

SECTION 3

SENSITIVE CIRCUMSTANCES

3.1 GENERAL

(1) Group I and Group II undercover operations (UCOs) are differentiated by the existence or absence of sensitive circumstances. During their review of Group I UCO matters, the Criminal Undercover Operations Review Committee (CUORC) gives careful consideration to all sensitive circumstances. The presence of sensitive circumstances in a UCO will not result in denial of authority in the majority of cases, but may result in modification by FBIHQ of the proposed activity. The CUORC members will closely examine the proposal to determine whether all reasonable steps have been taken to minimize any adverse effect of sensitive circumstances.

(2) Per the Attorney General's Guidelines (AGG), Section IV.C(2), except under the emergency authorization procedures set forth in Paragraph N, the SAC may not independently authorize the establishment of an undercover operation (UCO) that involves:

A. sensitive circumstances or

B. a UCO in which there is a reasonable expectation that sensitive circumstances will occur.

3.2 SENSITIVE CIRCUMSTANCES

The Attorney General's Guidelines On FBI Undercover Operations, dated May 30, 2002, denotes 15 separate types of sensitive circumstances. The sensitive circumstances are listed below in the major categories which best define them:

A. Public Corruption

(1) A UCO investigation of possible criminal conduct by any elected or appointed official, or political candidate, for a judicial-, legislative-, management-, or executive-level position of trust in a federal, state, or local governmental entity or political subdivision thereof.

(2) A UCO investigation of any public official at the federal, state, or local level in any matter involving systemic corruption of any governmental function.

(3) A UCO investigation of possible criminal conduct by any foreign official or government, religious organization, political organization, or the news media.

NOTE: There are some circumstances involving officials in, judicial-, legislative-, management-, or executive-level positions which may logically be considered non-sensitive.

In such instances, the Section Chief, Integrity Government/Civil Rights Section, CID, FBIHQ, who is a member of the CUORC and has a national perspective on matters involving public officials, must be consulted for a determination as to whether the undercover operation should be presented to the CUORC.

Additional information concerning investigation into public corruption matters is contained in the Manual of Investigative Operations and Guidelines (MIOG), Section 194, and in the Field Guide for Public Corruption Investigations.

If practicable, and assuming that it would not compromise the UCO, it is advisable to notify an appropriate senior public official of the general nature, but not the specific details, of the UCO. The public official notified should be someone with oversight responsibility for the state or federal government function that is the subject of the investigation.

B. Intrusion into Government

(4) engaging in activity having a significant effect on or constituting a significant intrusion into the legitimate operation of a federal, state, or local governmental entity;

(5) a significant risk that a person participating in the undercover operation will be arrested or

will supply falsely sworn testimony or false documentation in any legal or administrative proceeding;

NOTE: The mere existence of the activity or intrusion alone is not sufficient to be considered a sensitive circumstance. This action must be significant in nature. For example, merely applying to a state licensing office for a license for a fictitious undercover entity in order to bribe the official who issues the license would not be a significant intrusion. However, contrived arrests or contrived legislation to uncover police or legislative corruption, respectively, would be considered significant intrusions.

The use of contrived legal actions in public corruption matters may constitute a significant intrusion into the legitimate operation of a governmental entity.

If practicable, and assuming it would not compromise the operation, it is advisable to notify an appropriate senior official of the general nature, but not the specific details, of the operation. This official should be someone with oversight responsibility for the government entity that is the subject of the intrusive activity.

C. Privileged Relationships

(6) Attendance at a meeting or participation in communications between any individual and his or her lawyer.

(7) A significant risk that a third party will enter into a professional or confidential relationship with a person participating in the UCO who is acting as an attorney, physician, clergyman, or member of the news media.

(8) A request to an attorney, physician, member of the clergy, or other person for information that would ordinarily be privileged or to a member of the news media concerning an individual with whom the news person is known to have a professional or confidential relationship.

NOTE: These sensitive circumstances are listed in order to identify any operational scenario in which privileged communications or defense trial strategy might be overheard; a relationship with a subject is established which the subject believes to be privileged; or a cooperating individual may be placed in ethical or professional jeopardy because of his or her cooperation with the FBI. It is often the case in these scenarios that these apparent problems never actually materialize or that, if they do, measures can be taken to mitigate them (e.g., "taint" teams to filter privileged information). Nevertheless, their existence alone is a sensitive matter requiring CUORC review under the AGG.

D. Safety

(9) A significant risk of violence or physical injury to individuals or a significant risk of financial loss.

NOTE: Only the Director, Deputy Director, or designated Executive Assistant Director may approve a proposed undercover operation involving this sensitive circumstance.

NOTE: A sensitive circumstance exists when an investigation involves the use of a Cooperating Witness (CW), informant or undercover employee (UCE) to transport or house aliens, as defined in MIOG, Part I, 137-4(21)(a)13, in that a significant risk of violence or physical injury to individuals exists.

E. Felonious Activity by an Undercover Employee

(10) Activity that is proscribed by federal, state, or local law as a felony or that is otherwise a serious crime [redacted]

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(11) [redacted]

Example: [redacted]

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NOTE: Some of the above activities, for example, [redacted]

[redacted] are subject to specific review and approval procedures outside the purview of CUORC. These matters must be coordinated with FBIHQ.

F. Third-Party Liability

(12) Activities which create a realistic potential for significant claims against the United States arising in tort, contract, or for compensation for the "taking"

of property, or a realistic potential for significant claims against individual government employees alleging constitution torts.

(13) Untrue representations by a person participating in the undercover operation concerning the activities or involvement of any third person without that individual's knowledge or consent.

