

GUIDELINES ON UNDERCOVER OPERATIONS

By



Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

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PREAMBLE

These Guidelines on the use of undercover operations by Offices of Inspector General (OIGs) apply to those offices of Inspectors General with law enforcement powers received from the Attorney General under section 6(e) of the Inspector General Act of 1978, as amended, ¹Any of the individual Offices of Inspector General that comprise the OIGs will be referred to in these Guidelines as an "OIG,"

¹ See Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority, Section III.

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I. INTRODUCTION

The proper use of undercover techniques is essential to the success of the law enforcement mission. Successful undercover activities and operations have proven to be effective techniques to detect, prevent, solve, and prosecute criminal activities. The inherent dangers of undercover operations, coupled with legal and policy implications, require that considerable management review and oversight take place on a regular basis. For that reason, and in accordance with the Attorney General's Guidelines for Offices of Inspector General (OIG), the following review standards for certain undercover investigative operations are established.

II. DEFINITIONS

- A. Undercover Activities** - any investigative activity involving the use of an assumed name or cover identity by an employee of an OIG or another Federal, state, or local law enforcement organization working with an OIG.
- B. Undercover Operation** - an investigation involving a series of related undercover activities over a period of time by an undercover employee(s). For purposes of these Guidelines, a "series of related undercover activities" generally consists of more than three separate substantive contacts by an undercover employee with the individual(s) under investigation. However, undercover activity involving sensitive or fiscal circumstances constitutes an undercover operation regardless of the number of contacts involved. A contact is "substantive" if it is a communication with another person, whether by oral, written, wire, or electronic means, which includes information of investigative interest. Mere incidental contact, e.g., a conversation that establishes an agreed time and location for another meeting, is not a substantive contact within the meaning of these Guidelines.

NOTE: In the context of online communications such as e-mail and Internet Relay Chat (IRC) multiple transmissions or e-mail messages can constitute one contact much like a series of verbal exchanges can comprise as a single conversation. Factors to be considered in determining whether multiple online transmissions constitute a single contact or multiple contacts includes, the time between transmissions, the number of transmissions, the number of interruptions, topical transitions, and the media by which the communications are exchanged (i.e., e-mail versus IRC). For more detailed discussions, see the Online Investigative Principles for Federal Law Enforcement Agents, Principle 6, and Subpart C.

- C. Undercover Employee** - any employee of an OIG, or employee of a Federal, state, or local law enforcement agency working under the direction and control of an OIG in a particular investigation, whose relationship with the OIG is concealed from third parties in the course of an investigative operation by the maintenance of a cover or alias identity.
- D. IG Undercover Review Committee** - a committee established by these guidelines consisting of 6 or more Assistant Inspectors General for Investigation (AIGI), or equivalent senior managers that will review submitted undercover operation plans and provide the relevant Inspector General a consensus recommendation on whether the undercover operation should be approved.

- E. Proprietary** - 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 an OIG, and whose relationship with the OIG is concealed from third parties. Any funds earned or derived from a proprietary must be deposited in the U.S. Treasury and cannot be used to support the Agency program.
- F. Designated Prosecutor** - a United States Attorney or Section Chief in the Criminal Division of the Department of Justice (DOJ), or States Attorney or equivalent.
- G. Joint Undercover Operation** - an undercover operation conducted jointly by an OIG and another law enforcement agency. This definition does not include an operation where the participation by either agency is confined to the mere contribution of financial or equipment resources or providing technical advice.

III. GENERAL AUTHORITY

Pursuant to these Guidelines, the OIGs may engage in undercover activities and operations that are appropriate to carry out their law enforcement responsibilities. This is to include operation of a proprietary to the extent necessary to maintain an operation's cover or effectiveness. Certain other undercover operations and activities involving sensitive circumstances warrant specific consideration, action and approval.

