CHAPTER 700 - CHIEF COUNSEL

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CHAPTER 700 – CHIEF COUNSEL

(700)-10 Introduction

This chapter provides an overview of the Treasury Inspector General for Tax Administration's (TIGTA) Office of Chief Counsel (Counsel) and describes the responsibilities of the office, establishes policy and procedures, and provides guidance on legal topics that are addressed by Counsel, *i.e.*, the legal staff and government information specialists.

10.1 Abbreviations and Acronyms.

Acronyms	Meaning
ASAC	Assistant Special Agent in Charge
AUSA	Assistant United States Attorney
BFS	Bureau of Fiscal Service
CC	Chief Counsel
CCW	Chronological Case Worksheet
CEO	Chief Executive Officer
CI	Internal Revenue Service Criminal Investigation
CIGIE	Council of the Inspectors General on Integrity and Efficiency
CMA	Computer Matching Act
COTR	Contracting Officer Technical Representative
CRIMES	Criminal Results Management System
DDC	Debt Collection Center
DEO	Deputy Ethics Officer
DOJ	Department of Justice
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
EIF	Excepted Investment Fund
ETC	Employee Tax Compliance
FLRA	Federal Labor Relations Authority
FOIA	Freedom of Information Act
FTCA	Federal Tort Claims Act
GSA	General Services Administration
IAA	Interagency Agreement
IDRS	Integrated Data Retrieval System
IG	Inspector General
IGEA	Inspector General Empowerment Act
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual

IRS	Internal Revenue Service
LEA	Law Enforcement Agency
MOU	Memoranda of Understanding
MSPB	Merit Systems Protection Board
NLRB	National Labor Relations Board
OGE	Office of Government Ethics
OI	Office of Investigations
OMB	Office of Management and Budget
OPM	Office of Personnel Management
OSC	Office of Special Counsel
PA	Privacy Act
PDIG	Principal Deputy Inspector General
PII	Personally Identifiable Information
ROI	Report of Investigation
RRA 98	Internal Revenue Service Restructuring and Reform Act of 1998
SAC	Special Agent in Charge
SES	Senior Executive Service
SGE	Special Government Employee
SSN	Social Security Number
TIGTA	Treasury Inspector General for Tax Administration
TIN	Taxpayer Identification Number
TOP	Treasury Offset Program
TSP	Thrift Savings Plan
ULP	Unfair Labor Practice
UNAX	Unauthorized Access
U.S.	United States
WAG	Widely Attended Gathering
WIGI	Within Grade Increase

10.2 Authority and Function.

The duties and functions of the Chief Counsel to the Treasury Inspector General for Tax Administration include providing advice to the various TIGTA components on legal issues that arise in the exercise of their responsibilities. Issues include the scope and exercise of TIGTA's authorities and responsibilities; the impact of proposed and existing legislation and regulations on Internal Revenue Service (IRS) and TIGTA programs and operations; legal issues that arise in the conduct and resolution of audits, investigations, inspections, evaluations, and administrative operations (*e.g.*, appropriations, ethics, and personnel matters); and, the disclosure of TIGTA records and information. The Chief Counsel conducts and supervises litigation on personnel and Equal Employment Opportunity matters involving TIGTA employees and, as appropriate, coordinates with the Department of Justice (DOJ) and others on these and other litigation matters.

Additionally, the Chief Counsel reviews and coordinates with DOJ on the enforcement of TIGTA subpoenas. The Chief Counsel is also responsible for determining the availability of TIGTA records and information under Federal confidentiality and access statutes, including the Freedom of Information Act, the Privacy Act, and the Internal Revenue Code.

10.3 Organization.
Click here for the Organizational Chart for the Office of Chief Counsel.

10.4 Mission.
The mission of the Office of Chief Counsel is to provide quality legal advice and services, while adhering to the highest standards of integrity and professionalism, to TIGTA personnel.

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(700)-20 Responsibilities

20.1 Overview.
The Office of Chief Counsel provides a full range of legal services for the Treasury Inspector General for Tax Administration (TIGTA).

20.2 Attorneys.
The attorneys in the Office of Chief Counsel provide advice to TIGTA employees on legal issues that arise during the course of their official duties. Examples include the authority to access and disclose TIGTA records in accordance with I.R.C. § 6103 and the Privacy Act; statutory construction of federal and state statutes, including interpretation of the scope of the Inspector General Act, and taxation issues involving the Internal Revenue Code and implementing regulations; personnel issues; appropriations and contract issues; and ethical, regulatory, and statutory obligations. In addition, the legal staff represents TIGTA in litigation before administrative tribunals and provides litigation support to the Department of Justice and Assistant United States Attorneys on matters arising out of or in connection with TIGTA activities. The attorneys draft, review and/or approve Congressional correspondence responses, Inspector General subpoenas, Memoranda of Understanding, settlement agreements, outside employment requests, consensual monitoring, financial disclosure requirements, proposed legislation, Freedom of Information Act (FOIA) appeals, and TIGTA policies, procedures, and manual provisions. Further, the legal staff reviews TIGTA records to be referred to other law enforcement authorities in accordance with the provisions of the Privacy Act and I.R.C. § 6103. In addition, the attorneys conduct disclosure reviews of reports written by the Office of Audit and the Office of Inspections and Evaluations prior to release to the public.

20.3 Disclosure Branch.
The Disclosure Branch provides advice to TIGTA employees on routine disclosure issues that arise during the course of their official duties such as the disclosure of TIGTA records. The Government Information Specialists in the Disclosure Branch are responsible for processing requests for records maintained by TIGTA made pursuant to the FOIA and the Privacy Act. In addition, the Disclosure Branch drafts testimony authorizations for TIGTA employees who have received subpoenas to testify or produce TIGTA documents. The Disclosure Branch also evaluates and responds to requests from Treasury Equal Employment Opportunity (EEO) investigators for investigatory records relevant to the claims or allegations accepted for investigation. The Disclosure

Branch compiles FOIA data to respond to monthly data calls from the Department of the Treasury (Department) regarding requests received, closed and backlogged. The Disclosure Branch is also responsible for submitting a comprehensive annual report to the Department that contains detailed statistics on the number of requests received and processed by TIGTA, the time taken to respond, and the outcome of each request, as well as many other vital statistics regarding TIGTA's administration of the FOIA.

TIGTA's Disclosure Officer is also the FOIA Public Liaison for the Bureau who serves as a mediator in resolving issues with FOIA requesters.

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(700)-30 Ethics

This section contains general instruction and guidance for Treasury Inspector General for Tax Administration (TIGTA) personnel regarding the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). The instruction and guidance do not serve as substitutes for the Standards. Any questions or concerns about ethics should be directed to TIGTA's Chief Counsel, who is the Agency's Deputy Ethics Officer (DEO), at *TIGTA Counsel Office mailbox.

Note: This section does not address the additional ethical rules that may govern the different professions of TIGTA employees *e.g.*, attorneys and auditors.

30.1 History and Background.
In 1978, Congress enacted the Ethics in Government Act of 1978 (the Act), 5 U.S.C. App. 4. Section 401(a) of the Act established the Office of Government Ethics (OGE) as a separate agency in the executive branch. In addition, OGE received the authority to provide overall direction of executive branch policies to prevent conflicts of interests on the part of officers and employees of any executive agency. The Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act), Pub. L. No. 112-105, 126 Stat. 291, amended Title 1 of the Act, 5 U.S.C. app. 101 et seq.

In 1989 and 1990, President George H.W. Bush signed two Executive Orders that detail the Principles of Ethical Conduct for Employees of the Executive Branch (the Principles). The Principles establish fair and exacting standards of ethical conduct and ensure that every citizen can have complete confidence in the integrity of the Federal Government. Exec. Order No. 12674, 54 Fed. Reg. 15159, *modified*, Exec. Order No. 12731, 55 Fed. Reg. 42547. These Executive Orders also authorize each agency to supplement any regulations issued by OGE with regulations of special applicability. The Department of the Treasury has issued supplemental regulations for its employees, Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury (Treasury Supplemental Standards), which can be found at 5 C.F.R. Part 3101. These Executive Orders also grant OGE the authority to promulgate, in consultation with the Attorney General and the Office of Personnel Management, "regulations that establish a single, comprehensive, and clear set of executive-branch standards of conduct that shall be objective, reasonable and enforceable." In addition, OGE is granted the authority to promulgate regulations interpreting the provisions of the post-employment statute (18 U.S.C. § 207); the general conflict-of-interest statute (18 U.S.C. § 208); and, the statute prohibiting supplementation of salaries (18 U.S.C. § 209). OGE is tasked to promulgate regulations establishing a system of confidential financial disclosure pursuant to the Act.

Pursuant to its authority, OGE enacted the following ethics regulations: Executive Branch Financial Disclosures, Qualified Trusts, and Certificates of Divestiture, 5 C.F.R. Part 2634; the Standards, 5 C.F.R. Part 2635; Limitations on Outside Earned Income, Employment and Affiliations and Affiliations for Certain Noncareer Employees, 5 C.F.R. Part 2636; Interpretation, Exemptions and Waiver Guidance Concerning, 18 U.S.C. § 208 (Acts Affecting a Personal Financial Interest), 5 C.F.R. Part 2640; and, Post Employment Conflict of Interest Restrictions, 5 C.F.R. Part 2641.

30.2 TIGTA's Ethics Program.

30.2.1 General Rule. TIGTA has an ethics training program that educates employees on ethics laws and rules. The training program includes an ethics orientation for all new TIGTA employees and annual ethics training for covered employees. See Chapter (600)-70.26.

30.2.2 Ethics Orientation. As part of TIGTA's orientation program, each new TIGTA employee is provided training concerning the ethics Principles and Standards, given a hyperlink to the Standards and Treasury Supplemental Standards, and provided contact information for TIGTA's ethics official. Office of Chief Counsel personnel are available to advise the employee on ethics issues. New TIGTA employees are entitled to a total of one hour of official duty time to review the Standards and/or attend ethics training.

30.2.3 Annual Ethics Training. Each calendar year, TIGTA provides ethics training to the following employees:

- The Inspector General;
- Employees who are required by 5 C.F.R. Part 2634 to file public financial disclosure reports;
- Employees defined as confidential filers in 5 C.F.R. Part 2634 or designated by TIGTA under 5 C.F.R. Part 2634 to file confidential financial disclosure reports;
- Contracting Officer Technical Representatives (COTRs); and,
- Other employees designated by the Inspector General or his designee based on their official duties.

This training generally covers the Principles, the Standards, Treasury Supplemental Standards, and Federal conflict of interest statutes. Also, employees are provided the contact information for the designated agency ethics official.

30.2.4 New Supervisor Ethics Training. Within the first year of being appointed to a supervisory position, new supervisors must complete the new supervisor ethics training course. The training generally covers a supervisor's role in advancing Government ethics within TIGTA, serving as an example of ethical behavior for subordinates, and assisting agency ethics officials in evaluating and resolving potential conflicts of interest.

30.3 Outside Employment Activities.

Pursuant to the Standards, 5 C.F.R. §§ 2635.801-809, an employee may not engage in outside employment or activity that conflicts with the official duties of his or her position. An activity conflicts with official duties if it: a) is prohibited by statute or regulation; or, b) would require the employee to be disqualified from matters so central to the performance of the employee's official duties as to materially impair the ability to carry out those duties. An employee who wishes to engage in outside activities must comply with all relevant provisions of 5 C.F.R. §§ 2635.801-809 (Subpart H – Outside Activities). These provisions apply to both compensated and uncompensated outside activities. In addition, employees must endeavor to avoid action creating an appearance of violating any of the Standards.

The Treasury Supplemental Standards, 5 C.F.R. Part 3101, require all Treasury employees to obtain prior written approval before engaging in any outside employment or business activity, with or without compensation. 5 C.F.R. § 3101.104(a). Approval shall be granted only upon a determination that the employment or activity is not expected to involve conduct prohibited by statute, the Standards (Part 2635), or any other provision of the Treasury Supplemental Standards. 5 C.F.R. Part 3101.

Given TIGTA's role in overseeing Federal tax administration, limitations on certain outside employment activities involving tax preparation and representation in tax matters are necessary. As a result, TIGTA employees are subject to the same rules applicable to IRS employees as set forth in 5 CFR § 3101.106. TIGTA employees may engage in only unpaid (*i.e.*, no compensation, gift or favor) return preparation or return preparation assistance. Further, TIGTA employees may not appear on behalf of a taxpayer as a representative before any Federal, State, or local government agency, unless specific written authorization has been provided by the Agency's Deputy Ethics Officer. In addition, employees must receive prior approval for any outside employment or business activity, whether compensated or not, involving tax preparation or activities involving tax representation.

Certain activities such as teaching, speaking, writing, fundraising, and representative activities under 5 C.F.R. § 2635.804-808, have special exclusions and requirements and employees should seek guidance from TIGTA's Office of Chief Counsel before engaging in these kinds of activities.

Certain positions, by their very nature, require written approval. These include an officer, director, employee, trustee, general partner, proprietor, representative, executor, or consultant of any of the following: corporation, partnership, trust, or other business entity not exempted below.

Pursuant to the authority set forth in 5 C.F.R. § 3101.104(b), TIGTA has determined the following types of activities **do not require** written approval (see illustrative examples), although other restrictions may apply:

A. Membership and services (including holding office), in civic, scout, religious, social, fraternal, political, educational, community, veterans, and charitable organizations, including corporations, as well as Federal employee organizations, credit unions, and Federal employee unions, as otherwise permitted by law.
   - Examples: Coaching or officiating a youth sport, serving as a director or trustee for a non-profit, alumni association, community, or home owner's association board, tour guide/docent, and election-related volunteer activities.
   - Note to Forms 278 and 450 Filers: Filers are required to report all outside positions on Forms 278 and 450 except those in a religious, social, fraternal, or political entity.
   - Note: Hatch Act restrictions may otherwise apply to certain election-related and political activity (see section 30.10).

B. Participation in the Armed Forces Reserves or National Guard.

C. Services as a notary public.

D. Sales/Exchanges provided that the sale or exchange is not solicited or transacted during duty hours or in space occupied by TIGTA offices, and is otherwise permitted by law;
   - Examples: Sales of retail merchandise, insurance, antiques, and homemade or homegrown products.

E. Rental of personally-owned personal property.

F. Rental of personally-owned real property, limited to one property.
   - Note: Exclusion does not apply to the rental of multiple properties, "flipping" properties, and/or hiring a management company to manage the property.

G. Artistic and entertainment-related services.
   - Examples: Teaching musical lessons, performing in community theater, and performing as a musician.

H. Minor services and odd jobs.
   - Examples: fitness instructor, auto repair, maintenance/repair work, making deliveries, parking attendant, and event security.

I. Personal fiduciary: Serving as a trustee, executor, administrator, guardian, or other personal fiduciary for family members.
   - Note: For trustee positions, exception does not apply where the body of the trust is a business entity.

The determination as to whether one of the above-listed exemptions applies is fact specific, and employees may not engage in activities otherwise prohibited. Depending upon the circumstances, similar facts may produce a different result. An employee who has a question regarding whether an outside employment or business activity requires prior written approval should consult with TIGTA's Office of Chief Counsel.

TIGTA functions may require its employees to adhere to additional procedures. Each TIGTA employee is responsible for becoming familiar with, and following, any specific functional requirements.

A TIGTA employee who wishes to engage in outside employment in an activity not exempted above must submit a Form 7995, *Outside Employment or Business Activity Request*, to his or her supervisor. Upon receipt, the employee's supervisor should note the date of receipt in Section 2A of the form and review the written request form for completeness. If additional information is necessary, the supervisor should return the request form to the employee.

The form requires several levels of functional review (*i.e.*, supervisor, reviewer (manager), and recommending official (second level manager)). The functional review should consider whether the proposed outside employment or business activity conflicts with the function's operations. After all required levels of functional reviewers approve the form, it should be submitted to the Office of Chief Counsel.

The Office of Chief Counsel will review each request, seeking additional information from the employee as needed. The Office of Chief Counsel will maintain on file all outside employment requests and will return a copy of the approved or disapproved request to the employee, his/her manager, and function head. TIGTA will retain all requests for approval, whether granted or denied, in the employee's Official Personnel Folder (temporary side).

Employees must ensure that any outside employment request on file reflects current outside employment activities and that no outside employment is changed or begun without prior approval. Employees must renew requests for outside employment annually, on a calendar year basis (*i.e.*, before the beginning of the calendar year).

30.4 Financial Disclosures.

30.4.1 Rule for Public Filers. Public filers (Inspector General and TIGTA members of the Senior Executive Service (SES)) who perform the duties of the position or office for a period in excess of 60 days during a calendar year (including those acting in such a position), must file a public financial disclosure report, OGE Form 278e, *Executive Branch Personnel Public Financial Disclosure Report*, disclosing their financial interests as well as the interests of their spouses and minor children, on or before May 15 of the succeeding year. 5 C.F.R. Part 2634. Individuals who perform, or are reasonably expected to perform, the duties of these positions or office must file a New Entrant OGE Form 278e within 30 days of assuming the position or office. In addition to the annual reporting requirement, public filers must file a periodic transaction report, OGE Form 278-T, in *Integrity*, identifying any purchase, sale, or exchange by the filer, the filer's spouse, or dependent child of stocks, bonds, commodity futures, and other securities if the amount of the transaction exceeds $1,000. The following transactions are **excluded**: (1) mutual funds and other excepted investment funds (EIF); (2) certificates of deposit, savings, checking, or money market accounts; (3) U.S. Treasury bills, notes, and bonds; (4) TSP accounts; (5) real property; and (6) transactions solely between the filer, the filer's spouse, or dependent child. All Forms 278 (*i.e.*, Form 278e and Form 278-T) must be filed electronically in *Integrity*, OGE's electronic filing system.

Transactions must be disclosed within 30 days of the filer's notification of the transaction or within 45 days of the transaction, whichever is earlier. The Office of Chief Counsel recommends filing any necessary OGE Form 278-T by the 15th day of the month to ensure compliance. Negative reporting is not required.

30.4.2 General Rule for Confidential Filers. In general, the head of each function makes the determination as to which functional positions require the filing of an OGE Form 450, Confidential Financial Disclosure Form, based on the following criteria:

- All GS/GM-15 employees;
- Positions whose incumbents exercise significant judgment regarding contracting or procurement activities or who qualify as a Contracting Officer Technical Representative (COTR);
- Supervisors of positions whose incumbents are required to file a Form 450; and
- Employees who acted for more than 60 consecutive days in a position that requires the filing of a Form 450.

30.4.2.1 Functional Designated Positions.
The following TIGTA positions have been designated as confidential filer positions, for which the incumbent (either permanent or acting for more than 60 days) is required to file a Form 450, *i.e.*, are covered positions:

Office of Mission Support

- Assistant Deputy Inspector General for Mission Support (PD #09014Z);
- Directors:
    - Director, Facilities Management & Support Services (PD #19031Z);

  - Director, Finance & Procurement (PD #06Z402);
  - Director, Human Capital & Personnel Security (PD #19029Z); and
  - Director, Communications (PD #08007Z).
- Assistant Directors for Finance and Procurement Services (PD #13016Z and PD #11145Z);
- Contract Specialists (PD #10082Z and PD #15014Z); and
- Management and Program Analyst (PD #13011Z).

Office of Audit

- Supervisory Auditor (Performance) Director (PD #03Z404);
- Supervisory Auditor (Performance) (Director, Office of Management and Policy) (PD #Z29952);
- Supervisory Auditor (Performance) (Director, Systems Security) (PD #20009Z);
- Program Manager (Director, Strategic Workforce Planning and Development) (PD #08004Z);
- Supervisory Information Technology Specialist (Director) (PD #15203Z);
- Management and Program Analyst (Staff Assistant to the AIG for Management Support or AIGA Management Planning and Workforce Development) (PD #02Z543);
- Supervisory Auditor (Performance) Manager (PD #Z91509);
- Supervisory Auditor (Performance) (Peer Review) (PD #21018Z)
- Supervisory Auditor (Performance) (Procurement Fraud Audit Manager) (PD #11147Z);
- Supervisory Information Technology Specialist (Information Technology Audit Manager) (PD #11135Z);
- Supervisory Management & Program Analyst (Supervisory Evaluator) PD #13008Z)
- Supervisory Management & Program Analyst (PD #21014Z);
- Supervisory IT Specialist (DATAMGT) (Data Strategy) (PD #19002Z);
- Supervisory IT Specialist (DATAMGT) (Data Extract Manager) (PD #19001Z); and
- Supervisory Information Technology Specialist (DATAMGT) (Data Analytic Manager) (PD #21012Z).

Office of Investigations

- Criminal Investigator, GS-1811-13 through -15 (PD #Z90707, PD #04Z304, and PD #Z29944);
- Director, Forensic and Digital Science Lab (PD #05Z006);
- Deputy Director, Fraud and Schemes Division (PD #14003Z);
- Assistant Director, Fraud and Schemes Division (PD #14013Z);
- Assistant Director, Fraud and Schemes Division-Complaint Management Team (PD #11151Z); and
- Assistant Director in Charge, Criminal Intelligence and Counterterrorism Group (PD #11144Z).

Office of Inspections and Evaluations
- Supervisory Auditor (Performance) Director (PD #03Z404);
- Senior Inspections and Evaluations Specialist (PD #18007Z); and
- Supervisory Auditor (PD #Z91509).

Office of Information Technology
- Chief Information Program Manager (PD #18018Z); and
- Directors (PD #16023Z, PD #15213Z, PD #17015Z, PD #18905Z, and PD #03Z606).

Office of Chief Counsel
- General Attorney, GS-905-15 (PD #Z30068);
- Supervisory General Attorney (PD #Z29914); and
- Supervisory Government Information Specialist (PD #06Z405).

New Entrants: Not later than 30 days after assuming a position determined to be one for which a confidential disclosure report must be filed, or if assigned to such a position in an acting capacity for more than 60 days, new entrants must file a confidential report, OGE Form 450, covering the twelve-month period preceding the filing of the report. New entrant filers may submit an electronically signed PDF OGE Form 450 to *TIGTA Counsel Ethics Training. Alternatively, filers may submit a hard copy form with original signatures for both the filer and manager, and mail it to: Ethics Filing, Office of Chief Counsel, Treasury Inspector General for Tax Administration, 1401 H Street, NW, Suite 469, Washington, DC 20005.

Incumbents: Employees who perform the duties of a covered position for a period in excess of 60 consecutive days during the twelve-month period ending December 31, including more than 60 days in an acting capacity, must file a confidential report, OGE Form 450, on or before **February 15** of the following year. This requirement does not apply to employees who do not serve in a covered position as of that due date for the Annual Form 450 (*i.e.*, an employee who acted for more than 60 days in a position that requires the filing of a Form 450, and who filed a New Entrant Form 450 corresponding with that period, is **not** required to file an Annual Form 450 unless the employee occupies the position as of the due date of the Annual Form 450). Counsel provides instructions for Annual Form 450 completion and submission directly to all designated filers after the calendar year has ended.

30.4.3 Filing of Report. TIGTA's Deputy Ethics Officer or his or her delegate (reviewer) will review each financial disclosure report to determine that:

- Each required item is completed; and,
- No interest or position disclosed on the form violates or appears to violate applicable statutory provisions or regulations.

During the course of review of the financial disclosure report, the reviewer may contact the filer to obtain additional information. Upon completion, the confidential filer will receive notification that the form has been certified.

30.4.4 Access to Public Reports. TIGTA shall, within 30 days after any public report is received by the agency, permit inspection of the report by, or furnish a copy of the report to, any person who makes a written application as provided by agency procedure. The report shall be made available for a period of six years. After the six-year period, the report shall be destroyed unless needed in an ongoing investigation.

An application to obtain a public report must be made to TIGTA's DEO and include the following:

- The requesting person's name, occupation, and address;
- The name and address of any other person or organization on whose behalf the inspection or copy is requested; and,
- That the requesting person is aware of the prohibitions on obtaining or using the report for any unlawful purpose; for any commercial purpose, other than by news and communications media for dissemination to the general public; for determining or establishing the credit rating of any individual; or for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

30.5 Post-Government Employment.

The following statutes and regulations govern post-government employment for Executive Branch Employees:

- Restrictions on former officers, employees, and elected officials of the executive and legislative branches, 18 U.S.C. § 207;
- Penalties and Injunctions, 18 U.S.C. § 216;
- Office of Government Ethics, Post-Employment conflict of interest restrictions 5 C.F.R. Part 2641; and,
- Office of the Secretary of the Treasury, administrative enforcement of post-employment conflict of interest, 31 C.F.R. Part 15.

30.5.1 Ethical Restrictions. Employees of the Department of the Treasury are subject to restrictions on their activities (*i.e.,* matters that they can work on) after they leave Government service. Statutes and regulations bar certain acts by former TIGTA employees that may reasonably give the appearance of making unfair use of prior Government employment and affiliations. These restrictions are fact-specific and, therefore, employees who need guidance on the applicability of these restrictions to a specific situation should seek advice from the Office of Chief Counsel, which will respond with written guidance. 18 U.S.C. § 207 and 5 C.F.R. Part 2641. The relevant restrictions are as follows:

- Permanent restriction on any former employee's representations to United States concerning particular matter in which the employee participated personally and substantially;
- Two-year restriction on any former employee's representations to United States concerning particular matter for which the employee had official responsibility;
- One-year restriction on any former senior employee's representations to former agency concerning any matter, regardless of prior involvement;
- One-year restriction on any former senior or very senior employee's representations on behalf of, or aid or advice to, a foreign entity; and
- One-year restriction on any former private sector assignee under the Information Technology Exchange Program representing, aiding, counseling or assisting in representing in connection with any contract with former agency.

Violations of these post-employment restrictions may result in civil and criminal penalties, including imprisonment, fines, and injunctive relief (*See* 18 U.S.C. § 216 and 5 C.F.R. § 2641.103).

The post-employment restrictions apply to a former employee's involvement in specific and general matters depending upon the nature of the former employee's level of employment and nature and extent of the involvement (absent an exception or waiver).

30.5.1.1 Restrictions That Apply to All Former Employees.

30.5.1.1.1 Permanent Representational Ban for Matters of Personal and Substantial Involvement. Former employees are prohibited from making, with the intent to influence, any communication to or appearance before an employee of the United States (U.S.) on behalf of an Executive or Judicial Branch employee regarding a particular matter involving specific parties in which the employee participated personally and substantially as a Government employee, and in which the U.S. is a party or has a direct and substantial interest. This restriction applies upon an employee's termination from Government service and is permanent and continues for the duration of the particular matter.

30.5.1.1.1.2 Personal and Substantial Participation. A person participates personally and substantially in a particular matter through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise. *Personal* participation means direct participation, including that of a subordinate in a matter when actually directed by the employee.

