, have been satisfied.

(U//~~FOUO~~) Only FBI supervisory employees and representatives from other government agencies (OGA) assigned to the FBI under the Joint Duty Assignment Program or the Intergovernmental Personnel Act as supervisors (as defined in DIOG subsection 3.5.1) may approve the serialization of investigative records into Sentinel. Additionally, whenever an OGA supervisor (as described above) approves an investigative record, an FBI supervisor must also approve the record into Sentinel. An OGA supervisor may not approve investigative methods (i.e., DIOG Section 18 methods) or investigative activities (e.g., UDP and OIA).

(U//~~FOUO~~) Nonsupervisory employees, nonsupervisory OGA personnel, government contractors, detailees, task force officers (TFO), task force members (TFM), and task force participants (TFP) are not permitted to approve investigative records into Sentinel; however, they may draft such records for supervisory review and approval.

3.5.2.2 (U) ORAL AUTHORITY/APPROVAL

(U//~~FOUO~~) Unless otherwise specified by the AGG–Dom or FBI policy, any authority/approval required in the DIOG necessary to conduct investigative activities may be granted orally by the appropriate approving official. Should such oral authorization be granted, appropriate written documentation of the oral authorization must be documented by the FBI employee to the authorizing official as soon as practicable, but not more than five business days after the oral authorization. The effective date of any such oral authorization is the date on which the oral authority was granted, and that date and the name of the approving official must be included in the subsequent written documentation.

(U//~~FOUO~~) Supervisors are not permitted to self-approve investigative or intelligence collection activity or methods in assessments or investigations assigned to them as case agents or analysts. An independent evaluation and approval of these activities must be obtained including the opening and closing of any Assessment or predicated investigation. See Section 3.5.2.3 below.

3.5.2.3 (U) NO SELF-APPROVAL RULE

(U//~~FOUO~~) When approval/authority is required in the DIOG, or related policy guides, to open, utilize an investigative method, close, or perform any administrative requirement within the scope of the DIOG (i.e. initial paperwork to a file, perform a file review, etc.), an approving official (supervisor) may not “self-approve” his/her own work or activity. An independent evaluation and approval of these activities must be obtained, including the opening and closing of any Assessment or predicated investigation. *Note:* See Records Management Policy Guide, 0769PG subsection 4.7.2, for guidance on administrative case files.

(U//~~FOUO~~) In the event that an FBI employee errantly conducts a self-approval, the approval is considered “substantial non-compliance” (as described in DIOG subsection 2.8.1.1.B) and must be documented in accordance with DIOG subsection 2.8.2.

(U//~~FOUO~~) Example: An SSA/SIA properly designates a relief supervisor on the squad to act as the SSA/SIA while the supervisor is on leave. The relief SSA/SIA may not approve anything related to his/her own investigations/work because supervisors are not permitted to self-approve investigative or intelligence collection activity or methods in files assigned to themselves.

(U//~~FOUO~~) Example: An SSA conducts a follow-up interview of a complainant, who provides material information regarding criminal activity. The SSA drafts an FD-302 of the interview to document the information. The SSA must either seek approval of the FD-302 from another SSA or from a supervisor at a higher level (e.g., ASAC or SAC).

3.5.2.4 (U) ENSURE COMPLIANCE WITH U.S. REGULATIONS AND OTHER APPLICABLE LEGAL AND POLICY REQUIREMENTS

(U//~~FOUO~~) Supervisors must monitor and take reasonable steps to ensure that all investigative activity, collection activity and the use of investigative methods comply with the Constitution, Federal law, Executive Orders, Presidential Directives, AGG-Dom, other AGG, Treaties, Memoranda of Agreement/Understanding, the DIOG, and any other applicable legal and policy requirements.

3.5.2.5 (U) TRAINING

(U//~~FOUO~~) Supervisors must obtain training on the DIOG standards relevant to his/her position and then conform decisions to those standards. Supervisors must also take reasonable steps to ensure that all subordinates have received the required training on the DIOG standards and requirements relevant to the subordinate's position.

3.5.2.6 (U) PROTECT CIVIL LIBERTIES AND PRIVACY

(U//~~FOUO~~) All supervisors must take reasonable steps to ensure that civil liberties and privacy are protected throughout the investigative process.

3.5.2.7 (U) REPORT COMPLIANCE CONCERNs

(U//~~FOUO~~) If a supervisor encounters a practice that does not comply, or appears not to comply, with the law, rules, or regulations, the supervisor must report that compliance concern to the proper authority and, when necessary, take action to maintain compliance. For specific requirements and procedures for reporting departures and non-compliance with the AGG-Dom and the DIOG, see Sections 2.6 - 2.8.

3.5.2.8 (U) NON-RETALIATION POLICY

(U//~~FOUO~~) Supervisors must not retaliate or take adverse action against persons who raise compliance concerns. (See *Non-retaliation Policy for Reporting Compliance Risks Policy Directive*, 0727D)

3.5.2.9 (U) CREATE AND MAINTAIN RECORDS/FILES

(U//~~FOUO~~) Supervisors must ensure that FBI employees create and maintain authentic, reliable, and trustworthy records, establish files, set leads, supervise investigations, index information in documents, and retain and share information, as specified in DIOG Section 14.

(U//~~FOUO~~) Supervisors must periodically review investigative, control, and administrative files assigned to their areas of program responsibility or management in accordance with DIOG subsection 3.5.4 below.

3.5.2.10 (U//~~FOUO~~) CERTIFICATIONS FOR IMMIGRATION BENEFITS

(U//~~FOUO~~) Pursuant to the Memorandum of Delegation signed December 10, 2014, the SAC (nondelegable) has the authority to sign OMB Form I-918b as the certifying official to assist non-U.S. citizens who have suffered federal, state or local offenses such as rape, torture, human trafficking, slave trade, and extortion who are residing temporarily in the United States, if that person can provide specific relevant facts to the investigation or prosecution of the criminal activity in question. Whenever the SAC serves as the certifying official, the USAO prosecuting the matter must be notified in writing of the action as soon as practicable, but no more than [redacted] from the date of certification." b7E

(U//~~FOUO~~) Additionally, field office heads (i.e., ADICs/SACs) have the authority to sign Department of Homeland Security (DHS) forms as the certifying official for Continued Presence requests (a program to assist victims of a severe form of trafficking). See the *Licium Services Policy Guide (1010PG)* for complete requirements and procedures.

3.5.3 (U) DELEGATION AND SUCCESSION IN THE FBI

(U//~~FOUO~~) The ability to exercise legal authority within the FBI through delegations of legal authority and orderly succession to positions of authority is set forth in the *Succession and Delegation Policy Directive, 0259D*. A DIOG related policy or PG must adhere to the delegation and succession of authority standards, requirements and procedures established by the DIOG.

3.5.3.1 (U) DELEGATION

(U//~~FOUO~~) As used in the DIOG, the term “delegation” refers to the conveyance of authority to another official (either by position or to a named individual). FBI authority is delegable one supervisory level unless expressly permitted, prohibited, or restricted by law, regulation, or policy. For example, an SAC may delegate his/her authority to approve Sensitive Investigative Matters (SIMs) to an ASAC, but the ASAC cannot further delegate this authority to an SSA. Delegations will continue in effect until modified, revoked, superseded, the position no longer exists, or the named individual vacates the position. A supervisor may only delegate authority to another supervisor one level junior to himself or herself, unless specified otherwise (e.g., an ASAC may delegate authority to an SSA). SACs may restrict delegations within their field offices (e.g., an SAC may prohibit an ASAC from delegating authorities that are assigned to them).

(U//~~FOUO~~) SSAs and Supervisory Intelligence Analysts (SIA) cannot “delegate” their authority because they are the first level of supervisory responsibility; however, a relief supervisor may exercise the SSA’s authority when serving as the “acting” SSA (e.g., when the SSA is absent or unavailable). In the absence of the immediate approval authority, a supervisor at the same or higher level than that required may approve a particular activity (e.g., a Special Agent requests that his/her ASAC or SAC approve a Preliminary Investigation because the agent’s SSA is on a temporary duty assignment).

(U//~~FOUO~~) It is recognized that the first line supervisor’s role in mentoring and training relief supervisors is often accomplished by assigning tasks to those employees while the supervisor is present or available. This type of activity is permitted so long as the supervisor is monitoring the progress and outcome(s) of the assignments and is not abdicating the responsibilities associated with his or her supervisory position. For example, an SSA may

assign a relief supervisor to routinely review and assign investigative leads to others on the squad. This type of task promotes effective supervision and provides a monitored opportunity for the relief supervisor to hone his or her management abilities.

3.5.3.2 (U) SUCCESSION: ACTING SUPERVISORY AUTHORITY

(U//~~FOUO~~) As used in the DIOG, the term “succession” refers to the process by which an official assumes the authorities and responsibilities of an existing position, typically when the incumbent is absent, unavailable, unable to carry out official responsibilities, or has vacated the position. A person who temporarily succeeds to a position is referred to as “acting” in that position.

(U//~~FOUO~~) The FBI follows the general rule, recognized in law, that employees properly designated as “acting” in a position exercise the full legal authorities of that position, unless specifically precluded by higher authority or by an applicable law, regulation, or policy. Accordingly, unless expressly precluded, any authority vested in an FBI supervisor pursuant to the DIOG may be exercised by someone who occupies that position in an acting status. An employee may be designated to an acting position either through a succession plan or ad hoc designation. See the *Succession and Delegation Policy Directive*, 0259D for additional details.

3.5.3.3 (U) DOCUMENTATION

(U//~~FOUO~~) Delegations of authority as well as succession plans and ad hoc designations must be documented in writing and maintained in the appropriate administrative file identified below whenever practicable, unless specifically required by the DIOG. Administrative files have been created by IMD to maintain documentation of delegations of authority, to include ad hoc designations and succession plans.

3.5.3.3.1 (U//~~FOUO~~) “DELEGATIONS OF AUTHORITY RELATED TO SENIOR EXECUTIVES” – FILE 319X-HQ-A1700684-XX

(U//~~FOUO~~) File 319X-HQ-A1700684-XX, with the last two alpha characters designating a particular field office, FBIHQ Division, or LEGAT, must be used to document delegations of authority related to the responsibilities of senior executive positions (defined in the Director & Senior Officials [07-01] Retention Schedule) as only the Director, Deputy Director, Chief of Staff, Associate Deputy Director, and Executive Assistant Director(s). (*Note*: This file does not include Senior Executive Service [SES] delegations of authority. Such delegations of authority by SES and all other supervisory management officials must be documented using the file specified below in DIOG Section 3.5.3.3.2)

3.5.3.3.2 (U//~~FOUO~~) “DELEGATIONS OF AUTHORITY RELATED TO NON-SENIOR EXECUTIVES” (INCLUDING ALL SENIOR EXECUTIVE SERVICE [SES] AND OTHER SUPERVISORY MANAGEMENT OFFICIALS) AND ALL ADHOC DESIGNATIONS – FILE 319X-HQ-A1700685-XX

(U//~~FOUO~~) File 319X-HQ-A1700685-XX, with the last two alpha characters designating a particular field office, FBIHQ Division, or LEGAT, must be used to document delegations of authority related to the responsibilities of non-senior executive positions, to include all SES

level and other supervisory management officials not included above in DIOG Section 3.5.3.3.1, as well as to document adhoc designations, as specified.

(U//~~FOUO~~) Documentation of acting authority may take place subsequent to the actual ad hoc designation. For example, an SSA orally advises his principal relief supervisor that he/she has an emergency and will not be able to come into the office. The ad hoc designation of the relief supervisor as acting SSA can be documented upon the SSA's return to the office. Failure to document an ad hoc designation does not invalidate the designation but may result in difficulty proving the appropriate exercise of authority if required to do so. (See Section 3.5.2.2 above concerning oral authorizations and related documentation requirements).

3.5.3.3.3 (U//~~FOUO~~) **SUCCESSION PLANS – FILE 319X-HQ-A1538387**

(U//~~FOUO~~) An administrative file has also been created to maintain documentation of succession plans (319X-HQ-A1538387-XX with the last two alpha characters designating the particular field office, FBIHQ Division or LEGAT).

3.5.4 (U) **FILE REVIEWS AND JUSTIFICATION REVIEWS**

3.5.4.1 (U) **OVERVIEW**

(U//~~FOUO~~) The file review process is designed to ensure that investigative and intelligence activities are progressing adequately and are being conducted in compliance with applicable statutes, regulations, and FBI/DOJ policies and procedures. As a management tool, the file review process has proven effective for operational program oversight; for tracking the progress of investigative and intelligence collection; and for helping to ensure investigative focus, program management, and reduction of risk.

(U//~~FOUO~~) Supervisory review of investigative files (main file and all subfiles) are especially important with regard to tracking the progress and development of new employees. This provides an opportunity for supervisors to guide employees on how properly manage and document investigative files and to use and document investigative methods, while emphasizing the importance of compliance and recognition of risk. In addition, the file review process is an opportunity to begin to evaluate an employee's level of performance and to identify his or her strengths and weaknesses. Performance evaluation must not be documented on the file review itself; rather, any notes regarding performance must be documented using the Performance Management Tool (i.e., Check-In, Quick Feedback, or Wrap-up). See DIOG subsection 3.5.4.8 for further guidance.

(U//~~FOUO~~) File reviews help supervisors ensure that their offices are effectively supervising activities in their respective territories and are monitoring investigative activities carried out on their behalf in other field offices. For example, a supervisor may use a file review to ensure that an employee assigned to an investigation has addressed all logical investigation in a timely manner or that the employee has successfully set necessary leads. Additionally, the periodic review of control files and relevant administrative files permits supervisors to evaluate progress in meeting program-related objectives and helps to ensure that FBI resources are aligned with strategic objectives and are being utilized and managed properly and in accordance with policy standards.

3.5.4.2 **(U) TYPES OF FILES/INVESTIGATIONS REQUIRING FILE REVIEWS AND JUSTIFICATION REVIEWS**

(U//~~FOUO~~) File reviews (including the main file and all subfiles) must be conducted for all predicated investigations, including investigations placed in “pending inactive” status, unaddressed work files, and Type 3–6 Assessments. Type 1 & 2 Assessments must have 30-calendar-day justification reviews, as specified below.

(U//~~FOUO~~) Note: It is not necessary to separately document the review of individual subfiles in Sentinel, independent of the review of the main case file.

