



Controlled Unclassified Information (CUI) Notice 2013-01: Provisional Approval of Proposed CUI Categories and Subcategories

May 22, 2013

Executive Order 13556, “Controlled Unclassified Information,” November 4, 2010, (the Order) directs that a law, regulation, or Government-wide policy (enactments) must serve as the basis for the inclusion of a proposed category or subcategory of Controlled Unclassified Information (CUI) in the national CUI Registry. Consistent with the Order, agencies submit proposed categories and subcategories to the CUI Executive Agent, who determines if they meet the standard of the Order and thereby merit inclusion in the Registry.

In certain instances, agencies have proposed categories and subcategories of information that would reasonably require the protection of the CUI program, but nevertheless lack an enactment, and therefore do not meet the standard of the Order for inclusion in the Registry. Such gaps were not anticipated when the Order was issued.

A July 27, 2012 memorandum from the CUI Executive Agent to Senior Agency Officials requested that agencies propose any such categories or subcategories that are demonstrably worthy, but lack an enactment. A number of agency proposals were received. Following discussions with the Office of Management and Budget, a satisfactory procedural solution was crafted to allow agencies to plan their implementation with the fullest possible understanding of what information types are authorized to be managed as CUI.

The process outlined in this Notice provides that the CUI Executive Agent may grant “provisional approvals” under the condition that the proposed categories and subcategories will be entered into the CUI Registry upon finalization of an eligible enactment. Agencies are requested to follow the attached guidance to obtain provisional approvals.

Please direct any questions regarding this Controlled Unclassified Information Notice to: cui@nara.gov.

Provisional Approval of CUI Categories and Subcategories Lacking Eligible Enactments

- I. Provisional Approval is an authorization for an agency to take a category and subcategory into consideration for planning purposes (such as in a plan for compliance with Executive Order 13556) and a placeholder regarding its eventual incorporation into the Registry.
 - (a) Not until the process is completed for the creation of a suitable enactment will the proposed category and subcategory be incorporated into the Registry.
 - (b) The CUI Executive Agent's (CUI EA) provisional approval is based on the consistency of the proposed category or subcategory with EO 13556, applicable CUI EA directives, a legitimate and justified need for the category or subcategory which the agency is able to demonstrate, and the current taxonomy of the Registry; and the commitment of the agency to begin and complete the process of issuing an authorized Government-wide policy or an appropriate rule to be incorporated into the Code of Federal Regulations, within 12 months of the provisional approval. Issues related to compliance with this 12 month requirement shall be monitored by and coordinated with the CUI EA.
- II. The process parallels the current one used for approval of categories or subcategories:
 - (a) The CUI Senior Agency Official proposes the category or subcategory and requests provisional approval in official correspondence to the CUI EA.
 - (b) The CUI EA reviews for suitability the proposed category or subcategory including all draft and final Government-wide policies or rules. As in the case of other proposed categories or subcategories, the CUI EA consults with the agency and other stakeholders when appropriate.
 - (c) The CUI EA grants provisional approval contingent on:
 - i. Suitability of the enactment and the category or subcategory – including consistency with EO 13556, applicable CUI EA directives, and the current taxonomy of the Registry.
 - ii. In the case of a Government-wide policy – that the agency proposing the category or subcategory is authorized to issue such a policy applicable to the Executive branch; and begins and completes the process of issuing such a policy within 12 months of the provisional approval.
 - iii. In the case of a Federal Regulation – that the agency proposing the category or subcategory begins and completes the process for incorporation of rule into the Code of Federal Regulations within 12 months; and has the statutory authority to do so.

(d) The CUI EA has the discretion to grant extensions as it deems appropriate, but the provisional category or subcategory will not become an approved category or subcategory to be entered into the Registry without a suitable enactment and the CUI EA's final approval.