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Obama Administration Executive Order on Controlled Unclassified Information Strengthens Transparency

WASHINGTON – The Constitution Project (TCP) welcomes the Executive Order on Controlled Unclassified Information (CUI) released today. CUI, by definition, is information that does *not* meet the standards for classified national security information, but is still considered sensitive enough to warrant some level of protection. Previously, over 100 different marking labels (such as “sensitive but unclassified” and “for official use only”) were used by various federal agencies, creating confusion and preventing agencies from sharing information within government and with the public. Today’s Executive Order replaces a memorandum issued by President Bush, and standardizes and limits the use of control markings on unclassified documents. The Order should promote information sharing within the government, as well as government transparency.

TCP also commends the Obama Administration for reaching out to groups that promote openness and accountability to seek our input during the process and we are gratified to see that many of our recommendations are reflected in the final Order.

The following may be attributed to Sharon Bradford Franklin, Constitution Project Senior Counsel:

“We are particularly pleased that the Executive Order clarifies that a control marking on a document does *not* provide a basis for the Executive Branch to withhold the document from either Congress or the judiciary. The Order should ensure that CUI markings promote information sharing rather than creating a new category of classified information.”

In addition, the Constitution Project applauds the provisions of the Order that:

- Provide that control markings may only be justified by statute, regulation, or a government-wide policy, which should significantly limit the extent of control markings.
- Create a presumption of openness, and provide for a public registry of authorized CUI categories.
- Clarify that CUI markings have no bearing on an agency’s analysis of whether a document may be disclosed under the Freedom of Information Act (FOIA).
- Require the Executive Agent responsible for the program to consult with the public on implementation of the Order, which promotes further openness.

In July 2009, the Constitution Project’s Liberty and Security Committee released its report *Reining in Excessive Secrecy: Recommendations for Reform of the Classification and Controlled Unclassified Information Systems* which included a series of specific recommendations on the use of such control markings. [link to <http://www.constitutionproject.org/pdf/178.pdf>]

The Constitution Project (TCP) is a national, bipartisan think tank that develops consensus-based solutions to some of the most difficult constitutional challenges of our time. Established in 1997, TCP is renowned

for its ability to bring together *unlikely allies*—experts and practitioners from across the political spectrum—in order to promote and safeguard America’s founding charter. TCP works on criminal justice and rule of law issues by undertaking scholarship, policy reform and public education initiatives.