



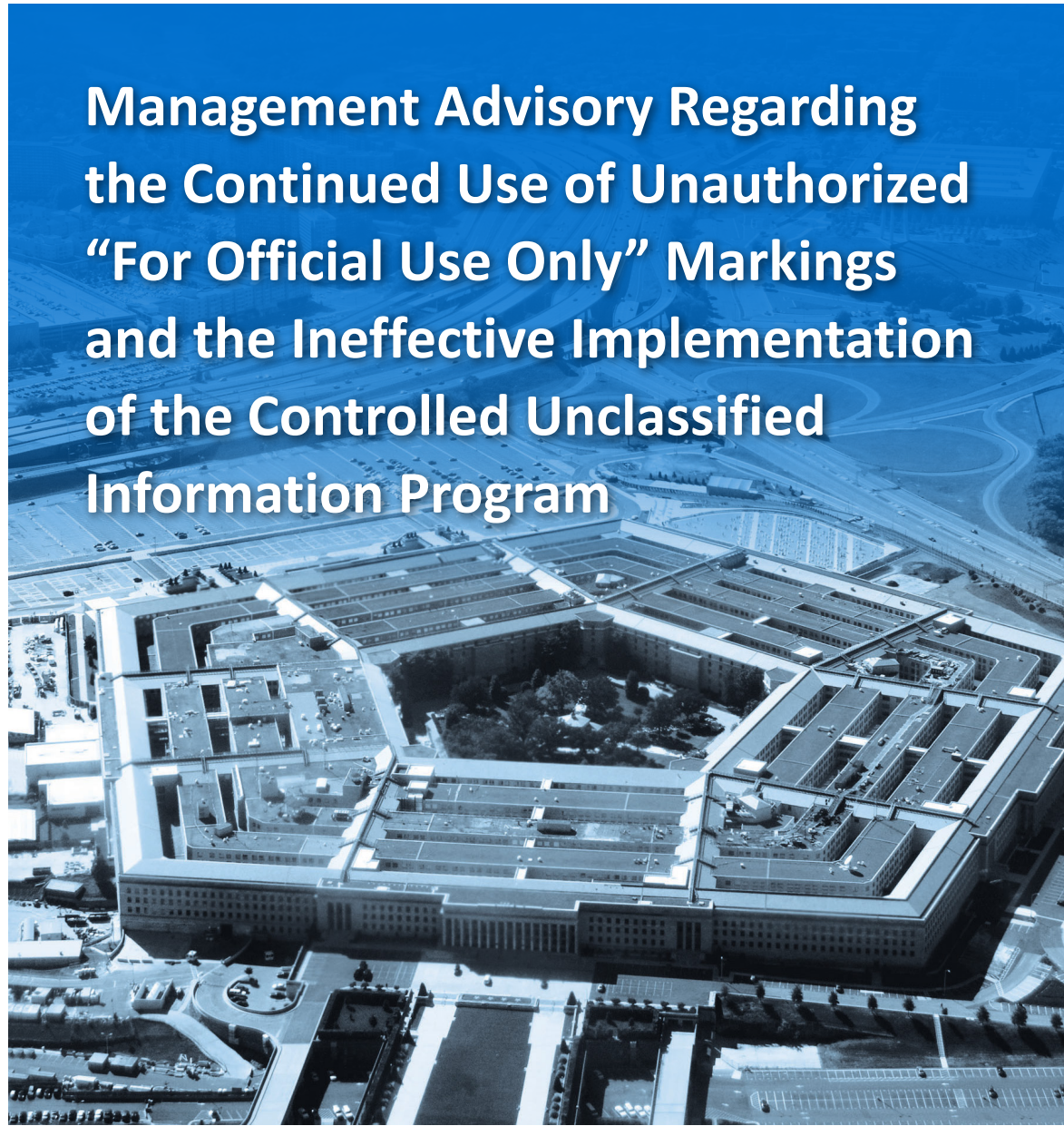
INSPECTOR GENERAL

U.S. Department of Defense

SEPTEMBER 23, 2021



Management Advisory Regarding the Continued Use of Unauthorized “For Official Use Only” Markings and the Ineffective Implementation of the Controlled Unclassified Information Program







**INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500**

September 23, 2021

MEMORANDUM FOR DEPUTY SECRETARY OF DEFENSE
SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDERSECRETARY OF DEFENSE FOR INTELLIGENCE AND SECURITY
COMMANDERS OF THE COMBATANT COMMANDS
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTORS OF DEFENSE AGENCIES
DIRECTORS OF DOD FIELD ACTIVITIES

SUBJECT: Management Advisory Regarding the Continued Use of Unauthorized
"For Official Use Only" Markings and the Ineffective Implementation of the
Controlled Unclassified Information Program (Report No. DODIG-2021-135)

The purpose of this memorandum is to inform Department of Defense (DoD) leadership about the continued use of unauthorized "For Official Use Only" (FOUO) markings on new DoD documents, the failure of DoD officials to effectively implement the DoD Controlled Unclassified Information (CUI) Program, and the impact of these practices on DoD Office of Inspector General (DoD OIG) oversight operations.