3.5.4.3 **(U) FREQUENCY OF FILE REVIEWS**

(U//~~FOUO~~) Supervisors must adhere to the following timeframes for file reviews:

- A) (U//~~FOUO~~) **For agents, resident agents, TFOs, IAs, and other employees assigned investigative files – 90 Days.** The supervisor must review the files (i.e., main file and sub-files) for all investigations (including pending predicated investigations, pending inactive investigations, unaddressed work files, and Type 3–6 assessments, or special event 300A files) for each consecutive 90-calendar-day period.
 1. (U//~~FOUO~~) **30 additional calendar days:** The case manager and the supervisor must complete the file review process and file review documentation, as described in DIOG subsections 3.5.4.5–3.5.4.9 below, including tasks identified while conducting the in-person or telephonic session, must be completed within 30 calendar days following each consecutive 90 calendar day file review period. The ASAC’s review of the file review package, while mandatory, does not need to be completed within this 30-calendar-day window.
- B) (U//~~FOUO~~) **For probationary employees (agents, resident agents, IAs, and other employees assigned investigative files) – 60 Days.** The supervisor must review the files (i.e., main file and sub-files) for all investigations (including pending predicated investigations, pending inactive investigations, unaddressed work files, and Type 3–6 assessments, special event 300A files) for each consecutive 60-calendar-day period.
 1. (U//~~FOUO~~) **30 additional calendar days:** The case manager and the supervisor must complete the file review process and file review documentation, as described in DIOG subsections 3.5.4.5–3.5.4.9 below, including tasks identified while conducting the in-person or telephonic session, must be completed by the case manager and supervisor within 30 calendar days following each consecutive 60 calendar day file review period. The ASAC’s review of the file review package, while mandatory, does not need to be completed within this 30-calendar-day window.

3.5.4.4 **(U) DELEGATION OF FILE REVIEWS**

(U//~~FOUO~~) Thorough and complete file reviews are an important part of the compliance regimen, provide valuable and needed information for the purpose of evaluating the performance of employees, and are critical to the effective management of a squad. For these reasons, file reviews are an important duty and responsibility for supervisors, and supervisors are discouraged from routinely delegating these reviews. However, because conducting a file review is an important developmental opportunity for primary relief supervisors, file reviews may be conducted by duly designated acting supervisors or duly designated primary relief supervisors. Acting supervisors may conduct file reviews just as they would conduct any other supervisory duty while functioning in an acting capacity. Primary relief supervisors may

conduct file reviews; however, when they do so, the next required file review must be conducted by a supervisor or a duly designated acting supervisor. In other words, every other file review of any given investigative file must be conducted by a supervisor or a duly designated acting supervisor. Acting supervisors may not review their own files under any circumstances; they must either reassign their investigations or have their investigations reviewed by another supervisor or by an ASAC.

3.5.4.5 (U) PREDICATED INVESTIGATIONS AND TYPE 3, 4, AND 6 ASSESSMENT – FILE REVIEW REQUIREMENTS

(U//~~FOUO~~) A file review must be conducted in person, or by telephone, Skype, or another similar method, when necessary (e.g., if an employee is on a TDY assignment or is located in a remote resident agency [RA]); must be conducted in private; and must be documented as specified in DIOG subsection 3.5.4.8.

(U//~~FOUO~~) The file review process requires the supervisor to (1) review the investigative files (including the main file and all sub-files) assigned to the employee; (2) discuss progress made in the last 60- or 90-calendar-day period toward specified investigative or intelligence collection objectives, (3) discuss the projected work or future objectives being contemplated and the method(s) to achieve them during the next review period and (4) document that information in the file review package generated by Sentinel.

(U//~~FOUO~~) When reviewing the employee's assigned investigative files (i.e., main file and sub-files), the supervisor should consider the following, whenever applicable, whether evaluating an Assessment or a predicated investigation:

- A) (U//~~FOUO~~) That no investigative activity is based solely on activity that is protected by the First Amendment or on the race, ethnicity, gender, national origin, religion, disability, sexual orientation, or gender identity of an individual, group, or organization or a combination of only those factors.
- B) (U//~~FOUO~~) Whether the activities that occurred in the prior 60 or 90 calendar days were appropriate based upon the investigative category, the type of case classification, and the stated objectives and whether investigative methods were used in compliance with applicable DIOG requirements.
- C) (U//~~FOUO~~) Whether subject(s) have been indexed in compliance with indexing guidelines.
- D) (U//~~FOUO~~) Whether threat issues and Crime Problem Indicator (CPI) codes for the investigation or Assessment were identified and current.
- E) (U//~~FOUO~~) Whether victim services policies have been followed (i.e., identification, notification to the VS, documentation, case status updates) in compliance with the DIOG and the *Victim Services Policy Guide* (1910PG).
- F) (U//~~FOUO~~) Whether information shared with domestic or foreign agencies was conducted in accordance with dissemination policies.
- G) (U//~~FOUO~~) Whether liaison and tripwire activity was documented.
- H) (U//~~FOUO~~) Whether statistical accomplishments (i.e., accomplishments in the “Accomplishments” module of Sentinel) were entered within established timeframes.
- I) (U//~~FOUO~~) Whether evidence was stored and disposed of properly and whether documentation was completed according to evidence control policies.

- J) (U//~~FOUO~~) Whether leads were covered within established deadlines.
- K) (U//~~FOUO~~) Whether any intelligence in the investigation or Assessment resulted in the production of intelligence products (e.g., intelligence information reports [IIR], situational information reports [SIR], intelligence bulletins, intelligence assessments) and whether the reports were released to the intelligence or law enforcement community and were properly documented in the INTELPRODS subfile, in compliance with the DIOG.
- L) (U//~~FOUO~~) Whether national security letters (NSL) were issued in accordance with policies, including whether responsive materials were appropriately examined (e.g., examined for overproduction).
- M) (U//~~FOUO~~) Whether federal grand jury (FGJ) subpoenas were issued in accordance with policies, including whether responsive materials were appropriately examined (e.g., examined for overproduction), and whether FGJ materials covered by Rule 6c were properly marked and handled, including being appropriately restricted in Sentinel.
- N) (U//~~FOUO~~) Whether documents obtained pursuant to a criminal mail cover request were returned to the USPS within 60 calendar days of the criminal mail cover's termination date and if the return was documented in the investigative file.
- O) (U//~~FOUO~~) Whether administrative subpoenas were issued in accordance with policies, including whether responsive materials were appropriately examined (e.g., examined for overproduction).
- P) (U//~~FOUO~~) Whether case-related electronic communications, including e-mail, text messages, phone calls, and instant messages, were appropriately uploaded into Sentinel or another IMD-authorized recordkeeping system. See Records Management Policy Guide, 0769PG, and the Social Media and Other Electronic Information Sharing Technologies Policy Guide, 0579PG.
- Q) (U//~~FOUO~~) Whether the watch-list status of any subjects was
- R) appropriately documented.
- S) (U//~~FOUO~~) For Preliminary Investigations, whether the status of the investigation is current (i.e., has not expired or will not expire before the next file review).
- T) (U//~~FOUO~~) Whether any potential Intelligence Oversight Board (IOB) violations have been reported in accordance with policies.
- U) (U//~~FOUO~~) Whether relevant asset forfeiture statutes have been applied and their use documented.
- V) (U//~~FOUO~~) For predicated investigations, whether the predication for continuing the investigation continues to exist.
- W) (U//~~FOUO~~) For Assessments, whether it is reasonably likely that information relevant to the authorized purpose and clearly defined objectives will be obtained, thereby warranting continuing the Assessment for another 60/90 calendar days.
- X) (U//~~FOUO~~) For Assessments, whether adequate predication has been developed to open a predicated investigation.

(U//~~FOUO~~) Supervisors must evaluate the proper use of investigative methods and ensure that they are adequately documented in the appropriate file. When evidence has been obtained, supervisors must ensure that the evidence was treated and/or disposed of appropriately. Supervisors should use the file review process as an opportunity to determine whether

employees have adequately used liaison and external contacts to further their investigations/Assessments. In addition, supervisors must assess whether employees need additional assistance, training, guidance, or resources to successfully advance their investigations/Assessments.

(U//~~FOUO~~) The intelligence aspect of every investigation must be scrutinized during the file review process. The supervisor must determine whether the employee understands his or her responsibilities relative to intelligence collection and reporting and whether the employee has ensured that the investigative and intelligence aspects of each investigation complement each other. This includes examining whether the employee has adequately collaborated with the field office's intelligence component and has exploited his or her investigations to obtain information relevant to standing intelligence collection requirements. The supervisor must review the files for potential intelligence-collection and sharing opportunities, both cross-programmatic and interagency. The file review must document whether applicable intelligence products, such as intelligence reports, intelligence bulletins, and intelligence assessments have been or should be drafted based on investigative and intelligence information collected during the investigation.

(U//~~FOUO~~) The supervisor must also evaluate whether the employee has been in communication with FBIHQ division entities, if appropriate, with respect to his or her investigative/intelligence activities and whether the employee has coordinated with FBIHQ to obtain any special authorities or concurrences needed from DOJ or FBI components and other government agencies (e.g., CIA, DOS, and DOD).

(U//~~FOUO~~) The supervisor must consider the employee's collateral duties (e.g., membership on the special weapons and tactics [SWAT] team, the evidence response team [ERT], the hazardous materials [HAZMAT] team, or the hostage negotiator team), training schedule, TDY assignments, and other activities constituting official business that could limit the employee's ability to address his or her assigned caseload. The supervisor must take into account planned annual and sick leave, holidays, and similar time constraints when estimating the employee's overall work responsibilities for the next 60/90-calendar-day period.

(U//~~FOUO~~) The supervisor must evaluate whether the employee is acting within all applicable statutes, regulations, and FBI and DOJ policies and procedures. Supervisors must keep in mind that how the employee accomplishes his or her tasks is just as important as whether he or she accomplishes them. Any compliance concerns must be immediately referred to the field office's compliance officer for discussion regarding additional actions to be taken. For specific requirements and procedures for reporting departures from, and noncompliance with, the AGG-Dom and the DIOG, see subsections 2.6–2.8.

(U//~~FOUO~~) At the conclusion of the file review, the supervisor must ensure that the employee understands the objectives to be accomplished over the next 60/90 calendar days and must specifically document those expectations in the file review package.

(U) While conducting file reviews pursuant to this subsection, a supervisor must ensure that all investigative activities conducted online are in accordance with *DIOG Appendix 1, Online Investigations*. Supervisors must pay special attention to information relating to the exercise of First Amendment rights. This type of information may only be collected if (1) the collection is logically related to an authorized investigative purpose, (2) the collection does not materially interfere with the ability of an individual or a group to engage in the exercise of

constitutionally protected rights, and (3) the method of collection is the least intrusive alternative that is reasonable, based upon the circumstances of the investigation. The FBI must not base investigative activities solely on an individual's legal exercise of his or her First Amendment rights. Further, every FBI employee has the responsibility to ensure that the activities of the FBI are "lawful, appropriate, and ethical, as well as effective in protecting the civil liberties and privacy of individuals in the United States." (See DIOG subsection 4.1.3.)

3.5.4.6 (U) TYPE 1 AND 2 ASSESSMENTS – JUSTIFICATION REVIEW REQUIREMENTS

(U//~~FOUO~~) Supervisors must conduct 30-calendar-day justification reviews for Type 1 & 2 Assessments. Following the end of the 30-calendar-day period, the agent, TFO, or IA and the supervisor have up to ten calendar days to complete all aspects of the justification review and to document the review. The justification review may be documented in Guardian or by using a Sentinel "Change Case Request." These justification reviews must address the following:

- A) (U//~~FOUO~~) Has progress been made toward achieving the authorized purpose and clearly defined objective(s)?
- B) (U//~~FOUO~~) Were the activities that occurred in the prior 30 calendar days appropriate and in compliance with applicable DIOG requirements?
- C) (U//~~FOUO~~) Is it reasonably likely that information that is relevant to the authorized purpose and clearly defined objective(s) will be obtained, thereby warranting continuing the Assessment for another 30 calendar days?
- D) (U//~~FOUO~~) Has adequate predication been developed to open a predicated investigation?
- E) (U//~~FOUO~~) Should the Assessment be terminated?

3.5.4.7 (U) TYPE 5 ASSESSMENTS – FILE REVIEW REQUIREMENTS

(U//~~FOUO~~)

b7E

A) (U)

1. (U//~~FOUO~~)

2. (U//~~FOUO~~)

3. (U//~~FOUO~~)

4. (U//~~FOUO~~)

B) (U)

1. (U//~~FOUO~~)

2. (U//~~FOUO~~)

3. (U//~~FOUO~~) [redacted]

b7E

4. (U//~~FOUO~~) [redacted]

3.5.4.8 (U) DOCUMENTATION OF FILE REVIEWS

(U//~~FOUO~~) File review packages are generated by Sentinel. These must be completed by an assigned case manager and the supervisor as part of the file review process. Once finalized, the completed packages can be viewed within Sentinel and used as a tool in determining an employee's performance rating. Documents maintained for evaluations, including printed copies of file review packages, must be maintained or destroyed in accordance with the FBI's performance appraisal system (see the *Performance and Development Program Policy Guide*, 1083PG). Upon completion of the file review, the electronic file review package must be submitted to field office executive management (e.g., an ASAC or an SSIA), who is responsible for ensuring that the file reviews were conducted properly by reviewing and signing the file review package. The Sentinel-generated file review package must be maintained for inspection review and other purposes not related to the performance appraisal process for a period of at least two years after being created or, if the material is related to a pending internal investigation, a performance action, a complaint, or a charge, the file review package must be maintained for one year from the date on which that case or action was closed, whichever is the longer period of time.

(U//~~FOUO~~) The Performance Management Tool is now accessible from the file review package in Sentinel. Employee performance notes are not required to be completed by the supervisor as part of the file review process. However, if the supervisor chooses to document performance notes, then the Performance Management Tool must be used. Using the Performance Management Tool in conjunction with the file review process can assist the supervisor and the employee in evaluating performance and providing developmental feedback.

3.5.4.9 (U) FILE REVIEW EXAMPLE

(U//~~FOUO~~) [redacted]

b7E

(U//~~FOUO~~) [redacted]

(U//~~FOUO~~) *Note:* While file reviews must be conducted every 90/60 calendar days respectively, the case manager and supervisor have 30 days following the 90- or 60-calendar-day period to conduct the in-person or telephonic meeting, complete the file review package in Sentinel, and complete any outstanding tasks. For example, if a file review identifies a missing LHM, FD-759, or accomplishment, those tasks should be completed during the 30-calendar-day period.

