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Domestic Investigations and Operations Guide

## 5. (U) Assessments

### 5.1. (U) Overview

(U//FOUO) The *Attorney General's Guidelines for Domestic FBI Operations* (AGG-Dom) combine "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." All assessments must either be opened in an investigative classification as an assessment file (e.g., [redacted]), placed in a [redacted] (e.g., [redacted] Guardian]), or placed in an [redacted] as discussed in greater detail below.

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(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 Section 15.7.B.

(U) Assessments authorized under the AGG-Dom do not require a particular factual predication but do require an authorized purpose. 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, national origin or religion 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. For example, an assessment may be conducted when there is a basis to know: (i) whether more information or facts are required to determine if 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. Regardless of whether specific approval or specific documentation is required, an FBI employee should be able to explain the purpose of an assessment and the reason for the methods used to conduct the assessment. Those FBI employees who conduct assessments are responsible for assuring that assessments are not pursued for frivolous or improper purposes and are not based solely on First Amendment activity or on the race, ethnicity, national origin, or religion of the subject of the assessment. (AGG-Dom, Part II)

(U//FOUO) An FBI employee can search historical information already contained within: (i) FBI data systems; (ii) United States Intelligence Community (USIC) systems to which an FBI employee has access (e.g., [redacted]); (iii) any other United States Government database to which an FBI employee has access; and (iv) the FBI employee can also conduct open-source Internet searches without initiating an assessment (open-source Internet searches do not include any paid-for-service databases such as Lexis-Nexis and Choicepoint), as further discussed in Section 5.6.A.1 and Section 15. The use of such paid-for-service databases requires the initiation of an assessment or predicated investigation. This allows the FBI employee to possibly resolve a

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matter without the need to conduct new investigative activity and open an assessment. Additionally, through analysis of existing information, the FBI employee may produce products that include, but are not limited to, an Intelligence Assessment, Intelligence Bulletin and [redacted]. If, while conducting analysis, the FBI employee finds a gap in intelligence that is relevant to an authorized FBI activity, the FBI employee can identify the gap for possible development of a "collection requirement." The applicable [redacted] (or other [redacted]) as directed in the DI PG) must be used to document this analysis. See the Directorate of Intelligence (DI) PG for file classification guidance.

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**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 its 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 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 objectives 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)

(U//FOUO) As described in the below-scenarios, 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 formal 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:

A. (U//FOUO) [redacted]

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(U//FOUO) [redacted] The FBI employee can analyze historical information already contained within: (i) FBI data systems; (ii) USIC systems to which FBI employees have access (e.g. [redacted]); (iii) any other United States Government database to which an FBI employee has access; and (iv) can conduct open-source Internet searches without initiating an assessment. Open-source Internet searches do not include any paid-for-service databases such as Lexis-Nexis and Choicepoint. [redacted]

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[redacted]

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B. (U//FOUO) [redacted]

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(U//FOUO) [redacted]

C. (U//FOUO) [redacted]

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(U//FOUO) [redacted]

D. (U//FOUO) [redacted]

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[Redacted]

(U//FOUO) [Redacted]

E. (U//FOUO) [Redacted]

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(U//FOUO) [Redacted]

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F. (U//FOUO) [Redacted]

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(U//FOUO) [Redacted]

[Redacted]

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G. (U//FOUO)

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I. (U//FOUO)

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[Redacted]

**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 that civil liberties are not undermined by the conduct of assessments, every assessment under this subsection must have an authorized purpose and an identified objective. The purpose and objective 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, national origin

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or religion—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 underlying reasons for conducting the assessment and engaging in the proposed 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, national origin or religion of the subject. If an assessment touches on or is partially motivated by First Amendment activities, race, ethnicity, national origin or religion, 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 a change in government through non-criminal means, and actively recruit others to join their causes—have a fundamental constitutional right to do so. An assessment may not be initiated 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 operationally sound and effective—used in lieu of more intrusive methods to obtain intelligence and/or evidence. This principle is also reflected in Executive Order 12333, which governs the activities of theUSIC. Executive Order 12333 lays out the goals, directions, duties and responsibilities of theUSIC. The concept of least intrusive means applies to the collection of all 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 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 effective—means from the available options to obtain the information.  
(AGG-Dom, Part I.C.2)

**5.4. (U) Authorized Purposes (AGG-Dom, Part II.A.2.—Authorized Activities)**

A. (U) **Assessment Activities:** During an assessment, the FBI may:

1. (U) Seek information, proactively or in response to investigative leads, relating to activities constituting violations of federal criminal law or threats to the national security;
2. (U) Seek information, proactively or in response to investigative leads, relating to the involvement or role of individuals, groups, or organizations relating to activities constituting violations of federal criminal law or threats to the national security;

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3. (U) Identify and obtain information about potential targets of or vulnerabilities to criminal activities in violation of federal law or threats to the national security;
4. (U) Obtain information to inform or facilitate intelligence analysis and planning (AGG-Dom, Part IV);
5. (U) Seek information to identify potential human sources, assess the suitability, credibility, or value of individuals as human sources, validate human sources, or maintain the cover or credibility of human sources, who may be able to provide or obtain information relating to criminal activities in violation of federal law, threats to the national security, or matters of foreign intelligence interest; and
6. (U) Seek information, proactively or in response to investigative leads, relating to matters of foreign intelligence interest responsive to foreign intelligence requirements.

**5.5. (U//FOUO) Standards for Initiating or Approving an Assessment**

(U//FOUO) Before initiating or approving an assessment, an FBI employee or approving official must determine whether:

- A. (U//FOUO) An authorized purpose and objective exists for the conduct of the assessment;
- B. (U//FOUO) The assessment is based on factors other than the exercise of First Amendment activities or the race, ethnicity, national origin or religion of the subject; and
- C. (U//FOUO) The assessment is an appropriate use of personnel and financial resources.

**5.6. (U) Duration, Approval, Notice, Documentation, File Review and Responsible Entity**

(U//FOUO) FBIHQ and FBI Field Offices have the authority to conduct all assessment activities as authorized in Section 5.4. Field Office personnel and approving officials, as specified in the DIOG Section 5.6.A.1-6, equate to the following FBIHQ personnel and approving officials when FBIHQ initiates, conducts, or closes an assessment:

- (U//FOUO) Field Office Analyst or Special Agent (SA) = FBIHQ Analyst, SA, or Supervisory Special Agent (SSA);
  - (U//FOUO) Field Office Supervisory Intelligence Analysts (SIA) = FBIHQ SIA;
  - (U//FOUO) Chief Division Counsel (CDC) = FBIHQ Office of the General Counsel (OGC);
  - (U//FOUO) Field Office SSA = FBIHQ Unit Chief (UC); and
  - (U//FOUO) Special Agent in Charge (SAC) = FBIHQ Section Chief (SC).
- A. (U//FOUO) **Duration, Approval, Notice, Documentation, File Review and Responsible Entity:** An FBI employee must document on the FD-71 or in Guardian the use of or the request and approval for the use of authorized investigative methods in type 1 and 2 assessments (see DIOG Section 5.6.A.1 and 2, below). By exception, certain assessment type 1 and 2 situations may require the use of an electronic communication (EC) to document the use and approval of particular investigative methods. All type 3, 4, and 6 (see DIOG Section 5.6.A.3.4. and 6, below) assessments and authorized investigative methods requiring

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supervisory approval must use an EC to document the approval of the assessment and the request and approval for the use of an applicable investigative method.

(U//FOUO) For type 5 assessment activities, an FBI employee must follow the duration, approval, and other requirements specified in the FBI's Confidential Human Source Policy Manual (CHSPM), Confidential Human Source Validation Standards Manual (CHSVSM), and The Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources (AGG-CHS), as implemented in [redacted]. All type 5 assessment activities under this provision must be documented in [redacted], unless otherwise directed in the DI PG or other FBIHQ Division PGs. If there is any inconsistency between the CHSPM or CHSVSM and the DIOG, the DIOG controls and OGC should be immediately notified of the conflict.

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(U//FOUO) Listed below are the applicable duration, documentation, justification/file review, approval level, and responsible entity for each type of assessment, described in DIOG Section 5.4 above.

1. (U//FOUO) **Seek information, proactively or in response to investigative leads, relating to activities constituting violations of federal criminal law or threats to the national security** (e.g., the prompt checking of leads on individuals or activity).

(U//FOUO) **Duration:** There is no time requirement for this type of assessment, but it is anticipated that such assessments will be relatively short. These assessments require recurring 30-day justification reviews by the SSA or SIA as discussed below.

(U//FOUO) **Documentation:** Guardian will be used for [redacted]

[redacted] The electronic FD-71, as discussed below, must be used to [redacted] FD-71 or Guardian [redacted]

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(U//FOUO) **Approval:** An FBI employee may initiate an assessment under this subsection without supervisory approval. [redacted]

[redacted] an FD-71 or Guardian [redacted] FD-71 or Guardian. The initiation date for this type of assessment is the date the SSA or SIA assigns an FBI employee to conduct the assessment.

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(U//FOUO) As soon as practicable following the determination that this type of assessment involves a sensitive investigative matter, the matter must be brought to the CDC for review and to the SAC for approval to continue the assessment. The term "sensitive investigative matter" is defined in Section 5.7 and Section 10, [redacted]

[redacted] the FD-71 or Guardian [redacted]

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[redacted] Higher supervisory approval, as described in Section 5.9, may be required before using one or more of the following investigative methods: physical surveillance, certain interviews, and tasking of confidential human sources. In addition, as specified in the Division policy implementation guides (PG), there are agreements (e.g., Memoranda

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of Agreements/Understanding, Treaties) that may require particular coordination prior to the release/acquisition of federal, state, local, tribal, and foreign government information.

(U//FOUO) **Justification Review:** If this type of assessment is not concluded within 30 days, the SSA or SIA must conduct recurring 30-day justification reviews in accordance with Section 3.4. This justification review must:

- a. (U//FOUO) Evaluate the progress made toward achieving the authorized purpose and objective;
- b. (U//FOUO) Ensure activities that occurred during the prior 30 days were appropriate;
- c. (U//FOUO) Determine whether it is reasonably likely that information will be obtained that is relevant to the authorized objective, thereby warranting an extension for another 30-days;
- d. (U//FOUO) Determine whether adequate predication has been developed to justify opening a criminal, counterterrorism, counterintelligence, cyber, or weapons of mass destruction predicated investigation; and
- e. (U//FOUO) Determine whether the assessment should be terminated.

(U//FOUO) The FBI employee must ensure that [redacted] in the FD-71 or Guardian. The completed FD-71 or Guardian requires supervisory approval before being uploaded. The FD-71 or Guardian must also document supervisory approval for the use of any investigative method that requires approval, such as: physical surveillance; certain interviews; or tasking of confidential human sources (see DIOG Section 5.9). In addition, as specified in the Division PG, there are agreements (e.g., Memoranda of Agreements/Understanding, Treaties) that may require particular coordination prior to the release/acquisition of federal, state, local, tribal and foreign government information. [redacted]

[redacted] within the appropriate classification as described in Section 5.14.

(U//FOUO) **Responsible Entity:** This type of assessment is conducted by the appropriate substantive Field Office Squad.

(U//FOUO) [redacted]

(U//FOUO) [redacted]

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access, he/she can also review already existing data contained in any United States Government data system and search open source information on the Internet [redacted]

[redacted] Open-source Internet searches do not include any paid-for-service databases such as Lexis-Nexis and Choicepoint [redacted]

[redacted] If these database checks or open source Internet searches do not reveal any derogatory information, the FBI employee may terminate this activity without opening an assessment or documenting these activities on an FD-71.

(U//FOUO) [redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted] and complete an FD-71.

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2. (U//FOUO) Seek information, proactively or in response to investigative leads, relating to the involvement or role of individuals, groups, or organizations in activities constituting violations of federal criminal law or threats to the national security (e.g., the prompt checking of leads on groups or organizations).

(U//FOUO) **Duration:** There is no time requirement for this type of assessment, but it is anticipated that such assessments will be relatively short. These assessments require recurring 30-day justification reviews by the SSA or SIA as discussed below.

(U//FOUO) **Documentation:** Guardian [redacted]  
[redacted]  
[redacted] The electronic FD-71, [redacted]  
[redacted] FD-71 or  
Guardian [redacted]

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(U//FOUO) **Approval:** An FBI employee may initiate an assessment under this subsection without supervisory approval [redacted]  
[redacted] an FD-71 or Guardian  
[redacted] the FD-71

or Guardian. The initiation date for this type of assessment is the date the SSA or SIA assigns an FBI employee to conduct the assessment

(U//FOUO) As soon as practicable following the determination that this type of assessment involves a sensitive investigative matter, the matter must be brought to the CDC for review and to the SAC for approval to continue the assessment. The term "sensitive investigative matter" is defined in Section 5.7 and Section 10. When completing the FD-71 or Guardian lead for an assessment involving a sensitive

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[redacted] Higher supervisory approval, as described in Section 5.9 may be required before using one or more of the following investigative methods: physical surveillance, certain interviews, and tasking of confidential human sources. In addition, as specified in the Division PGs, there are agreements (e.g., Memoranda of Agreements/Understanding, Treaties) that may require particular coordination prior to the release/acquisition of federal, state, local, tribal and foreign government information.

(U//FOUO) **Justification Review:** If this type of assessment is not concluded within 30 days, the SSA or SIA must conduct recurring 30-day justification reviews in accordance with Section 3.4. This justification review must:

- a. (U//FOUO) Evaluate the progress made toward achieving the authorized purpose and objective;
- b. (U//FOUO) Ensure activities that occurred during the prior 30 days were appropriate;
- c. (U//FOUO) Determine whether it is reasonably likely that information will be obtained that is relevant to the authorized objective, thereby warranting an extension for another 30-days;
- d. (U//FOUO) Determine whether adequate predication has been developed to justify opening a criminal, counterterrorism, counterintelligence, cyber, or weapons of mass destruction predicated investigation; and
- e. (U//FOUO) Determine whether the assessment should be terminated.

(U//FOUO) The FBI employee must ensure that [redacted] in the FD-71 or Guardian. The completed FD-71 or Guardian requires supervisory approval before being uploaded. The FD-71 or Guardian must also document supervisory approval for the use of any investigative method that requires approval, such as: physical surveillance; certain interviews; or tasking of confidential human sources (see Section 5.9). In addition, as specified in the Division PGs, there are agreements (e.g., Memoranda of Agreements/Understanding, Treaties) that may require particular coordination prior to the release/acquisition of federal, state, local, tribal and foreign government information.

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[redacted]

(U//FOUO) **Responsible Entity:** This type of assessment is conducted by the appropriate substantive Field Office Squad.

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(U//FOUO) [Redacted]

[Redacted]

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3. (U) Identify and obtain information about potential targets of or vulnerabilities to criminal activities in violation of federal law or threats to the national security.

(U//FOUO) Assessments in this section may include activities designed to collect information for domain analysis that is focused on identifying targets of or vulnerabilities to criminal conduct or threats to the national security. FBIHQ directed National Domain Assessments must be coordinated in advance with the FBIHQ DI, Domain Management Section (DMS). See the DI PG for details.

(U//FOUO) This type of assessment may not be used for the purpose of collecting positive foreign intelligence, although such intelligence may be incidentally collected during this type of assessment. Positive foreign intelligence can only be collected pursuant to Section 5.6.A.6 and Section 9.

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(U//FOUO) **Duration:** An FBI employee may initiate an assessment for this purpose only with prior SSA or SIA approval. The effective date of the assessment is the date the supervisor approves the EC. Such an assessment may continue for as long as necessary to achieve its purpose and objective. When the objective has been met, a closing EC must be approved by the SSA or SIA and uploaded to the file.

(U//FOUO) **Documentation:** The approval to initiate this type of assessment and the request for approval to use applicable investigative methods must be documented in an EC [Redacted]

(U//FOUO) **Approval:** All assessments conducted pursuant to this subsection must be approved in advance by an SSA or SIA and be opened in either the appropriate [Redacted] [Redacted] (or other [Redacted] as directed in the DI PG) or the appropriate substantive investigative classification as an assessment file with an opening EC. The title/case caption of the opening EC must contain the word "Assessment," and the synopsis must identify the purpose and the objective of the assessment. If at the time of the opening, or at anytime thereafter, the assessment involves a sensitive investigative matter, the title/case caption must contain the words "Assessment" and "Sensitive Investigative Matter."

(U//FOUO) **File Review:** This type of assessment requires recurring 90-day file reviews of the assessment file and any sub-file by the SSA or SIA in accordance with Section 3.4.

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Investigative file reviews for probationary FBI employees are recommended every 30 days but must be conducted at least every 60 days. This file review must:

- a. (U//FOUO) Evaluate the progress made toward achieving the authorized purpose and objective;
- b. (U//FOUO) Determine whether it is reasonably likely that information will be obtained that is relevant to the authorized objective, thereby warranting an extension for another 90 days (at least every 60 days for probationary FBI employees);
- c. (U//FOUO) Determine whether adequate predication has been developed to justify opening a criminal, counterterrorism, counterintelligence, cyber, or weapons of mass destruction predicated investigation; and
- d. (U//FOUO) Determine whether the assessment should be terminated.

