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(Original Signature of Member)

115TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

To amend title 44, United States Code, to require preservation of certain electronic records by Federal agencies, to require a certification and reports relating to Presidential records, and for other purposes.

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**IN THE HOUSE OF REPRESENTATIVES**

Mr. CUMMINGS introduced the following bill; which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To amend title 44, United States Code, to require preservation of certain electronic records by Federal agencies, to require a certification and reports relating to Presidential records, 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 “Electronic Message  
5       Preservation Act of 2017”.

1 **SEC. 2. PRESERVATION OF ELECTRONIC MESSAGES AND**  
2 **OTHER RECORDS.**

3 (a) REQUIREMENT FOR PRESERVATION OF ELEC-  
4 TRONIC MESSAGES.—Chapter 29 of title 44, United  
5 States Code is amended by adding at the end the following  
6 new section:

7 **“§ 2912. Preservation of electronic messages and**  
8 **other records**

9 “(a) REGULATIONS REQUIRED.—The Archivist shall  
10 promulgate regulations governing Federal agency preser-  
11 vation of electronic messages that are determined to be  
12 records. Such regulations shall, at a minimum—

13 “(1) require the electronic capture, manage-  
14 ment, and preservation of such electronic records in  
15 accordance with the records disposition requirements  
16 of chapter 33;

17 “(2) require that such electronic records are  
18 readily accessible for retrieval through electronic  
19 searches; and

20 “(3) include timelines for Federal agency imple-  
21 mentation of the regulations that ensure compliance  
22 as expeditiously as practicable.

23 “(b) ENSURING COMPLIANCE.—The Archivist shall  
24 promulgate regulations that—

25 “(1) establish mandatory minimum functional  
26 requirements for electronic records management sys-

1        tems to ensure compliance with the requirements in  
2        paragraphs (1) and (2) of subsection (a); and

3            “(2) establish a process to ensure that the elec-  
4        tronic records management system of each Federal  
5        agency meets the functional requirements estab-  
6        lished under paragraph (1).

7        “(c)    COVERAGE    OF    OTHER    ELECTRONIC  
8        RECORDS.—To the extent practicable, the regulations pro-  
9        mulgated under subsections (a) and (b) shall also include  
10       requirements for the capture, management, and preserva-  
11       tion of other electronic records.

12       “(d) COMPLIANCE BY FEDERAL AGENCIES.—Each  
13       Federal agency shall comply with the regulations promul-  
14       gated under subsections (a) and (b).

15       “(e) REVIEW OF REGULATIONS REQUIRED.—The Ar-  
16       chivist shall periodically review and, as necessary, amend  
17       the regulations promulgated under subsections (a) and  
18       (b).”.

19       (b) DEADLINE FOR REGULATIONS.—

20            (1) PRESERVATION OF ELECTRONIC MES-  
21        SAGES.—Not later than 120 days after the date of  
22        the enactment of this Act, the Archivist shall pro-  
23        mulgate the regulations required under section  
24        2912(a) of title 44, United States Code, as added by  
25        subsection (a).

1           (2) ENSURING COMPLIANCE.—Not later than 2  
2       years after the date of the enactment of this Act, the  
3       Archivist shall promulgate the regulations required  
4       under section 2912(b) of title 44, United States  
5       Code, as added by subsection (a).

6       (c) REPORTS ON IMPLEMENTATION OF REGULA-  
7       TIONS.—

8           (1) AGENCY REPORT TO ARCHIVIST.—Not later  
9       than one year after the date of the enactment of this  
10      Act, the head of each Federal agency shall submit  
11      to the Archivist a report on the agency's compliance  
12      with the regulations promulgated under section 2912  
13      of title 44, United States Code, as added by sub-  
14      section (a), and shall make the report publicly avail-  
15      able on the website of the agency.

16          (2) ARCHIVIST REPORT TO CONGRESS.—Not  
17      later than 90 days after receipt of all reports re-  
18      quired by paragraph (1), the Archivist shall submit  
19      to the Committee on Homeland Security and Gov-  
20      ernmental Affairs of the Senate and the Committee  
21      on Oversight and Government Reform of the House  
22      of Representatives a report on Federal agency com-  
23      pliance with the regulations promulgated under sec-  
24      tion 2912(a) of title 44, United States Code, as

1 added by subsection (a), and shall make the report  
2 publicly available on the website of the agency.

3 (3) FEDERAL AGENCY DEFINED.—In this sub-  
4 section, the term “Federal agency” has the meaning  
5 given that term in section 2901 of title 44, United  
6 States Code.

