110TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
110–776

REDUCING OVER-CLASSIFICATION ACT OF 2008

JULY 24, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. THOMPSON of Mississippi, from the Committee on Homeland Security, submitted the following

R E P O R T

[To accompany H.R. 4806]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 4806) to require the Secretary of Homeland Security to develop a strategy to prevent the over-classification of homeland security and other information and to promote the sharing of unclassified homeland security and other information, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary	4
Background and Need for Legislation	5
Hearings	6
Committee Consideration	6
Committee Votes	7
Committee Oversight Findings	7
New Budget Authority, Entitlement Authority, and Tax Expenditures	7
Congressional Budget Office Estimate	7
Statement of General Performance Goals and Objectives	9
Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits	9
Federal Mandates Statement	10
Advisory Committee Statement	10
Constitutional Authority Statement	10
Applicability to Legislative Branch	10
Section-by-Section Analysis of the Legislation	10
Changes in Existing Law Made by the Bill, as Reported	12
Committee Correspondence	17

The amendment is as follows:

Strike all after the enacting clause and insert the following:

69–006

SECTION 1. SHORT TITLE.

This Act may be cited as the "Reducing Over-Classification Act of 2008".

SEC. 2. FINDINGS.

Congress finds the following:

(1) A key conclusion in the Final Report of the National Commission on Terrorist Attacks Upon the United States (commonly known as the "9/11 Commission") was the need to prevent over-classification by the Federal Government.

(2) The 9/11 Commission and others have observed that the over-classification of homeland security information interferes with accurate, actionable, and timely homeland security information sharing, increases the cost of information security, and needlessly limits public access to information.

(3) The over-classification problem, which has worsened since the 9/11 attacks, causes considerable confusion about what information can be shared with whom both internally at the Department of Homeland Security and with its external partners. This problem negatively impacts the dissemination of homeland security information to the Department's State, local, tribal, and territorial homeland security and law enforcement partners, private sector customers, and the public.

(4) Excessive government secrecy stands in the way of a safer and more secure homeland. This trend is antithetical to the creation and operation of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485), and must be halted and reversed.

(5) To do so, the Department should start with the understanding that all departmental information that is not properly classified, or marked as controlled unclassified information and otherwise exempt from disclosure, should be made available to members of the public pursuant to section 552 of title 5, United States Code (commonly referred to as the "Freedom of Information Act").

(6) The Department should also develop and administer policies, procedures, and programs that promote compliance with applicable laws, executive orders, and other authorities pertaining to the proper use of classification markings and the United States National Archives and Records Administration policies implementing them.

SEC. 3. OVER-CLASSIFICATION PREVENTION WITHIN THE DEPARTMENT OF HOMELAND SECURITY.

Subtitle A of title II of the Homeland Security Act of 2002 (6 U.S.C. 121 et seq.) is amended by adding at the end the following new section:

"SEC. 210F. OVER-CLASSIFICATION PREVENTION PROGRAM.

"(a) IN GENERAL.—The Secretary shall develop and administer policies, procedures, and programs within the Department to prevent the over-classification of homeland security information, terrorism information, weapons of mass destruction information, and other information within the scope of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485) that must be disseminated to prevent and to collectively respond to acts of terrorism. The Secretary shall coordinate with the Archivist of the United States and consult with representatives of State, local, tribal, and territorial government and law enforcement, organizations with expertise in civil rights, civil liberties, and government oversight, and the private sector, as appropriate, to develop such policies, procedures, and programs.

"(b) REQUIREMENTS.—Not later than one year after the date of the enactment of the Reducing Over-Classification Act of 2008, the Secretary, in administering the policies, procedures, and programs required under subsection (a), shall—

"(1) create, in consultation with the Archivist of the United States, standard classified and unclassified formats for finished intelligence products created by the Department, consistent with any government-wide standards, practices or procedures for similar products;

"(2) require that all finished intelligence products created by the Department be simultaneously prepared in the standard unclassified format, provided that such 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, or the private sector, based on input provided by the Interagency Threat Assessment and Coordination Group Detail established under section 210D;

"(3) ensure that such policies, procedures, and programs protect the national security as well as the information privacy rights and legal rights of United States persons pursuant to all applicable law and policy, including the privacy guidelines for the information sharing environment established pursuant to sec-

tion 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485), as appropriate;