"Substantial" participation is where the employee's involvement is of significance to the matter, or forms the basis for a reasonable appearance thereof; more than official responsibility, mere knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue, involving a specific party or parties at any time during

his/her Federal employment. Participation is often substantial even if not determinative of the matter's outcome. The prohibition does not apply to routine requests not involving a potential controversy, *e.g*. requesting publicly available documents or making a status inquiry, conveying factual information, etc. Although signing and filing a tax return of another person as preparer is also not covered by this prohibition, other ethical restrictions applicable to TIGTA employees apply. See section 30.3 regarding limits to outside employment and activities related to tax preparation.

30.5.1.1.1.3 Particular Matter Involving Specific Parties. The prohibition applies only to communications or appearance made in connection with a particular matter involving a specific party or parties.

A "particular matter" includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding but only for those involving a specific party or parties, *e.g.*, a specific proceeding affecting the legal rights of the parties or an isolated transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product approval application, enforcement action, administrative adjudication, or court case.

Matters of general applicability, *e.g.,* legislation or rulemaking of general applicability and the formulation of general policies, standards or objectives, or other matters of general applicability, are not considered specific matters of specific parties.

30.5.1.1.2 Two-year Representational Bar For Matters Under Official Responsibility. For two years after leaving the Government, no former employee may communicate with or appear before any Executive or Judicial branch employee on behalf of any other person concerning a particular matter involving a particular party or parties, in which the U.S. is a party or has a direct and substantial interest, and which such person knows or reasonably should know was actually pending under his or her official responsibility within the one-year period prior to the termination of his or her Federal employment. For any matter that was under the employee's official responsibility during the last year of Government service, the employee is barred for two years after leaving Government service from representing anyone before the Government on that same matter.

"Official responsibility" is the direct authority to authorize or direct Government action. The scope of an employee's official responsibility is determined by those functions assigned by statute, regulation, Executive order, job description, or delegation of authority. For example, all particular matters under consideration in an agency are under the official responsibility of the agency head and each, in turn, is under that of any manager who supervises a person who actually participates in the matter or who has been assigned to participate in the matter within the scope of the employee's official duties. A nonsupervisory employee, however, does not have an "official responsibility"

for his or her own assignments, nor does it include authority to direct only ancillary or non-substantive aspects of a matter (*e.g.*, budgeting, equal employment, scheduling, or format requirements). Acting assignments may constitute official responsibility under certain circumstances.

Official responsibility for a matter can be terminated by a formal modification of an employee's responsibilities, *e.g*. change in the employee's position description, but **NOT** through self-disqualification or avoidance of personal participation. A post-employment communication or appearance is not prohibited unless the former employee knows or reasonably should know that the matter was actually pending under the employee's official responsibility within the one-year period prior to termination of Government service.

30.5.1.2 Restrictions That Apply to Senior Employees.
30.5.1.2.1 One-year Representational Bar. "Senior" employees, *i.e*., whose rate of basic pay is equal to or greater than 86.5 percent of the rate of basic pay for level II of the Executive Schedule, are subject to a so-called one-year "cooling off" period. For a period of one year after leaving a "senior" position, a former senior official may not make any appearance before, or communication to, their former agencies on behalf of any person (other than the U.S.), with the intent to influence them in connection with any matter on which the former senior employee seeks official action. The one-year period is measured from the termination of the senior position, not Government service, unless occurring simultaneously, and applies with respect to service of any capacity, regardless of position, rate of basic pay, or pay grade. In addition, no former "senior" employee may knowingly represent a foreign government or foreign political party before any department or agency of the U.S., or aid or advise a foreign entity.

30.5.1.3 Additional Post-Employment Restrictions.

30.5.1.3.1 Practice before the Internal Revenue Service. All three representational bars apply to former Federal employees, regardless of whether they are a "senior" employee, when practicing before the Internal Revenue Service. 31 C.F.R. § 10.25.

30.5.1.3.2 Partnership Agreements. A former employee may be prohibited from sharing in profits earned by others (such as in a partnership) if the money was earned from having contact with the Government on behalf of third parties (*e.g.*, clients) while the former employee was still in Government (*See* 18 U.S.C. § 203), and may thus want to consider receiving a fixed salary instead of pursuant to a partnership compensation agreement, during the first year following Federal service departure.

30.5.1.3.3 Procurement Integrity Bar. A former employee may be prohibited from accepting compensation from a contractor if the former employee served in a Government position or made a Government decision involving more than $10,000,000 given to that contractor (*See* 41 U.S.C. § 2104).

30.5.1.3.4 Other Requirements. Former employees may be subject to other requirements under some circumstances, without regard to Federal Government service, *e.g.*, under the American Bar Association rules or the Foreign Agents Registration Act.

30.6 Gifts.
The following statutes and regulations govern the acceptance of gifts by Executive Branch employees:

- The Emoluments Clause, U.S. Const., Art. I, § 9, cl. 2;
- Foreign Gifts and Decorations Act of 1966, as amended, 5 U.S.C. § 7342;
- Standards of Ethical Conduct for Executive Branch Employees, 5 C.F.R. § 2635;
- Utilization, Donation and Disposal of Foreign Gifts and Decoration, 41 C.F.R. § 102-42;
- Department of the Treasury Employee Rules of Conduct, 31 C.F.R. § 0.203;
- General Services Administration, GSA Bulletin FMR B-41, Redefinition of Foreign Gifts and Decorations Minimal Value (Jan. 12, 2017);
- Office of Government Ethics, Technical Updating Amendments to Executive Branch Financial Disclosure and Standards of Ethical Conduct Regulations, 82 Fed. Reg. 22735; and
- Treasury Directive 61-04, Foreign Gifts and Decorations.

30.6.1 Gifts From Outside Sources. Generally, an Executive Branch Employee is prohibited from soliciting any gift or accepting any gift from a prohibited source or because of the employee's official position, unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in 5 C.F.R. § 2635. Further, employees should consider declining otherwise permissible gifts if they believe that a reasonable person with knowledge of the relevant facts would question the employee's integrity or impartiality as a result of accepting the gift. Employees should seek advice from the Office of Chief Counsel (Counsel) if they have questions or concerns about accepting a gift.

"Gift" includes any gratuity, favor, discount, entertainment, training, transportation, lodging, meal, loan, forbearance, or other item having monetary value. It ***does not*** include modest items of food and non-alcoholic refreshments such as soft drinks, coffee, and donuts, offered other than as part of a meal; or items with little intrinsic value such as greeting cards, plaques, certificates, and trophies which are intended primarily for presentation.

"Prohibited source" means any person who is either seeking official action by the employee's agency; does business or seeks to do business with the employee's agency; conducts activities regulated by the employee's agency; has interests that may be substantially affected by performance or nonperformance of the employee's official

duties; or, is an organization a majority of whose members have been previously described.

In addition, an employee shall not:

- Accept a gift in return for being influenced in the performance of an official act;
- Solicit or coerce the offering of a gift;
- Accept gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using his public office for private gain;
- Accept a gift in violation of any statute. Relevant statutes applicable to all employees include: 18 U.S.C. § 201(b), which prohibits a public official from seeking, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act or for being induced to take or omit to take any action in violation of his official duty; and 18 U.S.C. § 209, which prohibits an employee, other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee; or
- Accept vendor promotional training contrary to applicable regulations, policies or guidance relating to the procurement of supplies and services for the Government, except pursuant to 5 C.F.R. § 2635.204(l).

30.6.1.1 Exceptions. Counsel will provide guidance to employees on the applicability of the regulations to a "gift" received by an employee. Employees seeking Counsel advice should submit a completed Exhibit (700)-30-1, *Gift Register Form*, with the gift to Counsel.

30.6.1.1.1 Gifts of $20.00 or Less. Except for cash or investment interests, such as stock, bonds, or certificates of deposit, an employee may accept unsolicited gifts having an aggregate market value of $20.00 or less per occasion, provided that the aggregate market value of individual gifts received from any one person under this exception does not exceed $50.00 in a calendar year.

30.6.1.1.2 Gifts Based on a Personal Relationship. An employee may accept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship, rather than the position of the employee.

30.6.1.1.3 Discounts and Similar Benefits. Opportunities, benefits, and discounts offered to the public, to all Government employees, or to all uniformed military personnel are not considered to be “gifts.”

30.6.1.1.4 Awards and honorary degrees. An employee may accept an award for meritorious public service or achievement and any item incident to the award if it is not

from a person or entity that has interests that may be substantially affected by the employee's official duties.

If the award and/or any item incident to the award (1) is in the form of cash or an investment interest, or (2) has an aggregate value over $200 (excluding free attendance to a presentation event, given by the event sponsor, for the employee and the employee's family), the employee may accept it only after the Chief Counsel as the DEO determines, in writing, that the award was made as part of an established program of recognition.

An employee may accept an honorary degree from an institution of higher education as defined at 20 U.S.C. § 1001, or from a similar foreign institution of higher education, based on a written determination by the Chief Counsel as the DEO that the timing of the award of the degree would not cause a reasonable person to question the employee's impartiality in a matter affecting the institution.

An employee accepting an award or honorary degree may also accept free attendance to the presentation event for the employee and members of the employee's family if provided by the sponsor of the event. An employee may also accept unsolicited offers of travel to and from the event for the employee and members of the employee's family if provided by the sponsor of the event, but these travel expenses must be added to the value of the award when determining whether its value exceeds $200.

30.6.1.1.5 Gifts Based on Outside Business or Employment Relationships. An employee may accept meals, lodgings, transportation and other benefits (a) resulting from the business or employment activities of an employee's spouse when it is clear that such benefits have not been offered or enhanced because of the employee's official position; (b) resulting from his/her outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of his/her official status; or (c) customarily provided by a prospective employer in connection with bona fide employment discussions.

30.6.1.1.6 Gifts in Connection with Political Activities Permitted by the Hatch Act Reform Amendments. An employee who, in accordance with the Hatch Act Reform Amendments of 1993, 5 U.S.C. § 7323, may take an active part in political management or in political campaigns, may accept meals, lodgings, transportation and other benefits, including free attendance at events, when provided in connection with such active participation by a political organization described in 26 U.S.C. § 527(e).

30.6.1.1.7 Speaking Engagements. When a TIGTA employee participates as a speaker or panel participant or otherwise presents information on behalf of the agency at a conference or other event, the employee may accept the invitation to attend the event and free attendance at the event provided by the sponsor on the day of the presentation. If the conference is widely attended, the employee may be authorized to

accept the sponsor's offer to waive the attendance fee for the remainder of the conference under the procedures set forth in 30.6.1.1.8.

30.6.1.1.8 Widely Attended Gatherings (WAG) and Other Events. An employee may accept an unsolicited gift of free attendance at all or appropriate parts of a WAG from the sponsor of the event under certain circumstances. A gathering is "*widely attended*" if a large number of persons are expected to attend, those persons have a diversity of views or interests (*e.g.*, it is open to members of an industry or profession or those attending represent a range of persons interested in a given matter), and there will be an opportunity for invited persons to exchange ideas and views. After completing the approval procedure set forth below, upon receipt of a written determination from the employee's first level Executive and the Chief Counsel that (1) the event is a WAG; (2) the employee's attendance is in the agency's interest because it will further agency programs or operations; and (3) that the employee's attendance outweighs the concern that the employee may be, or may appear to be, improperly influenced in the performance of official duties, a TIGTA employee may attend the event. The employee must take leave if the WAG occurs during official duty hours, unless the employee is authorized by TIGTA to attend on excused absence or otherwise without charge to leave, pursuant to TIGTA Operations Manual, Chapter (600)-70.4.

An employee may also accept an invitation from a person other than the sponsor of the event if more than 100 persons are expected to attend the event and the gift of free attendance has a market value of $415.00 or less.

Prior to accepting an invitation, the employee must forward the invitation, a completed Exhibit (700)-30-2, *Invitation Questionnaire*, and any background information, through the employee's first level Executive to the Office of Chief Counsel at *TIGTA Counsel Office for review. The employee's first level Executive will make the written determination regarding (1) whether the employee's attendance is in the interest of the agency because it will further agency programs and operations; (2) whether the agency's interest in the employee's attendance outweighs the concern that the employee may be, or may appear to be improperly influenced in the performance of official duties (see below); and (3) whether the employee must take leave or will be authorized to attend on excused absence or otherwise without charge to leave. In determination whether an agency's interest in the employee's attendance outweighs the concern that the employee may be, or may appear to be, improperly influenced in the performance of official duties, the first level Executive may consider relevant factors including:

(i) The importance of the event to the agency;
(ii) The nature and sensitivity of any pending matter affecting the interests of the person who extended the invitation and the significance of the employee's role in any such matter;
(iii) The purpose of the event to the agency;

(iv) The identity of other expected participants;
(v) Whether acceptance would reasonably create the appearance that the donor is receiving preferential treatment;
(vi) Whether the Government is also providing persons with views or interests that differ from those of the donor with access to the Government; and
(vii) The market value of the gift of free attendance.

5 C.F.R. § 2635.204(g)(4).

The Office of Chief Counsel will make the determination that the event is a WAG and will make the final written determination that the employee may accept the gift of free attendance to the event. When the Office of Chief Counsel makes this final written determination, the Office of Chief Counsel will provide a copy to the employee, his/her manager, and the first level Executive. Upon receipt of this written determination, the employee may accept an unsolicited gift of free attendance.

30.6.1.1.8.1 Free Attendance at WAG for Spouses or Other Guests. When others in attendance will generally be accompanied by a spouse or other guest, and where the invitation is from the same person who has invited the employee, the employee may be authorized to accept an unsolicited invitation of free attendance to an accompanying spouse or one other accompanying guest to participate in all or a portion of the event at which the employee's free attendance is authorized. When in doubt about whether the invitation extends to the employee's spouse or other guest, contact the Office of Chief Counsel and not the person extending the invitation. If the invitation extends to an accompanying spouse or other guest, the market value of the gift of free attendance includes both that of the employee and the spouse or other guest. Provided that spouses or other guests will generally be accompanying other attendees and the invitation is from the same person who invited the employee, TIGTA may authorize, either orally or in writing, an employee to accept an unsolicited invitation of free attendance to an accompanying spouse or to another accompanying guest to participate in all or a portion of the event if the employee's free attendance is permitted under 5 C.F.R. § 2635.204(g)(1) or (2).

30.6.1.1.9 Social Invitations from Persons other than Prohibited Sources. An employee may accept food, refreshments and entertainment, not including travel or lodgings for the employee and an accompanying spouse or other guest, at a social event attended by several persons when: (a) the invitation is unsolicited and from a person who is not a prohibited source; b) no fee is charged to any person in attendance; and c) if either the sponsor of the event or the person extending the invitation to the employee is not an individual, the first level Executive has made a written determination after finding that the employee's attendance would not cause a reasonable person with knowledge of the relevant facts to question the employee's integrity or impartiality, consistent with 5 C.F.R. 2635.201(b).

30.6.1.1.10 Foreign Gifts. The Foreign Gifts and Decorations Act of 1966 authorizes a Federal employee to accept from an agent or representative of a foreign government a gift of minimal value tendered as a souvenir or mark of courtesy. The General Services Administration (GSA) determines the "*minimal value*" for a set three-year period, which is currently $415. Employees receiving a gift from an agent or representative of a foreign government must seek an opinion from the Office of Chief Counsel concerning gift acceptance. The employee must submit the gift and a completed Exhibit (700)-30-1, *Gift Register Form* to Counsel.

30.6.1.2 Acceptance of Travel-Related Payments. TIGTA may authorize the acceptance of travel-related payments and payments in kind from non-Federal sources, either personally by the employee or on behalf of TIGTA, under specific circumstances.

30.6.1.2.1 Agency Acceptance of Travel-Related Payments. TIGTA may accept or authorize an employee to accept on the Agency's behalf, payments or payments in-kind from a non-Federal source, for foreign and domestic travel, subsistence, and expenses related to the employee's (and employee's spouse under certain situations) attendance at a meeting or similar function. However, prior to travel, TIGTA must have:

- issued the employee (and/or spouse) a travel authorization;
- determined that the travel is in the interest of the government;
- determined that the travel relates to the employee's official duties; and,
- concluded that the non-Federal source is not disqualified because of a conflict of interest.

41 C.F.R. § 304-5.1. An employee may not solicit payment of travel-related payments, but may inform the source of this authority upon receiving an invitation. Payments accepted by or on behalf of TIGTA may not be made in cash. In addition, payments by check or similar instrument must be made payable to the Department of the Treasury (not TIGTA or the individual employee). 41 C.F.R. § 304-6.1. Once such payment is received by the traveler, it is accepted on behalf of the Department of the Treasury and must be surrendered to the Office of Mission Support (OMS) upon return from the travel. See Chapter (600)-40.5.7 for additional procedures.

Per Delegation Order 12, the PDIG and each TIGTA function head has the delegated authority to approve acceptance of payments from a non-Federal source, however, a written recommendation from the Chief Counsel as to whether acceptance would cause a reasonable person with knowledge of the relevant facts to question the integrity of agency programs or operations is required. The approving official must consider the identity of the non-Federal source, the purpose of the meeting, the nature and sensitivity of any pending matter which affects the interest of the non-Federal source, together with the significance of the employee's role in such matter. The function head may not authorize acceptance of the payment if he or she determines that a reasonable person would question the integrity of agency programs or operations. 41 C.F.R. § 304-5.3.

Prior to acceptance of the travel-related payment and at least two (2) weeks in advance of travel, the employee shall submit to the Office of Chief Counsel, through his/her manager and function head, a completed Exhibit (700)-30-3, *Non-Federal Source Travel Payment Offers Questionnaire*. If the offer includes spousal travel, the employee must provide an additional memorandum to demonstrate that the spouse's presence at the meeting or similar function will: 1) support the agency's mission or will substantially assist the traveling employee in the performance of his or her duties; 2) be for the purpose of attending a ceremony where the employee will receive an award or honorary degree; or, 3) be for the purpose of the employee's participation in substantive programs related to the agency's mission or operations.

30.6.1.2.2 Acceptance of Travel-Related Payments by Employee. TIGTA may authorize an employee **personally** to accept a contribution or award (in cash or in kind) incident to training or to accept payment (in cash or in kind) of travel, subsistence, or other expenses incident to attendance at meetings. Upon written approval of the function head or designee, an employee may personally accept travel payments from organizations holding a tax exempt status under 26 U.S.C. § 501(c)(3) or from State, local or municipal governmental organizations.

Per Delegation Order 12, the PDIG and each TIGTA function head has the delegated authority to approve acceptance of payments from a non-Federal source, however, a written recommendation from the Chief Counsel as to whether acceptance should be authorized, is required. The Chief Counsel will provide guidance as to whether the following conditions for acceptance are met: 1) the payment or contribution is not a reward for services rendered by the employee to the sponsoring organization prior to the meeting; and 2) acceptance of the payment or contribution by the employee under the circumstances would not reflect unfavorably on the employee's ability to carry out official duties in a fair and objective manner, would not compromise the honesty and integrity of Government programs or of Government employees and their official actions or decisions, would be compatible with the Ethics in Government Act of 1978, as amended; and, would otherwise be proper and ethical for the employee concerned given the circumstances of the particular case.

Prior to acceptance, and at least two (2) weeks in advance of travel, the employee shall submit to the Office of Chief Counsel, through his/her manager and function head, the following information: a completed Exhibit (700)-30-3, *Non-Federal Source Travel Payment Offers Questionnaire*, and a copy of the sponsoring organization's tax-exempt certificate if it claims a 501(c)(3) status.

Employees who are required to submit a financial disclosure report, either OGE Form 278 or OGE Form 450, may be required to report acceptance of payments of travel-related expenses if made personally to the employee.

30.6.2 Gifts Between Employees. An Executive Branch Employee is prohibited from giving, donating to, or soliciting contributions for a gift to an official superior and from accepting a gift from an employee receiving less pay than him/her, unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in this subsection.

30.6.2.1 Gifts to Superiors. Except as provided in this subsection, an employee may not:

- Directly or indirectly give a gift to or make a donation toward a gift for an official superior; or
- Solicit a contribution from another employee for a gift to either his/her superior or the other employee's official superior.

30.6.2.2 Gifts from Employees Receiving Less Pay. Except as provided in this subsection, an employee may not, directly or indirectly, accept a gift from an employee receiving less pay unless the two employees are not in a subordinate-official superior relationship and there is a personal relationship between the two employees that would justify the gift.

30.6.2.3 Limitation on Use of Exceptions. Notwithstanding any exception provided in this subsection, an official superior shall not coerce the offering of a gift from a subordinate.

30.6.2.4 Exceptions. On an occasional basis, including any occasion on which gifts are traditionally given or exchanged, the following may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

- Items, other than cash, with an aggregate market value of $10 or less per occasion;
- Items such as food and refreshments to be shared in the office among several employees;
- Personal hospitality provided at a residence which is of a type and value customarily provided by the employee to personal friends;
- Items given in connection with the receipt of personal hospitality if of a type and value customarily given on such occasions; and,
- Leave transferred under 5 C.F.R. § 630.901 et seq. to an employee who is not an immediate supervisor, unless obtained in violation of 5 C.F.R. § 630.912.

Special, Infrequent Occasions. A gift appropriate to the occasion may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

- In recognition of infrequently occurring occasions of personal significance such as marriage, illness, or the birth or adoption of a child; or,

- Upon occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer.

Voluntary Contributions. An employee may solicit voluntary contributions of nominal amounts from fellow employees for an appropriate gift to an official superior and an employee may make a voluntary contribution of a nominal amount to an appropriate gift to an official superior:

- On a special, infrequent occasion as previously described; and,
- On an occasional basis, for items such as food and refreshments to be shared in the office among several employees

An employee also may accept as gifts such items as food and refreshments to be shared in the office among several employees.

30.6.3 Proper Disposition of Prohibited Gifts. An employee who has received a gift that cannot be accepted shall:

- Return any tangible item to the donor or pay the donor its market value;
- When it is not practical to return a tangible item because it is perishable, the item may, at the discretion of the employee's supervisor or the TIGTA ethics official, be given to appropriate charity, shared within recipient's office, or destroyed;
- For any entertainment, favor, service, benefit or other intangible, reimburse the donor the market value; or,
- Dispose of gifts from foreign governments or international organizations in accordance with 41 C.F.R. § 102-42.

An employee who, on his or her own initiative, promptly complies with the above mentioned requirements of this section will not be deemed to have improperly accepted an unsolicited gift. An employee who consults with TIGTA's ethics official to determine whether acceptance of an unsolicited gift is proper and who, upon the advice of the ethics official, returns the gift or otherwise disposes of the gift in accordance with the ethical requirements, will be considered to have complied with the ethical requirements on his or her own initiative.

30.7 Conflicting Financial Interests.
TIGTA employees are subject to restrictions governing financial conflicts of interest. The restrictions are contained in the criminal provisions of 18 U.S.C. § 208(b)(1) and regulations issued by OGE at Subpart D of the Standards of Ethical Conduct (5 C.F.R. Part 2635) and 5 C.F.R. Part 2640. The rules are intended to prevent an employee from allowing personal interests to affect official actions, and to protect governmental processes from actual or apparent conflicts of interest. However, because in certain cases, the nature and size of the financial interest and the nature of the matter in which

the employee would act are unlikely to affect an employee's official actions, the rules provide exemptions and waiver provisions.

TIGTA employees are prohibited from participating personally and substantially in an official capacity in any particular government matter that would have a direct and predictable effect on their own financial interests or the financial interests of certain other persons identified in the statute.

There are six elements to section 208:

- Federal employee;
- Particular matter;
- Personal and substantial participation;
- Financial interest and imputed financial interest;
- Direct and predictable effect; and,
- Knowledge.

If one element is not met, section 208 does not apply. Each element will be discussed below:

Federal Employee: Section 208 applies to full and part-time executive branch employees and special government employees (SGEs). Contractors and their employees are not covered by section 208, even if they perform the same job duties as government employees.

Particular Matter: Particular matter includes only matters that involve deliberation, decision, or action that is focused on the interests of specific persons or a discrete and identifiable class of persons.

- A judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, or arrest is a particular matter involving specific persons.
- A particular matter may focus on a discrete and identifiable class of persons rather than formal parties. For example, a regulation may identify and apply to a specific class of persons.
- Matters that focus on the interests of a large and diverse group of persons are **not** particular matters. For example, deliberations, actions or decisions that focus on the public are not particular matters.

Personal and Substantial Participation: Involves a direct and significant involvement in a particular matter. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. It includes direct and active supervision of the participation of a subordinate in the matter. Participation

may be substantial even though it is not determinative of the outcome. Examples include:

- Decision;
- Approval;
- Disapproval;
- Recommendation;
- Investigation; or,
- Advice.

Financial Interest: means the potential for gain or loss. The value of the financial interest is irrelevant as is the actual amount of the gain or loss. Financial interests include:

- Ownership of certain financial instruments or investments, such as stocks, bonds, mutual funds, and real estate;
- Salary;
- Indebtedness; or,
- Job offer.

In addition to an employee's own financial interest, section 208 considers the financial interests of certain other people to be the same as the employee's own financial interest. These interests, referred to as imputed financial interests, are interests of the employee's:

- Spouse;
- Minor child;
- General partner;
- Any organization in which the employee serves as an officer, director, trustee, general partner or employee; or,
- Any person or organization with which the employee is negotiating or has an arrangement for prospective employment.

Direct and Predictable Effect: means a close causal link between any decision and action to be taken in the matter and any real (as opposed to speculative) expected effect of the matter on the financial interest.

Knowledge: The employee must have knowledge of his financial interest or imputed financial interest, and knowledge that he is participating in a matter in which he has a financial interest.

30.7.1 Exemptions. OGE has determined that certain interests are too remote or inconsequential to affect the integrity of an employee's services to the government. By

regulation, OGE has exempted certain categories of financial interests from the application of the criminal provisions of 18 U.S.C. § 208. An exemption permits an employee to participate in a particular matter even when the employee would otherwise have a disqualifying financial interest. A brief summary of the most popular regulatory exemptions contained at 5 C.F.R. Part 2640 follows:

Mutual Funds

- Diversified mutual funds – An employee may participate in assignments or projects affecting one or more holdings of a diversified mutual fund. A fund is diversified if it does not have a stated policy of concentrating its investments in any industry, business, single country (other than the United States) or bonds of a single state within the United States.
- Sector mutual funds - Sector funds are funds which concentrate its investments in an industry, business, single country (other than the United States) or bonds of a single state within the United States (for example if the fund name contains the word "telecommunications" or "Canada" or "energy" it is a good indication that the fund is concentrated in those areas and, therefore, is not diversified). An employee may participate in a particular matter affecting the holding of a sector mutual fund if:
    - The affected holding is not invested in the sector in which the fund concentrates; or,
    - The employee's interest in the fund does not exceed $50,000.

Employee Benefit Plans - an employee may participate in any particular matter affecting one or more holdings of an employee benefit plan where the disqualifying financial interest in the matter arises from membership in:

- The Thrift Savings Plan for Federal employees (5 U.S.C. § 8437);
- A pension plan established or maintained by a state government or any political subdivision of a state government for its employees; or,
- A diversified employee pension plan provided the investments of the plan are administered by an independent trustee, the employee does not participate in the selection of the plan's investments and the plan is not a profit sharing or stock bonus plan.

