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*Office of the Executive Assistant Director**Washington, D.C. 20535 - 0001***MEMORANDUM FOR THE ATTORNEY GENERAL****THROUGH: THE DEPUTY ATTORNEY GENERAL***12-23-2020*

**FROM:** Stephen C. Laycock  
Executive Assistant Director, Intelligence Branch, FBI

**SUBJECT:** Proposed Revisions To The Attorney General Guidelines Regarding The Use Of  
FBI's Confidential Human Sources

**PURPOSE:** To propose specific revisions to the Attorney General Guidelines Regarding the  
Use of FBI's Confidential Human Sources, (December 13, 2006), as amended by  
Attorney General Orders 3019-2008 and 3596-2015 (AGG-CHS).

**TIMETABLE:** As soon as possible.

**SYNOPSIS:** In order to ensure the FBI's Confidential Human Source (CHS) program is operating in the most effective manner to support the FBI's mission to protect national security and the American people, the FBI seeks several modifications to the AGG-CHS. These modifications are informed by the Office of Inspector General's (OIG) recommendations set forth in the *Audit of the Federal Bureau of Investigation's Management of its Confidential Human Source Validation Processes* report (November 2019) and in keeping with the FBI Director's actions undertaken in response to the OIG's recommendations set forth in the *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* report (December 2019). Pursuant to these reports, the FBI undertook a comprehensive review of the AGG-CHS, as well as internal FBI policy, processes and procedures, to ensure that the FBI's source validation process was wholly refocused, revised, and improved across the FBI. Upon conclusion of its review, the FBI, in consultation with the Department, has determined that these proposed changes will allow for greater oversight of the source validation process, enhanced documentation requirements, a substantially improved Human Source Review Committee structure, and the use of the FBI's carefully constructed risk validation model for evaluating all FBI sources.

Thus, this memorandum outlines substantive proposed changes and provides the FBI's rationale for each suggested change. The Department's Criminal Division (CRM), National Security Division (NSD), Office of Legal Policy and Office of the Deputy Attorney General have reviewed the attached draft and concur with the recommended changes.

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FBI's Confidential Human Sources**Proposed Revisions**

- A. In Section I.A.1, the language now allows for task force officers (TFOs) to act as handling agents, which reflects the operational need for flexibility in field offices.
- B. In Section I.B.1, the inclusion of non-agent officials allows for greater flexibility in filling supervisory roles at the discretion of the Director.
- C. Similarly, in Sections I.B.15 and I.B.16, language has been added to clarify the roles of supervisor and SAC-designee.
- D. In Section II.A.3.C, changes have been made reflecting an expansion of FBI's initial validation check to include all former FBI national security and criminal subjects.
- E. In addition, Section II.A.3.d memorializes the current best practice of conducting U.S. Intelligence Community (USIC) checks for pre-existing relationships with CHSs.
- F. Language added to Section III.A.1 provides additional flexibility regarding early approval sources, given NSD's existing enhanced visibility into national security efforts involving sources in the specified categories.
- G. Changes set forth in Section III.A.2 reflect the shift from HSRC's long-term source review, replacing it with a random sampling of sources which FBI and CRM believe will generate greater visibility over CHSs with varied risk categories.
- H. In addition, language changes in Section III.A.3.a reflect the agreed upon restructuring of the composition of the HSRC.
- I. The removal of Section III.A.3.f was requested by NSD, and reflects NSD's existing enhanced visibility into national security efforts involving such sources. Further, the addition of language elsewhere to the AGG-CHS confirms that NSD maintains oversight capabilities of FBI CHSs (e.g., the edits to Section IV.F.1 makes explicit that NSD, through an appropriate FPO Attorney, may request, and the FBI must promptly provide, information regarding CHSs at any time).
- J. The changes made in Section IV.C.4 provide for additional documentation requirements related to CHS payments, as well as provide for approved alternative methods of payment in the event of an extraordinary circumstance.

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K. Finally, the changes made to Section VI.F.1 memorialize the current practice of sharing CHS information, to include pre-existing USIC source relationship information, with both NSD and CRM.

The changes proposed herein, with assistance from NSD, CRM, OLP and ODAG, will assist the FBI in ensuring that the recommendations adopted by the CHS Validation OIG and the Crossfire Hurricane OIG are rapidly and successfully put into effect in a manner that assures enhanced oversight for both FBI and DOJ.

**RECOMMENDATION:** The FBI recommends that the Attorney General approve and sign the attached modified AGG-CHS.

APPROVE: WP Barr

Dated: December 23, 2020

DISAPPROVE: \_\_\_\_\_

OTHER: \_\_\_\_\_

Attachment-- AGG-CHS

**THE ATTORNEY GENERAL'S GUIDELINES REGARDING THE  
USE OF FBI CONFIDENTIAL HUMAN SOURCES**

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## I. GENERAL PROVISIONS

### A. PURPOSE AND SCOPE

1. The purpose of these Guidelines is to set policy for all Department of Justice (DOJ) personnel regarding the use of all Confidential Human Sources, as further defined below, who are operated by Federal Bureau of Investigation (FBI) Agents or FBI-assigned Task Force Officers (TFOs)<sup>1</sup> in any of the FBI's investigative programs, or other authorized information collection activities.
2. These Guidelines are issued under the authority of the Attorney General as provided in Title 28, United States Code, Sections 509, 510, and 533.
3. These Guidelines are mandatory and supersede "The Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources (December 13, 2006), as amended by Attorney General Orders 3019-2008 and 3596-2015." These Guidelines do not supersede otherwise applicable ethical and legal obligations of DOJ attorneys, which can, in certain circumstances (for example, with respect to contacts with represented persons), have an impact on FBI conduct.
4. These Guidelines apply to the use of a Confidential Human Source in a foreign country only to the extent that the Confidential Human Source is reasonably likely to testify in a domestic case.
5. These Guidelines do not limit the ability of the FBI to impose additional restrictions on the use of Confidential Human Sources.
6. All DOJ personnel have a duty of candor in the discharge of their responsibilities

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<sup>1</sup> TFOs are subject to standards and requirements as provided in these Guidelines and other FBI policies.

pursuant to these Guidelines.

7. Activities conducted by the FBI 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, are authorized investigations in which all lawful methods may be used, consistent with FBI policy. The investigative authority under this paragraph is supplementary to the authorities of the FBI under other guidelines issued by the Attorney General, including the "Attorney General's Guidelines for Domestic FBI Operations."

## **B. DEFINITIONS**

1. **Special Agent in Charge (SAC):** The FBI Special Agent in Charge of an FBI Field Office (including an Acting Special Agent in Charge), except that the functions authorized for Special Agents in Charge by these Guidelines may also be exercised by the Assistant Director in Charge in an FBI Field Office headed by an Assistant Director, and by FBI Headquarters Agent or non-Agent officials designated by the Director of the FBI.
2. **Federal Prosecuting Office (FPO):** Any of the following DOJ components:
  - a. The United States Attorneys' Offices;
  - b. The Criminal Division;
  - c. The National Security Division (NSD);
  - d. Any other litigating component of the DOJ with authority to prosecute federal criminal offenses, including the relevant sections of the Antitrust Division, Civil Division, Civil Rights Division, Environmental and Natural Resources Division, and the Tax Division.

