110TH CONGRESS
2D Session

H. R. 6575

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

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

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Over-Classification Reduction Act”.

SEC. 2. PURPOSE.

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

SEC. 3. OVER-CLASSIFICATION PREVENTION WITHIN THE FEDERAL GOVERNMENT.

(a) Archivist Responsibilities.—

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

(2) Requirements.—The regulations under this subsection shall—

(A) identify specific thresholds, standards, and requirements to prevent the over-classification of information, including for determining—

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

(ii) when classified products should be prepared in an unclassified format; taking into consideration whether an unclassified product would reasonably be expected to be of any benefit to a State, local, tribal or territorial government, law enforcement
agency, or other emergency response provider, the private sector, or the public;

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

(C) establish requirements for Federal agencies to implement, subject to chapter 71 of title 5, United States Code, including the following:

(i) A process whereby employees may challenge without retribution classification decisions by agency employees or contractors and be rewarded with specific incentives for successful challenges resulting in—

(I) the removal of improper classification markings; or

(II) the correct application of appropriate classification markings.

(ii) A method for informing employees and contractors that repeated failure to comply with the regulations promulgated under this section could subject them to a series of penalties.
(iii) Penalties for employees and contractors who repeatedly fail to comply with the regulations promulgated under this section after having received both notice of their noncompliance and appropriate training or re-training to address such noncompliance.

(3) CONSULTATION.—In promulgating the regulations, the Archivist shall consult with the heads of Federal agencies and with representatives of State, local, tribal, and territorial governments; law enforcement entities; organizations with expertise in civil rights, employee and labor rights, civil liberties, and government oversight; and the private sector, as appropriate.

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

(b) INSPECTOR GENERAL RESPONSIBILITIES.—The Inspector General of each Federal agency, in consultation with the Archivist, the Director of National Intelligence, and the heads of other affected Federal agencies, shall randomly audit classified information from each component of the agency with employees that have classification
authority. In conducting any such audit, the Inspector General shall—

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

(2) describe any problems with the administration of the applicable classification policies, procedures, rules, and regulations, including specific non-compliance issues;

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

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

SEC. 4. ENFORCEMENT OF OVER-CLASSIFICATION PREVENTION WITHIN THE FEDERAL GOVERNMENT.

(a) PERSONAL IDENTIFIERS.—

(1) IN GENERAL.—For purposes described in paragraph (2), the Archivist of the United States shall require that, at the time of classification of information, the following shall appear on the information:

(A) The name or personal identifier of the employee or contractor classifying the information.
(B) The agency, office, and position of the employee or contractor.

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

(A) To identify and address over-classification problems, including the classification of information that should not be classified.

(B) To assess the information sharing impact of any such problems.

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

(1) require annual training for each employee or contractor of a Federal agency with classification authority and who is responsible for analysis, dissemination, preparation, production, receiving, publishing, or otherwise communicating written classified information, including training to educate each employee or contractor about—

(A) the prevention of overclassification of information;

(B) the proper use of classification markings, including portion markings; and
(C) the consequences of over-classification and other repeated improper uses of classification markings, including the misapplication of classification markings to information that does not merit such markings, and of failing to comply with the policies and procedures established under or pursuant to this section, including the negative consequences for the individual’s personnel evaluation, information sharing, and the overall success of the agency’s missions; and

(2) ensure that such program is conducted efficiently, in conjunction with any other security, intelligence, or other training programs required by the agency to reduce the costs and administrative burdens associated with the additional training required by this section.

(c) DETAILEE PROGRAM.—

(1) REQUIREMENT FOR PROGRAM.—The Archivist, subject to chapter 71 of title 5, United States Code, shall implement a detailee program to detail Federal agency personnel, on a nonreimbursable basis, to the National Archives and Records Administration for one year, for the purpose of—

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

(B) bolstering the ability of the National Archives and Records Administration to conduct its oversight authorities over agencies; and

(C) ensuring that the policies and procedures established by the agencies remain consistent with those established by the Archivist of the United States.

(2) Sunset of Detallee Program.—Except as otherwise provided by law, this subsection shall cease to have effect on December 31, 2012.

SEC. 5. DEFINITIONS.

In this Act:

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

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

(A) any Executive agency, as that term is defined in section 105 of title 5, United States Code;

(B) any military department, as that term is defined in section 102 of such title; and
(C) any other entity within the executive branch that comes into the possession of classified information.