Securities – an employee may participate in assignments or projects affecting companies or other entities in which he owns stocks, bonds or other securities if:

- The securities are publicly traded (as defined at 5 C.F.R. § 2640.102(p)), or are long-term government bonds or municipal bonds and
- The securities meet a *de minimis* market value test. The *de minimis* amount varies according to the type of matter:
    - $15,000 or less for particular matter involving specific parties.

- $25,000 or less for particular matter involving nonparties.
- $25,000 or less for matters of general applicability for one entity affected by the matter and $50,000 or less for all affected entities.

30.7.2 Resolution of Financial Conflicts of Interest. An employee may not engage in activities that conflict with the employee's financial interests. This may be accomplished via recusal (not working on a particular matter), reassignment (ranges from avoiding a particular assignment to transferring the employee to a different section or subject area), divestiture of the financial interest, or establishment of a qualified trust or waiver.

Recusal

The employee who becomes aware of the need to be disqualified from participation in a particular matter should notify the person responsible for the assignment. Recusal is always the first step, even if it is temporary and later it is determined that a different resolution is appropriate. The employee should create a record of actions by providing written notice to the supervisor or other appropriate official.

Divestiture

Divestiture means to detach oneself from the conflicting financial interest. This may be accomplished by selling the financial interest or by resigning from a conflicting outside position. The advantage of divestiture is that it permanently resolves the conflict of interest.

The divestiture may be voluntary or directed. If the employee is directed to divest a financial interest, the employee may be eligible to defer any tax consequences pursuant to a certificate of divestiture issued by the Director of OGE. The certificate must be received before the sale of the disqualifying assets. In such situations, the employee should consult with the Office of Chief Counsel to submit the request to OGE on the employee's behalf.

Qualified Trust

A qualified trust may be available as a remedy for a potential conflict of interest. A trust must be certified by OGE and meet the requirements set forth in OGE regulations. One requirement is that the employee must turn over management of the trust assets to a trustee who has been approved by OGE. Please consult with the Office of Chief Counsel to coordinate OGE certification.

Individual Waiver pursuant to 18 U.S.C. § 208(b)(1)

A waiver permits an employee to participate in a particular government matter that would otherwise conflict with the employee's private financial interests. On a case-by-case basis, TIGTA may determine that a disqualifying financial interest in a particular

matter is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government.

Waivers issued pursuant to section 208(b)(1) should comply with the following six requirements:

- The disqualifying financial interest, and the nature and circumstances of the particular matter or matters must be fully disclosed to the Government official responsible for appointing the employee to his/her position (or another Government official to whom authority to issue such a waiver to the employee has been delegated);
- The waiver must be issued in writing by the Government official responsible for appointing the employee to his/her position (or another Government official to whom authority to issue such a waiver to the employee has been delegated);
- The waiver should describe the disqualifying financial interest, the particular matter or matters to which it applies, the employee's role in the matter or matters, and any limitations on the employee's ability to act in such matters;
- The waiver shall be based on a determination that the disqualifying financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. Statements concerning the employee's good character are not material to, nor a basis for making such a decision;
- The waiver must be issued prior to the employee taking any action in the matter or matters; and,
- The waiver may apply to both present and future financial interests, provided the interests are described with sufficient specificity.

If an employee is given an assignment in which the employee has a financial interest, the employee must immediately inform his/her supervisor in writing of the employee's financial interest and the nature and circumstances of the particular matter or matters involved in the assignment.

The supervisor will forward the employee's documentation through the appropriate chain of command to the Approving Official. TIGTA Delegation Order No. 9 sets forth the Approving Officials for TIGTA.

The Approving Official will work with the Office of Chief Counsel to determine the appropriate course of action. If appropriate, the Office of Chief Counsel will work with OGE to prepare the waiver for signature by the Approving Official. See Exhibit (700)-30-4 for a sample recommendation from the Office of Chief Counsel to the Approving Official. The Approving Official will sign the waiver if the financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. See Exhibit (700)-30-5 for a sample waiver.

The Appointing Official will give the original executed waiver to the employee, maintain an executed copy for the employee's drop file and forward an executed copy of the waiver to the Office of Chief Counsel to forward to OGE.

30.7.3 Referrals. When circumstances require (*e.g.*, the employee continues to participate in a matter in which the employee has a conflicting financial interest), the matter may need to be referred to the Department of Justice and OGE. The Office of Chief Counsel will coordinate the referrals.

30.8 Negotiating and Seeking Employment.
Employees may seek and negotiate for employment outside the Government, but under some circumstances, the employee may need to take appropriate steps to protect the integrity of the Agency's decision-making processes through disclosure to a supervisor and recusal (*i.e.,* no participation in any matter pertaining to the prospective employer). For senior employees who are public filers (required to file an OGE Form 278e), however, there are additional requirements (see subsection 30.8.2.3.1).

30.8.1 Recusal Requirement. In accordance with 18 U.S.C. § 208(a), an employee is prohibited from participating personally and substantially in an official capacity in any "particular matter" that, to the employee's knowledge, will have a direct and predictable effect on the employee's financial interests or on the financial interest of a prospective employer (*i.e.*, any person, or such person's agent or intermediary) or person or organization with whom the employee is negotiating for, or has an arrangement concerning, prospective employment (unless otherwise authorized by a waiver or exemption). This restriction has been extended by regulation to those employees who are merely seeking employment with a person or organization affected by that matter, even though the employee's job search may not have progressed to actual negotiations. 5 C.F.R. § 2635.601. This requirement applies no matter the search method used, *e.g.*, social media, search firm, etc.

An employee who is seeking or negotiating for employment with a person whose financial interests are not affected directly and predictably by particular matters in which the employee participates personally and substantially has no obligation to recuse oneself. Other statutory restrictions (*e.g.* related to certain procurement matters, etc.) may apply to a particular employee's situation. In addition, an employee who is contemplating outside employment during the employee's Federal employment must comply with the requirements regarding outside employment (see subsection 30.3) in addition with applicable recusal requirements as a result of the outside employment activity.

*"*Employment" includes any form of non-Federal employment or business relationship involving the provision of personal services by the employee, whether to be undertaken at the same time as or subsequent to Federal employment. It includes, but is not limited

to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee.

"Direct and predictable effect," "particular matter," and "personal and substantial" have the same meaning as in (700)-30.7.

30.8.2 Start of the Recusal Requirement. The recusal requirement for an employee to disqualify oneself from participating in particular matters that would affect the financial interests of a prospective employer starts when the employee begins seeking employment. If an employee accepts an offer of post-Government employment, the recusal must continue until the end of the employee's Government service.

30.8.2.1 Seeking Employment. An employee is considered to be "seeking employment" when the employee:

- Engages in negotiations for employment with the prospective employer (any person, or agent or intermediary).
    - Negotiations: any discussion or communication mutually conducted with a view toward reaching an agreement regarding possible employment;
- Makes an unsolicited communication to the prospective employer regarding possible employment; or,
- Makes a response, other than rejection, to an unsolicited communication from the prospective employer.
    - A response that merely defers employment discussions until the foreseeable future does not constitute rejection.

"Seeking employment" includes using a search firm, online resume distribution service, or other intermediary and thus the recusal requirement starts at the time the intermediary identifies a prospective employer to the employee.

When the recusal requirement applies, it extends to any particular matter that would have a direct and predictable effect on the financial interests of the prospective employee and recusal is accomplished by not participating in the matter. The disqualification applies not only at the formal approval or disapproval stage of an action, but also to earlier stages, *e.g.*, recommendation or investigation. Once an employee is seeking or negotiating for employment, the recusal requirement applies to both specific matters and general matters which focus on a discrete and identifiable class of person and with a direct and predictable effect on the prospective employer's financial interests.

30.8.2.2 Exception to the Recusal Requirement. When an employee's only communication with a prospective employer is the submission of an unsolicited resume, and the prospective employer has not responded to indicate an interest in employment discussions, an employee may work on particular matters of general applicability that

affect a prospective employer (as opposed to a particular matter involving specific parties) until the employee receives an expression of interest from the prospective employer.

30.8.2.3 Notification. An employee who becomes aware that he or she must disqualify him or herself from a particular matter, must take the necessary steps to ensure that he or she does not participate in the matter. When recusal is required, an employee must notify his or her supervisor in writing of the employment discussions. Notice enables the supervisor to alter assignments as needed to minimize potential disruption of TIGTA's mission. In addition, providing notification aids in protecting employees from questions concerning potential impropriety by documenting the employee's actions, the date of recusal, etc.

The supervisor will forward the notification and documentation through the appropriate chain of command to the Approving Official, per TIGTA Delegation Order No. 9. Approving Official will review the documentation and make a determination whether or not the employee's action in seeking employment with the prospective employer would require the employee's recusal from matters so central or critical to the performance of the employee's official duties that the employee's ability to perform the duties of the employee's position would be materially impaired. The Approving Official will work with the Office of Chief Counsel to determine whether further action is necessary.

30.8.2.3.1 Specific Notification Requirement for Public Filers (OGE Form 278e). A Public filer who negotiates for, or has an agreement of, future non-Federal employment or compensation must notify the Office of Chief Counsel **within three business days** after the agreement or negotiations begin by filing a written statement signed by the filer that identifies by name the non-Federal entity and the date that the negotiations or agreement began. Filers must recuse themselves from participating personally and substantially in particular matters having a direct and predictable effect on entities with whom they are negotiating for employment, or the appearance of such, and file a notification of recusal statement with the Office of Chief Counsel. These requirements apply to future employment and compensation (including any form of consideration, remuneration, or income, as well as royalties and travel-related expenses). This requirement typically arises when a filer negotiates for, or has an agreement of, a post-government teaching, speaking, or writing activity.

Notification is only required when services are to be rendered **entirely after** termination of Federal employment. Any partial-performance during Federal service does not trigger the requirement, even if payment is postponed. Other restrictions on the activity (e.g., restrictions on teaching, speaking, and writing and outside employment), however, would still apply. Submit the Section 17 Notification and Recusal Statement to TIGTA Counsel via fax to (202) 622-9620, or via email to *TIGTACounselEthicsTraining@tigta.treas.gov. This notification is not subject to public disclosure and will be maintained confidentially.

30.8.2.3.2 Additional Notification Statement Not Required. Filers who previously complied with the notification requirement regarding the commencement of negotiations need not file a separate notification statement when reaching an agreement for future employment or compensation with the same non-Federal entity. Filers also do not need to file a notification when such negotiations prove unsuccessful (but may wish to do so to facilitate resumption of duties).

30.8.2.3.3 Optional Advance Filing of Notification and Recusal Statements. Public Filers seeking employment or considering seeking employment may elect to file a notification statement before negotiations have commenced and before reaching an agreement of future employment or compensation. Public filers may also elect to file a recusal statement before the filer has a conflict of interest or the appearance of one with the non-Federal entity identified in the notification statement. Public Filers do not need to re-file the document upon commencing negotiations or reaching an agreement for future employment or compensation with the same entity. Any such advanced filing is not construed as a statement that negotiations have or have nor commenced or that conflict of interest does or does not exist.

30.8.3 Recusal Based upon Arrangement for Future Employment. If an employee accepts an offer of post-Government employment, the period of recusal must continue until the end of Government service.

30.8.4 Termination of the Recusal Requirement. The recusal requirement terminates when:

- Two months have elapsed after the employee sends an unsolicited resume, job application, etc., and the employee has not received an expression of interest in employment discussions from the prospective employer; or
- One party, either the employee or prospective employer, rejects the possibility of employment and all discussions of possible employment have terminated.
    - Merely deferring a discussion until the foreseeable future does not constitute rejection.

If an employee is no longer seeking or negotiating for employment with a particular prospective employer, the recusal requirement regarding matters affecting that prospective employer ends. In some cases, however, the recusal period for an employee regarding a particular matter may continue after an employee is no longer seeking employment if there are impartiality concerns regarding the employment negotiations.

30.8.5 Travel Reimbursements - Employment Interviews. Advice from TIGTA's Office of Chief Counsel should be sought before accepting travel reimbursements in connection with an employment interview.

30.9 Employment Recommendations.
Generally, pursuant to 5 C.F.R. § 2635.702, an employee cannot use his or her government position, title, or authority to coerce or induce a benefit, create a government endorsement, or sanction of the employee's personal activities (or those of another) or for the private gain of a friend, relative or other individuals with whom the employee is associated outside the government employment context, nor create the appearance of such use of position.

30.9.1 References Based Upon Federal Sector Employment. A TIGTA employee may use his or her official title and agency resources (*e.g.*, letterhead, email (including electronic signatures), etc.) to provide a recommendation or reference on behalf of an individual provided it is based upon the employee's personal knowledge of the individual's ability or character, when either: 1) recommending the person for Federal employment; or 2) the TIGTA employee gained the knowledge of the person's ability and character during the course of the TIGTA employee's Federal employment. If the employee does not know the person who has asked for a reference and/or does not have knowledge of his or her ability or character, the employee may not use agency resources or sign using the employee's official title, but may, however, reference his or her position in the body of the letter of recommendation.

Examples:

- A TIGTA employee may provide a letter of recommendation for a former subordinate on her staff using TIGTA letterhead and may sign the letter using her official title.

- A TIGTA employee may use TIGTA letterhead and sign using his official title in providing a letter of recommendation or reference for a personal friend for a position within the Federal government (regardless of whether the TIGTA employee has dealt with the friend in an official capacity).

30.9.2 Other References. The risk of appearing to misuse one's position increases when providing a reference or recommendation for an individual where the employee does not have personal knowledge of the person's ability or character, whether it be a friend, relative, acquaintance, or individual they do not know. Under those circumstances, a TIGTA employee may not use agency resources or sign using the employee's official title, but may, however, reference his or her TIGTA position in the body of a letter of recommendation.

Example:
- A TIGTA employee may not use official stationery or sign using her official title if the request is for the recommendation of a personal friend with whom she or he has not dealt with during the course of the TIGTA employee's Federal service. The employee may refer to her or his TIGTA position in the body of the letter.

30.9.3 Employment Contacts. Employees should use caution in responding to an employment contact by a potential employer who is a "prohibited source," *i.e.*, who has business before TIGTA or is affected by TIGTA activity, as well as avoid initiating an unsolicited employment contact on an individual's behalf with a potential employer who is a prohibited source. Doing so may appear to the potential employer as coercive or intended to influence the potential employer to hire a particular individual. As a result, an initiation of an employment contact by a TIGTA employee with a prohibited source must be in writing and use unambiguous language that makes it clear to the recipient that the communication is a recommendation and not an implied favor or demand.

If a TIGTA employee is contacted by a prospective employer who is not a prohibited source regarding an associate's suitability for a job or to solicit names of potential suitable applicants, however, the employee may respond to the request and convey his or her personal views of an individual's qualifications, skills, and character.

30.10 Hatch Act and Political Activities.
The Hatch Act of 1939, as modified by the Hatch Act Reform Amendments of 1993 and codified at 5 U.S.C. §§ 7321 – 7326, restricts the political activities of executive branch employees.

30.10.1 Definitions.
Political activity: means doing something in active support of or opposition to a political party, a candidate for partisan political office or a partisan political group.

Nonpartisan election: means an election in which none of the candidates run affiliated with a political party (such as Democrat, Republican, Libertarian or Green Party) or an election involving a question or issue that is not specifically identified with a political party (e.g., state constitutional amendments, referendums, bond issues or municipal ordinances).

Partisan election or partisan political office: means any election for public office in which at least one person is running as a candidate affiliated with a political party (such as Democrat, Republican, Libertarian or Green Party).

Partisan political group: means a committee, club or other organization which is affiliated with a political party or a candidate for public office in a partisan election, or organized for the purpose of supporting or opposing the activities of a political party.

30.10.2 General Rules. Employees MAY:

- be a candidate for public office in nonpartisan elections;
- register and vote as they choose;
- assist in voter registration drives;
- express opinions about candidates and issues;

- attend fundraisers and contribute money to political organizations and campaigns;
- attend and be active at political rallies and meetings;
- join and be an active member of a political party or club;
- sign nominating petitions;
- campaign for or against referendum questions, constitutional amendments, municipal ordinances;
- make campaign speeches for candidates in partisan elections;
- distribute campaign literature in partisan elections; and
- hold office in political clubs or parties.

Employees MAY NOT:

- use official authority or influence to interfere with an election;
- solicit or discourage political activity of anyone with business before the employee's agency;
- solicit or receive political contributions;
- be a candidate for public office in partisan election;
- engage in political activity while on duty, in a government office, wearing an official uniform and/or using a government vehicle; and
- wear partisan political buttons on duty.

30.10.3 Social Media. The general rules listed above apply to all political activity, including such activity conducted using social media. The Office of Special Counsel (OSC) prepared guidance for Federal employees on the types of social media activities that could violate the Hatch Act. The relevant portions of OSC's guidance are detailed below.

General rule: Employees may not engage in political activity while on duty or in the workplace.

- Posting, Liking, Sharing, or Retweeting Partisan Messages: Employees may not post, like, share, or retweet a message or comment in support of, or opposition to, a political party, candidate in a partisan race, or partisan political group while on duty or in the workplace, even if their social media account is private.

- Liking, Following, or Friending the Official Social Media Accounts of Government Officials: Employees may continue to follow, be friends with, or like the official social media accounts of government officials after those officials become candidates for reelection.
- Using an Alias on Social Media: Employees may not use an alias on social media to engage in any activity that is directed at the success or failure of a political party,

candidate in a partisan race, or partisan political group while on duty or in the workplace.

- Profile Pictures on Social Media Accounts: Employees may display a political party or current campaign logo or the photograph of a candidate in a partisan race as a profile picture on personal Facebook or Twitter accounts; however, they may not post, share, tweet, or retweet on those accounts while on duty or in the workplace.

- Cover and Header Photographs on Social Media Accounts: Employees may display a political party or campaign logo or photograph of a candidate in a partisan race as a cover or header photograph on their personal Twitter or Facebook accounts.

General rule: Employees may not knowingly solicit, accept, or receive a political contribution for a political party, candidate in a partisan race, or partisan political group.

- Posting or Tweeting Solicitations: Employees, even when not on duty or in the workplace, may not post or tweet a message that solicits political contributions or invites people to a fundraising event.

- Liking, Sharing, or Retweeting Solicitations: Employees, even when not on duty or in the workplace, may not like, share, or retweet a post that solicits political contributions, including invitations to fundraising events.

- Accepting Invitations to Fundraising Events on Social Media: If not on duty or in the workplace, employees may accept invitations to, or mark themselves as “attending,” a fundraising event on social media.

- Using an Alias on Social Media: Employees, even when not on duty or in the workplace, may not use an alias on social media to solicit a political contribution for a political party, candidate in a partisan race, or a partisan political group.

General rule: Employees may not use their official authority or influence to affect the outcome of an election.

- Using Official Title or Position in Social Media Profile: Employees may include their official titles or positions and where they work in their social media profiles, even if they also include their political affiliation or otherwise use their account to engage in political activity.

- Using Official Title or Position in Social Media Communications: Employees may not use their official titles or positions when posting messages directed at the success or failure of a political party, candidate in a partisan race, or partisan political group.

- Using Official Social Media Accounts: Employees may not use a social media account designated for official purposes to post or share messages directed at the success or failure of a political party, candidate in a partisan race, or partisan political group. All such official social media accounts should remain politically neutral.

- Misusing Personal Social Media Accounts: Employees may not engage in political activity on a personal social media account if they are using such accounts for official purposes or posting in their official capacities. Factors indicating that a personal social media account is being used in ways that suggest it is an official social media account include, for example: (1) the account contains little to no personal content; (2) the account identifies the individual as a federal employee; (3) the account extensively uses photographs of the employee's official activities; (4) the account often references, retweets, likes, comments, or otherwise shares material related to official activities; or (5) the account is linked to an agency website or other official page. No one factor is dispositive.

- Targeting Subordinates and Certain Groups in Social Media Communications: Supervisors and subordinates may be friends or follow one another on social media platforms. However, supervisors may not send to subordinates, or to a subset of friends that includes subordinates, any message that is directed at the success or failure of a political party, candidate in a partisan race, or partisan political group.

30.10.4 Senior Executive Service and the Treasury Inspector General for Tax Administration. The political activity for career members of the Senior Executive Service and the Treasury Inspector General for Tax Administration is more limited. These individuals should consult with TIGTA Counsel prior to engaging in any potential political activity, including social media activity.

30.10.5 Violations. Violations of the Hatch Act may result in disciplinary action, up to and including removal. Additionally, certain activities may be criminal offenses under Title 18 of the United States Code.

DATE: October 1, 2017

(700)-40 Confidentiality of Information Received Under the IG Act

40.1 Introduction.
Under certain circumstances, § 7(b) of the Inspector General Act of 1978, as amended, 5 U.S.C. app 3, may restrict TIGTA's ability to reveal the identities of individuals who provided information to TIGTA. The purpose of this subsection is to summarize the scope and extent of those restrictions.

40.2 Text of Statute.
Section 7(b) of the IG Act provides as follows:

> The Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

40.3 Persons Entitled to Confidentiality.
The non-disclosure provisions of § 7(b) will not protect a person's identity unless two criteria are satisfied. First, the individual in question must be an employee. Second, the individual in question must have made a complaint or furnished information about waste, fraud, abuse, or other misconduct to TIGTA.

40.4 Exceptions to the Rule of Non-disclosure.

40.4.1 Consent. Information protected by § 7(b) of the IG Act may be disclosed to a person not employed by TIGTA if the employee in question has consented to the disclosure.

40.4.2 Disclosure during the course of an investigation. Information protected by § 7(b) of the IG Act may be disclosed to a person not employed by TIGTA if the Inspector General or another person authorized under TIGTA Delegation Order 26 has determined that disclosure of the employee's identity is unavoidable during the course of an investigation.

- Because the prosecution or discipline of wrongdoers is one of the fundamental reasons for conducting an investigation, an investigation should not be considered closed for purposes of this exception until all related administrative and judicial proceedings have been concluded.

- In determining whether disclosure is unavoidable, deciding officials should keep in mind the Senate Committee on Governmental Affairs' assertion that "[i]t is expected the disclosure of a complainant's identity will be necessary only in the rarest of circumstances."

40.5 Types of Information to be Withheld.

By its terms, § 7(b) of the IG Act prohibits Inspectors General from disclosing the "identit[ies]" of employees who have made a complaint or provided information to the Inspector General. TIGTA interprets this provision to prohibit both direct and indirect disclosures of a complaining employee's identity. Section 7(b) thus stands as a bar to the disclosure of not only names, addresses, position titles, and similar distinguishing information, but also any other information that would directly or indirectly identify a complaining employee to management, co-workers, or other witnesses.

(700)-50 I.R.C. § 6103

50.1 Overview.
Internal Revenue Code (I.R.C. or Code) § 6103(a) mandates that returns and return information shall remain confidential unless disclosure is authorized by one of the Code's exceptions to confidentiality. Specifically, I.R.C. § 6103(a) states that:

> [r]eturns and return information shall be confidential, and except as authorized by this title - (1) no officer or employee of the United States,... shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise under the provisions of this section.

I.R.C. § 6103(a).

50.2 Definitions.

- "Return" is defined in I.R.C. § 6103(b)(1) as:
  > any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

  "Returns" under this definition are only those returns filed with the Secretary of the Treasury (or the Secretary's delegate, *e.g.*, the Commissioner of Internal Revenue). These include, for example, income, estate, and information returns. Copies of returns retained by the taxpayer are not returns protected under I.R.C. § 6103.

- "Return information" is defined in I.R.C. § 6103(b)(2) as:
  > (A) a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense, and (B) any part of any written determination or any background file document relating to such written

determination (as such terms are defined in section 6110(b)) which is not open to public inspection under section 6110, but such term does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

- This definition includes all information gathered by, or on behalf of, the Secretary of the Treasury (*e.g.*, by IRS or TIGTA) with respect to determining possible liability under Title 26. Thus, information TIGTA creates or collects during a Title 26 investigation, including the fact of the investigation's existence, is the return information of the investigation's subject.

- Although the definition excludes "data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer," return information retains its protected character under I.R.C. § 6103 even when identifiers are removed. This includes direct identifiers, such as name, Social Security Number (SSN), and address, as well as indirect identifiers such as unique titles, employer, or location.

- "Taxpayer return information" is defined in I.R.C. § 6103(b)(3) as "return information as defined in paragraph (2) which is filed with, or furnished to, the Secretary by or on behalf of the taxpayer to whom such return information relates." The distinction between "return information" and "taxpayer return information" is significant only in the application of I.R.C. § 6103(i), which provides for disclosures in federal non-tax criminal matters.

- "Tax administration" is defined in I.R.C. § 6103(b)(4) as follows:
  (i) the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes (or equivalent laws and statutes of a State) and tax conventions to which the United States is a party, and (ii) the development and formulation of federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax conventions, and (B) includes assessment, collection, enforcement, litigation, publication, and statistical gathering functions under such laws, statutes, or conventions.

- "Disclosure" is defined in I.R.C. § 6103(b)(8) as "the making known to any person in any manner whatever a return or return information." This requires the recipient not already knowing the information.

50.3 Civil Remedies.
I.R.C. § 7431(a) permits a taxpayer to bring a civil action for damages against the United States if an officer or employee of the United States knowingly or negligently

discloses the taxpayer's return or return information in violation of I.R.C. § 6103. *See* (700)-100.3, Unauthorized Disclosure Lawsuits. The statute of limitations for filing a civil action is two years from the date of the taxpayer's discovery of the disclosure. I.R.C. § 7431(d).

50.4 Criminal Penalties.

50.4.1 Unauthorized Accesses (UNAX) – I.R.C. § 7213A. In addition to the civil liability discussed in section 50.3 of this Chapter, I.R.C. § 7213A imposes misdemeanor criminal penalties for the willful unauthorized inspection of returns or return information by a Federal Government employee (a.k.a., "browsing" or "UNAX"). To prove willfulness, the United States must show that the employee knowingly inspected the return or return information in violation of I.R.C. § 6103.

The penalties for an unauthorized access are a fine not exceeding $1,000, imprisonment of up to one year, or both, together with the costs of prosecution. Additionally, a federal employee convicted of an unauthorized access must be dismissed from employment. The statute of limitations for criminal prosecution is three years from the date of the disclosure. I.R.C. § 6531.

50.4.2 Unauthorized Disclosures – I.R.C. § 7213. I.R.C. § 7213(a) makes it a felony for any current or former federal officer or employee willfully to disclose returns or return information to third parties in violation of I.R.C. § 6103.

The penalties for willful violation of I.R.C. § 6103 are a fine not exceeding $5,000, imprisonment of up to five years, or both, together with the costs of prosecution. Additionally, a federal employee convicted of a willful violation of I.R.C. § 6103 must be dismissed from employment. The statute of limitations is three years from the date of the disclosure. I.R.C. § 6531.