3.6 (U) CHIEF DIVISION COUNSEL (CDC) ROLES AND RESPONSIBILITIES

(U//~~FOUO~~) The CDC must review all Assessments and predicated investigations involving Sensitive Investigative Matters (SIM) as discussed in DIOG Section 10 as well as review the use of certain investigative methods as discussed in Section 18. The primary purpose of the CDC's review is to ensure the legality of the actions proposed. Review, in this context, includes a determination that the investigative activity is: (i) not legally objectionable (e.g., that it is not based solely on the exercise of First Amendment rights, including the free exercise of speech, religion, assembly, press or petition, or on the race, ethnicity, gender, national origin, religion, disability, sexual orientation, or gender identity of the subject); and (ii) founded upon an authorized purpose and/or adequate factual predication and meets the standard specified in the DIOG. The CDC should also include in his or her review and recommendation, if appropriate, a determination of the wisdom of the proposed action (e.g., the CDC may have no legal objection but may recommend denial because the value of the proposal is outweighed by the intrusion into legitimate privacy interests). The CDC's determination that an investigative activity is: (i) not legally objectionable; and (ii) warranted from a mission standpoint is based on facts known at the time of the review and recommendation. Often, these facts are not verified or otherwise corroborated until the investigative activity commences. As a result, the CDC may require additional CDC reviews or provide guidance to supervisory personnel with regard to monitoring the results of the investigative activity to ensure that the authorized purpose and/or factual predication remains intact after the facts are developed. The regularity of such review is within the CDC's discretion. Activities found to be legally objectionable by the CDC may not be approved unless and until the CDC's determination is countermanded by the FBI General Counsel or a delegated designee.

(U//~~FOUO~~) For investigative activities involving a SIM, the CDC must also independently consider the factors articulated in Section 10 and provide the approving authority with a recommendation as to whether, in the CDC's judgment, the investigative activity should be approved.

(U//~~FOUO~~) Throughout the DIOG, DIOG related policies, or PGs, any requirement imposed on the CDC may be performed by an Associate Division Counsel (ADC) or a designated Acting CDC.

3.7 (U) OFFICE OF THE GENERAL COUNSEL (OGC) ROLES AND RESPONSIBILITIES

(U//~~FOUO~~) The mission of the FBI's Office of the General Counsel (OGC) is to provide comprehensive legal advice to the Director, other FBI officials and divisions, and field offices on a wide array of national security, investigative, and administrative operations. In addition to providing legal advice as requested, OGC reviews the legal sufficiency of sensitive Title III affidavits and a wide variety of operational documents relating to foreign counterintelligence/

international terrorism investigations, including requests for surveillance and physical searches pursuant to the Foreign Intelligence Surveillance Act (FISA) and undercover proposals, and manages the physical flow of FISA requests, applications, orders, and returns. OGC maintains liaison with the intelligence community on legal issues and reviews for legal sufficiency proposals to share information or form partnerships with other federal, state, local, and international agencies. OGC also supports federal criminal prosecutions by assisting in criminal discovery and by conducting reviews of personnel files, coordinates the defense of the FBI and its employees in civil actions which arise out of the FBI's investigative mission and personnel matters, and assists the Office of Congressional Affairs (OCA) in responding to Congressional inquiries, including Congressional requests for FBI documents. OGC addresses legal issues associated with the impact of communication and information technology on the ability of the FBI and other law-enforcement and intelligence agencies to execute their public safety and national security missions, including their ability to conduct authorized electronic surveillance.

(U//~~FOUO~~) In coordination with the DOJ NSD, the OGC is responsible for conducting regular reviews of all aspects of FBI national security and foreign intelligence activities. The primary purpose of the OGC's review is to ensure the legality of the actions proposed. These reviews, conducted at FBI field offices and FBIHQ' units, broadly examine such activities for compliance with the *AGG-Dom* and other applicable requirements. Review, in this context, includes a determination that the investigative activity is: (i) not legally objectionable (e.g., that it is not based solely on the exercise of First Amendment rights, including the free exercise of speech, religion, assembly, press or petition, or on the race, ethnicity, gender, national origin, religion, disability, sexual orientation, or gender identity of the subject); and (ii) founded upon an authorized purpose and/or adequate factual predication and meets the standard specified in the DIOG. The OGC should also include in its review and recommendation, if appropriate, a determination of the wisdom of the proposed action (e.g., the OGC may have no legal objection but may recommend denial because the value of the proposal is outweighed by the intrusion into legitimate privacy interests). The OGC's determination that an investigative activity is: (i) not legally objectionable; and (ii) warranted from a mission standpoint is based on facts known at the time of the review and recommendation. Often these facts are not verified or otherwise corroborated until the investigative activity commences. As a result, the OGC may require additional OGC reviews or provide guidance to supervisory personnel with regard to monitoring the results of the investigative activity to ensure that the authorized purpose and/or factual predication remains intact after the facts are developed. The regularity of such review is within the discretion of OGC.

(U//~~FOUO~~) For those investigative activities involving a sensitive investigative matter requiring OGC review, the OGC must independently consider the factors articulated in Section 10 and provide the approving authority with a recommendation as to whether, in the OGC's judgment, the investigative activity should be approved.

(U//~~FOUO~~) Throughout the DIOG, any requirement imposed on the General Counsel may be delegated and performed by a designated OGC attorney. All delegations must be made as set forth in Section 3.5.3 above.

3.8 (U) INTERNAL POLICY OFFICE (IPO) ROLES AND RESPONSIBILITIES

(U//~~FOUO~~) Subject to the guidance of the Deputy Director, the IPO has oversight of the implementation of the DIOG. Working with the Deputy Director's office, the IPO may make

revisions to the DIOG as necessary, following appropriate coordination with the OIC, OGC and other FBIHQ or field office entities. In the process of implementing and analyzing the DIOG, the IPO should report any apparent compliance risk areas directly to the OIC. Additionally, the IPO will work directly with the OIC to ensure that the policies, training, and monitoring are adequate to meet compliance monitoring procedures.

(U//~~FOUO~~) The IPO is responsible for ensuring the following:

- A) (U//~~FOUO~~) The DIOG is updated as necessary to comply with changes in the law, rules, or regulations;
- B) (U//~~FOUO~~) The DIOG is reviewed every three years from the effective date of the 2011 revision, and revised as appropriate. This mandatory review schedule, however, does not restrict the IPO, which is responsible for all FBI policy matters, from working with FBIHQ divisions and field offices to make policy revisions to the DIOG and the PGs whenever necessary and appropriate during the three year period. The IPO may also make technical or non-substantive language or formatting changes to the DIOG, as necessary, provided those changes clarify the meaning without altering the substance;
- C) (U//~~FOUO~~) Existing and proposed investigative and administrative policies and PGs comply with the standards established in the AGG-Dom and DIOG. On behalf of the Deputy Director, the IPO has the authority, following coordination with the OIC and OGC, to modify or remove any provision of existing or proposed investigative or administrative policies or PGs determined to violate, contradict, or otherwise modify the intent or purpose of any provision or standard established in the AGG-Dom or the DIOG; and
- D) (U//~~FOUO~~) If the IPO makes any changes to the DIOG or other policy pursuant to 3.8.B and/or C above, the IPO will immediately advise by e-mail all FBIHQ Division Policy Officers (DPO) and field office policy officers (FPO) of such changes and all DPOs and FPOs must further advise their respective FBI employees of such changes. The electronic version of the DIOG maintained in the IPO's Policy Library is the official current policy of the FBI.

3.9 (U) OFFICE OF INTEGRITY AND COMPLIANCE (OIC) ROLES AND RESPONSIBILITIES

(U//~~FOUO~~) OIC is responsible for reviewing the DIOG and working with each FBIHQ division and the IPO to identify compliance risk areas and to ensure the adequacy of policy statements, training and monitoring. When compliance risk areas are identified, OIC must work with the divisions, field offices, and/or programs affected by the risk and develop programs to review the adequacy of policy statements, training, and monitoring in order to mitigate those concerns appropriately.

3.10 (U) OPERATIONAL PROGRAM MANAGER ROLES AND RESPONSIBILITIES

(U//~~FOUO~~) In addition to managing national level programs, coordinating investigations, training, and providing guidance and oversight to the field, the FBIHQ Operational Program Managers are responsible for identifying, prioritizing, and analyzing potential compliance risks within their programs regarding implementation of the DIOG and developing mitigation plans where warranted.

(U//~~FOUO~~) Operational Program Managers must proactively identify and take appropriate action to resolve potential compliance concerns. In identifying possible compliance concerns, Program Managers should consider the following indicators of possible compliance issues:

- A) (U//~~FOUO~~) Similar activities being handled differently from squad-to-squad / unit-to-unit / field office-to-field office;
- B) (U//~~FOUO~~) Unusually high level of contact with FBIHQ’s division for basic information on how to conduct an activity;
- C) (U//~~FOUO~~) Apparent confusion over how to conduct a certain activity;
- D) (U//~~FOUO~~) Policy conflict;
- E) (U//~~FOUO~~) Non-existent/inaccurate/wrongly targeted training;
- F) (U//~~FOUO~~) Monitoring mechanisms that do not exist or do not test the right information (e.g. file reviews/program management); and
- G) (U//~~FOUO~~) Inadequate processes in place to audit for compliance.

(U//~~FOUO~~) Operational Program Managers may not retaliate or take adverse action against persons who raise compliance concerns.

3.11 (U) DIVISION COMPLIANCE OFFICER ROLES AND RESPONSIBILITIES

(U//~~FOUO~~) Each FBIHQ division and field office must have a Division Compliance Officer (DCO). The DCO will proactively identify potential risk of non-compliance in the implementation of the DIOG and report them to the proper authority and the OIC. The DCO must always be aware that the focus of a compliance program is the identification and resolution of a compliance problem using non-punitive and non-retaliatory means.

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Domestic Investigations and Operations Guide

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4 (U) PRIVACY AND CIVIL LIBERTIES, AND LEAST INTRUSIVE METHODS

4.1 (U) CIVIL LIBERTIES AND PRIVACY

4.1.1 (U) OVERVIEW

(U) The FBI is responsible for protecting the security of our nation and its people from crime and terrorism while maintaining rigorous obedience to the Constitution. The Attorney General's Guidelines for Domestic FBI Activities (AGG-Dom) establish a set of basic principles that serve as the foundation for all FBI mission-related activities. When these principles are applied, they demonstrate respect for civil liberties and privacy as well as adherence to the Constitution and laws of the United States. These principles are as follows:

- A) (U) **Protecting the public includes protecting their rights and liberties.** FBI investigative activity is premised upon the fundamental duty of government to protect the public, which must be performed with care to protect individual rights and to ensure that investigations are confined to matters of legitimate government interest.
- B) (U) **Only investigate for a proper purpose.** All FBI investigative activity must have an authorized law enforcement, national security, intelligence, or public safety purpose.
- C) (U) **Race, ethnicity, gender, national origin, religion, disability, sexual orientation, or gender identity alone can never constitute the sole basis for initiating investigative activity.** Although these characteristics may be taken into account under certain circumstances, there must be an independent authorized law enforcement or national security purpose for initiating investigative activity.
- D) (U) **Only perform authorized activities in pursuit of investigative objectives.** Authorized activities conducted as part of a lawful Assessment or investigation include the ability to: collect criminal and national security information, as well as foreign intelligence; provide investigative assistance to federal, state, local, tribal, and foreign agencies; conduct intelligence analysis and planning; and retain and share information.
- E) (U) **Employ the least intrusive means that do not otherwise compromise FBI operations.** Assuming a lawful intelligence or evidence collection objective, i.e., an authorized purpose, strongly consider the method (technique) employed to achieve that objective that is the least intrusive available (particularly if there is the potential to interfere with protected speech and association, damage someone's reputation, intrude on privacy, or interfere with the sovereignty of foreign governments) while still being operationally sound and effective.
- F) (U) **Apply best judgment to the circumstances at hand to select the most appropriate investigative means to achieve the investigative goal.** The choice of which investigative method to employ is a matter of judgment, but the FBI must not hesitate to use any lawful method consistent with the AGG-Dom when the degree of intrusiveness is warranted in light of the seriousness of the matter concerned.

4.1.2 (U) PURPOSE OF INVESTIGATIVE ACTIVITY

(U) One of the most important safeguards in the AGG-Dom—one that is intended to ensure that FBI employees respect the constitutional rights of Americans—is the threshold requirement that all investigative activities be conducted for an authorized purpose. Under the AGG-Dom that

authorized purpose must be an authorized national security, criminal, or foreign intelligence collection purpose.

(U) Simply stating such a purpose, however, is not sufficient to ensure compliance with this requirement. The authorized purpose must be well-founded and well-documented. In addition, the information sought and the investigative method used to obtain it must be focused in scope, time, and manner to achieve the underlying purpose. Furthermore, the Constitution sets limits on what that purpose may be. It may not be solely to monitor the exercise of constitutional rights, such as the free exercise of speech, religion, assembly, press and petition, and, equally important, the authorized purpose may not be based solely on the race, ethnicity, gender, national origin, religion, disability, sexual orientation, or gender identity of an individual, group, or organization or a combination of only those factors.

(U) It is important to understand how the “authorized purpose” requirement and these constitutional limitations relate to one another. For example, individuals or groups who communicate with each other or with members of the public in any form in pursuit of social or political causes—such as opposing war or foreign policy, protesting government actions, or promoting certain religious beliefs—have a First Amendment right to do so. No investigative activity may be conducted for the sole purpose of monitoring the exercise of these rights. If a well-founded basis to conduct investigative activity exists, however, and that basis is not solely activity that is protected by the First Amendment or on the race, ethnicity, gender, national origin, religion, disability, sexual orientation, or gender identity of the participants—FBI employees may assess or investigate these activities, subject to other limitations in the AGG-Dom and the DIOG. In such a situation, the investigative activity would not be based solely on constitutionally-protected conduct or on race, ethnicity, gender, national origin, religion, disability, sexual orientation, or gender identity. Finally, although investigative activity would be authorized in this situation, it is important that it be conducted in a manner that does not materially interfere with the ability of the individuals or groups to engage in the exercise of constitutionally-protected rights.