"(4) establish an ongoing auditing mechanism administered by the Inspector General of the Department or other appropriate senior Department official that randomly selects, on a periodic basis, classified information from each component of the Department that generates finished intelligence products to—

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

"(B) describe any problems with the administration of the applicable classification policies, procedures, rules, and regulations, including specific noncompliance issues;

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

"(D) report at least annually to the Committee on Homeland Security of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the public, in an appropriate format, on the findings of the Inspector General's audits under this section;

"(5) establish a process whereby employees may challenge original classification decisions made by Department employees or contractors and be rewarded with specific incentives for successful challenges resulting in the removal of classification markings or the downgrading of them;

"(6) inform employees and contractors that failure to comply with the policies, procedures, and programs established under this section could subject them to a series of penalties; and

"(7) institute a series of 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.

"(c) FINISHED INTELLIGENCE PRODUCT DEFINED.—The term 'finished intelligence product' means a document in which an intelligence analyst has evaluated, interpreted, integrated, or placed into context raw intelligence or information.".

SEC. 4. ENFORCEMENT OF OVER-CLASSIFICATION PREVENTION WITHIN THE DEPARTMENT OF HOMELAND SECURITY.

Subtitle A of title II of the Homeland Security Act of 2002 (6 U.S.C. 121 et seq.) is further amended by adding at the end the following new section:

"SEC. 210G. ENFORCEMENT OF OVER-CLASSIFICATION PREVENTION PROGRAMS.

"(a) PERSONAL IDENTIFIERS.—The Secretary shall—

"(1) assess the technologies available or in use at the Department by which an electronic personal identification number or other electronic identifying marker can be assigned to each Department employee and contractor with original classification authority in order to—

"(A) track which documents have been classified by a particular employee or contractor;

"(B) determine the circumstances when such documents have been shared;

"(C) identify and address over-classification problems, including the misapplication of classification markings to documents that do not merit such markings; and

"(D) assess the information sharing impact of any such problems or misuse;

"(2) develop an implementation plan for a Department standard for such technology with appropriate benchmarks, a timetable for its completion, and cost estimate for the creation and implementation of a system of electronic personal identification numbers or other electronic identifying markers for all relevant Department employees and contractors; and

"(3) upon completion of the implementation plan described in paragraph (2), or not later than 180 days after the date of the enactment of the Reducing Over-Classification Act of 2008, whichever is earlier, the Secretary shall provide a copy of the plan to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate.

"(b) TRAINING.—The Secretary, in coordination with the Archivist of the United States, shall—

"(1) require annual training for each Department employee and contractor with classification authority and who are responsible for analysis, dissemination, preparation, production, receiving, publishing, or otherwise communicating written classified information, including training to—

"(A) educate each employee and contractor about—

"(i) the Department's requirement that all classified finished intelligence products that they create be simultaneously prepared in unclassified form in a standard format prescribed by the Department, provided that the 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, or the private sector, based on input provided by the Interagency Threat Assessment and Coordination Group Detail established under section 210D;

"(ii) the proper use of classification markings, including portion markings; and

"(iii) the consequences of over-classification and other improper uses of classification markings, including the misapplication of classification markings to documents that do not merit such markings, and of failing to comply with the Department's policies and procedures established under or pursuant to this section, including the negative consequences for the individual's personnel evaluation, homeland security, information sharing, and the overall success of the Department's missions;

"(B) serve as a prerequisite, once completed successfully, as evidenced by an appropriate certificate, for—

"(i) obtaining classification authority; and

"(ii) renewing such authority annually; and

"(C) count as a positive factor, once completed successfully, in the Department's employment, evaluation, and promotion decisions; and

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

"(c) DETAILEE PROGRAM.—The Secretary shall—

"(1) implement a Departmental detailee program to detail Departmental personnel to the National Archives and Records Administration for one year, for the purpose of—

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

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

"(C) ensuring that the policies and procedures established by the Secretary remain consistent with those established by the Archivist of the United States;

"(2) ensure that the program established under paragraph (1) includes at least one individual for each Department office with delegated original classification authority; and

"(3) in coordination with the Archivist of the United States, report to Congress not later than 90 days after the conclusion of the first year of the program established under paragraph (1), on—

"(A) the advisability of expanding the program on a government-wide basis, whereby other departments and agencies would send detailees to the National Archives and Records Administration; and

"(B) the administrative and monetary costs of full compliance with this section.

