



## U.S. ABILITYONE COMMISSION

**Policy 51.108**  
**Effective Date: August 14, 2023**

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### CONTROLLED UNCLASSIFIED INFORMATION

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#### 1. PURPOSE.

Establishes the U.S. AbilityOne Commission's (Commission) policy and framework for Controlled Unclassified Information (CUI) to comply with Federal regulations, the National Archives' CUI policy, and with 32 CFR § 2002, Controlled Unclassified Information. The following three definitions will assist in understanding this CUI policy.

- (a) Controlled Unclassified Information (CUI) is information the Government creates or possesses, or that an entity creates or possesses for or on behalf of the Government, that a law, regulation, or Government-wide policy requires or permits an agency to handle using safeguarding or dissemination controls. However, CUI does not include classified information or information a non-executive branch entity possesses and maintains in its own systems that did not come from, or was not created or possessed by or for, an executive branch agency or an entity acting for an agency. CUI includes information in governmental, commercial, industrial, and service domains. These CUI domains are associated with the responsibilities of the Commission: privacy, financial, procurement and acquisition, proprietary business information, and privilege (e.g., legal practices). Law, regulation, or Government-wide policy may require or permit safeguarding or dissemination controls in three ways: Requiring or permitting agencies to control or protect the information but providing no specific controls, which makes the information CUI Basic; requiring or permitting agencies to control or protect the information and providing specific controls for doing so, which makes the information CUI Specified; or requiring or permitting agencies to control the information and specifying only some of those controls, which makes the information CUI Specified, but with CUI Basic controls where the authority does not specify.
- (b) The CUI Program standardizes the way the executive branch manages unclassified information that requires safeguarding or dissemination controls required by law, Federal regulation, and Government-wide policy. This Program replaces existing agency programs like For Official Use Only (FOUO), Official Use Only (OUO), and others.
- (c) CUI Categories and Subcategories are those types of information for which laws, regulations, or Government-wide policies require or permit agencies to exercise safeguarding or dissemination controls, and which the CUI Executive Agent (EA) has approved and listed in the CUI Registry.

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**2. APPLICABILITY.**

- (a) This policy is applicable to the Commission as an agency of the Executive Branch.
- (b) This policy also applies to the Commissioners and all staff members performing their assigned roles to fulfill the mission and functions of the Commission. In particular, this policy applies to all persons or entities that handle information in the CUI categories designated in this policy, under agreements or arrangements that include CUI provisions, to include AbilityOne Program documents and electronic information in contracts, memoranda of agreements, and agreements on information sharing.
- (c) The information the Commission creates, handles, and possesses in the CUI Organizational Grouping Index and CUI Categories is listed in paragraph 2(f). Updates to this list of CUI Categories and Organizational Index Groupings will be made by the CUI Program Manager (PM) based on approval from the Senior Agency Official (SAO). All the Organizational Index Groupings and CUI categories are listed at <https://www.archives.gov/cui/registry/category-list>.
- (d) Protection, handling, and storage standards apply to CUI documents and electronic media received from other Government departments and agencies.
- (e) CUI is applicable to information created for lawful Government purposes.
- (f) The following CUI categories have been selected from the NARA website page for the applicable Organizational Grouping Index and categories for CUI protection and markings based on the rationales listed.

<b>Organizational Index Grouping and Control Level</b> <i>Subject to Commission approval</i>	<b>CUI Categories (Basic or Specified) and Category Marking.</b> <b>CUI Specified marking indicated by *</b> <i>Subject to Commission approval</i>	<b>Rationale</b>
<b>1. Financial</b>	Budget (BUDG)* See notes for which safeguarding criterion applies (CUI Basic or Specified). This applies	OMB CIR A-11 section 22.1. Budget data is not releasable. Pertains to Commission budget data during formulation and submission.



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	when * appears in this column.	
<b>2. Legal</b>	Administrative Proceeding (ADPO)* Legal Privileged (PRIV)	(ADPO) Protection of legal documents handled by and issued from the General Counsel on adjudication of agency-related matters including dispute resolution and settlements.  (PRIV) Typical work products and attorney-client privilege.
<b>3. Privacy</b>	Contract Use (CONTRACT) *  General Privacy (PRVCY) * (Only for OMB M-17-12)  Inspector General Protected (PRIIG) * Only for 5 USC Appendix 8D(e)  Personnel Records (PERS) * Only for 5 CFR 293.106	(CONTRACT) Stipulations prepared by the Commission for an AbilityOne Program contractor to meet before material may be used in performance of certain contracts.  (PRVCY) Commission collection and use of Personal Identifiable Information (PII) data.  (PRIIG) Protection of the ID of person making a report to the IG.  (PERS) Related to employees of Federal agencies at the Commission level.
<b>4. Procurement and Acquisition</b>	General Procurement and Acquisition (PROCURE) *  Source Selection (SSEL) *	(PROCURE) Commission-level data on material and information relating to, or associated with, the acquisition and procurement of goods and services, i.e., cost or pricing data, contract information, indirect costs, and direct labor rates.  (SSEL) Commission handling of the data cited in FAR 2.101, under the definition of Source Selection Information items 1-10.
<b>5. Proprietary Business Information</b>	General Proprietary Business Information (PROPIN) *	(PROPIN) Procurement List operation relating to material and information relating to, or associated with, a company's products, business, or activities, including but not limited to financial information; data or statements; trade secrets; product research and development;

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	System for Award Management (CONREG)	existing and future product designs and performance specifications.  (CONREG) System for Award Management (SAM) data the Commission collects and uses on a contractor contained in this system.
<b>6. Provisional</b>	Privacy Information (CUI)  Sensitive Personally Identifiable Information (CUI)	(CUI) Pertains to PII data.  (CUI) A subset of PII that, if lost, compromised, or disclosed without authorization could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. Some forms of PII are sensitive as stand-alone elements.
<b>7. Statistical</b>	Statistical Information (STAT) *	(STAT) Refers to information collected by the Commission for statistical purposes; under law, regulation or Government-wide policy and requires (1) protection from unauthorized disclosure; (2) special handling safeguards; and/or (3) prescribed limits on access or dissemination.