4.1.3 (U) OVERSIGHT AND SELF-REGULATION

(U) Every FBI employee has the responsibility to ensure that the activities of the FBI are lawful, appropriate and ethical as well as effective in protecting the civil liberties and privacy of individuals in the United States. Strong oversight mechanisms are in place to assist the FBI in carrying out this responsibility. Department of Justice (DOJ) oversight is provided through provisions of the AGG-Dom, other Attorney General Guidelines, and oversight by other DOJ components. DOJ and the FBI’s Inspection Division, and the FBI’s Office of Integrity and Compliance (OIC) and Office of the General Counsel (OGC), also provide substantial monitoring and guidance. In the criminal investigation arena, prosecutors and district courts exercise oversight of FBI activities. In the national security and foreign intelligence arenas, the DOJ National Security Division (NSD) exercises that oversight. The DOJ NSD’s Oversight Section and the FBI’s OGC are responsible for conducting regular reviews of all aspects of FBI national security and foreign intelligence activities. These reviews, conducted at FBI field offices and FBI Headquarters (FBIHQ) divisions, broadly examine such activities for compliance with the AGG-Dom and other applicable requirements. In addition, the AGG-Dom creates additional requirements, including:

- A) (U) Required notification by the FBI to the DOJ NSD concerning a Full Investigation that involves foreign intelligence collection, a Full Investigation of a United States person (USPER) in relation to a threat to the national security, or a national security investigation involving a “sensitive investigative matter” (SIM) (see DIOG Section 10).
 - B) (U) An annual report by the FBI to the DOJ NSD concerning the FBI’s foreign intelligence collection program, including information reflecting the scope and nature of foreign intelligence collection activities in each FBI field office.
 - C) (U) Access by the DOJ NSD to information obtained by the FBI through national security or foreign intelligence activities.
 - D) (U) General authority for the Assistant Attorney General for National Security to obtain reports from the FBI concerning these activities. (AGG-Dom, Intro. C)
- (U) Further examples of oversight mechanisms include the involvement of both FBI and prosecutorial personnel in the review of undercover operations involving sensitive circumstances; notice requirements for investigations involving sensitive investigative matters; and notice and oversight provisions for Enterprise Investigations, which involve a broad examination of groups implicated in criminal and national security threats. These requirements and procedures help to ensure that the rule of law is respected in the FBI’s activities and that public confidence is maintained in these activities. (AGG-Dom, Intro. C)
- (U) In addition to the above-described oversight mechanisms, the FBI is subject to a regime of oversight, legal limitations, and self-regulation designed to ensure strict adherence to the Constitution. This regime is comprehensive and has many facets, including the following:
- A) (U) The Foreign Intelligence Surveillance Act of 1978, as amended, and Title III of the Omnibus Crime Control and Safe Streets Act of 1968. These laws establish the processes for obtaining judicial approval of electronic surveillance and physical searches for the purpose of collecting foreign intelligence and electronic surveillance for the purpose of collecting evidence of crimes.
 - B) (U) The Whistleblower Protection Acts of 1989 and 1998, and the Whistleblower Protection Enhancement Act of 2016. These laws protect whistleblowers from retaliation.
 - C) (U) The Freedom of Information Act of 1966. This law provides the public with access to FBI documents not covered by a specific statutory exemption.
 - D) (U) The Privacy Act of 1974. This law balances the government’s need to maintain information about United States citizens and legal permanent resident aliens with the rights of those individuals to be protected against unwarranted invasions of their privacy stemming from the government’s collection, use, maintenance, and dissemination of that information. The Privacy Act forbids the FBI and other federal agencies from collecting information about how individuals exercise their First Amendment rights, unless that collection is expressly authorized by statute or by the individual, or is pertinent to and within the scope of an authorized law enforcement activity (5 U.S.C. § 552a[e][7]). Activities authorized by the AGG-Dom – with the exception of Positive Foreign Intelligence collection (see DIOG Section 9.3) – are authorized law enforcement activities or activities for which there is otherwise statutory authority for purposes of the Privacy Act.
 - E) (U) Documents describing First Amendment rights that are subsequently determined to have been collected or retained in violation of the Privacy Act must be destroyed as set forth in Information Management Division’s (IMD) policy, Handling of Information Gathered in

Violation of the Privacy Act (*Handling of Information Gathered in Violation of the Privacy Act Policy Directive, 0356D*).

(U) Congress, acting primarily through the Judiciary and Intelligence Committees, exercises regular, vigorous oversight into all aspects of the FBI's operations. To this end, the National Security Act of 1947 requires the FBI to keep the intelligence committees (for the Senate and House of Representatives) fully and currently informed of substantial intelligence activities. This oversight has significantly increased in breadth and intensity since the 1970's, and it provides important additional assurance that the FBI conducts its investigations according to the law and the Constitution. Guidance on what activities fall within the scope of required congressional notification can be obtained from OCA. See *Policy for Reporting Intelligence Activities to Congress Policy Directive, 0614D*.

(U) The FBI's intelligence activities (as defined in Section 3.4(e) of Executive Order (EO) 12333 [see DIOG Appendix B]) are subject to significant self-regulation and oversight beyond that conducted by Congress. The Intelligence Oversight Board (IOB), comprised of members from the President's Intelligence Advisory Board (PIAB), also conducts oversight of the FBI's intelligence activities. Among its responsibilities, the IOB must inform the President of intelligence activities the IOB believes: (i)(a) may be unlawful or contrary to EO or Presidential National Security Directive (PNSD), and (b) are not being adequately addressed by the Attorney General, the Director of National Intelligence (DNI), or the head of the department concerned; or (ii) should be immediately reported to the President. The requirements and procedures for reporting potential IOB matters to OGC/NSCLB can be found in the *Guidance on Intelligence Oversight Board Matters Policy Guide, 0188PG*.

(U) Internal FBI safeguards include:

- A) (U) the OGC's Privacy and Civil Liberties Unit (PCLU), which reviews plans for any proposed FBI record system for compliance with the Privacy Act and related privacy protection requirements and policies and which provides legal advice on civil liberties questions;
- B) (U) the criminal and national security undercover operations review committees, comprised of senior DOJ and FBI officials, which review all proposed undercover operations that involve sensitive circumstances;
- C) (U) the Sensitive Operations Review Committee (SORC), comprised of senior DOJ and FBI officials, which provides oversight of those investigative activities that may impact civil liberties and privacy and that are not otherwise subject to high level FBI and DOJ review;
- D) (U) the FBI requirement that all FBI employees report departures from and non-compliance with the DIOG to their supervisor, other management officials, or appropriate authorities as set forth in DIOG Sections 2.6 – 2.8 and 3.1.1; and
- E) (U) training new FBI employees on privacy and periodic training for all FBI employees to maintain currency on the latest guidelines, changes to laws and regulations, and judicial decisions related to constitutional rights and liberties.

4.2 (U) PROTECTION OF FIRST AMENDMENT RIGHTS

(U) A fundamental principle of the Attorney General's Guidelines for FBI investigations and operations since the first guidelines were issued in 1976 has been that investigative activity may not be based solely on the exercise of rights guaranteed by the First Amendment to the United

States Constitution. This principle carries through to the present day in the AGG-Dom. The Privacy Act contains a corollary principle – the government is prohibited from retaining information describing how a person exercises rights under the First Amendment, unless that information is pertinent to or within the scope of an authorized law enforcement activity. 5 U.S.C. § 552a(e)(7).

(U) The First Amendment states:

(U) Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

(U) Although the amendment appears literally to apply only to Congress, the Supreme Court made clear long ago that it also applies to activities of the Executive Branch, including law enforcement agencies. Therefore, for FBI purposes, it would be helpful to read the introduction to the first sentence as: “The FBI shall take no action respecting...” In addition, the word “abridging” must be understood. “Abridging,” as used here, means “diminishing.” Thus, it is not necessary for a law enforcement action to destroy or totally undermine the exercise of First Amendment rights for it to be unconstitutional; significantly diminishing or lessening the ability of individuals to exercise these rights without an authorized investigative purpose is sufficient.

(U) This is not to say that any diminution of First Amendment rights is unconstitutional. The Supreme Court has never held that the exercise of these rights is absolute. In fact, the Court has realistically interpreted the level and kind of government activity that violates a First Amendment right. For example, taken to an extreme, one could argue that the mere possibility of an FBI agent being present at an open forum (or as an on-line presence) would diminish the right of free speech by a participant in the forum because he/she would be afraid to speak freely. The Supreme Court, however, has never found an “abridgement” of First Amendment rights based on such a subjective fear. Rather, the Court requires an action that, from an objective perspective, truly diminishes the speaker’s message or his/her ability to deliver it (e.g., pulling the plug on the sound system). For another example, requiring protestors to use a certain parade route may diminish their ability to deliver their message in a practical sense, but the Court has made it clear, that for legitimate reasons (e.g., public safety), the government may impose reasonable limitations in terms of time, place and manner on the exercise of such rights, as long as the ability to deliver the message remains.

(U) While the language of the First Amendment prohibits action that would abridge the enumerated rights, the implementation of that prohibition in the AGG-Dom reflects the Supreme Court’s opinions on the constitutionality of law enforcement action that may impact the exercise of First Amendment rights. As stated above, the AGG-Dom prohibits investigative activity for the sole purpose of monitoring the exercise of First Amendment rights. The importance of the distinction between this language and the actual text of the First Amendment is two-fold: (i) the line drawn by the AGG-Dom prohibits even “monitoring” the exercise of First Amendment rights (far short of abridging those rights) as the sole purpose of FBI activity; and (ii) the requirement of an authorized purpose for all investigative activity provides additional protection for the exercise of constitutionally protected rights.

(U) The AGG-Dom classifies investigative activity that involves a religious or political organization (or an individual prominent in such an organization) or a member of the news

media as a “sensitive investigative matter.” That designation recognizes the sensitivity of conduct that traditionally involves the exercise of First Amendment rights by groups, e.g., who associate for political or religious purposes or by the press. The requirements for opening and pursuing a “sensitive investigative matter” are set forth in DIOG Section 10. It should be clear, however, from the discussion below just how pervasive the exercise of First Amendment rights is in American life and that not all protected First Amendment rights will fall within the definition of a “sensitive investigative matter.” Therefore, it is essential that FBI employees recognize when investigative activity may have an impact on the exercise of these fundamental rights and be especially sure that any such investigative activity has a valid law enforcement or national security purpose, even if it is not a “sensitive investigative matter” as defined in the AGG-Dom and the DIOG.

(U) Finally, it is important to note that individuals in the United States (and organizations comprised of such individuals) do not forfeit their First Amendment rights simply because they also engage in criminal activity or in conduct that threatens national security. For example, an organization suspected of engaging in acts of domestic terrorism may also pursue legitimate political goals and may also engage in lawful means to achieve those goals. The pursuit of these goals through constitutionally protected conduct does not insulate them from legitimate investigative focus for unlawful activities—but the goals and the pursuit of their goals through lawful means remain protected from unconstitutional infringement.

(U) When allegations of First Amendment violations are brought to a court of law, it is usually in the form of a civil suit in which a plaintiff has to prove some actual or potential harm. See, e.g., *Presbyterian Church v. United States*, 870 F.2d 518 (9th Cir. 1989) (challenging INS surveillance of churches). In a criminal trial, a defendant may seek either or both of two remedies as part of a claim that his or her First Amendment rights were violated: suppression of evidence gathered in the alleged First Amendment violation, a claim typically analyzed under the “reasonableness” clause of the Fourth Amendment, and dismissal of the indictment on the basis of “outrageous government conduct” in violation of the Due Process Clause of the Fifth Amendment.

(U) The scope of First Amendment rights and their impact on FBI investigative activity are discussed below. The First Amendment’s “establishment clause”—the prohibition against the government establishing or sponsoring a specific religion—has little application to the FBI and, therefore, is not discussed here.

4.2.1 (U) FREE SPEECH

(U) The exercise of free speech includes far more than simply speaking on a controversial topic in the town square. It includes such activities as carrying placards in a parade, sending letters to a newspaper editor, posting information on the Internet, wearing a tee shirt with a political message, placing a bumper sticker critical of the President on one’s car, and publishing books or articles. The common thread in these examples is conveying a public message or an idea through words or deeds. Law enforcement activity that diminishes a person’s ability to communicate in any of these ways may interfere with his or her freedom of speech—and thus may not be undertaken by the FBI solely for that purpose.

(U) It is important to understand the line between constitutionally protected speech and advocacy of violence or of conduct that may lead to violence or other unlawful activity. In *Brandenburg v. Ohio*, 395 U.S. 444 (1969), the Supreme Court established a two-part test to determine whether

such speech is constitutionally protected: the government may not prohibit advocacy of force or violence except when such advocacy (i) is intended to incite imminent lawless action, and (ii) is likely to do so. Therefore, even heated rhetoric or offensive provocation that could conceivably lead to a violent response in the future is usually protected. Suppose, for example, a politically active group advocates on its web site taking unspecified “action” against persons or entities it views as the enemy, who thereafter suffer property damage and/or personal injury. Under the *Brandenburg* two-part test, the missing specificity and imminence in the message may provide it constitutional protection. For that reason, law enforcement may take no action that, in effect, blocks the message or punishes its sponsors.

(U) Despite the high standard for interfering with free speech or punishing those engaged in it, the law does not preclude FBI employees from observing and collecting any of the forms of protected speech and considering its content—as long as those activities are done for a valid law enforcement or national security purpose and are conducted in a manner that does not unduly infringe upon the ability of the speaker to deliver his or her message. To be an authorized purpose it must be one that is authorized by the AGG-Dom— i.e. to further an FBI Assessment, predicated investigation, or other authorized function such as providing assistance to other agencies. Furthermore, by following the standards for opening or approving an Assessment or predicated investigation as contained in the DIOG, the FBI will ensure that there is a rational relationship between the authorized purpose and the protected speech to be collected such that a reasonable person with knowledge of the circumstances could understand why the information is being collected.

(U) Returning to the example posed above, because the group’s advocacy of action could be directly related by circumstance to property damage suffered by one of the group’s known targets, collecting the speech—although constitutionally protected—can lawfully occur. Similarly, listening to and documenting the public talks by a religious leader, who is suspected of raising funds for a terrorist organization, may yield clues as to his motivation, plan of action, and/or hidden messages to his followers. FBI employees should not, therefore, avoid collecting First Amendment protected speech if it is relevant to an authorized AGG-Dom purpose—as long as FBI employees do so in a manner that does not inhibit the delivery of the message or the ability of the audience to hear it, and so long as the collection is done in accordance with the discussion of least intrusive means or method in DIOG Section 4.4.

(U) In summary, during the course of lawful investigative activities, the FBI may lawfully collect, retain, and consider the content of constitutionally protected speech, so long as: (i) the collection is logically related to an authorized investigative purpose; (ii) the collection does not actually infringe on the ability of the speaker to deliver his or her message; and (iii) the method of collection complies with the least intrusive method policy.

