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FEDERAL BUREAU OF INVESTIGATION

OVERALL CLASSIFICATION:
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FBIHQ DIOG Training Session B

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DIOG Section 17: Otherwise Illegal Activity (OIA)

- Conduct in the course of duty by an FBI employee or CHS which constitutes a crime under local, state, or federal law if engaged in by a person without authorization to engage in that conduct.
- Applies to undercover activity and use of CHS

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DIOG Section 17: OIA for CHS

- Must be approved in conformity with AGG-CHS and FBI's CHSPM
- Defined in CHS policy as either Tier I or Tier II activity
- Different approval levels
 - Tier I - DOJ/appropriate FPO or NSD Atty approval
 - Tier II - SAC approval

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DIOG Section 17: TIER I OIA

- Certain specified activity that would constitute a misdemeanor or felony under federal, state, or local law; and involves:
 - Commission of, or significant risk of, act of violence by persons other than by CHS
 - Corrupt conduct or significant risk of corrupt conduct by senior federal, state, or local public officials
 - Manufacturing, importing, exporting, possession, or trafficking of controlled substances (U.S.S.G.)

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DIOG Section 17: Tier I OIA

- Significant financial loss exceeding those specified in U.S.S.G. (Currently \$1M)
- The provision to another person of
 - any item, service, or expertise necessary for a federal, state, or local offense that the person would otherwise have difficulty obtaining
 - any quantity of a controlled substance, explosive, firearm, or other weapon without expectation of its recovery

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DIOG Section 17: TIER II OIA

- Any other activity that would constitute a misdemeanor or felony under federal, state, or local law if engaged in by a person acting without authorization.

• NEW:

[REDACTED]
[REDACTED]
[REDACTED] (CHSPM to be updated)

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DIOG Section 17: TIER II OIA Authorization

- Must be authorized in writing in advance for a specified period
- By SAC (CFP and SAC can agree on delegation)
- Not to exceed 90 days, but may be renewed

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DIOG Section 17: OIA PROHIBITIONS

- FBI can never authorize a CHS to:
 - participate in an act of violence except in self-defense; or
 - participate in an act designed to obtain information for the FBI that would be unlawful if conducted by a law enforcement agent (illegal wiretaps, illegal searches, etc.)

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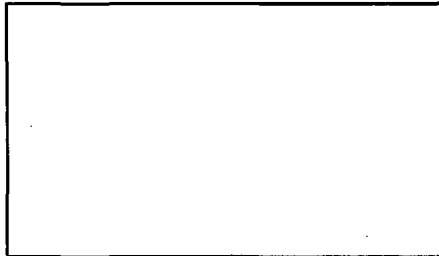
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DIOG Section 17: OIA for CHS

- CHSPM Provisions for



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DIOG Section 17: OIA in UC ACTIVITY

- Criminal: Must be approved in conformity with AGG-UCO. If so approved, satisfies DIOG requirements
- Tier I/II approach not applicable
- Felony OIA will make case Group I UCO, but there are listed exceptions that may be approved as Group II UCO by SAC

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DIOG Section 17: OIA in UC Activity

- National Security / FI: Must be approved in conformity with AGG-Dom and DIOG
- DOJ/NSD is approving component for OIA beyond that authorized for an SAC in DIOG 17.5

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DIOG Section 17: OIA in UC Activity

- SAC Approval permitted for:
 - Misdemeanors
 - Consensual monitoring, even if a crime under state, local, or tribal law
 - Controlled purchase, receipt, delivery, sale of drugs, stolen property, contraband
 - Payment of bribes (but other FBI policy may limit amounts—consult CID PG)

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DIOG Section 17: OIA in UC Activity

- SAC Approval permitted (Cont.)
 - Making false representations as to personal identity or true ownership of a proprietary
 - Money Laundering not exceeding \$1M
 - Special rules if OIA involves material support to terrorism, violation of export controls, or proliferation of WMD

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DIOG Section 17: Consensual Monitoring of Communications as OIA

- Policy: For those state, local, and tribal governments that do not sanction or provide a viable LE exception for one party consent, the SAC must approve the consensual monitoring as OIA
 - One party consent must be first obtained
 - SAC authority to approve OIA regarding consensual monitoring is delegable to ASACs and SSAs