(U//FOUO) An SSA or SIA may approve an assessment under this subsection in accordance with the standards listed in the DIOG Section 5.5. However, if the assessment involves a sensitive investigative matter, then the initiation requires prior CDC review and SAC approval. If a sensitive investigative matter arises after the initiation of an assessment, investigative activity must cease until CDC review and SAC approval is acquired. The term "sensitive investigative matter" is defined in Section 5.7 and Section 10. Higher supervisory approval, as described in Section 5.9, may be required prior to use of the following investigative methods: physical surveillance, certain interviews, and tasking of confidential human sources. In addition, as specified in the Division PGs, there are agreements (e.g., Memoranda of Agreements/Understanding, Treaties) that may require particular coordination prior to the release/acquisition of federal, state, local, tribal and foreign government information.

(U//FOUO) Any collection undertaken in order to identify threats, vulnerabilities, or intelligence gaps identified as a result of domain analysis or in response to an FBI National Collection Requirement or FBI Field Office Collection Requirement must be addressed in a separate substantive classification assessment file according to the investigative matter (e.g., [redacted]). Additionally, any time an assessment begins to focus on a particular individual, a separate substantive classification assessment file or subfile, as appropriate, according to the investigative matter must be opened on the individual.

(U//FOUO) **Responsible Entity:** In general, the Field Intelligence Group (FIG) or FBIHQ DI will manage this type of assessment, regardless of whether the assessment is documented in an [redacted] (or other [redacted]) as directed in the DI PG) or a substantive investigative classification file. This includes substantive assessments derived from analysis produced and documented in [redacted] (or other [redacted]) as directed in the DI PG). Under the management of the FIG, substantive Field Office Squads can support the collection of information for this type of assessment. However, substantive Field Office Squads or FBIHQ Units will be responsible for initiating and managing particular kinds of type 3 assessments. These assessments will be documented in the appropriate substantive investigative classification file.

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4. (U//FOUO) Obtain information to inform or facilitate intelligence analysis and planning. [AGG-Dom, Part IV]

(U//FOUO) Assessments in this section may include activities designed to collect information for domain analysis in order to respond to an FBI National Collection Requirement or FBI Field Office Collection Requirement created in response to FBI operational needs or an intelligence gap identified through strategic analysis that was conducted as part of the FBI's national security or law enforcement responsibilities, as discussed in Sections 5.11 and 5.12. FBIHQ directed National Domain Assessments must be coordinated in advance with the FBIHQ DI, Domain Management Section (DMS). See the DI PG for details.

(U//FOUO) This type of assessment may not be used for the purpose of collecting positive foreign intelligence, although such intelligence may be incidentally collected during this type of assessment. Positive foreign intelligence can only be collected pursuant to Section 5.6.A.6 and Section 9.

(U//FOUO) **Duration:** An FBI employee may initiate an assessment for this purpose only with prior SSA or SIA approval. The effective date of the assessment is the date the supervisor approves the EC. Such an assessment may continue for as long as necessary to achieve its purpose and objective. When the objective has been met, a closing EC must be approved by the SSA or SIA and uploaded to the file.

(U//FOUO) **Documentation:** The approval to initiate this type of assessment and the request for approval to use applicable investigative methods must be documented in an EC. This type of assessment may be documented in either the appropriate [Redacted] (or other [Redacted] as directed in the DI PG) or the appropriate substantive investigative classification assessment file.

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(U//FOUO) **Approval:** All assessments conducted pursuant to this subsection must be approved in advance by an SSA or SIA and be opened in either the appropriate [redacted] (or other [redacted] as directed in the DI PG)

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(U//FOUO) **File Review:** This type of assessment requires recurring 90-day file reviews of the assessment file and any sub-file by the SSA or SIA in accordance with DIOG Section 3.4. Investigative file reviews for probationary FBI employees are recommended every 30 days but must be conducted at least every 60 days. This file review must:

- a. (U//FOUO) Evaluate the progress made toward achieving the authorized purpose and objective;
- b. (U//FOUO) Determine whether it is reasonably likely that information will be obtained that is relevant to the authorized objective, thereby warranting an extension for another 90 days (at least every 60 days for probationary FBI employees);
- c. (U//FOUO) Determine whether adequate predication has been developed to justify opening a criminal, counterterrorism, counterintelligence, cyber, or weapons of mass destruction predicated investigation; and
- d. (U//FOUO) Determine whether the assessment should be terminated.

(U//FOUO) An SSA or SIA may approve an assessment under this subsection in accordance with the standards listed in the DIOG Section 5.5. However, if the assessment involves a sensitive investigative matter, then the initiation requires prior CDC review and SAC approval. If a sensitive investigative matter arises after the initiation of an assessment, investigative activity must cease until CDC review and SAC approval is acquired. The term "sensitive investigative matter" is defined in Section 5.7 and DIOG Section 10. Higher supervisory approval, as described in Section 5.9, may be required before using the following investigative methods: physical surveillance, certain interviews, and tasking of confidential human sources. In addition, as specified in the Division PGs, there are agreements (e.g., Memoranda of Agreements/Understanding, Treaties) that may require particular coordination prior to the release/acquisition of federal, state, local, tribal and foreign government information.

(U//FOUO) Any collection undertaken in order to identify threats, vulnerabilities, or intelligence gaps identified as a result of domain analysis or in response to an FBI National Collection Requirement or FBI Field Office Collection Requirement must be addressed in a separate substantive classification assessment file according to the investigative matter (e.g., [redacted]). Additionally, any time an assessment begins to focus on a particular individual, a separate substantive classification assessment file or subfile, as appropriate, according to the investigative matter must be opened on the individual.

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(U//FOUO) **Responsible Entity:** The FIG or FBIHQ DI will manage this type of assessment, regardless of whether the assessment is documented in an [redacted] (or other [redacted] as directed in the DI PG) or a substantive investigative classification file. This includes substantive assessments derived from analysis produced and documented in [redacted] (or other [redacted] as directed in the DI PG). Under the management of the FIG, substantive Field Office Squads can support the collection of information in this type of assessment.

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(U//FOUO) [redacted]

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(U//FOUO) [redacted]

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(U//FOUO) [redacted]

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5. (U//FOUO) **Seek information to identify potential human sources, assess the suitability, credibility, or value of particular individuals as human sources, validate human sources, or maintain the cover or credibility of human sources, who may be able to provide or obtain information relating to criminal activities in violation of federal law, threats to the national security, or matters of foreign intelligence interest.**

(U//FOUO) **Duration:** All such activities must follow the policy requirements established in the FBI's Confidential Human Source Policy Manual (CHSPM), Confidential Human Source Validation Standards Manual (CHSVSM), and The Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources (AGG-CHS), and implemented in [redacted]. If there is any inconsistency between the CHSPM or

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CHSVSM and the DIOG, the DIOG controls and OGC should be immediately notified of the conflict.

(U//FOUO) **Documentation:** [ ] must be used to document all activities under this provision, unless otherwise directed in the DI PG or other FBIHQ Division PGs.

(U//FOUO) **Approval:** All approvals must follow the policy requirements established in the FBI's CHSPM, CHSVSM, and the AGG-CHS, and as implemented in [ ]

(U//FOUO) **File Review:** File reviews must be conducted in accordance with the FBI's CHSPM.

(U//FOUO) **Responsible Entity:** A FIG or substantive squad may conduct and manage this type of assessment.

6. (U//FOUO) **Seek information, proactively or in response to investigative leads, relating to matters of foreign intelligence interest responsive to foreign intelligence requirements.**

(U//FOUO) Foreign Intelligence is "information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorists." The FBI defines a foreign intelligence requirement to be a collection requirement issued by the United States Intelligence Community (USIC) and accepted by the FBI DI. The collection of foreign intelligence pursuant to this definition extends the sphere of the FBI's information-gathering activities beyond federal crimes and threats to the national security, and permits the FBI to seek information regarding a broader range of matters relating to foreign powers, organizations, or persons that may be of interest to the conduct of the United States' foreign affairs. (AGG-Dom, Introduction A.3)

(U//FOUO) Under this authorized purpose, an FBI employee may only collect information that relates to matters of positive foreign intelligence. (See DIOG Section 9 for a description of "positive foreign intelligence.") An FBI employee should prioritize collection against FBI National Collection Requirements before attempting to collect against a positive foreign intelligence requirement. The DI PG furnishes guidance on the prioritization of collection.

(U//FOUO) **Duration:** An FBI employee may initiate an assessment for this purpose only with prior Field Office SSA or SIA approval and FBIHQ Collection Management Section (CMS) approval. The effective date of the assessment is the date FBIHQ CMS approves the assessment. Such an assessment may continue for as long as necessary to achieve its purpose and objectives. When the objective has been met, a closing EC must be approved by the Field Office SSA or SIA and FBIHQ CMS and uploaded to the file.

(U//FOUO) **Documentation:** This type of assessment must use an EC to document the initiation approval of the assessment and the request and approval for the use of applicable investigative methods. Foreign intelligence collected pursuant to this subsection must be maintained in the [ ] or as otherwise determined by FBIHQ CMS. The DI PG further describes this process.

(U//FOUO) **Approval:** Assessments to collect on matters of "foreign intelligence interest" must be approved in advance by FBIHQ CMS in accordance with the standards

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listed in Section 5.5. [REDACTED]

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[REDACTED] In addition to the normal requirement to use the least intrusive method to gather information during an assessment, when conducting this type of assessment the FBI employee must be mindful of the additional requirement to operate openly and consensually with a United States person, to the extent practicable.

(U//FOUO) **File Review:** This type of assessment requires recurring 90-day file reviews of the assessment file and any sub-file by the SSA or SIA in accordance with Section 3.4. Investigative file reviews for probationary FBI employees are recommended every 30 days but must be conducted at least every 60 days. This file review must:

- a. (U//FOUO) Evaluate the progress made toward achieving the authorized purpose and objective;
- b. (U//FOUO) Determine whether it is reasonably likely that information will be obtained that is relevant to the authorized objective, thereby warranting an extension for another 90 days (at least every 60 days for probationary FBI employees);
- c. (U//FOUO) Determine whether adequate predication has been developed to justify opening a criminal, counterterrorism, counterintelligence, cyber, or weapons of mass destruction predicated investigation; and
- d. (U//FOUO) Determine whether the assessment should be terminated.

(U//FOUO) If the initiation of the assessment involves a sensitive investigative matter, it must be reviewed by the CDC and approved by the SAC, prior to seeking FBIHQ CMS authorization. If a sensitive investigative matter arises after the initiation of an assessment, investigative activity must cease until CDC review and SAC approval is acquired and notice provided to FBIHQ CMS. Higher supervisory approval, as described in Section 5.9, may be required before using the following investigative methods: physical surveillance, certain interviews, and tasking of confidential human sources. In addition, as specified in the Division PGs, there are agreements (e.g., Memoranda of Agreements/Understanding, Treaties) that may require particular coordination prior to the release/acquisition of certain federal, state, local, tribal and foreign government information.

(U//FOUO) Positive foreign intelligence collected pursuant to this subsection must be maintained in [REDACTED] or as otherwise determined by FBIHQ CMS. The title/case caption of the opening EC must contain the word "Assessment," and the synopsis must identify the purpose and the objective of the assessment. If at the time of the opening, or at anytime thereafter, the assessment involves a sensitive investigative matter, the title/case caption must contain the words "Assessment" and "Sensitive Investigative Matter." The DI PG further describes this process.

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(U//FOUO) **Responsible Entity:** This type of assessment is managed by the FIG and FBIHQ DI.

**5.7. (U) Sensitive Investigative Matter / Academic Nexus / Buckley Amendment**

- A. (U//FOUO) **Sensitive Investigative Matter:** An investigative matter involving the activities of a domestic public official or political candidate (involving corruption or a threat to the national security), religious or political organization or individual prominent in such an organization, or news media, or any other matter which, in the judgment of the official authorizing an investigation, should be brought to the attention of FBI Headquarters and other DOJ officials. (AGG-Dom, Part VII.N.) As a matter of FBI policy, "judgment" means that the decision of the authorizing official is discretionary. DIOG Section 10 and the DIOG classified Appendix G define [redacted]

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- B. (U//FOUO) **Academic Nexus:** [redacted]

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(U//FOUO) The sensitivity related to an academic institution arises from the American tradition of "academic freedom" (e.g., an atmosphere in which students and faculty are free to express unorthodox ideas and views and to challenge conventional thought without fear of repercussion). Academic freedom does not mean, however, that academic institutions are off limits to FBI investigators in pursuit of information or individuals of legitimate investigative interest.

(U//FOUO) [redacted]

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[redacted] see the DIOG classified Appendix G.

- C. (U//FOUO) **Buckley Amendment:** A request for "academic records" must only be made pursuant to the provisions of the Buckley Amendment (The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232[g], as amended by Public Law 107-56 ["USA PATRIOT Act"]). An FBI employee is prohibited from receiving "academic records" that have not been properly requested pursuant to the Buckley Amendment. The definition of "academic records" is very broad and covers almost all records about a student other than public, student directory-type information published by the institution. The Buckley Amendment contains a penalty provision for those institutions that improperly provide academic records to law enforcement agencies [redacted]

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(U//FOUO) A Buckley Amendment request for academic records cannot be made during an assessment. In a predicated investigation, a request for academic records must be made pursuant to the Buckley Amendment.

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**5.8. (U//FOUO) Standards for Initiating or Approving the Use of an Authorized Investigative Method**

(U//FOUO) Prior to initiating or approving the use of an authorized investigative method, an FBI employee or approving official must determine whether:

- A. (U//FOUO) The use of the particular investigative method is likely to further an objective of the assessment;
- B. (U//FOUO) The investigative method selected is the least intrusive method, reasonable under the circumstances;
- C. (U//FOUO) The anticipated value of the assessment justifies the use of the selected investigative method or methods;
- D. (U//FOUO) If the purpose of the assessment is to collect positive foreign intelligence, the investigative method complies with the AGG-Dom requirement that the FBI operate openly and consensually with a United States person, to the extent practicable; and
- E. (U//FOUO) The method is an appropriate use of personnel and financial resources.

**5.9. (U) Authorized Investigative Methods in Assessments and Predicated Investigations**

(U) The following investigative methods may be used in assessments and predicated investigations:

- A. (U) **Obtain publicly available information.** (AGG-Dom, Part II.A.4.a and Part VII.L.)
  - 1. (U) **Scope:** "Publicly available information" is information that is:
    - a. (U) Published or broadcast for public consumption;
    - b. (U) Available on request to the public;
    - c. (U) Accessible on-line or otherwise to the public;
    - d. (U) Available to the public by subscription or purchase;
    - e. (U) Made available at a meeting open to the public;
    - f. (U) Obtained by visiting any place or attending an event that is open to the public; or
    - g. (U) Could be seen or heard by any casual observer not involving unconsented intrusion into private places.

(U//FOUO)



- 2. (U//FOUO) **Approval:** Supervisory approval is not required for use of this method, except as to information gathered at a religious service. Notwithstanding any other policy, tasking a CHS or UCE to attend a religious service during a predicated investigation, whether open to the public or not, requires SSA approval. Tasking a CHS to attend a religious service, whether open to the public or not, during an assessment requires SAC approval.

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3. (U//FOUO) **Application:** This investigative method may be used in assessments, national security investigations, criminal investigations, foreign intelligence collection cases, and for assistance to other agencies.
  4. (U) **Use/Dissemination:** The use or dissemination of information obtained by this method must comply with the AGG-Dom and DIOG Section 14.
- B. (U) **Engage in observation or surveillance not requiring a court order. Surveillance includes physical, photographic and video surveillance where such surveillance does not infringe on a reasonable expectation of privacy and trespass is not required to accomplish the surveillance. (AGG-Dom, Part II.A.4.h)**
1. (U) **Scope**
    - a. (U//FOUO) **Physical Surveillance Defined:** Physical surveillance is the deliberate observation by an FBI employee of persons, places, or events, on either a limited or continuous basis, in a public or a semi-public (e.g., commercial business open to the public) setting.

(U//FOUO)	

- b. (U//FOUO) **Surveillance Enhancement Devices:** The use of mechanical devices operated by the user (e.g., binoculars; hand-held cameras; radiation, chemical or biological detectors) is authorized in physical surveillance provided that the device is not used to collect information in which a person has a reasonable expectation of privacy (e.g., equipment such as a parabolic microphone or other listening device that would intercept a private conversation or thermal imaging a home is not permitted).
2. (U//FOUO) **Approval:** During an assessment, physical surveillance may be approved for a period of time not to exceed [ ] as explained further below.
    - a. (U//FOUO) **Standards for Initiating or Approving Physical Surveillance During an Assessment:** During an assessment, in addition to the standards contained in Sections 5.5 and 5.8, the FBI employee and supervisor must consider the following:

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- i. (U//FOUO) Whether the physical surveillance is rationally related to the articulated purpose and objective of the assessment;
- ii. (U//FOUO) Whether the physical surveillance is the least intrusive alternative for acquiring needed information;
- iii. (U//FOUO) If the physical surveillance is for the purpose of determining a pattern of activity, whether there is a logical nexus between the purpose of the assessment and the pattern of activity he or she is seeking to determine; and
- iv. (U//FOUO) If being conducted in order to gather positive foreign intelligence, whether the surveillance is consistent with the requirement that the FBI employee operate openly and consensually with a United States person, to the extent practicable.

b. (U//FOUO) [Redacted]

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c. (U//FOUO) [Redacted]

[Redacted area]

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d. (U//FOUO) [Redacted] or variation in an FD-71, Guardian, or an EC requesting ASAC approval.