3. Chief Federal Prosecutor (CFP): The head of an FPO.
4. FPO Attorney: An attorney employed by, or working under the direction of, an FPO.
5. Confidential Human Source Coordinator: A supervisory FPO Attorney designated by the CFP to facilitate compliance with these Guidelines.
6. FPO participating in the conduct of an investigation: Any FPO employing or directing an FPO Attorney assigned to a matter whose approval is necessary pursuant to these Guidelines, or whose approval was sought or obtained regarding any investigative or prosecutorial matter including the issuance of a search or arrest warrant, electronic surveillance order, subpoena, indictment, or other related matter.
7. Confidential Human Source: Any individual who is believed to be providing useful and credible information to the FBI for any authorized information collection activity, and from whom the FBI expects or intends to obtain additional useful and credible information in the future, and whose identity, information, or relationship with the FBI warrants confidential handling.
8. Senior Leadership Source: A Confidential Human Source who is in a position to exercise significant decision-making authority over, or to otherwise manage and direct, the unlawful activities of the participants in a group or organization involved in unlawful activities who are:
  - a. nationwide or international in scope; or
  - b. deemed to be of high significance to the FBI's criminal investigative

priorities, even if the unlawful activities are local or regional in scope.<sup>2</sup>

9. High-Level Government or Union Source: A Confidential Human Source who is either (a) in relation to the federal government or the government of a state, the chief executive, the official next in succession to the chief executive, or a member of the legislature, or (b) a president, secretary-treasurer or vice president of an international or national labor union, or the principal officer or officers of a subordinate regional entity of an international or national labor union.<sup>3</sup>

10. Tier 1 Otherwise Illegal Activity: Any activity that:

- a. would constitute a misdemeanor or felony under federal, state, local, tribal, or territorial<sup>4</sup> law if engaged in by a person acting without authorization; and
- b. that involves
- c. the commission, or the significant risk of the commission, of any act of violence by a person or persons other than the Confidential Human Source.<sup>5</sup>

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<sup>2</sup> Such organizations shall include, but are not limited to: any La Cosa Nostra Family, Eurasian Organized Crime Group, or Asian Criminal Enterprise, which is recognized by FBI Headquarters; and any domestic or international Terrorist Organization, which is recognized by FBI Headquarters.

<sup>3</sup> The term “regional entity” shall not include a local union or a group of local unions, such as a district council, combined together for purposes of conducting collective bargaining with employers.

<sup>4</sup> State, local, tribal, and territorial entities are hereafter collectively referred to by the abbreviation SLTT.

<sup>5</sup> Bookmaking that is significantly associated with, or substantially controlled by, organized crime ordinarily will be within the scope of this definition. Thus, for example, where bookmakers have a

- d. corrupt conduct, or the significant risk of corrupt conduct, by an elected public official or a public official in a high-level decision-making or sensitive position in federal or SLTT government;
- e. the manufacturing, importing, exporting, possession, or trafficking of controlled substances in a quantity equal to or exceeding those quantities specified in United States Sentencing Guidelines § 2D1.1(c)(1);
- f. financial loss, or the significant risk of financial loss, in an amount equal to or exceeding those amounts specified in United States Sentencing Guidelines § 2B1.1(b)(1)(I);<sup>6</sup>
- g. a Confidential Human Source providing to any person (other than an FBI Agent) any item, service, or expertise that is necessary for the commission of a federal or SLTT offense, which the person otherwise would have difficulty obtaining; or
- h. a Confidential Human Source providing to any person (other than an FBI Agent) any quantity of a controlled substance, an explosive, firearm, or other dangerous weapon, or other item that poses an immediate and

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financial relationship with members or associates of organized crime, or use members or associates of organized crime to collect their debts, the conduct of those bookmakers would create a significant risk of violence, and would therefore fall within the definition of Tier 1 Otherwise Illegal Activity.

<sup>6</sup> The citations to the United States Sentencing Guidelines (USSG) Manual are to the 2018 edition. The references herein to particular USSG sections are intended to remain applicable to the most closely corresponding USSG level in subsequent editions of the USSG Manual in the event that the cited USSG provisions are amended. Thus, it is intended that subsection (iii) of this paragraph will remain applicable to the highest offense level in the Drug Quantity Table in future editions of the USSG Manual, and that subsection (iv) of the paragraph will remain applicable to dollar amounts that, in future editions of the USSG Manual, trigger sentencing enhancements similar to that set forth in the current section 2B 1.1(b)(1)(I). Any ambiguities in this regard should be resolved by the Assistant Attorney General for the Criminal Division.

significant threat to public safety, with little or no expectation of its recovery by the FBI.

11. Tier 2 Otherwise Illegal Activity: Any other activity that would constitute a misdemeanor or felony under federal or SLTT law if engaged in by a person acting without authorization.
12. Fugitive: An individual:
  - a. for whom a federal or SLTT law enforcement agency has placed a wanted record in the FBI's National Crime Information Center (other than for a traffic or petty offense); or
  - b. for whom a federal warrant has been issued; and
  - c. for whom the law enforcement agency is willing, if necessary, to seek his or her extradition to its jurisdiction.
13. Human Source Review Committee (HSRC): A committee convened pursuant to these Guidelines to review various matters under these Guidelines as set forth below in paragraph III(A).
14. National Security Investigation: An investigative activity or other collection of information concerning a threat to the national security as defined in Part VII.S of the "Attorney General's Guidelines for Domestic FBI Operations."
15. Supervisor: A supervisory employee who is a Special Agent.
16. Designee: In relation to an SAC, a Special Agent designated by an SAC.

**C. PROHIBITION ON COMMITMENTS OF IMMUNITY BY THE FBI**

The FBI does not have any authority to make any promise or commitment that would prevent the government from prosecuting a Confidential Human Source for criminal

activity that is not authorized pursuant to Section V below or that would limit the use of any evidence by the government, without the prior written approval of the FPO that has primary jurisdiction to prosecute the Confidential Human Source for such criminal activity. An FBI Agent must exercise due diligence to avoid giving any person the erroneous impression that he or she has any such authority.

#### **D. MAINTAINING CONFIDENTIALITY**

##### **1. Obligation**

DOJ personnel have an obligation to maintain as confidential the identity of any Confidential Human Source. Consistent with that obligation, DOJ personnel shall not disclose the identity of a Confidential Human Source or information that a Source has provided that would have a tendency to identify the Source unless disclosure is appropriate under one of the exceptions referenced below in paragraph I(D)(4).

##### **2. Security of Material**

If the FBI provides DOJ personnel with any material containing:

- a. the identity of a Confidential Human Source;
- b. information that may possibly identify the Source; or
- c. information that the Source has provided; such material must be secured in a manner consistent with its security markings or classifications, when not in the direct care and custody of DOJ personnel.

##### **3. Continuing Obligation**

Personnel have a continuing obligation after leaving employment with the DOJ

to maintain as confidential the identity of any Confidential Human Source and the information that Source provided, unless disclosure is appropriate under one of the exceptions referenced below in paragraph I(D)(4).