NOTE: Civil liability can result from undercover scenarios which create a significant risk of physical or financial harm to third parties, such as unwitting participants or crime victims, or to UCO participants, such as CWs, or which--for any other reason--provide a legitimate basis for a claim to brought against the United States for negligent or intentional harm, breach of contract, or an actionable violation of a party's constitutional rights. The existence of a significant risk of physical or financial harm constitutes a sensitive circumstance regardless of whether the government is likely to prevail in a civil action brought by the injured party. Stated another way, a significant risk of harm to third parties should be considered a sensitive matter even if there exists a valid defense to a civil action brought against the United States or against individual employees. This important point is often overlooked. The ability to win in court does not "de-sensitize" the fact that innocent people may be hurt by undercover activity.

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G. Proprietary Business

(14) establishing, acquiring, or operating a proprietary.

NOTE: The AGG defines "proprietary" as a sole proprietorship, partnership, corporation, or other business entity operated on a commercial basis, which is owned, controlled, or operated wholly or in part on behalf of the FBI, and whose relationship with the FBI is concealed from third parties. The "commercial basis" language in this definition is intended to limit the application of this provision to instances in which the proprietary is dealing with the general public. Undercover entities doing business with only predicated subjects are not "proprietaries" as that term is defined in this section and therefore do not require Group I authority (Such activity does require DOJ exemption from certain fiscal statutes; Refer to Section 14 - Exemptions) The establishment of a "front" to conceal the identity of task force or special operations group off-site is not a proprietary.

EXAMPLE: If the FBI places a UCE into a CW's existing business in an employee status, and if the UCE exercises no commercial control over the business, a proprietary does not exist. Commercial control is defined as having a direction and decision making authority over a wide spectrum of the business's operations.

EXAMPLE: A business facade or a business entity staffed by a UCE that is not reasonably expected to conduct operations with the general public is not a proprietary. **However, if a business is created by the FBI, or if an existing business is either purchased or operated commercially by the FBI, and conducts commercial transactions with the public--even if only for cover or credibility purposes--it must be classified as a proprietary.**

EXAMPLE: The FBI opens a covert business that purchases items from predicated subjects. This business is not open to the general public and conducts business only with targets of the investigation. There is no publicly connected profit and loss operation. This business is not a proprietary.

H. Terrorism Enterprise Investigations

(15) involving active participation in the activities of a group under investigation as part of a terrorism enterprise investigation or recruiting a person from within such a group as an informant is a sensitive circumstance.

NOTE: Only the Director, Deputy Director, or designated Executive Assistant Director may approve a proposed undercover operation involving this sensitive circumstance.

NOTE: The proposal for UCOs involving this sensitive circumstance must contain a statement why the infiltration or recruitment is necessary and a description of procedures to minimize any acquisition, retention, and dissemination of information that does not relate to the matter

under investigation or to other authorized investigative activity.

NOTE: This sensitive circumstance applies only when the undercover technique is used to target either a predicated group or individually predicated members of a group that is already the subject of a Domestic Security Criminal Intelligence Investigation (under the "100" classification) and it is expected that a UCA will participate in group activities or will recruit a group member as a source. The reason for the sensitivity of this situation, and the commensurately elevated approval level, is to ensure that the First Amendment rights of the members of the group are not infringed.

EXAMPLE: Not all proposed uses of a UCA in a terrorism enterprise investigation will trigger a sensitive circumstance. The following is a list of examples of activities involving a terrorism enterprise investigation that would not normally be deemed to constitute "participation" (i.e., "sensitive") and, therefore, would not require Group I classification (at least not on the basis of this particular circumstance):

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EXAMPLE: By contrast, undercover activities that would constitute "participation" in terrorism enterprise group activities can be generally characterized as active rather than passive involvement. They include that type and level of activity that could place the UCE in a position to influence the group's public image, political or social agenda, or, in some other manner, to infringe upon the First Amendment rights of group members. For example,

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used in the AGG for FBI Undercover Operations.

NOTE: Caution should be exercised when targeting members of a terrorism enterprise group. Specific questions or

concerns should be directed to the field office's Chief Division Counsel or the Office of the General Counsel, FBIHQ.

SECTION 4

GROUP I UNDERCOVER OPERATIONS

4.1 DEFINITION

(1) A Group I undercover operation (UCO) is defined as any FBI UCO which must be approved by FBI Headquarters (FBIHQ) because the contemplated undercover activity involves a reasonable expectation that one or more of the sensitive circumstances listed in the Attorney General's Guidelines (AGG), Section IV.C(2), may occur. Proposed UCOs involving any of these circumstances must be submitted to FBI Headquarters in the prescribed manner for approval. (Refer to Section 3 - Sensitive Circumstances.)

(2) Although the existence of fiscal circumstances or activity which requires an exemption from the Department of Justice (DOJ) does not necessitate that a UCO be treated as a Group I UCO, many Group I UCOs do involve fiscal circumstances and exemptions. (Refer to Section 14 - Fiscal Circumstances and Section 15 - Exemptions.)

4.2 APPLICATION TO FBI HEADQUARTERS FOR APPROVAL OF A
GROUP I UCO

(1) A written application (proposal) must be submitted by the SAC in each case in which a field office intends to:

- (A) initiate a Group I UCO;
 - (B) extend a Group I UCO;
 - (C) request approval for a significant change of focus for a previously approved Group I UCO;
 - (D) request additional funding for a Group I UCO;
- or
- (E) convert a Group II operation to a Group I UCO.

(2) Application to FBIHQ must be made for any undercover operation requiring FBIHQ approval. Each application shall include a thorough review of many factors, to include:

- (A) The written SAC approval described in the AGG, Section IV.B(1);
- (B) A description of the proposed operation and the particular cover to be employed; the objective(s) of the operation and the anticipated achievement(s); legal review; any informants or other cooperating persons who will assist in the operation, including background information, arrest record, and plea agreements; the particular offense or criminal enterprise under investigation; and any individuals known to be involved;
- (C) A statement of the period of time for which the operation would be maintained;
- (D) A description of how the requirements concerning any inducements to be offered as discussed in the AGG, Section V.B, have been met; and
- (E) A statement of proposed expenses.