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e. (U//FOUO) **Physical Surveillance during Predicated Investigations:** Physical surveillance undertaken during a predicated investigation does not require supervisory approval. [REDACTED]

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3. (U//FOUO) **Application:** This investigative method may be used in assessments, national security investigations, criminal investigations, foreign intelligence collection cases, and for assistance to other agencies when it is not otherwise prohibited by AGG-Dom, Part III.B.2-3.
  4. (U) **Use/Dissemination:** The use or dissemination of information obtained by this method must comply with the AGG-Dom and DIOG Section 14.
- C. (U) **Access and examine FBI and other Department of Justice (DOJ) records, and obtain information from any FBI or other DOJ personnel.** (AGG-Dom, Part II.A.4.b.)
1. (U//FOUO) **Scope:** As part of an assessment or predicated investigation, an FBI employee may access and examine FBI and other DOJ records and may obtain information from any FBI personnel or other DOJ personnel. Access to certain FBI records may be restricted to designated FBI personnel because of the sensitive nature of the information in the record or the classification of the records. These include, but are not limited to: FBI records concerning human source identification; espionage investigations; code word; and other compartmented information.
  2. (U//FOUO) **Approval:** Supervisory approval is not required to use this method, except that if the use of records constitutes pattern-based data mining under the Federal Data Mining Reporting Act of 2007, it must be reviewed and approved according to paragraph 3 below.
  3. (U//FOUO) **Pattern-Based Data Mining:** The vast majority of data analysis performed during FBI assessments is based on subjects or events and does not meet the definition of pattern-based data mining. Pattern-based data mining is the use of one or more data bases to search for persons who fit a set of group characteristics or patterns of behavior (e.g., the known characteristics of a particular terrorist organization). Any such analysis based solely on racial, ethnic, national origin or religious characteristics is strictly prohibited. Sensitive Operations Review Committee (SORC) approval is required for any analytical search of FBI or other agency data bases that constitute pattern-based data mining, as defined above. Additionally, pursuant to the Federal Data Mining Reporting Act of 2007, the FBI must report all agency initiatives that involve the use of pattern-based data mining to Congress.
  4. (U//FOUO) **Application:** This investigative method may be used in assessments, national security investigations, criminal investigations, foreign intelligence collection cases, and for assistance to other agencies.
  5. (U) **Use/Dissemination:** The use or dissemination of information obtained by this method must comply with the AGG-Dom and DIOG Section 14.

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D. (U) **Access and examine records maintained by, and request information from, other federal, state, local, or tribal, or foreign governmental entities or agencies.** (AGG-Dom, Part II.A.4.c.)

1. (U//FOUO) **Scope:** As part of an assessment or predicated investigation, an FBI employee may access and examine records maintained by, and request information from, other federal, state, local, or tribal, or foreign governmental entities or agencies. When requesting information using this authority, care must be taken to ensure the entity concerned understands that it is not compelled to provide such information or create a new record for the purpose of assisting the FBI.
2. (U//FOUO) **Approval:** Supervisory approval is not required to use this method for "routine uses," unless such approval is required by Memoranda of Understanding (MOU) or other agreements for requesting such information. The FBI may request another federal agency to disclose Privacy Act-protected records pursuant to the other agency's "routine uses" (5 U.S.C. § 522a[b][3]) or through a written request for a law enforcement purpose (5 U.S.C. § 522a[b][7]). Such written requests (for a law enforcement purpose) pursuant to 5 U.S.C. § 522a(b)(7) may be made by the Director or his designee, provided that such authority may not be delegated below the Section Chief level (28 C.F.R. § 16.40[c]; OMB Guidelines, 40 Fed. Reg. at 28,955). Requests for records or information from a foreign government entity or agency must be appropriately coordinated through the applicable FBI Legat office, Office of International Operations (OIO), INTERPOL, relevant substantive headquarters division, and/or DOJ Office of International Affairs, as necessary. Direct contact is authorized in certain circumstances, such as an imminent threat situation. If the analysis of records obtained in this manner constitutes pattern-based data mining under the Federal Data Mining Reporting Act of 2007, it must be reviewed and approved according to Section 5.9.C.3, above.

(U//FOUO) [REDACTED]

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(U//FOUO) Records received from an outside entity and used during an assessment must be maintained as part of the appropriate file (e.g., [REDACTED]).

3. (U//FOUO) **Application:** This investigative method may be used in assessments, national security investigations, criminal investigations, foreign intelligence collection cases, and for assistance to other agencies.
  4. (U) **Use/Dissemination:** The use and/or dissemination of information obtained by this method must comply with the AGG-Dom and DIOG Section 14.
- E. (U) **Use online services and resources (whether non-profit or commercial).** (AGG-Dom, Part II.A.4.d.)
1. (U//FOUO) **Scope:** As part of an assessment or predicated investigation, an FBI employee may use any FBI-approved on-line service or resource that is available by subscription or purchase, including services available only to law enforcement entities.

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2. (U//FOUO) **Approval:** Supervisory approval is not required to use this method, although subscribing to or purchasing any new service or resource must be done according to FBI contracting procedures.  

(U//FOUO) **Example:** FBI-approved on-line services or resources include, but are not limited to: Google, Yahoo, or similar Internet search services; data brokers such as ChoicePoint, Westlaw, and Lexis-Nexis; and vehicle, casualty, and property insurance claims databases such as Claim-Search.
  3. (U//FOUO) **Application:** This investigative method may be used in assessments, national security investigations, criminal investigations, foreign intelligence collection cases, and for assistance to other agencies.
  4. (U) **Use/Dissemination:** The use or dissemination of information obtained by this method must comply with the AGG-Dom and DIOG Section 14.
- F. (U) **Interview or request information from members of the public and private entities.**  
(AGG-Dom, Part II.A.4.f)
1. (U//FOUO) **Scope:** An interview is the questioning of an individual (to include the subject) designed to gather information from the person being interviewed that is accurate, pertinent to, and within the scope of an authorized assessment or predicated investigation. In the normal course of an interview, the FBI employee should divulge the employee's affiliation with the FBI and the true purpose of the interview. Information requested during an interview must be voluntarily provided. If the person who is being interviewed expresses a desire not to provide the information, the FBI employee may not state or imply in any way that the interviewee is compelled to provide information or that adverse consequences may follow if the interviewee does not provide the information. If the person being interviewed indicates he or she wishes to consult an attorney, the interview must immediately stop.
  2. (U//FOUO) **Custodial Interviews:** Within the United States, *Miranda* warnings are required to be given prior to custodial interviews if the subject is significantly restricted in his/her freedom of action to a degree normally associated with a formal arrest. For more information refer to the CID and CTD PGs and The FBI Legal Handbook for Special Agents (LHBSA), Section 7-3-2.
  3. (U//FOUO) **Approval:** With the exceptions discussed below, interviews do not require supervisory approval.
    - a. (U//FOUO) **Contact With Represented Persons:**  

(U//FOUO) CDC review is required before contact with represented persons. Such contact may implicate legal restrictions and affect the admissibility of resulting evidence. Hence, if an individual is known to be represented by counsel in a particular matter, the CDC will follow applicable law and DOJ procedure when reviewing the request to contact the represented individual in the absence of prior notice to counsel. The SAC, CDC, or their designees, and the United States Attorney or their designees must consult periodically on applicable law and DOJ procedure. The Field Office may raise the following issues with the United States Attorney's Office and request that it consult with the DOJ Professional Responsibility Advisory Office, when the issues include, but are not limited to, the inconsistent application of:

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(i) state ethics rules; or (ii) rules for contacts with represented persons. (AGG-Dom, Part V.B.1)

**b. (U//FOUO) Members of the United States Congress and their Staffs:**

(U//FOUO) Generally, FBI employees may take information received from congressional offices just as they would take information from other sources, and they may act upon it accordingly.

(U//FOUO) However, prior CDC review, SAC and appropriate FBIHQ AD approval and prior notice to the AD Office of Congressional Affairs (OCA) are required if an investigator seeks to [redacted]

[redacted]

[redacted] **Note:** The FBIHQ substantive Division policy implementation guides may contain additional approval/notice requirements.

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**c. (U//FOUO) White House Personnel:**

(U//FOUO) CDC review and SAC approval is required before initiating contact with White House personnel. Additionally, CDC review, SAC approval and appropriate FBIHQ Section Chief approval must be obtained prior to conducting an interview of a member of the White House staff. **Note:** The FBIHQ substantive Division policy implementation guides may contain additional approval/notice requirements.

**d. (U) FBIHQ Substantive Division Requirements:**

- i. (U//FOUO) **Counterintelligence Division:** Interviews conducted during counterintelligence assessments and predicated investigations must comply with the requirements contained in the Memorandum of Understanding Between the Department of State and the FBI on Liaison for Counterintelligence Investigations. The FBIHQ Counterintelligence Division PG contains interview approval requirements.
- ii. (U//FOUO) **Other FBIHQ Divisions:** Each FBIHQ Division may provide additional interview approval requirements in its policy implementation guide.

**4. (U//FOUO) Requesting Information Without Revealing FBI Affiliation or the True Purpose of a Request:**

a. (U//FOUO) [redacted]  
[redacted]

b. (U//FOUO) [redacted]  
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c. (U//FOUO) [redacted]  
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d. (U//FOUO) [Redacted]

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e. (U//FOUO) [Redacted]

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(1) (U//FOUO) [Redacted]

i. (U//FOUO) [Redacted]

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iv. (U//FOUO) [Redacted]

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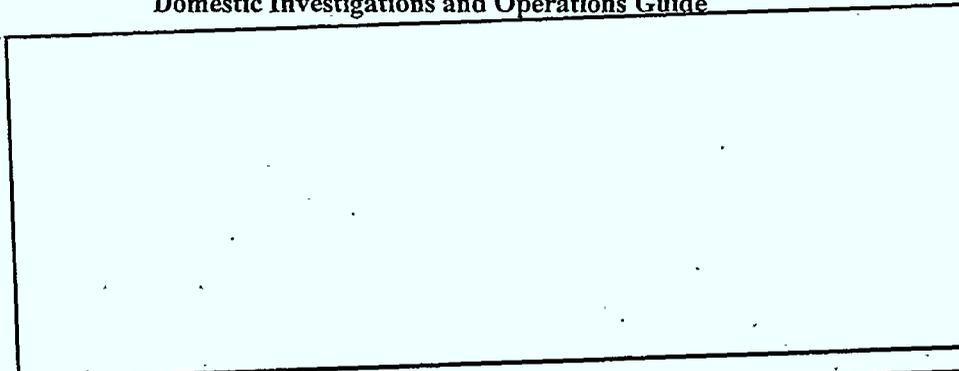
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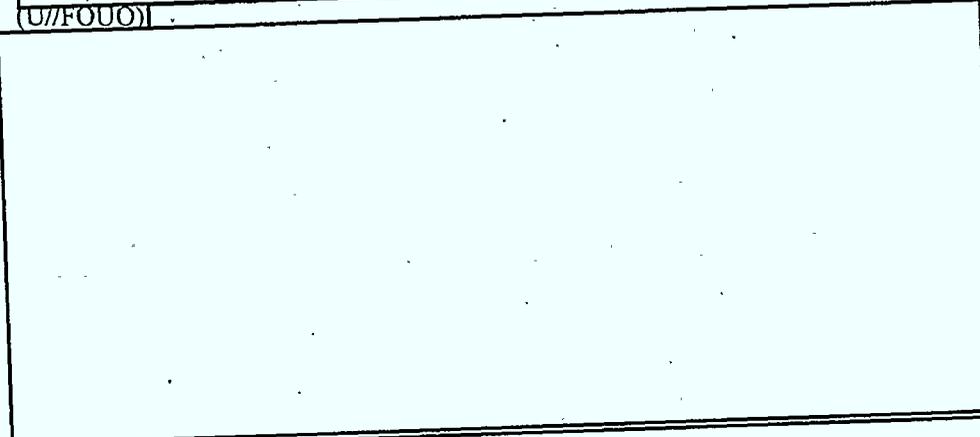
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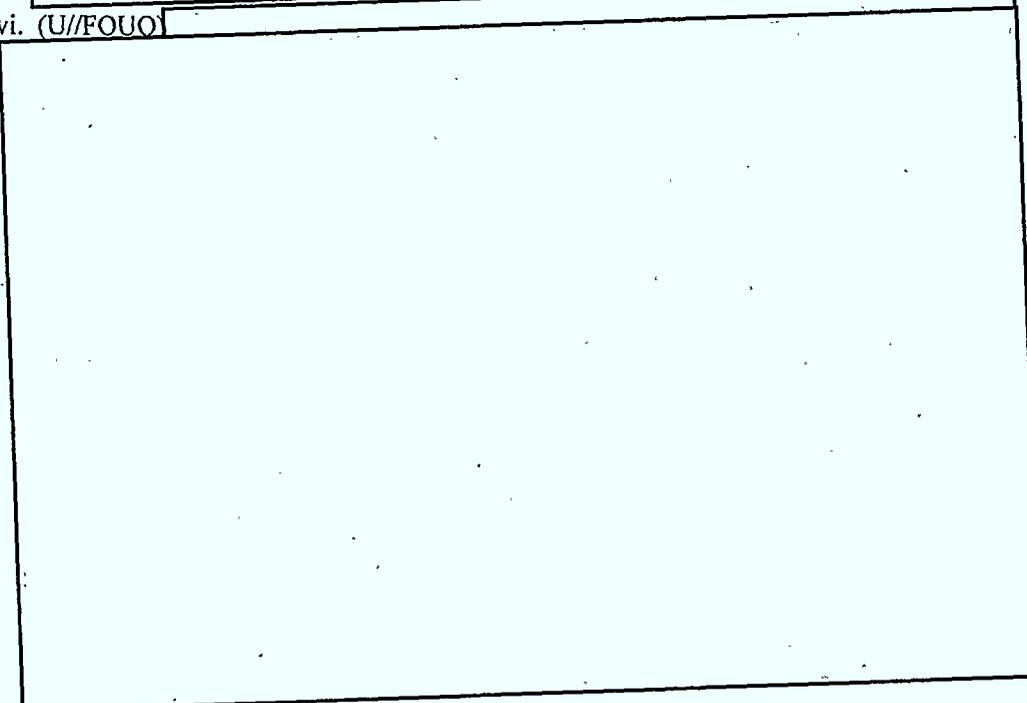
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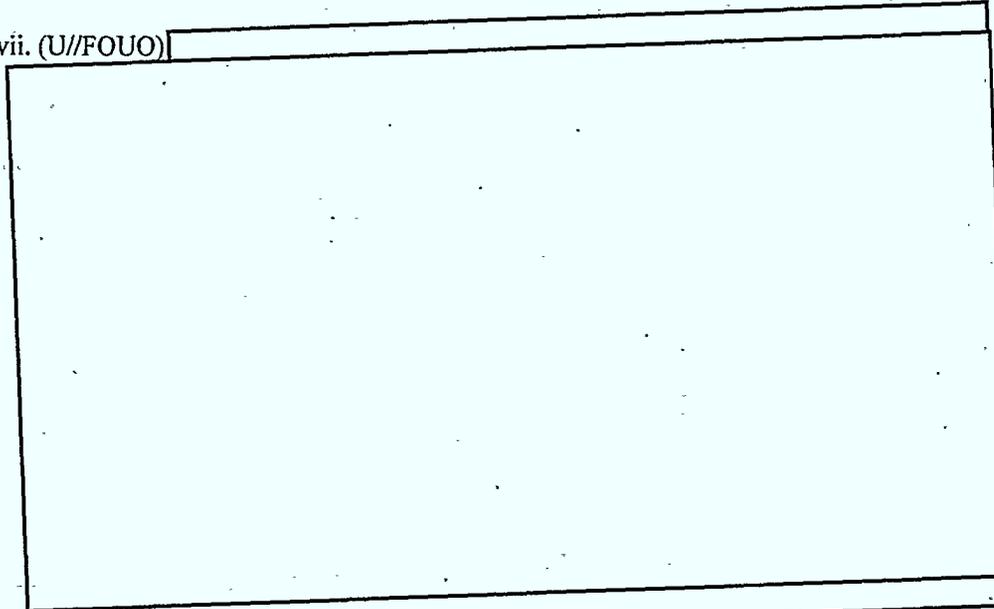
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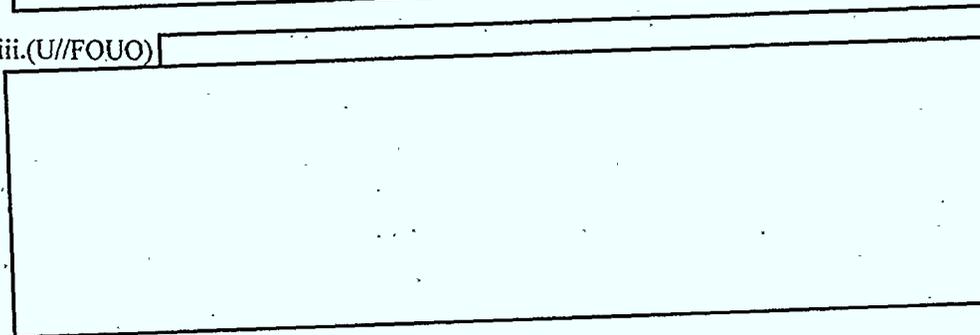
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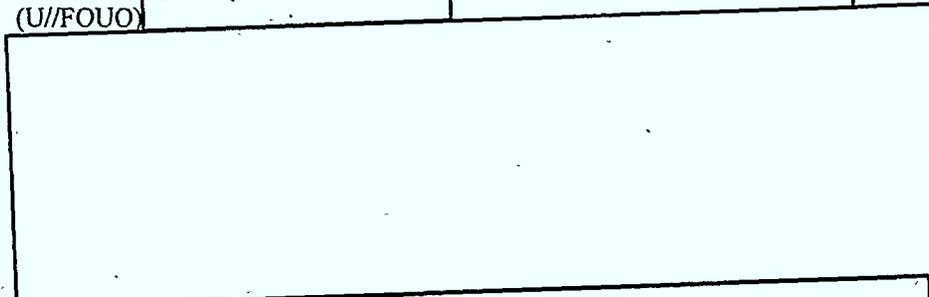
5. (U//FOUO) **Application:** This investigative method may be used in assessments, national security investigations, criminal investigations, foreign intelligence collection cases, and for assistance to other agencies when it is not otherwise prohibited by AGG-Dom, Part III.B.2-3.
  6. (U) **Use/Dissemination:** The use or dissemination of information obtained by this method must comply with the AGG-Dom and DIOG Section 14.
- G. (U) **Accept information voluntarily provided by governmental or private entities.**  
(AGG-Dom, Part II.A.4.g.)
1. (U//FOUO) **Scope:** As part of an assessment or predicated investigation, an FBI employee may accept information voluntarily provided by federal, state, local, or foreign governmental or private entities to include individuals. Voluntarily provided information includes, but is not limited to, oral as well as documentary and physical evidence such as: a computer hard drive or other electronic media that contains information, paper documents containing information, or physical objects (e.g., handgun or narcotics).