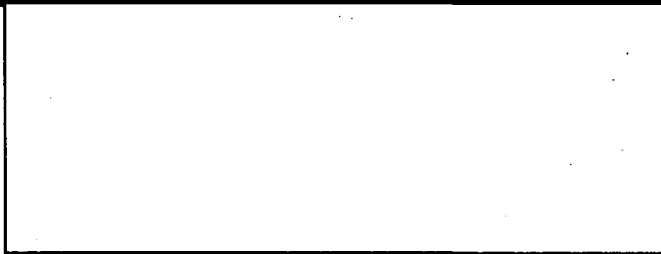
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OIA Example



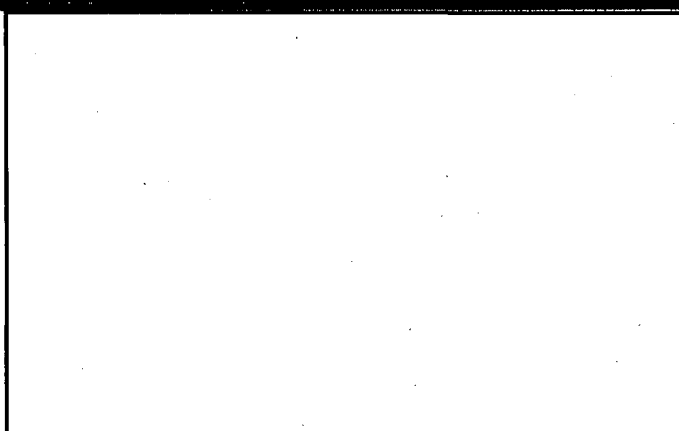
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OIA Example



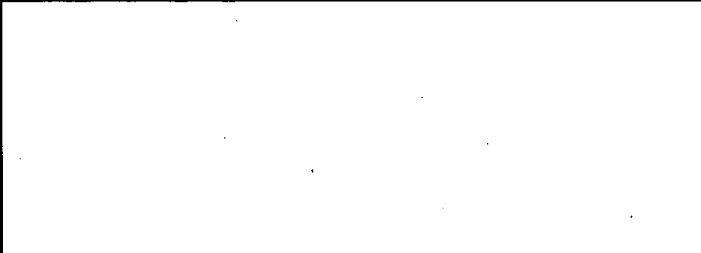
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OIA Example



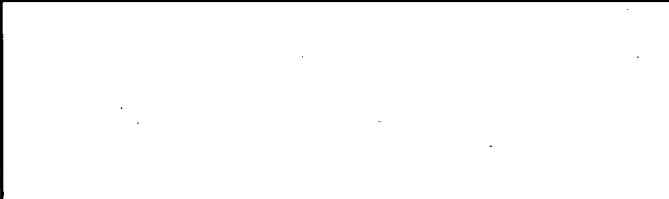
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OIA Example



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DIOG Section 10: Sensitive Investigative Matter

- **Investigations and Assessments are deemed "sensitive" when they involve activities of:**
 - A domestic public official (corruption or nat'l security threat)
 - A political candidate (corruption or nat'l security threat)
 - A religious or political organization or individual prominent in such organization (as either a victim or the subject of the assessment or investigation)
 - News media
 - Matters having an academic nexus (FBI policy)
 - Any other matter which should be brought to the attention of FBIHQ or DOJ, in the judgment of authorizing official

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DIOG Section 10: Sensitive Investigative Matter

- **Domestic Public Official Defined:**

An individual elected or appointed to a position of trust in a federal, state, local or tribal government entity or political subdivision thereof. A matter involving a domestic public official is a sensitive investigative matter if the assessment or predicated investigation involves corruption or a threat to the national security.

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DIOG Section 10: Sensitive Investigative Matter

- **Corruption Defined:**
Typically involves payment of bribes, kickbacks or other things of value in exchange for official action or inaction with respect to the public official's duties.
- **Threat to the National Security Defined:**
International terrorism; espionage and other intelligence activities, sabotage, and assassination, conducted by, for, or on behalf of foreign powers, organizations, or persons; foreign computer intrusion; and other matters determined by the Attorney General, consistent with E.O. 12333.

