

112TH CONGRESS
1ST SESSION

H. R. 209

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

JANUARY 6, 2011

Ms. SPEIER 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.

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 “Reducing Information
5 Control Designations Act”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to increase Government-
8 wide information sharing and the availability of informa-
9 tion to the public by standardizing and limiting the use
10 of information control designations.

1 **SEC. 3. REGULATIONS RELATING TO INFORMATION CON-**
2 **TROL DESIGNATIONS WITHIN THE FEDERAL**
3 **GOVERNMENT.**

4 (a) **REQUIREMENT TO REDUCE AND MINIMIZE IN-**
5 **FORMATION CONTROL DESIGNATIONS.**—Each Federal
6 agency shall reduce and minimize its use of information
7 control designations on information that is not classified.

8 (b) **ARCHIVIST RESPONSIBILITIES.**—

9 (1) **REGULATIONS.**—The Archivist of the
10 United States shall promulgate regulations regard-
11 ing the use of information control designations.

12 (2) **REQUIREMENTS.**—The regulations under
13 this subsection shall address, at a minimum, the fol-
14 lowing:

15 (A) Standards for utilizing the information
16 control designations in a manner that is nar-
17 rowly tailored to maximize public access to in-
18 formation.

19 (B) The process by which information con-
20 trol designations will be removed.

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

1 (D) Provisions to ensure that the use of in-
2 formation control designations is minimized and
3 cannot be used on information—

4 (i) to conceal violations of law, ineffi-
5 ciency, or administrative error;

6 (ii) to prevent embarrassment to Fed-
7 eral, State, local, tribal, or territorial gov-
8 ernments or any official, agency, or organi-
9 zation thereof; any agency; or any organi-
10 zation;

11 (iii) to improperly or unlawfully inter-
12 fere with competition in the private sector;

13 (iv) to prevent or delay the release of
14 information that does not require such pro-
15 tection;

16 (v) if it is required to be made avail-
17 able to the public; or

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

20 (E) Provisions to ensure that the presump-
21 tion shall be that information control designa-
22 tions are not necessary.

23 (F) Methods to ensure that compliance
24 with this Act protects national security and pri-
25 vacy rights.

1 (G) The establishment of requirements
2 that Federal agencies, subject to chapter 71 of
3 title 5, United States Code, implement the fol-
4 lowing:

5 (i) A process whereby an individual
6 may challenge without retribution the ap-
7 plication of information control designa-
8 tions by another individual.

9 (ii) A method for informing individ-
10 uals that repeated failure to comply with
11 the policies, procedures, and programs es-
12 tablished under this section could subject
13 them to a series of penalties.

14 (iii) Penalties for individuals who re-
15 peatedly fail to comply with the policies,
16 procedures, and programs established
17 under this section after having received
18 both notice of their noncompliance and ap-
19 propriate training or re-training to address
20 such noncompliance.

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

24 (I) A procedure to ensure that all agency
25 policies and standards for utilizing information

1 control designations that are issued pursuant to
2 subsection (c) be provided to the Archivist and
3 that such policies and standards are made pub-
4 licly available on the Web site of the National
5 Archives and Records Administration.

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

14 (c) AGENCY RESPONSIBILITIES.—The head of each
15 Federal agency shall implement the regulations promul-
16 gated by the Archivist under subsection (b) in the agency
17 in a manner that ensures that—

18 (1) information can be shared within the agen-
19 cy, with other agencies, and with State, local, tribal,
20 and territorial governments, the private sector, and
21 the public, as appropriate;

22 (2) all policies and standards for utilizing infor-
23 mation control designations are consistent with such
24 regulations;

1 (3) the number of individuals with authority to
2 apply information control designations is limited;
3 and

4 (4) information control designations may be
5 placed only on the portion of information that re-
6 quires control and not on the entire material.