- (g) The final Commission-approved list of CUI Categories with the Organizational Index Groupings is used to identify and select the required Category Marking banner format, e.g. “CUI//Category Marking//Limited Dissemination Control” on the CUI documents produced by the Commission. This information is listed at the NARA website for Category Marking.
- (h) The information covered by this policy does not apply to the Central Nonprofit Agencies (CNA) and Nonprofit Agencies (NPA) for information they maintain in their own systems that did not come from, or was not created or possessed by, or for, an executive branch agency or an entity acting for that agency. However, this policy is applicable to the CNA when it receives CUI information either through agreement with the Commission or pursuant to Federal disclosure laws, including the Freedom of Information Act (FOIA) and the Privacy Act of 1974. Records subject to the Privacy Act of 1974 are not necessarily marked as CUI.
- (i) The directives in the CUI regulation (32 CFR § 2002) and this policy do not replace the directives of the Freedom of Information Act (FOIA) and the Privacy Act of 1974. Further, this policy is intended to be consistent with Commission information security and privacy policies.
- (j) Other limitations on applicability per 32 CFR § 2002.22.

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- i. Commission CUI policies do not apply to entities outside the Commission unless a law, regulation, or Government-wide policy requires or permits the controls contained in the agency policy to do so, and the CUI Registry lists that law, regulation, or Government-wide policy as a CUI authority.
- ii. The Commission may not include additional requirements or restrictions on handling CUI other than those permitted in Executive Order (EO) 13556 or the CUI Registry when entering into agreements.

**3. AUTHORITY.**

- (a) 41 U.S.C. 8501 – 8506, Javits-Wagner-O’Day (JWOD) Act.
- (b) 41 C.F.R Chapter 51, Committee for Purchase from People Who Are Blind or Severely Disabled.
- (c) Executive Order (EO) 13556, Controlled Unclassified Information.
- (d) 32 C.F.R. § 2002, approved amendment by the National Archives and Records Administration (NARA) on Controlled Unclassified Information (CUI)
- (e) 32 § C.F.R. 2001, Information Security Oversight Office, National Archives and Records Administration
- (f) Federal Information Processing Standards (FIPS), Publication (PUB) 199, Standards for Security Categorizations of Federal Information and Information Systems, February 2004.
- (g) FIPS PUB 200, Minimum Security Standards for Federal Information and Information Systems
- (h) National Institute of Standards (NIST) SP 800-53 Security and Privacy Controls for Federal Information Systems and Organizations, Rev. 5 (Sept. 23, 2020).
- (i) National Institute of Standards (NIST) SP 800-171 Rev. 2 Protecting CUI in Nonfederal Systems and Organizations.

**REFERENCES.**

- (a) Handbook on Marking CUI published by NARA (Handbook).

**4. DEFINITIONS AND ACRONYMS ARE LISTED IN ATTACHMENT 1.**

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**5. RESPONSIBILITIES.**

Below are the responsibilities of the CUI-specific roles established to implement the CUI program under EO 13556.

- (a) Senior Agency Official (SAO) for CUI. The SAO is responsible for:
- i. Establishing and overseeing the CUI Program at the U.S. AbilityOne Commission;
  - ii. Ensuring the agency has CUI implementing policies and plans;
  - iii. Implementing a CUI education and training program and ensuring agency personnel including, if applicable, contractors, receive appropriate CUI awareness training;
  - iv. Providing updates on CUI implementation efforts to the CUI Executive Agent (the CUI EA is the National Archives and Records Administration (NARA));
  - v. Notifying authorized recipients, the EA, and the public of any waivers granted by the Commission, including a description of all waivers in the annual report to the CUI EA;
  - vi. Developing and implementing the agency's CUI self-inspection program;
  - vii. Establishing a process to accept and manage challenges to CUI status (including improper or absence of marking), in accordance with existing processes based in laws, regulations, and Government-wide policies;
  - viii. Establishing processes and criteria for reporting and investigating improper handling of CUI;
  - ix. Ensuring Commission's compliance with laws, regulations, and Commission policy in collaboration with the Commission CIO and Senior Agency Official for Privacy (SAOP);
  - x. Establishing processes for handling CUI decontrol requests; and
  - xi. Appointing and overseeing the activities and responsibilities of the Commission CUI PM.
- (b) CUI Program Manager. The CUI PM is responsible for:
- i. Managing the day-to-day operations of Commission's CUI program as directed by the SAO;
  - ii. Coordinating CUI policy development and updates;
  - iii. Carrying out the responsibilities of the SAO that are delegated to the CUI PM; and
  - iv. Interacting directly and officially with the Executive Agent on CUI matters including submission of required reports.

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(c) General Counsel. The General Counsel is responsible for serving as the lead for all public release decisions.

6. **POLICY.** See 32 CFR § 2002, Subparts A-C for source material.

(a) Safeguarding.