These Guidelines do not apply to investigations utilizing confidential informants, cooperating witnesses or cooperating subjects, unless the investigation also utilizes an undercover employee. However, the OIGs through the development of internal policy may choose to apply these Guidelines to certain confidential informant, cooperating witness, and cooperating subject operations by referring such matters to the Inspector General Undercover Review Committee (URC).

The OIGs may also participate in joint undercover activities with other law enforcement agencies. Approval guidelines established by another law enforcement agency controlling the undercover operation which are substantially comparable to the process under these Guidelines, may be relied on in lieu of the process under these Guidelines. Whenever a joint operation is (conducted with the Federal Bureau of Investigation (FBI), the FBI's undercover review process shall be relied on in lieu of the process under these Guidelines. However, in situations where the FBI is providing only limited assistance and resources, the IG URC may be used for approval. In any joint undercover activity or operation in which an OIG undercover employee participates, Section IV, Subpart H, and Section VI, Subparts A & B of these Guidelines shall apply regardless of which agency directs and controls the operation.

IV. AUTHORIZATION OF UNDERCOVER OPERATIONS

A. GENERAL APPROVAL STANDARDS

Any official considering approval or authorization of a proposed undercover application, shall weigh the risks and benefits of the operation, and must give careful

consideration to the following factors:

1. The risk of personal injury to individuals, property damage, financial loss to persons or businesses, damage to reputation, or other harm to persons;
2. The risk of civil liability or other loss to the Government;
3. The risk of invasion of privacy or interference with privileged or confidential relationships and any potential constitutional concerns or other legal concerns;
4. The risk that individuals engaged in undercover operations may become involved in illegal conduct restricted in Section IV, Subpart G below; and,
5. The suitability of Government participation in the type of activity that is expected to occur during the operation.

B. UNDERCOVER OPERATIONS THAT MUST BE APPROVED BY URC AND APPROVED BY THE INSPECTOR GENERAL (IG)

Sensitive Circumstances

Before conducting an undercover operation lasting longer than six months, or involving any of the sensitive circumstances set forth in these Guidelines, an AIGI shall submit a copy of the application required by paragraph E below to the appropriate FBI Special Agent in Charge (SAC) or FBI Headquarters manager to determine if the FBI wants to conduct a joint investigation.

1. If the FBI decides to join the investigation, the relevant OIG AIGI or designated OIG representative shall be promptly notified and the FBI's Criminal Undercover Operations Policy will be followed in lieu of these Guidelines.
2. If the FBI chooses not to join the investigation, the FBI shall promptly notify the relevant AIGI or designee, and the application shall be sent to the IG URC for recommendation. If sensitive circumstance (1) or (m) below applies, the URC must consult with the appropriate Section Chief of the DOJ Criminal Division during its consideration of the application. The application shall then be forwarded to the IG, or his or her designee, who may approve or disapprove the application. For purposes of administration, the AIGI shall notify the URC of the IG's final approval or disapproval of the application.
3. For purposes of these Guidelines, sensitive circumstances are involved if there is a reasonable expectation that the undercover operation will involve one or more of the following circumstances:
 - a. An 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;

- b. An investigation of any public official at the Federal, state or local level in any matter involving systemic corruption of any governmental function;
- c. An investigation of possible criminal conduct by any foreign official or government, religious organization, political organization, or the news media;
- d. 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;
- e. Establishing, acquiring, or operating a proprietary;
- f. Providing goods or services that are essential to the commission of a crime, which goods and services are reasonably unavailable to a subject of the investigation except from the Government;
- g. Activity by any undercover employee that is proscribed by Federal, State, or local laws as a felony or that is otherwise a serious crime, but not including the purchase of stolen or contraband goods; delivery or sale by the Government of stolen property whose ownership cannot be determined; controlled delivery of drug's that will not enter commerce, conduct of no more than five money laundering transactions, not to exceed a maximum aggregate amount of \$1 million; payment of bribes that are not included in the other sensitive circumstances; or the making of false representations to third parties in concealment of personal identity or the true ownership of a proprietary (this exemption does not include any statement under oath or penalties of perjury);
- h. A significant risk that a person participating in an undercover operation will be arrested or will supply falsely sworn testimony or false documentation in any legal or administrative proceeding;
- i. Attendance at a meeting or participation in communications between any individual and his or her lawyer;
- j. A significant risk that a third party will enter into a professional or confidential relationship with a person participating in an undercover operation who is acting as an attorney, physician, clergyman, or member of the news media;
- k. 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;

