AN ACT

To require the Archivist of the United States to promulgate regulations regarding the use of information control designations, and for other purposes.

1. 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 information 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 process by which information control designations 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) Provisions to ensure that the presumption shall be that information control designations are not necessary.

(F) Methods to ensure that compliance with this Act protects national security and privacy rights.

(G) The establishment of requirements that Federal agencies, subject to chapter 71 of title 5, United States Code, implement the following:

   (i) A process whereby an individual may challenge without retribution the application of information control designations by another individual.

   (ii) A method for informing individuals 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 individuals who repeatedly fail to comply with the policies, procedures, and programs established under this section after having received both notice of their noncompliance and ap-
propriate training or re-training to address such noncompliance.

(H) Procedures for members of the public to be heard regarding improper applications of information control designations.

(I) A procedure to ensure that all agency policies and standards for utilizing information control designations that are issued pursuant to subsection (c) be provided to the Archivist and that such policies and standards are made publicly available on the website of the National Archives and Records Administration.

(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.

(c) 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 individuals with authority to apply 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 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 any problems identified under paragraph (2); 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 designation of information, the following shall appear on the information:

(A) The name or personal identifier of the individual applying information control designations to the information.

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

(2) Purposes.—The purposes described in this paragraph are as follows:
(A) To enable the agency 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 individual who applies information control designations, including—

(A) instruction on the prevention of the overuse of information control designations;

(B) the standards for applying information control designations;

(C) the proper application of information control designations, including portion markings;

(D) the consequences of repeated improper application 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

    (E) information relating to lessons learned
about improper application of information con-
trol designations, including lessons learned pur-
suant to the regulations and Inspector General
audits required under this Act and any internal
agency audits; and

(2) ensure that such program is conducted effi-
ciently, in conjunction with any other security, intel-
ligence, 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 Archi-
vist, 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 Admin-
istration, 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 is made available to members of the public pursuant to an appropriate request under such section 552.
(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 information, or control the accessibility of information, regardless of its form or format. The term includes, but is not limited to, the designations of “controlled unclassified information”, “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 characteristics, 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 classified 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 24 months after the date of the enactment of this Act.

Passed the House of Representatives March 17, 2009.

Attest:

*Clerk.*
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