"(d) SUNSET OF DETAILEE PROGRAM.—Except as otherwise provided by law, subsection (c) shall cease to have effect on December 31, 2012.

"(e) FINISHED INTELLIGENCE PRODUCT DEFINED.—The term 'finished intelligence product' has the meaning given the term in section 210F(c).".

SEC. 5. TECHNICAL AMENDMENT.

The table of contents in section 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101(b)) is amended by adding after the item relating to section 210E the following new items:

"Sec. 210F. Over-classification prevention program.
"Sec. 210G. Enforcement of over-classification prevention programs.".

PURPOSE AND SUMMARY

The purpose of H.R. 4806 is to require the Secretary of Homeland Security to develop a strategy to prevent the over-classification of homeland security and other information and to promote the

sharing of unclassified homeland security and other information, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The Final Report of the National Commission on Terrorist Attacks Upon the United States, commonly known as the "9/11 Commission Report", found that the Federal Intelligence Community's information security policies and practices impeded the kinds of robust information sharing required to prevent and otherwise prepare for terrorist attacks. Specifically, it found that security requirements nurtured over-classification and excessive compartmentation of information among agencies in several respects: (1) each agency's incentive structure opposed sharing, with clear risks but few rewards for sharing information; (2) no one had to pay the long term costs of over-classifying information, though this cost is substantial; (3) there were no punishments for not sharing information; and (4) agencies upheld a "need-to-know" culture of information protection rather than promoting a "need-to-share" culture of integration. While some progress has been made, more work needs to be done within Federal agencies to ensure that over-classification truly becomes a thing of the past.

Over-classification can be defined as the automatic decision to classify government information rather than the informed, deliberative process outlined under Executive Order 12958, as amended by E.O. 13292. Since 1940, classification of official secrets has been governed by policies and procedures flowing from this Executive Order. In the years since the attacks of September 11, 2001, the tension between the need to protect certain types of highly sensitive information and the need to share such information with people or entities with a need to know has grown considerably. Security concerns after the attacks prompted some agencies and departments to increase the categories and volume of information shielded from public view by using Confidential, Secret, or Top Secret security classification markings.

The Information Security Oversight Office (ISOO) within the National Archives and Records Administration (NARA) is responsible for Executive Branch oversight of security classification matters. The 2005 ISOO Report to the President noted that there were eight million new classification actions in 2001, which jumped to over 14 million new actions in 2005, while the quantity of declassified pages dropped from 100 million in 2001 to 29 million in 2005. The ISOO also identified the cost of over-classification as a problem: while $4.5 billion was spent on classification in 2001, this figure increased to $7.1 billion in 2004. Declassification costs, by contrast, fell from $232 million in 2001 to $48.3 million in 2004.

This continuing trend is an obstacle to accurate, actionable, and timely information sharing across the Federal Government and with its State, local, and tribal partners—including with the Department of Homeland Security's partners in the law enforcement and wider first responder communities. Unless and until the Nation has a robust intelligence and information sharing system in place, with a clear and understandable system of classification, it will be unable to prevent a terrorist attack on the scale of 9/11 or greater. The Subcommittee on Intelligence, Information Sharing and Terrorism Risk Assessment accordingly focused its efforts dur-

ing the 110th Congress on addressing the over-classification problem and improving the Department's information sharing with the Nation's "first preventers"—the police and sheriffs' officers that bring homeland security to America's hometowns. H.R. 4806 is the culmination of that oversight work and promises to make the Department the "gold standard" within the Federal Intelligence Community when it comes to compliance with applicable classification law, executive orders, and other relevant authorities—promoting more and better information sharing in the process.

HEARINGS

No hearings were held on H.R. 4806, however, the Committee held oversight hearings on over-classification.

On March 22, 2007, the Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment held a hearing entitled "Over-classification and Pseudo-classification: The Impact on Information Sharing." The Subcommittee received testimony from Mr. J. William Leonard, Director, Information Security Oversight Office, National Archives and Records Administration, Mr. Scott Armstrong, Founder, Information Trust, Ms. Meredith Fuchs, General Counsel, The National Security Archive, George Washington University, Chief Cathy L. Lanier, Metropolitan Police Department, Washington, D.C., and Mr. Michael P. Downing, Assistant Commanding Officer, Counter-Terrorism/Criminal Intelligence Bureau, Los Angeles Police Department.