#### **4. Exceptions**

1. Notwithstanding paragraph I(D)(1), DOJ personnel may make appropriate disclosures:
  - a. to FBI Agents who need to know the identity of the Source in order to perform their official duties. However, an FPO must coordinate with the FBI Agent directing the Source to obtain the required approval of the FBI-SAC or his or her designee prior to such disclosure;
  - b. to other law enforcement, intelligence, immigration, diplomatic, and military officials who need to know the identity to perform their official duties, subject to the prior approval of the FBI-SAC or his or her designee;
  - c. when the Confidential Human Source has agreed to testify in a grand jury or judicial proceeding.
2. All DOJ personnel must disclose the identity of a Confidential Human Source, and the information that Source has provided, when required by court order, law, regulation, these Guidelines or other DOJ policies.

#### **5. Disclosures to Confidential Human Sources**

DOJ personnel must exercise due diligence to avoid disclosing any confidential

investigative information to a Confidential Human Source (for example, information relating to electronic surveillance, search warrants, indictments and other charging documents, or the identity of other actual or potential informants), other than what is necessary and appropriate for operational reasons.

#### **E. EXCEPTIONS AND DISPUTE RESOLUTION**

1. Whenever an FBI SAC, a CFP, or the designee of an FBI SAC or CFP, believes that extraordinary circumstances exist that warrant an exception to any provision of these Guidelines, or whenever there is a dispute between or among entities (other than a dispute with the Assistant Attorney General (AAG) of either the Criminal Division or National Security Division of the DOJ) regarding these Guidelines, an exception must be sought from, or the dispute shall be resolved by, the AAG for the Criminal Division or the National Security Division (whichever is appropriate) or his or her designee.
2. Whenever there is a dispute with the AAG for either the Criminal Division or National Security Division of the DOJ, such dispute shall be resolved by the Deputy Attorney General or his or her designee.
3. The Deputy Attorney General, or his or her designee, shall hear appeals, if any, from decisions of the Assistant Attorneys General of the Criminal Division and the National Security Division.
4. Any exception granted or dispute resolved pursuant to this paragraph shall be documented in the FBI's files.

#### **F. RIGHTS OF THIRD PARTIES**

Nothing in these Guidelines is intended to create or does create an enforceable legal

right or private right of action by a Confidential Human Source or any other person.

## **G. COMPLIANCE**

1. Each FPO shall have one or more supervisory FPO Attorneys serving as Confidential Human Source Coordinators, whose duties shall include:
  - a. coordinating the responsibilities of the FPO under these Guidelines;
  - b. serving as a point of contact for the FBI for all matters pursuant to these Guidelines; and
  - c. approving matters pursuant to these Guidelines on behalf of the FPO when no other FPO Attorney has been assigned or when the assigned FPO Attorney is unavailable.
2. Each CFP and FBI-SAC shall carry out comprehensive periodic training of its respective personnel regarding these Guidelines.
3. Each CFP shall coordinate with the appropriate FBI SAC to maintain procedures to maximize the accessibility and availability of the FPO's Confidential Human Source Coordinators.

## **II. VALIDATION OF A CONFIDENTIAL HUMAN SOURCE**

### **A. INITIAL VALIDATION**

#### **1. General**

All FBI Confidential Human Sources must be subjected to the validation process as provided in these Guidelines and other FBI policies.

#### **2. Time Limits**

The FBI, in consultation with the Assistant Attorneys General of the Criminal

Division and the National Security Division of the DOJ, shall establish reasonable time limits for subjecting a Source to the Initial Validation process that are compatible with these Guidelines and other FBI policies.

### **3. Required Information**

In opening a Confidential Human Source, an FBI Agent shall document information pertaining to that Source and forward it to an appropriate FBI Supervisor for an Initial Validation. At a minimum, an FBI Agent shall provide the following information to facilitate the Initial Validation process:

- a. basic identifying information that establishes the person's true identity, or the FBI's efforts to establish the person's true identity;
- b. a photograph of the person (when possible);
- c. whether the person has a criminal history, is reasonably believed to be a current or former subject or target of an FBI investigation, is under arrest or the subject or target of a pending criminal investigation, or has been charged in a pending prosecution;
- d. whether, to the extent known by the FBI with appropriate due diligence, the person has ever had a reporting relationship with another government agency;
- e. the person's motivation for providing information or assistance, including any consideration sought from the government for this assistance;
- f. any promises or benefits, and the terms of such promises or benefits, that are given a Confidential Human Source by the FBI, FPO or any

other law enforcement agency (if known, after exercising reasonable efforts); and

g. any other information that is required to be documented in the Confidential Human Source's file pursuant to these Guidelines and FBI policies, including but not limited to, the instructions provided to the Confidential Human Source.

## **B. INSTRUCTIONS**

1. In opening a Confidential Human Source, at least one FBI Agent, along with one additional Agent or other government official present as a witness, shall review with the Confidential Human Source instructions as required by these Guidelines and other FBI policies. At a minimum, these instructions must indicate that:
  - a. information provided by the Confidential Human Source to the FBI must be truthful;
  - b. the Confidential Human Source's assistance and the information provided are entirely voluntary;
  - c. the United States Government will strive to protect the Confidential Human Source's identity but cannot guarantee that it will not be divulged;
  - d. the Confidential Human Source must abide by the instructions of the FBI and must not take or seek to take any independent action on behalf of the United States Government.
2. The following additional instructions shall also be reviewed with a

Confidential Human Source if applicable to the particular circumstances of the Confidential Human Source:

- a. The FBI on its own cannot promise or agree to any immunity from prosecution or other consideration by a FPO, a SLTT prosecutor, or a Court in exchange for the Confidential Human Source's cooperation, because the decision to confer any such benefit lies within the exclusive discretion of the FPO and the Court. However, the FBI will consider (but not necessarily act upon) a request by the Confidential Human Source to advise the appropriate FPO, the SLTT prosecutor, or Court of the nature and extent of his or her assistance to the FBI;<sup>7</sup>
- b. The Confidential Human Source has not been authorized to engage in any criminal activity and has no immunity from prosecution for any unauthorized criminal activity;<sup>8</sup>
- c. The Confidential Human Source is not an employee of the United States Government and may not represent himself or herself as such;<sup>9</sup>
- d. The Confidential Human Source may not enter into any contract or incur any obligation on behalf of the United States Government, except as

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<sup>7</sup> This instruction should be provided if there is any apparent issue of criminal liability or penalties that relates to the Confidential Human Source.

<sup>8</sup> This instruction should be provided to any Confidential Human Source who is not authorized to engage in otherwise illegal activity. See paragraph V(B)(3) for instructions that must be provided to a Confidential Human Source who is, in fact, authorized to engage in otherwise illegal conduct.

<sup>9</sup> This instruction should be provided to all Confidential Human Sources except under those circumstances where the Source has previously been, and continues to be, otherwise employed by the United States Government.

specifically instructed and approved by the FBI;<sup>10</sup>

- e. The FBI cannot guarantee any rewards, payments, or other compensation to the Confidential Human Source;
- f. In the event that the Confidential Human Source receives any rewards, payments, or other compensation from the FBI, the Source is liable for any taxes that may be owed; and
- g. No promises or commitments can be made, except by the United States Department of Homeland Security, regarding the alien status of any person or the right of any person to enter or remain in the United States.<sup>11</sup>

3. The content and meaning of each of the foregoing instructions must be clearly conveyed to the Confidential Human Source. Immediately after these instructions have been given, the FBI Agent shall require the Confidential Human Source to acknowledge his or her receipt and understanding of the instructions. The FBI Agent, and the additional Agent or other government official present as a witness, shall document that the instructions were reviewed with the Confidential Human Source and that the Source acknowledged the instructions and his or her understanding of them. As soon as practicable thereafter, an FBI Supervisor shall review and, if warranted, approve the documentation.