DoD Instruction 5200.48, "Controlled Unclassified Information (CUI)," dated March 6, 2020, establishes policy, assigns responsibilities, and prescribes procedures for CUI throughout the DoD in accordance with Executive Order 13556 and other authorities. The instruction also cancelled prior DoD policy guidance authorizing the use of FOUO as an information protective marking.¹ As a result, since March 6, 2020, any new documents, including new documents created with information derived from legacy FOUO materials, must be marked as CUI if the information qualifies as CUI. Notably, paragraph 3.2 of the Instruction explains:

DoD legacy information does not automatically become CUI. **It must be reviewed by the owner of the information to determine if it meets the CUI requirements.** If it is determined the specific legacy information meets the CUI requirements, it will be marked in accordance with this issuance and corresponding manual. [Emphasis added.]

The DoD OIG regularly collects large amounts of DoD Component source documents and incorporates information from the documents into DoD OIG reports and other written products. Over the last year, we collected a significant number of DoD Component source documents marked FOUO. Some documents predated the publication of DoDI 5200.48.

¹ DoD Manual 5200.01, Volume 4, "DoD Information Security Program: Controlled Unclassified Information," February 24, 2012, as amended, was cancelled effective March 6, 2020.

However, the DoD OIG collected a significant number of new DoD Component source documents created after the publication of DoDI 5200.48 that included unauthorized FOUO markings. We provide examples of these new documents in the attachment.

To ensure DoD OIG reports are properly marked and DoD information is properly protected, when drafting our reports we request the originating DoD Components review their FOUO and other information included in our reports and determine, as required by DoDI 5200.48, whether the information meets CUI requirements.² If it does, we then request DoD Components to provide the appropriate CUI marking information (registry categories and dissemination controls) so that we can properly mark the reports. This process protects DoD Component source CUI information contained in DoD OIG publically-issued products.

Over the past year, DoD Components have not complied with the requirements of DoDI 5200.48 when responding to DoD OIG requests that they review and determine if their FOUO information in DoD OIG reports meets CUI requirements. Often, DoD Components did not provide CUI determinations or information on CUI markings, including applicable registry categories, dissemination controls, and points of contact. This affected our reporting efforts because the DoD OIG generally does not have the independent knowledge to determine if a DoD Component's source information meets the CUI requirements and how that information should be marked in our reports. As a result, the DoD OIG has issued reports since March of 2020 with FOUO markings in violation of the Executive Order, DoDI 5200.48, and other authorities. We provide examples in the attachment.

On October 1, 2021, we will stop the practice of including FOUO markings in new DoD OIG reports to account for the failure of DoD Components to comply with the requirements of DoDI 5200.48. We expect DoD Components that provide us with FOUO-marked source information will review the information when we incorporate it into DoD OIG reports, determine if the information meets the CUI requirements, and provide the DoD OIG with applicable CUI marking guidance in accordance with DoDI 5200.48 and other authorities. Failure to provide this support could result in the unintended public release of a DoD Component's controlled unclassified information in our reports.

The continued use of FOUO to mark both legacy and new information is contrary to Executive Branch and DoD requirements and continues to create reporting issues for the DoD OIG. Importantly, it also adversely affects the DoD's interests in ensuring information is appropriately protected from public release through the proper application of CUI markings.

Our experience also indicates the DoD CUI Program remains at an early stage and has not been implemented effectively in many of the DoD Components reviewed by the DoD OIG after DoDI 5200.48 was published. We provide examples in the attachment where DoD Components displayed limited familiarity with CUI, which significantly delayed the processing of our reports.

² This includes both properly marked legacy FOUO information and improperly marked FOUO information created after the publication of DoDI 5200.48.

For these reasons, we request the cooperation of DoD leadership in monitoring effective implementation of the DoD CUI Program generally, and in providing the DoD OIG prompt and appropriate CUI determinations and markings when advised that DoD Component source information is included in DoD OIG reports. This includes providing the DoD OIG with prompt and complete CUI determinations on legacy FOUO information and new information that is improperly marked FOUO when requested by the DoD OIG.