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2. (U//FOUO) **Approval:** Supervisory approval is not required to accept voluntarily provided information. Personnel may not request nor knowingly accept information where disclosure would be prohibited by federal law. See, e.g., 18 U.S.C. § 2702 (prohibiting an entity providing electronic communications services from divulging certain communications and other records, except in certain circumstances).
  3. (U//FOUO) **Application:** This investigative method may be used in assessments, national security investigations, criminal investigations, foreign intelligence collection cases, and for assistance to other agencies when it is not otherwise prohibited by AGG-Dom, Part III.B.2-3.
  4. (U) **Use/Dissemination:** The use or dissemination of information obtained by this method must comply with the AGG-Dom and DIOG Section 14.
- H. (U) **Use and recruit human sources in conformity with the Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources.** (AGG-Dom, Part II.A.4.e)
1. (U//FOUO) The FBI may use and recruit human sources in assessments and predicated investigations in conformity with the AGG-Dom, AGG-CHS, the FBI CHSPM, and the FBI CHSVSM. In this context, "use" means obtaining information from, tasking, or otherwise operating such sources. (AGG-Dom, Part VII.V.)
  2. (U//FOUO) A CHS can be "used" in support of an assessment and a predicated investigation or for the purpose of validating, vetting or determining the suitability of another CHS as part of an assessment.
  3. (U//FOUO) **Religious Service**—Notwithstanding any other policy, tasking a CHS to attend a religious service, whether or not open to the public, requires SSA approval in a predicated investigation and SAC approval in an assessment.
  4. (U//FOUO) All investigative methods should be evaluated to ensure compliance with the admonition that the FBI should use the least intrusive method practicable. That requirement should be particularly observed during an assessment when using a CHS because the use of a CHS during an assessment may be more intrusive than many other investigative methods. Use of a CHS in an assessment should take place only after considering whether there are effective, less intrusive means available to obtain the desired information. The CHS must comply with all constitutional, statutory, and regulatory restrictions and limitations. In addition:
    - a. (U//FOUO) CHS use and direction must be limited in focus and scope to what is necessary to accomplish the authorized purpose and objective of the assessment or predicated investigation. b2  
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    - b. (U//FOUO) A CHS may be directed to seek information about an individual, group or organization only to the extent that such information is necessary to achieve the specific objective of the assessment. If such contact reveals information or facts about an individual, group or organization that meets the requirements of a predicated investigation, a predicated investigation may be opened, as appropriate.

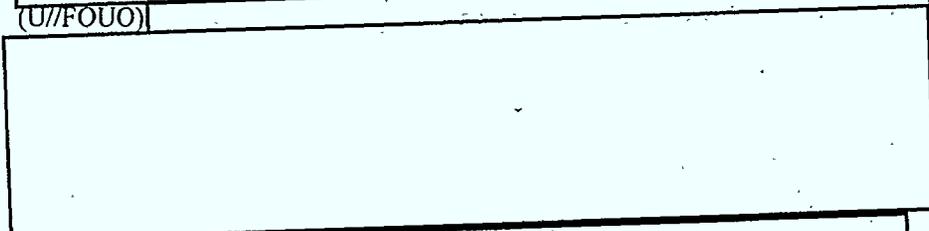
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c. (U//FOUO)



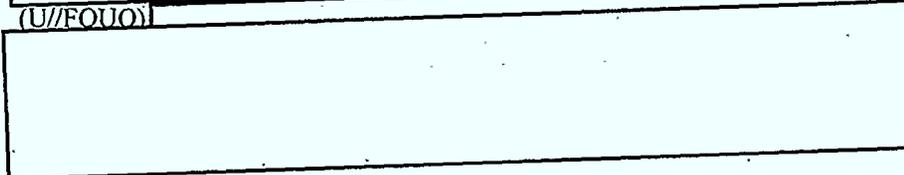
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d. (U//FOUO)



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e. (U//FOUO)



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f. (U//FOUO) If there is any conflict between the CHSPM or CHSVM and the DIOG, the DIOG controls and OGC should be immediately notified of the conflict.

5. (U//FOUO) **Application:** This investigative method may be used in assessments, national security investigations, criminal investigations, foreign intelligence collection cases, and for assistance to other agencies when it is not otherwise prohibited by AGG-Dom, Part III.B.2.

(U) **Note:** When collecting positive foreign intelligence, the FBI must operate openly and consensually with a United States person, to the extent practicable.

6. (U) **Use/Dissemination:** The use or dissemination of information obtained by this method must comply with the AGG-Dom and DIOG Section 14.

I. (U) **Grand jury subpoenas for telephone or electronic mail subscriber information.** (AGG-Dom, Part II.A.4.i)

1. (U//FOUO) **Scope:** During a type 1 or 2 assessment, an FBI employee may request from an appropriate United States Attorney's Office (USAO) the issuance of a Federal Grand Jury (FGJ) subpoena for the limited purpose of obtaining subscriber information. A FGJ subpoena, under this provision, may not be requested for the purpose of collecting foreign intelligence. For more information regarding FGJ subpoenas, see DIOG Section 11.9.

(U//FOUO) **Note:** The use of Federal Grand Jury Subpoenas, to include subpoenas for telephone or electronic mail subscriber information, is not authorized in a type 3, 4, or 5

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assessment or in a type 6 assessment or full investigation initiated for the purpose of collecting positive foreign intelligence.

2. (U//FOUO) **Approval:** In a type 1 or 2 assessment or predicated investigation, supervisory approval is not required prior to requesting a USAO to issue a FGJ subpoena for telephone or electronic mail subscriber information.
3. (U) **Electronic Communications Privacy Act (ECPA) (18 U.S.C. §§ 2701-2712):** ECPA, 18 U.S.C. § 2703 states "a provider of electronic communication service or remote computing service shall disclose to a governmental entity the: (i) name; (ii) address; (iii) local and long distance telephone connection records, or records of sessions, times and durations; (iv) length of service (including start date) and types of service utilized; (v) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and (vi) means and source of payment for such service (including any credit card or bank account number), of a subscriber to or customer of such service when the governmental entity uses . . . a Federal Grand Jury [subpoena] . . ." (emphasis added)
4. (U//FOUO) **Application:** This investigative method may be used in type 1 and 2 assessments, national security investigations, criminal investigations, and for assistance to other agencies if relevant to an already open type 1 or 2 assessment or predicated investigation. This method may not be used to collect positive foreign intelligence information.
5. (U) **Use/Dissemination:** [REDACTED]

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[REDACTED] The use or dissemination of information obtained by this method must comply with the AGG-Dom, DIOG Section 14, and the Federal Rules of Criminal Procedure (FRPC) Rule 6.

**5.10. (U) Investigative Methods Not Authorized During Assessments**

(U) The following methods may not be used in an assessment:

(U//FOUO) **Note:** For use of lawful investigative methods during the recruitment, assessment and validation of a CHS, refer to the AGG-CHS, CHSPM, and CHSVSM.

- A. (U) Mail covers
- B. (U) Physical searches of personal or real property where a warrant or court order is not legally required because there is no reasonable expectation of privacy (e.g., trash covers)
- C. (U) Consensual monitoring of communications, including consensual computer monitoring
- D. (U) Use of closed-circuit television, direction finders, and other monitoring devices
- E. (U) Polygraph examinations
- F. (U) Undercover operations

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- G. (U//FOUO) Compulsory process, including grand jury subpoenas (except: subscriber information during type 1 and 2 assessments), administrative and other subpoenas, and National Security Letters
- H. (U) Accessing stored wire and electronic communications and transactional records
- I. (U) Use of pen registers and trap and trace devices
- J. (U) Electronic surveillance
- K. (U) Physical searches where there is a reasonable expectation of privacy
- L. (U) Acquisition of foreign intelligence information in conformity with Title VII of the Foreign Intelligence Surveillance Act (FISA)

**5.11. (U//FOUO) FBI National Collection Requirements**

(U//FOUO) The FBIHQ DI establishes FBI National Collection Requirements after coordination with FBIHQ OGC, other FBIHQ substantive Divisions, and Field Offices. An FBI National Collection Requirement describes information needed by the FBI to: (i) identify or obtain information about potential targets of, or vulnerabilities to, federal criminal activities or threats to the national security; or (ii) inform or facilitate intelligence analysis and planning pertinent to the FBI's law enforcement or national security missions.

(U//FOUO) [Redacted]

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(U//FOUO) [Redacted]

(i) (U//FOUO) [Redacted]

(ii) (U//FOUO) [Redacted]

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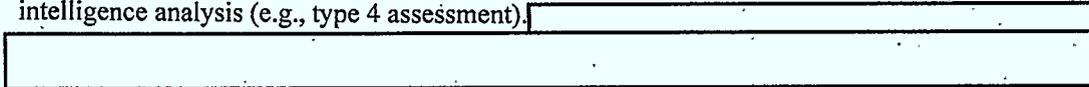
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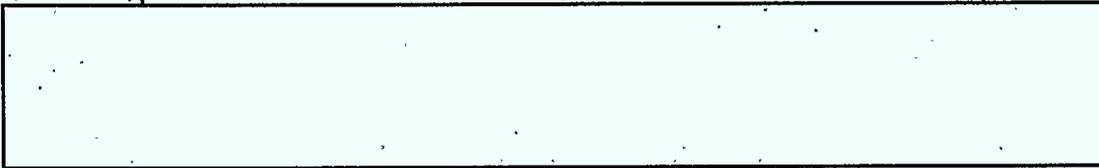


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(U//FOUO) Before any investigative activity is initiated in order to respond to an FBI National Collection Requirement, an assessment must be initiated or already open. An assessment cannot be opened solely based upon an FBI National Collection Requirement. An authorized purpose (national security or criminal threat) must exist and an objective must be clearly articulated that identifies an authorized purpose prior to opening an assessment. During an assessment, the FBI is authorized to collect against any FBI National Collection Requirement that is relevant to the assessment because such requirements are issued for information necessary to identify potential threats or vulnerabilities (e.g., type 3 assessment) or to collect information necessary for intelligence analysis (e.g., type 4 assessment).



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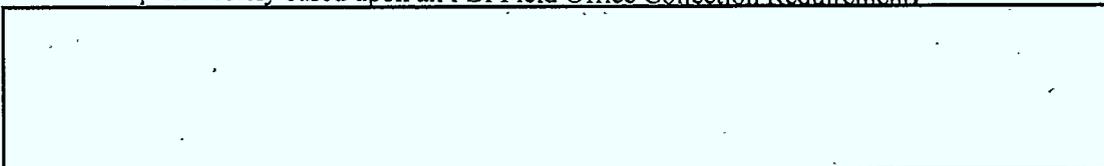
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**5.12. (U//FOUO) FBI Field Office Collection Requirements**

(U//FOUO) An FBI Field Office Collection Requirement describes information needed by the field to: (i) identify or obtain information about potential targets of or vulnerabilities to federal criminal activities or threats to the national security; or (ii) inform or facilitate intelligence analysis and planning pertinent to the FBI's law enforcement or national security missions.

(U//FOUO) Before any investigative activity may be conducted to respond to an FBI Field Office Collection Requirement, an assessment must be initiated or already open. An assessment cannot be opened solely based upon an FBI Field Office Collection Requirement.



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The DI PG contains detailed guidance regarding the Field Office Collection Requirements.

**5.13. (U) Retention and Dissemination of Privacy Act Records**

(U//FOUO) The Privacy Act restricts the maintenance of records relating to the exercise of First Amendment rights by individuals who are United States persons. Such records may be

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maintained if the information is pertinent to and within the scope of authorized law enforcement activities or for which there is otherwise statutory authority for the purposes of the Privacy Act (5 U.S.C. § 522a[e][7]). Activities authorized by the AGG-Dom are authorized law enforcement activities. Thus, information concerning the exercise of First Amendment rights by United States persons may be retained if it is pertinent to or relevant to the FBI's law enforcement or national security activity. Relevancy must be determined by the circumstances. If the information is not relevant to the law enforcement activity being conducted, then it may not be retained. For more information see DIOG Section 4. (AGG-Dom, Part I.C.5)

(U//FOUO) Even if information obtained during an assessment does not warrant opening a predicated investigation, the FBI may retain personally identifying information for criminal and national security purposes. In this context, the information may eventually serve a variety of valid analytic purposes as pieces of the overall criminal or intelligence picture are developed to detect and disrupt criminal and terrorist activities. In addition, such information may assist FBI personnel in responding to questions that may subsequently arise as to the nature and extent of the assessment and its results, whether positive or negative. Furthermore, retention of such information about an individual collected in the course of an assessment will alert other Divisions or Field Offices considering conducting an assessment on the same individual that the particular individual is not a criminal or national security threat. As such, retaining personally identifying information collected in the course of an assessment will also serve to conserve resources and prevent the initiation of unnecessary assessments and other investigative activities.

**(U) Marking Closed Assessments That Contain Personal Information:** Information obtained during an assessment that has insufficient value to justify further investigative activity may contain personal information. As a result: (i) when records retained in an assessment specifically identify an individual or group whose possible involvement in criminal or national security-threatening activity was checked out through the assessment; and (ii) the assessment turns up no sufficient basis to justify further investigation of the individual or group, then the records must be clearly annotated as follows: "It is noted that the individual or group identified during the assessment does not warrant further FBI investigation at this time. It is recommended that this assessment be closed." Extreme care should be taken when disseminating personally identifiable information collected during an assessment that does not lead to sufficient facts to open a predicated investigation. If personal information from the assessment is disseminated outside the FBI according to authorized dissemination guidelines and procedures, it must be accompanied by the required annotation that the assessment involving this individual or group did not warrant further investigation by the FBI at the time the assessment was closed. [REDACTED]

[REDACTED]

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[REDACTED] Moreover, an FBI employee, who shares information from such a closed assessment file, must ensure that the specific annotation (as discussed above) is included with the shared information.

**5.14. (U) Assessment File Records Management and Retention**

(U//FOUO) [REDACTED]

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[Redacted]

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[Redacted] Records must be retained according to National Archives and Records Administration (NARA) regulations.

(U//FOUO) [Redacted]

[Redacted] The retention of records in Guardian, or any successor information technology system, must be retained according to NARA regulations.

(U//FOUO) Assessments that require prior supervisory approval must have [Redacted]

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[Redacted]

[Redacted] must be approved by the SSA or SIA [Redacted]. If additional objectives arise during the assessment, they must be [Redacted] approved by the SSA or SIA, and [Redacted] Assessment classification files must be retained according to NARA regulations.

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## 6. (U) Preliminary Investigations

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### 6.1. (U) Overview

(U) The AGG-Dom authorizes a second level of investigative activity—predicated investigations. Predicated investigations that concern federal crimes or threats to the national security are subdivided into preliminary investigations and full investigations. Preliminary investigations may be initiated on the basis of any “allegation or information” indicative of possible criminal activity or threats to the national security.