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<sup>10</sup> This instruction should be provided to all Confidential Human Sources except under those circumstances where the Source is otherwise authorized to enter a contract or incur an obligation on the behalf of the United States.

<sup>11</sup> This instruction should be provided if there is any apparent issue of immigration status that relates to the Confidential Human Source.

4. The instruction and documentation procedures shall be repeated to the Confidential Human Source whenever it appears necessary or prudent to do so, and, in any event, at least annually.

### **C. ANNUAL VALIDATION REVIEW**

1. Each Confidential Human Source's file shall be reviewed at least annually consistent with these Guidelines and other FBI policies.
2. The FBI shall establish procedures to ensure that all available information that might materially alter a prior validation assessment, including, but not limited to, information pertaining to unauthorized illegal activity by the Confidential Human Source, is promptly reported to an FBI Supervisor and then recorded and maintained in the file of the Confidential Human Source.

### **III. SPECIAL APPROVAL REQUIREMENTS**

#### **A. DEFINED CATEGORIES OF SOURCES**

##### **1. Required Early Approval**

Within 60 days of utilizing a Confidential Human Source who meets any of the following definitions, the FBI must seek written approval, in accordance with the relevant provisions set forth in paragraph III(A)(3) below, for the continued use of the Source unless an FPO Attorney has existing oversight of a Source because the Source has agreed to testify in a federal criminal prosecution or unless the Source is providing information for use in a national security investigation or foreign intelligence collection:

- a. Senior Leadership Source: A Confidential Human Source as defined in

paragraph I(B)(8), above;

- b. **Privileged or Media Source:** A Confidential Human Source who is under the obligation of a legal privilege of confidentiality or affiliated with the media;
- c. **High-Level Government or Union Source:** A Confidential Human Source as defined in paragraph I(B)(9) above.

## **2. Selected Sources Requiring Approval**

The FBI must seek written approval, in accordance with the relevant provisions set forth in paragraph III(A)(3) below, for the continued use of Sources designated in, or selected pursuant to, a Source Review Agreement between the Criminal Division of the Department of Justice and the FBI, but not including Sources providing information for use in a national security investigation or foreign intelligence collection. The Source Review Agreement is included as an Addendum to these Guidelines and is effective upon the issuance of these Guidelines. The Criminal Division and the FBI may adopt amendments to the Source Review Agreement with the approval of the Deputy Attorney General.

## **3. Approval Process**

All FBI requests seeking approval for the continued use of a Confidential Human Source who meets any of the definitions set forth in paragraphs III(A)(1) & (2) above, except those Sources providing information for use in a national security investigation or foreign intelligence collection shall be reviewed and determined by a Human Source Review Committee.

- a. **Composition of the HSRC:** At least one HSRC shall be established by the

FBI and the Criminal Division of the DOJ. The Chairperson of each HSRC shall be an FBI Agent supervisor at or above the level of Section Chief (or its equivalent). The membership of each HSRC shall include: two supervisory FBI Agents, and one attorney from the FBI's Office of General Counsel, as designated by the Chairperson; and four experienced FPO Attorneys designated by the AAG for the Criminal Division, two of which shall be from the Criminal Division and two of which shall be from a U.S. Attorney's Office.

- b. Access to FBI Information: During the approval process, the HSRC shall have access to all relevant FBI information pertaining to the use of the Confidential Human Source under consideration, including any Annual Validation Reports. However, the identity of the Confidential Human Source will not be disclosed to the HSRC unless the Chairperson of the HSRC determines that compelling reasons exist to warrant such a disclosure.
- c. Time Limit: The HSRC approval process shall be completed no more than 45 days after the FBI has submitted a request seeking approval for the continued use of a Confidential Human Source. While the request is pending with the HSRC, the FBI shall be permitted to continue to utilize the Confidential Human Source.
- d. Notice to FPO: After a final decision has been made by the HSRC, the HSRC shall consider whether to provide notice of the decision to any appropriate FPO.
- e. Disputes: The HSRC shall recommend approval of the continued use of a Source only upon reaching a consensus, provided that whenever the FBI,

an FPO, or a HSRC Member disagrees with the final decision of the HSRC, it may seek review and reconsideration of that decision pursuant to the Exceptions and Dispute Resolution section, paragraph I(E) above. While the dispute is pending resolution, the FBI shall be permitted to continue to utilize the Confidential Human Source.

**B. FEDERAL PRISONERS, PROBATIONERS, PAROLEES, AND SUPERVISED RELEASEES**

1. Consistent with extant DOJ requirements, the FBI must receive the approval of the Criminal Division's Office of Enforcement Operations (OEO) prior to utilizing as a Confidential Human Source an individual who is in the custody of the United States Marshals Service or the Bureau of Prisons, or who is under Bureau of Prisons supervision. See J.M. § 9-21.050.
2. Prior to utilizing a federal probationer, parolee, or supervised releasee as a Confidential Human Source, an FBI Supervisor shall determine whether the use of that person in such a capacity would violate the terms and conditions of the person's probation, parole, or supervised release. If the FBI Supervisor has reason to believe that it would violate such terms and conditions, prior to using the person as a Confidential Human Source, the FBI Supervisor or his or her designee must obtain the permission of a federal probation, parole, or supervised release official with authority to grant such permission, which permission shall be documented in the Confidential Human Source's files. If such permission is denied or it is inappropriate for operational reasons to contact the appropriate federal official, the FBI may seek to obtain authorization for the use of such individual as a Confidential Human Source from the Court then responsible for

the individual's probation, parole, or supervised release, provided that the FBI first consults with the FPO for that District.

3. If an FPO is participating in the conduct of an investigation by the FBI in which a federal probationer, parolee, or supervised releasee would be utilized as a Confidential Human Source or would be working with a federal probationer, parolee, or supervised releasee in connection with a prosecution, the FBI shall notify the FPO Attorney assigned to the current matter prior to using the person as a Confidential Human Source.

**C. CURRENT OR FORMER PARTICIPANTS IN THE WITNESS SECURITY PROGRAM**

1. Consistent with extant DOJ requirements, the FBI must receive the approval of OEO and the sponsoring FPO Attorney (or his or her successor) prior to utilizing as a Confidential Human Source a current or former participant in the Federal Witness Security Program, provided further that the OEO will coordinate such matters with the United States Marshals Service. See J.M. § 9-21.800.
2. If an FPO is participating in the conduct of an investigation by the FBI in which a current or former participant in the Witness Security Program would be utilized as a Confidential Human Source or would be working with a current or former participant in the Witness Security Program in connection with a prosecution, the FBI shall notify the FPO Attorney assigned to the matter prior to using the person as a Confidential Human Source.