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DIOG Section 10: Sensitive Investigative Matter

- **Political Candidate Defined:**
An individual who is seeking election to, or nomination for election to, or who has authorized others to explore on his or her behalf the possibility of election to, an office in a federal, state, local or tribal governmental entity or political subdivision thereof. As with domestic public officials, a matter involving a political candidate is a sensitive investigative matter if the assessment or predicated investigation involves corruption or a threat to the nation security.

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DIOG Section 10: Sensitive Investigative Matter

- **Political Organization or Individual Prominent is
such an Organization Defined:**

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DIOG Section 10: Sensitive Investigative Matter

- **Religious Organization or Individual Prominent in
such an Organization Defined:**

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**DIOG Section 10:
Sensitive Investigative Matter**

- **Member of Media or News Organization Defined:**

- **Refer to the DIOG Classified Appendix for additional guidance**

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**DIOG Section 10:
Sensitive Investigative Matter**

- **Other Matters Defined:**
 - Any matter that in the judgment of the official authorizing an investigation that should be brought to the attention of FBIHQ and other DOJ officials.
 - As a matter of FBI policy, "judgment" means the decision of the authorizing official is discretionary.

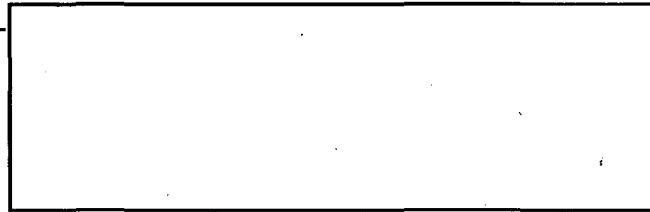
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DIOG Section 10: Sensitive Investigative Matter

- **Academic Nexus Defined:**



- **Refer to the DIOG Classified Appendix for Additional Guidance**

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DIOG Section 10: Sensitive Investigative Matter

- **Factors to Consider (FBI employee, CDC/OGC, Approving Official):**
 - Seriousness/severity of the violation/threat;
 - Significance of information sought to the violation/threat;
 - Probability that that proposed course of action will be successful;
 - Risk of public exposure, and if there is such a risk, the adverse impact or the perception of the adverse impact on civil liberties and public confidence; and
 - Risk to the national security of public welfare if the proposed course of action is not approved (i.e., risk of doing nothing).
- **Least Intrusive Method Feasible**

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DIOG Section 10: Sensitive Investigative Matter

- **Types 1 and 2 Assessments:**

If sensitive investigative matter develops after initiating Assessment – obtain CDC Review and SAC approval “as soon as practicable.”

FBIHQ notification is not required.

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DIOG Section 10: Sensitive Investigative Matter

- **Types 3, 4, and 6 Assessments:**

If sensitive investigative matter circumstances are known to exist before initiating assessment – prior CDC review and SAC approval are required.

If SIM circumstances develop after initiating assessment – Investigative activities must stop until CDC review and SAC approval have been obtained.

FBIHQ notification is not required.

All Type 6 Assessments require prior FBIHQ CMS approval. If a sensitive investigative matter arises after initiation of Type 6 Assessment, notice must be provided to FBIHQ CMS.

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DIOG Section 10: Sensitive Investigative Matter

- **Predicated Investigations (Preliminary and Full):**
 - Prior CDC review and SAC approval required
 - Written notification to the appropriate FBIHQ Unit Chief and Section Chief
 - Notice to United States Attorney's Office, if applicable
 - FBIHQ Section must provide written notification to DOJ Criminal Division or NSD no later than 30 calendar days after initiation
 - See DIOG Classified Annex for [REDACTED]

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DIOG Section 10: Sensitive Investigative Matter

- **A Sensitive Operations Review Committee (SORC)** [REDACTED]



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DIOG Section 10: Sensitive Investigative Matter

