

## Union Calendar No. 523

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION**H. R. 6575****[Report No. 110–809]**

To require the Archivist of the United States to promulgate regulations to prevent the over-classification of information, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 23, 2008

Mr. WAXMAN (for himself and Mr. TOM DAVIS of Virginia) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

JULY 30, 2008

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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**A BILL**

To require the Archivist of the United States to promulgate regulations to prevent the over-classification of information, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Over-Classification Re-  
5 duction Act”.

1 **SEC. 2. PURPOSE.**

2       The purpose of this Act is to increase Government-  
3 wide information sharing and the availability of informa-  
4 tion to the public by applying standards and practices to  
5 reduce improper classification.

6 **SEC. 3. OVER-CLASSIFICATION PREVENTION WITHIN THE**  
7 **FEDERAL GOVERNMENT.**

8       (a) ARCHIVIST RESPONSIBILITIES.—

9           (1) REGULATIONS.—The Archivist of the  
10 United States, in coordination with the Director of  
11 National Intelligence and the heads of other affected  
12 Federal agencies, shall promulgate regulations to  
13 prevent the over-classification of information.

14           (2) REQUIREMENTS.—The regulations under  
15 this subsection shall—

16           (A) identify specific thresholds, stand-  
17 ards, and requirements to prevent the over-  
18 classification of information, including for de-  
19 termining—

20                   (i) when classified products should be  
21 prepared in a standard format; and

22                   (ii) when classified products should be  
23 prepared in an unclassified format; taking  
24 into consideration whether an unclassified  
25 product would reasonably be expected to be  
26 of any benefit to a State, local, tribal or

1 territorial government, law enforcement  
2 agency, or other emergency response pro-  
3 vider, the private sector, or the public;

4 (B) ensure that compliance with this Act  
5 protects national security and privacy rights;  
6 and

7 (C) establish requirements for Federal  
8 agencies to implement, subject to chapter 71 of  
9 title 5, United States Code, including the fol-  
10 lowing:

11 (i) A process whereby employees may  
12 challenge without retribution classification  
13 decisions by agency employees or contrac-  
14 tors and be rewarded with specific incen-  
15 tives for successful challenges resulting  
16 in—

17 (I) the removal of improper clas-  
18 sification markings; or

19 (II) the correct application of ap-  
20 propriate classification markings.

21 (ii) A method for informing employees  
22 and contractors that repeated failure to  
23 comply with the regulations promulgated  
24 under this section could subject them to a  
25 series of penalties.

1 (iii) Penalties for employees and con-  
2 tractors who repeatedly fail to comply with  
3 the regulations promulgated under this  
4 section after having received both notice of  
5 their noncompliance and appropriate train-  
6 ing or re-training to address such non-  
7 compliance.

8 (3) CONSULTATION.—In promulgating the reg-  
9 ulations, the Archivist shall consult with the heads  
10 of Federal agencies and with representatives of  
11 State, local, tribal, and territorial governments; law  
12 enforcement entities; organizations with expertise in  
13 civil rights, employee and labor rights, civil liberties,  
14 and government oversight; and the private sector, as  
15 appropriate.

16 (4) DEADLINE.—The regulations under this  
17 subsection shall be promulgated in final form not  
18 later than one year after the date of the enactment  
19 of this Act.

20 (b) INSPECTOR GENERAL RESPONSIBILITIES.—The  
21 Inspector General of each Federal agency, in consultation  
22 with the Archivist, the Director of National Intelligence,  
23 and the heads of other affected Federal agencies, shall  
24 randomly audit classified information from each compo-  
25 nent of the agency with employees that have classification

1 authority. In conducting any such audit, the Inspector  
2 General shall—

3 (1) assess, on an individualized basis, whether  
4 applicable classification policies, procedures, rules,  
5 and regulations have been followed;

6 (2) describe any problems with the administra-  
7 tion of the applicable classification policies, proce-  
8 dures, rules, and regulations, including specific non-  
9 compliance issues;

10 (3) recommend improvements in awareness and  
11 training to address them; and

12 (4) report to Congress, the Archivist, and the  
13 public, in an appropriate format, on the findings of  
14 the Inspector General’s audits under this section.