50.5 Authorized Disclosures.

50.5.1 Overview. As discussed in sections 50.1 and 50.2, I.R.C § 6103 generally mandates the confidentiality of returns and return information and prohibits their disclosure. There are, however, certain exceptions under I.R.C. § 6103 authorizing the disclosure of returns and return information. The determination as to whether the information can be disclosed is fact specific. If there is any question about whether disclosure of returns and return information is authorized in a specific instance, the Office of Chief Counsel should be consulted before the disclosure is made to assist the function in making the determination.

50.5.2 Exceptions. The exceptions upon which TIGTA employees most often rely in conducting official duties are:

50.5.2.1 Disclosure pursuant to Taxpayer Consent – § 6103(c). Consent must be in writing, contain taxpayer identity information (name, address, and taxpayer identification number), and specifically designate to whom information is to be disclosed and the type of return or return information to be disclosed (including specific tax periods covered). TIGTA must receive the signed and dated consent within 60 days of execution. TIGTA's Consent for Release of Tax Return and/or Return Information by the Treasury Inspector General for Tax Administration form is a Word template under the Counsel Forms tab. Please note that even a consensual disclosure of returns or return information will not be made if the disclosure would seriously impair tax administration. *See* section 50.6.

50.5.2.2 Disclosure to Persons with a Material Interest – § 6103(e). Persons with a material interest may obtain access to returns and return information. "Material interest" usually means some kind of financial interest. This provision describes who may access individual returns, joint returns, partnership returns, corporation and subsidiary returns, estate and decedent returns, trust returns, returns of incompetent taxpayers, and returns of a debtor in bankruptcy. Although a written request is required to access returns under this provision, a written request is not required to access return information.

50.5.2.3 Returns and Return Information Available in the Public Record. There is no express statutory exception authorizing the disclosure of returns or return information that are part of the public record in a judicial or administrative tax administration proceeding. Some, but not all, courts have recognized a public record exception to I.R.C. § 6103. The judicially-created public record exception authorizes the disclosure of returns and return information when that information has become part of the public record pursuant to a tax administration proceeding. For example, information contained in a Notice of Federal Tax Lien and also in a taxpayer's bankruptcy petition was no longer confidential and disclosure did not violate I.R.C. § 6103.

When relying on the public record exception, the most prudent course in making a disclosure is to disclose only records or copies of records (or information from such records) that have been actually filed with or issued by a court in a tax administration proceeding. Disclosing copies of those records maintained in agency files, even if the agency's copies are identical to the copies filed with the court, may violate the public record exception.

50.5.2.4 Disclosures for Tax Administration Purposes – I.R.C. § 6103(h).

- I.R.C. § 6103(h)(1) permits the disclosure of returns and return information to employees of the Department of the Treasury, including TIGTA employees, whose official duties require the disclosure in connection with their official tax administration duties. This section also authorizes access to tax information when a Treasury employee, including a TIGTA employee, has a "need to know"

to perform his or her official tax administration duties (*e.g.*, TIGTA's investigation of Title 26 offenses, or TIGTA's review of returns and return information during an audit of IRS examination productivity).

- I.R.C. § 6103(h)(2) authorizes the disclosure of returns and return information to the Department of Justice in certain matters involving tax administration. *See* I.R.C. §§ 6103(h)(2)(A), (B), and (C) for use in proceedings before a federal grand jury or before a federal or state court in a matter involving tax administration.

- I.R.C. § 6103(h)(4) authorizes the disclosure of returns and return information in certain judicial and administrative tax proceedings. *See* I.R.C. §§ 6103(h)(4)(A), (B), and (C).

50.5.2.5 Investigative Disclosures– I.R.C. § 6103(k)(6). TIGTA employees are authorized under I.R.C. § 6103(k)(6), in the course of their official duties relating to any audit or civil or criminal tax investigation or any other offense under the I.R.C., to make disclosures of return information to the extent necessary to obtain information not otherwise reasonably available with respect to investigation or enforcement of any I.R.C. provision. I.R.C. § 6103(k)(6) authorizes disclosure of return information, but does not authorize disclosure of returns. Although the return itself cannot be disclosed, pieces of information can be taken from the return (*e.g.*, number of dependents, SSNs, etc.), and disclosed. Both the statute and courts interpreting the provision require the disclosures to be necessary to obtain information; disclosures for the recipient's benefit are not authorized under this provision.

50.5.2.6 Disclosures in Non-Tax Criminal Investigations – I.R.C. § 6103(i).

- Under I.R.C. § 6103(i)(1), the Department of Justice may obtain access to tax information for use in a non-tax criminal investigation pursuant to an *ex parte* order of a federal court or magistrate.

- Under I.R.C. § 6103(i)(3)(B)(i), tax return information may be disclosed to the extent necessary to notify appropriate federal and state law enforcement agencies of circumstances involving imminent danger of death or physical injury to an individual. This provision does not authorize disclosures to local law enforcement agencies.

50.5.2.7 Terrorism-Related Disclosures – I.R.C. §§ 6103(i)(3)(C) and 6103 (i)(7). TIGTA is most likely to use the following terrorism-related exemptions for disclosure in matters involving domestic terrorism. "Domestic terrorism" is defined in 18 U.S.C. § 2331(5) as activities occurring primarily within the United States that "involve acts dangerous to human life that are a violation of the criminal laws of the United States" and that appear to be intended: (1) to intimidate or coerce a civilian population; (2) to

influence the policy of a government by intimidation or coercion; or (3) to affect the conduct of a government by mass destruction, assassination, or kidnapping.

- TIGTA employees are authorized under I.R.C. § 6103(i)(3)(C)(i) to disclose in writing, return information related to terrorism to the extent necessary to apprise the head of a federal law enforcement agency responsible for investigating or responding to a terrorist incident, threat, or activity. TIGTA may *not* disclose returns or taxpayer return information (information received from the taxpayer or on the taxpayer's behalf) under this section, but may disclose a taxpayer's identity (the name of the person or entity with respect to whom a return is filed, and the associated mailing address and taxpayer identifying number).

- TIGTA employees are authorized under I.R.C. § 6103(i)(7)(A)(i) to disclose return information (but *not* returns or taxpayer return information), upon receipt of a written request from the head of the federal law enforcement agency (or the agency head's delegate) involved in the response to or investigation of any terrorist incident, threat, or activity, to employees of that agency who are personally or directly engaged in the response or investigation.

- TIGTA employees are authorized under I.R.C. § 6103(i)(7)(B) to disclose return information upon receipt of a written request from an employee of either the Justice Department or the Treasury Department who was appointed by the President with the advice or consent of the Senate, or from the Director of the U.S. Secret Service. The requestor must be responsible for the collection and analysis of intelligence and counterintelligence information concerning any terrorist incident, threat, or activity. The written request must set forth the *specific* reason(s) why the disclosure may be relevant to the terrorist incident, threat, or activity. TIGTA may *not* disclose returns or taxpayer return information (information received from the taxpayer or on the taxpayer's behalf) under this section, but may disclose a taxpayer's identity (the name of the person or entity with respect to whom a return is filed, and the associated mailing address and taxpayer identifying number).

- Under I.R.C. § 6103(i)(7)(C), the circumstances in which an *ex parte* order may be granted (*see* section 50.5.2.6) are expanded to instances in which there is reasonable cause to believe, based on information believed to be reliable, that the return or return information may be relevant to a matter relating to a terrorist incident, threat, or activity. The *ex parte* order may provide that those returns or return information be open to inspection by, or disclosure to, any *federal* law enforcement or intelligence agency employees who are personally and directly engaged in any investigation, response to, or analysis of, intelligence and counter intelligence concerning any terrorist incident, threat or activity. TIGTA employees are authorized under I.R.C. § 6103(i)(3)(C)(ii) to disclose in writing to

the Attorney General returns and taxpayer return information to the extent necessary and solely for use in applying for an e*x parte* order.

50.6 Impairment of Tax Administration.
Even if a disclosure of return information is authorized pursuant to a taxpayer consent or to a person having a material interest, access to the return information sought may be denied if disclosure of the information would seriously impair federal tax administration (such as by permitting circumvention of tax laws). *See* I.R.C. § 6103(c).

50.7 Accounting of Disclosures.

50.7.1 Accounting Required. I.R.C. § 6103(p)(3) requires that TIGTA maintain an accounting of certain disclosures of tax returns and return information. With several exceptions, when an oral or written disclosure is made of tax returns or return information, a record of the disclosure must be created and must be available for examination by the Joint Committee on Taxation or the Chief of Staff of such joint committee.

Some specific examples of disclosures of return information requiring an accounting include disclosures in circumstances involving an imminent danger of death or physical injury, or disclosures to the Department of Justice in response to an *ex parte* order.

50.7.2 Accounting Not Required. An accounting is not required for disclosures under the authority of the following sections:

- I.R.C. § 6103(c) - disclosures with the consent of the taxpayer;
- I.R.C. § 6103(e) - disclosure to persons with material interest;
- I.R.C. §§ 6103(h)(1), (3)(A) and (4) - disclosures to the Department of Treasury, Justice, or federal or state judicial or administrative proceedings for tax administration purposes;
- I.R.C. § 6103(i)(4) - disclosures in judicial or administrative proceedings of return or return information obtained via an *ex parte* order;
- I.R.C. § 6103(i)(7)(A)(ii) - disclosures to the General Accounting Office;
- I.R.C. §§ 6103(k)(1), (2), (6) and (8) - investigative disclosures;
- I.R.C. §§ 6103(l)(1), (4)(B), (5), (7), (8), (9), (10), (11), (12), (13), (14), (15), and (16) - this includes disclosures in administrative personnel matters;
- I.R.C. § 6103(m) - this section includes disclosure of taxpayer identity information to notify persons entitled to tax refunds or to collect/compromise a federal claim; and,
- I.R.C. § 6103(n) - disclosures to any persons providing services for tax administration purposes e.g., contractors, experts, etc.

50.7.3 Required Information in Accountings. If an accounting of a disclosure is required, the record of the disclosure must contain the following information:

- The date of disclosure;
- The information disclosed;
- The nature and purpose of each disclosure; and,
- The name and address of the recipient of the information disclosed.

50.8 Safeguarding Returns and Return Information. Under section 8(D)(e)(3) of the Inspector General Act of 1978, as amended, TIGTA employees are subject to the Internal Revenue Code's safeguard and security conditions for receiving returns and return information. I.R.C. § 6103(p)(4) requires that the confidentiality of returns and return information be protected by, among other things, being stored in a secured area that is accessible only by persons whose duties require access and to whom disclosure may be legally made.

DATE: 07/01/2020

(700)-60 Freedom of Information Act (FOIA)

60.1 Overview.
The Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended by the FOIA Improvement Act of 2016 (Pub. L. No. 114-185, 130 Stat. 538), provides the public with access to records maintained by agencies of the Executive Branch of the Federal Government. Those seeking information pursuant to the FOIA are not required to show a need for the information; instead, it is the Government's burden to justify any decision to withhold information from the public. The FOIA establishes standards for determining which records must be made available for public inspection in an electronic format and which records can be withheld from disclosure. The Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act states: "All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA." 74 Fed. Reg. 4683 (Jan. 21, 2009).

60.2 Delegated Authority.
The Treasury Inspector General for Tax Administration (TIGTA) Delegation Order No. 8 delegates the authority to make determinations on and respond to requests for information made pursuant to the FOIA and the Privacy Act (5 U.S.C. § 552a) to the Chief Counsel. The order also delegates to the Chief Counsel the authority to respond to requests to amend records under the Privacy Act as well as the authority to respond to administrative appeals from denials of FOIA and Privacy Act requests. The Chief Counsel has delegated this appeal authority to the Deputy Chief Counsel in accordance with TIGTA Delegation Order No. 8.

60.3 Provisions.

60.3.1 FOIA Requests. The FOIA requires TIGTA to make its records promptly available to any person who makes a request that complies with regulatory requirements. See Department of the Treasury's FOIA regulations at 31 Code of Federal Regulations (C.F.R.) Part 1. FOIA requests for TIGTA records must:

- Be made in writing and be signed;
- Reasonably describe the records being requested as specifically as possible (*e.g.*, subject matter, location, and time period);
- Provide a photocopy of an identifying document bearing the requester's signature (such as a driver's license, identification badge, or passport), or a notarized statement swearing to or affirming his/her identity, or a signed and dated sworn statement as to his/her identity, under penalty of perjury. (Example:

  I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.
  Date Executed: _____

Signature:_____;

- Include an agreement to pay FOIA processing fees for search, copy, and/or review as applicable to the requester's category; and
- Be mailed or delivered to:

  Treasury Inspector General for Tax Administration
  Office of Chief Counsel – Disclosure Branch
  1401 H Street, NW, Suite 469
  Washington, DC 20005

  Alternatively, the request may be sent via facsimile to (202) 622-3339 or email at FOIA.Reading.Room@tigta.treas.gov.

A FOIA request for records that is received by a TIGTA employee should be forwarded to the Office of Chief Counsel's Disclosure Branch immediately, as TIGTA has a statutory obligation to respond to the request within 20 business days from receipt of a valid FOIA request.

60.3.2 Search for Responsive Records.

60.3.2.1 Reasonable search. In responding to a valid FOIA request, TIGTA is required by statute to undertake a "reasonable" search, *i.e.*, a search that is reasonably calculated to uncover all agency documents responsive to the request. For purposes of the FOIA, "documents" include information stored in both paper and electronic format, *e.g.*, e-mails, CD-ROM, etc. TIGTA is statutorily obligated to review, manually or by automated means, all records located in response to a valid FOIA request.

60.3.2.2 Procedure. The Office of Chief Counsel's Disclosure Branch will notify the TIGTA function having jurisdiction over potentially responsive documents to ask that they conduct a reasonable search for all documents responsive to the FOIA request and to document their search efforts. If responsive documents are located, the function should forward the documents to the Disclosure Branch and include its disclosure recommendations and justification for any suggested withholding of information. The function must indicate whether the documents contain return information, investigative or prosecution threshold criteria, information, which if released, would disclose guidelines or other information that could risk circumvention of the law, or information identifying, directly or indirectly, a confidential informant. If a FOIA lawsuit is filed to compel the release of the withheld information, the function that provided the documents will need to execute affidavits to support the factual basis for withholding the information.

60.3.3 FOIA Exemptions. Records maintained by TIGTA must be made available to the public in response to a valid FOIA request except to the extent that such records (or

portions thereof) are protected from public disclosure by one or more of the FOIA's nine exemptions.

The legislative history of the Act makes it clear that Congress did not intend agencies to use these exempt categories to justify the automatic withholding of information. Instead, the exemptions are to be narrowly construed and are intended to designate those areas in which, under certain circumstances, information may be withheld.

60.3.3.1 Foreseeable Harm. The FOIA Improvement Act of 2016 codified the Department of Justice's Foreseeable Harm Standard with respect to withholding records:

- Agencies "shall withhold information" under the FOIA "only if the agency reasonably foresees that disclosure would harm an interest protected by an exemption" or "disclosure is prohibited by law."
- Agencies shall "consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible."
- Agencies shall "take reasonable steps necessary to segregate and release nonexempt information."
- This provision does not require disclosure of information "that is otherwise prohibited from disclosure by law, or otherwise exempted from disclosure under [Exemption] 3."

60.3.3.2 5 U.S.C. § 552(b)(1). Exemption (b)(1) pertains to classified documents concerning national defense and foreign policy.

60.3.3.3 5 U.S.C. § 552(b)(2). Exemption (b)(2) pertains to matters "related solely to the internal personnel rules and practices of an agency." To be exempt pursuant to (b)(2) the information must be: a) related to personnel rules and practices; b) the information must be solely related to those personnel rules and practices; and c) the information must be internal to the agency.

60.3.3.4 5 U.S.C. § 552(b)(3). Exemption (b)(3) incorporates certain nondisclosure provisions that are contained in other Federal statutes. Specifically, this exemption allows for the withholding of information prohibited from disclosure by another Federal statute provided that such statute: a) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or b) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

60.3.3.5.1 Return Information. I.R.C. § 6103 qualifies for withholding information under subsection (b)(3) of the FOIA. Unless there is authority to make a disclosure of return information under I.R.C. § 6103, return information is exempt from release under the FOIA.

60.3.3.5.2 Grand Jury Information. Rule 6(e) of the Federal Rules of Criminal Procedure qualifies for withholding information under subsection (b)(3) of the FOIA. Documents generated during the course of a grand jury investigation are exempt from release in response to a FOIA request.

60.3.3.5.3 Inspector General Act. Under certain circumstances, § 7(b) of the Inspector General Act of 1978, as amended, 5 U.S.C. app 3, may restrict TIGTA's ability to reveal the identities of individuals who provided information to TIGTA. See TIGTA Manual (700)-40, Confidentiality of Information Received Under the IG Act.

60.3.3.6 5 U.S.C. § 552(b)(4). Exemption (b)(4) pertains to "trade secrets and commercial or financial information obtained from a person that is privileged or confidential." This exemption is intended to protect the interests of both the government and submitters of information.

60.3.3.7 5 U.S.C. § 552(b)(5). Exemption (b)(5) may be used to protect inter-agency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the agency, provided that the deliberative process privilege does not apply to records created 25 years or more before the date on which the records were requested. This exemption incorporates the following civil privileges: deliberative process privilege, attorney-client communications, and attorney-work product.

60.3.3.7.1 Deliberative Process Privilege. The deliberative process privilege protects documents that reflect the predecisional and deliberative processes of government agencies, *i.e.*, internal agency documents containing the opinions, deliberations, and recommendations of governmental officials in connection with their official duties. This exemption protects documents that are predecisional, *i.e.*, antecedent to the adoption of an agency policy, and deliberative communications, *i.e.*, information that is/was a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters. Generally, facts cannot be protected under the deliberative process privilege unless they are inextricably intertwined with deliberative matter, or so selectively culled from a larger universe of facts, so as to reveal the deliberation itself. If a document prepared before a decision and used by the decision-maker(s) in reaching a decision is adopted as the rationale for the decision, the document loses its protection under the deliberative process privilege.

60.3.3.7.2 Attorney Work-Product Privilege. The attorney work-product privilege protects documents (*e.g.*, memoranda, factual material and background information) prepared or compiled by an attorney, or other individuals working under the direction or supervision of an attorney, in contemplation of litigation. Litigation need not have actually commenced so long as there is some articulable claim likely to lead to litigation.

60.3.3.7.3 Attorney-Client Privilege. The attorney-client privilege protects confidential communications between an attorney and his/her client relating to a legal matter for which the client has sought professional advice. Unlike the attorney work-product privilege, the attorney-client privilege is not limited to the context of litigation. Although the privilege fundamentally applies to facts divulged by a client to his/her attorney, the privilege also encompasses any opinions given by an attorney to his/her client based upon those facts, as well as communications between attorneys that reflect client-supplied information.

60.3.3.8 5 U.S.C. § 552(b)(6). Exemption (b)(6) protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

60.3.3.9 5 U.S.C. § 552(b)(7). Exemption (b)(7) exempts from disclosure "records or information compiled for law enforcement purposes but only to the extent that the production of such records:

(A) Could reasonably be expected to interfere with enforcement proceedings,
(B) Would deprive a person of a right to a fair trial or an impartial adjudication,
(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,
(D) Could reasonably be expected to disclose the identity of a confidential source, or information provided by a confidential source,
(E) Would disclose investigative techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of law, or
(F) Could reasonably be expected to endanger the life or physical safety of any individual."

60.3.3.10 5 U.S.C. § 552(b)(8). Exemption (b)(8) pertains to information that is "contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."

60.3.3.11 5 U.S.C. § 552(b)(9). Exemption (b)(9) applies to "geological and geophysical information and data including maps concerning wells."

60.3.4 FOIA Library. The FOIA also requires that agencies make available for public inspection in an electronic format:

- Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

- Statements of policy and interpretations that have been adopted by the agency and are not published in the Federal Register;
- Administrative staff manuals and instructions to staff that affect a member of the public;
- Copies of all records released under the FOIA that, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records or that have been requested three or more times;
- An index of the records referred to in the bullet above.

This information is available for public inspection in an electronic format at: https://www.treasury.gov/tigta/important_foia_err.shtml.

60.4 FOIA Appeals.

60.4.1 Adverse Determination. Title 31, C.F.R. § 1.6(a) provides that a requester may administratively appeal an adverse determination denying his or her request. Examples of adverse determinations denying a request, provided at 31 C.F.R. § 1.4(h), include:

- The requested record is exempt, in whole or in part;
- The request does not reasonably describe the records sought;
- The information requested is not a record subject to the FOIA;
- The requested record does not exist, cannot be located or has been destroyed;
- The requested record is not readily reproducible in the form or format sought;
- Denial involving fees or fee waiver matters; and
- Denial of request for expedited processing.

60.4.2 Process. Administrative appeals, other than an appeal for expedited processing, must be in writing and to be considered timely, must be postmarked, or in the case of electronic submissions, transmitted, within 90 calendar days after the date of the final response. 31 C.F.R. § 1.6(a). The FOIA provides for an agency response to an administrative appeal within 20 business days after receipt of the appeal. 5 U.S.C. § 552(a)(6)(A)(ii), 31 C.F.R. § 1.6(c). To ensure that the requester receives an independent review of the denial, administrative appeals are assigned to Office of Chief Counsel personnel who had no involvement in processing or making disclosure determinations at the initial request level. Administrative appeals under the FOIA should be addressed to:

Freedom of Information Act Appeal
Treasury Inspector General for Tax Administration
Office of Chief Counsel
1401 H Street, NW, Suite 469
Washington, DC 20005

Alternatively, the Appeal may be submitted electronically via facsimile to (202) 622-3339 or email at FOIA.Reading.Room@tigta.treas.gov.

60.5 Mediation.
The Office of Government Information Services within the National Archives and Records Administration offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. TIGTA's final determination letter advises the requestor of this option.

60.6 Litigation.
The FOIA gives a requester the right to file a lawsuit against the agency in Federal district court seeking production of records allegedly wrongfully withheld pursuant to the FOIA. 5 U.S.C. § 552(a)(4)(B). The Office of Chief Counsel provides litigation support to the Department of Justice attorney assigned to defend TIGTA in FOIA litigations. The Office of Chief Counsel personnel assigned to the case will contact the TIGTA function(s) whose records are at issue for background information, secure necessary information for supporting declarations to be executed by personnel familiar with the records, and other facts relevant to defense of the lawsuit.

60.7 Annual Report.
The FOIA imposes statutory reporting requirements upon government agencies. Each agency is required to submit statistical information about FOIA requests and administrative appeals received and/or processed by the agency during the Fiscal Year. In addition, each agency is required to report lawsuits filed as a result of the agency's response or failure to respond to a FOIA request.

The Office of Chief Counsel's Disclosure Branch is responsible for compiling the required information necessary to satisfy TIGTA's reporting requirements. At the end of each Fiscal Year, the Disclosure Branch provides statistical information about TIGTA's FOIA activities to the Department of the Treasury's Disclosure Officer. The Department compiles the information obtained from each of its Bureaus and reports this statistical information in an annual report to the Attorney General of the United States and to the Director of the Office of Government Information Services, National Archives and Records Administration.

DATE: October 1, 2020

CHAPTER 700 – CHIEF COUNSEL

(700)-70 Privacy Act

70.1 Overview.
The Privacy Act of 1974, 5 U.S.C. § 552a (Privacy Act or Act), provides safeguards for individuals against an unwarranted invasion of personal privacy through the collection, maintenance, use and disclosure of records by Federal agencies. The Act balances the individual's personal privacy interest against the Government's need to maintain information about individuals.

In general, the Privacy Act requires Federal agencies to:

- Maintain accurate, complete, relevant, and up-to-date records;
- Inform individuals who are subjects of those records about the agency's authority for collection of information and its uses;
- Protect those records from unauthorized access; and
- Afford individuals the right to access records, to amend records, and to receive an accounting of disclosure of those records.

Generally, the Privacy Act grants individuals the right to access their personal information maintained by a Federal agency and to seek an amendment of any incorrect or incomplete information maintained by a Federal agency.

The Privacy Act does not apply to all records maintained by the Treasury Inspector General for Tax Administration (TIGTA), but only to those records that contain information about an individual that are maintained in a system of records, *i.e.*, records that are organized so that they are retrievable by some identifying characteristic of the individual, such as a name or Social Security Number. The Privacy Act does not apply to information about entities, *e.g.*, corporations or partnerships, and does not safeguard the privacy of deceased individuals.

The Privacy Act provides that an individual may seek judicial review of an agency's:

- Refusal to grant access to records;
- Refusal to correct or amend a record;
- Failure to maintain a record with accuracy, relevance, timeliness, or completeness; or
- Failure to comply with any of the other provisions of the Privacy Act.

In addition, the Act also imposes criminal penalties against any agency employee who knowingly and willfully makes a disclosure in violation of the

Privacy Act or who maintains a system of records without meeting the notice and publication requirements of the Privacy Act.

70.2 Definitions.

- Individual – the term individual "means a citizen of the United States or an alien lawfully admitted for permanent residence." 5 U.S.C. § 552a(a)(2).
- Maintain – the term maintain "includes maintain, collect, use, or disseminate." 5 U.S.C. § 552a(a)(3).
- Record – the term record "means any item, collection, or grouping of information about an individual that is maintained by an agency... and that contains [that individual's] name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph." 5 U.S.C. § 552a(a)(4).
- System of Records – the term system of records "means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual." 5 U.S.C. § 552a(a)(5).
- System of Records Notice – is a notice published in the Federal Register for each system of records maintained by TIGTA.
- Routine Use – the term routine use "means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected." 5 U.S.C. § 552a(a)(7). Routine uses are published in the Federal Register.

70.3 Publishing and Reporting Requirements.

70.3.1 Publishing Requirements. The Privacy Act provides that information about individuals cannot be collected for inclusion in a system of records until a system of records notice (SORN) has been published in the Federal Register.

Each agency is responsible for preparing the required reports and notices of proposals to establish or alter a system of records. Care must be used in preparing a notice to establish or alter a system of records because the use or maintenance of such a system, except in accordance with an approved, published notice, is not be allowed under the Privacy Act. Any officer or employee of a component who willfully maintains a system of records without meeting the notice requirements of the Act may be found guilty of a misdemeanor and fined up to $5,000.

TIGTA prepares reports and notices in accordance with the established guidelines and format set forth by the Department of the Treasury and the Office of Management and Budget (OMB). The public notice must be as clear and

concise as possible and must achieve the objective of informing the public of the nature and purpose of the systems of records.

Each TIGTA component creating a new system of records or altering a system of records must first have the proposed system notice or system changes reviewed and approved by TIGTA's Office of Chief Counsel (Counsel). The final version of all system notices must receive official concurrence by TIGTA officials and Counsel before being submitted to the Department of the Treasury, Office of the Federal Register, Congress, and OMB and published for public comment. Upon completion of the public comment phase, any comments made or concerns expressed by the public are taken into consideration and the system of records revised accordingly, if appropriate.

A SORN must be published in the Federal Register describing each system of records, the categories of records covered by the system, the routine uses of the records contained in the system, and the purpose of such use. TIGTA's SORNs were most recently compiled and published in the Federal Register at 85 Fed. Reg. 26521 (May 4, 2020).