- i. There are two CUI safeguarding levels: Basic and Specified.
  - a. Basic is the default level unless the CUI Category states to use the Specified level.
  - b. Specified CUI is safeguarded in accordance with (IAW) the requirements of the underlying authorities indicated in the CUI Registry. If there is no guidance per the laws, regulations, or Government-wide policies governing a specific type of CUI and its dissemination, then apply the CUI Basic level unless this results in treatment that does not accord with the CUI Specified authority. In such cases the Commission applies the CUI Specified controls listed in the CUI Registry and may apply the limited dissemination controls listed in the Registry. The Commission will ensure all cases contact the CUI EA, via the SAO, when questions persist on the proper CUI designation to apply to documents.
- ii. The Commission must safeguard CUI IAW the instructions issued by the EA in the CUI Registry and 32 CFR § 2002. These standards require the Commission to always safeguard CUI in a manner that minimizes the risk of disclosure while allowing for timely access by Commission staff and the Commissioners (authorized holders).
- iii. Note on the priority of statute on disclosing information in relation to 32 CFR § 2002: The fact that the Commission designates certain information as CUI does not affect the Commission's or staff member's determinations pursuant to any law that requires the Commission or the employee to disclose that information or permits them to do so as a matter of discretion. Make such determinations according to the criteria set out in the governing law, not based on the information's status as CUI. (32 CFR § 2002.44(a)).
- iv. Authorized holders must only disseminate CUI under agreements and to other authorized holders when they believe there is a reasonable expectation the recipients have a lawful Government purpose to receive the CUI. Use an approved method to disseminate the CUI via information systems or in electronic and hard copy formats.
- v. Email, text, messaging, facsimile, and voice mail are authorized methods of transmission if the CUI is properly marked, has banner and portion markings, and the

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system/method used is one that is in the no-less-than moderate confidentiality impact value set out in FIPS PUB 199, FIPS PUB 200, and NIST SP 800-53.

- vi. All unclassified information throughout the executive branch that requires any safeguarding or dissemination control is CUI. Law, regulation (to include the 32 CFR § 2002), or Government-wide policy must require or permit such controls. The Commission therefore may not implement safeguarding or dissemination controls for any unclassified information other than those controls consistent with the CUI Program.

(b) Accessing and Disseminating CUI Marked Documents.

- i. The Commission will disseminate and permit access to CUI, provided such access or dissemination: abides by the laws, regulations, or Government-wide policies that established the CUI category or subcategory; furthers a lawful Government purpose; is not restricted by an authorized limited dissemination control established by the CUI EA; and is not otherwise prohibited by law.
- ii. Information (documents and electronic media) that an authorizing law, regulations, or Government-wide policy does not set out specific handling or dissemination is in the CUI Basic category. It is accessed and disseminated using this policy and the 32 CFR § 2002.16.
- iii. Dissemination controls will be marked on all documents and electronic media so designated.
- iv. In the absence of specific dissemination restrictions in the authorizing law, regulation, or Government-wide policy, disseminate CUI Specified as the Commission would for CUI Basic.
- v. Note for CUI Specified information: Place additional limits on disseminating CUI only through use of the limited dissemination controls approved by the CUI EA and published in the CUI Registry. These limited dissemination controls are separate from any controls that a CUI Specified authority requires or permits. Using limited dissemination controls to unnecessarily restrict access to CUI is contrary to the goals of the CUI program.

(c) Physical Protection of CUI.

- i. Locations in the Commission where CUI is used and stored are considered controlled environments where there are authorized users. These areas should be set up under the direction of the staff director and Commission security officer to reasonably assure

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against unauthorized disclosure of CUI through viewing, hearing, or removal of the CUI.

- ii. CUI will be kept under the direct control of the authorized user behind a physical barrier. When CUI material is being worked on in the Commission office areas, there must be a physical barrier and access control into the workspace. The barrier can be temporary. Non-Government visitors will be escorted while in the CUI work area. Use CUI cover sheets when visitors are in the controlled areas.
- iii. Office machines, printers, copiers, shredders, fax machines, and desktop PC used for CUI must be labeled as processing and storing CUI.

(d) Storage of CUI.

- i. Storage standards of CUI applies to paper copies, electronic media, emails, data, electronic files, and use of file cabinets, file storage boxes, and records holding rooms in the Commission offices.
- ii. All storage containers and locations will be marked on the outside/entrance with prominent signs denoting the container or room contains CUI.
- iii. Desktop personal computers storing or processing CUI will note as such on the “splash screen” and on the PC.

(e) Sharing CUI.

- i. To disseminate CUI to a non-executive branch entity, authorized holders must reasonably expect that all intended recipients are authorized to receive the CUI and have a basic understanding of how to handle it.
- ii. The Commission will enter into a formal agreement (per 32 CFR § 2002.4(c)) with non-executive branch entities to share CUI. The CUI to be shared must be properly marked per the guidance by the Commission SAO. The agreements must comply with EO 13556 and 32 CFR § 2002.
- iii. A written agreement is not required to share Commission-designated CUI with the following entities: Congress, including any committee, subcommittee, joint committee, joint subcommittee, or office thereof; a court of competent jurisdiction, or any individual or entity when directed by an order of a court of competent jurisdiction or a Federal administrative law judge (ALJ) appointed under 5 U.S.C. 3501; the Comptroller General, in the course of performing duties of the Government Accountability Office; or individuals or entities, when the agency releases information to them pursuant to a FOIA or Privacy Act request.