- Sensitive Monitoring Circumstance: Consensual monitoring of communications when a sensitive monitoring circumstance is involved requires approval by the DOJ Criminal Division or, if the investigation concerns foreign intelligence or a threat to the national security, by the DOJ National Security Division
- A Sensitive Monitoring Circumstance includes electronic monitoring in an:
 - Investigation of a member of Congress, a federal judge, a member of the Executive Branch at Level IV or above, or a person having served in such capacity in the previous two years (continued on next slide)

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DIOG Section 10: Sensitive Investigative Matter

- A sensitive monitoring circumstance includes (cont.):
 - Investigation of the governor, lieutenant governor, or attorney general of any state or territory, or a judge or justice of the highest court of any state or territory, concerning an offense involving bribery conflict of interest, or extortion
 - A party to the communications in the custody of the Bureau of Prisons or the U.S. Marshal Service or is being or has been afforded protection in the Witness Security Program
 - Any occasion where the U.S. Attorney General, the Deputy Attorney General, or an Assistant Attorney General has requested the FBI to obtain prior approval for the use of consensual monitoring in a specific investigation

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SIM Example

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SIM Example

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SIM Example

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- Does this example meet the standard of a SIM?

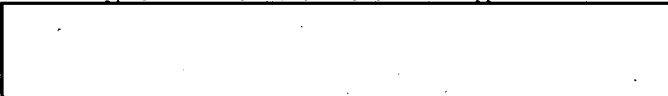
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DIOG Section 16: Undisclosed Participation

- Policy driven by EO 12333
- AGG-Dom required a UDP policy and AG approval of that policy
- FBI Policy seeks uniformity in National Security Investigations and Criminal investigations
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**DIOG Section 16:
Undisclosed Participation**

- [Redacted]
- [Redacted]

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**DIOG Section 16:
Undisclosed Participation**

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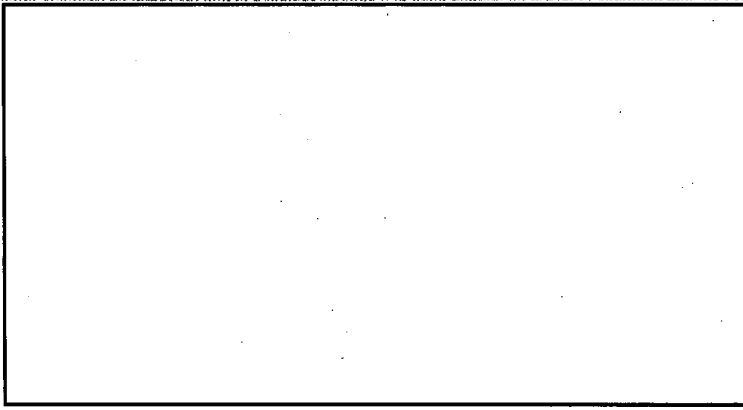
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**DIOG Section 16:
Undisclosed Participation**



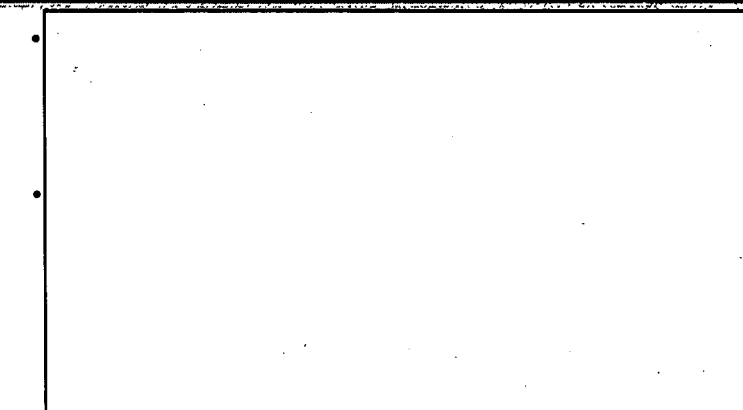
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**DIOG Section 16:
Undisclosed Participation**