(3) Applications for approval of undercover operations involving sensitive circumstances listed in the AGG, Section IV.C(2) shall also include the following information:

- (A) A statement of which sensitive circumstances are reasonably expected to occur, what the facts are likely to be, and why the undercover operation merits approval in light of the sensitive circumstances, including:

- (1) For undercover operations involving the sensitive circumstance described in the AGG, Section IV.C(2)(g),

pertaining to felonious or other serious criminal activity, a statement justifying the otherwise illegal activity under the AGG, Section IV.H, and a letter from the appropriate Federal prosecutor pursuant to the AGG, Section IV.F(2)(b);

(2) For undercover operations involving the sensitive circumstance described in the AGG, Section IV.C(2)(1), pertaining to terrorism enterprise investigations, a statement why the infiltration or recruitment is necessary, and a description of procedures to minimize any acquisition, retention, and dissemination of information that does not relate to the matter under investigation or to other authorized investigative activity.

(B) A letter from the appropriate federal prosecutor indicating that he or she has reviewed the proposed operation, including the sensitive circumstances reasonably expected to occur, agrees with the proposal and its legality, and will prosecute any meritorious case that has developed. The letter should also include a statement concerning the propriety of the UCO and the legal sufficiency and quality of evidence that is being produced by the activity. The letter should be dated within 30 days of the scheduled Criminal Undercover Operations Review Committee (CUORC) meeting.

(4) An application for the extension or renewal of an undercover operation should describe the results obtained from the operation to date or explain any failure to obtain significant results and, where sensitive circumstances are involved, should include a letter from the appropriate federal prosecutor supporting the extension or renewal of authority.

(5) Each proposal will be submitted via electronic communication (EC) to the FBIHQ substantive unit responsible for the principal violation being investigated. In addition, a copy of the proposal must be submitted to Undercover and Sensitive Operations Unit (USOU), Criminal Investigative Division (CID), FBIHQ. Because of the sensitivity and potential liability associated with such cases, extensive review is required prior to approval at FBI Headquarters. Accordingly, new proposals should be submitted to FBIHQ six weeks prior to the anticipated presentation to the CUORC. Proposals for extension of existing Group I authority should be submitted four weeks prior to the expiration date.

(6) Multi divisional investigations involving UCOs must be addressed with additional information in the proposal submitted to FBIHQ. These proposals must contain a statement that the SACs of all participating divisions have been briefed on the UCO and concur with the proposal. Additionally, proposals which involve possible prosecution in more than one judicial district require letters of support from the appropriate Federal prosecutor where prosecution is anticipated.

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Asset/Informant Unit, FBIHQ.

obtained from the Asset/Informant Unit, FBIHQ.

4.3

REVIEW AND APPROVAL BY FBI HEADQUARTERS

(1) The extensive Group I UCO review and approval process begins with the submission of the proposal by the field division, continues in the appropriate section at FBIHQ and with CUORC review and recommendation, and culminates with approval by the Assistant Director, CID, or in some cases the Director or Deputy Director. Proposals which involve sensitive circumstances, as defined above, must, upon recommendation of the substantive section at FBIHQ, be reviewed by the CUORC.

(2) The CUORC was implemented during September 1978 to evaluate field office proposals for undercover projects. The CUORC was the result of the increasing complexity and number of UCOs at the time. Representatives included members of CID, Legal Counsel Division, Administrative Services Division, and Technical Services Division. In June 1979, representatives of the DOJ began participating as permanent members of the Committee. The CUORC has become the main advisory board in the approval process of UCOs. Through the AGG, the CUORC was given specific duties and a mandated role in the approval process of UCOs.

(3) In its evaluation of UCOs, the CUORC carefully assesses the UCO's contemplated benefits along with the potential risks, liabilities, and the suitability. No UCO is approved for more than six months at a time. UCOs requiring more than six months to accomplish their objective must be re-submitted to the CUORC. Minutes of each CUORC meeting are documented and maintained by USOU.

(4) The CUORC is responsible for scrutinizing every aspect of a UCO and weighs the risks and benefits of the operation including the following areas:

(A) The risk of personal injury, property damage, financial loss to persons or businesses, damage to reputation, or other harm to persons;

(B) The risk of civil liability or loss to the government;

(C) The risk of invasion of privacy or interference with privileged or confidential relationships;

(D) The risk that individuals engaged in UCOs may become involved in illegal conduct restricted in the AGG, Section IV.H; and

(E) The suitability of government participation in the type of activity that is expected to occur during the UCO.

(5) In addition, the CUORC shall also examine the application to determine whether adequate measures have been taken to minimize the incidence of sensitive circumstances and reduce the risks of harm and intrusion that are created by such

circumstances. If the CUORC recommends approval of an undercover operation, the recommendation shall include a brief written statement explaining why the operation merits approval in light of the anticipated occurrence of sensitive circumstances.

(6) The CUORC shall recommend approval of a UCO to the Assistant Director (AD), CID, only upon reaching a consensus, provided that:

(A) If one or more of the designees of the Assistant Attorney General in charge of the Criminal Division does not join in a recommendation for approval of a proposed operation because of legal, ethical, prosecutive, or departmental policy considerations, the designee shall promptly advise the Assistant Attorney General and no further action shall be taken on the proposal until the designated Assistant Director has had an opportunity to consult with the Assistant Attorney General; and

(B) If, upon consultation, the Assistant Attorney General disagrees with a decision by the designated Assistant Director to approve the proposed UCO, no further action shall be taken on the proposal without the approval of the Deputy Attorney General or the Attorney General.

(C) All Group I UCOs outside CID's investigative programs must be approved by the AD of that particular program, as well as the AD, CID. In terrorism enterprise investigations or other Group I UCOs outside the CID investigative program, the approval of the Executive Assistant Director (EAD) of the particular program, as well as the AD for Criminal Investigations are required.