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- iv. The Commission will enter into agreements with any non-executive branch entity with which it shares or intends to share CUI, as follows:
    - a. An agreement may take any form the SAO approves. It will always include the requirement to comply with EO 13556, the provisions of the 32 CFR part § 2002 on agreements, and the CUI Registry.
    - b. Sharing CUI without a formal agreement. When the Commission cannot enter into an agreement under paragraph (a)(5)(i) of 32 CFR § 2002.16 but the mission requires it to disseminate CUI to non-executive branch entities, the CUI PM or SAO must communicate to the recipient that the Government strongly encourages the non-executive branch entity to protect CUI in accordance with EO 13556, 32 CFR §§ 2002.14 and 2002.16 of the CFR, and the CUI Registry, and that such protections should accompany the CUI if the entity disseminates it further.
  - v. Agreement content. At a minimum, a Commission agreement with non-executive branch entities must include provisions that state:
    - a. Non-executive branch entities must handle CUI in accordance with EO 13556, 32 CFR § 2002.16, and the CUI Registry.
    - b. Misuse of CUI is subject to penalties established in applicable laws, regulations, or Government-wide policies.
    - c. The non-executive branch entity must report any non-compliance with handling requirements to the disseminating agency using methods approved by the SAO.
  - vi. Exigent circumstances waivers may apply when the Commission shares the information with other agencies or non-Federal entities. In such cases, the authorized holders must make recipients aware of the CUI status of any disseminated information.
- (f) Dissemination Controls. Members of the Commission originating CUI as authorized users and the SAO must be judicious when considering imposing dissemination controls to only apply the necessary restrictions to access CUI, including those required by law, regulation, or Government-wide policy. The Commission CUI authorities and authorized users may not impose controls that unlawfully restrict access to CUI.
- (g) Decontrolling and Destruction.
- i. Authority to decontrol is based on a recommendation from the department director to the PM. The SAO approves the recommendation. In addition, the CFR states to decontrol CUI designated by the Commission as soon as practicable for documents that no longer require safeguarding or dissemination controls unless so doing conflicts with governing law, regulations, or Government-wide policy.

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- ii. Automatic decontrol can occur under the four conditions cited by 32 CFR § 2002.18(b)(1)-(4). These are: (1) changes in law, etc.; (2) when released from CUI control by the designating agency; (3) disclosure under the FOIA and Privacy Act, (4) when a predetermined event occurs.
  - iii. Decontrol does not equal public release. Commission authorized holders and the SAO must still use the statutory basis for the decision to release the document under a FOIA or Privacy Act request.
  - iv. CUI will not be decontrolled in an attempt to conceal, or otherwise circumvent accountability for an identified unauthorized disclosure.
  - v. Destruction approval and standards.
    - a. Destruction approval and standards are delegated to authorized holders of CUI in the Commission for CUI that is no longer needed and meets the Government records disposition schedules set by NARA.
    - b. Electronic media destruction standards are in NIST SP 800–53, Security and Privacy Controls for Federal Information Systems and Organizations, and NIST SP 800–88, Guidelines for Media Sanitization. The authorized user can also use any method of destruction approved for Classified National Security Information, as delineated in 32 § CFR 2001.47, Destruction, or any implementing or successor guidance.
    - c. When feasible, authorized users will decontrol records containing CUI prior to transferring them to NARA.
    - d. All destruction must be done in a manner that makes CUI unreadable, indecipherable, and irrecoverable. Paper matter must be shredded.
- (h) Public Release.
- i. Public release can only occur when the Commission, if it designated the information as CUI, makes that information available to the public through the official public release processes.
  - ii. Authorized holders in the Commission may request that the designating agency decontrol certain CUI. If an authorized holder publicly releases CUI in accordance with the designating agency’s authorized procedures, the release constitutes decontrol of the information.
  - iii. The General Counsel is the lead for all public release decisions.

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- (i) Commission Information Systems and CUI.
- i. Authorized holders of CUI who work in Commission information systems and those who access the systems must protect the confidentiality of CUI that is processed, stored, or transmitted in accordance with the applicable security requirements and controls established in FIPS PUB 199, FIPS PUB 200, NIST SP 800-171 and 800-53.
  - ii. Information systems that a non-executive branch entity operates *on behalf* of the Commission are subject to CUI requirements. The Commission may require these systems to meet additional requirements that the SAO, in consultation with the Commission IT, decides are necessary, up to meeting the same security levels the Commission uses for its own internal systems.
  - iii. In accordance with FIPS PUB 199, CUI Basic is categorized at no less than the moderate confidentiality impact level. FIPS PUB 199 defines the security impact levels for Federal information and Federal information systems. 32 CFR § 2002 requires the Commission to apply the appropriate security requirements and controls from FIPS PUB 200 and NIST SP 800-53 to CUI in accordance with any risk-based tailoring decisions.
  - iv. The Commission may increase CUI Basic’s confidentiality impact level above moderate only internally, or by means of agreements with agencies or non-executive branch entities (including agreements for the operation of an information system on behalf of the agencies).
  - v. Controls for CUI Basic may not be at a level higher or different from those permitted in the CUI Basic requirements when disseminating the CUI Basic outside the Commission.
  - vi. Uncontrolled information (non-CUI) is handled IAW the Federal Information Security Modernization Act (FISMA) requirements.
- (j) CUI Marking on Documents and in Electronic Media.
- i. CUI markings listed in the CUI Registry are the only markings authorized to designate unclassified information requiring safeguarding or dissemination controls. Authorized holders must, in accordance with the implementation timelines established for the Commission by the CUI EA:
    - a. Uniformly and conspicuously apply CUI markings to all CUI exclusively in accordance with the Handbook, the 32 CFR § 2002 and the CUI Registry, unless the CUI EA specifically permits otherwise.