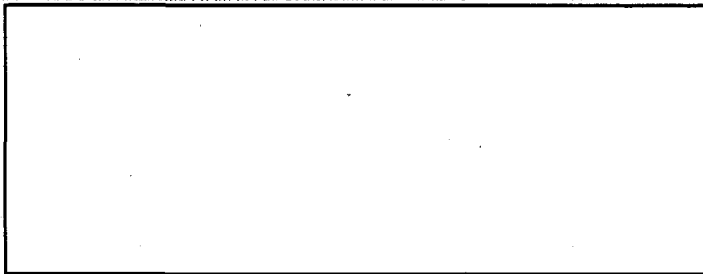
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**DIOG Section 16:
Undisclosed Participation**



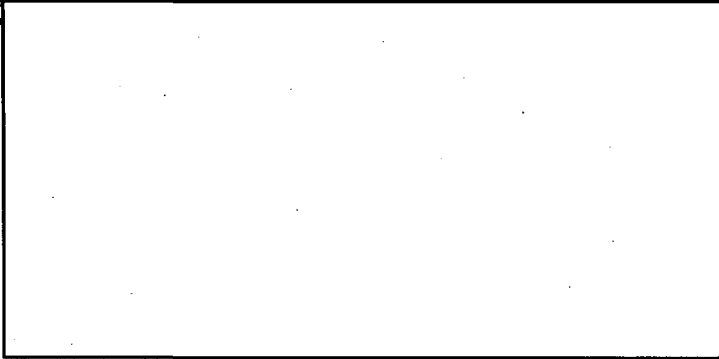
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**DIOG Section 16:
Undisclosed Participation**



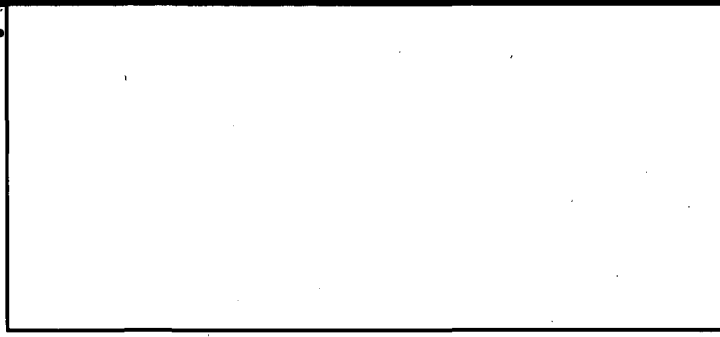
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**DIOG Section 16:
Undisclosed Participation**



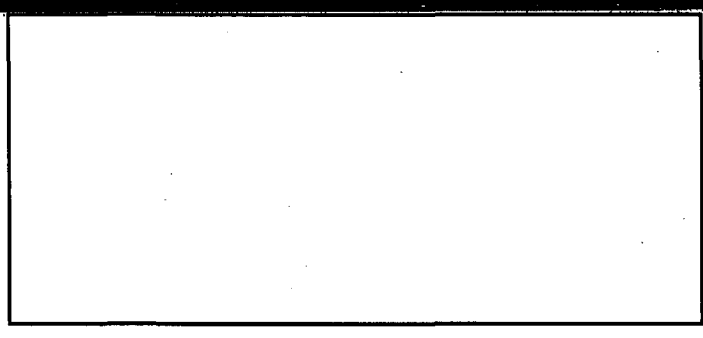
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**DIOG Section 16:
Sensitive UDP**



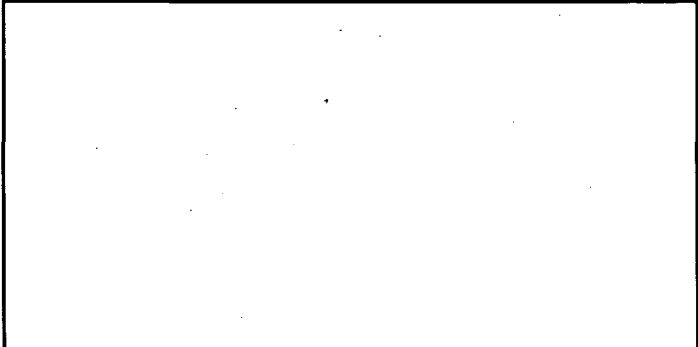
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**DIOG Section 16:
UDP Approval**