On April 26, 2007, the Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment held a hearing entitled "The Over-Classification and Pseudo-Classification of Government Information: The Response of the Program Manager of the Information Sharing Environment." The Subcommittee received testimony from Ambassador Thomas E. McNamara, Program Manager, Information Sharing Environment, Office of the Director of National Intelligence; Carter Morris, Ph.D., Director, Informational Sharing and Knowledge Management, Office of Intelligence and Analysis, Department of Homeland Security; Mr. Wayne M. Murphy, Assistant Director, Directorate of Intelligence, Federal Bureau of Investigation, Department of Justice, Colonel Bart R. Johnson, New York State Police; and Mr. Mark Zadra, Assistant Commissioner, Florida Department of Law Enforcement.

On June 28, 2007, the Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment held a hearing entitled "Over-Classification and Pseudo-Classification: Making DHS the Gold Standard for Designating Classified and Sensitive Homeland Security Information." The Subcommittee received testimony from Mr. J. William Leonard, Director, Information Security Oversight Office, National Archives and Record Administration; Mr. Scott Armstrong, Founder, Information Trust; Ms. Suzanne E. Spaulding, Principal, Bingham Consulting Group, LLC; and Mr. Mark Agrast, Senior Fellow, Center for American Progress.

COMMITTEE CONSIDERATION

H.R. 4806 was introduced in the House on December 18, 2007, by Ms. Harman and 13 original co-sponsors and referred solely to the Committee on Homeland Security. Within the Committee, H.R.

4806 was referred to the Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment.

The Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment considered H.R. 4806 on June 11, 2008, and ordered the measure favorably forwarded to the Full Committee for consideration, amended, by unanimous consent.

The Subcommittee adopted the bill, as amended, by unanimous consent.

The following amendment was offered:

An Amendment in the Nature of a Substitute offered by Ms. Harman (#1), was AGREED TO by unanimous consent.

The Committee considered H.R. 4806 on June 26, 2008 and ordered the measure to be reported to the House favorably, as amended, by voice vote.

The Committee adopted the measure, as amended, by unanimous consent.

The following amendment was offered:

An Amendment in the Nature of a Substitute offered by Ms. Harman (#1); was AGREED TO by unanimous consent.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

No recorded votes were requested during Committee consideration.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 4806, the Reducing Over-Classification Act of 2007, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 10, 2008.

Hon. BENNIE G. THOMPSON,
Chairman, Committee on Homeland Security,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4806, the Reducing Over-Classification Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jason Wheelock.

Sincerely,

ROBERT A. SUNSHINE
(For Peter R. Orszag, Director).

Enclosure.

H.R. 4806—Reducing Over-Classification Act of 2008

H.R. 4806 would make several amendments to the Homeland Security Act of 2002 designed to expand the amount of homeland security and intelligence information that the Department of Homeland Security (DHS) shares with state and local governments, law enforcement agencies, emergency response providers, and private-sector organizations. This information sharing would be accomplished by minimizing the number of documents DHS determines to be classified, and providing classified intelligence products in an unclassified format when such intelligence products would benefit those entities. The bill also would require periodic auditing of classified information to assess compliance with classification policies and training for DHS employees on those new requirements.

H.R. 4806 also would require DHS to assess technologies that would allow the department to track the classification and sharing of classified documents, and develop a plan for implementing such technologies. Since the bill would not require DHS to deploy such technologies, this estimate does not include implementation costs. However, based on information from DHS and the Office of the Director of National Intelligence, CBO anticipates that such costs could be significant.

DHS would incur small incremental costs related to the periodic auditing of classified documents and the additional training that would be required by the bill. Since DHS already conducts compliance reviews to determine whether documents are properly classified and has an annual training program for its employees, CBO anticipates that the cost of implementing H.R. 4806 would be less than $500,000 a year, assuming the availability of appropriated funds. Enacting the legislation would not affect direct spending or revenues.

H.R. 4806 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Jason Wheelock. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 4806, contains the following general performance goals, and objectives, including outcome related goals and objectives authorized.