**D. SLTT PRISONERS, PROBATIONERS, PAROLEES, OR SUPERVISED RELEASEES**

1. Prior to utilizing a SLTT prisoner, probationer, parolee, or supervised releasee as a Confidential Human Source, an FBI Supervisor shall determine whether the use of that person in such a capacity would violate the terms and conditions of the person's incarceration, probation, parole, or supervised release. If the FBI Supervisor has reason to believe that it would violate such terms and conditions, prior to using the person as a Confidential Human Source, an FBI Supervisor or his or her designee must obtain the permission of a SLTT prison, probation, parole, or supervised release official with authority to grant such permission, which permission shall be documented in the Confidential Human Source's files. If such permission is denied or it is inappropriate for operational reasons to contact the appropriate SLTT official, the FBI may seek to obtain authorization for the use of such person as a Source from the SLTT court then responsible for the person's incarceration, probation, parole, or supervised release.
2. If an FPO is participating in the conduct of an investigation by the FBI in which a SLTT prisoner, probationer, parolee, or supervised releasee would be utilized as a Confidential Human Source or would be working with a SLTT prisoner, probationer, parolee, or supervised releasee in connection with a prosecution, the FBI shall notify the FPO Attorney assigned to the matter prior to using the person as a Confidential Human Source.

## E. FUGITIVES

1. Except as provided below, an FBI Agent shall not initiate communication with a current or former Confidential Human Source who is a fugitive.

2. An FBI Agent is permitted to communicate with a current or former Confidential Human Source who is a fugitive:
  - a. if the fugitive Source initiates the communication;
  - b. if the communication is part of a legitimate effort by the FBI to arrest the fugitive; or
  - c. if approved, in advance whenever possible, by a Supervisor of any federal or SLTT law enforcement agency that has a wanted record for the individual in the NCIC and, in the case of a federal warrant, by the FPO for the issuing District.
3. An FBI Agent who communicates with a Confidential Human Source who is a fugitive must promptly report such communication to the appropriate federal or SLTT law enforcement agency, and any other law enforcement agency having a wanted record for the individual in the NCIC, and must document those communications in the Confidential Human Source's files.

#### **IV. RESPONSIBILITIES REGARDING CONFIDENTIAL HUMAN SOURCES**

##### **A. NO INTERFERENCE WITH AN INVESTIGATION OF A CONFIDENTIAL HUMAN SOURCE**

DOJ personnel shall not interfere with or impede any criminal investigation or arrest of a Confidential Human Source. DOJ personnel shall not reveal to a Confidential Human Source any information relating to an investigation of the Source, including confirming or denying the existence of such an investigation, unless authorized to do so by the Chief Federal Prosecutor or his or her designee, after consultation with the appropriate FBI SAC or his or her designee.

## **B. PROHIBITED TRANSACTIONS AND RELATIONSHIPS**

1. DOJ personnel directing or overseeing the direction of a Confidential Human Source shall not:
  - a. exchange gifts with a Confidential Human Source;
  - b. provide the Confidential Human Source with anything of more than nominal value;
  - c. receive anything of more than nominal value from a Confidential Human Source; or
  - d. engage in any business or financial transactions with a Confidential Human Source.
2. Unless authorized pursuant to paragraph IV(B)(3) below, any exception to this provision requires the written approval of an FBI Supervisor, in advance whenever possible, based on a finding by the FBI Supervisor that the event or transaction in question is necessary and appropriate for operational reasons. This written finding shall be maintained in the Confidential Human Source's files.
3. DOJ personnel directing or overseeing the direction of a Confidential Human Source shall not socialize with that Source, except to the extent necessary and appropriate for operational reasons.
4. If an FPO is participating in the conduct of an investigation that is utilizing an FBI Confidential Human Source or working with a Confidential Human Source in connection with a prosecution, the FBI shall provide written notification to the FPO Attorney assigned to the matter, in advance whenever possible, if the FBI approves an exception under paragraph IV(B) or if an FBI Agent socializes

with a Confidential Human Source in a manner not permitted under paragraph IV(B)(2) and (3).

## C. MONETARY PAYMENTS

### 1. General

Monies that the FBI pays to a Confidential Human Source in the form of fees and rewards shall be commensurate with the value, as determined by the FBI, of the information or assistance the Source provided to the FBI. The FBI's reimbursement of expenses incurred by a Confidential Human Source shall be based upon actual expenses incurred, except that relocation expenses may be made based on an estimate of the expenses.

### 2. Prohibition Against Contingent Payments

Under no circumstances shall any payments to a Confidential Human Source be contingent upon the conviction or punishment of any individual.

### 3. Approval for Payments

The FBI shall establish a written delegation of authority for approval of payments to Confidential Human Sources. The delegation of authority shall establish the level of approval required when single payments, aggregate annual payments, and total aggregate payments meet or exceed specific threshold amounts. The threshold amounts and approval authority are subject to periodic review and amendment as deemed appropriate by the FBI Director.

### 4. Documentation of Payment

a. The payment of any FBI funds to a Confidential Human Source shall be

witnessed by at least one FBI Agent and another government official<sup>12</sup>.

However, in the event of extraordinary circumstances documented in the CHS's file, only one witness shall be required.

- b. Payments to a CHS shall not be made via electronic or digital means except in extraordinary circumstances documented in the CHS's file. In such circumstances, at least one FBI Agent and another government official shall witness that the electronic monetary payment was made to the CHS.
- c. The CHS should provide timely confirmation of receipt in writing, which may be through electronic or digital means, that the payment was received.
- d. At the time of payment, the FBI Agent or another government official shall advise the CHS that the monies may be taxable income that must be reported to appropriate tax authorities. In extraordinary circumstances this advice may be given by an FBI Agent, or another government official, electronically, digitally, orally or through other secure means, at or about the time of payment.
- e. All records of payment, to include cash, electronic or digital payments, the CHS's acknowledgement of the receipt of funds, documentation of the advice on taxability, and documentation denoting whether the payments involved CHS services provided or expenses incurred, shall be

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<sup>12</sup> The Confidential Human Source may sign or initial the written receipt by using a pseudonym which has been previously approved and documented in the Source's files and designated for use by only one Confidential Human Source.

retained in the CHS's file.

#### **5. Accounting and Reconciliation Procedures**

The FBI shall establish accounting and reconciliation procedures to comply with these Guidelines. The FBI procedures shall ensure that the FBI accounts for all funds paid to a Confidential Human Source subsequent to the issuance of these Guidelines.

#### **6. Coordination with Prosecution**

If an FPO Attorney is participating in the conduct of an investigation or prosecution that is utilizing an FBI Confidential Human Source who is expected to testify, the FBI shall coordinate with the FPO attorney, in advance if practicable, any payment of monies to the Confidential Human Source pursuant to paragraph IV(C)(3) above. If the payment is to be made for services and if the FPO Attorney objects to the payment, no payment will be made until the dispute has been resolved in accordance with Section I(E) above.

### **V. AUTHORIZATION OF OTHERWISE ILLEGAL ACTIVITY**

#### **A. GENERAL PROVISIONS**

1. The FBI shall not authorize a Confidential Human Source to engage in any activity that otherwise would constitute a criminal violation under federal or SLTT law if engaged in by a person acting without authorization, except that a Confidential Human Source may engage in (i) the consensual monitoring of communications in accordance with FBI policy, even if a crime under SLTT law, and (ii) activity authorized in accordance with the procedures in

paragraph V(B) below.

2. The FBI is never permitted to authorize a Confidential Human Source to:
  - a. participate in any act of violence except in self-defense;<sup>13</sup> or
  - b. participate in an act designed to obtain information for the FBI that would be unlawful if conducted by a law enforcement agent (e.g., breaking and entering, illegal wiretapping, illegal opening or tampering with the mail, or trespass amounting to an illegal search).

