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To ensure that executive departments and agencies include statements of preemption in regulations only when such statements have a sufficient legal basis:

1. Heads of departments and agencies should not include in regulatory preambles statements that the department or agency intends to preempt State law through the regulation except where preemption provisions are also included in the codified regulation.

2. Heads of departments and agencies should not include preemption provisions in codified regulations except where such provisions would be justified under legal principles governing preemption, including the principles outlined in Executive Order 13132.

3. Heads of departments and agencies should review regulations issued within the past 10 years that contain statements in regulatory preambles or codified provisions intended by the department or agency to preempt State law, in order to decide whether such statements or provisions are justified under applicable legal principles governing preemption. Where the head of a department or agency determines that a regulatory statement of preemption or codified regulatory provision cannot be so justified, the head of that department or agency should initiate appropriate action, which may include amendment of the relevant regulation.

Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory authorities. Heads of departments and agencies should consult as necessary with the Attorney General and the Office of Management and Budget's Office of Information and Regulatory Affairs to determine how the requirements of this memorandum apply to particular situations.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the *Federal Register*.

BARACK OBAMA

THE WHITE HOUSE,
Washington, May 20, 2009.

Memorandum of May 27, 2009

Classified Information and Controlled Unclassified Information

Memorandum for the Heads of Executive Departments and Agencies

As outlined in my January 21, 2009, memoranda to the heads of executive departments and agencies on Transparency and Open Government and on

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the Freedom of Information Act, my Administration is committed to operating with an unprecedented level of openness. While the Government must be able to prevent the public disclosure of information where such disclosure would compromise the privacy of American citizens, national security, or other legitimate interests, a democratic government accountable to the people must be as transparent as possible and must not withhold information for self-serving reasons or simply to avoid embarrassment.

To these ends, I hereby direct the following:

Section 1. *Review of Executive Order 12958.* (a) Within 90 days of the date of this memorandum, and after consulting with the relevant executive departments and agencies (agencies), the Assistant to the President for National Security Affairs shall review Executive Order 12958, as amended (Classified National Security Information), and submit to me recommendations and proposed revisions to the order.

(b) The recommendations and proposed revisions shall address:

(i) Establishment of a National Declassification Center to bring appropriate agency officials together to perform collaborative declassification review under the administration of the Archivist of the United States;

(ii) Effective measures to address the problem of over classification, including the possible restoration of the presumption against classification, which would preclude classification of information where there is significant doubt about the need for such classification, and the implementation of increased accountability for classification decisions;

(iii) Changes needed to facilitate greater sharing of classified information among appropriate parties;

(iv) Appropriate prohibition of reclassification of material that has been declassified and released to the public under proper authority;

(v) Appropriate classification, safeguarding, accessibility, and declassification of information in the electronic environment, as recommended by the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction and others; and

(vi) Any other measures appropriate to provide for greater openness and transparency in the Government's security classification and declassification program while also affording necessary protection to the Government's legitimate interests.

Sec. 2. *Review of Procedures for Controlled Unclassified Information.* (a) *Background.* There has been a recognized need in recent years to enhance national security by establishing an information sharing environment that facilitates the sharing of terrorism-related information among government personnel addressing common problems across agencies and levels of government. The global nature of the threats facing the United States requires that our Nation's entire network of defenders be able rapidly to share sensitive but unclassified information so that those who must act have the information they need.

To this end, efforts have been made to standardize procedures for designating, marking, and handling information that had been known collectively as "Sensitive But Unclassified" (SBU) information. Sensitive But Unclassified refers collectively to the various designations used within the Federal Government for documents and information that are sufficiently

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sensitive to warrant some level of protection, but that do not meet the standards for national security classification. Because each agency has implemented its own protections for categorizing and handling SBU, there are more than 107 unique markings and over 130 different labeling or handling processes and procedures for SBU information.