### 6.2. (U) Purpose and Scope

(U//FOUO) Preliminary investigations may be carried out to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security. However, a preliminary investigation cannot be initiated or used solely for the purpose of collecting against Positive Foreign Intelligence Requirements, or for conducting enterprise investigations. Intelligence responsive to Positive Foreign Intelligence Requirements, FBI National Collection Requirements and FBI Field Office Collection Requirements may be collected incidental to a preliminary investigation concerning another person, organization, or entity. If Positive Foreign Intelligence Requirement, FBI National Collection Requirement or FBI Field Office Collection Requirement information is incidentally collected in a preliminary investigation, it should be forwarded to the FIG for evaluation and potential dissemination against collection requirements.

(U) In preliminary investigations, the immediate objectives include such matters as: determining whether a federal crime has occurred or is occurring, or if planning or preparation for such a crime is taking place; identifying, locating, and apprehending the perpetrators; obtaining evidence needed for prosecution; or identifying threats to the national security.

(U) The investigation of threats to the national security may constitute an exercise of the FBI's criminal investigation authority as well as its authority to investigate threats to the national security. As with criminal investigations, detecting and solving crimes and arresting and prosecuting the perpetrators are likely objectives of investigations relating to threats to the national security. These investigations, however, serve important purposes outside the ambit of normal criminal investigations, by providing the basis for decisions concerning other measures needed to protect the national security.

### 6.3. (U) Civil Liberties and Privacy

(U) The pursuit of legitimate investigative 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 further ensure that civil liberties are not undermined by the conduct of criminal and national security investigations, every preliminary investigation under this subsection must have an identified authorized purpose and adequate predication.

(U) No investigative activity, including preliminary investigations, may be taken solely on the basis of activities that are protected by the First Amendment or on the race, ethnicity, national origin or religion of the subject. Preliminary investigations of individuals, groups or organizations must focus on activities related to the threats and or crimes being investigated, not solely on First Amendment activities or on the race, ethnicity, national origin or religion of the

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subject. In this context, it is particularly important clearly to identify and document the law enforcement or national security basis of the preliminary investigation.

(U) **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 a change in government through non-criminal means, and actively recruit others to join their causes—have a fundamental constitutional right to do so. A preliminary investigation may not be initiated based solely on the exercise of these First Amendment rights.

(U) The AGG-Dom present investigators with a number of authorized investigative methods in the conduct of a preliminary investigation. Considering the effect on the privacy and civil liberties of individuals and the potential to damage the reputation of individuals, some of these investigative methods are more intrusive than others. The least intrusive method feasible is to be used, but the FBI must not hesitate to use any lawful method consistent with the AGG-Dom. A more intrusive method may be warranted in light of the seriousness of a criminal or national security threat.

(U) By emphasizing the use of the least intrusive means to obtain intelligence and/or evidence, FBI employees can effectively execute their duties while mitigating the 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 intelligence, information, or evidence, but rather is intended to encourage FBI employees to choose the least intrusive—but still effective means—from the available options to obtain the material.

**6.4. (U) Legal Authority**

**A. (U) Criminal Investigations**

(U) The FBI has statutory authority to investigate all federal crime not assigned exclusively to another federal agency. (See 28 U.S.C. § 533; 18 U.S.C. § 3052; 28 C.F.R. § 0.85 [1])

(U) The FBI also has special investigative jurisdiction to investigate violations of state law in limited circumstances. Specifically, the FBI has jurisdiction to investigate felony killings of state law enforcement officers (28 U.S.C. § 540), violent crimes against interstate travelers (28 U.S.C. § 540A), and serial killers (28 U.S.C. § 540B). Authority to investigate these matters is contingent on receiving a request by an appropriate state official.

**B. (U) Threats to the National Security**

(U) The FBI has authority to investigate threats to the national security pursuant to executive orders, Attorney General authorities, and various statutory sources. (See E.O. 12333; 50 U.S.C. §§ 401 et seq.; 50 U.S.C. § 1801 et seq.)

(U) “Threats to the national security” are specifically defined to mean: international terrorism; espionage and other intelligence activities, sabotage, and assassination, conducted by, for, or on behalf of foreign powers, organizations, or persons; foreign computer intrusion; and other matters determined by the Attorney General, consistent with Executive Order 12333 or any successor order. (AGG-Dom, Part VII.S)

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**6.5. (U) Predication**

(U) A preliminary investigation may be initiated on the basis of "information or an allegation" indicating the existence of a circumstance described as follows:

- A. (U) An activity constituting a federal crime or a threat to the national security has or may have occurred, is or may be occurring, or will or may occur and the investigation may obtain information relating to the activity or the involvement or role of an individual, group, or organization in such activity. (AGG-Dom, Part II.B.3)
- B. (U) An individual, group, organization, entity, information, property, or activity is or may be a target of attack, victimization, acquisition, infiltration, or recruitment in connection with criminal activity in violation of federal law or a threat to the national security and the investigation may obtain information that would help to protect against such activity or threat. (AGG-Dom, Part II.B.3)

(U//FOUO) [Redacted]

[Redacted]

(i) (U//FOUO) [Redacted]

[Redacted]

(ii) (U//FOUO) [Redacted]

[Redacted]

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**6.6. (U//FOUO) Standards for Initiating or Approving a Preliminary Investigation**

(U) Before initiating or approving the conduct of a preliminary investigation, an FBI employee or approving official must determine whether:

- A. (U//FOUO) An authorized purpose and adequate predication exist for initiating a preliminary investigation;
- B. (U//FOUO) The preliminary investigation is not based solely on the exercise of First Amendment activities or on the race, ethnicity, national origin or religion of the subject; and
- C. (U//FOUO) The preliminary investigation is an appropriate use of personnel and financial resources.

**6.7. (U) Duration, Approval, Notice, Documentation and File Review**

- A. (U//FOUO) **Initiation:** The purpose of and predication for a preliminary investigation must be documented in the initiating EC. The effective date of the preliminary investigation is the date the final approval authority (e.g., SSA or SAC) approves the EC.
  - 1. (U//FOUO) The initiation of a preliminary investigation by the Field Office requires prior approval of the SSA. FBIHQ Division policy implementation guides may require written notification to the appropriate FBIHQ Unit and Section. The initiation of a preliminary investigation does not require FBIHQ and DOJ notification unless the preliminary investigation involves a sensitive investigative matter as discussed in paragraph 3, below.

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2. (U//FOUO) The initiation of a preliminary investigation by FBIHQ requires prior approval of the Unit Chief with written notification to the applicable Field Office. The initiation of a preliminary investigation does not require DOJ notification unless the preliminary investigation involves a sensitive investigative matter as discussed in paragraph 3, below.
3. (U//FOUO) **Sensitive Investigative Matter:** The initiation of a preliminary investigation involving a sensitive investigative matter:
  - a. (U//FOUO) **Initiated by a Field Office:** requires CDC review, SAC approval, and written notification to the appropriate FBIHQ Unit Chief and Section Chief. Additionally, written notification must be made by the Field Office to the United States Attorney or by the appropriate FBIHQ Section to the DOJ Criminal Division or NSD as soon as practicable but in all events no later than 30 calendar days after the initiation of such an investigation. b2  
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cease until CDC review and SAC approval is acquired and notice is furnished as specified above.
  - b. (U//FOUO) **Initiated by FBIHQ:** requires OGC review, Section Chief approval, and written notification to the United States Attorney and the appropriate Field Office or the DOJ Criminal Division or NSD as soon as practicable but in all events no later than 30 calendar days after the initiation of such an investigation.  
must cease until OGC review and Section Chief approval is acquired and notice is furnished as specified above. (AGG-Dom, Part II.B.5.a)
4. (U//FOUO) The Executive Assistant Director (EAD) for the National Security Branch must notify the Deputy Attorney General if FBI Headquarters disapproves a Field Office's initiation of a preliminary investigation relating to a threat to the national security on the ground that the predication for the investigation is insufficient, and the EAD for the National Security Branch is responsible for establishing a system that will allow for the prompt retrieval of such denials. (AGG-Dom, Part II.B.5.d)
- B. (U//FOUO) **Extension:** A preliminary investigation must be concluded within six months of its initiation but may be extended for up to six months by the SAC. This extension authority may not be delegated by the SAC to the ASAC. Extensions of preliminary investigations beyond a year are discouraged and may only be approved by the appropriate FBIHQ Unit and Section for "good cause." (AGG-Dom, Part II.B.4.a.ii) **Note:**b2  
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(U//FOUO) The following factors must be used to determine if "good cause" exists to extend the preliminary investigation beyond one year:

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- (U//FOUO) Whether logical investigative steps have yielded information that tends to inculcate or exculpate the subject;
  - (U//FOUO) The progress that has been made toward determining whether a full investigation should be opened or the preliminary investigation should be closed;
  - (U//FOUO) Whether, based on the planned course of investigation for the following six months, it is reasonably likely that information will be obtained that will lead to predication for a full investigation, thereby warranting an extension for another six months, or will lead to exculpatory information, thereby warranting closing the preliminary investigation; and
  - (U//FOUO) Whether adequate predication has been developed to justify opening a full investigation or whether sufficient information has been developed that justify closing the preliminary investigation.
- C. (U//FOUO) **Closing:** When closing a preliminary investigation, the Field Office or FBIHQ will provide the reason for closing the investigation. When closing a preliminary investigation, the SSA or Unit Chief must ensure that all pending investigative methods have been completed/terminated (e.g., mail covers and pen register/trap and trace).
1. (U//FOUO) Closing a preliminary investigation initiated by a Field Office requires approval from the SSA. [redacted]
  2. (U//FOUO) Closing a preliminary investigation initiated by FBIHQ requires approval from the Unit Chief and notification to the appropriate Field Office.
  3. (U//FOUO) Closing a preliminary investigation initiated by a Field Office involving a sensitive investigative matter requires approval from the SAC [redacted]
  4. (U//FOUO) Closing a preliminary investigation initiated by FBIHQ involving a sensitive investigative matter requires approval from the Section Chief [redacted]
- D. (U//FOUO) **Conversion:** When converting a preliminary investigation to a full investigation, see Section 7 for approval and notification requirements.
- E. (U//FOUO) **File Review:** Supervisory file reviews must be conducted at least once every 90 days in accordance with Section 3.4. File reviews for probationary FBI employees must be conducted at least every 60 days.
- 6.8. (U//FOUO) Standards for Initiating or Approving the Use of an Authorized Investigative Method**
- (U//FOUO) Prior to initiating or approving the use of an investigative method, an FBI employee or approving official must determine whether:
- A. (U//FOUO) The use of the particular investigative method is likely to further the purpose of the preliminary investigation;
  - B. (U//FOUO) The investigative method selected is the least intrusive method, reasonable under the circumstances; and

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C. (U//FOUO) The method to be used is an appropriate use of personnel and financial resources.

**6.9. (U) Authorized Investigative Methods in Preliminary Investigations**

A. (U) All lawful methods may be used in a preliminary investigation, except for mail opening, physical search requiring a Federal Rules of Criminal Procedure (FCRP) Rule 41 search warrant or a FISA order, electronic surveillance requiring a judicial order or warrant, or Title VII FISA requests. Authorized methods include, but are not limited to, those listed below. Some of the methods listed are subject to special restrictions or review or approval requirements. (AGG-Dom, Part V.4.A)

B. (U//FOUO) A complete discussion of the investigative methods, including approval requirements, is contained in Sections 5 and 11. The use or dissemination of information obtained by the use of the below methods must comply with the AGG-Dom and DIOG Section 14.

1. (U) Obtain publicly available information.
2. (U) Access and examine FBI and other DOJ records, and obtain information from any FBI or other DOJ personnel.
3. (U) Access and examine records maintained by, and request information from, other federal, state, local, or tribal, or foreign governmental entities or agencies.
4. (U) Use online services and resources (whether non-profit or commercial).
5. (U) Use and recruit human sources in conformity with the AGG-CHS.
6. (U) Interview or request information from members of the public and private entities.
7. (U) Accept information voluntarily provided by governmental or private entities.
8. (U) Engage in observation or surveillance not requiring a court order.
9. (U) Grand Jury Subpoenas for telephone or electronic mail subscriber information (see also number 16, below).
10. (U) Mail covers. (AGG-Dom, Part V.A.2)
11. (U) Physical searches of personal or real property where a warrant or court order is not legally required because there is no reasonable expectation of privacy (e.g., open fields, trash covers). (AGG-Dom, Part V.A.3)
12. (U) Consensual monitoring of communications, including consensual computer monitoring, subject to legal review by the CDC or the FBI OGC. When a sensitive monitoring circumstance is involved, the monitoring must be approved by the DOJ Criminal Division or, if the investigation concerns a threat to the national security, by the DOJ NSD. (AGG-Dom, Part V.A.4) Sensitive monitoring circumstances include:
  - a. (U) Investigation of a member of Congress, a federal judge, a member of the Executive Branch at Executive Level IV or above, or a person who has served in such capacity within the previous two years (Executive Level I through IV are defined in 5 U.S.C. §§ 5312-5315);
  - b. (U) Investigation of the Governor, Lieutenant Governor, or Attorney General of any state or territory, or a judge or justice of the highest court of any state or territory,

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concerning an offense involving bribery, conflict of interest, or extortion related to the performance of official duties;

- c. (U) A party to the communication is in the custody of the Bureau of Prisons or the United States Marshal Service or is being or has been afforded protection in the Witness Security Program; or
- d. (U) The Attorney General, the Deputy Attorney General, or an Assistant Attorney General has requested that the FBI obtain prior approval for the use of consensual monitoring in a specific investigation. (AGG-Dom, Part VII.A and O)

(U//FOUO) **Note:** See classified appendix for additional information.

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- 13. (U) Use of closed-circuit television, direction finders, and other monitoring devices, subject to legal review by the CDC or the FBI OGC. (The methods described in this paragraph usually do not require a court order or warrant unless they involve an intrusion into an area where there is a reasonable expectation of privacy or non-consensual monitoring of communications, but legal review is necessary to ensure compliance with all applicable legal requirements.) (AGG-Dom, Part V.A.5)
- 14. (U) Polygraph examinations. (AGG-Dom, Part V.A.6)
- 15. (U) Undercover operations. In investigations relating to activities in violation of federal criminal law that do not concern threats to the national security or foreign intelligence, undercover operations must be carried out in conformity with *The Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations*. Investigations that are not subject to the preceding sentence because they concern threats to the national security or foreign intelligence undercover operations involving religious or political organizations must be reviewed and approved by FBI Headquarters, with participation by the DOJ NSD in the review process. (AGG-Dom, Part V.A.7)
- 16. (U) Compulsory process as authorized by law, including grand jury subpoenas and other subpoenas, National Security Letters (15 U.S.C. §§ 1681u, 1681v; 18 U.S.C. § 2709; 12 U.S.C. § 3414[a][5][A]; 50 U.S.C. § 436); and FISA orders for the production of tangible things. (50 U.S.C. §§ 1861-63). (AGG-Dom, Part V.A.8)
- 17. (U) Accessing stored wire and electronic communications and transactional records in conformity with chapter 121 of title 18, United States Code (18 U.S.C. §§ 2701-2712). (AGG-Dom, Part V.A.9)
- 18. (U) Use of pen registers and trap and trace devices in conformity with chapter 206 of title 18, United States Code (18 U.S.C. §§ 3121-3127) or FISA (50 U.S.C. §§ 1841-1846). (AGG-Dom; Part V.A.10)

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**6.10. (U) Sensitive Investigative Matter / Academic Nexus / Buckley Amendment**

(U//FOUO) The title/case caption of the opening or subsequent EC for a preliminary investigation involving a sensitive investigative matter must contain the words "Sensitive Investigative Matter." DIOG Section 10 contains the required approval authority and factors for consideration when determining whether to initiate or approve a predicated investigation involving a sensitive investigative matter.

A. (U//FOUO) **Sensitive Investigative Matter:** An investigative matter involving the activities of a domestic public official or political candidate (involving corruption or a threat to the national security), religious or political organization or individual prominent in such an organization, or news media, or any other matter which, in the judgment of the official authorizing an investigation, should be brought to the attention of FBI Headquarters and other DOJ officials. (AGG-Dom, Part VII.N.) As a matter of FBI policy, "judgment" means that the decision of the authorizing official is discretionary. DIOG Section 10 and/or the DIOG classified Appendix G define [redacted]

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B. (U//FOUO) **Academic Nexus:** [redacted]

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(U//FOUO) The sensitivity related to an academic institution arises from the American tradition of "academic freedom" (e.g., an atmosphere in which students and faculty are free to express unorthodox ideas and views and to challenge conventional thought without fear of repercussion). Academic freedom does not mean, however, that academic institutions are off limits to FBI investigators in pursuit of information or individuals of legitimate investigative interest.

(U//FOUO) [redacted]

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[redacted] see the DIOG classified Appendix G.