70.3.2 Reporting Requirements. TIGTA, as a Treasury bureau, provides information to the Department of the Treasury concerning TIGTA's Privacy Act activities upon request.

70.4 Access and Amendment.
The Privacy Act affords individuals the right to request access to, and amendment of, most TIGTA records about themselves maintained in a system of records. However, the Act allows the head of an agency to promulgate rules to exempt certain systems of records from the access and amendment provisions. TIGTA has exempted information compiled for the purpose of a criminal investigation and/or enforcement of criminal laws from the access and amendment provisions of the Privacy Act. This type of exempted information is generally found in Treasury/DO .311 – TIGTA Office of Investigations Files. To the extent that the Office of Investigation's criminal law enforcement records are maintained in TIGTA's other systems of records, that information has also been exempted from the access and amendment provisions of the Privacy Act as well.

70.4.1 Request to Access Records. Individuals may request access to review, and/or seek a copy of, all or any portion, of a record on themselves that TIGTA maintains.

Counsel's Disclosure Branch is responsible for responding to requests for access to TIGTA records made pursuant to the Privacy Act. Any request for access to TIGTA records received by a TIGTA employee should be forwarded to

the Disclosure Branch at FOIA.Reading.Room@tigta.treas.gov. A Privacy Act request or a Privacy Act/Freedom of Information Act (FOIA) request will be processed under both Acts, allowing the requester the greatest access to the requested information (See 31 CFR Subpart A §1.0(a)).

To request access to Privacy Act records, the request must:

- Be in writing;
- Be signed by the requester;
- State that the request is being made pursuant to the Privacy Act, 5 U.S.C. § 552a
- Be marked "Privacy Act Request," as well as the envelope;
- Reasonably describe the system or subsystem or categories of records sufficiently for the record to be located, to include a description of the nature of the record sought, the date of the record or the period in which the record was compiled;
- Provide proper identification. See Verification of Identity at Treasury Privacy Act Regulations 31 CFR Subpart C - Privacy Act, Appendix A to Subpart C of Part 1 - Departmental Offices #8.; and
- State a firm agreement to pay fees in accordance with 31 CFR Subpart A § 1.7.

All access requests should be forwarded to the Disclosure Branch via e-mail at FOIA.Reading.Room@tigta.treas.gov, fax at 202-622-3339, or by U.S. mail:

Office of Chief Counsel, Disclosure Branch
Treasury Inspector General for Tax Administration
1401 H Street, NW, Suite 469
Washington, DC 20005

70.4.2 Request to Amend Records. Under the provisions of the Privacy Act, an individual has the right to request that an agency amend any record, or portion of a record, if the individual believes that the record or portion of the record is inaccurate, irrelevant, or incomplete. The amendment procedures are not intended 1) to permit a challenge to a record that records an event that actually occurred, or 2) for amending the judgments of officials or others whose judgments are reflected in the records and which are about the underlying decisions they reflect.

Counsel's Disclosure Branch is responsible for processing requests to amend TIGTA records. The request must:

- Be in writing;
- Be signed by the requester;

- State the request to amend is made pursuant to the Privacy Act, 5 U.S.C. 552a;
- Reasonably describe the record or systems of records sufficiently for the record to be located;
- Describe the reason for the request to amend; and
- Provide proper identification. See Verification of Identity at Treasury Privacy Act Regulations 31 CFR Subpart C - Privacy Act, Appendix A to Subpart C of Part 1 - Departmental Offices #8.

All requests for an amendment of TIGTA records should be forwarded to the Disclosure Branch via e-mail at FOIA.Reading.Room@tigta.treas.gov, fax at 202-622-3339, or by U.S. mail:

Office of Chief Counsel, Disclosure Branch
Treasury Inspector General for Tax Administration
1401 H Street, NW, Suite 469
Washington, DC 20005

The Disclosure Branch has 10 business days to provide written acknowledgment of the Privacy Act amendment request. The Disclosure Branch will respond in writing to all amendment requests within 30 business days from receipt of a perfected request. If additional time is warranted, the Disclosure Branch will notify the requester of the need for an extension of time and the reason for the delay.

The Disclosure Branch will coordinate with the TIGTA function having jurisdiction over the record(s) requested for amendment. The function will provide the Disclosure Branch with their agreement or denial decision and reasoning.

When a record is amended, *i.e.*, the proposed amendment has been accepted, the record must be clearly marked “Information deleted, corrected or added (as applicable) – Privacy Act Request” and include the date of the amendment.

The Disclosure Branch will notify the requester of TIGTA’s decision in writing and provide the requester with a copy of the corrected record.

If a request for amendment is denied, the Disclosure Branch will notify the requester in writing of TIGTA’s decision, will provide the reason for the denial and will provide the opportunity to seek reconsideration of the decision from the Office of Chief Counsel. An appeal must be made in writing within 35 days from the date of the denial via e-mail at Counsel.Office@tigta.treas.gov, fax at 202-622-9620, or U.S. mail at:

Office of Chief Counsel
Privacy Act Amendment Appeal
Treasury Inspector General for Tax Administration
1401 H Street, NW, Suite 469
Washington, DC 20005

The Deputy Chief Counsel will issue TIGTA's final determination on the request for amendment no later than 30 days after receipt of the appeal. If the individual disagrees with the final determination, the individual may seek judicial review of the reviewing official's determination.

70.5 Privacy Act Referrals.
TIGTA is authorized under the provisions of the Privacy Act to refer documents and results of investigations to other law enforcement agencies. Specifically, under TIGTA's SORNs, TIGTA may disclose pertinent information to appropriate Federal, State, local, tribunal or foreign agencies, responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, when a record on its face, or in conjunction with other records, indicates a violation or potential violation of a civil or criminal law or regulation.

70.5.1 Referral of TIGTA Records. Referrals of TIGTA records to another law enforcement agency (LEA) must be reviewed by Counsel, with the exception of referrals:

- To the Department of Justice;
- To the Internal Revenue Service;
- To Department of the Treasury or the Department of the Treasury's Offices of Inspector General;
- To a non-Treasury law enforcement officer (LEO) during a joint investigation for investigative purposes if the LEO has a need for the information in order to pursue the investigation under the LEO's jurisdiction; or
- Of information of a threat of imminent danger of death or physical injury.

Counsel is responsible for reviewing the documents and/or evidence to be referred to determine if there is legal authority to disclose such information.

NOTE: In circumstances involving imminent danger of death or physical injury to any individual:

- TIGTA may disclose pertinent information to appropriate Federal. State, local, tribunal or foreign agencies, responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute,

rule regulation, order or license, when a record on its face, or in conjunction with other records, indicates a violation or potential violation of a civil or criminal law or regulation. For example, if there is a threat to blow up an Internal Revenue Service facility or an individual is threatening to harm him/herself or others when such action is a potential violation of law or regulation, TIGTA may disclose the information necessary to apprise the appropriate LEA of the circumstances.
  - Note: TIGTA may only disclose returns and return information in these circumstances to a Federal or State LEA (but not a local LEA) to the extent necessary to apprise the Federal or State LEA of the imminently dangerous situation. See (700)-50.5.2.6; and
- TIGTA may disclose relevant Privacy Act-protected information to an individual or individuals who are in danger.

These limited exceptions described above apply only if the danger is truly imminent, *i.e.*, reasonably certain to occur. OI should not submit a Privacy Act referral through CRIMES if there is an imminent danger of death or physical injury, but is responsible for making determinations concerning its authority to disclose such information and must ensure the disclosure is properly documented. See (400)-70.8, Accounting for Disclosures. If a Special Agent (SA) is unsure if the imminent danger exception applies, the SA should contact Counsel.

70.5.1.1 Procedures for Referring Documents to a Law Enforcement Agency. With the exception of those matters referenced above, in order to refer a matter to another LEA, OI must determine whether the LEA is interested in investigating and/or prosecuting the matter that OI seeks to refer, prior to making the referral.

In non-Title 26 investigations, OI may discuss the substance of the information to be referred **in hypothetical terms only** with the LEA to determine if the other LEA is interested in pursuing an investigation or prosecution of the matter.

For Title 26 investigations, the entire investigation is the return information of the subject of the investigation and is protected in its entirety from disclosure by I.R.C. § 6103. OI must generally obtain consent from the subject of the investigation before having any discussion (this includes discussions in hypothetical terms) with the LEA regarding the investigation and/or referring the investigation to the LEA.

NOTE: An OI employee **cannot** have a discussion, even in hypothetical terms, about any tax returns or return information contained in a non-Title 26 investigation (this includes the tax information of the subject or of any other taxpayer whose tax information may be included in the referral

documents/evidence) unless there is authority under I.R.C. § 6103 for such disclosure, *e.g.*, the taxpayers have signed consents authorizing the disclosure of their return information. A discussion of I.R.C. § 6103 can be found at Chapter (700)-50.

For cases that will be forwarded to Counsel for disclosure review, prior to referral, OI will create a "Disclosure Review" folder in the SharePoint folder associated with the case in CRIMES. This folder must contain a memorandum to Counsel that includes the information discussed in 70.5.1.1.1, all documents and/or evidence to be referred, and the Privacy Act Referral Checklist.

70.5.1.1.1 Memorandum to Counsel. OI will prepare a memorandum to Counsel, which is to be signed by the appropriate Special Agent in Charge (SAC). This memorandum must be included in the Disclosure Review folder that OI creates in SharePoint. The memorandum must contain the following information:

- A description of the records to be disclosed;
- The subject's name, the case number, and a brief factual narrative;
- If the matter to be referred is an investigation of a Federal crime, the memorandum must indicate that an Assistant United States Attorney (AUSA) has declined to prosecute. NOTE: This requirement only applies if TIGTA has been investigating a Federal crime. If the matter under investigation by TIGTA is not a Federal crime, the SA should not seek, and has no authority to obtain, a declination from an AUSA. CRIMES presently requires an AUSA declination before referring to Counsel, so the assigned SA should coordinate with OI management and/or the CRIMES team to refer a case that does not involve a Federal crime;
- The name, title, agency, and address of the person to whom the information is being disclosed;
- That the LEA to which the matter is being referred is interested in pursuing the referral, and that the matter will be accepted for investigative or prosecutive action; and
- The name, mailing address, and telephone number of the SA assigned to the matter.

70.5.1.1.2 Documents and/or Evidence. All documents or evidence to be referred — *e.g.*, Report of Investigation (ROI), TIGTA Form OI 2028-M (Memorandum of Interview or Activity), photographs, audio files, video files, etc. — must be included in the Disclosure Review folder for Counsel review. To the extent possible, OI should consolidate the documents/evidence to be referred into one file that is uploaded to the Disclosure Review folder.

70.5.1.1.3 Privacy Act Referral Checklist. In addition to the memorandum discussed in 70.5.1.1.1, OI must also complete the referral checklist found at Exhibit (700)-70.3, and include the completed checklist in the Disclosure Review folder. The assigned SA should use this checklist to ensure that all required information discussed above is included in the referral package submitted to Counsel. Completion of the checklist will also assist both OI and Counsel in making sure that the referral of TIGTA information to another LEA complies with Federal confidentiality statutes.

In order to comply with the Privacy Act, only information/documents that are relevant or pertinent to the investigation or prosecution of the case by the other LEA may be disclosed to that LEA. The SA who investigated the case is in the best position to identify such information for referral. **Therefore, it is the assigned SA's responsibility to identify any information that is not relevant in the referral documents/evidence submitted for Counsel's review**. If entire pages of a document are not relevant to the matter being referred, those pages should be removed from the version included in the Disclosure Review folder. If portions of pages in a document are not relevant, the non-relevant portions should be clearly identified, and Counsel will redact the information accordingly.

To the extent that the documents/evidence to be referred contain, or consist of, tax returns or return information (*e.g.*, transcripts of account, Forms 2848), a referral may only be made with consent form the taxpayer to whom such returns or return information pertains. Consent(s) authorizing the disclosure should be obtained from the appropriate taxpayer(s), *i.e.*, the subject and/or any other taxpayers whose tax information may be included in the referral documents/evidence, and included with the referral. A *Consent for Release of Tax Return and/or Return Information by the Treasury Inspector General for Tax Administration* can be found at Exhibit (700)-70.1 or as a Word template. The consent form must describe each and every item of return information and/or tax return to be referred. **The assigned SA must clearly identify all return information in the referral documents prior to submission to Counsel.** Entire pages of returns and/or return information for which consent has not been obtained should be removed prior to submission to Counsel for review. If no consents are included, Counsel will redact this information prior to the referral to the other LEA.

Grand jury information prohibited from release pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure, as well as any information that would tend to identify a confidential informant, should be removed from the documents/evidence prior to submission to Counsel. Any information revealed by an employee in an interview where the employee has been given *Kalkines* warnings generally cannot be used in a subsequent criminal proceeding against

the employee and, therefore, should not be referred to an LEA for State or local prosecution of the employee. It may, however, be referred for prosecution of another individual.

70.5.1.1.4 Counsel Review. Upon SAC approval of the referral, CRIMES sends a notification to Counsel that the proposed referral is pending Counsel's review. Upon receipt of the notification, Counsel will review the documents/evidence to be referred, and will determine whether there is authority under the Privacy Act and/or I.R.C. § 6103 for disclosing the information/evidence. NOTE: Counsel will not conduct its review until all required documents are uploaded to the Disclosure Review folder.

70.5.1.1.4.1 No Redactions. If no redactions to the documents/evidence to be referred are necessary, the Counsel employee assigned to the matter will approve the referral in CRIMES.

OI should use the template found at Exhibit (700)-70.4 as the cover letter for the referral to the LEA. OI will then mail or deliver the letter and the documents/evidence to the LEA. The SAC or other OI employee must make a written annotation in the case file's Chronological Case Worksheet (CCW), to indicate that the disclosure to the LEA was made. In accordance with (700)-70.6, Accounting Record of Disclosure, this annotation must include: (1) a description of the record disclosed; (2) the name, position title, and mailing address of the person to whom the disclosure was made; (3) the nature and purpose of the disclosure; and (4) the date of the disclosure.

70.5.1.1.4.2 Redactions. If redactions to the documents to be referred are necessary, Counsel will redact the documents and upload the redacted documents to the Disclosure Review folder with a file name that includes the word "Redacted." The Counsel employee assigned to the matter will approve the referral with redactions in CRIMES.

NOTE: Counsel will not delete the original documents from the Disclosure Review folder; therefore, OI must ensure that the redacted version of the documents/evidence is referred to the receiving LEA.

OI will use the template found at Exhibit (700)-70.5, signed by the SAC, to refer the documents to the LEA. OI will then mail or deliver the letter and the redacted documents/evidence to the LEA. The SAC or other OI employee must make an annotation in the case file's CCW, to indicate that the disclosure to the LEA was made, as described above.

70.5.1.2 Procedures for Document Requests from Federal Agencies for Background Investigations. Upon receipt of a request for investigative

information from the Office of Personnel Management (OPM) or other Federal agency for records needed for a background investigation, OI is responsible for identifying the records responsive to the request. OI Records Management will forward the responsive records, as well as the incoming request, to Counsel.

Upon receipt, Counsel will review the documents to determine whether the records may be released. TIGTA generally has no authority under I.R.C. § 6103 to disclose returns and return information in response to this type of request without a consent form signed by the subject of the records. Additionally, grand jury information, information pertaining to confidential informants and information pertaining to an on-going investigation may not be disclosed.

After review, if no redactions to the requested documents are necessary, Counsel will notify OI that the documents may be disclosed without redaction. If redactions are necessary, Counsel will redact the documents and provide a copy of the redacted documents to OI Records Management.

The SAC of the Operations Division will prepare a letter in the format provided in Exhibit (700)-70.6, which will be forwarded along with the investigative records. OI is responsible for maintaining a record of the disclosure, *e.g.*, referral letter, in accordance with (700)-70.6, Accounting Record of Disclosure.

70.6 Accounting/Record of Disclosure.
The Privacy Act requires that each Federal agency keep an accounting of certain disclosures of records that are maintained in its systems of records. With few exceptions, when an oral or written disclosure is made of records/information maintained in a system of records, *i.e.*, records retrievable by the name/identifier of an individual, the Privacy Act requires that a written record accounting for the disclosure be created. This accounting of disclosures must be maintained for a period of five years from the date of the disclosure, or for the life of the record that was disclosed, whichever is longer.

Any TIGTA employee making an oral disclosure of information to entities other than mentioned below must maintain a written record of such disclosure. *See* Exhibit (700)-70.2.

TIGTA is not required to maintain an accounting for disclosures made:

- To the individual who is the subject of the record;
- To Department of the Treasury employees who have a need for the record in the performance of their duties; or
- In response to Freedom of Information Act (FOIA) requests.

The written record of disclosure must contain the following information:

- A description of the record disclosed;
- The name, position title, and mailing address of the person to whom the disclosure was made;
- The nature and purpose of the disclosure; and
- The date of the disclosure.

The Privacy Act grants an individual the right to request access to the accounting of disclosures of his/her records unless the system of records, however, TIGTA has exempted its criminal law enforcement records, generally found in Treasury/DO .311 – TIGTA Office of Investigations Files, from this provision of the Privacy Act. To the extent that the Office of Investigation's criminal law enforcement records are maintained in TIGTA's other systems of records, that information has also been exempted from this provision. Even if the system is exempt from the Privacy Act access provision, TIGTA is still obligated to maintain the accounting, as the accounting may be accessed via a Freedom of Information Act request.

The Privacy Act requires each agency to make reasonable efforts to serve notice on an individual when any record on such individual is produced pursuant to court order. TIGTA has exempted its criminal law enforcement records, from this provision of the Privacy Act.

Should a TIGTA employee be compelled to provide Privacy Act-protected records pursuant to court order, the employee should contact Counsel to discuss the notice provisions set forth in 5 U.S.C. § 552a(e)(8).

70.7 Record Maintenance.
The Privacy Act requires an agency to "maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President." This provision is intended to reduce the amount of personal information collected by Federal agencies, thus reducing the risk of intentional or inadvertent improper use of personal data. This provision does not apply to civil and criminal investigatory records in a system of records for which an appropriate exemption has been asserted pursuant to 5 U.S.C. § 552a(k).

A determination that information is relevant and necessary should be based upon a realistic evaluation of the purpose to be served by the information being maintained and a sound understanding of the principles underlying the Privacy Act. TIGTA has exempted its criminal law enforcement records, generally found in Treasury/DO .311 – TIGTA Office of Investigations Files, from the access provisions of the Privacy Act. To the extent that the Office of Investigation's

criminal law enforcement records are maintained in TIGTA's other systems of records, that information has also been exempted from the access and amendment provisions of the Privacy Act as well.

When records that are collected about an individual are to be used in making a determination about that individual, or are to be re-disclosed to another Federal agency, the Privacy Act obligates the agency to ensure that the records are "accurate, relevant, timely, and complete" at the time the information is collected.

70.8 Computer Matching Act.

70.8.1 Background. The Computer Matching and Privacy Protection Act of 1988 (Computer Matching Act, hereinafter CMA), Pub. L. No. 100-503, provides protections for the subjects of Privacy Act records whose records are used in automated "matching programs," as defined by the CMA. These protections have been mandated to ensure:

- Procedural uniformity in carrying out matching programs subject to the CMA;
- Due process for subjects in order to protect their rights; and
- Oversight of matching activities through the establishment of Data Integrity Boards at each agency engaging in matching to monitor the agency's matching activity.

The Inspector General Empowerment Act (IG Empowerment Act or IGEA), Pub. L. No. 114-317, exempts from the requirements of the CMA any computer match performed by an inspector general, or by an agency in coordination with an inspector general, in conducting an audit, investigation, inspection, evaluation, or other review authorized under the IG Act.

Any computer matching activity not related to TIGTA's oversight authority remains subject to the provisions of the CMA, and a computer matching agreement will be required to conduct such a match. Any function questioning whether a computer matching agreement is required for a proposed computer match, *i.e.*, the match is not related to TIGTA's oversight authority, should contact the Office of Chief Counsel for guidance.

70.8.2 Written Agreement. Notwithstanding the provisions of the IG Empowerment Act, TIGTA must coordinate with an agency, such as by executing a Memorandum of Understanding (MOU), before transferring records to, receiving records from, and/or matching records of another agency, even Treasury agencies. This MOU should be modeled on the requirements of the

CMA and should require the documentation or capture of similar information, *e.g.*, detail scope, justification, what needs to me matched, how data will be matched, safeguards and reporting data.

70.8.3 Conducting Computer Matches. Computer matches may only be conducted to serve a legitimate business need pursuant to TIGTA's grant of authority (*i.e.*, the IG Act, Treasury Order 115-01, etc.). Each function engaging in computer matching activity should implement procedures for approving computer matches, such as approval through the OI Initiatives Board or inclusion in an audit plan that is subject to Executive approval.

TIGTA employees should continue to abide by the following when engaging in computer matching activity:

- Privacy Act systems of records – no system of records may be used in a computer match unless the system's routine uses authorize the disclosure for use in computer matching. On occasion, the system of records notice may require revision to allow the matching activity.
- Data reliability – TIGTA employees should take appropriate steps to verify that data used in and produced as a result of computer matches are reasonably complete and accurate, meets the intended purposes for conducting the match, and is not subject to inappropriate alteration.
- Disposition of data – all matches performed and all information obtained from computer matches must be maintained in accordance with applicable Federal privacy laws and retained in accordance with record retention schedules.
- Security procedures – all information obtained and/or generated as part of TIGTA's computer matches must be safeguarded in accordance with the provisions of the Privacy Act and I.R.C. § 6103, if applicable, as well as TIGTA record safeguarding requirements which will conform with TD 80-05, Records and Information Management, and TD P 71-10, *Department of the Treasury Security Manual*. Matches must also comply with the standards of OMB policy M-06-16, *Protection of Sensitive Agency Information*, requiring that sensitive information, including all personally identifiable information (PII), be protected at all times.
- Disclosure – the information collected or generated as part of any computer match may only be disclosed in accordance with the provisions of the Privacy Act; I.R.C. § 6103, if applicable; any other applicable Federal privacy provisions; and any applicable Memorandum of Understanding with a source agency.

70.8.4 Maintaining Records of Computer Matches. TIGTA employees should continue to document computer-matching activity. At a minimum, the following data concerning computer matches should be collected and maintained:

- The date a computer match is performed;
- The purpose of the match;
- The systems of records used;
- The employee performing the match;
- The number of records in the final result; and
- The hours spent performing the match

(700)-80 Government Representation

80.1 Overview.
There may be instances in which a Treasury Inspector General for Tax Administration (TIGTA) employee is sued or subpoenaed in his/her individual capacity as a result of actions the employee has taken within the scope of his or her TIGTA employment. It is important to distinguish between official and individual capacity lawsuits. When a government employee is sued in an official capacity, the actual defendant is the United States; any adverse judgment would be directed to the actions or the resources of the United States. Government representation of employees sued in their official capacity is virtually automatic and no formal request for representation is necessary.

When employees are sued in their individual capacities, they are the targets of the lawsuit; the plaintiff is seeking to recover from the employee's personal assets and not from the United States. Under certain circumstances, the Government will provide personal representation to current or former employees. The following section provides guidance and establishes the procedures to be followed to obtain government representation when an employee is sued individually or receives a subpoena to provide testimony in his/her official capacity.

Two criteria must be met for government representation to be authorized:

1) The employee's actions giving rise to the lawsuit must reasonably appear to have been performed within the scope of his/her employment; and,

2) It is in the interest of the United States to provide the requested representation.

28 C.F.R. § 50.15(a). With input from TIGTA's Office of Chief Counsel, the Department of Justice decides whether the above-listed elements have been met, and therefore, whether government representation will be provided to the employee. The Department of Justice's representation determination is not subject to review by the judicial system.

Employees are under no obligation to request or utilize government representation; the employee may obtain representation from a private attorney at his/her own expense. In addition, at any time after obtaining government representation, the employee may elect to withdraw his/her request and discontinue government representation. Further, an employee may seek advice and/or assistance of private counsel even while receiving government representation; however, the Government is solely responsible for filing pleadings and will not enter into "co-counsel" arrangements.

Government representation is generally not available in a federal criminal proceeding or investigation unless the Government determines that it would be in the interests of the United States. In making this determination, the Government will consider "the relevance of any non-prosecutorial interests of the United States, the importance of the

interests implicated, the Department's ability to protect those interests through other means, and the likelihood of a conflict of interest between the Department's prosecutorial and representational responsibilities." 28 C.F.R. § 50.15(a)(4).

Government representation is not available to an employee involved in an agency disciplinary proceeding. In addition, it is generally not available in civil cases if the employee is the subject of a federal criminal investigation for the same acts; however, the Department of Justice has the discretion to provide a private attorney to the employee at federal expense.

Government representation may be available for TIGTA employees involved in state criminal proceedings. For example, a TIGTA employee who is investigated by a state law enforcement agency for actions taken within the TIGTA employee's official capacity, e.g., firing a weapon or other use of force, may seek government representation. TIGTA employees performing federal functions may be immune from state prosecution for the performance of their official duties if they can show that their actions were "necessary and proper" to carry out their federal responsibilities. To show that conduct is necessary and proper, an employee must satisfy two criteria: 1) that the employee reasonably believed that the conduct was authorized by his or her federal supervisors, and 2) that the conduct was reasonably calculated to further some legitimate federal function.

80.2 Named Employees.
Upon receiving a complaint in which a TIGTA employee has been named as a defendant in his/her individual capacity or upon becoming the subject of a state criminal matter, the employee should forward the complaint and/or relevant information to TIGTA's Office of Chief Counsel as quickly as possible. Generally, there is only a short period in which the employee and his/her counsel must respond to the complaint; therefore, it is important to begin the process to obtain government representation as quickly as possible.

If applicable, the Office of Chief Counsel will advise the employee in writing that he or she may be eligible to be individually represented by government counsel and that such representation is subject to the scope and interest limitations set forth above. In addition, the employee will be provided with the Department of Justice's Acknowledgment of Conditions of Department Representation.

The Acknowledgment of Conditions of Department Representation contains the following information that the employee should consider when seeking government representation:

- Attorney-Client Communication Privilege - All written or oral communications between the employee and his/her assigned Justice Department lawyer will be protected by the attorney-client privilege.

- Claims Against the United States - The Justice Department attorney will not assert any claim on the employee's behalf against the United States; nor will he or she assert any claim the employee might have against other federal employees.

- Counterclaims - As a general policy, the Department of Justice attorney may only undertake to defend the employee. He or she will not assert an affirmative claim on the employee's behalf against the plaintiff or anyone else. If the employee strongly believes that such a claim should be asserted, the employee's normal recourse would be to hire a private attorney at his/her personal expense to press that claim. In the rare instance when an affirmative claim would further not only the employee's defense, but also the interests of the United States, the Department will consider pursuing the claim.