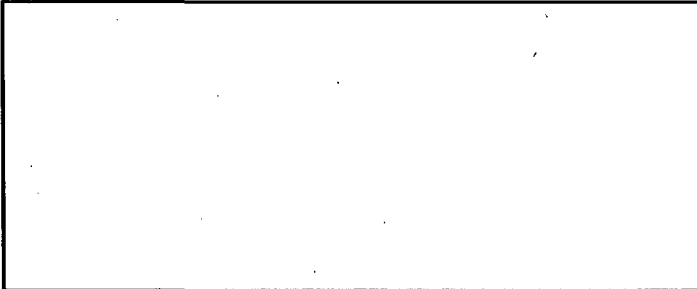
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DIOG Section 16:



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 **DIOG Section 16:**

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 **DIOG Section 16:**

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 **DIOG Section 16:**

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 **DIOG Section 16:**

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DIOG Section 16:
Standards for Review and Approval

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DIOG Section 16:
Standards for Review and Approval

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 **DIOG Section 16:**

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 [Redacted] **Example**

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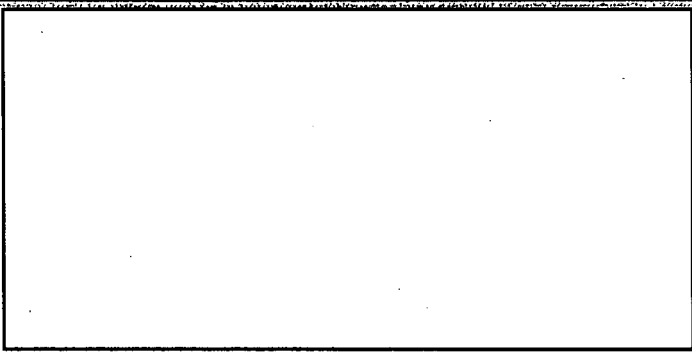
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Scenario



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Scenario



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Scenario

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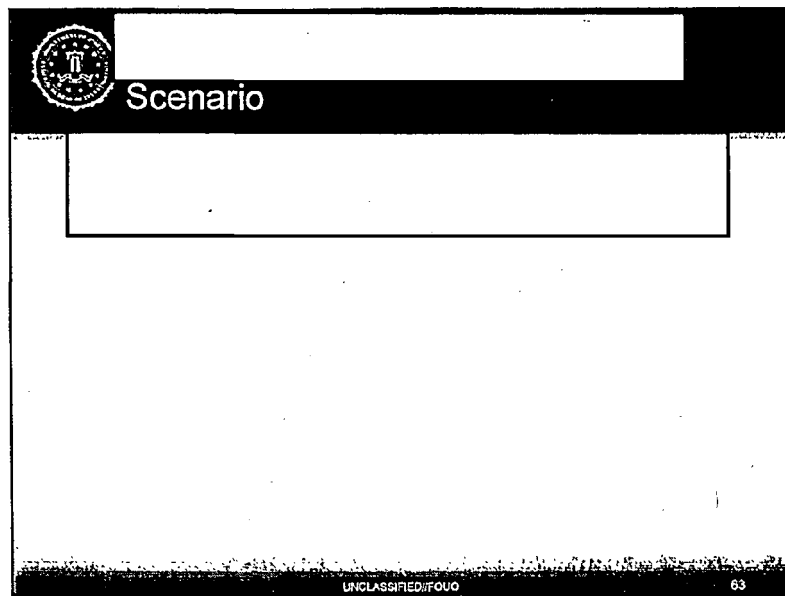
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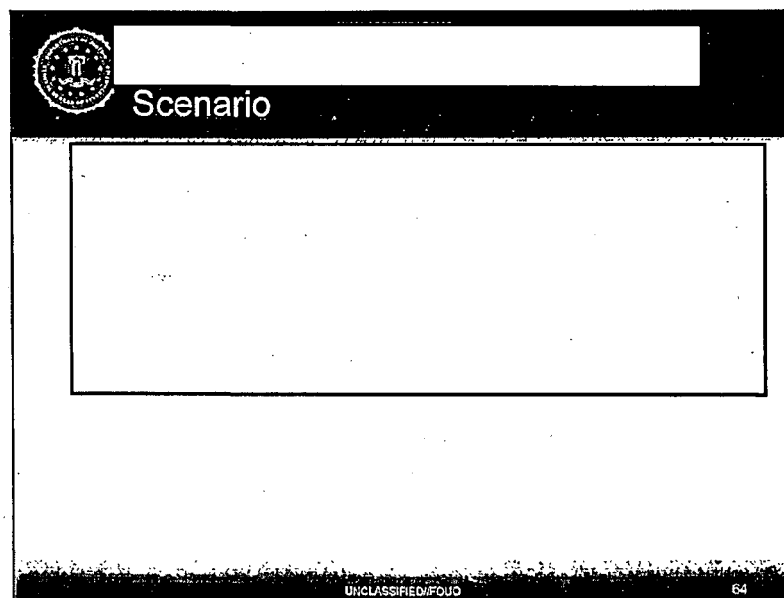
Scenario