C. (U//FOUO) **Buckley Amendment:** Although not a sensitive investigative matter, a request for "academic records" must only be made pursuant to the provisions of the Buckley Amendment (The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232[g], as amended by Public Law 107-56 ["USA PATRIOT Act"]). An FBI employee is prohibited from receiving "academic records" that have not been properly requested pursuant to the Buckley Amendment. The definition of "academic records" is very broad and covers almost all records about a student other than public, student directory-type information published by the institution. The Buckley Amendment contains a penalty provision for those institutions that improperly provide academic records to law enforcement agencies [redacted]

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A Buckley Amendment request for academic records cannot be made during an assessment. In a predicated investigation, a request for academic records must be made pursuant to the Buckley Amendment.

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**6.11. (U) Program Specific Investigative Requirements**

(U//FOUO) Because of the many investigative programs within the FBI, a single universal requirement will not adequately address every program. To facilitate compliance within an existing program, the FBI employee should consult the relevant program policy guidance.

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## 7. (U) Full Investigations

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### 7.1. (U) Overview

(U//FOUO) The AGG-Dom authorizes a second level of investigative activity—predicated investigations. Predicated investigations that concern federal crimes or threats to the national security are subdivided into preliminary investigations and full investigations. Full investigations may be initiated if there is an “articulable factual basis” of possible criminal or national threat activity, as discussed in greater detail in Section 7.5, below. There are three types of full investigations: (i) single and multi-subject; (ii) enterprise; and (iii) positive foreign intelligence collection.

### 7.2. (U) Purpose and Scope

(U) Full investigations may be initiated to detect, obtain information about, or prevent or protect against federal crimes or threats to the national security or to collect foreign intelligence.

(U) The objective of a full investigation includes: determining whether a federal crime is being planned, prepared for, occurring or occurred; identifying, locating, and apprehending the perpetrators; obtaining evidence for prosecution; identifying threats to the national security; investigating an enterprise (as defined in DIOG Section 8); or collecting positive foreign intelligence.

(U) The investigation of threats to the national security can be investigated under both the FBI’s criminal investigation authority and its authority to investigate threats to the national security. As with criminal investigations, detecting and solving crimes, gathering evidence and arresting and prosecuting the perpetrators are frequently the objectives of investigations relating to threats to the national security. These investigations also serve important purposes outside the ambit of normal criminal investigations, however, by providing the basis for decisions concerning other measures needed to protect the national security.

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(U//FOUO) A full investigation solely for the collection of positive foreign intelligence extends the sphere of the FBI’s information gathering activities beyond federal crimes and threats to the national security and permits the FBI to seek information regarding a broader range of matters relating to foreign powers, organizations, or persons that may be of interest to the conduct of the United States’ foreign affairs. (See DIOG Section 9)

### 7.3. (U) Civil Liberties and Privacy

(U) The pursuit of legitimate investigative 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 further ensure that civil liberties are not undermined by the conduct of criminal and national security investigations, every full investigation under this subsection must have an identified authorized purpose and adequate predication.

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(U) No investigative activity, including full investigations, may be taken solely on the basis of activities that are protected by the First Amendment or on the race, ethnicity, national origin or religion of the subject. Full investigations of individuals, groups or organizations must focus on activities related to the threats or crimes being investigated, not solely on First Amendment activities or on the race, ethnicity, national origin or religion of the subject. In this context, it is particularly important clearly to identify and document the law enforcement or national security basis of the full investigation:

(U) **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 a change in government through non-criminal means, and actively recruit others to join their causes—have a fundamental constitutional right to do so. A full investigation may not be initiated based solely on the exercise of these First Amendment rights.

(U) The AGG-Dom authorize all lawful investigative methods in the conduct of a full investigation. Considering the effect on the privacy and civil liberties of individuals and the potential to damage the reputation of individuals, some of these investigative methods are more intrusive than others. The least intrusive method feasible is to be used, but the FBI must not hesitate to use any lawful method consistent with the AGG-Dom. A more intrusive method may be warranted in light of the seriousness of a criminal or national security threat or the importance of a foreign intelligence requirement.

(U) By emphasizing the use of the least intrusive means to obtain intelligence or evidence, FBI employees can effectively execute their duties while mitigating the 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 intelligence, information, or evidence, but rather is intended to encourage FBI employees to choose the least intrusive—but still effective means—from the available options to obtain the material.

(U) Because the authority to collect positive foreign intelligence enables the FBI to obtain information pertinent to the United States' conduct of its foreign affairs, even if that information is not related to criminal activity or threats to the national security, the information gathered may concern lawful activities. The FBI must accordingly operate openly and consensually with a United States person to the extent practicable when collecting positive foreign intelligence that does not concern criminal activities or threats to the national security.

**7.4. (U) Legal Authority**

**A. (U) Criminal Investigations**

(U) The FBI has statutory authority to investigate all federal crime not assigned exclusively to another federal agency. (See 28 U.S.C. § 533; 18 U.S.C. § 3052; 28 C.F.R. § 0.85 [1].)

(U) The FBI also has special investigative jurisdiction to investigate violations of state law in limited circumstances. Specifically, the FBI has jurisdiction to investigate felony killings of state law enforcement officers (28 U.S.C. § 540), violent crimes against interstate travelers

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(28 U.S.C. § 540A), and serial killers (28 U.S.C. § 540B). Authority to investigate these matters is contingent on receiving a request by an appropriate state official.

**B. (U) Threats to the National Security**

(U) The FBI has authority to investigate threats to the national security pursuant to executive orders, Attorney General authorities, and various statutory sources. (See E.O. 12333; 50 U.S.C. §§ 401 et seq.; 50 U.S.C. §§ 1801 et seq.)

(U) "Threats to the national security" are specifically defined to mean: international terrorism; espionage and other intelligence activities, sabotage, and assassination, conducted by, for, or on behalf of foreign powers, organizations, or persons; foreign computer intrusion; and other matters determined by the Attorney General, consistent with Executive Order 12333 or any successor order. (AGG-Dom, Part VII.S)

**C. (U) Foreign Intelligence Collection**

(U) The FBI authority to collect foreign intelligence derives from a mixture of administrative and statutory sources. (See E.O. 12333; 50 U.S.C. §§ 401 et seq.; 50 U.S.C. §§ 1801 et seq.; 28 U.S.C. § 532 note (incorporates the Intelligence Reform and Terrorism Protection Act, P.L. 108-458 §§ 2001-2003).

(U) "Foreign Intelligence" is defined as information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations or foreign persons, or international terrorists. (AGG-Dom, Part VII.E)

**7.5. (U) Predication**

(U) A full investigation may be initiated if there is an "articulable factual basis" that reasonably indicates one of the following circumstances exists:

- A. (U) An activity constituting a federal crime or a threat to the national security has or may have occurred, is or may be occurring, or will or may occur and the investigation may obtain information relating to the activity or the involvement or role of an individual, group, or organization in such activity.
- B. (U) An individual, group, organization, entity, information, property, or activity is or may be a target of attack, victimization, acquisition, infiltration, or recruitment in connection with criminal activity in violation of federal law or a threat to the national security and the investigation may obtain information that would help to protect against such activity or threat.
- C. (U) The investigation may obtain foreign intelligence that is responsive to a Positive Foreign Intelligence Requirement, as defined in DIOG Section 7.4.C.

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[Redacted]

(i)

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[Redacted]

(ii)

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

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7.6. (U//FOUO) Standards for Initiating or Approving a Full Investigation

(U//FOUO) Before initiating or approving the conduct of a full investigation, an FBI employee or approving official must determine whether:

- A. (U//FOUO) An authorized purpose and adequate predication exist for initiating a full investigation;
- B. (U//FOUO) The full investigation is based on factors other than the exercise of First Amendment activities or the race, ethnicity, national origin or religion of the subject; and
- C. (U//FOUO) The full investigation is an appropriate use of personnel and financial resources.

7.7. (U) Duration, Approval, Notice, Documentation and File Review

- A. (U//FOUO) **Initiation:** The purpose of and predication for a full investigation must be documented in the initiating EC. The effective date of the full investigation is the date the final approval authority (e.g., SSA or SAC) approves the EC.
  1. (U//FOUO) **By a Field Office:** The initiation of a full investigation for circumstances described in Sections 7.5.A and 7.5.B by a Field Office requires prior approval of the SSA with written notification to the appropriate FBIHQ substantive Unit. The initiation of a full investigation of a United States person relating to a threat to the national security for circumstances described in Sections 7.5.A and 7.5.B requires the approval of the Field Office SSA with written notification to the appropriate FBIHQ substantive Unit. The FBIHQ substantive Unit must notify DOJ NSD as soon as practicable but in all events within 30 calendar days after the initiation of the investigation.
  2. (U//FOUO) **By FBIHQ:** The initiation of a full investigation for circumstances described in Sections 7.5.A and 7.5.B by FBIHQ requires prior approval of the Unit Chief with written notification to the appropriate Field Office. The initiation of a full investigation by FBIHQ of a United States person relating to a threat to the national security for circumstances described in Sections 7.5.A and 7.5.B requires the approval of the Unit Chief with written notification to the appropriate Field Office and notice to DOJ NSD as soon as practicable but in all events within 30 days after initiation of the investigation.
  3. (U//FOUO) **Sensitive Investigative Matter:** The initiation of a full investigation involving a sensitive investigative matter:
    - a. (U//FOUO) **By a Field Office:** requires CDC review, SAC approval, and written notification to the appropriate FBIHQ substantive Unit Chief and Section Chief. Additionally, the Field Office must notify, in writing, the United States Attorney, if required. The appropriate FBIHQ Section must notify, in writing, the DOJ Criminal Division or NSD as soon as practicable, but no later than 30 calendar days after the initiation of the investigation. The notice must identify all known sensitive investigative matters involved in the investigation (see classified appendix for additional notice requirements). If a sensitive investigative matter arises after the initiation of a full investigation, investigative activity must cease

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until CDC review and SAC approval are acquired and notice is furnished as specified above.

- b. (U//FOUO) **By FBIHQ:** requires OGC review, Section Chief approval, and written notification to the United States Attorney and the appropriate Field Office or the DOJ Criminal Division or NSD as soon as practicable, but no later than 30 calendar days after the initiation of such an investigation. The notice must identify all known sensitive investigative matters involved in the investigation (see classified appendix for additional notice requirements). If a sensitive investigative matter arises after the initiation of a full investigation, investigative activity must cease until OGC review and Section Chief approval are acquired and notice is furnished as specified above. (AGG-Dom, Part II.B.5.a)
  4. (U//FOUO) The initiation of a full investigation in order to collect positive foreign intelligence must be approved as provided in Section 9. Additionally, written notification to FBIHQ CMS and DOJ NSD is required as soon as practicable but no later than 30 calendar days after the initiation of the investigation.
  5. (U//FOUO) The EAD for the National Security Branch must notify the Deputy Attorney General if FBI Headquarters disapproves a Field Office's initiation of a full investigation relating to a threat to the national security on the ground that the predication for the investigation is insufficient, and the EAD for the National Security Branch is responsible for establishing a system that will allow for the prompt retrieval of such denials. (AGG-Dom, Part II.B.5.d)
- B. (U//FOUO) **Closing:** When closing the full investigation, the Field Office or FBIHQ will provide the reason for closing the investigation. When closing a full investigation, the SSA or Unit Chief must ensure that all pending investigative methods have been completed/terminated (e.g., mail covers and pen register/trap and trace). Although there is no duration requirement for a full investigation, the investigation must be closed upon all investigative activity being exhausted.
1. (U//FOUO) Closing a full investigation initiated by a Field Office requires approval from the SSA. Notification to the substantive FBIHQ Unit may be required by program policy.
  2. (U//FOUO) Closing a full investigation initiated by FBIHQ requires approval from the Unit Chief and notification to the appropriate Field Office.
  3. (U//FOUO) Closing a full investigation initiated by a Field Office involving a sensitive investigative matter requires approval from the SAC and written notification to the FBIHQ substantive Unit and Section.
  4. (U//FOUO) Closing a full investigation initiated by FBIHQ involving a sensitive investigative matter requires approval from the Section Chief and written notification to the appropriate Field Office.
  5. (U//FOUO) Closing a full investigation for the purpose of positive foreign intelligence collection requires the approval of FBIHQ CMS.

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- C. (U//FOUO) **File Review:** Supervisory file reviews must be conducted at least once every 90 days in accordance with Section 3.4. File reviews for probationary FBI employees must be conducted at least every 60 days.
- D. (U//FOUO) **Annual Letterhead Memorandum:** Annual letterhead memoranda regarding the status of full investigations are not required by the AGG-Dom; however,

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**7.8. (U//FOUO) Standards for Initiating or Approving the Use of an Authorized Investigative Method**

(U//FOUO) Prior to initiating or approving the use of an investigative method, an FBI employee or approving official must determine whether:

- A. (U//FOUO) The use of the particular investigative method is likely to further the purpose of the full investigation;
- B. (U//FOUO) The investigative method selected is the least intrusive method, reasonable under the circumstances;
- C. (U//FOUO) If the full investigation is for collecting positive foreign intelligence, the FBI must operate openly and consensually with a United States person, to the extent practicable; and
- D. (U//FOUO) The method to be used is an appropriate use of personnel and financial resources.

**7.9. (U) Authorized Investigative Methods in Full Investigations**

(U) All lawful methods may be used in a full investigation, unless the investigation is to collect foreign intelligence. The use or dissemination of information obtained by the use of these methods must comply with the AGG-Dom and DIOG Section 14. See foreign intelligence collection Section 9 for more information regarding use of authorized investigative methods.

- A. (U) Obtain publicly available information.
- B. (U) Access and examine FBI and other DOJ records, and obtain information from any FBI or other DOJ personnel.
- C. (U) Access and examine records maintained by, and request information from, other federal, state, local, or tribal, or foreign governmental entities or agencies.
- D. (U) Use online services and resources (whether non-profit or commercial).
- E. (U) Use and recruit human sources in conformity with the AGG-CHS.
- F. (U) Interview or request information from members of the public and private entities.
- G. (U) Accept information voluntarily provided by governmental or private entities.
- H. (U) Engage in observation or surveillance not requiring a court order.
- I. (U) Grand Jury Subpoenas for telephone or electronic mail subscriber information (see also 'P' below).
- J. (U) Mail covers. (AGG-Dom, Part V.A.2)

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- K. (U) Physical searches of personal or real property where a warrant or court order is not legally required because there is no reasonable expectation of privacy (e.g., trash covers). (AGG-Dom, Part V.A.3)
- L. (U) Consensual monitoring of communications, including consensual computer monitoring, subject to legal review by the CDC or the FBI OGC. When a sensitive monitoring circumstance is involved, the monitoring must be approved by the DOJ Criminal Division or, if the investigation concerns a threat to the national security, by the DOJ NSD. (AGG-Dom, Part V.A.4)
- (U) Sensitive monitoring circumstances include:
1. (U) Investigation of a member of Congress, a federal judge, a member of the Executive Branch at Executive Level IV or above, or a person who has served in such capacity within the previous two years (Executive Level I through IV are defined in 5 U.S.C. §§ 5312-5315);
  2. (U) Investigation of the Governor, Lieutenant Governor, or Attorney General of any state or territory, or a judge or justice of the highest court of any state or territory, concerning an offense involving bribery, conflict of interest, or extortion related to the performance of official duties;
  3. (U) A party to the communication is in the custody of the Bureau of Prisons or the United States Marshal Service or is being or has been afforded protection in the Witness Security Program; or
  4. (U) The Attorney General, the Deputy Attorney General, or an Assistant Attorney General has requested that the FBI obtain prior approval for the use of consensual monitoring in a specific investigation. (AGG-Dom, Part VII.A and O)
- (U//FOUO) Note: See classified appendix for additional information.
- (U//FOUO) Note: For those state, local and tribal governments that do not sanction or provide a law enforcement exception available to the FBI for one-party consensual recording of communications with persons within their jurisdiction, the SAC must approve the consensual monitoring of communications as an OIA, as discussed in Section 17. Prior to the SAC authorizing the OIA, one-party consent must be acquired. The SAC may delegate this OIA approval authority to an ASAC or SSA.
- M. (U) Use of closed-circuit television, direction finders, and other monitoring devices, subject to legal review by the CDC or the FBI OGC. (The methods described in this paragraph usually do not require a court order or warrant unless they involve an intrusion into an area where there is a reasonable expectation of privacy or non-consensual monitoring of communications, but legal review is necessary to ensure compliance with all applicable legal requirements.) (AGG-Dom, Part V.A.5)
- N. (U) Polygraph examinations. (AGG-Dom, Part V.A.6)
- O. (U) Undercover operations. In investigations relating to activities in violation of federal criminal law that do not concern threats to the national security or foreign intelligence, undercover operations must be carried out in conformity with The Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations. Investigations that are not subject to the preceding sentence because they concern threats to the national security

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or foreign intelligence undercover operations involving religious or political organizations must be reviewed and approved by FBI Headquarters, with participation by the DOJ NSD in the review process. (AGG-Dom, Part V.A.7)

