To require the Archivist of the United States to promulgate regulations regarding the use of information control designations, 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 regarding the use of information control designations, 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 “Reducing Information Control Designations 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 standardizing and limiting the use of information control designations.

SEC. 3. REGULATIONS RELATING TO INFORMATION CONTROL DESIGNATIONS WITHIN THE FEDERAL GOVERNMENT.

(a) Requirement To Reduce and Minimize Information Control Designations.—Each Federal agency shall reduce and minimize its use of information control designations on information that is not classified.

(b) Archivist Responsibilities.—

(1) Regulations.—The Archivist of the United States shall promulgate regulations regarding the use of information control designations.

(2) Requirements.—The regulations under this subsection shall address, at a minimum, the following:

(A) Standards for utilizing the information control designations in a manner that is narrowly tailored to maximize public access to information.

(B) The duration of the information control designations and the process by which they will be removed.

(C) Procedures for identifying, marking, dating, and tracking information assigned the
information control designations, including the identity of officials making the designations.

(D) Provisions to ensure that the use of information control designations is minimized and cannot be used on information—

(i) to conceal violations of law, inefficiency, or administrative error;

(ii) to prevent embarrassment to Federal, State, local, tribal, or territorial governments or any official, agency, or organization thereof; any agency; or any organization;

(iii) to improperly or unlawfully interfere with competition in the private sector;

(iv) to prevent or delay the release of information that does not require such protection;

(v) if it is required to be made available to the public; or

(vi) if it has already been released to the public under proper authority.

(E) Methods to ensure that compliance with this Act protects national security and privacy rights.
The establishment of requirements that Federal agencies, subject to chapter 71 of title 5, United States Code, implement the following:

(i) A process whereby employees may challenge without retribution the use of information control designations by agency employees or contractors and be rewarded with specific incentives for successful challenges resulting in—

(I) the removal of improper information control designations; or

(II) the correct application of appropriate information control designations.

(ii) A method for informing employees and contractors that repeated failure to comply with the policies, procedures, and programs established under this section could subject them to a series of penalties.

(iii) Penalties for employees and contractors who repeatedly fail to comply with the policies, procedures, and programs established under this section after having received both notice of their noncompliance
and appropriate training or re-training to address such noncompliance.

(G) Procedures for members of the public to challenge the use of the information control designations.

(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.

(e) AGENCY RESPONSIBILITIES.—The head of each Federal agency shall implement the regulations promulgated by the Archivist under subsection (b) in the agency in a manner that ensures that—

(1) information can be shared within the agency, with other agencies, and with State, local, tribal, and territorial governments, the private sector, and the public, as appropriate;

(2) all policies and standards for utilizing information control designations are consistent with such regulations;
(3) the number of agency employees and contractors with authority to utilize information control designations is limited; and

(4) information control designations may be placed only on the portion of information that requires control and not on the entire material.

SEC. 4. ENFORCEMENT OF INFORMATION CONTROL DESIGNATION REGULATIONS WITHIN THE FEDERAL GOVERNMENT.

(a) INSPECTOR GENERAL RESPONSIBILITIES.—The Inspector General of each Federal agency, in consultation with the Archivist, shall randomly audit unclassified information with information control designations. In conducting any such audit, the Inspector General shall—

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

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

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

(4) report to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and
Governmental Affairs of the Senate, the Archivist, and the public on the findings of the Inspector General’s audits under this section.

(b) **Personal Identifiers.**—

(1) **In General.**—For purposes described in paragraph (2), the Archivist of the United States shall require that, at the time of marking of information, the following shall appear on the information:

(A) The name or personal identifier of the employee or contractor marking 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 misuse of information control designations, including the misapplication of information control designations to information that does not merit such markings.

(B) To assess the information sharing impact of any such problems or misuse.
(c) TRAINING.—The Archivist, subject to chapter 71 of title 5, United States Code, and in coordination with the heads of Federal agencies, shall—

(1) require training as needed for each employee or contractor of a Federal agency who is responsible for analyzing, disseminating, preparing, producing, receiving, publishing, or otherwise communicating information with an information control designation. Such training shall educate each employee and contractor about—

(A) the standards for using information control designations;

(B) the proper use of information control designations, including portion markings; and

(C) the consequences of repeated improper use of information control designations, including the misapplication of information control designations 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; 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 bur-
dens associated with the additional training required by this section.

(d) **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 the purpose of—

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

(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 detailee program.—** Except as otherwise provided by law, this subsection shall cease to have effect on December 31, 2012.
SEC. 5. RELEASING INFORMATION PURSUANT TO THE FREEDOM OF INFORMATION ACT.

(a) AGENCY RESPONSIBILITIES.—The head of each Federal agency shall ensure that—

(1) information control designations are not a determinant of public disclosure pursuant to section 552 of title 5, United States Code (commonly referred to as the “Freedom of Information Act’’); and

(2) all information in the agency’s possession that is releasable pursuant to an appropriate request under section 552 of title 5, United States Code (commonly referred to as the ‘‘Freedom of Information Act’’), is made available to members of the public.

(b) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to prevent or discourage any Federal agency from voluntarily releasing to the public any unclassified information that is not exempt from disclosure under section 552 of title 5, United States Code (commonly referred to as the “Freedom of Information Act’’).

SEC. 6. DEFINITIONS.

In this Act:

(1) INFORMATION CONTROL DESIGNATIONS.—The term “information control designations” means information dissemination controls, not defined by Federal statute or by an Executive order relating to
the classification of national security information,
that are used to manage, direct, or route informa-
tion, or control the accessibility of information, re-
gardless of its form or format. The term includes
the designations of “controlled unclassified informa-
tion”, “sensitive but unclassified”, and “for official
use only”.

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

(3) 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 classi-
fied information.
SEC. 7. DEADLINE FOR REGULATIONS AND IMPLEMENTATION.

Regulations shall be promulgated in final form under this Act, and implementation of the requirements of this Act shall begin, not later than 18 months after the date of the enactment of this Act.