(D) The FBI shall immediately notify the Deputy Attorney General whenever FBIHQ disapproves an application for approval of an undercover operation and whenever the Undercover Review Committee (CUORC) is unable to reach consensus concerning an application.

(7) The CUORC should consult the Office of the General Counsel or other appropriate division or office at DOJ about any significant unsettled legal questions concerning authority for, or the conduct of, a proposed UCO.

(8) The Director, Assistant Attorney General, or other official designated by them may refer any sensitive investigative matter, including informant, cooperating witness, and cooperating subject operations, to the CUORC for advice, recommendation or comment, regardless of whether a UCO is involved. A SAC may, consistent with FBI policy, submit a UCO for review by FBIHQ and the CUORC, regardless of whether the sensitive circumstances listed in these Guidelines are present. In these instances, the SAC must articulate the justification for FBIHQ oversight of the

UCO and obtain the concurrence and approval of the appropriate program Section Chief.

(9) The United States Attorney or appropriate Federal prosecutor, SAC or other executive manager, may attend the CUORC in order to advocate the approval of an undercover operation.

(10) If the SAC and the United States Attorney or appropriate Federal prosecutor jointly disagree with any stipulation set by the CUORC regarding the approval of a UCO, they may consult with the chairman of the CUORC who may schedule a meeting of the CUORC to reconsider the issue in question.

(11) At any time during the UCO the SAC can appeal any FBIHQ decision directly to the Assistant Director. Likewise, the United States Attorney or appropriate Federal prosecutor can appeal directly to the Assistant Attorney General, Criminal Division, or the Deputy Attorney General as appropriate.

(12) Interim and Emergency Authority. See Section 7.2, Emergency Group I Undercover Operation Authority, and Section 7.4, Interim Group I Undercover Operation Authority.

4.4

SERIOUS LEGAL, ETHICAL, PROSECUTIVE, OR DEPARTMENTAL
POLICY QUESTIONS AND PREVIOUSLY UNFORESEEN SENSITIVE
CIRCUMSTANCES

(1) In any UCO, the SAC shall consult with FBIHQ whenever a serious legal, ethical, prosecutive, or departmental policy question is presented by the undercover operation. FBIHQ shall promptly inform the CUORC members of any such question and its proposed resolution.

(2) This procedure shall always be followed if a UCO is likely to involve one of the sensitive circumstances listed previously and either: (1) the SAC's application to FBIHQ did not contemplate the occurrence of that circumstance; or (2) the UCO was approved by the SAC under his/her own authority. In such cases, the SAC shall also submit a written application for continued authorization of the UCO or an amendment of the existing application to FBIHQ pursuant to previously stated procedures.

(3) Whenever such new authorization or amended authorization is required, the FBI shall consult with the United States Attorney (USA), or Assistant Attorney General, and with the members of the CUORC on whether to modify, suspend, or terminate the UCO pending full processing of the application or amendment.

4.5 PARTICIPATION IN OTHERWISE ILLEGAL ACTIVITY BY
UNDERCOVER EMPLOYEES

(1) Except when authorized pursuant to the AGG, no undercover employee (UCE) shall engage in any activity that would constitute a violation of federal, state, or local law if engaged in by a private person acting without authorization. For purposes of the AGG and this Guide, such activity is referred to as otherwise illegal activity.

(2) Justification: No official shall recommend or approve participation by a UCE in otherwise illegal activity unless the participation is justified:

(A) to obtain information or evidence necessary for the success of the investigation and not reasonably available without participation in the otherwise illegal activity;

(B) to establish or maintain credibility of a cover identity; or

(C) to prevent death or serious bodily injury.

(3) Minimization: The FBI shall take reasonable steps to minimize the participation of a UCE in any otherwise illegal activity.

(4) Prohibitions: An UCE shall not

(A) participate in any act of violence except in self-defense;

(B) initiate or instigate any plan to commit criminal acts except in accordance with the AGG, Section V (Avoidance of Entrapment), or

(C) participate in conduct which would constitute unlawful investigative techniques (e.g., illegal wiretapping, illegal mail openings, breaking and entering, or trespass amounting to an illegal search).

(5) Self-Defense: Nothing in the AGG or this Guide prohibits an UCE from taking reasonable measures of self-defense in an emergency to protect his or her own life or the lives of others against wrongful force. Such measures shall be reported to the appropriate federal prosecutor and FBIHQ, who shall inform the Assistant Attorney General for the Criminal Division as soon as possible.

(6) Authorization: The SAC must approve all UCOs and activities, including those which contemplate participation in otherwise illegal activity. This approval shall constitute authorization of:

(7) As with all sensitive circumstances, participation in otherwise illegal activity which is a felony or its equivalent under federal, state, or local law requires additional authorization by the Assistant Director after review by the CUORC.

(8) Participation in otherwise illegal activity which involves a significant risk of violence or physical injury requires authorization by the Director, Deputy Director or Executive Assistant Director (EAD) for Criminal Investigations after review by the CUORC. See AGG, Section IV.E.

(9) If an UCE believes it to be necessary and appropriate under the standards set out in the AGG, Section IV.H(1), to participate in otherwise illegal activity that was not foreseen or anticipated, every effort should be made to consult with the SAC, who shall seek emergency interim authority from the designated Assistant Director, and review by the CUORC if possible, or, if necessary, may provide emergency authorization under the AGG, Section IV.I. If consultation is impossible and the UCE concludes that there is an immediate and grave threat to life, physical safety, or property, the UCE may participate in the otherwise illegal activity, so long as he/she does not take part in and makes every effort to prevent any act of violence. A report to the SAC shall be made as soon as possible, who shall submit a written report to FBIHQ, which shall promptly inform the CUORC as provided in the AGG, Section IV (H).

A decision by an UCE to participate in otherwise illegal activity under this subsection may be retroactively authorized if appropriate.