The only way to ensure that accurate, actionable, and timely classified homeland security information is shared between the Federal Government and its State, local, tribal, and private sector partners is to create a classification system that is enforceable, understandable, and applicable to everyone. Almost seven years after the attacks of September 11, 2001, the Nation should be treating far less information as classified and instead should be making fixing the problem of over-classification a top priority. A recurrent theme throughout the Final Report of the National Commission on Terrorist Attacks Upon the United States (9/11 Commission Report) was the need to address the persistent problem of over-classification in order to remove a major stumbling block to preventing, preparing for, and responding to terrorist attacks. While a Government-wide solution would be beneficial, the Department of Homeland Security is an excellent place to start making changes. Through the policies, procedures, and programs established in H.R. 4806, the Department will become a "best practices" center for fixing the problems of the past and a test bed for the rest of the Federal Government.

The goals of this measure are to ensure that Department employees and contractors apply the existing classification regime in strict accordance with applicable law, executive orders, and other authorities. This approach will help prevent over-classification and maximize the disclosure of homeland security and other information within the scope of the Information Sharing Environment that must be disseminated to prevent and to collectively respond to acts of terrorism. To facilitate this change, this measure will accomplish several key objectives: (1) promote a common understanding among Department employees and contractors that classified markings are not to be used to protect political turf or to hide embarrassing facts from public view; (2) develop best practices that ensure that Department classification practice adheres to applicable laws, executive orders, and other relevant authorities; (3) promote a variety of accountability measures that identifies over-classification problems and their sources and recommend and implement strategies to address them; and (4) bolster public confidence in the Department's information sharing mission through these and other measures that promote accountability, integrity, and transparency across the Department.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of the rule XXI.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 1, which grants Congress the power to provide for the common Defense of the United States.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section states that that this measure may be cited as the "Reducing Over-Classification Act of 2008".

Section 2. Findings

This section outlines a series of Congressional findings, including: (1) over-classification of homeland security information interferes with information sharing; increases the cost of information security; and needlessly limits public access to information; (2) this trend stands in the way of a safer homeland and must be halted and reversed; (3) accordingly, the Department of Homeland Security should start with the understanding that information that is not properly classified—or otherwise exempt from disclosure—should be made publicly available pursuant to an appropriate Freedom of Information Act (FOIA) request; and (4) the Department should develop and administer policies, procedures and programs that promote compliance with applicable laws, executive orders, and other authorities pertaining to the proper use of classification markings.

Section 3. Over-classification prevention within the Department of Homeland Security

This section modifies title II of the Homeland Security Act of 2002 (P.L. 107–296) to require the Secretary of Homeland Security to develop and administer policies, procedures and programs to prevent the over-classification of homeland security information and other information that must be disseminated to prevent and to collectively respond to acts of terrorism. This section requires the Sec-

retary to coordinate this work with the Archivist of the United States and to consult with organizations with expertise in civil rights, civil liberties, and governmental oversight.

This section further modifies title II of the Homeland Security Act of 2002 to require the Secretary, in administering the policies, procedures, and programs required under this section, to (1) create standard classified and unclassified formats for Finished Intelligence Products; (2) require the use of the standard unclassified format when an unclassified version of classified information would be helpful to America's first preventers; (3) ensure that not only the national security but also the privacy and other legal rights of United States persons are protected as part of the enforcement of the aforementioned policies, procedures, and programs; (4) establish, within one year of enactment, an ongoing auditing mechanism administered by the Department of Homeland Security's Inspector General to ensure that, among other things, over-classification prevention policies, procedures, rules and regulations are being followed by all Department employees and contractors; and (5) report to the Committee on Homeland Security of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the public, in an appropriate format, on the findings of the Department's Inspector General about whether these policies, procedures, rules, and regulations are being followed, identifying any problems in this regard, and recommending improvements to address any such problems.

This section further modifies title II of the Homeland Security Act of 2002 to require the Secretary to establish a process to reward Department personnel for successful challenges to classification decisions resulting in the removal of classification markings or the downgrading of them. This section requires the Secretary to institute a series of penalties for Department personnel who repeatedly fail to comply with applicable over-classification prevention policies, procedures, rules, and regulations after having received notice of their non-compliance and appropriate training or re-training to address such noncompliance.

Section 4. Enforcement of over-classification prevention within the Department of Homeland Security

This section modifies title II of the Homeland Security Act of 2002 (P.L. 107–296) to require the Secretary of Homeland Security to assess technologies available or already in use at the Department of Homeland Security by which an electronic personal identification number or other electronic identifying marker can be assigned to each Department employee or contractor with classification authority in order to track which documents have been classified by a particular employee; identify and address over-classification problems; and assess the information sharing impact of any such problems or misuse. This section requires the Secretary to develop an implementation plan for such technology at the Department and to establish a deadline for it.