- l. 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;
- m. A significant risk of violence or physical injury to individual(s) or a significant risk of financial loss;
- n. Activities that 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 constitutional torts; or
- o. 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.

C. UNDERCOVER OPERATIONS WHICH MUST BE APPROVED BY THE INSPECTOR GENERAL (IG)

Fiscal Circumstances

In all undercover operations involving the fiscal circumstances set out below, the AIGI (or his or her designee) shall submit an application to the IG in accordance with Section IV, Subpart E below. A recommendation for authorization may be forwarded directly to the IG (or his or her designee) for final review and authorization, provided that the approval levels conform to all applicable laws.

Applications for approval of undercover operations referred to the IG only because of fiscal circumstances need not be considered or approved by the URC, unless internal OIG policy dictates otherwise.

For the purpose of these Guidelines, an undercover operation involves fiscal circumstances if there is a reasonable expectation that the undercover operation will:

1. Require the purchase or lease of real property, equipment, buildings, or facilities; the alteration of buildings or facilities; a contract for construction or alteration of buildings or facilities; or prepayment of more than one month's rent;

NOTE: The purchase, rental, or lease of real property using an assumed name or cover identity to facilitate a physical or technical surveillance is not an undercover operation for purposes of these Guidelines. However, since the expenditure of appropriated funds is involved, approval must be obtained from the IG (or his or her designee for such purpose) in conformance with applicable laws.

2. Require the deposit of appropriated funds or proceeds generated by the undercover operation into banks or other financial institutions;

3. Use the proceeds generated by the undercover operation to offset necessary and reasonable expenses of the operation;
4. Require a reimbursement, compensation, or indemnification agreement with cooperating individuals or entities for services or losses incurred by them in aid of the operation (any such agreement entered into with third parties must be reviewed by the OIG's General Counsel and the OIG's resource management official or equivalent official); or
5. Exceed the limitations on duration or commitment of resources established by the IG for operations initiated.

D. UNDERCOVER OPERATIONS WHICH MAY BE AUTHORIZED BY THE ASSISTANT INSPECTOR GENERAL FOR INVESTIGATIONS (AIGI)

The establishment, extension, or renewal of all undercover operations to be supervised by an OIG must be approved by the AIGI or equivalent senior manager. If the undercover operation does not involve any of the factors listed in Section IV, Subpart C above, this approval shall constitute authorization for the operation. However; an IG, through development of internal policy, may choose to require authorization for undercover activities and operations by the IG or Deputy IG as well as require the AIGI to submit the undercover operations plan to the IG URC for its recommendation.

1. Approval requires a written determination, stating supporting facts and circumstances, that:
 - a. Initiation of investigative activity regarding the alleged criminal conduct or criminal enterprise is warranted under any applicable departmental/agency guidelines;
 - b. The proposed undercover operation appears to be an effective means of obtaining evidence or necessary information. This finding should include a statement of what prior investigation has been conducted and what chance the operation has of obtaining evidence or necessary information concerning the alleged criminal conduct or criminal enterprise;
 - c. The undercover operation will be conducted with minimal intrusion consistent with the need to collect the evidence or information in a timely and effective manner;
 - d. Approval for the use of any confidential informant has been obtained as required by the Attorney General's Guidelines Regarding the Use of Confidential Informants;
 - e. Any foreseeable participation by an undercover employee in illegal activity that can be approved by the AIGI on his or her own authority is justified by the factors