(10) If a UCO results in violence in the course of criminal activity, and an undercover employee, informant, or cooperating witness has participated in any manner in the criminal activity, the SAC shall immediately inform the appropriate federal prosecutor and FBIHQ, which shall inform the Assistant Attorney General in charge of the Criminal Division as soon as possible.

4.6

DURATION OF GROUP I UCOS

(1) Except as provided in the emergency authorization procedures, the AGG allow approval of Group I UCOS [REDACTED] [REDACTED] In order to continue a Group I UCO [REDACTED] from the date of initial approval, a proposal to extend the operation must be submitted to FBIHQ.

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(2) A UCO approved by FBIHQ may not continue longer than is necessary to achieve the objectives specified in the authorization [REDACTED] without new authorization. The undercover operation commences on the date approved by the Assistant Director (or Director, Deputy Director or designated Executive Assistant Director, if appropriate) and terminates [REDACTED].

(3) Among the factors to be considered in a determination by any approving official of whether a UCO should be renewed or extended are:

(A) The extent to which the undercover operation has produced the results anticipated when it was established;

(B) The potential for future success beyond that initially targeted;

(C) The extent to which the investigation can continue without exposing the UCO; and

(D) The extent to which continuation of the investigation may cause injury, financial or otherwise, to innocent parties.

4.7 FUNDING GROUP I UCOS

(1) Once the Assistant Director, CID, [or other authorizing official - see Section 4.3 (C)] approves a Group I UCO, the money can be advanced to the field office. [REDACTED]

[REDACTED] The Assistant Director's approval of a [REDACTED] UCO does not imply approval of administrative aspects of the UCO. Separate approvals must be obtained for [REDACTED]

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(2) The amount of money expected to be spent during a Group I UCO must be set forth in detail in the budget section of the proposal. The reasonableness of the amount to be spent is one of the issues considered by FBIHQ in the approval process. The standardized chart of accounts, contained in the Confidential Funding Guide, must be utilized in setting forth a budget in all Group I proposals.

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(10) The SAC is responsible for ensuring that expenditures made in connection with UCOs are reasonable and in keeping with the stated objectives of the undercover operation.

(11) The SAC is also responsible for ensuring that vouchers and audits are completed in a manner which is consistent with the policy stated in the Confidential Funding Guide.

(12) Nonexpendable property acquired during this UCO must be placed on the division's confidential inventory. The division's supply technician should enter the information into the Property Management Application.

4.8 CONSULTATION WITH UNITED STATES DEPARTMENT OF JUSTICE

(1) Prior to submission of a proposal for a Group I UCO to FBIHQ, the SAC must consult with the U.S. Attorney (USA) as appropriate in order to:

(A) obtain a prosecutive opinion concerning the violations to be investigated;

(B) ensure concurrence with the use of the undercover technique and the particular strategy to be employed as it relates to evidentiary matters; and

(C) obtain a firm commitment from the appropriate Federal prosecutor to undertake prosecution of cases developed by the UCO.

(2) Throughout the course of any UCO, the SAC or a designated Supervisory Special Agent shall consult on a continuing basis with the appropriate Federal prosecutor, particularly with respect to the propriety of the UCO and the legal sufficiency and quality of evidence that is being produced by the activity. Accordingly, a copy of recorded conversations or pertinent portions thereof and transcripts, as well as all appropriate documentation, should be provided to the appropriate Federal prosecutor as the case develops.

(3) All pertinent conversations between FBI and DOJ personnel concerning the conduct of UCOs should be confirmed in writing and made a part of the case file.

(4) In cases in which the SAC determines that it is inadvisable to discuss a particular case with the appropriate Federal prosecutor, the SAC should contact FBIHQ, and the case should be discussed with an Assistant Attorney General prior to submission of a proposal for a Group I UCO to FBIHQ.

(5) The SAC must obtain a letter from the USA or Assistant Attorney General as appropriate which confirms the consultation with the SAC and sets forth the concurrence with the proposed undercover activity and commitment to prosecute cases arising from the operation. The letter must be signed by the USA, or Assistant Attorney General. The letter cannot be signed by an AUSA unless he/she has been designated as the Acting United States Attorney. The original letter must accompany the proposal submitted to FBIHQ for approval of a Group I UCO. UCOs which involve potential prosecution in more than one judicial district must have letters from the United States Attorney for each judicial district where prosecution is anticipated.

4.9

CHIEF DIVISION COUNSEL ANALYSIS

(1) Each proposal for a Group I UCO submitted to FBIHQ for approval shall be coordinated with the Chief Division Counsel (or designated Legal Advisor) and shall include a written analysis of all legal issues which bear on the proposal. This coordination and analysis will be in addition to the consultation with the USA or Assistant Attorney General. No proposed UCO will be approved by FBI Headquarters unless a thorough analysis by the Chief Division Counsel (or designated Legal Advisor) is included with the proposal. This analysis should be a specific review of the facts and circumstances of the UCO rather than a general discussion of legal issues which relate to UCOs in general.

(2) The case agent and field supervisor must brief the SAC or ASAC and the Chief Division Counsel or Legal Advisor on a regular basis regarding the status of all pending UCOs, planned investigative approaches, and anticipated legal problems. These briefings are necessary to maintain proper control of the UCO and to ensure that legal issues are properly analyzed to minimize the exposure to unnecessary liability. Every effort should be made to ensure that all UCO personnel are fully aware of the legal significance of their decisions before the UCO is initiated.

4.10

[REDACTED] ANALYSIS

(1) An analysis from [REDACTED] providing [REDACTED] for the Group I UCO and/or UCE is mandatory and will be included as an addendum to the proposal. This addendum will confirm that [REDACTED] has conducted a review of the proposal [REDACTED] assessed the reasonableness of the scenario, and addressed any safety or security concerns. This analysis is required upon the submission of a proposal to initiate a Group I UCO and whenever there is a significant expansion in scope or change of focus in the UCO.