This section further modifies title II of the Homeland Security Act of 2002 to require the Secretary to (1) develop a training program for the proper use of classification markings for all employees and contractors who have classification authority and who are responsible for analysis, dissemination, preparation, producing, re-

ceiving, publishing, or otherwise communicating written classified information; and (2) coordinate with the Archivist of the United States in developing this training program. This section clarifies that such training (1) must address the proper formats for finished intelligence products and the consequences of over-classification and other improper uses of classification markings; and (2) serves as a prerequisite for obtaining classification authority and renewing such authority annually.

This section further modifies title II of the Homeland Security Act of 2002 to require the Secretary to establish a detailee program with the United States National Archives and Records Administration (NARA) that will, among other things, train Department personnel about the policies, procedures, and laws governing original classification authorities; bolster NARA's ability to conduct oversight over the Department; and ensure that Department policies are consistent with those established by the Archivist of the United States.

Section 5. Definitions

This section defines terms used in this measure.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

* * * * * * *

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Subtitle A—Information and Analysis and Infrastructure Protection; Access to Information

* * * * * * *

Sec. 210F. Over-classification prevention program.
Sec. 210G. Enforcement of over-classification prevention programs.

* * * * * * *

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Subtitle A—Information and Analysis and Infrastructure Protection; Access to Information

* * * * * * *

SEC. 210F. OVER-CLASSIFICATION PREVENTION PROGRAM.

(a) IN GENERAL.—The Secretary shall develop and administer policies, procedures, and programs within the Department to prevent the over-classification of homeland security information, terrorism information, weapons of mass destruction information, and other information within the scope of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485) that must be disseminated to prevent and to collectively respond to acts of terrorism. The Secretary shall coordinate with the Archivist of the United States and consult with representatives of State, local, tribal, and territorial government and law enforcement, organizations with expertise in civil rights, civil liberties, and government oversight, and the private sector, as appropriate, to develop such policies, procedures, and programs.

(b) REQUIREMENTS.—Not later than one year after the date of the enactment of the Reducing Over-Classification Act of 2008, the Secretary, in administering the policies, procedures, and programs required under subsection (a), shall—

(1) create, in consultation with the Archivist of the United States, standard classified and unclassified formats for finished intelligence products created by the Department, consistent with any government-wide standards, practices or procedures for similar products;

(2) require that all finished intelligence products created by the Department be simultaneously prepared in the standard unclassified format, provided that such 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, or the private sector, based on input provided by the Interagency Threat Assessment and Coordination Group Detail established under section 210D;

(3) ensure that such policies, procedures, and programs protect the national security as well as the information privacy rights and legal rights of United States persons pursuant to all applicable law and policy, including the privacy guidelines for the information sharing environment established pursuant to section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485), as appropriate;

(4) establish an ongoing auditing mechanism administered by the Inspector General of the Department or other appropriate senior Department official that randomly selects, on a periodic basis, classified information from each component of the Department that generates finished intelligence products to—

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

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

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

(D) report at least annually to the Committee on Homeland Security of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of

the Senate, and the public, in an appropriate format, on the findings of the Inspector General's audits under this section;

(5) establish a process whereby employees may challenge original classification decisions made by Department employees or contractors and be rewarded with specific incentives for successful challenges resulting in the removal of classification markings or the downgrading of them;

(6) inform employees and contractors that failure to comply with the policies, procedures, and programs established under this section could subject them to a series of penalties; and

(7) institute a series of 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.

(c) FINISHED INTELLIGENCE PRODUCT DEFINED.—The term "finished intelligence product" means a document in which an intelligence analyst has evaluated, interpreted, integrated, or placed into context raw intelligence or information.

SEC. 210G. ENFORCEMENT OF OVER-CLASSIFICATION PREVENTION PROGRAMS.