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- b. Not modify CUI Program markings or deviate from the method of use prescribed by the CUI EA in an effort to accommodate existing agency marking practices, except in circumstances approved by the CUI EA. Only use markings or practices included in the CFR or the CUI Registry. If legacy markings remain on information, the legacy markings are void and no longer indicate that the information is protected or that it is, or qualifies as, CUI.
- c. Notify the sending agency, either the disseminating entity or the designating agency, when receiving an incorrectly marked document, and request a properly marked document.
- ii. The designating agency determines that the information qualifies for CUI status and applies the appropriate CUI marking when it designates that information as CUI.
- iii. If the Commission staff has information within its control that qualifies as CUI but has not been previously marked as CUI for any reason (for example, pursuant to an agency internal marking waiver as referenced in CFR § 2002.38 (a)), the Commission must mark it as CUI prior to disseminating it.
- iv. Documents will be marked with the acronym “CUI.” Use of the word “Controlled” is not necessary.
- v. Instructions on how to mark CUI on documents are in the CUI Marking Handbook at the weblink.
- vi. Authorized holders of CUI and the CUI PM are required to undergo training on document and media markings at the NARA training website.
- vii. Requirements for marking on inner envelopes and containers for shipping CUI material are described at 32 CFR § 2002.14(d) and are illustrated on page 30 of the CUI Marking Handbook. Use of automated in-transit tracking tools is mandatory when shipping CUI.
- viii. CUI Specified markings. For the clearest explanation of designations and procedures, see the CUI Registry or [www.archives.gov/cui/registry/category-list](http://www.archives.gov/cui/registry/category-list).
- ix. Underlying laws, regulations or Government-wide policy give guidance on types of documents and data that should be marked and safeguarded as part of CUI control designation.
- x. CUI Basic markings. This level of CUI marking is applied when the laws, regulations, and Government-wide policies are silent, or when the Basic markings are

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- specified in the CUI Registry based on the requirement from the underlying directive, policy, or regulations.
- xi. Limited dissemination control markings place additional limits on dissemination of CUI through selection and use of one or more of the markings on the “CUI banner” marking area of a CUI document and in the portion markings of electronic media. (“Portion markings” are defined in section (j)xii, below.) The list of these limited dissemination markings is in the CUI Registry.
    - a. These controls are not to be used to unnecessarily restrict access to CUI. Use of these controls must therefore further a lawful Government purpose; and laws, regulations, or Government-wide policies must require or permit an agency use of these controls.
    - b. Although the Commission is not a designating agency for these controls, the CUI PM will approve all use of limited dissemination controls on CUI documents. The glossary lists types and titles of limited dissemination controls. Ask the Commission PM or CUI SAO when in doubt on the use of limited dissemination controls and which type apply.
    - c. These markings are appropriate for uses as stated in the description column on the web page for the CUI Registry. In general, Commission use of these markings should be constrained. If used, after approval of the CUI PM, the following limited dissemination control marking categories are the ones most applicable to the Commission: Federal Employees Only, Federal Employees and Contractors, No Dissemination to Contractors, and Controls Limited To.
  - xii. The Commission will use portion CUI markings on official electronic and hard copy CUI. Portion markings annotate the portions of a document that are CUI protected and specify the category (Specified or Basic). They may also include a limited dissemination control marking, if approved by the CUI EA and assigned due to the content.
  - xiii. Authorized holders of CUI may remove or strike through only those CUI markings on the first or cover page of decontrolled CUI and markings on the first page of any attachments that contain CUI.
  - xiv. The Commission will use CUI marking on documents that are in a draft stage.
  - xv. Staff members will review documents created prior to November 14, 2016, and remark any that contain information that qualifies as CUI. If the CUI PM or SAO decides that placing CUI markings individually is impractical due to the quantity or

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nature of the information, the CUI status may be posted using alternate posting methods, such as on the containers, via an agreement between users that notes some material may be CUI, or through use of a “splash screen” on a computer.

(k) CUI Program Management

- i. The PM maintains and operates the CUI Management Program.
- ii. The PM assures scheduling and delivery of mandatory training and refresher training on the CUI policy for the Commission staff and Commissioners. Training is required for new staff members within 60 days of employment and for all staff members every two years; and

(l) CUI Marking Waivers.

- i. Limited waivers are granted by the SAO or as delegated to the CUI PM. These waivers are for all or some of the CUI marking requirements while that CUI remains within agency control.
- ii. Circumstances for waivers include: (1) when marking for CUI may be excessively burdensome; (2) for legacy material expected to remain in the Commission; (3) when the authorized users reuse CUI-marked or legacy material; (4) in exigent circumstances stated in 32 CFR § 2002.38(c).
- iii. For all waivers, the SAO must still assure the Commission appropriately safeguards and disseminates the CUI.
- iv. The SAO must detail in each waiver the alternate protections to the CUI.
- v. The SAO or, as delegated, PM must retain a record of each waiver. See the same CFR section for the requirements that cover annual reporting and notifications of waivers to authorized holders and the public.

(m) Sanctions for Misuse of CUI.

- i. The Executive Director will take administrative action against staff members who misuse CUI.
- ii. Where laws, regulations, or Government-wide policies governing certain categories or subcategories of CUI specifically establish sanctions, the Commission must adhere to such sanctions.

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- (n) CUI and the Administrative Procedure Act (APA).
- i. Nothing in the regulations alters the Administrative Procedure Act (APA) or the powers of Federal administrative law judges (ALJs) appointed thereunder, including the power to determine confidentiality of information in proceedings over which the ALJs preside. Nor do the regulations in this part impose requirements concerning the manner in which ALJs designate, disseminate, control access to, decontrol, or mark such information, or make such determinations, per 32 CFR § 2002.48.

