

DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC

ES 2020-01207

MEMORANDUM FOR: The Honorable Robert C. O'Brien
Assistant to the President for National Security Affairs

SUBJECT: (U) Rescission of Executive Order 13556, Controlled Unclassified Information

REFERENCES: A. (U) Executive Order 13556, Controlled Unclassified Information, 04 November 2010
B. (U) Executive Order 13526, Classified National Security Information, 05 January 2010
C. (U) 32 Code of Federal Regulations, part 2002, Controlled Unclassified Information, 14 September 2016

(U) Please accept this as the Intelligence Community's (IC) formal request for the President to rescind Executive Order (E.O.) 13556, *Controlled Unclassified Information*. The purpose of the E.O. was to standardize executive branch handling of information that is not classified under E.O. 13526, *Classified National Security Information*, or any predecessor or successor order, or the Atomic Energy Act of 1954, as amended, but that still requires protection under laws, regulations, or Government-wide policies. For decades, agencies often employed ad hoc, agency-specific policies, procedures, and markings to handle unclassified information that requires safeguarding or dissemination controls. This patchwork approach apparently resulted in agencies' marking and handling information inconsistently, implementing allegedly unclear or unnecessarily restrictive dissemination policies, and creating potential obstacles to information sharing. The intended solution was to retire For Official Use Only (FOUO) and similar markings (e.g., SBU, AIUO, LES, LIMDIS) and create one marking—CUI—to replace them.

(U) However, in the 10 years since President Obama signed E.O. 13556, and in the four years since the National Archives and Records Administration/Information Security Oversight Office (ISOO)—as the Executive Agent for CUI—created implementing guidance (32 C.F.R. Part 2002), the CUI Program has become unsustainable. Although its clear mandate was to simplify the unclassified markings system and sharing rules, the resulting CUI Program is exponentially more complex than the classification system outlined in E.O. 13526. As currently conceived, instead of simplifying and replacing a handful of current markings with one new CUI marking, the CUI Program has expanded to over 124 categories in 20 groupings, with 60 Specified and 60+ Basic categories. It is vastly overcomplicated.

(U) The complexity and lack of clarity within the CUI Program has stymied uniform implementation policy within the IC. Despite extensive coordination, the IC continues to have

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significant concerns about the implementation of a new methodology of subdividing and protecting unclassified information that will impact every aspect of IC operations. Program implementation will require a substantial investment in marking, training, reporting, and technical capabilities, with some estimates suggesting a cost of over a billion dollars within the IC alone. The cost in labor and time required to implement an initiative of this magnitude is substantial and is indefensible in light of competing IC mission requirements. The IC has very real mission imperatives closely aligned to the proper marking and protection of data, and implementation of the CUI Program poses insurmountable hurdles to accomplishment of those imperatives.

(U//FOUO) Over the past few years, the IC has communicated to ISOO and the Office of Management and Budget our strong opposition to implementation of the CUI program; however, our concerns remain unaddressed. In fact, ISOO on 14 May 2020 directed agencies to issue implementation policies by 31 December 2020, over the non-concurrence of multiple agencies (and every IC element) with that deadline. I cannot justify the continued investment in time and resources required for CUI implementation in the IC. Given the complexity of the program, I believe that the full rescission of E.O. 13556 is the only viable alternative and therefore respectfully request that you immediately start the NSPM-4 process for eventual Presidential action.

(U//FOUO) Application of an FOUO system adequately protects unclassified information and is in keeping with the intent of a commitment to balancing protection of information critical to our Nation's security with our commitment to open Government. Upon rescission of the E.O., the IC would fully support a long-overdue executive branch-wide E.O. or similar guidance mechanism that provides standardized rules for the use of FOUO and related markings to protect unclassified information.

(U//FOUO) My point of contact for this matter is Mr. Gregory Koch, and he may be reached at 933-6118 (secure).



John Ratcliffe

4 December 20

Date