(a) PERSONAL IDENTIFIERS.—The Secretary shall—

(1) assess the technologies available or in use at the Department by which an electronic personal identification number or other electronic identifying marker can be assigned to each Department employee and contractor with original classification authority in order to—

(A) track which documents have been classified by a particular employee or contractor;

(B) determine the circumstances when such documents have been shared;

(C) identify and address over-classification problems, including the misapplication of classification markings to documents that do not merit such markings; and

(D) assess the information sharing impact of any such problems or misuse;

(2) develop an implementation plan for a Department standard for such technology with appropriate benchmarks, a timetable for its completion, and cost estimate for the creation and implementation of a system of electronic personal identification numbers or other electronic identifying markers for all relevant Department employees and contractors; and

(3) upon completion of the implementation plan described in paragraph (2), or not later than 180 days after the date of the enactment of the Reducing Over-Classification Act of 2008, whichever is earlier, the Secretary shall provide a copy of the plan to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate.

(b) TRAINING.—The Secretary, in coordination with the Archivist of the United States, shall—

(1) require annual training for each Department employee and contractor with classification authority and who are responsible for analysis, dissemination, preparation, production,

receiving, publishing, or otherwise communicating written classified information, including training to—

(A) educate each employee and contractor about—

(i) the Department's requirement that all classified finished intelligence products that they create be simultaneously prepared in unclassified form in a standard format prescribed by the Department, provided that the 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, or the private sector, based on input provided by the Interagency Threat Assessment and Coordination Group Detail established under section 210D;

(ii) the proper use of classification markings, including portion markings; and

(iii) the consequences of over-classification and other improper uses of classification markings, including the misapplication of classification markings to documents that do not merit such markings, and of failing to comply with the Department's policies and procedures established under or pursuant to this section, including the negative consequences for the individual's personnel evaluation, homeland security, information sharing, and the overall success of the Department's missions;

(B) serve as a prerequisite, once completed successfully, as evidenced by an appropriate certificate, for—

(i) obtaining classification authority; and

(ii) renewing such authority annually; and

(C) count as a positive factor, once completed successfully, in the Department's employment, evaluation, and promotion decisions; and

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

(c) DETAILEE PROGRAM.—The Secretary shall—

(1) implement a Departmental detailee program to detail Departmental personnel to the National Archives and Records Administration for one year, for the purpose of—

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

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

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

(2) ensure that the program established under paragraph (1) includes at least one individual for each Department office with delegated original classification authority; and

(3) in coordination with the Archivist of the United States, report to Congress not later than 90 days after the conclusion of the first year of the program established under paragraph (1), on—

(A) the advisability of expanding the program on a government-wide basis, whereby other departments and agencies would send detailees to the National Archives and Records Administration; and

(B) the administrative and monetary costs of full compliance with this section.

(d) SUNSET OF DETAILEE PROGRAM.—Except as otherwise provided by law, subsection (c) shall cease to have effect on December 31, 2012.

(e) FINISHED INTELLIGENCE PRODUCT DEFINED.—The term "finished intelligence product" has the meaning given the term in section 210F(c).

* * * * * * *

COMMITTEE CORRESPONDENCE

BENNIE G. THOMPSON, MISSISSIPPI
CHAIRMAN

PETER T. KING, NEW YORK
RANKING MEMBER

One Hundred Tenth Congress
U.S. House of Representatives
Committee on Homeland Security
Washington, DC 20515

July 24, 2008

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Waxman:

Thank you for your letter regarding H.R. 4806, the "Reducing Over-Classification Act of 2007," introduced by Congresswoman Jane Harman on December 18, 2007.

I appreciate your willingness to work cooperatively on this legislation. I acknowledge that H.R. 4806 contains provisions that fall under the jurisdictional interests of the Committee on Oversight and Government Reform. I appreciate your agreement to not seek a sequential referral of this legislation and I acknowledge that your decision to forgo a sequential referral does not waive, alter, or otherwise affect the jurisdiction of the Committee on Oversight and Government Reform.

Further, I recognize that your Committee reserves the right to seek appointment of conferees on the bill for the portions of the bill that are within your jurisdiction, and I agree to support such a request.

I will ensure that this exchange of letters in included in the Committee's report on H.R. 4806 and in the *Congressional Record* during floor consideration of H.R.4806. I look forward to working with you on this legislation and other matters of great importance to this nation.