**7. PROCEDURES.**

- (a) The CUI Self-Inspection Program is an annual review and assessment of the Commission CUI conducted by the PM. It evaluates the program effectiveness, measures the level of compliance, and serves as the primary monitor of the progress of CUI implementation.
- i. Documenting self-inspections and recording findings will follow a checklist format that includes optional questionnaires for the staff on the CUI program.
  - ii. Results will be coordinated and shared with the CUI Advisory Council, an EA council within NARA. The review will help identify and integrate lessons learned and best practices arising from reviews and assessments of our CUI policy, procedures, and training.
  - iii. Deficiencies will be resolved by the CUI PM using resources made available from the SAO. The PM will lead corrective actions that resolve deficiencies.
  - iv. Analysis and conclusions from the self-inspection program will be documented by the PM and shared with staff directors. Self-inspection results and final reports will be posted on the internal Commission share site on an annual basis.
- (b) Accountability is required when sending CUI through the postal system or other carrier system. Use automated U.S. Postal System accountability tools. Use interoffice or interagency mail to transport CUI. Packages containing CUI must be marked IAW CUI guidance and this policy.
- (c) Training resources in CUI can be found on the NARA EA website. The modules are designed for a widespread audience at multiple levels within the Government and beyond. The modules can be used to supplement Commission training or awareness efforts for the staff and other stakeholders (i.e., non-federal organizations).

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- (d) Details on the format and application of CUI markings (banner markings) on documents and in electronic media.
  - i. Authorized holders must include in the CUI banner marking all CUI Specified category or subcategory markings that pertain to the information in the document. If law, regulation, or Government-wide policy requires specific marking, disseminating, informing, distribution limitation, or warning statements, use those indicators as those authorities require or permit. Do not include these additional indicators in the CUI banner marking or CUI portion markings.
  - ii. Where feasible, include a specific decontrolling date or event with all CUI. Agencies may do so in any manner that makes the decontrolling schedule readily apparent to an authorized holder.
  - iii. CUI category and subcategory portion markings are required for both CUI Basic and Specified level documents.
- (e) Use of CUI cover sheets is required when CUI is not in a CUI designated storage container.
- (f) Reporting improperly marked documents.
  - i. First verify the document against the marking guidelines in the CUI marking handbook and CUI marking policy.
  - ii. Report to the supervisor and to the CUI PM as soon as feasible. Include the basis of the improper marking and from where the document or media was received.
- (g) Process to challenge the designation of information as CUI.
  - i. Authorized holders of CUI who, in good faith, believe that its designation as CUI is improper or incorrect, or who believe they have received unmarked CUI, should notify the disseminating agency, through the Commission SAO or PM, of this belief. When the disseminating agency is not the designating agency, the disseminating agency must notify the designating agency.
  - ii. If the information at issue is involved in Government litigation, or the challenge to its designation or marking as CUI arises as part of the litigation, the issue of whether the challenger may access the information will be addressed via the litigation process instead of by the Commission CUI program. Challengers should nonetheless notify their supervisor, staff director or the CUI PM of the issue to activate the process described below and include its litigation connection.

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- iii. The Commission CUI challenge process:
  - a. The SAO or PM shall acknowledge receipt of the challenge to the initiator and the persons in the roles named in the above paragraph.
  - b. The SAO or PM shall state an expected timetable for response to the challenger and monitor the timetable.
  - c. The SAO or PM shall provide an opportunity for the challenger to define a rationale for belief that the CUI in question is inappropriately designated.
  - d. The CUI challenge process requires that challengers who are authorized holders have the option of bringing such challenges anonymously, and assures challengers are not subject to retribution for bringing such challenges.
  - e. Until the challenge is resolved, authorized holders are to continue to safeguard and disseminate the challenged CUI at the control level indicated in the markings.
  - f. If a challenging party disagrees with the response from the Commission SAO, that party may use the Dispute Resolution procedures described in 32 CFR § 2002.50 (applicable to authorized holders) and the procedures in 32 CFR 2002.52 when there is a dispute between agencies. Report the receipt of a dispute to the staff director and to either the PM or SAO, with an information copy to the General Counsel. Follow-on action on disputes will be handled by the General Counsel.
  
- (h) Transferring CUI.
  - i. Agencies must decontrol records containing CUI before transferring to NARA. This is accomplished by the authorized users as stated in the decontrol section of this policy and in 32 CFR § 2002.18. The authorized users then release the decontrolled records to the Commission records administrator.
  - ii. When the CUI material cannot be decontrolled before transferring to NARA, the agency must indicate on a Transfer Request (TR) in NARA's Electronic Records Archives (ERA) or on an SF-258 paper transfer form, that the records should continue to be controlled as CUI (subject to NARA's regulations on transfer, public availability, and access; see 36 CFR §§ 1235, 1250, and 1256).
  - iii. For hard copy transfer, do not place a CUI marking on the outside of the container.

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- iv. If the status as CUI is not indicated on the TR or SF-258, NARA may assume the agency decontrolled the information prior to transfer, regardless of any CUI markings on the actual records.
- (i) In the case of CUI that pertains to the CNAs, provide details on the exchange and release of CUI considering the CNA business relationship with the Commission under the Javits-Wagner-O'Day (JWOD) Act.
  - i. CUI released and exchanged with the CNA is governed by this policy and 32 CFR § 2002 (See § 2002.4(c) (Agreements and Arrangements) and § 2002.16(a) (Accessing and Disseminating)).



