

115TH CONGRESS
1ST SESSION

H. R. 1376

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.

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 2017

Mr. CUMMINGS introduced the following bill; which was referred to the Committee on Oversight and Government Reform

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 fol-
6 lowing 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.

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