4.2.2 **(U) EXERCISE OF RELIGION**

(U) Like the other First Amendment freedoms, the “free exercise of religion” clause is broader than commonly believed. First, it covers any form of worship of a deity—even forms that are commonly understood to be cults or fringe sects, as well as the right not to worship any deity. Second, protected religious exercise also extends to dress or food that is required by religious edict, attendance at a facility used for religious practice (no matter how unlikely it appears to be intended for that purpose), observance of the Sabbath, raising money for evangelical or missionary purposes, and proselytizing. Even in controlled environments like prisons, religious

exercise must be permitted—subject to reasonable restrictions as to time, place, and manner. Another feature of this First Amendment right is that religion is a matter of heightened sensitivity to some Americans—especially to devout followers. For this reason, religion is a matter that is likely to provoke an adverse reaction if the right is violated—regardless of which religion is involved. Therefore, when essential investigative activity may impact this right, the investigative activity must be conducted in a manner that avoids the actual—and the appearance of—interference with religious practice to the maximum extent possible.

(U) While there must be an authorized purpose for any investigative activity that could have an impact on religious practice, this does not mean religious practitioners or religious facilities are completely free from being examined as part of an Assessment or predicated investigation. If such practitioners are involved in—or such facilities are used for—activities that are the proper subject of FBI-authorized investigative or intelligence collection activities, their religious affiliation does not “immunize” them to any degree from these efforts. It is paramount, however, that the authorized purpose of such efforts be properly documented. It is also important that investigative activity directed at religious leaders or at conduct occurring within religious facilities be focused in time and manner so as not to infringe on legitimate religious practice by any individual but especially by those who appear unconnected to the activities under investigation.

(U) Furthermore, FBI employees may take appropriate cognizance of the role religion may play in the membership or motivation of a criminal or terrorism enterprise. If, for example, affiliation with a certain religious institution or a specific religious sect is a known requirement for inclusion in a violent organization that is the subject of an investigation, then whether a person of interest is a member of that institution or sect is a rational and permissible consideration. Similarly, if investigative experience and reliable intelligence reveal that members of a terrorist or criminal organization are known to commonly possess or exhibit a combination of religion-based characteristics or practices (e.g., group leaders state that acts of terrorism are based in religious doctrine), it is rational and lawful to consider such a combination in gathering intelligence about the group—even if any one of these, by itself, would constitute an impermissible consideration. By contrast, solely because prior subjects of an investigation of a particular group were members of a certain religion and they claimed a religious motivation for their acts of crime or terrorism, other members’ mere affiliation with that religion, by itself, is not a basis to assess or investigate—absent a known and direct connection to the threat under Assessment or investigation. Finally, the absence of a particular religious affiliation can be used to eliminate certain individuals from further investigative consideration in those scenarios where religious affiliation is relevant.

4.2.3 (U) *FREEDOM OF THE PRESS*⁸

(U) Contrary to what many believe, this well-known First Amendment right is not owned by the news media; it is a right of the American people. Therefore, this right covers such matters as reasonable access to news-making events, the making of documentaries, and various other forms

⁸ Note: Due to an administrative error, the version of the DIOG released on September 17, 2021, prematurely included new requirements pertaining to the use of compulsory processes to obtain information from, or records of, members of the news media. As of October 25, 2021, those changes (including some that erroneously appeared on this page) have been reverted to the previous release of the DIOG, dated March 31, 2020. Additional updates about this topic are coming soon. Questions should be directed to CDCs or IPO.

of publishing the news. Although the news media typically seek to enforce this right, freedom of the press should not be viewed as a contest between law enforcement or national security, on the one hand, and the interests of news media, on the other. That said, the news gathering function is the aspect of freedom of the press most likely to intersect with law enforcement and national security investigative activities.

(U) The interest of the news media in protecting confidential sources and the interest of agencies like the FBI in gaining access to those sources who may have evidence of a crime or national security intelligence often clash. The seminal case in this area is *Branzburg v. Hayes*, 408 U.S. 665 (1972), in which the Supreme Court held that freedom of the press does not entitle a news reporter to refuse to divulge the identity of his source to a federal grand jury. The Court reasoned that, as long as the purpose of law enforcement is not harassment or vindictiveness against the press, any harm to the news gathering function of the press (by revealing source identity) is outweighed by the need of the grand jury to gather evidence of crime.

(U) Partially in response to *Branzburg*, the Attorney General promulgated regulations that govern the issuance of subpoenas for reporter's testimony and telephone toll records, the arrest of a reporter for a crime related to news gathering, and the interview of a reporter as a suspect in a crime arising from the news gathering process. In addition, an investigation of a member of the news media in his official capacity, the use of a reporter as a source, and posing as a member of the news media are all sensitive circumstances in the AGG-Dom, DIOG and other applicable AGGs.

(U) These regulations are not intended to insulate reporters and other news media from FBI Assessments or predicated investigations. They are intended to ensure that investigative activity that seeks information from or otherwise involves members of the news media:

- A) (U) Is appropriately authorized;
- B) (U) Is necessary for an important law enforcement or national security objective;
- C) (U) Is the least intrusive means to obtain the information or achieve the goals; and
- D) (U) Does not unduly infringe upon the news gathering aspect of the constitutional right to freedom of the press.

4.2.4 (U) FREEDOM OF PEACEFUL ASSEMBLY AND TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES

(U) Freedom of peaceful assembly, often called the right to freedom of association, presents unique issues for law enforcement agencies, including the FBI. Individuals who gather with others to protest government action, or to rally or demonstrate in favor of, or in opposition to, a social cause sometimes present a threat to public safety by their numbers, by their actions, by the anticipated response to their message, or by creating an opportunity for individuals or other groups with an unlawful purpose to infiltrate and compromise the legitimacy of the group for their own ends. The right to peaceful assembly includes more than just public demonstrations—it includes, as well, the posting of group web sites on the Internet, recruiting others to a cause, marketing a message, and fund raising. All are protected First Amendment rights if they are conducted in support of the organization or political, religious or social cause.

(U) The right to petition the government for redress of grievances is so linked to peaceful assembly and association that it is included in this discussion. A distinction between the two is that an individual may exercise the right to petition the government by himself whereas assembly necessarily involves others. The right to petition the government includes writing letters to Congress, carrying a placard outside city hall that delivers a political message, recruiting others to one's cause, and lobbying Congress or an executive agency for a particular result.

(U) For the FBI, covert presence or action within associations or organizations, also called "undisclosed participation," has the greatest potential to impact this constitutional right. The Supreme Court addressed this issue as a result of civil litigation arising from one of the many protests against the Vietnam War. In *Laird v. Tatum*, 408 U.S. 1 (1972), the Court found that the mere existence of an investigative program—consisting of covert physical surveillance in public areas, infiltration of public assemblies by government operatives or sources, and the collection of news articles and other publicly available information—for the purpose of determining the existence and scope of a domestic threat to national security does not, by itself, violate the First Amendment rights of the members of the assemblies. The subjective "chill" to the right to assembly, based on the suspected presence of government operatives, did not by itself give rise to legal "standing" for plaintiffs to argue that their constitutional rights had been abridged. Instead, the Court required a showing that the complained-of government action would reasonably deter the exercise of that right.

(U) Since *Laird v. Tatum* was decided, the lower courts have examined government activity on many occasions to determine whether it gave rise to a "subjective chill" or an "objective deterrent." The basic standing requirement established by *Laird* remains unchanged today. The lower courts, however, have often imposed a very low threshold of objective harm to survive a motion to dismiss the case. For example, plaintiffs who have shown a loss of membership in an organization, loss of financial support, loss to reputation and status in the community, and loss of employment by members have been granted standing to sue.

(U) More significant for the FBI than the standing issue has been the lower courts' evaluation of investigative activity into First Amendment protected associations since *Laird*. The courts have held the following investigative activities to be constitutionally permissible under First Amendment analysis:

- A) (U) Undercover participation in group activities;
- B) (U) Physical and video surveillance in public areas;
- C) (U) Properly authorized electronic surveillance;
- D) (U) Recruitment and operation of sources;
- E) (U) Collection of information from government, public, and private sources (with consent); and
- F) (U) The dissemination of information for a valid law enforcement purpose.

(U) However, these decisions were not reached in the abstract. In every case in which the courts have found government action to be proper, the government proved that the action was conducted for an authorized law enforcement or national security purpose and that the action was conducted in substantial compliance with controlling regulations. In addition, in approving these techniques, the courts have often considered whether a less intrusive technique was available to

the agency, and the courts have balanced the degree of intrusion or impact against the importance of the law enforcement or national security objective.

(U) By contrast, since *Laird*, the courts have found these techniques to be legally objectionable:

- A) (U) Opening an investigation solely because of the group's social or political agenda (even if the agenda made the group susceptible to subversive infiltration);
- B) (U) Sabotaging or neutralizing the group's legitimate social or political agenda;
- C) (U) Disparaging the group's reputation or standing;
- D) (U) Leading the group into criminal activity that otherwise probably would not have occurred; and
- E) (U) Undermining legitimate recruiting or funding efforts.

(U) In every such case, the court found the government's purpose was not persuasive, was too remote, or was too speculative to justify the intrusion and the potential harm to the exercise of First Amendment rights.

(U) Once again, the message is clear that investigative activity that involves assemblies or associations of individuals in the United States exercising their First Amendment rights must have an authorized purpose under the AGG-Dom—and one to which the information sought and the technique to be employed are rationally related. Less intrusive techniques should always be explored first and those authorizing such activity (which, as discussed above, will almost always constitute a sensitive investigative matter) should ensure that the investigative activity is focused as narrowly as feasible and that the purpose is thoroughly documented.

4.3 (U) EQUAL PROTECTION UNDER THE LAW

4.3.1 (U) INTRODUCTION

(U) The Equal Protection Clause of the United States Constitution provides in part that: “No State shall make or enforce any law which shall deny to any person within its jurisdiction the equal protection of the laws.” The Supreme Court and the lower courts have made it clear that the Equal Protection Clause applies to the official acts of United States government law enforcement agents. See, e.g., *Whren v. United States*, 517 U.S. 806 (1996); see also *Chavez v. Illinois State Police*, 251 F.3d 612 (7th Cir. 2001).

(U) Specifically, federal government employees are prohibited from engaging in invidious discrimination against individuals on the basis of race, ethnicity, gender, national origin, religion, disability, sexual orientation, or gender identity. This principle is further reflected and implemented for federal law enforcement in the United States Department of Justice’s Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity (hereinafter “DOJ’s 2014 Guidance on Use of Race, etc.”) and the Department of Justice’s Guidance on Interactions with Members of the Public with Disabilities in Traditional Law Enforcement Program Activities.

(U) Investigative and intelligence collection activities must not be based solely on race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity. Any such activities that are based solely on such considerations are invidious by definition, and therefore, unconstitutional. This standard applies to all investigative and collection activity, including collecting and retaining information, opening investigations, disseminating information, and

indicting and prosecuting defendants. It is particularly applicable to the retention and dissemination of personally identifying information about an individual—as further illustrated in the examples enumerated below.

(U) The constitutional prohibition against invidious discrimination based on race, ethnicity, national origin or religion and the DOJ Guidance on the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity is relevant to both the national security and criminal investigative programs of the FBI. National security investigations often have ethnic aspects; members of a foreign terrorist organization may be primarily or exclusively from a particular country or area of the world. Similarly, ethnic heritage is frequently the common thread running through violent gangs or other criminal organizations. It should be noted that this is neither a new nor isolated phenomenon. Ethnic commonality among criminal and terrorist groups has been relatively constant and widespread across many ethnicities throughout the history of the FBI.

4.3.2 **(U) POLICY PRINCIPLES**

(U) On December 8, 2014, the Department of Justice issued the *DOJ's 2014 Guidance on Use of Race, etc.*, which superseded the Department's 2003 "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies."

(U) The DOJ's 2014 Guidance applies to Federal law enforcement officers performing Federal law enforcement activities, including those related to national security and intelligence, and defines not only the circumstances in which Federal law enforcement officers may take into account a person's race and ethnicity – as the 2003 Guidance did – but also when gender, national origin, religion, sexual orientation, or gender identity may be taken into account. This new Guidance also applies to state and local law enforcement officers while participating in Federal law enforcement task forces.

(U) The DOJ's 2014 Guidance on Use of Race, etc. provides two standards in combination which will guide Federal law enforcement and task force officers in the appropriate use of race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity in law enforcement or intelligence activities:

- A) (U) In making routine or spontaneous law enforcement decisions, such as ordinary traffic stops, Federal law enforcement or task force officers may not use race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity to any degree, except that officers may rely on the listed characteristics in a specific suspect description. This prohibition applies even where the use of a listed characteristic might otherwise be lawful.
- B) (U) In conducting all activities other than routine or spontaneous law enforcement activities, Federal law enforcement or task force officers may consider race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity only to the extent that there is trustworthy information, relevant to the locality or time frame, that links persons possessing a particular listed characteristic to an identified criminal incident, scheme, or organization, a threat to national or homeland security, a violation of Federal immigration law, or an authorized intelligence activity. In order to rely on a listed characteristic, federal law enforcement or task force officers must also reasonably believe that the law enforcement, security, or intelligence activity to be undertaken is merited under the totality of the circumstances, such as any temporal exigency and the nature of any potential harm to be

averted. This standard applies even where the use of a listed characteristic might otherwise be lawful.

(U) To ensure that Assessment and investigative activities and strategies consider racial, ethnic, gender, national origin, religion, sexual orientation, or gender identity factors properly and effectively and to help assure the American public that the FBI does not engage in invidious discrimination, the DIOG establishes the following policy principles:

- A) (U) The prohibition on basing investigative activity solely on race or ethnicity is not avoided by considering it in combination with other prohibited factors. For example, a person of a certain race engaging in lawful public speech about his religious convictions is not a proper subject of investigative activity based solely on any one of these factors—or by their combination. Before collecting and using information on race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity, a well-founded and authorized investigative purpose must exist beyond these prohibited factors.
- B) (U) When race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity is a relevant factor to consider, it should not be the dominant or primary factor. Adherence to this standard will not only ensure that they are never the sole factor—it will also preclude undue and unsound reliance on them in investigative analysis. It reflects the recognition that there are thousands and, in some cases, millions of law abiding people in American society of the same race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity as those who are the subjects of FBI investigative activity, and it guards against the risk of sweeping them into the net of suspicion without a sound investigative basis.
- C) (U) The FBI will not collect or use behavior or characteristics common to a particular racial or ethnic community as investigative factors unless the behavior or characteristics bear clear and specific relevance to a matter under Assessment or investigation. This policy is intended to prevent the potential that collecting ethnic characteristics or behavior will inadvertently lead to individual identification based solely on such matters, as well as to avoid the appearance that the FBI is engaged in ethnic or racial profiling.