Sincerely,

Bennie G. Thompson
Chairman

cc: The Honorable Nancy Pelosi, Speaker
The Honorable Peter T. King, Ranking Member
The Honorable John Sullivan, Parliamentarian

HENRY A. WAXMAN, CALIFORNIA,
CHAIRMAN

EDOLPHUS TOWNS, NEW YORK
PAUL E. KANJORSKI, PENNSYLVANIA
CAROLYN B. MALONEY, NEW YORK
ELIJAH E. CUMMINGS, MARYLAND
DENNIS J. KUCINICH, OHIO
DANNY K. DAVIS, ILLINOIS
JOHN F. TIERNEY, MASSACHUSETTS
WM. LACY CLAY, MISSOURI
DIANE E. WATSON, CALIFORNIA
STEPHEN F. LYNCH, MASSACHUSETTS
BRIAN HIGGINS, NEW YORK
JOHN A. YARMUTH, KENTUCKY
BRUCE L. BRALEY, IOWA
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA
BETTY MCCOLLUM, MINNESOTA
JIM COOPER, TENNESSEE
CHRIS VAN HOLLEN, MARYLAND
PAUL W. HODES, NEW HAMPSHIRE
CHRISTOPHER S. MURPHY, CONNECTICUT
JOHN P. SARBANES, MARYLAND
PETER WELCH, VERMONT
JACKIE SPEIER, CALIFORNIA

ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

MAJORITY (202) 225–5051
FACSIMILE (202) 225–4784
MINORITY (202) 225–5074

www.oversight.house.gov

TOM DAVIS, VIRGINIA,
RANKING MINORITY MEMBER

DAN BURTON, INDIANA
CHRISTOPHER SHAYS, CONNECTICUT
JOHN M. MCHUGH, NEW YORK
JOHN L. MICA, FLORIDA
MARK E. SOUDER, INDIANA
TODD RUSSELL PLATTS, PENNSYLVANIA
CHRIS CANNON, UTAH
JOHN J. DUNCAN, JR., TENNESSEE
MICHAEL R. TURNER, OHIO
DARRELL E. ISSA, CALIFORNIA
KENNY MARCHANT, TEXAS
LYNN A. WESTMORELAND, GEORGIA
PATRICK T. MCHENRY, NORTH CAROLINA
VIRGINIA FOXX, NORTH CAROLINA
BRIAN P. BILBRAY, CALIFORNIA
BILL SALI, IDAHO
JIM JORDAN, OHIO

July 24, 2008

The Honorable Bennie G. Thompson
Chairman
Committee on Homeland Security
H2-176 Ford House Office Building
Washington, DC 20515

Dear Chairman Thompson:

I am writing about H.R. 4806, the Reducing Over-Classification Act of 2008, which the Homeland Security Committee ordered reported to the House on June 26, 2008.

I appreciate your effort to consult with the Committee on Oversight and Government Reform regarding H.R. 4806. In particular, I appreciate your willingness to work with me to move a governmentwide over-classification bill, H.R. 6575, to the House floor so that H.R. 4806 and H.R. 6575 can be considered during the same week.

In the interest of expediting consideration of H.R. 4806 and in recognition of your efforts to address my concerns, the Oversight Committee will not request a sequential referral of this bill. I would, however, request your support for the appointment of conferees from the Oversight Committee should H.R. 4806 or a similar Senate bill be considered in conference with the Senate.

Notwithstanding the Oversight Committee's agreement to forgo a sequential referral, I believe it is important to reiterate my general concern about H.R. 4806 as it applies to the Department of Homeland Security.

H.R. 4806 creates procedures for the Department to follow in order to reduce the over-classification of information. Several congressional investigations and the 9/11 Commission have emphasized, however, that over-classification is a governmentwide problem that requires a governmentwide solution. Accordingly, I favor an approach that requires all agencies to follow the same classification protocols and encourages the sharing of information between agencies and with the public to the maximum extent possible.

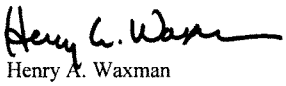
The Honorable Bennie G. Thompson
July 24, 2008
Page 2

Again, thank you for your efforts to address my concerns with H.R. 4806. I look forward to working with you to reduce the significant problem of over-classification throughout the federal government.

This letter should not be construed as a waiver of the Oversight Committee's legislative jurisdiction over subjects addressed in H.R. 4806 that fall within the jurisdiction of the Oversight Committee.

Please include our exchange of letters on this matter in the Homeland Security Committee Report on H.R. 4806 and in the Congressional Record during consideration of this legislation on the House floor.

Sincerely,



Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member

○