- Conflicts With the United States - If there is a legal argument which could be made in the employee's defense, but which conflicts with a legal position taken by the Untied States, or any of its agencies, the Department of Justice attorney will not make the argument. The employee will be advised of this fact so that he or she may assess available options. Correspondingly, should the employee ever have questions in this regard, he or she should take the opportunity to discuss them with the Justice Department attorney.

- Conflicts With Co-Defendants - If there is a material conflict of interest between the employee and one of the employee's individually-sued co-defendants, whether factual or legal in nature, the Department of Justice attorney will advise the employee of this fact so that he or she may assess available options. Correspondingly, should the employee ever become aware of such conflicts, the employee should immediately notify the Justice Department attorney. Normally, in such cases, it will not be possible for the lawyer to continue representing the employee and other co-defendants having mutually conflicting interests.

- Defending Co-Defendants - If the Justice Department attorney is representing other defendants in addition to the employee, including the United States or an agency, the Department attorney may elect to press available defenses that could result in the dismissal of a co-defendant before the employee.

- Appeals - If the judgment of the court is in the employee's favor and the losing plaintiff appeals, government representation will continue throughout the appellate stage of this case. In the event of an adverse judgment against the employee, the Solicitor General of the United States will determine whether an appeal by the Justice Department attorney would be in the interest of the United States. If not, the employee will be promptly advised in order to discuss available options.

- Retention of Private Counsel - In certain limited circumstances where a Department of Justice attorney can no longer represent the employee, the Department may elect in its discretion to provide the employee with a private attorney at Government expense. The employee will be so advised if such circumstances arise.

If the employee is interested in obtaining government representation, he/she will be asked to sign both the letter from TIGTA Counsel as well as the Department of Justice's Acknowledgment of Conditions of Department Representation. As indicated previously, representation will be denied if the Department of Justice determines that the employee did not act within the performance of his/her official duties.

After receiving the employee's signed request for government representation, the Office of Chief Counsel will forward this form to the Department of Justice as well as factual information and TIGTA's recommendation as to whether employee representation should be provided. As indicated previously, the Department of Justice will authorize government representation if it determines that the employee's actions were taken in the performance of his or her official capacity and it is in the Government's interest to provide individual representation. TIGTA Counsel's Office will notify the employee of the recommendation and whether or not the Department of Justice has authorized government representation.

An attorney-client relationship between the employee and the government attorneys commences with the request for representation and applies to all communications made for purposes of obtaining government representation. While privileged information may be used in determining whether government representation is to be authorized or continued, it ordinarily cannot be used against the TIGTA employee in agency disciplinary actions. The statute governing Department of Justice representation provides, in part:

> Any adverse information communicated by the client-employee to an attorney during the course of such attorney-client relationship shall not be disclosed to anyone, either inside or outside the Department, other than attorneys responsible for representation of the employee, unless such disclosure is authorized by the employee. Such adverse information shall continue to be fully protected whether or not representation is provided, and even though representation may be denied or discontinued.

28 C.F.R. § 50.15(a)(3).

80.3 Witnesses.
TIGTA employees who are called to provide testimony in their official capacities may seek government representation. Ordinarily, however, individual government representation of employee-witnesses is not necessary. In cases where the employee is called to testify, the government attorney assigned to the matter will represent the

employee in his/her official capacity as a designated representative of the United States. If the employee is testifying as a fact witness, the government attorney represents the United States and is responsible for assisting the employee who is an employee of the United States.

There may be instances where a TIGTA employee, called to testify in his or her official capacity, may be entitled to government representation, for example, in litigation in which the government is not a party to the lawsuit. If an employee believes that individual representation is necessary, the same procedures to obtain government representation as set forth in section 80.1 need to be followed. The employee must sign a request for representation to be submitted to the Department of Justice for consideration along with the Office of Chief Counsel's recommendation as to whether the employee's actions reasonably appear to have been performed within the scope of his/her employment and whether providing representation will be in the interest of the United States. The Office of Chief Counsel will notify the TIGTA employee in writing of the Department of Justice's representation determination.

(700)-90 Testimony and Production of Documents

90.1 Overview.
During the course of their official duties, Treasury Inspector General for Tax Administration (TIGTA) employees may be called upon or subpoenaed to give oral testimony in, or to produce TIGTA documents for, various types of legal proceedings. These legal proceedings include court hearings, trials, depositions, and administrative proceedings. This section describes some of the situations in which TIGTA employees may be called upon to testify or produce documents. It also establishes the procedures for addressing each type of request. Strict compliance with these procedures is essential to ensure TIGTA's and employees' compliance with the law and to protect TIGTA's rights and prerogatives in litigation.

90.2 Treasury Regulation.
Department of the Treasury regulation 31 C.F.R. § 1.11 requires Treasury Department employees, including TIGTA employees, to obtain approval before testifying about or producing information obtained during the course of their official duties in legal proceedings pursuant to a request, order or subpoena. TIGTA's testimony authorization provides guidance to the TIGTA employee/witness about the limits on his or her testimony and protects the employee from a contempt citation.

In court cases in which the United States, the Department or TIGTA is not a party, the litigant seeking a current or former employee's testimony or the production of documents must submit an affidavit setting forth the information with respect to which the testimony or production is desired. The affidavit shall include the title of the legal proceeding, the forum, the requestor's interest in the legal proceeding, the reason for the testimony or production demand and a showing that other evidence reasonably suited to the requestor's needs is not available from any other source. If testimony is requested, the affidavit must include the intended use of the testimony, a general summary of the desired testimony and a showing that no document could be provided and used in lieu of testimony. The purpose of the affidavit is to permit TIGTA officials to make informed decisions regarding whether the testimony or the production of documents should be authorized. Permission to testify or produce documents will be limited to the information set forth in the affidavit, or to such portions thereof as may be deemed proper.

When TIGTA refers documents to state or local law enforcement agencies for prosecution, TIGTA will provide the state or local prosecutor a form entitled *Description of Information Sought Through Testimony* to submit with the subpoena. (See Exhibit (700)-90.1). The form template can be found in the Counsel tab in Word through File/New. In non-referred cases, the party seeking the testimony or information must submit an affidavit, as described in Treasury Reg. § 1.11.

90.3 Testimony Authorization.

90.3.1 Scope of Testimony. A testimony authorization documents the approval for an employee's testimony and specifies the matters about which the employee may testify. The testimony authorization permits the TIGTA employee to testify regarding his/her official TIGTA duties. The TIGTA employee may not testify or produce TIGTA records without prior authorization except when such testimony or production of records falls into the following categories:

- The TIGTA employee is called to testify by the Department of Justice (DOJ) on behalf of the Government;
- The TIGTA employee is called to testify by the Internal Revenue Service (IRS) at an administrative hearing involving personnel matters; or
- Discovery requests from DOJ or the IRS.

A testimony authorization generally indicates that the employee is prohibited from:

- Disclosing tax returns or return information in violation of I.R.C. § 6103;
- Disclosing information that would tend to identify, either directly or indirectly, a confidential informant;
- Disclosing information protected by Grand Jury secrecy laws;
- Answering hypothetical questions;
- Answering any questions concerning the polices, practices, procedures or other matters of TIGTA official business, except as they relate or are relevant to the legal proceeding in which they are testifying; and
- Revealing attorney work-product or information protected by the attorney-client or deliberative process privileges, or any law enforcement investigative privileges.

The employee's testimony must be limited to the information set forth in the authorization. If an employee is asked to testify beyond the scope of the authorization, the employee should refuse, citing the authorization and 31 C.F.R. § 1.11 as the basis for the refusal. If necessary, the employee should contact the Office of Chief Counsel for assistance.

90.3.2 Authorization and Procedure. The Office of Chief Counsel's Disclosure Branch is responsible for generating testimony authorizations for TIGTA employees. The decision to authorize the testimony of a TIGTA employee will be made by the Chief Counsel or designee.

Upon receipt of a subpoena or request to testify or produce documents, the TIGTA employee should immediately forward the subpoena or request along with the affidavit form entitled *Description of Information Sought Through Testimony* (if applicable) to the Office of Chief Counsel at *TIGTA Counsel Office (Counsel.Office@tigta.treas.gov). In

addition, the employee should forward a brief narrative or any documents, *e.g.*, relevant portions of a Report of Investigation, which set forth the expected scope of the testimony to be provided by the employee.

A Government Information Specialist (GIS) will acknowledge receipt of the subpoena or request and will determine whether the subpoena or request contains sufficient information to process it in accordance with applicable Treasury regulations.

The GIS will prepare the testimony authorization memorandum and route it through the Chief Counsel or designee for authorization before sending it to the Function Head or designee for approval and issuance to the employee.

In deciding whether to authorize the testimony of personnel concerning official information, the Chief Counsel or designee shall consider the following factors:

- Whether the request or demand is unduly burdensome;
- Whether the request would involve TIGTA in controversial issues unrelated to the TIGTA's mission;
- Whether the time and money of the United States would be used for private purposes;
- The extent to which the time of employees for conducting official business would be compromised;
- Whether the public might misconstrue variances between personal opinions of employees and TIGTA policy;
- Whether the request demonstrates that the information requested is relevant and material to the action pending, genuinely necessary to the proceeding, unavailable from other sources, and reasonable in its scope;
- Whether the number of similar requests would have a cumulative effect on the expenditure of agency resources;
- Whether disclosure otherwise would be inappropriate under the circumstances; and
- Any other factor that is appropriate, *i.e.*, whether applicable Federal confidentiality statutes (*e.g.*, Privacy Act) permit the disclosure of TIGTA records.

The Function Head or designee is responsible for forwarding an electronic version of the approved testimony authorization to the employee. In emergency situations oral authorization can be provided to the employee.

The TIGTA employee should be aware of the following guidance:

- The specifics of the testimony and production authorization, including identification of the particular records, tax entities and tax records about which disclosure is permitted.

- The need to segregate documents and not testify to matters that are not authorized to be disclosed.
- Testimony should be confined to the limits of the authorization. Additional information such as personal opinions, unless authorized, should not be volunteered.
- During testimony, employees should make sure that they understand a question and give the accompanying counsel time to raise any objections they might have before responding. If a question is not understood or the employee does not know the answer, he/she should say so.
- If a "yes" or "no" answer is requested and such answer would be misleading, the employee should explain that the question cannot be properly answered without an explanation.

90.3.3 Accounting of Disclosure. All TIGTA employees providing testimony in federal and state courts and administrative proceedings other than TIGTA tax administration cases must account for any oral or written disclosures in accordance with TIGTA Operations Manual (700)-70.6, Accounting and Notification.

90.3.4 When Testimony or Production is Not Authorized. If it is decided that the TIGTA employee will not be authorized to testify, the Office of Chief Counsel will assist the United States Attorney's office in determining what legal efforts should be undertaken, *e.g.*, removal to federal court or seeking to quash the subpoena.

90.3.5 Testimony Requests Pertaining to Prior Employment. If a TIGTA employee receives a subpoena or request to testify in a matter relating to their prior employment, the TIGTA employee will need to coordinate with, and get approval from their previous employer, as the subpoena concerns a non-TIGTA matter. Additionally, the TIGTA employee will need to get approval from their current supervisor to use official time to testify.

90.4 Discovery.
In this section, "discovery" refers to the process by which parties in litigation seek information from, and provide information to, the opposing party(ies). Methods for conducting discovery include depositions (oral questions to a witness under oath before a court reporter), interrogatories (written questions answered in writing under penalty of perjury), requests for production of documents and information, and requests for admissions. Discovery requests are often made in accordance with a pre-trial order that specifies the time by which discovery must be completed. As such, a deadline by which specific discovery must be answered is generally included in each discovery request. Compliance with time deadlines is important.

Records may be sought from TIGTA by parties in litigation through discovery requests such as requests for production of documents. For documents requested by or through DOJ or the IRS, while the Office of Chief Counsel operates as a contact point, the

TIGTA function that maintains the responsive records is responsible for gathering and reviewing the records sought to determine relevancy and possible assertion of privilege (*e.g.*, informant privilege).

90.5 Brady v. Maryland and the Jencks Act.
Criminal trials pose unique issues related to testimony and document production. Two of these issues are discussed in this section: *Brady v. Maryland,* 373 U.S. 83 (1963) and the Jencks Act, 18 U.S.C. § 3500. *See also* § 90.8 (Giglio/Henthorn requests).

90.5.1 Brady v. Maryland. In 1963, the Supreme Court ruled in *Brady v. Maryland*, 373 U.S. 83 (1963), that the United States must provide to a criminal defendant any evidence in its possession that is favorable to the accused and relevant to guilt or punishment. Usually, the obligation to produce *Brady* material is predicated on a request by defense counsel. If, however, the material is of "obviously substantial value to the defense," the United States is required to produce the material even absent a request. Failure to comply with *Brady* requirements may constitute a violation of the defendant's due process rights and may result in dismissal of the charges.

Brady has practical ramifications for TIGTA employees. First, TIGTA employees working with a federal prosecutor must bring possible *Brady* material to the prosecutor's attention. Further, a court may deem the prosecutor to have knowledge of and access to *Brady* material in the possession, custody, or control of any federal agency participating in the investigation of the defendant. Thus, TIGTA may need to search its files for *Brady* material concerning a defendant standing trial.

It is the responsibility of any employee working with a federal prosecutor to perform a search of TIGTA records for any evidence that is favorable to the accused and relevant to guilt or punishment, *i.e., Brady* material. TIGTA Special Agents-in-Charge (SAC) and Directors are responsible for reviewing and releasing *Brady* material to the federal prosecutor. TIGTA Counsel is available to provide assistance in reviewing documents to determine if information is considered to be *Brady* material.

When material protected by I.R.C. § 6103 is possible *Brady* material, the TIGTA employee responsible for releasing the documents should contact TIGTA's Office of Chief Counsel prior to the release. The Office of Chief Counsel attorney assigned to the matter may coordinate with the prosecutor to seek the court's review of the material and determination whether it constitutes *Brady* material. If the court rules that the material is *Brady* material, the prosecutor may request a court order releasing the I.R.C. § 6103 material to ensure compliance with *Brady* to ensure protection of the defendant's Constitutional rights, and to protect the prosecutor from civil liability for unauthorized disclosures. Ideally, the court's order would also limit defendant's use of the I.R.C. § 6103 material to that particular criminal case. Coordination with TIGTA's Office of Chief Counsel is recommended when I.R.C. § 6103 material is possible *Brady* material.

90.5.2 Jencks Act. The Jencks Act, 18 U.S.C. § 3500, states that no statement or report in the possession of the United States that was made by a Government witness or prospective Government witness (other than the defendant) shall be the subject of discovery until the witness has testified on direct examination in the trial of the criminal case. To be covered by the Jencks Act, the "statement" may be either 1) written and signed or otherwise adopted or approved by the witness; 2) a recording or substantially verbatim transcription of an oral statement; or, 3) a statement the witness made to a grand jury.

TIGTA employees must follow the direction of the prosecutor in all criminal cases regarding the Jencks Act because the Act is applied differently in different judicial districts. For example, although the Act states that no statement shall be subject to discovery before a witness for the United States testifies, the practice in some districts is to give the witness's statement to the defense in advance of the trial. In some districts and under some circumstances, the statement is given to the defense during the discovery period. If this practice might lead to witness intimidation or threats, the Special Agent should speak with the prosecutor about her/his concerns. A TIGTA Report of Investigation may be Jencks material if the Special Agent who prepared the Report testifies at the criminal trial.

90.6 Privileges.
The Government may assert a privilege in declining to provide access to its documents, or to provide information orally (*e.g.*, in deposition or trial testimony), based upon three different grounds: statutory privileges, evidentiary privileges, and governmental privileges. Privilege situations normally arise in the context of litigation.

90.6.1 Statutory Privileges. Statutory privileges are based on federal statutes that allow or require that certain information be kept confidential. The statutory privileges that TIGTA most commonly invokes are:

- Internal Revenue Code (I.R.C.) § 6103: The definitions of returns and return information under I.R.C. § 6103, and some of the circumstances under which TIGTA must protect information under I.R.C. § 6103, are discussed at Chapter (700)-50.
- The Privacy Act of 1974, 5 U.S.C. § 552a: The type of information covered by the Privacy Act, and the circumstances under which TIGTA cannot disclose information protected by the Privacy Act, are discussed at Chapter (700)-70.

90.6.2 Evidentiary Privileges. Evidentiary privileges that the Government most commonly asserts include:

- Attorney-Client Privilege: The attorney-client privilege protects communications between clients and their attorneys that are meant to be confidential and that are made for the purpose of securing legal advice or services. The privilege extends

to an agency's confidential communications with its attorneys. The privilege belongs to the agency and may only be asserted or waived by the agency. Unlike the attorney work product privilege, the attorney-client privilege is not limited to the litigation context. The confidentiality of the communication must have existed both at the time of the communication and at the time of the privilege claim.

- Attorney Work Product Privilege: The attorney work product privilege protects all documents prepared by attorneys (or by non-attorneys who are supervised by attorneys) in contemplation of litigation. The privilege includes all factual information contained in the protected documents. Litigation need not have actually commenced in order for the privilege to exist so long as specific claims have been identified which make litigation probable. The privilege extends to documents relating to possible settlement of, as well as to the decision to end, litigation.

90.6.3 Government Privileges. Governmental privileges are available only to the Government. Certain courts require that formal claims of Governmental privilege be made by the head of the Government agency involved, while other courts will accept claims made by other senior agency officials.

- Deliberative Process Privilege: The deliberative process privilege (also referred to as executive privilege) may be asserted by the Government to protect predecisional and deliberative information (opinions, recommendations and advice) generated pursuant to the decision-making processes within the Government. The privilege is intended to ensure that open and frank discussions will take place during decision making. The privilege protects only information reflecting the thoughts and opinions expressed during the decision making process and normally will not protect factual material. Factual material is protected if it is so inextricably intertwined with the deliberative material that the factual information cannot reasonably be separated out. Factual information may also be protected if the revelation of the facts discussed would itself reveal the thought processes involved. Records submitted by outside consultants may be covered by the deliberative process privilege if they played essentially the same part in an agency's process of deliberation as documents prepared by agency personnel might have done. The consultant would not represent an interest of its own or the interest of a client; its obligations would be to the truth and to its sense of what good judgment requires. Because the information protected must be predecisional in nature, the privilege does not cover final agency decisions or documents specifically incorporated by reference in final agency decisions. The deliberative process privilege is qualified. If the information is sought in litigation the court will balance the public interest in protecting the deliberative process with the litigant's need for the information.

- Informant's Privilege: The informant's privilege protects the identities of persons who furnish information under an express or implied promise of confidentiality concerning possible violations of law. The privilege protects only the identity of the confidential source and does not protect the information furnished by the confidential source to the Government, unless the information furnished would reveal the source's identity. Assurances of confidentiality need not have been expressly made by the agency to the confidential source for the privilege to attach; confidentiality may be implied from the circumstances surrounding the contact between the source and the agency. The privilege is the government's to assert or waive. In preparing a declaration to support its claim of privilege, TIGTA will necessarily rely on contemporaneous documentation of circumstances under which confidentiality assurances were given. The privilege is qualified. To prevail, the Government must show that its law enforcement interests outweigh the litigant's need to know the confidential source's identity.

- Investigatory Files Privilege: Investigatory files compiled for law enforcement purposes are privileged when disclosure of the files would undercut the Government's efforts to prosecute by disclosing unique or uncommon techniques, forewarning suspects of the investigation, and/or prematurely revealing the scope and direction of the Government's case. The privilege is qualified and will be lost if the court determines that the litigant's need for the information outweighs the law enforcement interests involved. Once the investigation for which the files were generated or compiled is closed, the privilege usually is no longer available.

90.7 Witness Fees.
Witness fees may be encountered any time an employee testifies as a witness in a judicial or administrative proceedings. TIGTA Manual (600)-70.4.16 contains additional information on the different types of court leave and related fees set forth in 5 U.S.C. §§ 5515, 5537 and 6322.

Witness fees may be tendered by an opposing party requesting trial testimony or seeking to take deposition testimony of a TIGTA employee. Whether a TIGTA employee may accept the tendered witness fees depends upon whether the testimony is given in the employee's official or personal capacity.

90.7.1 Testimony in an Employee's Official Capacity. Employees are not entitled to witness fees when testifying on behalf of the United States. When the payment of witness fees is required under federal or state law, the fees must be tendered prior to the appearance and testimony of a TIGTA employee. If an employee testifies in an official capacity or produces official records on behalf of a state or local government or a private party or if the employee is summoned on behalf of a state or local government, and the payment of witness fees is required under federal or state law, the employee must collect the authorized witness fees and allowances for expenses of travel and

subsistence. Employees who are granted court leave for service as witnesses are required to turn in any fees along with a copy of the court order, subpoena, summons, or other written request to office of the Director, Finance & Procurement Services. If the subpoena is withdrawn or quashed, notify the Director to initiate refund of the payment.

90.7.2 Testimony in an Employee's Nonofficial Capacity. When an employee renders witness service in an unofficial capacity in which a government body is not a party to the proceeding, the manager and/or timekeeper shall charge the employee's absence to annual leave or leave without pay. For example, if a TIGTA employee witnesses an automobile accident while walking to the office or during his or her lunch period, any testimony on behalf of a party to the accident would be rendered in a nonofficial capacity. In this type of situation, the employee may accept any fees and expenses incidental to such testimony.

90.8 Giglio/Henthorn Policy.

90.8.1 Overview. TIGTA employees who are potential witnesses are required to inform the federal prosecutor with whom they work of potential impeachment information as early as possible prior to providing a sworn statement or testimony in any criminal investigation or case. Each potential witness should have a candid conversation with the prosecutor regarding any on-duty or off-duty potential impeachment information, including information that may be known to the public but that should not in fact be the basis for impeachment in a federal criminal court proceeding, so that prosecuting attorneys may take appropriate action, be it producing the material or taking steps to preclude its improper introduction into evidence. Because there are times when a potential witness is unaware that he or she is the subject of a pending investigation, prosecutors will receive the most comprehensive potential impeachment information by having both the candid conversation with the potential witness and by submitting a request for potential impeachment information to the investigative agency. It is likely that a prosecutor will decide to request potential impeachment information from the employing agency. Requests originating with prosecutors are known as Giglio requests.

Note: Henthorn requests are discovery motions by defense counsel in federal prosecutions for similar information and are processed following the same procedures.

The disclosure of potential impeachment information concerning Department of the Treasury employees who are witnesses in federal criminal trials or cases is governed by the Department of Justice (DOJ) Giglio Policy.

Potential impeachment information has been generally defined as impeaching information which is material to the defense. It also includes information that either casts a substantial doubt upon the accuracy of any evidence, including witness testimony, the prosecutor intends to rely on to prove an element of any crime charged, or might have a significant bearing on the admissibility of prosecution evidence. This

information may include, but is not limited to: (a) specific instances of conduct of a witness for the purpose of attacking the witness' credibility or character for truthfulness; (b) evidence in the form of opinion or reputation as to a witness' character for truthfulness; (c) prior inconsistent statements; and (d) information that may be used to suggest that a witness is biased.

Allegations that cannot be substantiated, are not credible, or have resulted in the exoneration of an employee are not considered to be potential impeachment information. Upon request, such information which reflects upon the truthfulness or bias of the employee, to the extent maintained by the agency, will be provided to the Requesting Official under the following circumstances:

- When the Requesting Official advises the Agency Official that it is required by a Court decision in the district where the investigation or case is being pursued;
- When: (i) the allegation was made by a federal prosecutor, magistrate judge, or judge; or (ii) the allegation received publicity;
- When the Requesting Official and the Agency Official agree that such disclosure is appropriate, based upon exceptional circumstances involving the nature of the case or the role of the agency witness; or,
- When disclosure is otherwise deemed appropriate by the agency. The agency is responsible for advising the prosecuting office whether any aforementioned allegation is unsubstantiated, not credible, or resulted in the employee's exoneration.

90.8.2 Giglio Responsibilities. TIGTA SACs and Directors are designated as the Agency Officials to serve as points of contact within TIGTA concerning Giglio requests. Each Agency Official should inform the U.S. Attorney's Offices within his/her area of responsibility of his/her designation as TIGTA's Agency Official for Giglio requests and is responsible for consulting periodically with the relevant Requesting Officials about case law and practice governing the definition and disclosure of impeachment information. Upon receiving a request for potential impeachment information, the Agency Official shall conduct a review of relevant files.

Each U.S. Attorney's Office will appoint a Requesting Official to serve as the DOJ point of contact for Giglio requests. All requests for impeachment information from a U.S. Attorney's office will be made to TIGTA's Agency Officials through Requesting Officials.

Agency Officials are responsible for ensuring that tax information protected by 26 U.S.C. § 6103 is only disclosed to a Requesting Official if it is relevant to the potential impeachment of the witness. TIGTA's Office of Chief Counsel is available to assist in reviewing material for 26 U.S.C. § 6103 issues. The Agency Official must comply with the Privacy Act Accounting of Disclosure requirements set forth at 5 U.S.C. § 552a(c). See TIGTA Manual (700)-70.6 for guidance pertaining to this accounting requirement.

90.8.3 Giglio Requests Involving TIGTA Employees. The DOJ Requesting Official will contact the appropriate Agency Official and request impeachment information affecting witness credibility, or other exculpatory or impeachment material subject to discovery.

Six categories of files are relevant to requests for impeachment information, and relevant portions of these files must be obtained and examined:

- **Official Personnel Files** must be requested through the Bureau of the Fiscal Services (BFS) email at OPFInquireies@fiscal.treasury.gov or telephone number (304) 480-8276
- **Employee Performance Files** must be requested from the employee's immediate manager
- **Drop Files** must be requested from the employee's immediate manager
- **Employee Investigative Files** must be queried in the Criminal Results Management System (CRIMES)
- **Grievance Files** must be requested from the Office of Human Capital and Personnel Security email at OMSHumanCapital@tigta.treas.gov
- **Equal Employment Opportunity Files** must be requested from the TIGTA EEO Program Manager

The Agency Official should contact TIGTA Counsel (Counsel.Office@tigta.treas.gov) and the Office of Mission Support (OMS) Human Capital (OMSHumanCapital@tigta.treas.gov) to conduct a records check for any disciplinary matters on the employee. TIGTA Counsel will notify the Agency Official whether any Merit System Protection Board (MSPB) matters involving the employee exist.

Upon request from the Agency Official, Counsel and/or OMS may provide copies of relevant disciplinary actions or administrative findings, such as signed and dated written reprimands, proposal and/or decision memoranda, and Merit Systems Protection Board decisions, to the Agency Official for examination, if the Office of Investigations (OI) does not have these documents.