noted in paragraph Section IV, Subpart H; and

- f. There is no present expectation of the occurrence of any of the sensitive or fiscal circumstances listed in Section IV, Subparts B & C.
2. Undercover operations may be authorized pursuant to this subsection for up to 6 months and continued upon renewal for an additional 6-month period for a total of no more than 1 year. Absent approval from the Inspector General, undercover operations initiated pursuant to this subsection may not involve the expenditure of more than \$50,000 (\$75,000 in drug cases of which a maximum of \$50,000 is for operational expenses), or such other amount that is set from time to time by the IG;
3. If the IG delegates the responsibility to authorize the establishment, extension, or renewal of undercover operations to any other OIG official, the delegation should be in writing and maintained in the OIG headquarters office.
4. A copy of all written approvals described in Section IV, Subpart B above shall be maintained by the approving OIG.

E. IG UNDERCOVER REVIEW COMMITTEE

To assist the IG with reaching an informed decision on the suitability of an undercover operation that involves sensitive circumstances, the URC shall provide the IG with a recommendation of approval or disapproval, after reviewing the operation in accordance with the following procedures. The IG may also require, through internal OIG policy, that the committee review all undercover operations.

1. An eight-member Undercover Review Committee (URC) will be established. The Chairman of the Investigations Committee of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) shall designate a URC Chairperson who, in turn will select a minimum of 5 AIGIs, or equivalent, to participate on the committee. The Chairperson should consider the collective relative experience and knowledge of undercover operations of the participating members when making selections. Additionally, the Chairperson should generally consider and select AIGIs from those OIGs covered by these guidelines.
2. The URC shall have as a voting member a representative from the Fraud and Public Integrity Sections of the Criminal Division of the Department of Justice, or, if appropriate, the National Security Division, as designated by the Assistant Attorney General of the Criminal Division.
3. Each member, including the chair, will serve on the URC for a period generally lasting 12 to 18 months. Should any member no longer be able to participate on the URC, the chairperson shall identify a replacement. If a member has a conflict involving, or is otherwise unable to participate in the review of, a particular application, the chairperson may designate a temporary replacement.

4. An OIG shall only have one voting representative participate on the URC at a time.
5. If an undercover investigation is being reviewed by the URC, and the OIG submitting the application is not represented on the URC, the AIGI of that OIG, or a designee, shall be added as a temporary full participant of the URC to review that undercover operation.
6. When an application for an undercover operation is received that involves sensitive circumstances specified in Section IV, Subpart B, the URC members will meet to review the application as established by internal policy. Members of the URC may consult with: FBI personnel, senior DOJ officials, and the United States Attorney as deemed appropriate. The results of any relevant consultation shall be reported to the full URC.
7. In addition to the considerations contained in Section IV, Subpart A above, the URC 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 URC 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. The URC shall also provide a brief written response when a submission is denied.
8. The URC shall make a consensus recommendation approving or disapproving the undercover operation provided that:
 - a. 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, prospective, or departmental policy; and,
 - b. The designee promptly advises the Assistant Attorney General and no further action shall be taken on the proposal until the relevant OIG senior management official has had an opportunity to consult with the Assistant Attorney General and agreement is reached.
9. The URC should consult with the relevant OIG Office of General Counsel and the Office of Legal Counsel (or other appropriate division or office at DOJ) about significant unsettled legal questions concerning authority or the conduct of a proposed undercover operation.
10. The IG, AIGI, or other designated official may refer any sensitive investigative matter including informant, cooperating witness, and cooperating subject operations, to the URC for advice, recommendations or comments regardless of whether an undercover operation is involved. An IG or AIGI may submit an undercover operation for review by the URC, regardless of whether the sensitive circumstances listed in these Guidelines are present.

