

DBAFT - 17 January 1972

MEMORANDUM FOR: Mrs. Jeanne W. Davis  
Staff Secretary  
National Security Council

SUBJECT : Security Classification Procedures:  
Draft Revision of Executive Order  
10501--NSSM 113

1. The final draft of a proposed revision of Executive Order 10501 forwarded by your covering memorandum of 11 January 1972 has been reviewed. The following comments are submitted:

- a. The Order could be shortened by deleting the list of 39 departments and agencies in Section 2(c), pages 4A and B, excepting only ACTION and the Tennessee Valley Authority. Assuming that the heads of ACTION and the Tennessee Valley Authority are meant to possess authority for classification of "Confidential" only, Section 2(f)2 would be deleted and Section 2(f)(3) would be changed to read "officials designated in writing by a superior in the same vertical chain of command or supervision who has 'Top Secret' or 'Secret' classification authority."

- b. Section 2(h), pages 6 and 7, is unworkable within the Central Intelligence Agency in that its provisions would violate the "need-to-know" principle and the statutory responsibility of the Director of Central Intelligence to protect intelligence sources and methods. Individuals who have a "need-to-know" for the contents of intelligence documents do not have the same "need-to-know" for the identity of <sup>certain</sup> Central Intelligence Agency employees, particularly those engaged in operations abroad. A considerable portion of CIA produced data is originally classified overseas. It is recommended that this section be deleted or that documents containing intelligence information be exempted.
- c. The last sentence of Section 2(1), page 8, needs clarification. If it is meant to protect information which in the opinion of a contractor should be classified, it would appear that Section 14, page 59, would apply and this sentence would then be redundant.
- d. We have no particular preference between Alternative I and Alternative II of Section 4(a), pages 13-18. In either

case, sensitive intelligence and information relating to intelligence sources and methods would be protected under the "Special Categories" provisions contained in Section 4(b)(1).

e. The adoption of Alternative II, page 19, is recommended. The qualifying adjective "highly" in Alternative I is considered unnecessary because the word "sensitive" itself establishes a need for protection. Alternative III is already included in Section 4(b)(1)b(ii) and need not be repeated.

f. Since both Alternatives I and II of Section 4(b)(1)c(ii), page 20, relate solely to foreign policy, we defer to the Department of State.

g. We prefer Alternative II of Section 4(b)(3), page 22. However, it is recommended that Section 4(b)(4) be amended to read as follows "All information and material classified pursuant to Section 4(b)(1)c of this Order shall be reviewed for declassification after 30 years from the date of its original classification if it has not earlier been declassified." This change is necessary to protect those persons, systems, plans, and projects which require protection even after 30 years.

h. Since the proposed Executive Order will rescind Executive Order 10964, it is suggested that subparagraph Section 4(i)(1), page 26, be deleted.

i. To protect information and material which relates to intelligence sources and methods, we most strongly urge that the following subparagraph be added to the "Retroactive Application" section of the Executive Order on page 28:

"The exemption specified in Section 4(b)(1), 4(b)(1)a, and 4(b)(1)b shall apply to information or material pertaining to intelligence sources and methods or that containing sensitive intelligence which was classified under the provisions of previous Executive Orders."

j. To avoid misinterpretation, it is suggested that the last sentence of Section 5(k)(3), page 35, read as follows "Failure to comply with the foregoing could result in the imposition of a fine and/or imprisonment and, in addition, in the case of government personnel, dismissal or other disciplinary action."

k. We prefer Alternative I of Section 8(b), page 46, since the publication of Alternative II would cast official

doubt on the effectiveness of the President's anti-hijacking program. In any case, heads of departments and agencies can regulate such travel if and when they deem it advisable.

- l. Alternative III of Section 10(d), page 55, is preferred because the committee would consist of a smaller and therefore more manageable group. However, the responsibility of the committee as set forth in Alternative I appears to be more realistic than in the other alternatives. We have no choice as to whether the chairman of the committee be a member of the executive branch or the President's staff.
- m. It is noted that Section 11 is missing from the draft.
- n. Section 15A on page 60, together with Section 16, raise a special problem. The revocation of Executive Order 10501 should not serve to free any violator of it from the penalties now provided, which are similar to those proposed by Section 15A. If this new Order will not bear the number 10501, subsection 15A should be modified by inserting in the sixth line following the words "authorized by this Order" the words "or by Executive Order 10501."

o. Section 15B is obviously in error and not intended to be a part of the Executive Order.

p. Two minor errors have been noted. In the last sentence of the preamble the word "invested" should be "vested."

In Section 1(b), line 3, page 2A, between the words "bn" and "important" there should be added the word "jeopardizing" or the word "endangering."

2. Please advise if we can be of any further assistance in this effort.

William E. Colby  
Executive Director-Comptroller