

AAU Association of American Universities
COGR Council on Governmental Relations

July 7, 2015

Regulations Comment Desk
Strategy Division (SP), Suite 4100
National and Archives Records Administration
8601 Adelphi Road
College Park, MD 20740-6001
Via e-mail: Regulation_comments@nara.gov.

Re: NARA RIN 3095-AB80

Dear Sir/Madame:

On behalf of the Council on Governmental Relations (COGR) and the Association of American Universities (AAU), we write to comment on the National and Archives Records Administration (NARA) proposed rule on Controlled Unclassified Information (CUI), RIN 3095-AB80. COGR is an association of 190 U.S. research universities and their affiliated academic medical centers and research institutes that concerns itself with the impact of federal regulations, policies, and practices on the performance of research and other sponsored activities conducted at its member institutions. AAU is an association of 60 U.S. and two Canadian preeminent research universities organized to develop and implement effective national and institutional policies supporting research and scholarship, graduate and undergraduate education, and public service in research universities.

Our member institutions have established information security controls and are very familiar with the need to protect information system infrastructure and processes. We support the goal of establishing uniform policies and practices across the Federal government with regard to information that requires safeguarding or dissemination controls commonly referred to as Controlled Unclassified Information or CUI. As the subject Notice recognizes, the existing patchwork system for CUI has led to inefficiencies and confusion on the part of contractors who work with more than one agency as is the case with COGR/AAU members. Our members have experienced differing agency requirements and conflicting guidance with regard to CUI, and we therefore support the concept of consistent uniform security standards.

Unfortunately, the application of the proposed rule to contractors raises a number of questions. Foremost is a question as to the interaction of the proposed NARA rule with the other elements of the three-part implementation of Executive Order 13556, namely the NIST security standards and the upcoming FAR rule. We twice commented to NIST on draft versions of Special Publication 800-171 (see comments attached). The main issue we raised concerned the compliance implications for nonfederal organizations such as our members. While the proposed NARA rule is primarily directed to federal agencies, it includes provisions directed to contractors and vendors, and gives rise to similar concerns.

The Notice cites NARA as partnering with NIST to develop the NIST 800-171 standards. However, it is unclear whether the proposed rule requires agencies to impose the NIST requirements or their equivalents

for CUI Basic information. We assume from the CUI Registry that NARA envisions “CUI Basic” to be subject to the 800-171 controls, but this is not clearly stated in the proposed rule. As we pointed out in our comments to NIST, if the full set of both the NIST basic and derived controls are applied (109 controls) in all cases, this will create a substantial compliance burden for our members.

It also is not clear whether agencies are required to specifically reference the CUI Registry requirements in contracts, particularly as to CUI Specified requirements. While the pending FAR clause hopefully will provide clarification, the NARA requirements presumably will be effective upon issuance of a final rule. Since the FAR clause is not expected to be issued until 2016, the proposed rule needs to be clearer as to what requirements apply.

In 2002.1 (e) the proposed rule also appears to draw a distinction between contractors and other non-executive branch entities that receive CUI. With regard to the latter, the proposed rule discusses the need for agencies to enter into formal information-sharing agreements regarding CUI with non-executive branch entities. However, the definition in 2002.2 of non-executive branch entities includes contractors. We also note that our members may originate certain CUI information (e.g. student records). It is not clear how the information-sharing agreement requirement applies in such cases, or what the intent is of the distinction between 2002.1(e) (1) and (2).

As an observation, we note that beginning in section 2002.12(c), the form of address in the proposed rule changes from “agencies” to “you.” This appears inappropriate in a proposed rule that is in part directed to non-federal entities, and may raise questions as to who the “you” is for these purposes.

We urge NARA as Executive Agent for the CUI Program to more clearly address the application of the proposed rule to contractors and other non-federal entities. While the current system has imposed occasional burdens and inconsistencies, we are concerned that more consideration be given to the burden resulting from the imposition of requirements derived from federal information system controls as discussed in our comments to NIST. We also urge consideration be given to delaying implementation of the NARA rule to assure coordination with the pending FAR rule. Otherwise there appears to be the potential for confusion as to how the NARA requirements apply to contractors and nonfederal organizations that handle CUI and the interaction of the various components of EO 13556 implementation.

We appreciate the opportunity to comment.

Sincerely,

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