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4.11

FORFEITURE COORDINATOR ANALYSIS

(1) An analysis from the Forfeiture Coordinator is required for all Group I UCOs. The field office forfeiture coordinator must provide specifics regarding the forfeiture potential in the UCO. In renewal UCOs, the analysis must contain specifics regarding the progress in asset identification and the development of the forfeiture portion of the UCO.

4.12 ON-SITE REVIEW OF GROUP I UCOs

(1) During the initial stages of a Group I UCO, generally within the first year of the operation or at the request of the CUORC, an on-site review and analysis will be conducted by FBIHQ. The on-site review staff will be conducted by the FBIHQ substantive desk supervisor and the USOU supervisor responsible for that particular investigative program. Additional operational reviews may occur at the request of the field office, the substantive section, the chairman of the CUORC, or the Assistant Director, CID.

(2) An on-site review is not considered an inspection; but, rather an oversight procedure designed to facilitate the implementation of the UCO in a minimum amount of time and in compliance with applicable Bureau rules and regulations. The on-site review addresses the following matters:

(A) Compliance with federal laws and FBI rules, regulations, and policies;

(B) Operational concerns; e.g., prioritization of goals and objectives, investigative strategy, progress made to date, accomplishments, problems encountered, etc.;

(C) Operational efficiency, e.g., use and control of informants and sources, and budgetary and personnel considerations;

(D) Administrative matters, including:

1. responsibilities of UCO personnel;
2. adequacy and security of off-site locations;
3. training of undercover personnel (including familiarity with psychological guidelines);
4. evidence-handling procedures;
5. adequacy and composition of files and subfiles;
6. establishment and structure of financial books and records;
7. controls in place with regard to evidence and property; and
8. adequacy of case supervision and support from management.

(2) The procedure during the on-site review includes:

(A) An initial conference with the SAC, ASAC, Undercover Coordinator or squad supervisor regarding the purpose and procedure of the on-site review;

(B) A review of UCO files, subfiles, and pertinent ELSUR material, as well as informant and administrative files;

(C) A review of financial books and records with the accountant assigned to the operation to ensure compliance with the policy described in the Confidential Funding Guide (This review is not an audit.);

(D) Individual meetings with all pertinent project personnel, including but not limited to, UCO squad supervisor, case agent(s), contact agent(s), accountant, Undercover Coordinator, Chief Division Counsel, all UCEs, undercover support personnel, and corresponding personnel from other agencies involved in the UCO;

(E) A review of operational aspects of the UCO with the assigned personnel to discuss progress made toward goals and any problems which may have arisen;

(F) A discussion with the UCE of his/her personal goals and situation, satisfaction with the UCO, and suggestions or requests he/she may have;

(G) If feasible, a meeting with the appropriate Federal prosecutor assigned to the UCO.

(H) A visit to all off-site location(s), including businesses and residence(s), to determine if they are compatible with the UCO scenario and afford security for UCO personnel, property, and evidence;

(I) A review of a representative sampling of audio/video tapes of significant meetings and conversations, along with transcripts thereof; and

(J) A final meeting with the case agent, supervisor, Undercover Coordinator, ASAC, and SAC to discuss the findings in the form of review, observations, recommendations, and instructions.

(3) The findings of this review should be communicated verbally to the above personnel at the conclusion of the on-site, so they may have an opportunity to provide additional input and clarify certain points. Upon the team's return to FBIHQ, the substantive desk supervisor, with input from the USOU supervisor, will prepare an electronic communication (EC) or other appropriate type of communication (Personal Attention to the SAC) to the division where the review occurred, containing the results

of the on-site review. A copy of this communication should be forwarded to USOU.

(4) The on-site review communication will include the following:

(A) Description of the on-site review, including the procedures followed, the identities of all personnel involved in the on-site review, a summary of the UCO to date, and progress toward achieving initial goals and objectives;

(B) Noteworthy observations made by the on-site team during the review;

(C) Recommendations which will enable the field office to better manage or increase the administrative efficiency of the UCO; and

(D) Direction from FBIHQ to the field office and involve those aspects which must be brought into conformity with FBI policies and regulations, Attorney General's Guidelines, and provisions of the law.

(5) If the on-site communication contains instructions, the field office must respond to the substantive unit and USOU, by appropriate communication, within a specific time period. The response must state the instructions have been complied with, or if not, explain the reason for non compliance.

4.13

GROUP I UCO CLOSE-DOWN INSTRUCTIONS

(1) Upon the conclusion of the covert phase of a UCO, the field office should submit a communication to the substantive unit and USOU itemizing the anticipated confidential expenses remaining from the UCO. This itemization should include any lease or rental obligations. Those remaining expenses cannot be paid with UCO funds once the UCO has terminated. Authorization to pay remaining expenses must be obtained from the FBIHQ substantive supervisor through the normal procedures utilized for requesting case funds. This policy encourages planning by the field regarding the termination of UCOs. (Refer to Section 26.11 - Close-Down Expenses.)

(2) Upon termination of covert activity, an electronic communication (or other approved Bureau communication) will be sent by USOU to the field office reminding them of the following:

(A)

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(B) Review

obtained in connection with the operation and determine whether these items should be retained. Each division's inventory of should reflect these materials and should be updated, if necessary. Each time a division's inventory is updated, a copy of the updated inventory should be forwarded to USOU.

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(C) Identify special weapons assigned to the UCEs.

These weapons are in short supply and only with cooperation can the varying needs of each field division be met. Weapons should be returned directly to the Firearms Training Unit, Training Division, FBI Academy. The address on the package should not identify its contents. The EC (or other appropriate type of Bureau communication) should describe the contents of the package and contain a brief statement as to why it is being returned. The title of the communication should carry a dual caption: "Undercover Activities - Criminal Matters" and the code name of the UCO. A copy of the communication should be forwarded to USOU. (Refer to Section 20 - Weapons.)