## **B. AUTHORIZATION PROCEDURES**

### **1. Written Authorization**

- a. Tier 1 Otherwise Illegal Activity must be authorized by an FBI SAC and the appropriate CFP, in advance and in writing for a specified period, not to exceed 90 days, except that, with respect to all national security investigations or foreign intelligence collection, upon request of the FBI and at the discretion of the appropriate CFP, the Otherwise Illegal Activity may be authorized for a period of up to one year.
- b. Tier 2 Otherwise Illegal Activity must be authorized by an FBI SAC in advance and in writing for a specified period, not to exceed 90 days.
- c. The written authorization by the FBI SAC and/or CFP of Otherwise Illegal Activity shall be as narrow as reasonable under the circumstances as to the unlawful activity's scope, geographic area, duration and other

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<sup>13</sup> The Source may take reasonable measures of self-defense in an emergency to protect his or her own life or the lives of others against wrongful force.

related matters.

- d. For purposes of this paragraph, except with respect to all national security investigations or foreign intelligence collection, the “appropriate Chief Federal Prosecutor” is the CFP that:
  - (i) is participating in the conduct of an investigation by the FBI that is utilizing the Confidential Human Source or is working with the Confidential Human Source in connection with a prosecution;
  - (ii) would have primary jurisdiction to prosecute the Otherwise Illegal Activity that would constitute a violation of federal law; or
  - (iii) is located where the Otherwise Illegal Activity is to occur, and it only constitutes a violation of SLTT law.

- e. With respect to national security investigations or foreign intelligence collection, the appropriate Chief Federal Prosecutor is the AAG of the NSD, or designee. The AAG of the NSD shall identify designees for purposes of this paragraph, which may include DOJ personnel outside the NSD.

## 2. Findings

- a. The FBI SAC and the CFP who authorize the Otherwise Illegal Activity must make a finding, which shall be documented in the Confidential Human Source’s files, that the illegal activity is:
  - (i) necessary either to -

- A. obtain information or evidence essential for the success of an investigation that is not reasonably available without such activity, including circumstances in which the Confidential Human Source must engage in the illegal activity in order to maintain his credibility and thereby obtain the information or evidence, or
- B. prevent death, serious bodily injury, or significant damage to property; and
- C. that the benefits to be obtained from the Confidential Human Source's participation in the Otherwise Illegal Activity outweigh the risks.

b. In making these findings, the FBI SAC and the CFP shall consider, among other things:

- (i) the importance of the investigation;
- (ii) the likelihood that the information or evidence sought will be obtained;
- (iii) the risk that the Confidential Human Source might misunderstand or exceed the scope of his authorization;
- (iv) the extent of the Confidential Human Source's participation in the Otherwise Illegal Activity;
- (v) the risk that the FBI will not be able to closely monitor the Confidential Human Source's participation in the Otherwise Illegal Activity;

- (vi) the risk of violence, physical injury, property damage, or financial loss to the Confidential Human Source or others; and
- (vii) the risk that the FBI will not be able to ensure that the Confidential Human Source does not realize undue profits from his or her participation in the Otherwise Illegal Activity.

3. **Instructions**

- a. If a Confidential Human Source is authorized to engage in Otherwise Illegal Activity, at least one FBI Agent, along with one additional government official present as a witness, shall review with the Confidential Human Source written instructions that:
  - (i) the Confidential Human Source is authorized only to engage in the specific conduct set forth in the written authorization and not in any other illegal activity (the Chief Federal Prosecutor's written authorization should be read to the Confidential Human Source unless it is not feasible);
  - (ii) the Confidential Human Source's authorization is limited to the time period specified in the written authorization;
  - (iii) under no circumstance may the Confidential Human Source:
    - A. participate in an act of violence (except in self-defense);
    - B. participate in an act designed to obtain information for the FBI that would be unlawful if conducted by a law enforcement agent (e.g., breaking and entering, illegal wiretapping, illegal opening or tampering with the mail, or trespass amounting to

an illegal search);

C. If applicable: participate in an act that constitutes obstruction of

justice (e.g., perjury, witness tampering, witness intimidation,

entrapment, or the fabrication, alteration, or destruction of

evidence);

D. If applicable: initiate or instigate a plan or strategy to commit a

federal or SLTT offense;

- (iv) if the Confidential Human Source is asked by any person to participate in any illegal activity other than the specific conduct set forth in the written authorization, or learns of plans to engage in such illegal activity, the Source must immediately report the matter to the FBI Case Agent; and
- (v) participation in any illegal activity other than the specific conduct set forth in the written authorization could subject the Confidential Human Source to criminal prosecution.

b. Immediately after these instructions have been given, the Confidential Human Source shall be required to sign or initial, and date, a written acknowledgment of the instructions.<sup>14</sup> If the Confidential Human Source refuses to sign or initial the written acknowledgment, the FBI Agent, and the additional Agent or other government official present as a witness, shall document that the instructions

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<sup>14</sup> The Confidential Human Source may sign or initial the written acknowledgment by using a pseudonym which has been previously approved and documented in the Confidential Human Source's files and designated for use by only one Confidential Human Source.

were reviewed with the Confidential Human Source and that the Source acknowledged the instructions and his or her understanding of them. As soon as practicable thereafter, an FBI Supervisor shall review and, if warranted, approve the documentation.

#### **4. Precautionary Measures**

Whenever the FBI has authorized a Confidential Human Source to engage in Otherwise Illegal Activity, the FBI must take all reasonable steps to:

- a. monitor closely the activities of the Confidential Human Source;
- b. minimize the adverse effect of the Otherwise Illegal Activity on innocent persons; and
- c. ensure that the Confidential Human Source does not realize undue profits from his or her participation in the Otherwise Illegal Activity.

#### **5. Suspension of Authorization**

Whenever the FBI cannot, for legitimate reasons unrelated to the Confidential Human Source's conduct (e.g., unavailability of the Case Agent), comply with the precautionary measures described above, it shall immediately:

- a. suspend the Confidential Human Source's authorization to engage in Otherwise Illegal Activity until such time as the precautionary measures can be complied with;
- b. inform the Confidential Human Source that his or her authorization to engage in any Otherwise Illegal Activity has been suspended until that time; and
- c. document these actions in the Confidential Human Source's files.

#### **6. Revocation of Authorization**

- a. If an FBI Agent has reason to believe that a Confidential Human Source has failed to comply with the terms of the authorization of Otherwise Illegal Activity, the FBI Agent shall immediately:
  - (i) revoke the Confidential Human Source's authorization to engage in Otherwise Illegal Activity;
  - (ii) inform the Confidential Human Source that he or she is no longer authorized to engage in any Otherwise Illegal Activity;
  - (iii) comply with the notification requirement of paragraph VI (B) below;
  - (iv) determine whether the Confidential Human Source should be closed pursuant to Section VII; and
  - (v) document these actions in the Confidential Human Source's files.
- b. Immediately after the Confidential Human Source has been informed that he or she is no longer authorized to engage in any Otherwise Illegal Activity, the Confidential Human Source should sign or initial, and date, a written acknowledgment that he or she has been informed of this fact.<sup>15</sup> If the Confidential Human Source refuses to sign or initial the written acknowledgment, the FBI Agent who informed the Confidential Human Source of the revocation of authorization shall document the refusal, and the source's oral acknowledgment of the information if such oral acknowledgment is provided. As soon as practicable thereafter, an FBI Supervisor shall review

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<sup>15</sup> The Confidential Human Source may sign or initial the written acknowledgment by using a pseudonym which has been previously approved and documented in the Confidential Human Source's files and designated for use by only one Confidential Human Source..

the written acknowledgment or documentation of refusal.

