

113TH CONGRESS
1ST SESSION

H. R. 1234

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 18, 2013

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”.

6 **SEC. 2. RECORDS MANAGEMENT.**

7 (a) REQUIREMENT FOR PRESERVATION OF ELEC-
8 TRONIC MESSAGES.—

1 (1) IN GENERAL.—Chapter 29 of title 44,
2 United States Code, is amended by adding at the
3 end the following new section:

4 **“§ 2911. Preservation of electronic messages and**
5 **other records**

6 “(a) REGULATIONS REQUIRED.—Not later than 18
7 months after the date of the enactment of this section,
8 the Archivist shall promulgate regulations governing Fed-
9 eral agency preservation of electronic messages that are
10 determined to be records (as such term is defined under
11 section 3301 of this title). Such regulations shall, at a
12 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 of this title;

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

20 “(3) establish mandatory minimum functional
21 requirements for electronic records management sys-
22 tems to ensure compliance with the requirements in
23 paragraphs (1) and (2);

24 “(4) establish a process to certify that Federal
25 agencies’ electronic records management systems

1 meet the functional requirements established under
2 paragraph (3); and

3 “(5) include timelines for Federal agency com-
4 pliance with the regulations that ensure compliance
5 as expeditiously as practicable but not later than
6 four years after the date of the enactment of this
7 section.

8 “(b) COVERAGE OF OTHER ELECTRONIC
9 RECORDS.—To the extent practicable, the regulations pro-
10 mulgated under subsection (a) shall also include require-
11 ments for the capture, management, and preservation of
12 other electronic records.

13 “(c) COMPLIANCE BY FEDERAL AGENCIES.—Each
14 Federal agency shall comply with the regulations promul-
15 gated under subsection (a).

16 “(d) REVIEW OF REGULATIONS REQUIRED.—The
17 Archivist shall periodically review and, as necessary,
18 amend the regulations promulgated under subsection (a).

19 “(e) REPORTS ON IMPLEMENTATION OF REGULA-
20 TIONS.—

21 “(1) AGENCY REPORT TO ARCHIVIST.—Not
22 later than four years after the date of the enactment
23 of this section, the head of each Federal agency shall
24 submit to the Archivist a report on the agency’s

1 compliance with the regulations promulgated under
2 this section.

3 “(2) ARCHIVIST REPORT TO CONGRESS.—Not
4 later than 90 days after receipt of all reports re-
5 quired by paragraph (1), the Archivist shall submit
6 to the Committee on Homeland Security and Gov-
7 ernmental Affairs of the Senate and the Committee
8 on Oversight and Government Reform of the House
9 of Representatives a report on Federal agency com-
10 pliance with the regulations promulgated under sub-
11 section (a).”.

12 (2) CLERICAL AMENDMENT.—The table of sec-
13 tions at the beginning of chapter 29 of title 44,
14 United States Code, is amended by adding after the
15 item relating to section 2910 the following new item:

“2911. Preservation of electronic messages and other records.”.

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

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

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

22 “(15) the term ‘electronic messages’ means
23 electronic mail and other electronic messaging sys-
24 tems that are used for purposes of communicating
25 between individuals; and

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

4 “(A) categorizing and locating records;

5 “(B) ensuring that records are retained as
6 long as necessary;

7 “(C) identifying records that are due for
8 disposition; and

9 “(D) ensuring the storage, retrieval, and
10 disposition of records.”.

11 **SEC. 3. PRESIDENTIAL RECORDS.**

12 (a) ADDITIONAL REGULATIONS RELATING TO PRESI-
13 DENTIAL RECORDS.—

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

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

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

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

21 “(5) provisions for establishing standards nec-
22 essary for the economical and efficient management
23 of electronic Presidential records during the Presi-
24 dent’s term of office, including—

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

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

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

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

16 “(6) The term ‘electronic messages’ has the
17 meaning given that term under section 2901(15) of
18 this title.

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

22 (b) CERTIFICATION OF PRESIDENT’S MANAGEMENT
23 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 **“§ 2208. 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) of this title.

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, as amended by subsection
 18 (a)(4), is further amended by adding at the end the
 19 following new item:

“2208. Certification of the President’s management of Presidential records.”.

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

23 “(4) One year following the conclusion of a Presi-
 24 dent’s term of office, or if a President serves consecutive
 25 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) of this
11 title.”.

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

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