11. The designated prosecutor, IG or their designee may attend the URC in order to advocate for or against the recommendation to approve an undercover operation.
12. The URC shall promptly submit their recommendation for approval or disapproval of the undercover operation proposal, along with any recommended changes or amendments to the AIGI or the AIGI designee. A copy of the decision will be provided to the CIGIE Investigations Committee, as well as the appropriate Inspector General.
13. If the AIGI of the requesting agency and/or the designated prosecutor disagree with any stipulation proposed by the URC in its recommendation regarding an undercover operation, they may consult with the Chairperson of the URC who will convene a meeting of the URC to reconsider the issue in question.
14. If the URC votes to recommend disapproval of an undercover operation, and the Inspector General of the submitting agency desires to disregard the recommendation for any reason, the IG shall promptly consult with the CIGIE Investigations Committee and Assistant Attorney General, Criminal Division, or the Deputy Attorney General prior to approving the undercover operation. If the CIGIE Investigations Committee and the DOJ senior official agree with continuing the operation, the IG shall provide the URC with a memorandum outlining the reasons for continuing the operation.

F. APPLICATION/PROPOSAL TO THE UNDERCOVER REVIEW COMMITTEE

1. Application for any undercover operation shall include:
 - a. A description of the proposed operation and the particular identity cover to be employed; 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;
 - b. A statement of the period of time for which the operation would be maintained;
 - c. A description of how the requirements concerning any inducements to be offered as discussed in Section V, Subpart B below have been met;
 - d. A statement why the infiltration or recruitment is necessary, a description of procedures to minimize any acquisition, retention, and dissemination of, information that does not relate to the matter under investigation or other authorized investigative activity, and an explanation of how any potential constitutional concerns and any other legal concerns have been addressed;
 - e. A letter from the appropriate 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 would anticipate prosecuting any meritorious case that is developed. The letter should include a finding that the

proposed investigation would be an appropriate use of the undercover technique and that the potential benefits in detecting, preventing, or prosecuting criminal activity outweigh any direct costs or risks of other harm.

2. Applications for approval of undercover operations involving sensitive circumstances listed in Section IV, Subpart B, in addition to requirements outlined in Section IV, Subpart F (1), shall also include:
 - a. A statement of circumstances that are reasonably expected to occur; what the facts are likely to be, and why the undercover operation merits approval in light of the circumstances;
 - b. A statement why the participation in otherwise illegal activity is justified under the requirements of Section IV, Subsection H.
3. An application for the extension or renewal of an undercover operation should describe the results obtained from the operation or explain any failure to obtain significant results and, where sensitive circumstances are involved, should include a letter from the appropriate prosecutor favoring the extension or renewal of authority.
4. The AIGI shall immediately notify the IG whenever the URC recommends an action concerning an application or is unable to reach consensus concerning an application.

G. DURATION OF AUTHORIZATION

1. An undercover operation should not continue longer than necessary to achieve the objectives specified in the authorization, and in any event no longer than 6 months, without new authorization by the IG to proceed, except pursuant to subparagraph (3) below. Undercover operations exceeding 12 months, or exceeding any monetary threshold set by the IG, must be reauthorized by the IG after every additional 6-month period.
2. If there is significant change in either the direction or objectives of an undercover operation that the URC reviewed, the operation must be reviewed again by the URC to determine whether a new authorization is necessary.
3. An undercover operation that requires the URC's review may be initiated or extended on an interim basis by an IG in the event of exigent circumstances for a period not to exceed 30 days. In the case of an initial authorization, budget enhancement, or change in focus, the IG must notify the Chair of the URC and the interim authority must be submitted for ratification by the IG through the URC.
4. Any undercover operation approved pursuant to these Guidelines is deemed to commence on the date approved, not on the date covert activity is begun.
5. Among the factors to be considered in a determination by any approving official of

whether an undercover operation should be renewed or extended are the:

- a. Extent to which the operation has produced the results anticipated when it was established;
 - b. Potential for future success beyond that initially targeted;
 - c. Extent to which the investigation can continue without exposing the undercover operation; and
 - d. Extent to which continuation of the investigation may cause injury, financial or otherwise, to innocent parties.
6. Any approved undercover operation may be immediately terminated by the AIGI, the IG, or any equivalent official. The reasons for the termination will be provided to the URC if the URC was involved in the approval process.