(U) On January 6, 2017, the Department of Justice (DOJ) issued the Department of Justice's *Guidance on Interactions with Members of the Public with Disabilities in Traditional Law Enforcement Programs and Activities*. Agents must not unlawfully discriminate against any person with a disability and must treat persons with disabilities with professionalism and respect. DOJ is responsible, under Executive Order 12250, for coordinating implementation of Section 504 of the Rehabilitation Act of 1973 with respect to both federally assisted and federally conducted programs and activities. As the DOJ's guidance reiterated, it is important that FBI's programs and activities be a model of compliance.

4.3.3 (U) GUIDANCE ON THE USE OF RACE, ETHNICITY, GENDER, NATIONAL ORIGIN, RELIGION, SEXUAL ORIENTATION, OR GENDER IDENTITY IN ASSESSMENTS AND PREDICATED INVESTIGATIONS

(U) Considering the reality of common ethnicity, race, religion, or national origin among many criminal and terrorist groups, some question how the prohibition against racial or ethnic profiling is to be effectively applied—and not violated—in FBI Assessments and predicated investigations. The question arises generally in two contexts: (i) with respect to an individual or a group of individuals; and (ii) with respect to ethnic or racial communities as a whole.

4.3.3.1 (U) INDIVIDUAL RACE, ETHNICITY, GENDER, NATIONAL ORIGIN, RELIGION, SEXUAL ORIENTATION, OR GENDER IDENTITY AS A FACTOR

(U) The *DOJ's 2014 Guidance on Use of Race, etc.* permits the consideration of race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity information based on specific reporting—such as from an eyewitness. As a general rule, race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity as an identifying feature of a suspected perpetrator, subject, and in some cases, a victim, is relevant if it is based on reliable evidence or information—not conjecture or stereotyped assumptions. In addition, the DOJ's 2014 Guidance on Use of Race, etc. permits consideration of such personal characteristics in other investigative or collection scenarios if it is relevant to an identified criminal incident, scheme, or organization. These examples illustrate:

- A) (U) The race or ethnicity of suspected members, associates, or supporters of an ethnic-based gang or criminal enterprise may be collected and retained when gathering information about or investigating the organization.
- B) (U) Ethnicity may be considered in evaluating whether a subject is—or is not—a possible associate of a criminal or terrorist group that is known to be comprised of members of the same ethnic grouping—as long as it is not the dominant factor for focusing on a particular person. It is axiomatic that there are many members of the same ethnic group who are not members of the criminal or terrorist group; for that reason, there must be other information beyond race or ethnicity that links the individual to the terrorist or criminal group or to the other members of the group. Otherwise, racial or ethnic identity would be the sole criterion, and that is impermissible.

4.3.3.2 (U) COMMUNITY RACE, ETHNICITY, GENDER, NATIONAL ORIGIN, RELIGION, SEXUAL ORIENTATION, OR GENDER IDENTITY AS A FACTOR**4.3.3.2.1 (U) COLLECTING AND ANALYZING DEMOGRAPHICS**

(U) The *DOJ's 2014 Guidance on Use of Race, etc.* and FBI policy permit the FBI to identify locations of concentrated ethnic communities in the field office's domain, if these locations will reasonably aid the analysis of potential threats and vulnerabilities to national and homeland security or an authorized intelligence activity, e.g., assist domain awareness for the purpose of performing intelligence analysis. If, for example, intelligence reporting reveals that members of certain terrorist organizations live and operate primarily within a certain concentrated community of the same ethnicity, the location of that community is clearly valuable—and properly collectible—data. Similarly, the locations of ethnic-oriented businesses and other facilities may be collected if their locations will reasonably contribute to an awareness of potential threats and vulnerabilities, and intelligence collection opportunities. Also, members of some communities may be potential victims of civil rights crimes and, for this reason, community location may aid enforcement of civil rights laws. Information about such communities should not be collected, however, unless the communities are sufficiently concentrated and established so as to provide a reasonable potential for intelligence collection that would support FBI mission programs (e.g., where identified terrorist subjects from certain countries may relocate to blend in and avoid detection).

4.3.3.2.2 (U) GEO-MAPPING ETHNIC/RACIAL DEMOGRAPHICS

(U) As a general rule, if information about community demographics may be collected, it may be “mapped.” Sophisticated computer geo-mapping technology visually depicts lawfully collected information and can assist in showing relationships among disparate data. By itself, mapping raises no separate concerns about racial or ethnic profiling, assuming the underlying information that is mapped was properly collected. It may be used broadly - e.g., for domain awareness of all relevant demographics in the field office’s area of responsibility or to track crime trends – or narrowly to identify specific communities or areas of interest to inform a specific Assessment or investigation. In each case, the relevance of the ethnic or racial information mapped to the authorized purpose of the Assessment or investigation must be clearly demonstrated and documented.

4.3.3.2.3 (U) GENERAL ETHNIC/RACIAL BEHAVIOR

(U) The authority to collect ethnic community location information does not extend to the collection of cultural and behavioral information about an ethnic community that bears no rational relationship to a valid investigative or analytical need. Every ethnic community in the Nation that has been associated with a criminal or national security threat has a dominant majority of law-abiding citizens, resident aliens, and visitors who may share common ethnic behavior but who have no connection to crime or terrorism (as either subjects or victims). For this reason, a broad-brush collection of racial or ethnic characteristics or behavior is not helpful to achieve any authorized FBI purpose and may create the appearance of improper racial or ethnic profiling.

4.3.3.2.4 (U) SPECIFIC AND RELEVANT ETHNIC BEHAVIOR

(U) On the other hand, knowing the behavioral and life style characteristics of known individuals who are criminals or who pose a threat to national security may logically aid in the detection and prevention of crime and threats to the national security within the community and beyond. Focused behavioral characteristics reasonably believed to be associated with a particular criminal or terrorist element of an ethnic community (not with the community as a whole) may be collected and retained. For example, if it is known through intelligence analysis or otherwise that individuals associated with an ethnic-based terrorist or criminal group conduct their finances by certain methods, travel in a certain manner, work in certain jobs, or come from a certain part of their home country that has established links to terrorism, those are relevant factors to consider when investigating the group or assessing whether it may have a presence within a community. It is recognized that the “fit” between specific behavioral characteristics and a terrorist or criminal group is unlikely to be perfect—that is, there will be members of the group who do not exhibit the behavioral criteria as well as persons who exhibit the behaviors who are not members of the group. Nevertheless, in order to maximize FBI mission relevance and to minimize the appearance of racial or ethnic profiling, the criteria used to identify members of the group within the larger ethnic community to which they belong must be as focused and as narrow as intelligence reporting and other circumstances permit. If intelligence reporting is insufficiently exact so that it is reasonable to believe that the criteria will include an unreasonable number of people who are not involved, then it would be inappropriate to use the behaviors, standing alone, as the basis for FBI activity.

4.3.3.2.5 (U) EXPLOITIVE ETHNIC BEHAVIOR

(U) A related category of information that can be collected is behavioral and cultural information about ethnic or racial communities that is reasonably likely to be exploited by criminal or terrorist groups who hide within those communities in order to engage in illicit activities undetected. For example, the existence of a cultural tradition of collecting funds from members within the community to fund charitable causes in their homeland at a certain time of the year (and how that is accomplished) would be relevant if intelligence reporting revealed that, unknown to many donors, the charitable causes were fronts for terrorist organizations or that terrorist supporters within the community intended to exploit the unwitting donors for their own purposes.

4.4 (U) LEAST INTRUSIVE METHOD**4.4.1 (U) OVERVIEW**

(U) The AGG-Dom requires that the "least intrusive" means or method be considered and—if reasonable based upon the circumstances of the investigation—used to obtain intelligence or evidence in lieu of a more intrusive method. This principle is also reflected in Appendix B: Executive Order 12333, which governs the activities of the United States Intelligence Community. The concept of least intrusive method applies to the collection of all information. Regarding the collection of foreign intelligence that is not collected as part of the FBI's traditional national security or criminal missions, the AGG-Dom further requires that open and overt collection activity must be used with USPERs, if feasible.

(U) By emphasizing the use of the least intrusive means to obtain information, FBI employees can effectively execute their duties while mitigating potential negative impact on the privacy and civil liberties of all people encompassed within the investigation, including targets, witnesses, and victims. This principle is not intended to discourage FBI employees from seeking relevant and necessary information, but rather is intended to encourage investigators to choose the least intrusive—but still reasonable—means from the available options to obtain the information.

(U) This principle is embodied in statutes and DOJ policies on a variety of topics including electronic surveillance, the use of tracking devices, the temporary detention of suspects, and forfeiture. In addition, the concept of least intrusive method can be found in case law as a factor to be considered in assessing the reasonableness of an investigative method in the face of a First Amendment or due process violation claim. See *Clark v. Library of Congress*, 750 F.2d 89, 94-5 (D.C. Cir. 1984); *Alliance to End Repression v. City of Chicago*, 627 F. Supp. 1044, 1055 (N.D. Ill. 1985), citing *Ehrod v. Burns*, 427 U.S. 347, 362-3 (1976).

4.4.2 (U) GENERAL APPROACH TO LEAST INTRUSIVE METHOD CONCEPT

(U) Determining what constitutes the least intrusive method in an investigative or intelligence collection scenario is both a logical process and an exercise in judgment. It is logical in the sense that the FBI employee must first confirm that the selected technique will:

- A) (U) Gather information that is relevant to the Assessment or predicated investigation;
- B) (U) Acquire the information within the time frame required by the Assessment or predicated investigation;

- C) (U) Gather the information consistent with operational security and the protection of sensitive sources and methods; and
- D) (U) Gather information in a manner that provides confidence in its accuracy.

(U) Determining the least intrusive method also requires sound judgment because the factors discussed above are not fixed points on a checklist. They require careful consideration based on a thorough understanding of investigative objectives and circumstances.

4.4.3 **(U) DETERMINING INTRUSIVENESS**

(U) The degree of procedural protection that established law and the AGG-Dom provide for the use of the method helps to determine its intrusiveness. Using this factor, search warrants, wiretaps, and undercover operations are very intrusive. By contrast, investigative methods with limited procedural requirements, such as checks of government and commercial data bases and communication with established sources, are less intrusive.

(U) The following guidance is designed to assist FBI personnel in judging the relative intrusiveness of different methods:

- A) (U) *Nature of the information sought:* Investigative objectives generally dictate the type of information required and from whom it should be collected. This subpart is not intended to address the situation where the type of information needed and its location are so clear that consideration of alternatives would be pointless. When the option exists to seek information from any of a variety of places, however, it is less intrusive to seek information from less sensitive and less protected places. Similarly, obtaining information that is protected by a statutory scheme (e.g., financial records) or an evidentiary privilege (e.g., attorney/client communications) is more intrusive than obtaining information that is not so protected. In addition, if there exists a reasonable expectation of privacy under the Fourth Amendment (i.e., private communications), obtaining that information is more intrusive than obtaining information that is knowingly exposed to public view as to which there is no reasonable expectation of privacy.
- B) (U) *Scope of the information sought:* Collecting information regarding an isolated event—such as a certain phone number called on a specific date or a single financial transaction—is less intrusive or invasive of an individual's privacy than collecting a complete communications or financial "profile." Similarly, a complete credit history is a more intrusive view into an individual's life than a few isolated credit charges. In some cases, of course, a complete financial and credit profile is exactly what the investigation requires (for example, investigations of terrorist financing or money laundering). If so, FBI employees should not hesitate to use appropriate legal process to obtain such information if the predicate requirements are satisfied. Operational security—such as source protection—may also dictate seeking a wider scope of information than is absolutely necessary for the purpose of protecting a specific target or source. When doing so, however, the concept of least intrusive method still applies. The FBI may obtain more data than strictly needed, but it should obtain no more data than is needed to accomplish the investigative or operational security purpose.
- C) (U) *Scope of the use of the method:* Using a method in a manner that captures a greater picture of an individual's or a group's activities are more intrusive than using the same method or a different one that is focused in time and location to a specific objective. For example, it is less intrusive to use a tracking device to verify point-to-point travel than it is to use the same device to track an individual's movements over a sustained period of time. Sustained tracking on public highways would be just as lawful but more intrusive because it captures a greater portion of an individual's daily movements. Similarly, surveillance by closed circuit television

that checks a discrete location within a discrete time frame is less intrusive than 24/7 coverage of a wider area. For another example, a computer intrusion device that captures only host computer identification information is far less intrusive than one that captures file content.

- D) (U) *Source of the information sought:* It is less intrusive to obtain information from existing government sources (such as state, local, tribal, international, or federal partners) or from publicly-available data in commercial data bases, than to obtain the same information from a third party (usually through legal process) that has a confidential relationship with the subject—such as a financial or academic institution. Similarly, obtaining information from a reliable confidential source who is lawfully in possession of the information and lawfully entitled to disclose it (such as obtaining an address from an employee of a local utility company) is less intrusive than obtaining the information from an entity with a confidential relationship with the subject. It is recognized in this category that the accuracy and procedural reliability of the information sought is an important factor in choosing the source of the information. For example, even if the information is available from a confidential source, a grand jury subpoena, national security letter, ex parte order, or other process may be required in order to ensure informational integrity and accuracy.
- E) (U) *The risk of public exposure:* Seeking information about an individual or group under circumstances that create a risk that the contact itself and the information sought will be exposed to the individual's or group's detriment and/or embarrassment—particularly if the method used carries no legal obligation to maintain silence—is more intrusive than information gathering that does not carry that risk. Interviews with employers, neighbors, and associates, for example, or the issuance of grand jury subpoenas at a time when the investigation has not yet been publicly exposed are more intrusive than methods that gather information covertly. Similarly, interviews of a subject in a discrete location would be less intrusive than an interview at, for example, a place of employment or other location where the subject is known.
- (U) There is a limit to the utility of this list of intrusiveness factors. Some factors may be inapplicable in a given investigation and, in many cases, the choice and scope of the method will be dictated wholly by investigative objectives and circumstances. The foregoing is not intended to provide a comprehensive checklist or even an overall continuum of intrusiveness. It is intended instead to identify the factors involved in a determination of intrusiveness and to attune FBI employees to select, within each applicable category, a less intrusive method if operational circumstances permit. In the end, selecting the least intrusive method that will accomplish the objective is a matter of sound judgment. In exercising such judgment, however, consideration of these factors should ensure that the decision to proceed is well founded.