(D) Nonexpendable property acquired during the UCO must be placed promptly on the division's confidential inventory by the division's supply technician by entering the property into the Property Management Application.

Upon conducting an inventory of all nonexpendable property, the field office must prepare an EC and furnish the

Special Operations Support Desk, Property Management Unit (PMU), with a complete listing of all purchased or seized nonexpendable property which was obtained during or used in support of the UCO.

Field offices will provide PMU with a copy of the accountable property register from the Property Management Application. This listing should include jewelry, furniture, office equipment, cellular telephones, computers, other technical equipment, or any other "props" and must include a complete description of each item including serial numbers, colors, and condition. This listing of property will be utilized by PMU, in consultation with USOU [redacted] to accommodate future undercover operations. In the event property cannot be utilized [redacted] the field office may be permitted to place the property into their regular inventory.

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In addition, by appropriate communication, a list of jewelry and/or valuables provided by FBIHQ or other field division(s) should be furnished to PMU showing their disposition.

Jewelry or other valuables being returned to FBIHQ must be accompanied by a Receipt for Government Property (FD-281a.)

(E) By appropriate communication, the field office must furnish a complete listing of all vehicles (cars, trucks, and motorcycles) in the UCO including seized/excess, undercover, rental/lease, or vehicles obtained from private parties. The listing should include make, model, VIN, Bucar number, mileage, condition of vehicles, and remaining number of months in the lease or agreement, if any.

If a Bucar number was never assigned, one should be requested from the Automotive Management Unit, FBI Headquarters.

(F) [redacted] [redacted] should be returned to FBIHQ in accordance with provisions of the Confidential Funding Guide.

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(G) Ensure that expense vouchers for this UCO are submitted to FBIHQ monthly until all funds have been accounted for. Any excess funds are to be returned to FBIHQ.

(H) List the amount of gross receipts received during this operation to include [redacted]
[redacted]

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(I) Furnish the total amount of expenditures incurred during the conduct of this undercover operation as reflected on the last travel voucher submitted to and approved by FBIHQ.

Note that gross receipts or income in excess of [redacted] or expenditures exceeding [redacted] will require a special

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audit and a report by FBIHQ to the United States Congress.
(Refer to Section 26 - Financial Matters.)

(J) If any contracts or leases were negotiated in support of this UCO, they should be coordinated with the General Contracts Unit, FD. All off-site space leased or rented covertly with the appropriate exemption should be identified as the authority to lease space applies only to covert off-sites. Any continuation of such covert rentals requires FBIHQ authority once the UCO terminates to ensure that GSA lease/rental policy is followed where necessary. All requests to continue to lease space covertly must be coordinated with the appropriate substantive section, the Budget Unit, and USOU. (Refer to Section 15 - Exemptions)

(K) A separate listing of all technical equipment used in support of this UCO is to be compiled by the Technical Coordinator. The list should note whether the equipment is temporarily or permanently assigned to the division and should be forwarded to the attention of the Operational Support Unit, Technical Services Division, with a copy designated to USOU.

(L) The Undercover Coordinator is responsible for debriefing undercover personnel at the termination of the undercover project and approximately six months thereafter. Guidelines and instructions for debriefing interviews are contained in the Undercover Safeguard Manual issued by CID. If the Undercover Coordinator is also the supervisor of the undercover project, arrangements should be made with USOU for another individual to conduct the interviews.

(M) Ensure compliance with all ELSUR requirements.

(N) The field office will be required to objectively assess the UCO and submit to USOU, via EC or other appropriate Bureau communication, the office's recommendations to improve the effectiveness and efficiency of future UCOs.

SECTION 6

ON-LINE COVERT OPERATIONS

The explosive growth in computer and information technology and the use of the Internet over recent years have resulted in a dramatic increase in "cyber crime." In investigating cyber crime, the FBI has utilized a variety of investigative techniques, including the use of sophisticated "online" undercover operations (UCOs). In considering the use of the UCO technique, it is recommended Agents review the Department of Justice's "Online Investigative Principles for Federal Law Enforcement Agents," as well as the Manual of Investigative Operations and Guidelines (MIOG), Part II, Section 10-18, FBI Principles and Policies for Online Criminal Investigations. Inasmuch as the Internet is a worldwide medium, the likelihood of an online UCO involving an international aspect is apparent. Agents are reminded to seek guidance and necessary approvals from designated FBI officials, who will seek DOJ authority as necessary, when online international contacts are anticipated. If additional guidance is needed, Agents should seek assistance from their division's Chief Division Counsel (CDC).

6.1 DEFINITIONS

(1) An online UCO is defined as any investigation involving a series of related online covert contacts over a period of time by an Online Covert Employee (OCE). For the duration of the UCO, contacts with subjects of the UCO are almost exclusively initiated and maintained throughout the duration of the UCO through the use of the Internet. An online UCO involving undercover activities where there is a reasonable expectation that one or more sensitive circumstances listed in the Attorney General's Guidelines (AGG), Section IV.C(2), may occur, must be initiated as a Group I UCO, and prior approval from FBI Headquarters must be obtained as set forth in Section 4, Group I Undercover Operations, of this manual. An online UCO whose undercover activities do not involve those defined by the AGG as being sensitive circumstances must be initiated as a Group II UCO, as set forth in Section 2, Group II Undercover Operations, or as a covert investigation.

(2) An Online Covert Employee (OCE) is defined as a Special Agent of the FBI, or sworn law enforcement officer of a federal, state, or local law enforcement agency working under the direction and control of the FBI and whose identity as an employee of the FBI or another law enforcement agency is concealed from third parties with whom the OCE is interacting/communicating with online.

(3) [REDACTED]

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[REDACTED] Electronic mail (e-mail) exchanged between a subject of the UCO and an OCE constitutes an online covert contact; however, one "related online covert contact" may include several e-mail messages, each transmitted during different online sessions. The relative content of e-mail messages exchanged between a subject of the UCO and an OCE during one or more online sessions, over a reasonable period of time, must be considered in defining each "related online covert contact."

