

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 6575

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 10, 2008

Received; read twice and referred to the Committee on Homeland Security and  
Governmental Affairs

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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Over-Classification Re-  
3 duction Act”.

4 **SEC. 2. PURPOSE.**

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

9 **SEC. 3. OVER-CLASSIFICATION PREVENTION WITHIN THE**  
10 **FEDERAL GOVERNMENT.**

11 (a) ARCHIVIST RESPONSIBILITIES.—

12 (1) REGULATIONS.—The Archivist of the  
13 United States, in consultation with the heads of af-  
14 fected Federal agencies, shall promulgate regulations  
15 to prevent the over-classification of information.

16 (2) REQUIREMENTS.—The regulations under  
17 this subsection shall—

18 (A) identify specific requirements to pre-  
19 vent the over-classification of information, in-  
20 cluding for determining—

21 (i) when classified products should be  
22 prepared in a similar format government-  
23 wide; and

24 (ii) when classified products should  
25 also be prepared in an unclassified format;  
26 taking into consideration whether an un-

1 classified product would reasonably be ex-  
2 pected to be of any benefit to a State,  
3 local, tribal or territorial government, law  
4 enforcement agency, or other emergency  
5 response provider, the private sector, or  
6 the public;

7 (B) ensure that compliance with this Act  
8 protects national security and privacy rights;  
9 and

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

14 (i) The process whereby an individual  
15 may challenge without retribution classi-  
16 fication decisions by another individual and  
17 be rewarded with specific incentives for  
18 successful challenges resulting in—

19 (I) the removal of improper clas-  
20 sification markings; or

21 (II) the correct application of ap-  
22 propriate classification markings.

23 (ii) A method for informing individ-  
24 uals that repeated failure to comply with  
25 the regulations promulgated under this

1 section could subject them to a series of  
2 penalties.

3 (iii) Penalties for individuals who re-  
4 peatedly fail to comply with the regulations  
5 promulgated under this section after hav-  
6 ing received both notice of their noncompli-  
7 ance and appropriate training or re-train-  
8 ing to address such noncompliance.

9 (3) CONSULTATION.—The regulations shall be  
10 promulgated in consultation, as appropriate, with  
11 representatives of State, local, tribal, and territorial  
12 governments; law enforcement entities; organizations  
13 with expertise in civil rights, employee and labor  
14 rights, civil liberties, and government oversight; and  
15 the private sector.

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.—Con-  
21 sistent with the Inspector General Act of 1978 (5 U.S.C.  
22 App.) and section 17 of the Central Intelligence Agency  
23 Act of 1949 (50 U.S.C. 403q), the Inspector General of  
24 each affected Federal agency, in consultation with the Ar-  
25 chivist, shall randomly audit classified information from

1 each component of the agency with employees that have  
2 classification authority. In conducting any such audit, the  
3 Inspector General shall—

4 (1) assess whether applicable classification poli-  
5 cies, procedures, rules, and regulations have been  
6 followed;

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

11 (3) recommend improvements in awareness and  
12 training to address any problems identified under  
13 paragraph (2); and

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

17 **SEC. 4. ENFORCEMENT OF OVER-CLASSIFICATION PREVEN-**  
18 **TION WITHIN THE FEDERAL GOVERNMENT.**

19 (a) **PERSONAL IDENTIFIERS.**—

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

1           (A) The name, personal identifier, or  
2           unique agency identifier of the individual apply-  
3           ing classification markings to the information.

4           (B) The agency, office, and position of the  
5           individual.

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

8           (A) To enable the agency to identify and  
9           address over-classification problems, including  
10          the classification of information that should not  
11          be classified.

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

14          (b) TRAINING.—When implementing the security  
15          education and training program pursuant to Executive  
16          Order 12958, Executive Order 12829, and successor ap-  
17          propriate Executive Orders, the Archivist, subject to chap-  
18          ter 71 of title 5, United States Code, shall, in consultation  
19          with heads of affected Federal agencies—

20               (1) integrate training to educate about—

21                   (A) the prevention of over-classification of  
22                   information;

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

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          (D) information relating to lessons learned  
12          from implementation of the regulations includ-  
13          ing affected Federal agency internal audits and  
14          Inspector General audits, as provided under  
15          this Act; and

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

22          (c) DETAILEE PROGRAM.—

23           (1) REQUIREMENT FOR PROGRAM.—The Archi-  
24           vist, subject to chapter 71 of title 5, United States  
25           Code, in consultation with heads of affected Federal

1 agencies, shall implement a detailee program to de-  
2 tail Federal agency personnel, on a nonreimbursable  
3 basis, to the National Archives and Records Admin-  
4 istration for the purpose of—

5 (A) training and educational benefit for  
6 the agency personnel assigned so that they may  
7 better understand the policies, procedures and  
8 laws governing classification authorities;

9 (B) bolstering the ability of the National  
10 Archives and Records Administration to con-  
11 duct its oversight authorities over agencies; and

12 (C) ensuring that the policies and proce-  
13 dures established by the agencies remain con-  
14 sistent with those established by the Archivist  
15 of the United States.

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

19 **SEC. 5. DEFINITIONS.**

20 In this Act:

21 (1) INFORMATION.—The term “information” means  
22 any communicable knowledge or documentary material,  
23 regardless of its physical form or characteristics, that is  
24 owned by, is produced by or for, or is under the control  
25 of the Federal Government.



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

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

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

7           (C) any other entity within the executive branch  
8 that comes into the possession of classified informa-  
9 tion.

10          (3) AFFECTED FEDERAL AGENCY.—The term “af-  
11 fected Federal agency” means any Federal agency that  
12 employs an individual with original or derivative classifica-  
13 tion authority.

Passed the House of Representatives September 9,  
2008.

Attest:                           LORRAINE C. MILLER,  
*Clerk.*