APPROVED *Kimberly M. Zeich* Date: 8/14/2023

**Kimberly M. Zeich**  
Executive Director

**Attachments:**

1. Definitions and Acronyms
2. The Commission CUI Framework

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**Attachment 1: Definitions and Acronyms**

This list includes terms and acronyms used in this policy. Here is the NARA website for all CUI terms and acronyms <https://www.archives.gov/cui/registry/cui-glossary.html>.

**Agency** (also Federal agency, executive agency, executive branch agency) is any “executive agency” as defined in 5 U.S.C. 105; the United States Postal Service; and any other independent entity within the executive branch that designates or handles CUI. This term does not refer to either the CNA or NPA for CUI purposes and policy under 32 CFR § 2002, unless noted by exception in the Commission policy.

**Agreements and arrangements** are any vehicle that sets out specific CUI handling requirements for contractors and other information-sharing partners when the arrangement with the other party involves CUI. Agreements and arrangements include, but are not limited to, contracts, grants, licenses, certificates, memoranda of agreement/arrangement or understanding, and information-sharing agreements or arrangements. When disseminating or sharing CUI with non-executive branch entities, agencies should enter into written agreements.

**Authorized holder** is an individual, agency, organization, or group of users that is permitted to designate or handle CUI.

**Controls** are safeguarding or dissemination controls that a law, regulation, or Government-wide policy requires or permits agencies to use when handling CUI. The authority may specify the controls it requires or permits the agency to apply, or the authority may generally require or permit agencies to control the information (in which case, the agency applies controls from EO 13556, the designated part of the CFR, and the CUI Registry).

**Control level** is a general term that indicates the safeguarding and disseminating requirements associated with CUI Basic and CUI Specified.

**Controlled environment** is any area or space an authorized holder deems to have adequate physical or procedural controls (e.g., barriers or managed access controls) to protect CUI from unauthorized access or disclosure.

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**CUI Basic** is the subset of CUI for which the authorizing law, regulation, or Government-wide policy does not set out specific handling or dissemination controls. Agencies handle CUI Basic according to the uniform set of controls set forth in the designated part of the CFR and the CUI Registry. CUI Basic differs from CUI Specified (see definition for CUI Specified), and CUI Basic controls apply whenever CUI Specified ones do not cover the involved CUI.

**CUI categories and subcategories** are those types of information for which laws, regulations, or Government-wide policies require or permit agencies to exercise safeguarding or dissemination controls, and which the CUI EA has approved and listed in the CUI Registry. The controls for any CUI Basic categories and any CUI Basic subcategories are the same, but the controls for CUI Specified categories and subcategories can differ from CUI Basic ones and from each other. A CUI category may be Specified, while some or all of its subcategories may not be, and vice versa. If dealing with CUI that falls into a CUI Specified category or subcategory, review the controls for that category or subcategory on the CUI Registry. Also consult the agency's CUI policy for specific direction from the Senior Agency Official.

**CUI Program** is the executive branch-wide program to standardize CUI handling by all Federal agencies. The Program includes the rules, organization, and procedures for CUI, established by Executive Order 13556, 32 CFR § 2002, and the CUI Registry. It covers any information the Government creates or possesses, or that an entity creates or possesses on the behalf of the Government, which is required to be protected under law, regulation, or Government-wide policy. The CUI Program standardizes the way the executive branch manages unclassified information that requires safeguarding or dissemination controls required by law, Federal regulation, and Government-wide policy. This Program replaces existing agency programs like For Official Use Only (FOUO), Sensitive But Unclassified (SBU), Official Use Only (OUO), and others.

**CUI Registry** is the official web site listing of the CUI Organizational Index Groupings and CUI Categories, and Category Markings.

**CUI Senior Agency Official (SAO)** is a senior official designated in writing by an agency head and responsible to that agency head for implementation of the CUI Program within that agency. The CUI Senior Agency Official is the primary point of contact for official correspondence, accountability reporting, and other matters of record between the agency and the CU IEA.

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**CUI Specified** is a term for categories of CUI for which a law, Federal regulation, or Government-wide policy requires safeguarding or dissemination controls that differ from those used at the CUI Basic level. These requirements will be incorporated into implementation of the CUI Program so that all unclassified information-handling policies will be brought under one program.

**Decontrolling** occurs when an authorized holder, consistent with 32 CFR § 2002 and the CUI Registry, removes safeguarding or dissemination controls from CUI that no longer requires such controls. Decontrol may occur automatically or through agency action. Decontrolling CUI relieves authorized holders from requirements to handle the information under the CUI Program but does not constitute authorization for public release. See 32 CFR § 2002.18.

**Disseminating** occurs when authorized holders provide access, transmit, or transfer CUI to other authorized holders through any means, whether internal or external to an agency.