The Agency Official is responsible for reviewing and releasing potential impeachment information contained in the files subject to review. Agency Officials should make broad disclosures of potential impeachment information to the prosecutor so that the prosecutor can assess the information in light of the role of the agency witness, the facts of the case, and known or anticipated defenses, among other variables. Unless advised by a Requesting Official or prosecutor that case law or court rulings in the district require broader disclosures, potential impeachment information relating to agency employees may include, but is not limited to, the categories listed below:

- Any finding of misconduct that reflects upon the truthfulness or possible bias of the employee, including a finding of lack of candor during a criminal, civil, or administrative inquiry or proceeding;

- Any past or pending criminal charge brought against the employee;
- Any allegation of misconduct bearing upon truthfulness, bias, or integrity that is the subject of a pending investigation;
- Prior findings by a judge that an agency employee has testified untruthfully, made a knowing false statement in writing, engaged in an unlawful search or seizure, illegally obtained a confession, or engaged in other misconduct;
- Any misconduct finding or pending misconduct allegation that either casts a substantial doubt upon the accuracy of any evidence—including witness testimony—that the prosecutor intends to rely on to prove an element of any crime charged, or that might have a significant bearing on the admissibility of prosecution evidence. Accordingly, agencies and employees should disclose findings or allegations that relate to substantive violations concerning:
  - Failure to follow legal or agency requirements for the collection and handling of evidence, obtaining statements, recording communications, and obtaining consents to search or to record communications;
  - Failure to comply with agency procedures for supervising the activities of a cooperating person;
  - Failure to follow mandatory protocols with regard to the forensic analysis of evidence;
- Information that may be used to suggest that the agency employee is biased for or against a defendant (*See U.S. v. Abel*, 469 U.S. 45, 52 (1984). The Supreme Court has stated, "[b]ias is a term used in the 'common law of evidence' to describe the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party. Bias may be induced by a witness' like, dislike, or fear of a party, or by the witness' self-interest."); and
- Information that reflects that the agency employee's ability to perceive and recall truth is impaired.

The DOJ Requesting Official is the best resource to contact when an Agency Official has questions regarding the scope of information to be disclosed to the prosecutor. TIGTA Counsel is also available to provide assistance in reviewing documents to determine if information is considered impeachment information under current case law.

The Agency Official provides potential impeachment information regarding TIGTA witnesses directly to the DOJ Requesting Official.

90.8.4 Giglio Requests Involving IRS Employees. IRS Criminal Investigation (CI) has designated the SACs, CI, as the Agency Officials to conduct a review of relevant files

for witnesses in CI cases. One of the categories of records that must be checked for those witnesses is TIGTA Office of Investigations' investigative files. The SAC, CI, will contact the TIGTA Agency Official to request that a check of Office of Investigations records be conducted. Upon receiving a request, the TIGTA Agency Official will:

- Query CRIMES for relevant investigative records pertaining to the subject of the Giglio request and obtain investigative files for review. Review TIGTA investigative files for potential impeachment information. See 90.8.3.3 for categories. The DOJ Requesting Official is the best resource to contact when an Agency Official has questions regarding the scope of the information to be disclosed to the prosecutor. TIGTA Counsel is also available to provide assistance in reviewing documents to determine if information is considered impeachment information under current case law.
- Pursuant to an agreement with CI, and in light of privacy interests of employees, potential impeachment information that may be responsive to a Giglio request will be provided directly to the DOJ Requesting Official by the TIGTA Agency Official.

90.8.5 Responsibilities After Disclosure of Potential Impeachment Information. When Agency Officials have provided potential impeachment information to a Requesting Official, DOJ's Giglio policy requires Requesting Officials to inform the Agency Official how the prosecuting office used the information. A circumstance may arise in which a prosecutor or Requesting Official learns of potential impeachment information relating to a TIGTA employee from a source other than TIGTA, including, but not limited to, the TIGTA employee. In such circumstance, the Requesting Official shall notify the Agency Official of such information and provide the Agency with a timely opportunity to meaningfully express its views regarding the information. Regardless of the source of the information, the Requesting Official will:

- Advise the Agency Official whether the employee provided an affidavit or testimony in a criminal proceeding or whether a decision was made not to use the employee as a witness or affiant because of potential impeachment issues;
- Advise the Agency Official whether the information was disclosed to a court or to the defense and, if so, whether the court ruled that the information was admissible for use as impeachment information; and
- Provide the Agency Official a copy of any related pleadings, and any judicial rulings, findings or comments relating to the use of the potential impeachment information.

The Agency Official shall maintain judicial rulings and related pleadings on information that was disclosed to the court or the defense in a manner that allows expeditious access upon the request of any Requesting Official.

Before any prosecutor or Requesting Official uses or relies upon information included in the prosecuting office's Giglio system of records, the Requesting Official will contact the relevant Agency Official(s) to determine the status of the potential impeachment information. The Agency Official(s) is required to provide an update so that the Requesting Official can update the prosecuting office's Giglio system of records to ensure that the information in the system of records is accurate.

TIGTA has a continuing duty to disclose potential impeachment information to prosecuting offices. Once a request for potential impeachment information has been made, the Agency Official is required to make the Requesting Official aware of any additional potential impeachment information that arises after such request and during the pendency of the specific criminal case or investigation in which a TIGTA employee is a potential witness or affiant. DOJ Giglio policy requires prosecuting offices to promptly notify the relevant agency when the specific criminal case or investigation for which the request was made ends in a judgment or declination, at which time the TIGTA's duty to disclose shall cease.

When a TIGTA employee has been transferred to another judicial district, or will testify or serve as an affiant in another judicial district, DOJ Giglio policy allows the prosecuting office in the originating district to provide any relevant information from its Giglio system of records relating to that TIGTA employee to the Requesting Official in the new district. The Requesting Official(s) providing the information shall notify the Agency Official(s) when distributing materials from its Giglio system of records to another prosecuting office.

If the potential impeachment information relates to pending investigations or other incomplete matters, the status of which may have changed or been resolved favorably to the agency employee, the DOJ Requesting Official transferring the information is required to notify the relevant Agency Official(s) before providing any information to another prosecuting office, except in cases where there is no time to provide notice. The Agency Official(s) should then provide a prompt update. Whether notice is provided before or contemporaneously with the transfer, the Requesting Official is required to advise the Agency Official(s) what materials will be or have been distributed.

DOJ Giglio policy also requires the Requesting Official in the new prosecuting office to request an update from Agency Official(s) as part of the Giglio analysis, and give TIGTA the timely opportunity to fully express its views and to provide an update. The Requesting Official in the new district is not bound by the former district's decisions regarding disclosure of information to the court or defense, or use of the TIGTA employee as a witness or affiant.

When a TIGTA employee is transferred to a new district, TIGTA is required to ensure that the Requesting Official in the new district is advised of any potential impeachment material known to TIGTA when the employee begins meaningful work on a case or

matter within the prosecuting district or is reasonably anticipated to begin meaningful work on such a case or matter.

OFFICE OF THE TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DATE: 07/01/2020

DESCRIPTION OF INFORMATION SOUGHT THROUGH TESTIMONY

The attached subpoena requests the testimony of a Special Agent of the Office of the Treasury Inspector General for Tax Administrations (TIGTA) at the prosecution of a matter TIGTA investigated and referred to my office. The scope of the requested testimony will be the Special Agent's knowledge of facts and circumstances concerning the allegation(s) and investigation, and of matters contained in the Report of Investigation provided to my office in connection with the matter to which the subpoena refers.

_____
(Signature of Prosecutor)

DATE: 10/01/2021

(700)-100 Litigation

In all administrative proceedings, the Treasury Inspector General for Tax Administration (TIGTA) Office of Chief Counsel (Counsel) represents the Agency. This representation encompasses both the assertion of claims on behalf of TIGTA (for example, claims for damage to Government property under the Fair Debt Collection Act) as well as defending against claims asserted by third parties (for example, claims for damage by Government employees under the Federal Tort Claims Act (FTCA)). In addition, Counsel supports the Department of Justice (DOJ) in representing the Agency in judicial proceedings. This section sets forth the information and procedures for coordination with Counsel.

Note: In all litigation described in this section, TIGTA Counsel represents the Agency and its interests and not those of any individual employee.

100.1 Personnel Litigation.

100.1.1 Introduction. Upon Counsel's receipt of a personnel litigation matter (whether via appeal, complaint, or charge), assignment will be made to one or more attorneys in Counsel's office. The assigned attorney(s) will be responsible for the review of the written record, supplementation of the record though discovery, preparation of testimonial evidence, presentation and argument of motions before the adjudicative body, presentation of evidence at hearing, the handling of any appeals of the adjudication, and representation of the Agency during all settlement negotiations.

When a TIGTA employee is contacted by Counsel in connection with a personnel litigation, their full and complete cooperation is expected. Counsel may request employees gather documents, provide information, certify responses to discovery, or testify at a hearing in the matter. Adjudicators' orders in litigation often contain short deadlines for the gathering of documents and preparation of testimony. Consequently, prompt compliance with the requested periods is essential. The failure to timely furnish information, documents, or assistance requested in litigation may result in the loss of an opportunity to fully present the evidence or legal arguments that supports TIGTA's position in a matter.

Counsel will work with employees' managers to make any needed adjustment to work schedules and other duties to facilitate their assistance. Counsel will also assist employees in gathering requested documents and information, will coordinate the effort amongst the different TIGTA functions, and will meet with employees to prepare them to testify in the event that they are required to give deposition testimony or testify in a hearing before the adjudicator.

Counsel attorneys, as designated representatives of TIGTA, do not represent the interests of any individual and cannot render guidance or advice related to the litigation matter to employees in their personal capacities.

100.1.2 Adverse Action and Unacceptable Performance Cases. Federal personnel law vests jurisdiction in the Merit Systems Protection Board (MSPB) for employee challenges to adverse and performance-based actions. (See Chapters 43 and 75 of Title 5 of the United States Code (U.S.C.) for definitions and explanations of these terms.) Suspensions of more than 14 calendar days, removals, and demotions for misconduct are the most common forms of adverse action. The denial of a within grade increase (WIGI), reduction in grade, or removal for performance-based reasons constitute the forms of performance-based actions. In an employee's appeal of an adverse action or unacceptable performance case, Counsel represents TIGTA and defends the action taken against the employee.

100.1.3 Discrimination Complaints. When an employee, former employee, applicant, third party, or group of employees allege discrimination, the matter proceeds under the statutory Equal Employment Opportunity (EEO) process as outlined in 29 C.F.R. Part 1614 and Treasury Directive 12-41. The complaint process consists of two stages known as the informal and formal stages. Upon the request of a complainant for a hearing by an administrative judge of the Equal Employment Opportunity Commission (EEOC), Treasury's Office of Civil Rights and Diversity notifies TIGTA Counsel.

100.1.4 Unfair Labor Practice Proceedings. All positions within TIGTA are excluded from collective bargaining units by statute. However, in carrying out its mission of promoting the economy, efficiency, and effectiveness in the administration of Internal Revenue laws and preventing and detecting waste, fraud, and abuse in the programs and operations of the Internal Revenue Service (IRS) and related entities, TIGTA interacts with employees of the IRS belonging to a collective bargaining unit (union). The union representative may potentially assert that TIGTA has committed an unfair labor practice (ULP) under 5 U.S.C. Section (§) 7116, and in doing so may attempt to suggest that TIGTA has acted as the representative of IRS management. When the union asserts that TIGTA has committed a ULP, it files a charge with the Federal Labor Relations Authority (FLRA). Any charge received by TIGTA should be forwarded to TIGTA Counsel. Counsel represents the Agency in responding to the charge and defending against any complaint issued by the FLRA as a result of the charge.

100.2 Claims Under 28 U.S.C. § 2672 (Federal Tort Claims Act).
When Congress enacted the FTCA, it authorized private individuals to sue the Government for injuries arising from certain types of negligent or wrongful acts committed by Governmental employees acting within the scope of their employment. Before an injured party can file suit, however, they must present their claim to the appropriate Federal agency. The statute then grants the agency six months to investigate and allow, deny, or compromise the claim. If the agency denies the claim or fails to make final disposition of the claim within this period, the claimant may then institute a tort action against the government in United States District Court.

This subsection sets forth Counsel's policies and procedures relating to claims for money damages against the United States for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an officer or employee of TIGTA while acting within the scope of their office or employment.

100.2.1 Authority. The authority for this subsection is set forth in the FTCA 28 U.S.C. §§ 1346(b), 1402(b), 2401(b), and 2671-2680; DOJ Regulations (28 C.F.R. Part 14); Department of the Treasury Regulations (31 C.F.R. Part 3); TIGTA Delegation Order 23; and TIGTA Chief Counsel Delegation Order 1.

100.2.2 Claim Submission. Claimants seeking to assert a claim against TIGTA under the FTCA should submit their claims to the Office of Chief Counsel, Treasury Inspector General for Tax Administration, 1401 H Street N.W., Room 469, Washington, D.C. 20005. If a claimant files a claim with a field office, that office should record the date of receipt and promptly transmit a copy of the claim to Chief Counsel at the address set forth above.

100.2.3 Evidence or Information to Be Submitted With a Claim. Persons asserting claims for personal injury, death, and property damage may be required to furnish specific evidence and information in support of their claims, such as medical records, doctor's reports, hospital bills, death certificates, proof of ownership, and repair estimates. Specific guidance regarding the types of evidence and information required may be found at 28 C.F.R. § 14.4.

100.2.3.1 Notification. Upon receipt of an administrative claim under the FTCA or of notice of litigation seeking damages for an alleged negligent act or omission of a TIGTA employee acting within the scope of their employment, Counsel shall notify the relevant function head, and shall provide a copy of the administrative claim or the claim filed in the litigation.

100.2.3.2 Investigation. If appropriate, TIGTA's Office of Investigations (OI) may investigate incidents that have given rise to, or can reasonably be expected to give rise to, a claim under the FTCA. When a non-Federal person suffers personal injury or death as a result of TIGTA activities, the function head, after consultation with the Office of Chief Counsel should contact OI's SAC-Special Investigations Unit. See (400)-310.3.2. OI will conduct a formal investigation of the incident and transmit its findings, *i.e.* a Report of Investigation, to the function head and Counsel.

OI does not routinely conduct formal investigations in incidents solely involving property damage. See (400)-310.

100.2.4 Determination of Claims. Pursuant to TIGTA Delegation Order 23 and Chief Counsel Delegation Order 1, the Deputy Chief Counsel is authorized to approve or disapprove, and compromise tort claims submitted under the provisions of the FTCA.

Certain types of claims, however, must be referred to the Department of the Treasury and DOJ for final approval.

100.3 Unauthorized Disclosure Lawsuits.
I.R.C. § 7431 affords a taxpayer the right to sue the United States for damages if a Federal employee knowingly, or by reason of negligence, inspects or discloses that taxpayer's return or return information in violation of I.R.C. § 6103. *See* I.R.C. § 7431(a)(1). There is no liability under the statute with respect to an inspection or disclosure resulting from a good faith but erroneous interpretation of I.R.C. § 6103. *See* I.R.C. § 7431(b). Upon a finding of liability, the United States must pay the taxpayer the greater of $1,000 for each act of unauthorized inspection or disclosure, or the sum of the plaintiff's actual damages, punitive damages (in the case of willfulness or gross negligence), the costs of suit, and reasonable attorney's fees. The taxpayer must file suit within two years of when they knew or should have known about the alleged unauthorized disclosure(s). *See* I.R.C. § 7431(c).

Counsel provides litigation support to DOJ when defending allegations of unauthorized disclosures of returns or return information by TIGTA employees. Counsel will contact relevant TIGTA function personnel for background information and to secure necessary information for any supporting declarations DOJ requires from TIGTA personnel in its defense of the case.

100.4 FOIA Lawsuits.
See § 60.5 of this Chapter.

100.5 Privacy Act Lawsuits.
The Privacy Act (PA) gives a requester the right to file suit against TIGTA in Federal district court for: refusal to grant a request for access; a final determination not to correct or amend a record; failure to maintain a record with accuracy, relevance, timeliness or completeness; and failure to comply with any other subsection of 5 U.S.C. § 552a. *See* 5 U.S.C. §§ 552a(g)(1)(A)-(g)(1)(D). The PA gives a requester two years in which to file suit. *See* 5 U.S.C. § 552a(g)(5). Remedies, which can include injunctive relief (amendment of or access to records) or compensatory damages, vary depending on the alleged violation. However, the PA shall not be applied, directly or indirectly, to the determination of the existence or possible existence of liability, or of the amount of liability, of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense under the Internal Revenue Code. *See* I.R.C. § 7852(e).

Counsel provides litigation support to DOJ in defending TIGTA in a lawsuit filed under the PA. Counsel will contact the TIGTA functions whose actions are at issue for background information and to secure necessary information for any supporting declarations DOJ requires from TIGTA personnel in its defense of the case.

100.6 Counsel's Role in Collecting Debts Owed the United States.

100.6.1 Introduction. The federal debt collection laws, 31 U.S.C. § 3701, *et seq.*, authorize and direct the heads of Federal agencies and their designees to collect the debts of the United States arising out of the functions of their agencies. Subsection (600)-50.17, *Managing Debt*, summarizes TIGTA's policies and procedures concerning the collection and compromise of debts arising out of TIGTA's operations. This subsection summarizes the policies and procedures pertaining to Counsel's role in the collection and compromise of debts.

100.6.2 Authority. The authority for this subsection is set forth in the federal debt collection laws codified at 31 U.S.C. §§ 3701, 3711, 3716, 3717, 3718, 3719, 3720A, 3720B, 3720C, 3720D, and 3720E; the Federal Claims Collection Standards, 31 C.F.R. Parts 900-904; 31 C.F.R. Part 5; and Treasury Directive 34-02, *Credit Management and Debt Collection Program*.

100.6.3 Definitions. For purposes of this subsection, the following terms shall have the meanings set forth below.

- "Act" means the federal debt collection laws, as amended, set forth at 31 U.S.C. §§ 3701, *et seq.* Specific versions of these laws include the Federal Claims Collection Act of 1966, the Debt Collection Act of 1982, and the Debt Collection Improvement Act of 1996.

- "Claim" and "debt" are synonymous and interchangeable. They refer to an amount of money or property that has been determined by an appropriate Agency official to be owed to the United States from any person, organization, or entity, except another Federal agency. They include amounts owing to the United States on account of loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, taxes, and forfeitures (except those arising under the Uniform Code of Military Justice), and other similar sources.

- "Claims collection official" (CCO) means a person authorized to engage in the collection of a debt of the United States arising out of TIGTA's activities.

- "Demand letter" means a notice provided to the debtor comporting with the requirements of 31 C.F.R. §§ 5.4(a) and 901.2. See Exhibit (600)-50.15 for a sample demand letter.

100.6.4 Generally.
The collection of a debt occurs in four phases. In the first phase, an appropriate official establishes the existence of a valid debt due and owing the United States. Next, the CCO makes demand upon the debtor (via "demand letter") and attempts to negotiate a

compromise of the debt. In the third phase, the CCO initiates administrative collection proceedings of unresolved debts. Finally, debts determined by the CCO to be administratively uncollectible are disposed of through formal termination of collection activities, referral for litigation, or other conclusive measures. This subsection provides information concerning Counsel's roles and responsibilities during this process.

100.6.5 Review of Demand Letters. Counsel will review all demand letters drafted by the CCO for conformance to law and regulation.

100.6.6 Requests for Counsel Recommendation. Upon request by the CCO, Counsel will evaluate the potential for successful collection of a debt, including via litigation, and will provide a recommendation for consideration by the CCO. Counsel may recommend pursuit of collection of the debt via administrative collection procedures; suspension or termination of the debt; or referral of a debt to DOJ for litigation, if the debt cannot be compromised, administrative collection proceedings have not been effective, and the claims do not meet the requirements for suspension or termination. *See* 31 C.F.R. § 904.1(a).

100.6.7 Referral for Litigation. When the CCO determines that referral for litigation is warranted, Counsel will refer the debt to DOJ. Counsel will designate one or more attorneys to be responsible for coordinating with DOJ on all matters pertaining to the litigation.

100.6.7.1 Monetary Limitation. Claims valued at less than $2,500, exclusive of interest, penalties, and administrative costs, should generally not be referred for litigation unless Counsel, in consultation with the Financial Litigation Staff of the Executive Office for United States Attorneys, concludes that:

- The litigation is important to ensure compliance with the Agency's policies or programs.
- The claim is being referred solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property and returned to TIGTA for enforcement.
- The debtor has the clear ability to pay the claim and the Government effectively can enforce payment.

Claims valued at $1,000,000 or less, exclusive of penalties and interest, are ordinarily referred to DOJ's Nationwide Central Intake Facility, while claims valued at more than $1,000,000 usually are referred to the Civil Division. Referrals should be accompanied by a completed Claims Collection Litigation Report, a signed Certificate of Indebtedness, and certified copies of any documents that form the basis for the claim.

CHAPTER 700 – CHIEF COUNSEL

(700)-110 Certification of Documents

110.1 Overview.
This policy establishes the processes and responsibilities for authenticating copies or transcripts of books, records, papers, or documents under the seal of the Treasury Inspector General for Tax Administration. Copies of official records may be certified upon request, *e.g.*, for use in a legal proceeding. Requests for certification should be referred to the office that has custody of the records, via the function's Records Management Liaison, and include notification to the Office of Chief Counsel for necessary coordination. The incoming request should identify any specific certification requirements applicable, *e.g.*, if the certification request is for use in a judicial proceeding.

110.2 Authority.
Treasury Directive 25-01 provides that the Treasury Inspector General for Tax Administration shall ensure that certifying officials are properly appointed and authorized for their respective bureaus and offices.

TIGTA Delegation Order No. 24 delegates the authority to certify TIGTA records to the Chief Counsel. This authority may be re-delegated.

110.3 Locating Responsive Records. The custodial function should identify the responsive records and determine where the records are physically located. If the request is for documents in a format other than hard copy, the function should contact the Office of Chief Counsel for further coordination and processing.

The function is responsible for notifying the requester if the Agency has destroyed the records in accordance with its records retention schedule.

110.4 Certification of Documents.

110.4.1 Legal Custodian. The Legal Custodian is the head of the TIGTA function that maintains the records to be certified. The Legal Custodian completes Part A of TIGTA Form TIGTA 1000, which is a Word template (*i.e.*, Personal Templates/Counsel folder), by entering the date of preparation, a description that clearly identifies all documents submitted for certification, and a signature and title of the Legal Custodian. As appropriate, the Legal Custodian should identify the document(s) by:

- The form number and title of the document;
- The date of the document;
- The name and signer of the document;
- The name of the audit, or investigation number; and/or
- Any other feature by which the document would normally be identified; and/or

The Legal Custodian should also include the total number of pages to be certified with the phrase "... consisting of [insert total] pages."

The Legal Custodian should ensure that identification of records is brief and includes only such details as are necessary to identify the documents. Copies of records must accurately portray the originals and be free of any distortions, flaws, or illegibility not present in the original, and the Legal Custodian should ensure copies are accurate and authentic before signing the form.

The Legal Custodian must identify any material in the records that cannot be released in full or part for legal reasons (*e.g.*, grand jury material, confidential informants, *etc.*).

The Legal Custodian forwards the certification package, consisting of the completed form, documents to be certified, and pertinent background information, including the document(s) prompting the certification and any specific certification requirements, to the Office of Chief Counsel.

The Legal Custodian is responsible for maintaining a copy of the certification package as well as a copy of the completed Form 1000 that is returned by the Chief Counsel.

110.4.2 Certifying Official. The Certifying Official is the Chief Counsel. Upon receipt of a certification package, Counsel will conduct a disclosure review of the documents to be certified and will determine whether there is legal authority to disclose the requested documents. If there is disclosure authority, the Certifying Official will sign and date the Form 1000, place an embossed gummed seal in the lower left corner of the form, place the form on top of the document being certified, and staple the documents together, taking care not to obliterate any portions of the document.

In the event that the certified record is needed in a litigation, *e.g.*, a blue ribbon certification is required, in lieu of stapling the records, the Certifying Official will press one eyelet or rivet in the top left corner of the document and press another eyelet or rivet in the bottom left corner of the document through all pages, taking care not to obliterate any portion of the record. The Certifying Official will run a blue ribbon through

the eyelets down the left side of the form, tie it, and place a gummed TIGTA seal over both ends of the ribbon in the lower left corner and sign.

The Certifying Official will return the certified documents and all supporting papers to the Legal Custodian of the documents. The Legal Custodian is responsible for providing the certified documents to the requester.

110.5 Unauthorized Use of Seal. An employee who fraudulently or wrongfully affixes or impresses the seal of any department or agency of the United States, to or upon any document or with knowledge of its fraudulent character, or with wrongful or fraudulent intent, uses, buys, procures, sells, or transfers to another any document to which or upon said seal has been fraudulently affixed or impressed, shall be fined not more than $5,000 or imprisoned not more than five years, or both. 18 U.S.C. § 1017.

DATE: 10/01/2020

CHAPTER 700 – CHIEF COUNSEL

(700)-120 TIGTA Employee Access To IRS Information, Records, and Facilities

120.1 Overview.
In order to execute the responsibilities of the Treasury Inspector General for Tax Administration (TIGTA) in an effective and timely manner, TIGTA employees must have access to information, records, and facilities of the Internal Revenue Service (IRS), IRS Chief Counsel, and the IRS Oversight Board. This section outlines the authorities and procedures for accessing IRS information, records, and facilities, including procedures for addressing resistance to TIGTA's request to access IRS information, records, and facilities.

120.2 Authority.
Inspector General Act. The Inspector General Act of 1978 (IG Act), as amended, 5 U.S.C. app., gives TIGTA officials the authority to access all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the IRS, the IRS Chief Counsel, or the IRS Oversight Board, which relate to its programs and operations. This access authority is notwithstanding any other provision of law unless that provision of law specifically refers to TIGTA and limits the right of access of TIGTA. TIGTA also may have timely access to Federal grand jury material upon approval from the Attorney General. See IG Act § 6(a)(1)(C) and (h).

Treasury Order No. 115-01. TIGTA's authority to access IRS facilities is outlined in § 6.a(2) of Treasury Order No. 115-01, which provides as follows:

> [i]n executing the functions of TIGTA, the IG, and any duly authorized representative, is authorized to... access all facilities of the IRS and [the IRS' Office of Chief Counsel and the IRS Oversight Board], including computer facilities and computer rooms, electronic data bases and files, electronic and paper records, reports and documents, and other material available to the IRS and [the IRS' Office of Chief Counsel and the IRS Oversight Board] which relate to their programs and operations; and, when access is necessary to execute a function of the IG pertaining to a matter within the jurisdiction of the IG, all similar facilities throughout the Department.

120.3 Resolving Conflicts Regarding Access with the IRS.

Any TIGTA employee who experiences issues regarding access to IRS information or facilities should first attempt to resolve the matter with the IRS by taking the following steps:

- Explain to IRS personnel the basis and extent of TIGTA's authority and the consequence of not complying with the request.
- Notify your management chain of the issue in order to raise the issue through the IRS chain of command.
- Any TIGTA function that is not successful in using these informal attempts to resolve access issues should contact TIGTA's Office of Chief Counsel for assistance.

120.4 Reporting Denials of Access.

120.4.1 Reporting to the Secretary of the Treasury and Congress. Under § 6(c)(2) of the IG Act, whenever requested information or assistance requested by TIGTA pursuant to the IG Act is, in the Inspector General for Tax Administration's (IG) judgment, unreasonably refused or not provided, the IG shall report the circumstances to the Secretary of the Treasury without delay.