7 (d) CLERICAL AMENDMENT.—The table of sections  
8 at the beginning of chapter 29 of title 44, United States  
9 Code, is amended by adding after the item relating to sec-  
10 tion 2911 the following new item:

“2912. Preservation of electronic messages and other records.”.

11 (e) DEFINITIONS.—Section 2901 of title 44, United  
12 States Code, is amended—

13 (1) by striking “and” at the end of paragraph  
14 (14); and

15 (2) by striking paragraph (15) and inserting  
16 the following new paragraphs:

17 “(15) the term ‘electronic messages’ means  
18 electronic mail and other electronic messaging sys-  
19 tems that are used for purposes of communicating  
20 between individuals; and

21 “(16) the term ‘electronic records management  
22 system’ means software designed to manage elec-  
23 tronic records, including by—

24 “(A) categorizing and locating records;

1 “(B) ensuring that records are retained as  
2 long as necessary;

3 “(C) identifying records that are due for  
4 disposition; and

5 “(D) ensuring the storage, retrieval, and  
6 disposition of records.”.

7 **SEC. 3. PRESIDENTIAL RECORDS.**

8 (a) ADDITIONAL REGULATIONS RELATING TO PRESI-  
9 DENTIAL RECORDS.—

10 (1) IN GENERAL.—Section 2206 of title 44,  
11 United States Code, is amended—

12 (A) by striking “and” at the end of para-  
13 graph (3);

14 (B) by striking the period at the end of  
15 paragraph (4) and inserting “; and”; and

16 (C) by adding at the end the following:

17 “(5) provisions for establishing standards nec-  
18 essary for the economical and efficient management  
19 of electronic Presidential records during the Presi-  
20 dent’s term of office, including—

21 “(A) records management controls nec-  
22 essary for the capture, management, and pres-  
23 ervation of electronic messages;

24 “(B) records management controls nec-  
25 essary to ensure that electronic messages are

1 readily accessible for retrieval through elec-  
2 tronic searches; and

3 “(C) a process to ensure the electronic  
4 records management system to be used by the  
5 President for the purposes of complying with  
6 the requirements in subparagraphs (A) and  
7 (B).”.

8 (2) DEFINITIONS.—Section 2201 of title 44,  
9 United States Code, is amended by adding at the  
10 end the following new paragraphs:

11 “(6) The term ‘electronic messages’ has the  
12 meaning given that term under section 2901(15).

13 “(7) The term ‘electronic records management  
14 system’ has the meaning given that term under sec-  
15 tion 2901(16).”.

16 (b) CERTIFICATION OF PRESIDENT’S MANAGEMENT  
17 OF PRESIDENTIAL RECORDS.—

18 (1) CERTIFICATION REQUIRED.—Chapter 22 of  
19 title 44, United States Code, is amended by adding  
20 at the end the following new section:

21 **“§ 2210. Certification of the President’s management**  
22 **of Presidential records**

23 “(a) ANNUAL CERTIFICATION.—The Archivist shall  
24 annually certify whether the electronic records manage-

1 ment controls established by the President meet require-  
2 ments under sections 2203(a) and 2206(5).

3 “(b) REPORT TO CONGRESS.—The Archivist shall re-  
4 port annually to the Committee on Homeland Security and  
5 Governmental Affairs of the Senate and the Committee  
6 on Oversight and Government Reform of the House of  
7 Representatives on the status of the certification.”.

8 (2) CLERICAL AMENDMENT.—The table of sec-  
9 tions at the beginning of chapter 22 of title 44,  
10 United States Code, is amended by adding at the  
11 end the following new item:

“2210. Certification of the President’s management of Presidential  
records.”.

12 (c) REPORT TO CONGRESS.—Section 2203(g) of title  
13 44, United States Code, is amended by adding at the end  
14 the following new paragraph:

15 “(5) One year following the conclusion of a Presi-  
16 dent’s term of office, or if a President serves consecutive  
17 terms one year following the conclusion of the last term,  
18 the Archivist shall submit to the Committee on Homeland  
19 Security and Governmental Affairs of the Senate and the  
20 Committee on Oversight and Government Reform of the  
21 House of Representatives a report on—

22 “(A) the volume and format of electronic Presi-  
23 dential records deposited into that President’s Presi-  
24 dential archival depository; and



1           “(B) whether the electronic records manage-  
2           ment controls of that President met the require-  
3           ments under sections 2203(a) and 2206(5).”.

4           (d) EFFECTIVE DATE.—The amendments made by  
5 this section shall take effect one year after the date of  
6 the enactment of this Act.