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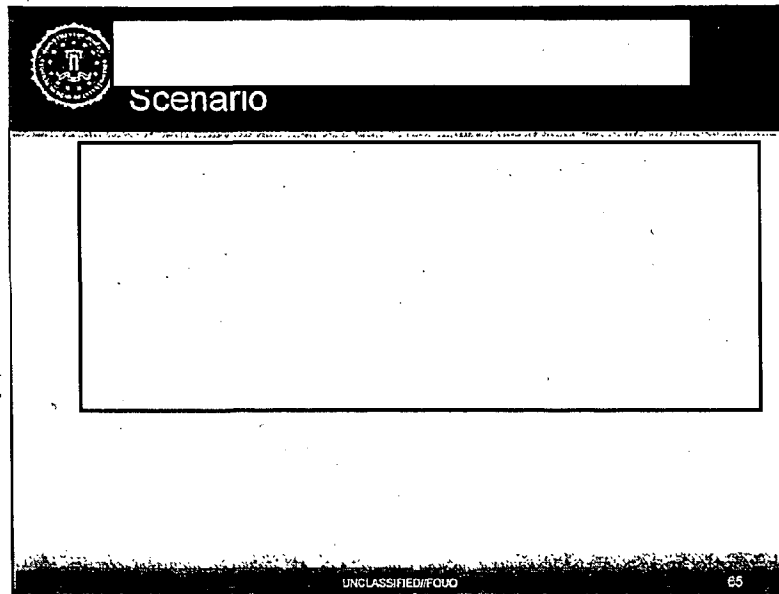
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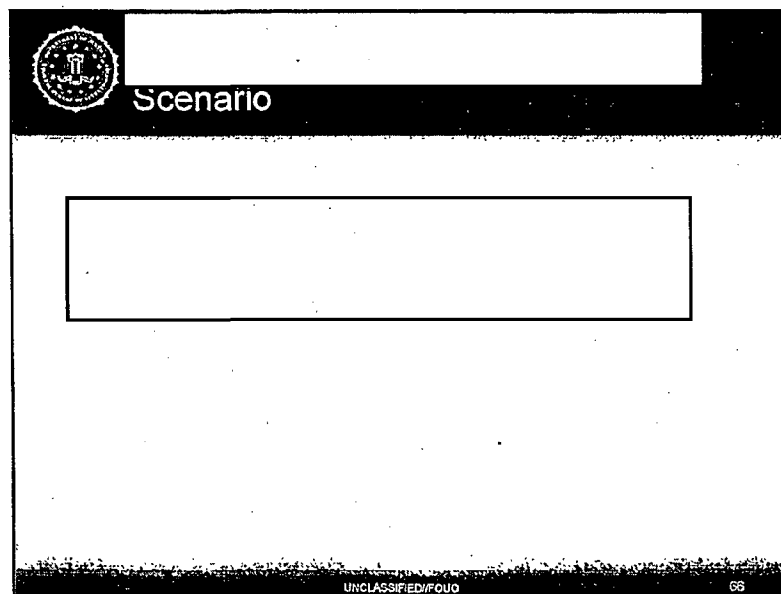
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Scenario

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Scenario

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