**Document** is any tangible thing which constitutes or contains information, and means the original and any copies (whether different from the originals because of notes made on such copies or otherwise) of all writings of every kind and description over which an agency has authority, whether inscribed by hand or by mechanical, facsimile, electronic, magnetic, microfilm, photographic, or other means, as well as phonic or visual reproductions of oral statements, conversations, or events, and including, but not limited to: correspondence, email, notes, reports, papers, files, manuals, books, pamphlets, periodicals, letters, memoranda, notations, messages, telegrams, cables, facsimiles, records, studies, working papers, accounting papers, contracts, licenses, certificates, grants, agreements, computer disks, computer tapes, telephone logs, computer mail, computer printouts, worksheets, sent or received communications of any kind, teletype messages, agreements, diary entries, calendars and journals, printouts, drafts, tables, compilations, tabulations, recommendations, accounts, work papers, summaries, address books, other records and recordings, or transcriptions of conferences, meetings, visits, interviews, discussions, or telephone conversations, charts, graphs, indexes, tapes, minutes, contracts, leases, invoices, records of purchase or sale correspondence, electronic or other transcription of taping of personal conversations or conferences, and any written, printed, typed, punched, taped, filmed, or graphic matter however produced or reproduced. Document also includes the file, folder, exhibits, and containers,

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the labels on them, and any metadata, associated with each original or copy. Document also includes voice records, film, tapes, video tapes, email, personal computer files, electronic matter, and other data compilations from which information can be obtained, including materials used in data processing.

**Executive Agent (EA) for Agency CUI Policy** is the National Archives and Records Administration (NARA). The EA assures compliance and oversees agency actions. The Director of the Information Security Oversight Office (ISOO) is the NARA component who performs the role of EA for NARA.

**Federal information system** is an information system used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency. An information system operated on behalf of an agency provides information processing services to the agency that the Government might otherwise perform itself but has decided to outsource. This includes systems operated exclusively for Government use and systems operated for multiple users (multiple Federal Agencies or Government and private sector users). Information systems that a non-executive branch entity operates on behalf of an agency are subject to the requirements of the designated part as though they are the agency's systems, and agencies may require these systems to meet additional requirements the agency sets for its own internal systems.

**Information sharing agreement** is a document put in place when agencies intend to share CUI with a non-executive branch entity. They should enter into a formal agreement whenever feasible. Such an agreement may take any form the agency head approves, but when established, it must include a requirement to comply with EO 13556, Controlled Unclassified Information (or any successor order), 32 CFR § 2002.16, and the CUI Registry.

**Lawful Government purpose** is any activity, mission, function, operation, or endeavor that the U.S. Government authorizes or recognizes as within the scope of its legal authorities or the legal authorities of non-executive branch entities (such as state and local law enforcement). 32 CFR § 2002.4(bb).

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**Limited dissemination control** is any NARA CUI EA-approved control that agencies may use to limit or specify CUI dissemination. Examples of document and electronic media CUI markings for limited dissemination control:

NOFORN No Foreign Dissemination

FED ONLY Federal Employees Only

FEDCON Federal Employees and Contractors Only

NOCON No Dissemination to Contractors

DL ONLY Dissemination List

Controls REL TO XXXX

Authorized for release to certain nationals only

DISPLAY ONLY Display Only

**Misuse** occurs when someone uses CUI in a manner not in accordance with the policy contained in the EO, the CUI Registry, agency CUI policy, or the applicable laws, regulations, and Government-wide policies that govern the affected information. This may include intentional violations or unintentional errors in safeguarding or disseminating CUI. This may also include designating or marking information as CUI when it does not qualify as CUI.

**Non-executive branch entity** is a person or organization established, operated, and controlled by an individual(s) acting outside the scope of any official capacity as officers, employees, or agents of the executive branch of the Federal Government. Such entities may include: elements of the legislative or judicial branches of the Federal Government; state, interstate, tribal, or local government elements; and private organizations. “Non-executive branch entity” does not include foreign entities as defined in 32 CFR § 2002, nor does it include individuals or organizations when they receive CUI information pursuant to Federal disclosure laws, including the Freedom of Information Act (FOIA) and the Privacy Act of 1974.

**Organizational Index Grouping** is a list on the CUI categories webpage of NARA. The categories are sorted into 20 groupings, e.g., Critical Infrastructure, Financial, etc.

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**Personal Identifiable Information** is information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.

**Portion marking** is ordinarily applied to a section within a document, and may include subjects, titles, graphics, tables, charts, bullet statements, sub-paragraphs, bullet points, or other sections.

**Public release** occurs when the agency that originally designated particular information as CUI makes that information available to the public through the agency's official public release processes. Disseminating CUI to non-executive branch entities as authorized does not constitute public release. Releasing information to an individual pursuant to the Privacy Act of 1974 or disclosing it in response to a FOIA request also does not automatically constitute public release, although it may if that agency ties such actions to its official public release processes. Even though an agency may disclose some CUI to a member of the public, the Government must still control that CUI unless the agency publicly releases it through its official public release processes.

**Records** are agency records and Presidential (or Vice-Presidential) papers or records, as those terms are defined in 44 U.S.C. §§ 3301, 2201 and 2207. Records also include such items created or maintained by a Government contractor, licensee, certificate holder, or grantee that are subject to the sponsoring agency's control under the terms of the entity's agreement with the agency.

**Unauthorized disclosure** occurs when an authorized holder of CUI intentionally or unintentionally discloses CUI without a lawful Government purpose, in violation of restrictions imposed by safeguarding or dissemination controls, or contrary to limited dissemination controls.

**Uncontrolled unclassified information** is information that neither EO 13556 nor the authorities governing classified information cover as protected. Although this information is not controlled or classified, agencies must still handle it in accordance with Federal Information Security Modernization Act (FISMA) requirements.

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**Acronyms**

**EA** Executive Agent

**ISOO** Information Security Oversight Office of NARA

**NARA** National Archives and Records Administration (the EA for Federal CUI). The ISOO is the EA for NARA to issue policy and operate the CUI program.

**PM** Program Manager

**SAO** Senior Agency Official



Attachment 2: CUI Framework for the U.S. AbilityOne Commission

# AbilityOne Commission Controlled Unclassified Information (CUI) Framework

