



CUI Memo 2020-03-30

Memorandum for: Heads of Executive Departments and Agencies
From: Mark A. Bradley *Mark A. Bradley*
Director
Subject: Applying an Exigent Circumstances Waiver to CUI Safeguarding Requirements while Teleworking in Response to the COVID-19 Pandemic

This memorandum clarifies issues concerning the application of an exigent circumstances waiver to CUI safeguarding requirements while teleworking in response to the COVID-19 pandemic. This memorandum constitutes guidance. This memorandum does not have the force and effect of law and is not meant to bind the public, except as authorized by law or regulation or as incorporated into a contract. Accordingly, with regard to the public, this document only provides clarity regarding existing requirements under the law or agency policies. This guidance document is binding on agency actions as authorized under applicable statute, executive order, regulation, or similar authority.

In response to this pandemic, many agencies have instituted a mandatory or expanded telework initiative. While doing so, agencies must balance the need to access, store, and transmit CUI to support current and future operations against the safeguards stipulated by the national CUI Program (32 CFR 2002) and in agency policy.

The agency's CUI program office should be involved in any risk-accepting decisions made during this pandemic so it can align any steps the agency takes with information security principles and help ensure that the agency is properly protecting CUI. This includes both physical safeguarding changes as well as cyber security changes.

CUI must be safeguarded at all times. This requirement does not change because the agency and authorized holders are handling the information in a telework environment. The methods the agency uses to safeguard CUI may change in the environment, but they must still enable the agency to meet the relevant cyber security and physical safeguarding requirements, including protecting the CUI at the appropriate level. Agencies and authorized holders are responsible for ensuring that all appropriate safeguards are in place at remote work locations.

In exigent circumstances, the CUI Program provides an avenue for agency heads or CUI Senior Agency Officials (SAO) to waive safeguarding provisions and requirements found in 32 CFR 2002 while the information is within the agency's possession or control, unless specifically prohibited by applicable laws, regulations, or Government-wide policies (see 32 CFR 2002.38). The CUI SAO must detail in each waiver which CUI is covered by the waiver, which safeguarding provisions or requirements the agency is waiving for that CUI, and the alternate or compensatory protection methods the agency will employ instead to protect that CUI.

If an agency elects to issue an exigent circumstances waiver, the CUI SAO must retain a record of the waiver and include a description in its annual report to the CUI Executive Agent, along with the rationale for each waiver and the alternate steps the agency has taken to ensure sufficient protection of the CUI. In conjunction with the CUI Advisory Council, we are developing a CUI Notice that provides additional details on the waiver process itself and will issue it soon.