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From:

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To:

Cc:

Subject: FW: Wordsmiths

The exception to finality in a settlement agreement is specified by statute in both section 7121 (governing closing agreements) and 6224(c)(TEFRA settlement agreements). See [H-Graphics v. Commissioner](#), T.C. Memo. 1992-345. Both use the term "malfeasance" rather than "misconduct." Since the operative TEFRA settlement forms will continue to use the word "malfeasance", the change in language to the cover letter could actually be misleading since "malfeasance" has different alternative meanings than "misconduct." The courts have construed "malfeasance" as amounting to or similar to fraud in this context, but have not construed the word "misconduct" in this context.

I recommend sticking with the word "malfeasance" since it is more accurate, it is the legally correct term, and the term "misconduct" may not accurately describe the circumstances in which the agreement will not be considered binding.

ATTACHMENT 1 (REDACTED)