H. PARTICIPATION IN OTHERWISE ILLEGAL ACTIVITY BY UNDERCOVER EMPLOYEES

Except when authorized pursuant to these Guidelines, no undercover employee shall engage in any activity that would constitute a violation of Federal, state, or local law if engaged by a private person acting without authorization. For purposes of these Guidelines, such activity is referred to as otherwise illegal activity.

1. Justification: No official shall recommend or approve participation by an undercover employee 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 to themselves or others.
2. Minimization: The OIGs shall take reasonable steps to minimize the participation of an undercover employee in any otherwise illegal activity.
3. Prohibitions: An undercover employee shall not:
 - a. Participate in any act of violence except in self-defense or defense of others;
 - b. Initiate or instigate any plan to commit criminal acts except in accordance with Section V (concerning avoidance of entrapment) below; or
 - c. Participate in conduct that would constitute unlawful investigative techniques (e.g.,

illegal wiretapping, illegal mail openings, breaking and entering, or trespass amounting to an illegal search).

4. Self-Defense: Nothing in these Guidelines prohibits an undercover employee 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, if taken, shall be reported to the appropriate prosecutor, the Inspector General, the Chairperson of the URC, and the Assistant Attorney General for the Criminal Division as soon as possible.
5. Authorization:
 - a. All undercover operations and activities that contemplate participation in otherwise illegal activity must be approved, at a minimum, by a Special Agent -in-Charge (or equivalent). Individual IGs may determine that a higher level of authority is required in their office. This approval shall, if so specified, constitute authorization of:
 - (1) Otherwise illegal activity that is a misdemeanor or similar minor crime under Federal, state, or local law;
 - (2) Consensual monitoring, even if a crime under local law;
 - (3) The purchase of stolen or contraband goods;
 - (4) The delivery or sale of stolen property that cannot be traced to the rightful owner;
 - (5) The controlled delivery of drugs that will not enter commerce;
 - (6) The payment of bribes that do not fall within the sensitive circumstances set forth in Section IV, Subpart B above;
 - (7) The making of false representations to third parties in concealment of personal identity or the true ownership of a proprietary (but not any statement under oath or the penalties of perjury, which must be authorized pursuant to subparagraph (b) below); and,
 - (8) Conducting no more than five money laundering transactions, not to exceed a maximum aggregate amount of \$1 million.
 - b. Participation in otherwise illegal activity that is a felony or its equivalent under Federal, state, or local law, and which is not otherwise accepted under Section IV, Subpart B above, requires authorization by the IG after the URC's review. See Section N, Subpart E.
 - c. Participation in otherwise illegal activity that involves a significant risk of violence

or physical injury requires authorization by the IG after the URC's review.

- d. If an undercover employee believes it to be necessary and appropriate under the standards set out in paragraph H (1) above, to participate in otherwise illegal activity that was not foreseen or anticipated, every effort should be made to consult with the AIGI, who shall seek emergency interim authority from the IG, and review by the URC if possible, or, if necessary, may provide emergency authorization. If consultation is impossible, and the undercover employee concludes that there is an immediate and grave threat to life, physical safety, or property, the undercover employee may participate in the otherwise illegal activity, so long as he or she does not take part in, and makes every reasonable 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 the AIGI, who shall promptly inform the Undercover Review Committee. A decision by an undercover employee to participate in otherwise illegal activity under this subsection may be retroactively authorized if appropriate.
- e. If an undercover operation 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 AIGI shall immediately inform the appropriate prosecutor and the IG, who shall inform the Assistant Attorney General in Charge of the Criminal Division as soon as possible.