7 **SEC. 4. ENFORCEMENT OF INFORMATION CONTROL DES-**
8 **IGNATION REGULATIONS WITHIN THE FED-**
9 **ERAL GOVERNMENT.**

10 (a) INSPECTOR GENERAL RESPONSIBILITIES.—The
11 Inspector General of each Federal agency, in consultation
12 with the Archivist, shall randomly audit unclassified infor-
13 mation with information control designations. In con-
14 ducting any such audit, the Inspector General shall—

15 (1) assess whether applicable policies, proce-
16 dures, rules, and regulations have been followed;

17 (2) describe any problems with the administra-
18 tion of the applicable policies, procedures, rules and
19 regulations, including specific non-compliance issues;

20 (3) recommend improvements in awareness and
21 training to address any problems identified under
22 paragraph (2); and

23 (4) report to the Committee on Oversight and
24 Government Reform of the House of Representa-
25 tives, the Committee on Homeland Security and

1 Governmental Affairs of the Senate, the Archivist,
2 and the public on the findings of the Inspector Gen-
3 eral's audits under this section.

4 (b) PERSONAL IDENTIFIERS.—

5 (1) IN GENERAL.—For purposes described in
6 paragraph (2), the Archivist of the United States
7 shall require that, at the time of designation of in-
8 formation, the following shall appear on the informa-
9 tion:

10 (A) The name or personal identifier of the
11 individual applying information control designa-
12 tions to the information.

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

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

17 (A) To enable the agency to identify and
18 address misuse of information control designa-
19 tions, including the misapplication of informa-
20 tion control designations to information that
21 does not merit such markings.

22 (B) To assess the information sharing im-
23 pact of any such problems or misuse.

1 (c) TRAINING.—The Archivist, subject to chapter 71
2 of title 5, United States Code, and in coordination with
3 the heads of Federal agencies, shall—

4 (1) require training as needed for each indi-
5 vidual who applies information control designations,
6 including—

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

9 (B) the standards for applying information
10 control designations;

11 (C) the proper application of information
12 control designations, including portion mark-
13 ings;

14 (D) the consequences of repeated improper
15 application of information control designations,
16 including the misapplication of information con-
17 trol designations to information that does not
18 merit such markings, and of failing to comply
19 with the policies and procedures established
20 under or pursuant to this section; and

21 (E) information relating to lessons learned
22 about improper application of information con-
23 trol designations, including lessons learned pur-
24 suant to the regulations and Inspector General

1 audits required under this Act and any internal
2 agency audits; and

3 (2) ensure that such program is conducted effi-
4 ciently, in conjunction with any other security, intel-
5 ligence, or other training programs required by the
6 agency to reduce the costs and administrative bur-
7 dens associated with the additional training required
8 by this section.

9 (d) DETAILEE PROGRAM.—

10 (1) REQUIREMENT FOR PROGRAM.—The Archi-
11 vist, subject to chapter 71 of title 5, United States
12 Code, shall implement a detailee program to detail
13 Federal agency personnel, on a nonreimbursable
14 basis, to the National Archives and Records Admin-
15 istration, for the purpose of—

16 (A) training and educational benefit for
17 agency personnel assigned so that they may
18 better understand the policies, procedures, and
19 laws governing information control designa-
20 tions;

21 (B) bolstering the ability of the National
22 Archives and Records Administration to con-
23 duct its oversight authorities over agencies; and

24 (C) ensuring that the policies and proce-
25 dures established by the agencies remain con-

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

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

17 (3) FEDERAL AGENCY.—The term “Federal
18 agency” means—

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

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

1 (C) any other entity within the executive
2 branch that comes into the possession of classi-
3 fied information.

4 **SEC. 7. DEADLINE FOR REGULATIONS AND IMPLEMENTA-**
5 **TION.**

6 Regulations shall be promulgated in final form under
7 this Act, and implementation of the requirements of this
8 Act shall begin, not later than 24 months after the date
9 of the enactment of this Act.

○