**7. Renewal and Expansion of Authorization**

- a. If the FBI seeks to re-authorize any Confidential Human Source to engage in Otherwise Illegal Activity after the expiration of the authorized time period, or after revocation of authorization, the FBI must first comply with the procedures set forth above in paragraphs V(B)(1)-(3).
- b. If the FBI seeks to expand in any material way a Confidential Human Source's authorization to engage in Otherwise Illegal Activity, the FBI must first comply with the procedures set forth above in paragraphs V(B)(1)-(3).

**8. Emergency Authorization**

- a. In exceptional circumstances, an FBI SAC and the appropriate CFP may orally authorize a Confidential Human Source to engage in Tier 1 Otherwise Illegal Activity without complying with the documentation requirements of paragraphs V(B)(1)-(3) above, when they each determine that a highly significant and unanticipated investigative opportunity would be lost were the time taken to comply with these documentation requirements, and that the circumstances support a finding required pursuant to paragraph V(B)(2). In such an event, the documentation requirements, as well as a written justification for the oral authorization, shall be completed within 72 hours or as soon as practicable following the oral approval and maintained in the Confidential Human Source's files.
- b. In extraordinary circumstances, an FBI SAC may orally authorize a Confidential Human Source to engage in Tier 2 Otherwise Illegal Activity without complying

with the documentation requirements of paragraphs V(B) (1)-(3) above when he or she determines that a highly significant and unanticipated investigative opportunity would be lost were the time taken to comply with these requirements. In such an event, the documentation requirements, as well as a written justification for the oral authorization, shall be completed within 72 hours or as soon as practicable following the oral approval and maintained in the Confidential Human Source's files.

#### **9. Designees**

The FBI SAC and the CFP may agree to designate particular individuals at the supervisory level in their respective offices to carry out the approval functions assigned to them in Section V.

#### **10. Record-Keeping Procedures**

- a. The FBI shall maintain a file for each Confidential Human Source containing all the written authorizations, findings and instructions regarding Tier 1 Otherwise Illegal Activity, as required under Section V(B) of these Guidelines.
- b. At the end of each calendar year, the FBI shall report to the Assistant Attorneys General of the Criminal Division and the National Security Division the total number of times each FBI Field Office authorized a Confidential Human Source to engage in Otherwise Illegal Activity, and the overall nationwide totals.
- c. If requested, the FBI shall provide to the Assistant Attorneys General of the Criminal Division and the National Security Division a copy of any written authorization, finding or instruction issued pursuant to Section V(B) of these

Guidelines.

## **VI. SPECIAL NOTIFICATION REQUIREMENTS**

### **A. NOTIFICATION OF INVESTIGATION OR PROSECUTION**

1. If an FBI Agent has reasonable grounds to believe that the alleged felonious activity of a current or former Confidential Human Source is, or is expected to become, the basis of a prosecution or investigation by an FPO or a SLTT prosecutor's office, the FBI Agent must immediately notify a Confidential Human Source Coordinator or the assigned FPO Attorney of that individual's status as a current or former Confidential Human Source. However, with respect to a former Confidential Human Source whose alleged felonious activity is, or is expected to become, the basis of a prosecution or investigation by a SLTT prosecutor's office, no notification obligation shall arise unless the FBI Agent has reasonable grounds to believe that the Confidential Human Source's prior relationship with the FBI is material to the prosecution or investigation.
2. Whenever such a notification occurs, the Confidential Human Source Coordinator or the assigned FPO Attorney shall notify the CFP. The CFP and FBI SAC, with the concurrence of each other, shall notify any other federal or SLTT prosecutor's office or law enforcement agency that is participating in the investigation or prosecution of the Confidential Human Source.

### **B. NOTIFICATION OF UNAUTHORIZED ILLEGAL ACTIVITY**

1. If an FBI Agent has reasonable grounds to believe that a Confidential Human

Source has engaged in unauthorized criminal activity (other than minor traffic offenses), the FBI shall promptly notify a Confidential Human Source Coordinator or the assigned FPO Attorney. In turn, the Confidential Human Source Coordinator or assigned FPO Attorney shall notify the following FPOs of the Confidential Human Source's criminal activity and his or her status as a Confidential Human Source:

- a. the FPO in whose District the criminal activity primarily occurred, unless a SLTT prosecuting office in that District has filed charges against the Confidential Human Source for the criminal activity and there is no basis for federal prosecution in that District;
- b. the FPO Attorney, if any, who is participating in the conduct of an investigation that is utilizing the Confidential Human Source or is working with the Confidential Human Source in connection with a prosecution; and the FPO Attorney, if any, who authorized the Confidential Human Source to engage in Otherwise Illegal Activity pursuant to paragraph V(B) above.<sup>16</sup>

2. Whenever such notifications are provided, the Chief Federal Prosecutor(s) and the FBI SAC, with the concurrence of each other, shall notify any SLTT prosecutor's office that has jurisdiction over the Confidential Human Source's criminal activity and that has not already filed charges against the Confidential Human Source for the criminal activity of the fact that the Confidential Human

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<sup>16</sup> Whenever such notifications to FPOs are provided, the FBI must also comply with the Annual Validation Review requirements described above in paragraph (II)(C)(2).

Source has engaged in such criminal activity. The CFP(s) and the FBI SAC(s) are not required, but may with the concurrence of each other, also notify the SLTT prosecutor's office of the person's status as a Confidential Human Source.

**C. NOTIFICATION REGARDING CERTAIN FEDERAL JUDICIAL PROCEEDINGS**

The FBI shall immediately notify an appropriate Confidential Human Source Coordinator or the assigned FPO Attorney whenever an FBI Agent has reasonable grounds to believe that:

1. a current or former Confidential Human Source has been called to testify by the prosecution in any federal grand jury or judicial proceeding;
2. the statements of a current or former Confidential Human Source have been, or will be, utilized by the prosecution in any federal judicial proceeding; or
3. an FPO Attorney intends to represent to a Court or jury that a current or former Confidential Human Source is or was a co-conspirator or other criminally culpable participant in any criminal activity.

**D. PRIVILEGED OR EXCULPATORY INFORMATION**

1. If an FPO is participating in the conduct of an investigation by the FBI that is utilizing a Confidential Human Source or working with a Confidential Human Source in connection with a prosecution, the FBI shall notify the FPO Attorney assigned to the matter, in advance whenever possible, if the FBI has reasonable grounds to believe that a Confidential Human Source will obtain or provide information that is subject to, or arguably subject to, a legal privilege of

confidentiality belonging to someone other than the Confidential Human Source.

2. Whenever an FBI Agent knows or reasonably believes that a current or former Confidential Human Source has information that is exculpatory as to a target of a federal or SLTT investigation, or as to a defendant (including a convicted defendant) in a federal or SLTT case, the FBI Agent shall disclose the exculpatory information either to the assigned FPO Attorney that is participating, or had participated, in the conduct of the investigation or to a Confidential Human Source Coordinator.
3. In turn, the assigned FPO Attorney or Confidential Human Source Coordinator shall disclose the exculpatory information to all affected federal and SLTT authorities. In the event the disclosure would jeopardize the security of a Confidential Human Source or seriously compromise an investigation, the FPO Attorney or Confidential Human Source Coordinator shall refer the matter to the HSRC for consideration, except such matters with respect to a national security investigation or foreign intelligence collection shall be referred to the AAG of the NSD or designee.