6.2

TECHNICAL ANALYSIS

In addition to the Group I UCO proposal requirements set forth in Section 4.2 of this guide, all proposed online Group I UCOs require an in-depth, written, technical analysis. The analysis should be coordinated with the submitting field office's Investigative Technology Manager or Technical Advisor and reviewed by the CART Coordinator or CART Supervisor. The field office should then send the technical analysis to the FBIHQ substantive unit and USOU for their review. Although not part of the approval process, this analysis should be reviewed prior to authorizing the online UCO. The analysis should address the following:

(1) identification and verification of all computer hardware and software required to conduct the UCO as proposed by the field office;

(2) recommendation for the installation and maintenance of computer hardware and software;

(3) identification of unique technical needs, if any, beyond the capability of the submitting field office;

(4) identification of other technological issues and/or requirements not set forth in the UCO proposal or provided for in the UCO budget;

(5) discussion with appropriate FBIHQ entities (i.e., Information Resources Division (IRD); Computer Investigations and Operations Section (CIOS); Investigative Technology Division (ITD); and the Property Procurement and Management Section (PPMS)/Finance Division; and/or another appropriate substantive unit) in an effort to identify existing computer hardware and software available to support the online UCO to obviate the necessity of purchasing equipment unnecessarily.

(6) that a defensible digital evidence collection protocol has been established in coordination with the division's ECT, ELSUR, CART examiner and Technical Coordinator.

6.3

SELECTION, ASSESSMENT, AND TRAINING OF ONLINE COVERT EMPLOYEES

(1) Absent an extenuating circumstance, no Agent shall be assigned as an OCE in an online UCO unless he/she has served as a Special Agent for a minimum of two years and has successfully completed his/her probationary period. The extenuating circumstance must be other than mere possession of technical expertise or professional experience in a computer related field and must be approved in writing by the SAC and USOU prior to assignment. An Agent not meeting the two-year experience requirement, who would otherwise be considered for such an assignment, should be considered by the field office to assist the UCO in an administrative or technical-consulting capacity, thus having exposure to the UCO, and the ability to share his/her expertise to it. This rule is to ensure Agents have an opportunity to learn FBI investigative techniques and demonstrate their ability to perform the resulting administrative responsibilities associated with these techniques before assuming a more complex covert assignment.

(A) A FBI support employee or non-sworn member of another law enforcement agency may conduct Internet activity commonly referred to as "surfing" or similar on-line activity in an effort to identify potential violations of applicable Federal law. A FBI support employee or non-sworn member of another law enforcement agency cannot engage in interactive on-line contact unless the field office has obtained the approval of the appropriate Cyber Division Section Chief.

(2) An SAC/Undercover Coordinator interview must be completed by the prospective OCE's field office to determine his/her suitability to perform as an OCE, the results of which should be set forth in an electronic communication (EC) and provided to USOU. Upon favorable recommendation by the field office, USOU will complete the requisite checks with FBIHQ - Office of Professional Responsibility (OPR) and, thereafter, direct an EC to [redacted] requesting an assessment of the prospective OCE, if required by the circumstances of the UCO.

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(3) Prospective OCEs may require an assessment by [redacted] prior to their assignment, which may be accomplished at [redacted] [redacted] For the determination of need for [redacted] assessment, online UCOs are divided into three categories: (1) Innocent Images Investigations (IIIs), (2) online UCOs with the expectation of face-to-face meetings between the OCE and the subjects of the UCO, and (3) online UCOs with no expectation of face-to-face meetings with the subjects. USU assessments are intended to address the unique, increased stressors inherent in face-to-face UCO experiences or associated with the cumulative exposure to disturbing stimuli; therefore, OCEs assigned to category one (1) and category two (2) UCOs will require [redacted] assessment prior to assignment to the online role.

OCEs assigned to category three (3) UCOs will not require [] assessment prior to the assignment. A field office may require [] assessment at any time deemed appropriate. OCEs assigned solely to category three (3) online UCOs do not require [] assessment. OCEs assigned to category one (1) and category two (2) UCOs will require an assessment prior to their assignment. Subsequent assessments by [] will be conducted on an annual or semi-annual basis (to be determined by [] based on the circumstances of the UCO and the outcome of the previous assessment), as well as at the conclusion of the online UCO, or the conclusion of a particular OCE's involvement in an ongoing online UCO, whichever is appropriate.

(4) The Cyber Division will develop the training curriculum, schedule, and instruction for OCEs. USOU will participate in this training at the request of the Cyber Division.

6.4

ONLINE COVERT EMPLOYEE - AUTHORIZED ACTIVITIES

A distinction is made between an OCE and a certified Undercover Employee (UCE), whose selection, assessment, and certification process, as well as training requirements, are set forth in Sections 11 and Section 12, respectively, of this manual. An OCE is not to be utilized in online UCOs where there is an expectation of face-to-face meetings between the OCE and subjects of the UCO, as OCEs are neither trained nor certified to engage in such activities. Online UCOs contemplating the periodic need to engage in physical meetings with a subject during the course of the UCO, or at its conclusion, should ensure a certified UCE is available and assigned to assist in the online UCO. An OCE seeking UCE training and certification should consult with his/her field office Undercover Coordinator.

6.5

ONLINE UNDERCOVER OPERATION EQUIPMENT/SPACE

(1) In conducting online undercover investigations



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(2) All computer hardware and software necessary to conduct the online UCO must be specified in the Group I UCO proposal budget section. See Section 17.3 - Purchase of Nonexpendable Property.

(3) Computer hardware/software purchased with covert funds must be maintained and utilized in a such a way as to ensure their covert character. Physical location of the equipment in an off-site location, while desirable, may not be required. Computer hardware and software purchased with the intention of being utilized to conduct any online undercover activity must be purchased with covert funds regardless of whether the equipment is used or placed in overt or covert space.