- P. (U) Compulsory process as authorized by law, including grand jury subpoenas and other subpoenas, National Security Letters (15 U.S.C. §§ 1681u, 1681v; 18 U.S.C. § 2709; 12 U.S.C. § 3414[a][5][A]; 50 U.S.C. § 436), and FISA orders for the production of tangible things. (50 U.S.C. §§ 1861-63). (AGG-Dom, Part V.A.8)
- Q. (U) Accessing stored wire and electronic communications and transactional records in conformity with chapter 121 of title 18, United States Code (18 U.S.C. §§ 2701-2712). (AGG-Dom, Part V.A.9)
- R. (U) Use of pen registers and trap and trace devices in conformity with chapter 206 of title 18, United States Code (18 U.S.C. §§ 3121-3127) or FISA (50 U.S.C. §§ 1841-1846). (AGG-Dom, Part V.A.10)
- (U) **The following investigative methods can only be used in full investigations:**
  - S. (U) Electronic surveillance in conformity with chapter 119 of Title 18, United States Code (18 U.S.C. §§ 2510-2522), FISA, or Executive Order 12333 § 2.5. (AGG-Dom, Part V.A.11)
  - T. (U) Physical searches, including mail openings, in conformity with Rule 41 of the Federal Rules of Criminal Procedure, FISA, or Executive Order 12333 § 2.5. The classified appendix to the DIOG, Appendix G, provides additional information regarding certain searches. (AGG-Dom, Part V.A.12)
  - U. (U) Acquisition of foreign intelligence information in conformity with Title VII of FISA. (AGG-Dom, Part V.A.13)

**7.10. (U) Sensitive Investigative Matter / Academic Nexus / Buckley Amendment**

(U//FOUO) The title/case caption of the opening or subsequent EC for a full investigation involving a sensitive investigative matter must contain the words "Sensitive Investigative Matter." DIOG Section 10 contains the required approval authority and factors to be considered when determining whether to conduct or to approve a predicated investigation involving a sensitive-investigative matter. The AGG-Dom defines sensitive investigative matter as follows:

- A. (U//FOUO) **Sensitive Investigative Matter:** An investigative matter involving the activities of a domestic public official or political candidate (involving corruption or a threat to the national security), religious or political organization or individual prominent in such an organization, or news media, or any other matter which, in the judgment of the official authorizing an investigation, should be brought to the attention of FBI Headquarters and other DOJ officials. (AGG-Dom, Part VII.N). As a matter of FBI policy, "judgment" means that the decision of the authorizing official is discretionary. DIOG Section 10 and/or the DIOG classified Appendix G define domestic public official, political candidate, religious or political organization or individual prominent in such an organization, and news media.
- B. (U//FOUO) **Academic Nexus:**

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[REDACTED]

(U//FOUO) The sensitivity related to an academic institution arises from the American tradition of "academic freedom" (e.g., an atmosphere in which students and faculty are free to express unorthodox ideas and views and to challenge conventional thought without fear of repercussion). Academic freedom does not mean, however, that academic institutions are off limits to FBI investigators in pursuit of information or individuals of legitimate investigative interest.

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(U//FOUO) For matters not considered a sensitive investigative matter [REDACTED] [REDACTED] see the DIOG classified Appendix G.

- C. (U//FOUO) **Buckley Amendment:** Although not a sensitive investigative matter, a request for "academic records" must only be made pursuant to the provisions of the Buckley Amendment (The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232[g], as amended by Public Law 107-56 ["USA PATRIOT Act"]). An FBI employee is prohibited from receiving "academic records" that have not been properly requested pursuant to the Buckley Amendment. The definition of "academic records" is very broad and covers almost all records about a student other than public, student directory-type information published by the institution. The Buckley Amendment contains a penalty provision for those institutions that improperly provide academic records to law enforcement agencies. [REDACTED]

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[REDACTED]

(U//FOUO) A Buckley Amendment request for academic records cannot be made during an assessment. In a predicated investigation, a request for academic records must be made pursuant to the Buckley Amendment.

**7.11. (U) Program Specific Investigative Requirements**

(U//FOUO) Because of the many investigative programs within the FBI, a single universal requirement will not adequately address every program. To facilitate compliance within an existing program, the FBI employee should consult the relevant program policy guidance.

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## **8. (U) Enterprise Investigations**

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### **8.1. (U) Overview**

(U) Enterprise investigations may only be opened and operated as full investigations and are subject to the same requirements that apply to full investigations described in Section 7. Enterprise investigations focus on groups or organizations that may be involved in the most serious criminal or national security threats to the public, as described in Section 8.5 below. Enterprise investigations cannot be conducted as preliminary investigations or assessments, nor may they be conducted for the sole purpose of collecting positive foreign intelligence. See Section 8.2, below, regarding preliminary investigations and assessments.

### **8.2. (U) Purpose, Scope and Definitions**

(U) The term "enterprise" includes any partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact, although not a legal entity. The purpose of an enterprise investigation is to examine the structure, scope, and nature of the group or organization including: its relationship, if any, to a foreign power; the identity and relationship of its members, employees, or other persons who may be acting in furtherance of its objectives; its finances and resources; its geographical dimensions; its past and future activities and goals; and its capacity for harm. (AGG-Dom, Part II.C.2)

(U//FOUO) Although an enterprise investigation may not be conducted as a preliminary investigation, a preliminary investigation may be used to determine whether a group or organization is a criminal or terrorist enterprise if the FBI has "information or an allegation" that an activity constituting a federal crime or a threat to the national security has or may have occurred, is or may be occurring, or will or may occur, and the investigation may obtain information relating to the activity of the group or organization in such activity. An assessment may also be initiated to determine whether a group or organization is involved in activities constituting violations of federal criminal law or threats to the national security.

### **8.3. (U) Civil Liberties and Privacy**

(U) The pursuit of legitimate investigative 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 further ensure that civil liberties are not undermined by the conduct of criminal and national security investigations, every full investigation, including an enterprise investigation under this subsection, must have an identified authorized purpose and adequate predication.

(U) No investigative activity, including enterprise investigations, may be taken solely on the basis of activities that are protected by the First Amendment or on the race, ethnicity, national origin or religion of the subject. Enterprise investigations of groups and organizations must focus on activities related to the threats or crimes being investigated, not solely on First Amendment activities or on the race, ethnicity, national origin or religion of the members of the group or organization. In this context, it is particularly important clearly to identify and document the law enforcement or national security basis of the enterprise investigation.

(U//FOUO) **Example:** Groups who communicate with each other or with members of the public in any form in pursuit of social or political causes—

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such as opposing war or foreign policy, protesting government actions, promoting certain religious beliefs, championing particular local, national, or international causes, or a change in government through non-criminal means, and actively recruit others to join their causes—have a fundamental constitutional right to do so. An enterprise investigation may not be initiated based solely on the exercise of these First Amendment rights.

(U) The AGG-Dom authorize all lawful investigative methods in the conduct of an enterprise investigation. Considering the effect on the privacy and civil liberties of individuals and the potential to damage the reputation of individuals, some of these investigative methods are more intrusive than others. The least intrusive method feasible is to be used, but the FBI must not hesitate to use any lawful method consistent with the AGG-Dom. A more intrusive method may be warranted in light of the seriousness of a criminal or national security threat.

(U) By emphasizing the use of the least intrusive means to obtain intelligence and/or evidence, FBI employees can effectively execute their duties while mitigating the 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 intelligence, information, or evidence, but rather is intended to encourage FBI employees to choose the least intrusive—but still effective means—from the available options to obtain the material.

**8.4. (U) Legal Authority**

(U) A full investigation of a group or organization may be initiated as an enterprise investigation if there is an articulable factual basis for the investigation that reasonably indicates the group or organization may have engaged, or may be engaged in, or may have or may be engaged in planning or preparation or provision of support for: (AGG-Dom, Part II.C.1)

- A. (U) A pattern of racketeering activity as defined in 18 U.S.C. § 1961(5);
- B. (U) International terrorism, as defined in the AGG-Dom, Part VII.J, or other threat to the national security;
- C. (U) Domestic terrorism as defined in 18 U.S.C. § 2331(5) involving a violation of federal criminal law;
- D. (U) Furthering political or social goals wholly or in part through activities that involve force or violence and a violation of federal criminal law; or
- E. (U) An offense described in 18 U.S.C. § 2332b(g)(5)(B) or 18 U.S.C. § 43.

**8.5. (U) Predication**

(U) An enterprise investigation is predicated when there is an articulable factual basis for the investigation that reasonably indicates the group or organization may have engaged or may be engaged in, or may have or may be engaged in, planning or preparation or provision of support for the matters identified in Section 8.4, above.

(U) The “articulable factual basis” for opening an enterprise investigation is met with the identification of a group whose statements made in furtherance of its objectives, or its conduct, demonstrate a purpose of committing crimes or securing the commission of crimes by others. The group’s activities and statements of its members may be considered in combination to

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comprise the "articulable factual basis," even if the statements alone or activities alone would not warrant such a determination.

(U//FOUO) Examples of situations in which an enterprise investigation may be opened:

- i. (U//FOUO) [REDACTED]
- ii. (U//FOUO) [REDACTED]
- iii. (U//FOUO) [REDACTED]

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**8.6. (U) Duration, Approval, Notice, Documentation and File Review**

**A. (U) Initiation:**

- 1. (U//FOUO) **By a Field Office:** The initiation of an enterprise investigation by an FBI Field Office requires the prior approval of the Field Office SSA with written notification to the appropriate FBIHQ substantive Unit and DOJ (as discussed in greater detail below). FBIHQ Divisions may require specific facts to be included in this notification. [REDACTED]

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[REDACTED]  
Enterprise investigations involving sensitive investigative matters require CDC review, SAC approval, and written notification to the appropriate FBIHQ substantive Unit and DOJ.

(U//FOUO) The responsible FBIHQ entity must notify the DOJ NSD or the Organized Crime and Racketeering Section (OCRS) of the initiation of an enterprise investigation, by a Field Office or by FBIHQ, as soon as practicable but no later than 30 days after the initiation of the investigation. The FBI Field Office must also notify any relevant USAO, except in counterintelligence investigations. See the DOJ NSD policy that governs notification to the USAO for counterintelligence investigations.

- 2. (U//FOUO) **By FBIHQ:** The initiation of an enterprise investigation by an FBIHQ Division requires the prior approval of the appropriate Section Chief with written notification to the appropriate Field Offices and DOJ (as discussed in greater detail below). Enterprise investigations involving sensitive investigative matters require OGC review, appropriate Assistant Director approval, and written notification to DOJ.

(U//FOUO) The responsible FBIHQ entity must provide notification of an enterprise investigation initiation to the appropriate DOJ component (NSD or OCRS) as soon as practicable, but no later than 30 days after the initiation of the investigation. FBIHQ must notify any relevant USAO of the initiation of all enterprise investigations, except in counterintelligence investigations.

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(U//FOUO) **Note:** For enterprise investigations that involve allegations that pertain to national security matters, the responsible DOJ component for the purpose of notification and reports is the NSD. For enterprise investigations relating to a pattern of racketeering activity that does not involve terrorism offenses, see 18 U.S.C. § 2332b(g)(5)(B), the responsible DOJ component is the Organized Crime and Racketeering Section of the Criminal Division. (AGG-Dom, Part II.C.3)

(U) The Assistant Attorney General for National Security or the Chief of the Organized Crime and Racketeering Section, as appropriate, may at any time request the FBI to provide a report on the status of an enterprise investigation and the FBI will provide such reports as requested. (AGG-Dom, Part II C.3.d)

- B. (U//FOUO) **Closing:** When closing the enterprise investigation, the Field Office or FBIHQ will provide the reason for closing the investigation. When closing an enterprise investigation, the SSA or Unit Chief must ensure that all pending investigative methods have been completed/terminated (e.g., mail covers and pen register/trap and trace). Although there is no duration requirement for an enterprise investigation, the investigation must be closed upon all investigative activity being exhausted.
1. (U//FOUO) Closing an enterprise investigation initiated by a Field Office requires approval from the SSA with written notification to the appropriate FBIHQ substantive Unit. Unless advised contrary by the FBIHQ (UACB) substantive desk, the enterprise investigation can be closed 30 days after the date of notification to FBIHQ.
  2. (U//FOUO) Closing an enterprise investigation initiated by FBIHQ requires approval from the Unit Chief and notification to the appropriate Field Office.
  3. (U//FOUO) Closing an enterprise investigation initiated by a Field Office involving a sensitive investigative matter requires approval from the SAC, with written notification to the appropriate FBIHQ substantive Unit. The enterprise investigation can be closed 30 days after the notification to FBIHQ, UACB.
  4. (U//FOUO) Closing an enterprise investigation initiated by FBIHQ involving a sensitive investigative matter requires approval from the Section Chief, and written notification to the appropriate Field Office.

C. (U//FOUO) **File Review:**

(U//FOUO) Supervisory file reviews must be conducted at least once every 90 days in accordance with Section 3.4. File reviews for probationary agents must be conducted at least once every 60 days.

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## 9. (U) Foreign Intelligence

### 9.1. (U) Overview

(U) Foreign intelligence is “information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorists.” A “Foreign Intelligence Requirement” is a collection requirement issued under the authority of the DNI and accepted by the FBI DI. Additionally, the President, a USIC office designated by the President, the Attorney General, Deputy Attorney General, or other designated DOJ official may levy a Foreign Intelligence Requirement on the FBI. Foreign intelligence collection by the FBI is based upon requirements.

(U//FOUO) Foreign Intelligence Requirements issued by one of the parties listed above and accepted by the FBI DI will fall into one of two categories: (i) those that address national security issues that are within the FBI’s core national security mission; and (ii) information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists which are not within the FBI’s core national security mission.

(U//FOUO) Requirements which fall into the first category may correspond to FBI National Collection Requirements as defined in Section 5.11. FBI National Collection Requirements will only be addressed in properly authorized assessments or incidental to predicated investigations. (See the DI PG for specific requirements.)

(U//FOUO) Requirements which fall into the second category are known as Positive Foreign Intelligence Requirements and may only be addressed under the authorities described in this section. Assessments and full investigations intended to result in the collection of positive foreign intelligence must be based upon established requirements and approved by FBIHQ DI. Preliminary investigations for the sole purpose of collecting positive foreign intelligence are not authorized.

[redacted] Assessments and full investigations initiated for the purpose of positive foreign intelligence collection must be opened by FBIHQ CMS. For assessments, the authorized purpose and identified objective must be documented in the assessment file.

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(U//FOUO) “The general guidance of the FBI’s foreign intelligence collection activities by DNI-authorized requirements does not limit the FBI’s authority to conduct investigations supportable on the basis of its other authorities—to investigate federal crimes and threats to the national security—in areas in which the information sought also falls under the definition of foreign intelligence.” (AGG-Dom, Introduction A.3) Accordingly, the AGG-Dom authorizes the collection of foreign intelligence incidental to predicated criminal, counterintelligence, counterterrorism, cyber, and weapons of mass destruction investigations.

(U//FOUO) FBI National Collection Requirements which address national security issues that are within the FBI’s core national security mission will be worked under FBI substantive case classifications (e.g., 200, 105, 315) as assessments. An assessment cannot be opened solely based upon an FBI National Collection Requirement. An authorized purpose (national security or criminal threat) must exist and the objective of the assessment must be clearly articulated when

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opening an authorized assessment. The authorized purpose and identified objective for all assessments must be documented in the assessment file.

(U//FOUO) **Example:**

(i) (U//FOUO) [Redacted]

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(ii) (U//FOUO) [Redacted]

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(U//FOUO) [Redacted]

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(U//FOUO) **Note:** FBIHQ DI provides specific guidance in its policy implementation guide regarding FBI National Collection Requirements, FBI Field Office Collection Requirements, and Positive Foreign Intelligence Requirements.

**9.2. (U) Purpose and Scope**

(U//FOUO) As stated above, foreign intelligence is “information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorists.” The collection of positive foreign intelligence extends the sphere of the FBI’s information-gathering activities beyond federal crimes and threats to the national security and permits the FBI to seek information regarding a broader range of matters relating to foreign powers, organizations, or persons that may be of interest to the conduct of the United States’ foreign affairs. (AGG-Dom, Introduction A.3)

**9.3. (U) Civil Liberties and Privacy**

(U) Because the authority to collect positive foreign intelligence enables the FBI to obtain information pertinent to the United States’ conduct of its foreign affairs, even if that information

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is not related to criminal activity or threats to the national security, the information so gathered may concern lawful activities. Accordingly, the FBI must operate openly and consensually with a United States person to the extent practicable when collecting positive foreign intelligence. (AGG-Dom, Introduction A.3)

(U) The pursuit of legitimate investigative 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 further ensure that civil liberties are not undermined, every assessment or full investigation involving the collection of positive foreign intelligence under this section must have an authorized purpose and an identified objective. Additionally, the authorized purpose and objective of any assessment conducted must be documented and retained as prescribed in Sections 5 and 14.

(U) No investigative activity, including the collection of positive foreign intelligence, may be taken solely on the basis of activities that are protected by the First Amendment or on the race, ethnicity, national origin or religion of the subject. Collection of positive foreign intelligence requires: (i) an assessment relating to a matter of foreign intelligence interest responsive to a Positive Foreign Intelligence Requirement; or (ii) a full investigation that is predicated on a Positive Foreign Intelligence Requirement.

