

## Legislation in the 110<sup>th</sup> Congress to Prevent Over-Classification

During the 110<sup>th</sup> Congress, the House of Representatives took action on two bills addressing over-classification: [H.R. 4806](#), the Reducing Over-Classification Act of 2008, which applies only to the Department of Homeland Security, and [H.R. 6575](#), the Over-Classification Reduction Act, which applies across the federal government. H.R. 4806 was passed by the House of Representatives on July 30, 2008; H.R. 6576 was passed by the House of Representatives on September 9, 2008. Given the short time left in the 110<sup>th</sup> Congress, it is not likely that either bill will become law this year.

A side-by-side breakdown of the two bills follows:

<b>Provision</b>	<b>H.R. 4806, Reducing Over-Classification Act of 2008</b>	<b>H.R. 6575, Over-Classification Reduction Act</b>
Authority	Secretary of Homeland Security	Archivist of the United States
Required Formats	All finished intelligence products must be simultaneously prepared in an unclassified format, if the unclassified product would reasonably be expected to be of any benefit	Requires Archivist to identify specific thresholds, standards, and requirements to prevent over-classification, including when classified products should be produced in an unclassified form
Auditing Mechanism	Establishes a random audit of classified information by the Inspector General (IG) or other appropriate senior Department official and requires a report at least annually to the House and Senate Homeland Security Committees on any problems with the administration of the policy and to suggest improvements; the report must also be available to the public	Establishes a random audit of classified information by the Inspector General (IG) and requires a report Congress, the Archivist on any problems with the administration of the policy and to suggest improvements; the report must also be available to the public in an appropriate format
Employee Challenges	Establishes a process whereby employees and contractors can challenge original classification decisions and are rewarded for successfully having markings removed or downgraded	Establishes a process whereby employees and contractors can challenge original classification decisions and are rewarded for successfully having markings removed or downgraded AND includes a reference to whistleblower protections
Penalties	Institutes a series of penalties for employees and contactors who fail to comply with the policy, after they have been warned and re-trained.	Institutes a series of penalties for employees and contactors who fail to comply with the policy, after they have been warned and re-trained.
Tracking	Secretary must assess available technology for tracking classified information, including the identity of the	Requires that at the time of classification, the identify of the original classifier appears on the information

	original classifier	
Training	Requires annual training for employees and contractors with classification authority; successful completion of training will be counted as a positive factor for employment, evaluation, and promotion decisions	Requires annual training for employees and contractors with classification authority
Detailee Program	Implements a program to detail Departmental employees to NARA for one year; ends December 31, 2012	Implements a program to detail Departmental employees to NARA for one year; ends December 31, 2012

Analysis:

In its [Final Report of the National Commission on Terrorist Attacks Upon the United States](#), the 9/11 Commission cited the necessity of preventing over-classification by the federal government. Over-classification hinders information sharing and causes the government to needlessly spend billions of taxpayer dollars protecting information that should never have been classified. Over-classification also leads to disrespect of the system and leaks to the press, public suspicion, and incidents such as the reclassification of public documents taken from the shelves of the National Archives in April 2006.

Both H.R. 4806 and H.R. 6575 create a system of sticks and carrots to encourage employees and contractors to avoid over-classification: in particular, they require establishing a process that rewards employees and contractors for successfully challenging improper original classification decisions and institute a series of penalties for employees and contractors that fail to follow the policy, after the employee or contractor has been warned and gone through re-training. Crucially, H.R. 6576 also contains a provision that the system for employee challenges should also ensure no retribution for such challenges. Both bills also call for a tracking system that will allow auditors to identify the person with original classification authority responsible for the decision to classify information; however, H.R. 4806 grants the Secretary a year to assess available technologies and report to Congress before instituting a tracking system. Additionally, both bills require annual employee and contractor training for individuals with original classification authority; under H.R. 4806 successful completion of this training will be counted as a positive for employment decisions. Finally, both bills require an analysis of the benefits of the provision of an unclassified format of properly classified information.

The bills lay the groundwork and create momentum on which we hope Congress will capitalize and build in the 111th Congress.