A Presidential Memorandum of December 16, 2005, created a process for establishing a single, standardized, comprehensive designation within the executive branch for most SBU information. A related Presidential Memorandum of May 9, 2008 (hereafter the “May 2008 Presidential Memorandum”), adopted the phrase “Controlled Unclassified Information” (CUI) to refer to such information. That memorandum adopted, instituted, and defined CUI as the single designation for information within the scope of the CUI definition, including terrorism-related information previously designated SBU. The memorandum also established a CUI Framework for designating, marking, safeguarding, and disseminating CUI terrorism-related information; designated the National Archives and Records Administration as the Executive Agent responsible for overseeing and managing implementation of the CUI Framework, and created a CUI Council to perform an advisory and coordinating role.

The May 2008 Presidential Memorandum had the salutary effect of establishing a framework for standardizing agency-specific approaches to designating terrorism-related information that is sensitive but not classified. As anticipated, the process of implementing the new CUI Framework is still ongoing and is not expected to be completed until 2013. Moreover, the scope of the May 2008 Presidential Memorandum is limited to terrorism-related information within the information sharing environment. In the absence of a single, comprehensive framework that is fully implemented, the persistence of multiple categories of SBU, together with institutional and perceived technological obstacles to moving toward an information sharing culture, continue to impede collaboration and the otherwise authorized sharing of SBU information among agencies, as well as between the Federal Government and its partners in State, local, and tribal governments and the private sector.

Agencies and other relevant actors should continue their efforts toward implementing the CUI framework. At the same time, new measures should be considered to further and expedite agencies’ implementation of appropriate frameworks for standardized treatment of SBU information and information sharing.

(b) *Interagency Task Force on CUI.* (i) The Attorney General and the Secretary of Homeland Security, in consultation with the Secretary of State, the Archivist of the United States, the Director of the Office of Management and Budget, the Director of National Intelligence, the Program Manager, Information Sharing Environment (established in section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended (6 U.S.C. 485)), and the CUI Council (established in the May 2008 Presidential Memorandum), shall lead an Interagency Task Force on CUI (Task Force). The Task Force shall be composed of senior representatives from a broad range of agencies from both inside and outside the information sharing environment.

(ii) The objective of the Task Force shall be to review current procedures for categorizing and sharing SBU information in order to determine

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whether such procedures strike the proper balance among the relevant imperatives. These imperatives include protecting legitimate security, law enforcement, and privacy interests as well as civil liberties, providing clear rules to those who handle SBU information, and ensuring that the handling and dissemination of information is not restricted unless there is a compelling need. The Task Force shall also consider measures to track agencies' progress with implementing the CUI Framework, other measures to enhance implementation of an effective information sharing environment across agencies and levels of government, and whether the scope of the CUI Framework should remain limited to terrorism-related information within the information sharing environment or be expanded to apply to all SBU information.

(iii) Within 90 days of the date of this memorandum, the Task Force shall submit to me recommendations regarding how the executive branch should proceed with respect to the CUI Framework and the information sharing environment. The recommendations shall recognize and reflect a balancing of the following principles:

(A) A presumption in favor of openness in accordance with my memoranda of January 21, 2009, on Transparency and Open Government and on the Freedom of Information Act;

(B) The value of standardizing the procedures for designating, marking, and handling all SBU information; and

(C) The need to prevent the public disclosure of information where disclosure would compromise privacy or other legitimate interests.

Sec. 3. General Provisions. (a) The heads of agencies shall assist and provide information to the Task Force, consistent with applicable law, as may be necessary to carry out the functions of their activities under this memorandum. Each agency shall bear its own expense for participating in the Task Force.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) Authority granted by law or Executive Order to an agency, or the head thereof; or

(ii) Functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 4. Publication. The Attorney General is hereby authorized and directed to publish this memorandum in the *Federal Register*.

BARACK OBAMA

THE WHITE HOUSE,
Washington, May 27, 2009.