

## Union Calendar No. 638

115<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 1376

[Report No. 115–824]

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

MARCH 7, 2017

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

JULY 16, 2018

Committed to the Committee of the Whole House on the State of the Union,  
and ordered to be printed

# **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”.

6 **SEC. 2. PRESERVATION OF ELECTRONIC MESSAGES AND**  
7 **OTHER RECORDS.**

8       (a) REQUIREMENT FOR PRESERVATION OF ELEC-  
9 TRONIC MESSAGES.—Chapter 29 of title 44, United  
10 States Code, is amended by adding at the end the fol-  
11 lowing new section:

12 **“§ 2912. Preservation of electronic messages and**  
13 **other records**

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

18               “(1) require the electronic capture, manage-  
19 ment, and preservation of such electronic records in  
20 accordance with the records disposition requirements  
21 of chapter 33;

22               “(2) require that such electronic records are  
23 readily accessible for retrieval through electronic  
24 searches; and

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

4           “(b) ENSURING COMPLIANCE.—The Archivist shall  
5           promulgate regulations that—

6           “(1) establish mandatory minimum functional  
7           requirements for electronic records management sys-  
8           tems to ensure compliance with the requirements in  
9           paragraphs (1) and (2) of subsection (a); and

10           “(2) establish a process to ensure that the elec-  
11           tronic records management system of each Federal  
12           agency meets the functional requirements estab-  
13           lished under paragraph (1).

14           “(c) COVERAGE OF OTHER ELECTRONIC  
15           RECORDS.—To the extent practicable, the regulations pro-  
16           mulgated under subsections (a) and (b) shall also include  
17           requirements for the capture, management, and preserva-  
18           tion of other electronic records.

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

22           “(e) REVIEW OF REGULATIONS REQUIRED.—The Ar-  
23           chivist shall periodically review and, as necessary, amend  
24           the regulations promulgated under subsections (a) and  
25           (b).”.

1 (b) DEADLINE FOR REGULATIONS.—

2 (1) PRESERVATION OF ELECTRONIC MES-  
3 SAGES.—Not later than 120 days after the date of  
4 the enactment of this Act, the Archivist shall pro-  
5 mulgate the regulations required under section  
6 2912(a) of title 44, United States Code, as added by  
7 subsection (a).

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

13 (c) REPORTS ON IMPLEMENTATION OF REGULA-  
14 TIONS.—

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

23 (2) ARCHIVIST REPORT TO CONGRESS.—Not  
24 later than 90 days after receipt of all reports re-  
25 quired by paragraph (1), the Archivist shall submit

1 to the Committee on Homeland Security and Gov-  
2 ernmental Affairs of the Senate and the Committee  
3 on Oversight and Government Reform of the House  
4 of Representatives a report on Federal agency com-  
5 pliance with the regulations promulgated under sec-  
6 tion 2912(a) of title 44, United States Code, as  
7 added by subsection (a), and shall make the report  
8 publicly available on the website of the agency.

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

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

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

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

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

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

23 “(15) the term ‘electronic messages’ means  
24 electronic mail and other electronic messaging sys-

1       tems that are used for purposes of communicating  
2       between individuals; and

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

6                       “(A) categorizing and locating records;

7                       “(B) ensuring that records are retained as  
8       long as necessary;

9                       “(C) identifying records that are due for  
10       disposition; and

11                      “(D) ensuring the storage, retrieval, and  
12       disposition of records.”.

13   **SEC. 3. PRESIDENTIAL RECORDS.**

14       (a) **ADDITIONAL REGULATIONS RELATING TO PRESI-**  
15 **DENTIAL RECORDS.—**

16               (1) **IN GENERAL.—**Section 2206 of title 44,  
17       United States Code, is amended—

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

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

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

23                      “(5) provisions for establishing standards nec-  
24       essary for the economical and efficient management

1 of electronic Presidential records during the Presi-  
2 dent's term of office, including—

3 “(A) records management controls nec-  
4 essary for the capture, management, and pres-  
5 ervation of electronic messages;

6 “(B) records management controls nec-  
7 essary to ensure that electronic messages are  
8 readily accessible for retrieval through elec-  
9 tronic searches; and

10 “(C) a process to ensure the electronic  
11 records management system to be used by the  
12 President for the purposes of complying with  
13 the requirements in subparagraphs (A) and  
14 (B).”.

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

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

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

23 (b) CERTIFICATION OF PRESIDENT'S MANAGEMENT  
24 OF PRESIDENTIAL RECORDS.—



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

4 **“§ 2210. Certification of the President’s management**  
 5 **of Presidential records**

6 “(a) ANNUAL CERTIFICATION.—The Archivist shall  
 7 annually certify whether the electronic records manage-  
 8 ment controls established by the President meet require-  
 9 ments under sections 2203(a) and 2206(5).

10 “(b) REPORT TO CONGRESS.—The Archivist shall re-  
 11 port annually to the Committee on Homeland Security and  
 12 Governmental Affairs of the Senate and the Committee  
 13 on Oversight and Government Reform of the House of  
 14 Representatives on the status of the certification.”.

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

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

19 (c) REPORT TO CONGRESS.—Section 2203(g) of title  
 20 44, United States Code, is amended by adding at the end  
 21 the following new paragraph:

22 “(5) One year following the conclusion of a Presi-  
 23 dent’s term of office, or if a President serves consecutive  
 24 terms one year following the conclusion of the last term,

1 the Archivist shall submit to the Committee on Homeland  
2 Security and Governmental Affairs of the Senate and the  
3 Committee on Oversight and Government Reform of the  
4 House of Representatives a report on—

5           “(A) the volume and format of electronic Presi-  
6           dential records deposited into that President’s Presi-  
7           dential archival depository; and

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

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



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