120.4.1.1 Seven Day Letter. In situations where TIGTA becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of the IRS, § 5(d) of the IG Act requires the IG to report to the Secretary of the Treasury (Secretary) immediately. In turn, the Secretary must transmit any such report to the appropriate committees or subcommittees of Congress within seven calendar days, together with a report from the Secretary containing any comments the Secretary deems appropriate. This is commonly referred to as a "seven-day letter." If the IG, with the advice of Counsel, determines that a denial of access meets the criteria for a seven-day letter, then, as a matter of courtesy, the IG will advise the Commissioner of Internal Revenue before proceeding with notification to the Secretary.

Within the seven-day period, the Secretary of the Treasury shall also transmit the report to the: (1) Senate Committees on Homeland Security, Government Affairs, and Finance; (2) House Committees on Government Reform and Oversight and Ways and Means; (3) IRS Oversight Board; and (4) Commissioner of Internal Revenue. See 5 U.S.C. app. § 8D(g)(1) and (2).

120.4.2 Reporting Access Restriction in Semiannual Report. TIGTA is required to report in its Semiannual Report to Congress any incidents where the IRS has resisted

or objected to oversight activities or restricted or significantly delayed access to information. See IG Act § 5(a)(21).

DATE: July 1, 2020

CHAPTER 700 - CHIEF COUNSEL

(700)-130 Memoranda of Understanding

130.1 General.

Memoranda of Understanding (MOU) memorialize agreements between agencies and other parties (usually other agencies or agency sub components). This manual section addresses MOUs or Interagency Agreements (IAs) that do not involve the transfer of funds. See TIGTA Operations Manual (600)-40.3.13, *Interagency Agreements (IAs)*, for procedures for processing MOUs or IAs involving a transfer of funds.

130.2 Approval Procedures.

The Office of Chief Counsel (Counsel) is responsible for reviewing all MOUs and IAs to be executed by TIGTA, for legal sufficiency. When a function determines that an MOU or IA is necessary, that function, as the responsible function, should forward the proposed document(s) to Counsel's shared mailbox (*TIGTA Counsel Office). The proposal should be routed through the responsible function's Deputy Inspector General or Chief Information Officer.

Upon completion of its review, Counsel will return the proposed MOU or IA to the responsible functional contact for execution. In addition to the Inspector General, in accordance with Delegation Order No. 36, the Deputy Inspectors General, Chief Counsel, and Chief Information Officer have been delegated the authority to sign MOUs and IAs. A copy of the executed version of the MOU should be retained by the responsible function and that function is responsible for taking steps to have the MOU posted in IMDS.

Substantive amendments to an MOU (*e.g.,* regarding purpose, level, and/or nature of the services to be performed) require review and approval by the Counsel.

MOUs that are to be in effect for periods covered by more than one fiscal year may require reauthorization. Unless the purpose, level, and/or nature of the services to be performed change, Counsel need not review each such renewal.

DATE: October 1, 2021

(700)-140 LEGAL CITATIONS

140.1 Bluebook Form.
Legal material cited in Treasury Inspector General for Tax Administration (TIGTA) documents should generally be cited according to the rules of the most current edition of *The Bluebook: A Uniform System of Citation* ("*Bluebook"*). The *Bluebook* contains the uniform system of citation commonly used in U.S. legal writing. Using *Bluebook* form will help ensure that legal sources in all TIGTA materials are cited according to a uniform citation system and that readers are able to locate cited legal sources easily.

140.2 Statutes.
Subsection 140.12 lists current citations for statutes frequently cited by TIGTA components. Citations to statute sections should be in the following short form citation format: "[title] U.S.C. § [section number] ([year])." Citations to previous versions of the U.S. Code should use the date provided on the source document (*e.g.*, the year on the spine of the volume or title page). For example, 26 U.S.C. § 32 (2000) is a citation to Title 26 of the U.S. Code, section 32 of the Internal Revenue Code, using a source from 2000. A provision of the Internal Revenue Code, however, may also be cited simply as "I.R.C. § [section number] ([year])."

140.3 Treasury Regulations.
The citation for a Treasury Regulation that has never been amended should include the year the regulation was promulgated. If the regulation cited is a temporary regulation, that fact must be indicated.

- Treas. Reg. § 1.72-16(a) (1963).
- Temp. Treas. Reg. § 1.338-4T(k) (1985).

Often a regulation will contain some indication about its history and whether it has ever been amended. If any subsection of the regulation has been amended, or for some other reason the regulation has appeared in substantially different versions, the citation should provide the year of the last amendment. The same form should be followed even if the particular subsection cited has never been amended.

- Treas. Reg. § 1.61-2(c) (as amended in 1995).

When the fact that the regulation has been amended is relevant, the citation should include the source of the amendment.

- Treas. Reg. § 1.61-2(c) (as amended by T.D. 8607, 1995-36 I.R.B. 8).

For proposed Treasury regulations, citation is made to the *Federal Register*.

- Prop. Treas. Reg. § 1.704-1, 48 Fed. Reg. 9871, 9872 (Mar. 9, 1983).

140.4 Signals.
A signal sends a shorthand message to the reader about the relationship between the proposition stated and the source or authority cited in relation to that proposition.

Use a citation without a signal for (1) an authority that directly states the proposition; (2) the source of a quotation; or (3) an authority referred to in the preceding text.

Use *e.g.*, to introduce an authority that is one of multiple authorities directly stating the same proposition. Use *see* to introduce an authority that clearly supports, but does not directly state, the proposition. Additional signals may be found under *Bluebook* Rule 1.2, Introductory Signals.

Generally, a signal is italicized or underlined, but if a signal is used in a footnote as a verb of a textual sentence, it should not be italicized.

- Citation: *See* Christina L. Anderson, Comment, *Double Jeopardy: The Modern Dilemma for Juvenile Justice*, 152 U. PA. L. REV. 1181, 1204-07 (2004) (discussing four main types of restorative justice programs).
- Textual Sentence in footnote: See Christina L. Anderson, Comment, *Double Jeopardy: The Modern Dilemma for Juvenile Justice*, 152 U. PA. L. REV. 1181, 1204-07 (2004), for a discussion of four main types of restorative justice programs.

140.5 TIGTA's Semiannual Report to Congress.
TIGTA's Semiannual Report to Congress is cited as follows:

- Treasury Inspector General for Tax Administration [year number] Semiannual Report to Congress [page number].

140.6 Court Cases.
A full case citation includes five components: (1) the name of the case; (2) the published source in which the case may be found; (3) a parenthetical indicating the court and year of the decision; (4) other parenthetical information, if any; and (5) the subsequent history of the case, if any. The parenthetical information should include the deciding court, unless it is the Supreme Court of the United States, followed by the year of the decision. If citing to a specific page of a decision, the page number is included after the published source information.

For Supreme Court cases, cite to the United States Reports (U.S.) if the opinion appears therein; otherwise cite to Supreme Court Reporter (S. Ct.)

- *Meritor Sav. Bank v. Vinson,* 477 U.S. 57, 60 (1986).
- *Tennessee v. Lane,* 124 S. Ct. 1978 (2004).

For Federal Courts of Appeals, cite to Federal Reporter (F., F.2d, F.3d) and indicate the name of the court parenthetically.

- *Envtl. Def. Fund v. EPA,* 465 F.2d 528 (D.C. Cir. 1972).
- *United States v. Jardine,* 364 F.3d 1200, 1202-03 (10th Cir. 2004).

For Federal District Courts, cite to Federal Supplement (F. Supp., F. Supp. 2d) and indicate the name of the court parenthetically.

- *W. St. Group LLC v. Epro,* 564 F. Supp. 2d 84, 91 (D. Mass. 2008).
- *Harris v. Roderick,* 933 F. Supp. 977 (D. Idaho 1996).

140.7 Legislative Materials.
A full citation to legislative material generally includes the following basic components: (1) title of material; (2) abbreviated name of legislative body; (3) number assigned; (4) number of Congress and/or legislative session; and (5) year of publication.

- *Toxic Substances Control Act: Hearing on S.776 Before the Subcomm. on the Env't of the Senate Comm. on Commerce,* 94th Cong. 343 (1975).
- S. Rep. No. 89-910, at 4 (1965).
- H.R. Rep. No. 101-524, at 10 (1990).

140.8 Administrative and Executive Materials.
Citations should conform to the style used for cases, with some exceptions.

- Cite administrative adjudications by the reported name of the private party or the official subject matter title.
    - Trojan Transp., Inc., 249 N.L.R.B. 642 (1980).
- Cite arbitrations as court cases if the adversary parties are named, but as administrative adjudications if they are not. Include the arbitrator's name parenthetically.
    - Kroger Co. v. Amalgamated Meat Cutters, Local 539, 74 Lab. Arb. Rep. (BNA) 785, 787 (1980) (Doering, Arb.)
- Include the issuing agency if not clear from the source.
- Use short forms for regulations.
    - 16 C.F.R. § 444.1 (2021).

140.9 Books and Other Nonperiodic Materials.
Citations to books, treatises, pamphlets, and other nonperiodic materials should include the following elements: (1) volume number (only if multivolume set); (2) full name(s) of the author(s) as it appears on the publication, in small caps; (3) title of publication, in small caps; (4) section or page number; and (5) parenthetical indicating the year of publication, as well as name of editor, if any, and the edition, if more than one.

- 21 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1006 (3d ed. 1998).
- AIDS AND THE LAW 35 (Harlon L. Dalton et al. eds., 1987).
- BLACK'S LAW DICTIONARY 712 (9th ed. 2009).

140.10 Law Review Articles, Magazines, and Newspapers.
A full citation to periodical material generally includes the following: (1) full name(s) of author(s); (2) title of the article (italicized); (3) abbreviated name of the publication; (4) section or page number; and (5) date of publication.

- Kenneth R. Feinberg, *Mediation – A Preferred Method of Dispute Resolution*, 16 PEPP. L. REV. 5, 14 (1989).
- Lynn Hirschberg, *The Misfit*, VANITY FAIR, Apr. 1991, at 158.
- *Cop Shoots Tire, Halts Stolen Car*, S.F. CHRON., Oct. 10, 1975, at 43.

140.11 Internet Sources.
If a source is available both online and in traditional format, cite traditional format. A full citation to the internet includes: (1) name of the author(s); (2) title of the specific page of the website, in italics; (3) title of the main page of the website, in small caps; (4) date and time; and (5) URL.

- Eric Posner, *More on Section 7 of the Torture Convention*, THE VOLOKH CONSPIRACY (Jan. 29, 2009, 10:04 AM), http://www.volokh.com/posts/1233241458.shtml.
- YAHOO! HOME PAGE, http://www.yahoo.com (last visited Feb. 1, 2009).

140.12 Interviews.
When citing an in-person or telephone interview, include the name, title, and institutional affiliation (if any) of the interviewee and the date of the interview. For an in-person interview, provide the location of the interview before the date.

- Interview with Patricia Keane, Editor-in-Chief, UCLA Law Review, in L.A., Cal. (Mar. 2, 2000).
- Telephone interview with John J. Farrell, Senior Partner, Hildebrand, McLeod & Nelson (Nov. 11, 1999).

When the author has not personally conducted the interview, provide the name of the interviewer:

- Interview by Lauren Brook Eisen with Shane Spradlin, CEO Nextel Commc'ns, in Potomac, Md. (Mar. 1, 2000).

140.13 List of Commonly Used Citations.[1]
The citations listed below are for use when referencing an act in its entirety. They will need to be adapted when the citation is for a specific section of a statute. *See* § 140.2.

- Age Discrimination in Federally Assisted Programs Act, 42 U.S.C. §§ 6101-6107 (2018).

- Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. §§ 621-634 (2018).

- American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118 Stat. 1418 (codified in scattered sections of 7, 15, 19, 26, 29, and 42 U.S.C.).

- American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (codified in scattered sections of 7, 12, 15, 16, 19, 20, 29, 33, 42, and 45 U.S.C.).

- American Recovery and Reinvestment Tax Act of 2009 (Recovery Tax Act), Pub. L. No. 111-5, § 1001, 123 Stat 115, subsequently amended by the Tax Relief Unemployment Insurance Reauthorization and Job Creation Act of 2010, Pub. L. No. 111-312, 124 Stat. 3296.

- American Rescue Plan Act of 2021 (ARPA), Pub. L. No. 117-2, 135 Stat. 4 (codified in scattered sections of 7, 12, 15, 19, 20, 26, 29, 42, and 45 U.S.C.).

- Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101-12213 (2018).

- Bank Secrecy Act, Pub. L. No. 91-508, 84 Stat. 1114-4 (1970) (codified as amended in scattered sections of 12, 18, and 31 U.S.C.). Regulations for the Bank Secrecy Act and other related statutes are 31 C.F.R. §§ 103.11-103.77.

- Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (codified as amended in scattered sections of 11, 12, and 15 U.S.C.).

- Chief Financial Officers Act of 1990, Pub. L. No. 101-576, 104 Stat. 2838 (codified as amended in scattered sections of 5, 31, and 42 U.S.C.).

- Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 2, 28, and 42 U.S.C.).

[1] These citations are current as of the date of posting of this manual section; please confirm dates prior to external publication.

- Clinger-Cohen Act of 1996 (Federal Acquisition Reform Act of 1996 and Information Technology Management Reform Act of 1996), Pub. L. No. 104-106, 110 Stat. 642 (codified in scattered sections of 5, 10, 15, 22, 28, 29, 31, 38, 41, 42, 44, 49, and 50 U.S.C.).

- Computer Security Act of 1987, Pub. L. No. 100-235, 101 Stat. 1724 (codified as amended in scattered sections of 15 and 40 U.S.C.).

- Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (codified as amended in scattered sections of 2, 5, 12, 15, 20, 21, 29, 42, and 45 U.S.C.).

- Deficit Reduction Act of 1984, Pub. L. No. 98-369, 98 Stat. 494 (codified as amended in scattered sections of 26 U.S.C.).

- Digital Accountability and Transparency Act of 2014, Pub. L. No. 113-101, 128 Stat. 1146 (codified at 31 U.S.C. §§ 3512, 3716, and 6101 note).

- Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified in scattered sections of 7, 12, and 15 U.S.C.).

- Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38 (codified as amended in scattered sections of 26 U.S.C.).

- Employee Retirement Income Security Act of 1974 (ERISA), Pub. L. No. 93-406, 88 Stat. 829 (codified as amended at 29 U.S.C. §§ 1001-1461 and in scattered sections of 5, 18, and 26 U.S.C.).

- Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (codified as amended in scattered sections of 26 and 42 U.S.C.).

- Fair Debt Collection Practices Act, 15 U.S.C. §§ 1601 note, 1692-1692p (2018).

- Families First Coronavirus Response Act, Pub. L. No. 116-127, 134 Stat. 178 (codified in scattered sections of 7, 26, 29, and 41 U.S.C.).

- Federal Acquisition Regulation (FAR): When citing the entire regulation, use Federal Acquisition Regulation (FAR); no citation is required. When citing to a specific section of the FAR, use “48 C.F.R. § [section number]” or “FAR § [section number].” Provide the year of the *current* versions of the FAR.

- Federal Employees' Compensation Act (FECA), ch. 458, 39 Stat. 742 (codified as amended in scattered sections of 1, 5, and 18 U.S.C.).

- Federal Employees Family Friendly Leave Act of 1993, 29 U.S.C. §§ 2601-2653 (2018).

- Federal Employees Flexible and Compressed Work Schedules Act:

    - 1978 version: The Federal Employees Flexible and Compressed Work Schedules Act of 1978, 95 Pub. L. 390, 92 Stat. 755 (codified at 5 U.S.C. § 5550a and § 6101 note); its implementing regulations begin at 5 C.F.R. §§ 550.1001.
    - § 401 of the Act (religious compensatory time): 5 U.S.C. § 5550a (2018).
    - Federal Employees Flexible and Compressed Work Schedules Act of 1982: 5 U.S.C. §§ 6120-6133 (2018).

- Federal Financial Management Improvement Act of 1996, Pub. L. No. 104-208, §§ 801-08, 110 Stat. 3009 (codified at 5 U.S.C. App. § 5(a) and 31 U.S.C. § 3512 note).

- Federal Information Security Management Act of 2002 (FISMA), Pub. L. No. 107-347, Title III, 116 Stat. 2899 (codified as amended in 44 U.S.C. §§ 3541-3549 (2018)). Note: FISMA is located in Title III of the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899.

- Federal Information Technology Acquisition Reform Act (FITARA), Pub. L. No. 113-291, Title VIII, Subtitle D, 128 Stat. 3449, §§ 831-837 (codified as amended in 40 U.S.C. §§ 11302 and 11319; 41 U.S.C. § 1704 note; 41 U.S.C. § 3301 note; and 44 U.S.C. § 3601 note). Note: FITARA is located in Title VIII, Subtitle D, of the National Defense Authorization Act (NDAA) for Fiscal Year 2015, Pub. L. No. 113-291, 128 Stat. 3449.

- Federal Managers' Financial Integrity Act of 1982, 31 U.S.C. §§ 1105, 1113, and 3512 (2018).

- Federal Unemployment Tax Act (FUTA), 26 U.S.C. §§ 3301-3311 (2018).

- Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2018).

- Foreign Account Tax Compliance Act, Pub. L. No. 111-147, Subtitle A, 124 Stat 97 (codified in scattered sections of 26 U.S.C.).

- Genetic Information Nondiscrimination Act of 2008 (GINA), Pub. L. No. 110-233, 122 Stat. 881 (codified as amended in scattered sections of 26, 29, and 42 U.S.C.).

- Government Charge Card Abuse Prevention Act of 2012, Pub. L. No. 112-194, 126 Stat. 1445 (codified as amended at 5 U.S.C. § 5701 note, 10 U.S.C. § 2784, and 41 § U.S.C. 1909).

- Government Performance and Results Act of 1993 (GPRA), Pub. L. No. 103-62, 107 Stat. 285 (codified as amended in scattered sections of 5, 31, and 39 U.S.C.).

- Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (codified in scattered sections of 20, 26, and 42 U.S.C.). (*See* Patient Protection and Affordable Care Act, *infra*).

- Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. No. 104-191, 110 Stat. 1936 (codified as amended in scattered sections of 18, 26, 29, and 42 U.S.C.).

- Hiring Incentives to Restore Employment Act (HIRE), Pub. L. No. 111-147, 124 Stat. 71 (2010) (codified in scattered sections of 16, 23, 26, and 49 U.S.C.).

- Homebuyer Assistance and Improvement Act of 2010, Pub. L. No. 111-198, 124 Stat. 1356 (codified in scattered sections of 8, 22, and 26 U.S.C.).

- Housing and Economic Recovery Act of 2008 (HERA), Pub. L. No. 110-289, 122 Stat. 2654 (codified as amended in scattered sections of 5, 12, 15, 42, 47, and 50 U.S.C.).

- Improper Payments Elimination and Recovery Act of 2010, Pub. L. No. 111-204, 124 Stat. 2224.

- Improper Payments Information Act of 2002, Pub. L. No. 107-300, 116 Stat. 2350 (2018).

- Inmate Tax Fraud Prevention Act of 2008, Pub. L. No. 110-428, 122 Stat. 4839 (codified in scattered sections of 26 and 28 U.S.C.).

- Inspector General Act of 1978, 5 U.S.C. App. (2018).

- Inspector General Reform Act of 2008, Pub. L. No. 110-409, 122 Stat. 4302 (codified in 5 U.S.C. App. (2018)).

- Inspector General Empowerment Act of 2016, Pub. L. No. 114-317, 130 Stat. 1595 (codified in 5 U.S.C. App. (2018)).

- Internal Revenue Code (I.R.C. or Code): In citations to the Internal Revenue Code, "26 U.S.C." may be replaced with "I.R.C." A provision of the Code may be cited as "I.R.C. § [section number]." When reference is made to a prior version of the Code, a date must be used. When reference is made to the entire Code, a legal citation is not required. For example, the statement "The Internal Revenue Code contains all the laws related to the payment of taxes in the United States," does not require a legal citation.

- Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98), Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2, 5, 16, 19, 22, 23, 26, 31, 38, and 49 U.S.C.).

- Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147, 116 Stat. 21 (codified in scattered sections of 26, 29, and 42 U.S.C.).

- Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. No. 108-27, 117 Stat. 752 (codified in scattered sections of 26 U.S.C.).

- Katrina Emergency Tax Relief Act of 2005, Pub. L. No. 109-73, 119 Stat. 2016 (codified in scattered sections of 26 U.S.C.).

- Money Laundering Control Act of 1986, Pub. L. No., 99-570, 100 Stat. 3207 (codified as amended in scattered sections of 12, 18, and 31 U.S.C.).

- Mortgage Forgiveness Debt Relief Act of 2007, Pub. L. No. 110-142, 121 Stat. 1803 (codified in scattered sections of 26 U.S.C.).

- Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (NO FEAR), Pub. L. No. 107-174, 116 Stat. 566 (codified in scattered sections of 5 U.S.C.).

- Omnibus Taxpayer Bill of Rights (TBOR*)*, Pub. L. No. 100-647, 102 Stat. 3730 (1988) (codified as amended in scattered sections of 5 and 26 U.S.C.).

- Patient Protection and Affordable Care Act (Affordable Care Act), Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended in scattered sections of 26 and 42 U.S.C.), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029.

- Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat. 2861.
- Privacy Act of 1974, 5 U.S.C. § 552a (2018).
- Prompt Payment Act, Pub. L. No. 97-177, 96 Stat. 85 (1982) (codified as amended at 31 US.C. §§ 3901-3907 (2018)).
- Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355 (codified as amended in scattered sections of 29 U.S.C and 31-41c U.S.C.).
- Small Business Job Protection Act of 1996, Pub. L. No. 104-188, 110 Stat. 1755 (codified in scattered sections of 7, 15, 22, 26, 29, and 42 U.S.C.).
- Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054 (codified in scattered sections of 26 U.S.C.).
- Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No. 97-248, 96 Stat. 324 (codified as amended in scattered sections of 26 U.S.C.).
- Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (codified in scattered sections of 26 U.S.C.).
- Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, 124 Stat. 3296.
- Taxpayer Bill of Rights 2 (TBOR2), Pub. L. No. 104-168, 110 Stat. 1452 (1996) (codified as amended in scattered sections of 26 U.S.C.).
- Taxpayer Bill of Rights 3 (TBOR3), Pub. L. No. 105-206, 112 Stat. 726 (1998) (codified as amended in scattered sections of 26 U.S.C.).
- Taxpayer Browsing Protection Act, 26 U.S.C. §§ 7213, 7213A, and 7431 (2018).
- Taxpayer First Act, Pub L. No. 116-25, 133 Stat. 981 (codified in scattered sections of 26 U.S.C.).
- Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788 (codified as amended in scattered sections of 19, 26, 29, and 42 U.S.C.).
- Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688 (2018).

- Trade Adjustment Assistance Reform Act of 2002, Pub. L. No. 107-210, §§ 101-383, 116 Stat. 933 (codified as amended in scattered sections of 19 and 29 U.S.C.).

- Worker, Homeownership, and Business Assistance Act of 2009, Pub. L. No. 111-92, 123 Stat. 2984.

- Working Families Tax Relief Act of 2004 (WFTA), Pub. L. No. 108-311, 118 Stat. 1166 (codified in scattered sections of 26, 29, and 42 U.S.C.).

DATE: April 1, 2021

CHAPTER 700 – CHIEF COUNSEL

(700)-150 Employee Tax Compliance

150.1 Overview.
Treasury Inspector General for Tax Administration (TIGTA) employees have an obligation to file and pay their Federal, State and local taxes timely and accurately. Due to the unique role TIGTA plays in overseeing the Internal Revenue Service (IRS) and the Federal system of tax administration, it is critical that every TIGTA employee fulfills his or her personal tax responsibilities. To ensure TIGTA employees are fulfilling their Federal tax responsibilities, TIGTA has an Employee Tax Compliance (ETC) Program. The ETC Program enables TIGTA to hold itself to a high compliance standard given TIGTA's unique role in oversight of tax administration. This manual sets out the policies and procedures for TIGTA's ETC Program.

150.2 Tax Compliance.
All taxpayers have the responsibility to comply fully with the tax laws. Full tax compliance means timely, accurately filed returns and the timely payment of taxes without penalties. Tax compliance responsibilities include all types of returns, not only income tax. Other types of returns include, but are not limited to: estate taxes, and employers returns. Additionally, as employees of the Federal Government, TIGTA employees must comply with the Standards of Ethical Conduct for Employees of the Executive Branch. 5 C.F.R. Part 2635. The Standards require employees to "satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State, or local taxes that are imposed by law." 5 C.F.R. § 2635.809.

150.3 Employee Tax Compliance Program Procedures.

150.3.1 Identification of Potential Tax Non-Compliance. TIGTA has entered into an agreement with the IRS to provide Tax Compliance Reports that identify TIGTA employees who may have tax compliance issues.

Processing, including adjudication, of TIGTA employee potential noncompliance issues rests solely with TIGTA personnel.

150.3.2 TIGTA Processing of Potential Non-Compliance Cases. Upon identification of potential compliance matters, the Chief Counsel or Deputy Chief Counsel may send an information request, i.e., initial contact letter, to an employee if additional information is needed to address the matter, or refer the matter to the Office of Investigations Special Investigations Unit.

An information request sent by the Chief Counsel or Deputy will ask the employee to provide an explanation for the identified potential compliance matter. A response to this

inquiry must be received within 30 days of the date of this information request. If a response is not received within 30 days, the matter will be referred to a TIGTA Executive for disciplinary action as appropriate.

Based upon the information received on the Tax Compliance Report and any response to the information request that is received from the employee, the Chief Counsel or Deputy will make a determination to close the matter with a clearance or as a minor error, or to refer the matter to a functional Executive for further action. The determination to close the matter with a clearance or as a minor error will be made by the Chief Counsel or Deputy using developed criteria informed by the standards that the IRS ETC office uses for IRS employee tax compliance matters. The Chief Counsel or Deputy will issue a letter to the employee notifying him or her of the clearance or closing determination. Matters not cleared or closed will be referred to an Executive for adjudication, as appropriate, in conformance with TIGTA Operations Manual (600)-70.8 and TIGTA's Table of Offenses and Penalties at Exhibit (600)-70.3.

150.3.3 Consequences of Non-Compliance. TIGTA employees are held to a high tax compliance standard due to TIGTA's oversight role over the IRS and tax administration. Failure to meet fully tax obligations is a violation of the Standards of Ethical Conduct that may result in disciplinary action, up to and including removal from TIGTA employment. See TIGTA Operations Manual (600)-70.8.1.3 and TIGTA's Table of Offenses and Penalties at Exhibit (600)-70.3.

150.4 Confidentiality of Employee Tax Information.
All employee tax information is confidential and subject to the protection of I.R.C. § 6103 and the Privacy Act. Dissemination of tax information will be restricted within TIGTA to those employees with a "need to know" for tax administration purposes.