Additionally, we recommend that the Under Secretary of Defense for Intelligence and Security develop and implement an action plan, with milestones, to oversee CUI training within the DoD and the effective implementation of the DoD CUI Program by all DoD Components.

We appreciate your timely attention to the matters raised in this memorandum. My point of contact is Paul Hadjiyane, General Counsel, DoD OIG, who can be reached at (703) 604-8350 or paul.hadjiyane@dodig.mil.

A handwritten signature in black ink, reading "Sean W O'Donnell". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Sean W. O'Donnell
Acting Inspector General

Attachment:
As stated



Examples of DoD OIG Oversight Projects Impacted by DoD's Continued Use of Unauthorized FOUO Markings and Lack of Responsive CUI Determinations

I. Component Source Documents Dated After Issuance of DoDI 5200.48 with Unauthorized FOUO Markings

Project No. D2020-D000CR-0092.000

Title: Joint Audit of the Department of Defense and Department of Veterans Affairs Efforts to Achieve Electronic Health Record Interoperability

Announcement Date: February 24, 2020

Auditee: Defense Health Agency (DHA)

Summary: The DHA provided documentation generated after March 2020 with FOUO markings instead of CUI markings, including e-mails from staff marked FOUO instead of CUI. Examples of documentation received from DHA with FOUO markings include various guides, scans, and action plans issued after March 2020.

Project No. D2020-D000CX-0032.000

Title: Audit of the DoD's Recruitment and Retention of the Civilian Cyber Workforce

Announcement Date: November 7, 2019

Auditee: DoD CIO, U.S. Cyber Command, the Joint Force Headquarters, DISA, the Defense Civilian Personnel Advisory Service, and Military Departments at various locations

Summary: The Defense Civilian Personnel Advisory Service (DCPAS) provided multiple unmarked reports during the audit that contained workforce data. In January 2021, a DCPAS official stated that DCPAS considered workforce data to be FOUO information. We also received multiple reports from the Air Force from March 2020 through February 2021 that contained workforce data with FOUO markings instead of CUI markings.

Project No. D2020-D000CP-0068.000

Title: Audit of DoD's Use of Secure Commercial Cloud Services

Announcement Date: January 14, 2020

Auditee: DoD CIO, DISA, and Military Departments at various locations

Summary: DISA issued two provisional authorizations for cloud service providers in January 2021 with FOUO markings instead of CUI markings.

Project No. D2020-D000CT-0120.000

Title: Audit of ENCORE III Information Technology Service Task Orders

Announcement Date: April 27, 2020

Auditee: DoD Components administering task orders under the ENCORE III information technology service contract

Summary: Several components provided documentation dated after March 2020 with FOUO markings instead of CUI markings. Examples include Joint Service Provider (DISA Component) - status reports, Naval CPARS Program Office - CPARS entries, and Defense Information Technology Contracting Organization (DISA Component) - memorandum for record for contract modification.

Project No. D2020-D000AW-0179.000

Title: Audit of the Department of Defense Middle Tier of Acquisition Rapid Prototyping and Rapid Fielding Program

Announcement Date: September 14, 2020

Evaluated Entity: DoD Components and Military Departments at various levels

Summary: The DoD OIG received documents that were marked CUI but did not include complete markings identifying who controlled the document, CUI category, distribution/dissemination control, or point of contact information. Additionally, we received memorandums, reports, and acquisition documents from personnel at various levels of the Army, Navy, and Air Force from September 2020 through June 2021 that contained FOUO markings instead of CUI markings. Examples of documentation dated after March 2020 the DoD OIG received with FOUO markings include: recurring acquisition reports, plans, and schedules.

II. Components Failed to Determine Whether Legacy FOUO information in New DoD OIG Products Met CUI Requirements or Delayed Providing Useful CUI Guidance

Project No. D2019-D000RK-0134

Report No. DODIG-2020-123

Title: Audit of the F-35 Program Office's Beyond Economical Repair Process for Parts

Report Date: September 4, 2020

Auditee: F-35 Program Office

Summary: During coordination on the draft report, the DoD OIG requested whether the F-35 Program Office could or had converted any of its source FOUO information to CUI. As of August 19, 2020, the Program Office had not, and the liaison stated that the F-35 Program Office would begin that process in FY 2021. (Current status of this effort is unknown.) As a result, we were compelled to retain the unauthorized FOUO markings in our report and redact the F-35 Program information from our public release in September 2020.