15 **SEC. 4. ENFORCEMENT OF OVER-CLASSIFICATION PREVEN-**  
16 **TION WITHIN THE FEDERAL GOVERNMENT.**

17 (a) **PERSONAL IDENTIFIERS.**—

18 (1) **IN GENERAL.**—For purposes described in  
19 paragraph (2), the Archivist of the United States  
20 shall require that, at the time of classification of in-  
21 formation, the following shall appear on the informa-  
22 tion:

23 (A) The name or personal identifier of the  
24 employee or contractor classifying the informa-  
25 tion.

1           (B) The agency, office, and position of the  
2           employee or contractor.

3           (2) PURPOSES.—The purposes described in this  
4           paragraph are as follows:

5                   (A) To identify and address over-classifica-  
6                   tion problems, including the classification of in-  
7                   formation that should not be classified.

8                   (B) To assess the information sharing im-  
9                   pact of any such problems.

10          (b) TRAINING.—The Archivist, subject to chapter 71  
11          of title 5, United States Code, and in coordination with  
12          the Director of National Intelligence and the heads of  
13          other affected Federal agencies, shall—

14                   (1) require annual training for each employee  
15                   or contractor of a Federal agency with classification  
16                   authority and who is responsible for analysis, dis-  
17                   semination, preparation, production, receiving, pub-  
18                   lishing, or otherwise communicating written classi-  
19                   fied information, including training to educate each  
20                   employee or contractor about—

21                           (A) the prevention of overclassification of  
22                           information;

23                           (B) the proper use of classification mark-  
24                           ings, including portion markings; and

1           (C) the consequences of over-classification  
2           and other repeated improper uses of classifica-  
3           tion markings, including the misapplication of  
4           classification markings to information that does  
5           not merit such markings, and of failing to com-  
6           ply with the policies and procedures established  
7           under or pursuant to this section, including the  
8           negative consequences for the individual's per-  
9           sonnel evaluation, information sharing, and the  
10          overall success of the agency's missions; and

11          (2) ensure that such program is conducted effi-  
12          ciently, in conjunction with any other security, intel-  
13          ligence, or other training programs required by the  
14          agency to reduce the costs and administrative bur-  
15          dens associated with the additional training required  
16          by this section.

17          (c) DETAILEE PROGRAM.—

18          (1) REQUIREMENT FOR PROGRAM.—The Archi-  
19          vist, subject to chapter 71 of title 5, United States  
20          Code, shall implement a detailee program to detail  
21          Federal agency personnel, on a nonreimbursable  
22          basis, to the National Archives and Records Admin-  
23          istration for one year, for the purpose of—

24                  (A) training and educational benefit for  
25                  the agency personnel assigned so that they may

1 better understand the policies, procedures and  
2 laws governing classification authorities;

3 (B) bolstering the ability of the National  
4 Archives and Records Administration to con-  
5 duct its oversight authorities over agencies; and

6 (C) ensuring that the policies and proce-  
7 dures established by the agencies remain con-  
8 sistent with those established by the Archivist  
9 of the United States.

10 (2) SUNSET OF DETAILEE PROGRAM.—Except  
11 as otherwise provided by law, this subsection shall  
12 cease to have effect on December 31, 2012.

13 **SEC. 5. DEFINITIONS.**

14 In this Act:

15 (1) INFORMATION.—The term “information” means  
16 any communicable knowledge or documentary material,  
17 regardless of its physical form or characteristics, that is  
18 owned by, is produced by or for, or is under the control  
19 of the Federal Government.

20 (2) FEDERAL AGENCY.—The term “Federal agency”  
21 means—

22 (A) any Executive agency, as that term is de-  
23 fined in section 105 of title 5, United States Code;

24 (B) any military department, as that term is  
25 defined in section 102 of such title; and



1           (C) any other entity within the executive branch  
2           that comes into the possession of classified informa-  
3           tion.

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