I. INTERIM/EMERGENCY AUTHORIZATION

1. In a situation where the IG's prior written approval for an undercover operation is required, the AIGI may orally approve an undercover operation when he or she believes that a significant investigative opportunity would be lost if time was taken to prepare a written authorization. However, the written authorization must still be completed by the AIGI, along with the justification for the oral approval and then forwarded to the IG within 2 business days.
2. OIGs must establish internal policy to address emergency interim authorization procedures. These procedures are to provide for an expeditious review and authorization of a proposed undercover operation. Before providing authorization in these situations, the involved OIG shall attempt consultation with the Chairperson of the URC as well as with any appropriate prosecutor and FBI manager.
3. Online undercover operations may be authorized in writing by the AIGI to continue for a period not to exceed 30 days if it is essential to continue online contact with a subject, in order to either maintain credibility or avoid permanent loss of contact with a subject during the period of time in which an application for an online undercover operation is being prepared and submitted for approval. If approved, the undercover employee maintaining online contact during this period must:
 - a. Maintain an accurate recording of all online communication;

- b. Avoid otherwise illegal activity;
- c. Maintain as limited an online profile as possible consistent with the need to accomplish the objectives stated above;
- d. Avoid physical contact with subjects;
- e. Take all necessary and reasonable actions during the interim period to protect potential victims and prevent serious criminal activity if online contact reveals significant and imminent threat to third parties, commercial establishments, or government entities.

V. PROTECTING INNOCENT PARTIES AGAINST ENTRAPMENT

A. ENTRAPMENT

Entrapment must be scrupulously avoided. Entrapment occurs when the Government implants in the mind of a person who is not otherwise disposed to commit the offense, the disposition to commit the offense and then induces the commission of that offense in order to prosecute.

B. AUTHORIZATION REQUIREMENTS

No undercover activity involving an inducement to an individual to engage in crime shall be authorized, unless the approving official(s) is satisfied that:

1. The illegal nature of the activity is reasonably clear to potential subjects; and
2. The nature of any inducement offered is justifiable in view of the character of the illegal transaction in which the individual is invited to engage; and
3. There is a reasonable expectation that offering an inducement will reveal illegal activity; and,
4. One of the two following limitations is met:
 - a. There is reasonable indication that the subject is engaging, has engaged, or is likely to engage in the illegal activity proposed or in similar illegal conduct; or
 - b. The opportunity for illegal activity has been structured so that there is reason to believe that any persons drawn or brought to the opportunity are predisposed to engage in the contemplated illegal conduct.

VI. MONITORING AND CONTROL OF UNDERCOVER OPERATIONS

A. PREPARATION OF UNDERCOVER EMPLOYEES, INFORMANTS, AND COOPERATING WITNESSES

1. Prior to the operation, the AIGI or other designated official shall review with each undercover employee the conduct that is expected while undergoing the investigation. The undercover employee should be aware of any sensitive or fiscal circumstances specified in Section IV, Subparts B & C that are likely to occur. The undercover employee shall be instructed in the law of entrapment.
2. Each undercover employee shall be instructed that except in an emergency situation as set out in Section IV, Subpart H (5) (d), he or she shall not:
 - a. participate in any act of violence;
 - b. initiate or instigate any plan to commit criminal acts;
 - c. use unlawful investigative techniques to obtain information or evidence;
 - d. engage in any conduct that would violate restrictions on investigative techniques or OIG conduct contained in the Attorney General's Guidelines or departmental/agency policy; or
 - e. participate in any illegal activity for which authorization has not been obtained under these Guidelines.
3. When an undercover employee learns that a person who is under investigation intends to commit a violent crime, he or she shall take reasonable action to try to discourage the violence.

B. REVIEW OF CONDUCT

During the course of the undercover operation, the AIGI or other designated official shall review compliance with the appropriate policies and conduct of the undercover employee(s) and others who are participating in the undercover operation. Any findings of impermissible conduct shall promptly be reported to the appropriate IG, prosecutor, and the URC, and a determination shall be made as to whether the individual should continue his or her participation in the investigation.