**E. LISTING A CONFIDENTIAL HUMAN SOURCE IN AN ELECTRONIC SURVEILLANCE APPLICATION**

1. The FBI shall not name a Confidential Human Source as a named interceptee or a violator in an affidavit in support of an application made pursuant to 18 U.S.C. § 2516 for an electronic surveillance order unless the FBI believes that:
  - a. omitting the name of the Confidential Human Source from the affidavit would endanger that person's life or otherwise jeopardize an ongoing

investigation; or

- b. the Confidential Human Source is a bona fide subject of the investigation based on his or her suspected involvement in unauthorized criminal activity.

2. In the event that a Confidential Human Source is named in an electronic surveillance affidavit under paragraph VI(E)(1) above, the FBI must inform the FPO Attorney making the application and the Court to which the application is made of the actual status of the Confidential Human Source.

**F. RESPONDING TO REQUESTS FROM FPO ATTORNEYS REGARDING A CONFIDENTIAL HUMAN SOURCE**

1. In any matter arising under, or related to, these Guidelines, upon request by an appropriate FPO Attorney, the FBI shall promptly provide the FPO Attorney all relevant information concerning a Confidential Human Source, including whether he or she is a current or former Confidential Human Source for the FBI and whether, to the extent known by the FBI with appropriate due diligence, he or she has ever had a reporting relationship with another government agency.
2. If the FBI SAC has an objection to providing such information based on specific circumstances of the case, he or she shall explain the objection to the FPO making the request and any remaining disagreement as to whether the information should be provided shall be resolved pursuant to the Exceptions and Dispute Resolution section, paragraph I(E).

**G. EXCEPTIONS TO THE SPECIAL NOTIFICATIONS REQUIREMENTS**

The Director of the FBI, with the written concurrence of the Deputy Attorney General, may withhold any notification required pursuant to paragraphs VI(A)-(F) if it is

determined that the identity, position, or information provided by the Confidential Human Source warrants extraordinary protection for sensitive national security reasons. Any such determination shall be documented and maintained in the Confidential Human Source file, along with the concurrence of the Deputy Attorney General.

#### **H. FILE REVIEWS**

If the FBI discloses any information about a Confidential Human Source to a FPO pursuant to paragraphs VI(A)-(F), the FBI SAC and the CFP shall consult to facilitate any review and copying of the Confidential Human Source's files by the FPO that might be necessary for an FPO Attorney to fulfill his or her disclosure obligations.

#### **I. DESIGNEES**

An FBI SAC and a CFP may, with the concurrence of each other, designate particular individuals in their respective offices to carry out the functions assigned to them in paragraphs VI(A)-(H).

### **VII. CLOSING A CONFIDENTIAL HUMAN SOURCE**

#### **A. GENERAL PROVISIONS**

If the FBI determines that a Confidential Human Source should be closed for cause or for any other reason the FBI shall promptly:

1. close the individual;
2. document the reasons for the decision to close the individual as a Confidential Human Source in the Confidential Human Source's files;
3. if the Confidential Human Source can be located, notify the Confidential Human

Source that he or she has been closed as a Confidential Human Source and document that such notification has been provided in the same manner as set forth in paragraph II(B)(3), except that, if the Confidential Human Source refuses to acknowledge his receipt and understanding of the notification, the FBI shall document the refusal; and

4. if the Confidential Human Source was authorized to engage in Otherwise Illegal Activity pursuant to paragraph V(B), immediately revoke that authorization under the provisions of paragraph V(B)(6).

**B. DELAYED NOTIFICATION TO A CONFIDENTIAL HUMAN SOURCE**

The FBI may delay providing the notification to the Confidential Human Source described above in paragraph of VII(A)(3) during the time such notification might jeopardize an ongoing investigation or prosecution or might cause the flight from prosecution of any person. If the decision is made to delay providing a notification, that decision and the reasons supporting it must be documented in the Confidential Human Source's files.

**C. CONTACTS WITH FORMER CONFIDENTIAL HUMAN SOURCES CLOSED FOR CAUSE**

Absent exceptional circumstances that are approved by an FBI Supervisor, in advance whenever possible, an FBI Agent shall not initiate contact with or respond to contacts from a former Confidential Human Source who has been closed for cause. When granted, such approval shall be documented in the Confidential Human Source's files.

**D. COORDINATION WITH FPO ATTORNEYS**

If an FPO is participating in the conduct of an investigation that is utilizing an FBI Confidential Human Source or the FPO is working with a Confidential Human Source in connection with a prosecution, the FBI shall coordinate with the FPO Attorney assigned to the matter, in advance whenever possible, regarding any of the decisions described in paragraphs VII(A)-(C).

W.P.Barr  
William P. Barr  
Attorney General

12/23/20  
Date

**Source Review Addendum to the Attorney General's Guidelines  
Regarding the Use of FBI Confidential Human Sources**

Pursuant to Section III(A)(2) of the Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources ("AGG-CHS"), this Agreement between the FBI and the Criminal Division describes procedures for selecting Confidential Human Sources ("risk-tier sources") to be reviewed by the Confidential Human Source Review Committee ("HSRC") in addition to those sources requiring early approval as defined in AGG-CHS Section III(A)(1) ("early approval sources"). Both risk-tier sources and early approval sources will be reviewed by the HSRC pursuant to the procedures set forth in AGG-CHS Section III(A)(3).

No less than 60 risk-tier sources will be selected for review per quarter. The risk-tier sources will be selected at random from sources who have not been validated in the previous year. Risk-tier sources will be selected in equal proportion from each of the four risk tiers established by the Directorate of Intelligence's validation risk model. (The process for selecting the risk-tier sources is described below.)

Until such time that risk scores can be calculated, and risk-tier sources selected, under the above-described procedure, the HSRC will continue to review, in addition to early approval sources, those sources who qualified for HSRC review under Section III(A)(2) of the prior version of the AGG-CHS, that is, sources who have been "registered for more than five consecutive years, and to the extent such a Source remains open, every five years thereafter" ("long-term sources").

This Agreement is effective upon issuance of the AGG-CHS and may be amended by the FBI and the Criminal Division with the approval of the Deputy Attorney General.

### **Sampling Procedure**

To select a random, unbiased sample of sources for submission to the HRSC prior to each meeting, the DI's Validation Management Unit ("VMU") will identify, from a list of all open sources, those sources that have not been validated in the last year. VMU will then use a software application such as Microsoft Excel to extract a simple random sample of those sources across each of the four risk tiers. For example, to select 6 sources from each tier, VMU will implement a random number calculation, such as RAND() in Excel, to generate a random decimal number

between 0 and 1 for each source, and then select the 6 sources with the largest randomly generated numbers within each tier.

This process is random, unbiased, and easy to implement to meet the required cadence for submitting sources to the HSRC. Also, the process can be easily adjusted to increase or decrease the number of sources submitted to the HSRC from different tiers. For example, if the sample selected for a particular HSRC meeting requires adjustment to meet the quarterly minimum for a risk tier, VMU could simply select an appropriate number from that tier using the same random process.