

Executive Order 13381: Strengthening Processes Relating To Determining Eligibility for Access To Classified National Security Information

June 27, 2005

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to assist in determining eligibility for access to classified national security information, while taking appropriate account of title III of Public Law 108-458, it is hereby ordered as follows:

Section 1. Policy.

To the extent consistent with safeguarding the security of the United States and protecting classified national security information from unauthorized disclosure, agency functions relating to determining eligibility for access to classified national security information shall be appropriately uniform, centralized, efficient, effective, timely, and reciprocal.

Section 2. Functions of the Office of Management and Budget.

The Director of the Office of Management and Budget (Director).

(a) may, to ensure the effective implementation of the policy set forth in section 1 of this order, assign, in whole or in part, to the head of any agency (solely or jointly) any process relating to determinations of eligibility for access to classified national security information, with the agency's exercise of such assigned process to be subject to the Director's supervision and to such terms and conditions (including approval by the Office of Management and Budget) as the Director determines appropriate;

(b) shall carry out any process that the Director does not assign to another agency (or agencies) under subsection (a);

(c) may, after consultation with the Secretary of State, Secretary of Defense, the Attorney General, the Secretary of Energy, the Secretary of Homeland Security, the Director of National Intelligence (DNI), and the Director of the Office of Personnel Management,

issue guidelines and instructions to the heads of agencies to ensure appropriate uniformity, centralization, efficiency, effectiveness, and timeliness in processes relating to determinations by agencies of eligibility for access to classified national security information;

(d) may, with regard to determining eligibility for access to Sensitive Compartmented Information (SCI) and "special access programs pertaining to intelligence activities; including special activities, but not including military operational, strategic, and tactical programs" (Intelligence SAPs) under section 4.3(a) of Executive Order 12958 of April 17, 1995, as amended, issue guidelines and instructions with the concurrence of the DNI to the heads of agencies to ensure appropriate uniformity, centralization, efficiency, effectiveness, and timeliness in making such determinations relating to those programs;

(e) may, with regard to determining eligibility for access to special access programs (SAP) as defined in Executive Order 12958 other than Intelligence SAPs, issue guidelines and instructions with the concurrence of the agency head with responsibility for the SAP to ensure appropriate uniformity, centralization, efficiency, effectiveness, and timeliness in making such determinations relating to those programs;

(f) may report periodically to the President on implementation by agencies of the policy set forth in section 1; and

(g) shall submit reports to the Congress relating to the subject matter of this order to the extent required by law.

Section 3. Functions of the Heads of Agencies.

(a) Heads of agencies shall:

(i) carry out any process assigned to the agency head by the Director under subsection 2(a) of this order, and shall assist the Director in carrying out any process under subsection 2(b);

(ii) implement guidelines and instructions issued by the Director under subsections 2(c), 2(d), and 2(e) of this order;

(iii) to the extent permitted by law, make available to the Director such information as the Director may request to implement this order;

(iv) ensure that all actions taken under this order take appropriate account of the counterintelligence interests of the United States; and

(v) ensure that all actions taken under this order are consistent with the DNI's responsibility to protect intelligence sources and methods.

(b) The Director and other heads of agencies shall ensure that all actions taken under this order are consistent with the President's constitutional authority to (i) conduct the foreign affairs of the United States, (ii) withhold information the disclosure of which could impair the foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties, (iii) recommend for congressional consideration such measures as the President may judge necessary or expedient, and (iv) supervise the unitary executive branch.

Section 4. Definitions. As used in this order.

(a) the term "agencies" means: (i) any "executive department" as defined in section 101 of title 5, United States Code, as well as the Department of Homeland Security; (ii) any "military department" as defined in section 102 of title 5, United States Code; (iii) any "government corporation" as defined in section 103 of title 5, United States Code; and (iv) any "independent establishment" as defined in section 104 of title 5, United States Code, but excluding the Government Accountability Office and including the United States Postal Service and the Postal Rate Commission.

(b) the term "classified national security information" means information that is classified pursuant to Executive Order 12958;

(c) the term "counterintelligence" has the meaning specified for that term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a); and

(d) the term "process" means: (i) oversight of determinations of eligibility for access to classified national security information, including for SCI and SAPs made by any agency, as well as the acquisition of information through investigation or other means upon which such determinations are made; (ii) developing and implementing uniform and consistent policies and procedures to ensure the effective, efficient, and timely completion of access eligibility determinations, to include for SAPs; (iii) designating an authorized agency for making access eligibility determinations and an authorized agency for collecting information through investigation upon which such determinations are made; (iv) ensuring reciprocal recognition of determinations of eligibility for access to classified information among the agencies of the United States Government, including resolution of disputes involving the reciprocity of security clearances and access to SCI and SAPs; (v) ensuring the availability of resources to achieve clearance and investigative program goals regarding the making of access determinations as well as the collection of information through investigation and other means upon which such determinations are made; and (vi) developing tools and techniques for enhancing the making of access eligibility determinations as well as the collection of information through investigation and other means upon which such determinations are made.

Section 5. General Provisions.

(a) Nothing in this order shall be construed to supersede, impede, or otherwise affect:

- (1) Executive Order 10865 of February 20, 1960, as amended;
 - (2) Executive Order 12333 of December 4, 1981, as amended;
 - (3) Executive Order 12958, as amended;
 - (4) Executive Order 12968 of August 2, 1995;
 - (5) Executive Order 12829 of January 6, 1993, as amended;
 - (6) subsections 102A(i) and (j) of the National Security Act of 1947 (50 U.S.C. 403-1(i) and (j)); and
 - (7) sections 141 through 146 of the Atomic Energy Act of 1954 (42 U.S.C. 2161 through 2166).
- (b) Executive Order 12171 of November 19, 1979, as amended, is further amended by inserting after section after 1-215 the following new section: ``1-216. The Center for Federal Investigative Services, Office of Personnel Management."`
- (c) Nothing in this order shall be construed to impair or otherwise affect any authority of the Director, including with respect to budget, legislative, or administrative proposals. The Director may use any authority of the Office of Management and Budget in carrying out this order.
- (d) Existing delegations of authority to any agency relating to granting access to classified information and conducting investigations shall remain in effect, subject to the authority of the Office of Management and Budget under section 2 of this order to revise or revoke such delegation.
- (e) This order is intended solely to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

Section 6. Submission of Report and Expiration of Order.

- (a) The Director shall submit a report to the President, on or before April 1, 2006, on the implementation of this order and the policy set forth in section 1 of this order.
- (b) Unless extended by the President, this order shall expire on July 1, 2006. (It was extended June 29, 2006 until July 1, 2007.)

[signed:] George W. Bush

THE WHITE HOUSE,
June 27, 2005.