C. CONTINUING CONSULTATION WITH THE APPROPRIATE PROSECUTOR

Upon initiating and throughout the course of any undercover operation, the AIGI or designated official, shall consult on a continuing basis with the appropriate prosecutor, particularly with respect to the propriety of the operation and the legal sufficiency and quality of evidence that is being produced by the activity.

D. SERIOUS LEGAL, ETHICAL, PROSPECTIVE OR DEPARTMENTAL POLICY QUESTIONS, AND PREVIOUSLY UNFORESEEN SENSITIVE CIRCUMSTANCES

1. The AIGI or other designated official shall consult with the Chairperson of the URC whenever a serious legal, ethical, prosecutive or departmental/agency policy question arises in any undercover operation, or if sensitive circumstances occur that were not anticipated. The Chairperson and AIGI shall consult with the appropriate prosecutor, or DOJ representative on whether to modify, suspend, or terminate the investigation related to such issues.
2. When unforeseen sensitive circumstances arise, an AIGI shall submit a written application to the URC for authorization to continue the undercover operation previously approved, or amend the existing application.

E. ANNUAL REPORT OF THE UNDERCOVER REVIEW COMMITTEE

1. The URC Chairperson shall retain a file of all applications for approval of undercover operations procedures with a written record of the URC's action on the application and any ultimate disposition by the approving official. The relevant OIG shall also prepare a short summary of each undercover operation submitted for approval by the URC. These records and summaries shall be available for inspection by a designee of the Deputy Attorney General and the Assistant Attorney General in charge of the Criminal Division and CIGIE peer reviews.
2. On an annual basis, the URC shall submit a written report summarizing the following to the CIGIE Investigations Committee, the Attorney General, the Deputy Attorney General, and the Assistant Attorney General in charge of the Criminal Division:
 - a. The types of undercover operations approved and disapproved together with the reasons for disapproval;
 - b. Any major issues addressed by the URC in reviewing applications and how they were resolved; and,
 - c. Any significant modifications to the operations recommended by the URC.

F. DEPOSIT OF PROCEEDS; LIQUIDATION OF PROPRIETARIES

As soon as the proceeds from any undercover operation are no longer necessary for the conduct of the activity, the remaining proceeds shall be deposited in the U.S. Treasury as miscellaneous receipts.

Whenever a proprietary with a net value over the amount specified by the Department of Justice Appropriation Authorization Act or other applicable laws is to be liquidated, sold, or otherwise disposed of, the OIG shall report the circumstances to the Attorney General

and the Comptroller General. The proceeds of the liquidation sale or the disposition after obligations are met shall be deposited in the U.S. Treasury as miscellaneous receipts.

VII. FILES MAINTENANCE

The URC Chairperson will maintain the official records of the URC. All undercover operation documents in the possession of the URC Chairperson and URC members must be secured in a locked container, such as a GSA-approved fireproof safe, within a locked office when not in use (or equally secure configuration). Access to such documents must be limited to individuals with a need-to-know. At the conclusion of the URC's involvement in a particular undercover operation, all original records obtained or generated by the URC including but not limited to applications for undercover operation approval, URC approval/disapproval documents, extension request and approval memoranda shall be provided to the OIG that conducted the operation. That OIG will maintain such records in accordance with its record retention policy and guidelines established by the National Archive and Records Administration.

VIII. RESERVATION

These Guidelines are set forth solely for the purpose of internal OIG guidance. They are not intended to be relied upon to create any rights, substantive or procedural, enforceable by law, and by any party in any matter, civil or criminal, nor do they place any limitations on otherwise lawful investigative or litigative prerogatives of the Offices of Inspector General or the U.S. Department of Justice.

XI. AMENDMENTS

On the motion of a current member of the CIGIE Investigations Committee, these Guidelines may be amended by a majority vote of the membership of the Committee. Voting may be accomplished at a duly called Investigations Committee meeting, bye-mail, or other means at the discretion of the Committee Chair.