4.4.4 (U) STANDARD FOR BALANCING INTRUSION AND INVESTIGATIVE REQUIREMENTS

(U) Once an appropriate method and its deployment have been determined, reviewing and approving authorities should balance the level of intrusion against investigative requirements. This balancing test is particularly important when the information sought involves clearly established constitutional, statutory, or evidentiary rights or sensitive circumstances (such as obtaining information from religious or academic institutions or public fora where First Amendment rights are being exercised), but should be applied in all circumstances to ensure that the least intrusive method if reasonable based upon the circumstances of the investigation is being utilized.

(U) Balancing the factors discussed above with the considerations discussed below will help determine whether the method and the extent to which it intrudes into privacy or threatens civil liberties are proportionate to the significance of the case and the information sought.

(U) Considerations on the investigative side of the balancing scale include the:

- A) (U) Seriousness of the crime or national security threat;
- B) (U) Strength and significance of the intelligence/information to be gained;
- C) (U) Amount of information already known about the subject or group under investigation; and
- D) (U) Requirements of operational security, including protection of sources and methods.

(U) If, for example, the threat is remote, the individual's involvement is speculative, and the probability of obtaining probative information is low, intrusive methods may not be justified, and, in fact, they may do more harm than good. At the other end of the scale, if the threat is significant and possibly imminent (e.g., a bomb threat), aggressive measures would be appropriate regardless of intrusiveness.

(U) In addition, with respect to the investigation of a group, if the terrorist or criminal nature of the group and its membership is well established (e.g., al Qaeda, Ku Klux Klan, Colombo Family of La Cosa Nostra), there is less concern that pure a First Amendment right is at stake than there would be for a group whose true character is not yet known (e.g., an Islamic charity suspected of terrorist funding) or many of whose members appear to be solely exercising First Amendment rights (anti-war protestors suspected of being infiltrated by violent anarchists). This is not to suggest that investigators should be less aggressive in determining the true nature of an unknown group that may be engaged in terrorism or other violent crime. Indeed, a more aggressive and timely approach may be in order to determine whether the group is violent or to eliminate it as a threat. Nevertheless, when First Amendment rights are at stake, the choice and use of investigative methods should be focused in a manner that minimizes potential infringement of those rights. Finally, as the investigation progresses and the subject's or group's involvement becomes clear, more intrusive methods may be justified. Conversely, if reliable information emerges refuting the individual's involvement or the group's criminal or terrorism connections, the use of any investigative methods must be carefully reconsidered.

(U) Another consideration to be balanced is operational security: if a less intrusive but reasonable method were selected, would the subject detect its use and alter his activities—including his means of communication—to thwart the success of the operation? Operational security—particularly in national security investigations—should not be undervalued and may, by itself, justify covert tactics which, under other circumstances, would not be the least intrusive.

4.4.5 (U) CONCLUSION

(U) The foregoing guidance is offered to assist FBI employees in navigating the often unclear course to select the least intrusive investigative method that effectively accomplishes the operational objective at hand. In the final analysis, choosing the method that most appropriately balances the impact on privacy and civil liberties with operational needs, is a matter of judgment, based on training and experience. Pursuant to the AGG-Dom, other applicable laws and policies, and this guidance, FBI employees may use any lawful method allowed, even if intrusive, where the intrusiveness is warranted by the threat to the national security or to potential victims of crime and/or the strength of the information indicating the existence of that threat.

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5 (U) ASSESSMENTS

5.1 (U) OVERVIEW AND ACTIVITIES AUTHORIZED PRIOR TO OPENING AN ASSESSMENT

(U//~~FOUO~~) The *AGG-Dom* combines “threat assessments” under the former *Attorney General’s Guidelines for FBI National Security Investigations and Foreign Intelligence Collection* and the “prompt and extremely limited checking out of initial leads” under the former *Attorney General’s Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations* into a new investigative category entitled “Assessments.”

(U//~~FOUO~~) All Assessments must be documented in the appropriate form, to include a Guardian FD-71a or EC, and the form must be placed in one of the following files:

- A) (U//~~FOUO~~) Investigative classification as an Assessment file (e.g., 415A-WF-xxxxxx);
- B) (U//~~FOUO~~) Zero classification file (e.g. 196-WF-0). This file may be used if information is entered in Guardian (FD-71a) and an Assessment is not opened based on that information;
- C) (U//~~FOUO~~) 800 series (801-807) classification file, as discussed in greater detail below;
- D) (U//~~FOUO~~) Unaddressed work file; or
- E) (U//~~FOUO~~) Existing open or closed file.

(U//~~FOUO~~) Note: In the DIOG, the word “assessment” has two distinct meanings. The AGG-Dom authorizes as an investigative activity an “Assessment,” which requires an authorized purpose as discussed in this section of the DIOG. The USIC, however, also uses the word “assessment” to describe written intelligence products, as discussed in DIOG Sections 15.2.3 and 15.6.1.2.

(U) Assessments authorized under the AGG-Dom do not require a particular factual predication but do require an authorized purpose and clearly defined objective(s). Assessments may be carried out to detect, obtain information about, or prevent or protect against Federal crimes or threats to the national security or to collect foreign intelligence. (AGG-Dom, Part II and Part II.A)

(U//~~FOUO~~) Although “no particular factual predication” is required, the basis of an Assessment cannot be arbitrary or groundless speculation, nor can an Assessment be based solely on the exercise of First Amendment protected activities or on the race, ethnicity, gender, national origin, religion, disability, sexual orientation, or gender identity of the subject. Although difficult to define, “no particular factual predication” is less than “information or allegation” as required for the initiation of a Preliminary Investigation (PI). For example, an Assessment may be conducted when: (i) there is reason to collect information or facts to determine whether there is a criminal or national security threat; and (ii) there is a rational and articulable relationship between the stated authorized purpose of the Assessment on the one hand and the information sought and the proposed means to obtain that information on the other. An FBI employee must be able to explain the authorized purpose and the clearly defined objective(s), and reason the particular investigative methods were used to conduct the Assessment. FBI employees who conduct Assessments are responsible for ensuring that Assessments are not pursued for frivolous or improper purposes and are not based solely on First Amendment rights or on the race,

ethnicity, gender, national origin, religion, disability, sexual orientation, or gender identity of the subject of the Assessment, or a combination of only such factors. (AGG-Dom, Part II)

5.1.1 **(U) ACTIVITIES AUTHORIZED PRIOR TO OPENING AN ASSESSMENT**

(U//~~FOUO~~) When employees undertake activities authorized in DIOG subsection 5.1.1 prior to opening an Assessment, they must have a reason that is tied to an authorized FBI criminal or national security purpose to undertake these activities. If, while engaged in such activities, the information collected or obtained meets the standard for opening an Assessment or a predicated investigation, and the employee intends to continue pursuing the matter, an Assessment or a predicated investigation must be opened, and any records obtained must be treated in accordance with DIOG subsection 5.1.2 below.

(U//~~FOUO~~) With the benefit of these methods, an FBI employee may be able to answer the following question when evaluating the initial complaint, observation, or information: Does the complaint, observation, or information appear to represent a credible basis to open an Assessment, with an authorized purpose and clearly defined objective(s), or to open a predicated investigation consistent with the standards set forth in the DIOG?

(U//~~FOUO~~) Moreover, the use of these activities may allow the FBI employee to resolve a matter without the need to conduct new investigative activity, for which an Assessment or a predicated investigation must be opened. However, when using these methods prior to opening an Assessment, FBI employees must always adhere to the core values and principles articulated in DIOG Sections 3 and 4.

(U//~~FOUO~~) When initially processing a complaint, observation, or information, an FBI employee can use the following investigative methods:

5.1.1.1 **(U) PUBLIC INFORMATION**

(U//~~FOUO~~) See DIOG section 18.5.1.

(U//~~FOUO~~) Prior to opening an Assessment, consent searches are not authorized. However, if in the course of processing a complaint or conducting a clarifying interview of the complainant, the complainant volunteers to provide access to his personal or real property, an agent may accept and conduct a search of the item(s) or property voluntarily provided.

5.1.1.2 **(U) RECORDS OR INFORMATION - FBI AND DOJ**

(U//~~FOUO~~) See DIOG section 18.5.2.

5.1.1.3 **(U) RECORDS OR INFORMATION – OTHER FEDERAL, STATE, LOCAL, TRIBAL, OR FOREIGN GOVERNMENT AGENCY**

(U//~~FOUO~~) See DIOG Section 18.5.3.1.

5.1.1.4 **(U) ON-LINE SERVICES AND RESOURCES**

(U//~~FOUO~~) See DIOG subsection 18.5.4 and Appendix L, Section 3.

5.1.1.5 (U) CLARIFYING INTERVIEW

(U//~~FOUO~~) Conduct a voluntary clarifying interview of the complainant or the person who initially furnished the information. A clarifying interview is limited for the sole purpose of eliminating confusion in the original allegation or information provided. It is not intended to be an interview as described in 18.5.6.

5.1.1.6 (U) INFORMATION VOLUNTARILY PROVIDED BY GOVERNMENTAL OR PRIVATE ENTITIES

(U//~~FOUO~~) See DIOG Section 18.5.7.

5.1.2 (U) REQUIRED JUSTIFICATION REVIEWS

(U//~~FOUO~~) If a Guardian FD-71a associated with one of the following matters is not closed as Information Only or converted to an Assessment or predicated investigation within 30 days, the SSA must conduct a justification review every 30 days (recurring until the Guardian FD-71a is closed) in accordance with DIOG Section 3.5.4:

- (U//~~FOUO~~) Sexual abuse/exploitation
- (U//~~FOUO~~) Violent crimes against children (including child pornography, child sex trafficking, and child sexual abuse/exploitation)
- (U//~~FOUO~~) Human trafficking

(U//~~FOUO~~) The justification review standards must be documented in Guardian.

5.1.3 (U) DOCUMENTATION REQUIREMENTS FOR ACTIVITIES AUTHORIZED PRIOR TO OPENING AN ASSESSMENT: (EXISTING/HISTORICAL INFORMATION REFERRED TO IN SECTION 5.1.1 ABOVE)

(U//~~FOUO~~) FBI employees are permitted to retain records checks and other information collected while processing a complaint or responding to a tip or lead using permitted DIOG 5.1.1 activities. This collection or record retention is permitted if, in the judgment of the FBI employee, there is a law enforcement, national security, intelligence, or public safety purpose to do so. This documentation must be completed as soon as practicable, but not more than five business days from the receipt of the information and placed within an FBI system of record. Indexing of the information is mandatory. When permitted, such documentation must be retained in the 1A section of one of the following files:

- A) (U//~~FOUO~~) Zero classification file, when no further investigative activity is warranted
- B) (U//~~FOUO~~) Relevant, open or closed Assessment
- C) (U//~~FOUO~~) Relevant, open or closed predicated investigation file
- D) (U//~~FOUO~~) New Assessment or predicated investigation file, when further investigative activity is warranted
- E) (U//~~FOUO~~) Unaddressed work file

(U//~~FOUO~~) See also DIOG Appendix L, Section 3, for guidance on authorized activities conducted online prior to opening an Assessment.

(U//~~FOUO~~) **Intelligence Analysis and Planning:** Through analysis of existing information, the FBI employee may produce products that include, but are not limited to: an Intelligence Assessment, Intelligence Bulletin and Geospatial Intelligence (mapping). If, while conducting analysis, the FBI employee finds a gap in intelligence that is relevant to an authorized FBI activity, then the FBI employee can identify the gap for possible development of a “collection requirement.” The FBI employee must document this analysis in the applicable 801-807 classification file (or other 800-series classification file as directed in the *Intelligence Program Policy Guide* (1150PG)). See the *Intelligence Program Policy Guide* (1150PG) for file classification guidance.

5.1.4 (U) LIAISON ACTIVITIES AND TRIPWIRES

(U) Some FBI activities are not traditional investigative or intelligence activities. Activities such as liaison, tripwires, and other community outreach represent relationship-building efforts or other pre-cursors to developing and maintaining good partnerships. These activities are critical to the success of the FBI’s mission. DIOG Section 11 addresses liaison activities and tripwires.

5.2 (U) PURPOSE AND SCOPE

(U//~~FOUO~~) The FBI cannot be content to wait for leads to come in through the actions of others; rather, we must be vigilant in detecting criminal or national security threats to the full extent permitted by law, with an eye towards early intervention and prevention of criminal or national security incidents before they occur. For example, to carry out the central mission of protecting the national security, the FBI must proactively collect information from available sources in order to identify threats and activities and to inform appropriate intelligence analysis. Collection required to inform such analysis will appear as FBI National Collection Requirements and FBI Field Office Collection Requirements. Likewise, in the exercise of its protective functions, the FBI is not constrained to wait until information is received indicating that a particular event, activity or facility has drawn the attention of would-be perpetrators of crime or terrorism. The proactive authority conveyed to the FBI is designed for, and may be used by, the FBI in the discharge of these responsibilities. The FBI may also conduct Assessments as part of its special events management responsibilities. (AGG-Dom, Part II)

(U) More broadly, detecting and interrupting criminal activities at their early stages, and preventing crimes from occurring in the first place, is preferable to allowing criminal plots to come to fruition. Hence, Assessments may also be undertaken proactively with such purposes as detecting criminal activities; obtaining information on individuals, groups, or organizations of possible investigative interest, either because they may be involved in criminal or national security-threatening activities or because they may be targeted for attack or victimization in such activities; and identifying and assessing individuals who may have value as confidential human sources. (AGG-Dom, Part II and AGG-CHS).