(U) The AGG-Dom present investigators with a number of authorized investigative methods in the conduct of an assessment or full investigation to collect positive foreign intelligence. Considering the effect on the privacy and civil liberties of individuals and the potential to damage the reputation of individuals, some of these investigative methods are more intrusive than others. The least intrusive method feasible is to be used, but the FBI must not hesitate to use any lawful method consistent with the AGG-Dom. For further explanation of the least intrusive method refer to Section 4.

(U) Moreover, when collecting positive foreign intelligence either as part of an assessment related to a matter of foreign intelligence interest or as part of a full investigation predicated on a Positive Foreign Intelligence Requirement, the FBI must operate openly and consensually with a United States person, to the extent practicable.

(U) By emphasizing the use of the least intrusive means to collect positive foreign intelligence and by emphasizing the need to operate openly and consensually with a United States person, to the extent practicable, FBI employees can effectively execute their duties while mitigating the potential negative impact on the privacy and civil liberties of all people encountered as part of the collection. This principle is not intended to discourage FBI employees from seeking relevant and necessary positive foreign intelligence or evidence, but rather is intended to make sure FBI employees choose the least intrusive—but still effective—means from the available options to obtain the information.

**9.4. (U) Legal Authority**

(U) The FBI's legal authority to collect positive foreign intelligence derives from a mixture of administrative and statutory sources. (See E.O. 12333; 50 U.S.C. §§ 401 et seq.; 50 U.S.C. §§ 1801 et seq.; 28 U.S.C. § 532 note [incorporates the Intelligence Reform and Terrorism Protection Act, P.L. 108-458 §§ 2001-2003]). In collecting positive foreign intelligence, the FBI will be guided by Collection Requirements issued under the authority of the DNI, including the

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National Intelligence Priorities Framework and the National HUMINT Collection Directives, or any successor directives issues under the authority of the DNI and accepted by FBIHQ DI.

**A. (U) Assessment Activities**

(U//FOUO) As discussed in Section 5 of the DIOG, the AGG-Dom authorize six types of assessments, one of which specifically applies to collection of positive foreign intelligence as follows: "seeking information, proactively or in response to investigative leads on matters of foreign intelligence interest responsive to foreign intelligence requirements." Positive Foreign Intelligence Requirements can be found on the DI's Collection Management Section website. Further instructions on the collection of positive foreign intelligence are contained in the DI PG.

**B. (U) Full Investigation Activities**

(U//FOUO) As discussed in Section 7 of the DIOG, the AGG-Dom cites three predication circumstances warranting a full investigation, one of which specifically applies to collection of positive foreign intelligence: "The full investigation may obtain foreign intelligence that is responsive to a foreign intelligence requirement."

(U//FOUO) Predicated positive foreign intelligence collection originates when the Office of the DNI levies a foreign intelligence collection requirement on the FBI and the DI accepts the requirement as one to which the FBI will endeavor to respond to as part of its Positive Foreign Intelligence Program.

(U//FOUO) A full investigation to collect positive foreign intelligence is appropriate only when a DNI-authorized requirement exists for a particular issue and that requirement has been accepted by FBIHQ DI.

**9.5. (U//FOUO) Duration, Approval, Notice, Documentation, File Review and FBIHQ Standards for Approving the Initiation of Positive Foreign Intelligence Investigations**

**A. (U//FOUO) Positive Foreign Intelligence Collection Authorities**

(U//FOUO) The FBIHQ CMS is responsible for promulgating FBI policy and oversight of the Foreign Intelligence Collection Program (FICP). FBIHQ CMS will provide notice to the DOJ NSD upon the initiation of a positive foreign intelligence investigation. To ensure that all positive foreign intelligence collection is focused on authorized Positive Foreign Intelligence Requirements, only FBIHQ CMS may approve the initiation of a positive foreign intelligence assessment or full investigation [redacted] or as otherwise determined by DI). [redacted]

[redacted] Field offices must request, by EC, FBIHQ CMS approval to open such assessments and full investigations.

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**B. (U//FOUO) Standards to be Considered When Initiating an Assessment or Full Foreign Intelligence Investigation to Collect Positive Foreign Intelligence**

(U//FOUO) Before initiating or approving an assessment or full investigation for the purpose of collecting positive foreign intelligence, the approving official must determine whether:

1. (U//FOUO) An authorized purpose and objective exists for the conduct of the assessment or an authorized purpose and adequate predication exists for initiating a full investigation;

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2. (U//FOUO) The assessment or full investigation is not based solely on the exercise of First Amendment activities or on the race, ethnicity, national origin or religion of the subject; and
3. (U//FOUO) The assessment or full investigation is an appropriate use of personnel and financial resources.

**9.6. (U//FOUO) Standards for Initiating or Approving the Use of an Authorized Investigative Method**

(U//FOUO) Before initiating or approving the use of an investigative method in an assessment or full investigation for the purpose of collecting positive foreign intelligence, an FBI employee or approving official must determine whether:

- A. (U//FOUO) The use of the particular investigative method is likely to further the purpose of the assessment or full investigation;
- B. (U//FOUO) The investigative method selected is the least intrusive method, reasonable under the circumstances and, if taken relative to a United States person, the method involves open and consensual activities, to the extent practicable;
- C. (U//FOUO) If open and consensual activity would likely be successful, then covert non-consensual contact with a United States person may not be approved.
- D. (U//FOUO) In the case of an assessment, the anticipated value of the assessment justifies the use of the selected investigative method or methods; and
- E. (U//FOUO) The investigative method is an appropriate use of personnel and financial resources.

**9.7. (U) Authorized Investigative Methods in Foreign Intelligence Assessments and Predicated Investigations**

(U//FOUO) Prior to initiating or approving the use of a method, an FBI employee and approving official will apply the standards as provided in Section 9.6. With the exceptions noted below, all lawful assessment methods may be used during positive foreign intelligence assessments. With the exceptions noted below, all lawful methods may be used during a full investigation to collect positive foreign intelligence. **If actions are to be taken with respect to a United States person, the method used must include open and consensual activities, to the extent practicable.**

- A. (U) **Assessments** (see DIOG Section 5.9 for a complete description of the following methods that may be used in assessments):
  1. (U) Obtain publicly available information.
  2. (U) Engage in observation or surveillance not requiring a court order.
  3. (U) Access and examine FBI and other DOJ records, and obtain information from any FBI or other DOJ personnel.
  4. (U) Access and examine records maintained by, and request information from, other federal, state, local, or tribal, or foreign governmental entities or agencies.
  5. (U) Use online services and resources (whether non-profit or commercial).
  6. (U) Interview or request information from members of the public and private entities.

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7. (U) Accept information voluntarily provided by governmental or private entities.
8. (U) Use and recruit human sources in conformity with the AGG-CHS.

(U//FOUO) Note: The use of Federal Grand Jury Subpoenas, to include subpoenas for telephone or electronic mail subscriber information, is not authorized in a positive foreign intelligence assessment.

**B. (U) Full Investigations:**

(U) In addition to the authorized methods listed in Section 9.7.A, above, the following lawful methods may also be used in full investigations opened for the purpose of collecting positive foreign intelligence:

1. (U) Physical searches of personal or real property where a warrant or court order is not legally required because there is no reasonable expectation of privacy (e.g., trash covers). (AGG-Dom, Part V.A.3)
2. (U) Consensual monitoring of communications, including consensual computer monitoring, subject to legal review by the CDC or the FBI OGC. Where a sensitive monitoring circumstance is involved, the monitoring must be approved by the DOJ Criminal Division or, if the investigation concerns a threat to the national security, by the DOJ NSD. (AGG-Dom, Part V.A.4)

(U//FOUO) Note: See the classified appendix for additional information.

(U//FOUO) Note: For those state, local and tribal governments that do not sanction or provide a law enforcement exception available to the FBI for one-party consent recording of communications with persons within their jurisdiction, the SAC must approve the consensual monitoring of communications as an OIA. Prior to the SAC authorizing the OIA, one-party consent must be acquired. The SAC may delegate the OIA approval authority to an ASAC or SSA.

3. (U) Use of closed-circuit television, direction finders, and other monitoring devices, subject to legal review by the CDC or the FBI OGC. (The methods described in this paragraph usually do not require court orders or warrants unless they involve an intrusion into an area where there is a reasonable expectation of privacy or non-consensual monitoring of communications, but legal review is necessary to ensure compliance with all applicable legal requirements.) (AGG-Dom, Part V.A.5)
4. (U) Polygraph examinations (AGG-Dom, Part V.A.6)
5. (U) Undercover operations. Undercover operations involving religious or political organizations conducted for the purpose of collecting positive foreign intelligence must be reviewed and approved by FBIHQ, with participation by the DOJ NSD in the review process. (AGG-Dom, Part V.A.7)
6. (U//FOUO) Use of pen registers and trap and trace devices in conformity with FISA (50 U.S.C. §§ 1841-1846), for non-United States persons only. (AGG-Dom, Part V.A.10)
7. (U) Electronic surveillance in conformity with FISA or E.O. 12333 § 2.5. (AGG-Dom, Part V.A.11)

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8. (U//FOUO) Physical searches, including mail openings, in conformity with FISA or E.O. 12333 § 2.5. The classified appendix to the DIOG provides additional information regarding certain searches. (AGG-Dom, Part V.A.12)
9. (U) Acquisition of positive foreign intelligence information in conformity with Title VII of FISA. (AGG-Dom, Part V.A.13)
10. (U//FOUO) Obtaining a business records order pursuant to FISA, 50 U.S.C. §§ 1861-83, for records relating to a non-United States person only.

**9.8. (U//FOUO) Investigative Methods Not Authorized During Foreign Intelligence Investigations**

(U//FOUO) The following investigative methods are not permitted for the purpose of collecting positive foreign intelligence:

- A. (U//FOUO) National Security Letters (15 U.S.C. §§ 1681u, 1681v; 18 U.S.C. § 2709; 12 U.S.C. § 341[a][5][A]; 50 U.S.C. § 436);
- B. (U//FOUO) Obtaining a business records order pursuant to FISA, 50 U.S.C. §§ 1861-1863, for records relating to a United States person;
- C. (U//FOUO) Use of pen registers and trap and trace devices in conformity with FISA (50 U.S.C. §§ 1841-1846) on a United States person;
- D. (U//FOUO) Use of pen registers and trap and trace devices in conformity with chapter 206 of 18 U.S.C. §§ 3121-3127;
- E. (U//FOUO) Mail covers;
- F. (U//FOUO) Compulsory process as authorized by law, including grand jury subpoenas and other subpoenas (e.g., Administrative Subpoena); and
- G. (U//FOUO) Accessing stored wire and electronic communications and transactional records in conformity with chapter 121 of title 18, United States Code (18 U.S.C. §§ 2701-2712). (AGG-Dom, Part V.A.9)

**9.9. (U) Sensitive Investigative Matter**

(U//FOUO) The title/case caption of the opening or subsequent EC for a positive foreign intelligence assessment involving a sensitive investigative matter must contain the words "Assessment" and "Sensitive Investigative Matter." The title/case caption of the opening or subsequent EC for a full investigation for the collection of positive foreign intelligence involving a sensitive investigative matter must contain the words "Sensitive Investigative Matter." DIOG Section 10 contains the required approval authorities and factors to be considered relative to an assessment or a predicated investigation involving a sensitive investigative matter. The AGG-Dom defines sensitive investigative matter as follows:

- A. (U//FOUO) **Sensitive Investigative Matter:** An investigative matter involving the activities of a domestic public official or political candidate (involving corruption or a threat to the national security), religious or political organization or individual prominent in such an organization, or news media, or any other matter which, in the judgment of the official authorizing an investigation, should be brought to the attention of FBI Headquarters and other DOJ officials. (AGG-Dom, Part VII.N.) As a matter of FBI policy, "judgment" means

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that the decision of the authorizing official is discretionary. DIOG Section 10 and/or the DIOG classified Appendix G define domestic public official, political candidate, religious or political organization or individual prominent in such an organization, and news media.

All positive foreign intelligence assessments or full investigations involving a sensitive investigative matter must be reviewed by the CDC, approved by the SAC, and approved by the appropriate FBIHQ DI Section Chief. (see DIOG Section 9.10 below)

**B. (U//FOUO) Academic Nexus:** [REDACTED]

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(U//FOUO) The sensitivity related to an academic institution arises from the American tradition of "academic freedom" (e.g., an atmosphere in which students and faculty are free to express unorthodox ideas and views and to challenge conventional thought without fear of repercussion). Academic freedom does not mean, however, that academic institutions are off limits to FBI investigators in pursuit of information or individuals of legitimate investigative interest.

(U//FOUO) [REDACTED]

[REDACTED] see the DIOG classified Appendix G.

**9.10. (U) Approval and Notification**

**A. (U) Initiation**

(U//FOUO) The authorized purpose of an assessment or full investigation must be documented in the initiating EC.

1. (U//FOUO) **Approval to Initiate an Assessment to Collect Positive Foreign Intelligence:** No assessment for the purpose of seeking information relating to matters of positive foreign intelligence interest responsive to a Positive Foreign Intelligence Requirement may be initiated without prior approval from FBIHQ CMS. After obtaining FBIHQ CMS approval [REDACTED]

[REDACTED] The title/case caption of the opening EC must contain the word "Assessment," and the synopsis must identify the authorized purpose and the objective of the assessment.

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2. (U//FOUO) **Approval to Initiate a Full Investigation:** FBIHQ CMS will direct the initiation of full investigations based on Positive Foreign Intelligence Requirements.
3. (U//FOUO) **Approval to Initiate an Assessment or Full Investigation Involving a Sensitive Investigative Matter:** The initiation of either an assessment or full investigation to collect positive foreign intelligence involving a sensitive investigative matter must have prior CDC review, SAC approval and the appropriate FBIHQ DI Section Chief approval.

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**B. (U) Notice**

1. (U//FOUO) Notification to DOJ is not required when an assessment to collect information relating to a matter of foreign intelligence interest responsive to a positive foreign intelligence requirement is initiated.
2. (U//FOUO) Notification to DOJ is required when a full investigation to collect information responsive to a foreign intelligence requirement is initiated. Notice must be forwarded from FBIHQ CMS to the DOJ NSD as soon as practicable but no later than 30 calendar days after the initiation of the investigation. (AGG-Dom, Part II.B.5)

**C. (U) Duration**

(U//FOUO) A foreign intelligence assessment and full investigation may continue for as long as necessary to achieve its purpose and objective if an assessment, or until the requirement is met in a full investigation.

**D. (U) File Review**

1. (U//FOUO) **Assessments:** Foreign intelligence assessments require recurring 90 day file reviews of the assessment file and any sub-file by the SSA/SIA. File reviews for probationary agents must be conducted at least every 60-days. The file review must:
  - a. (U//FOUO) Evaluate the progress made toward the achievement of the authorized purpose and objective;
  - b. (U//FOUO) Determine whether it is reasonably likely that information may be obtained that is relevant to the authorized objective, thereby warranting a continuation of the assessment;
  - c. (U//FOUO) Determine whether the Field Office has appropriate access and ability to collect positive foreign intelligence in response to a requirement that has been accepted by FBIHQ DI; and
  - d. (U//FOUO) Determine whether the assessment should be terminated.
2. (U//FOUO) **Full Investigations:** Supervisory file reviews must be conducted at least every 90 days in accordance with Section 3.4. File reviews for probationary agents must be conducted at least every 60-days.

**E. (U) Closing**

(U//FOUO) Upon its determination or at the request of the Field Office, only FBIHQ CMS may close an assessment or full investigation.

**F. (U) Annual Letterhead Memorandum**

1. (U//FOUO) **Field Office Responsibility:** All FIGs must submit an annual report on each positive foreign intelligence full investigation that was open for any period of time during the past calendar year. This report is due to FBIHQ CMS no later than January 30th of the calendar year following each year during which a full investigation is open and must consist of the following:
  - a. (U//FOUO) The Positive Foreign Intelligence Requirement to which the investigation was responding;

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- b. (U//FOUO) All methods of collection used;
- c. (U//FOUO) All sensitive matters encountered;
- d. (U//FOUO) A list of all IIRs by number issued based on information collected during the investigation;
- e. (U//FOUO) A summary of the positive foreign intelligence collected; and
- f. (U//FOUO) The date the full investigation was opened and, if applicable, the date closed.

(U//FOUO) These reports should be submitted by electronic communication. The EC must be uploaded into ACS in a file number and in the applicable Foreign Intelligence Collection Program (FICP) case files as designated in the DI PG.

- 2. (U//FOUO) **FBIHQ Responsibility:** FBIHQ CMS must compile data from each Field Office regarding the scope and nature of the prior year's positive foreign intelligence collection program. The FBIHQ CMS must submit an annual comprehensive report of all activity described above to DOJ NSD no later than April 1<sup>st</sup> of each year. The report must include the following information:
  - a. (U//FOUO) The Positive Foreign Intelligence Requirement to which the investigation was responding;
  - b. (U//FOUO) All sensitive matters; and
  - c. (U//FOUO) The date the full investigation was opened and closed (if applicable).

**9.11. (U) Retention of Information**

(U//FOUO) FBIHQ CMS must maintain a database or records systems that permits the prompt retrieval of the status of each positive foreign intelligence collection full investigation (open or closed), the dates of opening and closing, and the basis for the full investigation.