<https://media.defense.gov/2020/Sep/09/2002493541/-1/-1/1/DODIG-2020-123.PDF>

Project No. D2020-D000RL-0118.000

Report No. DODIG-2021-069

Title: Audit of the Impact of Coronavirus Disease-2019 on Basic Training

Report Date: March 31, 2021

Auditee: Multiple Service Training Commands

Summary: The Army Training and Doctrine Command (TRADOC) received and reviewed our draft audit report. On the Security Review Form provided in January 2021 to record its comments, TRADOC representatives stated that they had not started the steps to re-categorize to CUI its legacy FOUO information included in the DoD OIG draft report, which related to Army guidance documents issued in 2020. As a result, we were compelled to retain the unauthorized FOUO markings in our report and redacted the TRADOC information from our public release in March 2021.

<https://media.defense.gov/2021/Apr/02/2002613239/-1/-1/1/DODIG-2021-069.PDF>

Project No. D2020-D000AX-0034.00

Report No. DODIG-2021-096

Title: Audit of the Military Departments' Purchases of Aviation Fuel and Non-Fuel Services Using the Aviation Into-Plane Reimbursement (AIR) Card

Date: June, 24, 2021

Auditee: Defense Logistics Agency (DLA)

Summary: The DoD OIG encountered a six week delay because DLA officials misunderstood CUI and initially requested that the entire report be marked CUI, not coordinated with the contractor, and withheld from public release. Only after the DoD OIG explained the CUI requirements to DLA officials was a properly portion-marked report and completed Security Marking Review form provided to the DoD OIG. In the end, DLA senior leadership revised their position and we were able to issue a report in June 2021 that contained no CUI.

<https://media.defense.gov/2021/Jun/29/2002751279/-1/-1/1/DODIG-2021-096.PDF>

Project No. D2020-DEVPSM-0027.00

Report No. DODIG-2021-046

Title: Evaluation of the Aircraft Monitor and Control System's Nuclear Certification

Report Date: January 22, 2121

Evaluated Entity: Air Force

Summary: The DoD OIG encountered significant delays because, in December 2020, the Air Force responded to the DoD OIG's request for a security review of the draft report by insisting that the entire report was CUI and that it was not necessary for their personnel to review and portion mark it. We explained that, because the report was to be redacted and publically released, the Air Force needed to portion mark the CUI. After a series of conversations between DoD OIG and Air Force officials, the Air Force agreed to portion mark the report. These conversations, plus the additional Air Force review, delayed publication of the report approximately five weeks. We were eventually able to issue a properly marked CUI report in January 2021

https://media.defense.gov/2021/Jan/26/2002570561/-1/-1/1/DODIG-2021-046_REDACTED.PDF

Project No. D2020-D000AW-0037.000

Report No. DODIG-2021-106

Title: Audit of the Department of Defense's Controls on Health Information of Well-Known Department of Defense Personnel

Report Date: July 26, 2021

Evaluated Entity: Defense Health Agency (DHA) and Military Departments

Summary: The DoD OIG encountered problems after the final report was sent to DoD recipients on July 26, 2021. After receiving the final report, the DHA requested that the report be marked at least CUI and possibly classified as Secret. We corresponded with Office of the Under Secretary of Defense for Intelligence and Security, which stated that it did not consider the information in the report to have the "specificity" to be classified as Secret. As a result, we portioned marked the report as CUI based on initial feedback from the DHA. The confusion over CUI markings delayed issuance of the report by 30 days.

<https://media.defense.gov/2021/Aug/26/2002840168/-1/-1/1/DODIG-2021-106.PDF>



Whistleblower Protection

U.S. DEPARTMENT OF DEFENSE

Whistleblower Protection safeguards DoD employees against retaliation for protected disclosures that expose possible fraud, waste, and abuse in Government programs. For more information, please visit the Whistleblower webpage at <http://www.dodig.mil/Components/Administrative-Investigations/Whistleblower-Reprisal-Investigations/Whistleblower-Reprisal/> or contact the Whistleblower Protection Coordinator at Whistleblowerprotectioncoordinator@dodig.mil

**For more information about DoD OIG
reports or activities, please contact us:**

Congressional Liaison
703.604.8324

Media Contact
public.affairs@dodig.mil; 703.604.8324

DoD OIG Mailing Lists
www.dodig.mil/Mailing-Lists/

Twitter
www.twitter.com/DoD_IG

DoD Hotline
www.dodig.mil/hotline



DEPARTMENT OF DEFENSE | INSPECTOR GENERAL

4800 Mark Center Drive
Alexandria, VA 22350-1500
www.dodig.mil
DoD Hotline 1.800.424.9098