(U//~~FOUO~~) As described in the scenarios below, Assessments may be used when an “allegation or information” or an “articulable factual basis” (the predicates for predicated investigations) concerning crimes or threats to the national security is obtained and the matter can be checked out or resolved through the relatively non-intrusive methods authorized in Assessments (use of

least intrusive means). The checking of investigative leads in this manner can avoid the need to proceed to more elevated levels of investigative activity (predicated investigation), if the results of an Assessment indicate that further investigation is not warranted. (AGG-Dom, Part II) Hypothetical fact patterns are discussed below:

5.2.1 **(U) SCENARIOS**

(U//~~FOUO~~) Scenario 1:

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(U//~~FOUO~~) Response 1:

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(U//~~FOUO~~) Scenario 2:

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(U//~~FOUO~~) Scenario 4:

[Redacted Content]

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(U//~~FOUO~~) Response 4:

[Redacted Content]

(U//~~FOUO~~)(U//~~FOUO~~) Scenario 5:

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(U//~~FOUO~~) Response 5:

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(U//~~FOUO~~)(U//~~FOUO~~) Scenario 6:

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(U//~~FOUO~~) Response 6:

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(U//~~FOUO~~) Scenario 7:

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(U//~~FOUO~~) Response 7:

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(U//~~FOUO~~) Scenario 8:(U//~~FOUO~~) Response 8:

5.3 (U) CIVIL LIBERTIES AND PRIVACY

(U) The pursuit of legitimate goals without infringing upon the exercise of constitutional freedoms is a challenge that the FBI meets through the application of sound judgment and discretion. In order to ensure civil liberties are not infringed upon through Assessments, every Assessment must have an authorized purpose and clearly defined objective(s). The authorized purpose and clearly defined objective(s) of the Assessment must be documented and retained as described in this section and in DIOG Section 14.

(U) Even when an authorized purpose is present, an Assessment could create the appearance that it is directed at or activated by constitutionally-protected activity, race, ethnicity, gender, national origin, religion, disability, sexual orientation, or gender identity—particularly under circumstances where the link to an authorized FBI mission is not readily apparent. In these situations, it is vitally important that the authorized purpose and the clearly defined objective(s), as well as the use of any investigative methods, are well documented.

(U) No investigative activity, including Assessments, may be taken solely on the basis of activities that are protected by the First Amendment or on the race, ethnicity, gender, national origin, religion, disability, sexual orientation, or gender identity of the subject, or a combination of only such factors. If an Assessment touches on or is partially motivated by First Amendment rights, or by race, ethnicity, gender, national origin, religion, disability, sexual orientation, or gender identity, or a combination of only such factors, it is particularly important to identify and document the basis for the Assessment with clarity.

(U//~~FOUO~~) *Example*: Individuals or groups who communicate with each other or with members of the public in any form in pursuit of social or political causes—such as opposing war or foreign policy, protesting government actions, promoting certain religious beliefs, championing particular local, national, or international causes, or advocating a change in government through non-criminal means, and actively recruiting others to join their causes—have a fundamental constitutional right to do so. An Assessment may not be opened based solely on the exercise of these First Amendment rights. If, however, a group exercising its First Amendment rights also threatens or advocates violence or destruction of property, an Assessment would be appropriate.

(U) The AGG-Dom require that the "least intrusive" means or method be considered and—if reasonable based upon the circumstances of the investigation—used in lieu of more intrusive

methods to obtain information, intelligence and/or evidence. This principle is also reflected in Executive Order 12333 (see Appendix B), which governs the activities of the USIC. Executive Order 12333 lays out the goals, directions, duties and responsibilities of the USIC. The concept of least intrusive means applies to the collection of all information, intelligence and evidence, not just that collected by those aspects of the FBI that are part of the intelligence community.

(U) By emphasizing the use of the least intrusive means to obtain information, intelligence, and/or evidence, FBI employees can effectively execute their duties while mitigating the potential negative impact on the privacy and civil liberties and the damage to the reputation of all people encompassed within the investigation or Assessment, including targets, witnesses, and victims. This principle is not intended to discourage FBI employees from seeking relevant and necessary intelligence, information, or evidence, but rather is intended to encourage FBI employees to choose the least intrusive—but still reasonable based upon the circumstances of the investigation—means from the available options to obtain the information. (AGG-Dom, Part I.C.2)

5.4 (U) FIVE TYPES OF ASSESSMENTS (AGG-DOM, PART II.A.3.)

5.4.1 (U) ASSESSMENT TYPES

(U) There are five (5) authorized types of Assessments that may be carried out for the purposes of detecting, obtaining information about, or preventing or protecting against Federal crimes or threats to the national security or to collect foreign intelligence. The types of Assessments are:

- A) (U) Type 1 & 2 Assessment¹⁰: Seek information, proactively or in response to investigative leads, relating to activities – or the involvement or role of individuals, groups, or organizations relating to those activities – constituting violations of Federal criminal law or threats to the national security;
- B) (U) Type 3 Assessment: Identify, obtain and utilize information about actual or potential national security threats or Federal criminal activities, or the vulnerability to such threats or activities;
- C) (U) Type 4 Assessment: Obtain and retain information to inform or facilitate intelligence analysis and planning;
- D) (U) Type 5 Assessment: Seek information to identify potential human sources, assess their suitability, credibility, or value of individuals as human sources; and
- E) (U) Type 6 Assessment: Seek information, proactively or in response to investigative leads, relating to matters of foreign intelligence interest responsive to foreign intelligence requirements.

5.5 (U) STANDARDS FOR OPENING OR APPROVING AN ASSESSMENT

(U//~~FOUO~~) Before opening or approving an Assessment, an FBI employee or approving official must determine whether:

¹⁰ (U//~~FOUO~~) In the original DIOG (12/16/2008), Types 1 and 2 were considered to be separate Assessment types. Because they, however, have many commonalities, they were merged into one type (named a “Type 1 & 2 Assessment”) for purposes of this version of the DIOG. Hence, there are now five, not six, types of Assessments.

- A) (U//~~FOUO~~) An authorized purpose and clearly defined objective(s) exists for the conduct of the Assessment;
- B) (U//~~FOUO~~) The Assessment is not based solely on the exercise of First Amendment rights or on the race, ethnicity, gender, national origin, religion, disability, sexual orientation, or gender identity of the subject, or a combination of only such factors; and
- C) (U//~~FOUO~~) The Assessment is an appropriate use of personnel and financial resources.

5.6 (U) POSITION EQUIVALENTS, EFFECTIVE DATE, DURATION, DOCUMENTATION, APPROVAL, NOTICE, FILE REVIEW AND RESPONSIBLE ENTITY

5.6.1 (U) FIELD OFFICE AND FBIHQ POSITION EQUIVALENTS

(U//~~FOUO~~) FBIHQ and FBI field offices have the authority to conduct all Assessment activities as authorized in Section 5.4 above. Position equivalents for field office and FBIHQ personnel when FBIHQ opens, conducts, or closes an Assessment are specified in DIOG Section 3.5.1.

5.6.2 (U) EFFECTIVE DATE OF ASSESSMENTS

(U//~~FOUO~~) The effective date of an Assessment (for record keeping purposes) is the date the final approval authority approves the Guardian FD-71a (Type 1 & 2), or the EC used to open the Assessments (Types 3 - 6) in Sentinel. Documenting the effective date of an Assessment is important for many reasons, including establishing time frames for justification and file reviews, and extensions. The effective date for Assessments occurs when:

- A) (U//~~FOUO~~) For Type 1 & 2 Assessments: the SSA assigns the Guardian FD-71a to an agent or TFO.

(U//~~FOUO~~) Note: In Type 1 & 2 Assessments only, agents or TFOs do not need to obtain supervisory approval prior to opening these Assessments. However, the agent or TFO must complete a Guardian FD-71a as soon as practicable documenting the opening of an Assessment and the use of any investigative methods.
- B) (U//~~FOUO~~) For Type 3 – 6 Assessments: the SSA, SIA, or the DI opens and assigns the Assessment via EC; or
- C) (U//~~FOUO~~) For Type 1 & 2 Sensitive Investigative Matters (SIM) Assessments:
 1. (U//~~FOUO~~) *Opened by a Field Office (FO)*: the special agent in charge (SAC) authorizes the Assessment to be opened and assigned to an agent or a TFO by approving the Guardian FD-71a. (See DIOG subsection 5.7 and Section 10.)
 2. (U//~~FOUO~~) *Opened by FBIHQ*: the Deputy Director (DD) (nondelegable) authorizes the Assessment to be opened and assigned to an agent or a TFO by approving the Guardian FD-71a. (See DIOG subsection 5.7 and Section 10.)
- D) For Type 3 - 6 SIM Assessments: the SAC (or the relevant FBIHQ section chief [SC]) authorizes the Assessment to be opened and assigned to an FBI employee by approving the EC that is subsequently serialized into the appropriate investigative file. (See DIOG subsection 5.7 and Section 10.)

5.6.3 (U) ASSESSMENT TYPES

(U//~~FOUO~~) The applicable duration, documentation, approval level, notice, justification/file review, and responsible entity requirements for each of the five (5) types of Assessments are discussed below.

(U//~~FOUO~~) In all types of Assessments, investigative leads, either Action Required or Information Only, may only be set by Sentinel Lead Request form, EC, or Guardian FD-71a.

5.6.3.1 (U) TYPE 1 & 2 ASSESSMENTS

(U) **Type 1 & 2 Assessment defined:** Seek information, proactively or in response to investigative leads, relating to activities – or the involvement or role of individuals, groups, or organizations in those activities – constituting violations of Federal criminal law or threats to the national security (i.e., the prompt checking of leads on individuals, activity, groups or organizations). (AGG-Dom, Part II.A.3.a.i and ii)

(U//~~FOUO~~) See Section 5.11 below for intelligence collection (i.e., incidental collection) and documentation requirements. All incidental collection must be documented in the 815 field office file. Additionally, the appropriate operational squad must be notified of the information to determine whether an Assessment or a predicated investigation is already open, or should be opened, based upon the alleged threat activity.

5.6.3.1.1 (U) DURATION

(U//~~FOUO~~) There is no time limit for a Type 1 & 2 Assessment, but it is anticipated that such Assessments will be relatively short.

5.6.3.1.2 (U) DOCUMENTATION

(U//~~FOUO~~) [REDACTED]

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[REDACTED] Guardian FD-71a.

(U//~~FOUO~~) An FBI employee must also document in the Guardian FD-71a [REDACTED]

[REDACTED] Guardian FD-71a [REDACTED] The completed Guardian FD-71a requires SSA approval before being serialized.

(U//~~FOUO~~) [REDACTED]

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[REDACTED] Guardian FD-71a [REDACTED]

[REDACTED] Guardian FD-71a.

(U//~~FOUO~~) **Note:** Investigative activity must not be conducted¹¹ out of a control file.

5.6.3.1.3 (U) APPROVAL TO OPEN

(U//~~FOUO~~) An agent or TFO may open a Type 1 & 2 Assessment without prior supervisor approval. However, the agent or TFO must complete a Guardian FD-71a as soon as

¹¹ (U) Investigative methods may only be conducted out of investigative files.

practicable [redacted]

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(U//~~FOUO~~) In addition, any FBI employee may initiate a Guardian Incident by entering the appropriate information into a Guardian FD-71a and forwarding it to the responsible SSA.

Upon receiving a Guardian FD-71a, [redacted]

[redacted] the Guardian FD-71a. Because an agent or TFO may open and conduct a Type 1 & 2 Assessment [redacted]

[redacted] Guardian.

(U//~~FOUO~~) The agent or TFO and the SSA must apply the standards for opening or approving a Type 1 & 2 Assessment contained in DIOG Section 5.5. Additional approval requirements apply to SIMs, as described below.

(U//~~FOUO~~) Indexing of the information used to create the initial Guardian FD-71a is mandatory per DIOG section 5.6.3.1.3.

5.6.3.1.4 (U) SENSITIVE INVESTIGATIVE MATTERS

(U//~~FOUO~~) Opening requirements for Type 1 & 2 SIM Assessments:

- A) (U//~~FOUO~~) *Opened by an FO:* As soon as practicable, but not more than five business days after determining that a Type 1 & 2 Assessment involves a SIM, the matter must be reviewed by the CDC and approved by the SAC. If the Assessment involves Presidential or congressional candidates or campaigns, refer to the *Updated Requirements for Certain Investigative Matters Related to Presidential and Congressional Candidates and Campaigns Policy Notice (1096N)* for additional requirements. The term "sensitive investigative matter" is defined in DIOG subsection 5.7.1 and DIOG Section 10. Guardian [redacted]

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- B) (U//~~FOUO~~) *Opened by FBIHQ:* For the rare circumstances in which FBIHQ-led Type 1 & 2 SIM Assessments are deemed appropriate, prior consultation with the ADIC(s) or SAC(s) of all affected FOs, Office of the General Counsel (OGC) review, and DD (nondelегable) approval are required. The opening on the Guardian FD-71a [redacted]

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[redacted] If the Assessment involves Presidential or congressional candidates or campaigns, refer to the *Updated Requirements for Certain Investigative Matters Related to Presidential and Congressional Candidates and Campaigns Policy Notice (1096N)* [redacted]

(U//~~FOUO~~) If a SIM arises after an FBIHQ-led Type 1 & 2 Assessment has already been opened, ongoing and previously approved investigative activity may continue; however, before initiating or beginning additional investigative activity, the FBIHQ section with oversight must consult with the affected ADIC(s) or SAC(s), obtain OGC review, and obtain DD (nondelgatable) approval to continue the investigation. These steps must be completed as soon as practicable, but not more than five business days after the SIM arises.

5.6.3.1.5 (U) UNDISCLOSED PARTICIPATION (UDP)

(U//~~FOUO~~)

See DIOG Section 16.

5.6.3.1.6 (U) NOTICE

(U//~~FOUO~~) There is no requirement to provide notice to FBIHQ or DOJ of opening or closing Type 1 & 2 Assessments. If the Assessment involves Presidential or Congressional Candidates or Campaigns, refer to *Updated Requirements for Certain Investigative Matters Related to Presidential and Congressional Candidates and Campaigns Policy Notice (1096N)* for additional requirements.

5.6.3.1.7 (U) JUSTIFICATION REVIEW

(U//~~FOUO~~) If a Type 1 & 2 Assessment is not concluded within 30 days, the SSA must conduct a justification review every 30 days (recurring until the Assessment is closed) in accordance with DIOG Section 3.5.4. The justification review standards may be documented in Guardian or using a Change Case Request (CCR).

5.6.3.1.8 (U) RESPONSIBLE ENTITY

(U//~~FOUO~~) A Type 1 & 2 Assessment may be conducted by an investigative field office squad or FBIHQ operational division.

5.6.3.1.9 (U) TYPE 1 & 2 ASSESSMENT CLOSING

(U//~~FOUO~~) The appropriate closing supervisor described below must review and approve the closing of the Guardian FD-71a to ensure that it contains the required information and sufficient details of the investigation on which to base the decision to close the Type 1 & 2 Assessment. The appropriate closing supervisors are:

- A) (U//~~FOUO~~) **Opened by an FO:** Closing a Type 1 & 2 Assessment opened by an FO requires approval from the supervisory special agent (SSA) with oversight.