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 Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Electronic Message Preservation Act”.

SEC. 2. PRESERVATION OF ELECTRONIC MESSAGES.

(a) REQUIREMENT FOR PRESERVATION OF ELECTRONIC MESSAGES.—

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

“§ 2911. Electronic messages

“(a) REGULATIONS REQUIRED.—Not later than 18 months after the date of the enactment of this section, the Archivist shall promulgate regulations governing agency preservation of electronic messages that are records. Such regulations shall, at a minimum—

“(1) require the electronic capture, management, and preservation of such electronic records in accordance with the records disposition requirements of chapter 33 of this title;

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

“(3) establish mandatory minimum functional requirements for electronic records management systems to ensure compliance with the requirements in paragraphs (1) and (2);
“(4) establish a process to certify that Federal agencies’ electronic records management systems meet the functional requirements established under paragraph (3); and

“(5) include timelines for agency compliance with the regulations that ensure compliance as expeditiously as practicable but not later than four years after the date of the enactment of this section.

“(b) COVERAGE OF OTHER ELECTRONIC RECORDS.—To the extent practicable, the regulations promulgated under subsection (a) shall also include requirements for the capture, management, and preservation of other electronic records.

“(c) COMPLIANCE BY FEDERAL AGENCIES.—Each Federal agency shall comply with the regulations promulgated under subsection (a).

“(d) REVIEW OF REGULATIONS REQUIRED.—The Archivist shall periodically review and, as necessary, amend the regulations promulgated under this section.

“(e) REPORTS ON IMPLEMENTATION OF REGULATIONS.—

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

“(2) ARCHIVIST REPORT TO CONGRESS.—Not later than 90 days after receipt of all reports required by paragraph (1), the Archivist shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on Federal agency compliance with the regulations promulgated under this section.”.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 29 of title 44, United States Code, is amended by adding after the item relating to section 2910 the following new item:

“2911. Electronic messages.”.

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

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

(2) by striking the period at the end of paragraph (15) and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

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

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

“(A) categorizing and locating records;

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

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

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

SEC. 3. PRESIDENTIAL RECORDS.

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

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

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

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

(C) by adding at the end the following:

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

“(A) records management controls necessary for the capture, management, and preservation of electronic messages;

“(B) records management controls necessary to ensure that electronic messages are readily accessible for retrieval through electronic searches; and

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

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

“(5) The term ‘electronic messages’ has the meaning provided in section 2901(16) of this title.

“(6) The term ‘electronic records management system’ has the meaning provided in section 2901(17) of this title.”.

(b) CERTIFICATION OF PRESIDENT’S MANAGEMENT OF PRESIDENTIAL RECORDS.—
(1) Certification required.—Chapter 22 of title 44, United States Code, is amended by adding at the end the following new section:

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

“(a) Annual Certification.—The Archivist shall annually certify whether the electronic records management controls established by the President meet requirements under sections 2203(a) and 2206(5) of this title.

“(b) Report to Congress.—The Archivist shall report annually to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives on the status of the certification.”.

(2) Clerical amendment.—The table of sections for chapter 22 of title 44, United States Code, is amended by adding at the end the following new item:

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

(c) Report to Congress.—Section 2203(f) of title 44, United States Code, is amended by adding at the end the following:

“(4) One year following the conclusion of a President’s term of office, or if a President serves consecutive terms one year following the conclusion of the last term, the Archivist shall submit to the Committee on Homeland
Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on—

“(A) the volume and format of electronic Presidential records deposited into that President’s Presidential archival depository; and

“(B) whether the electronic records management controls of that President met the requirements under sections 2203(a) and 2206(5) of this title.”.

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

SEC. 4. PROCEDURES TO PREVENT UNAUTHORIZED REMOVAL OF CLASSIFIED RECORDS FROM NATIONAL ARCHIVES.

(a) IN GENERAL.—The Archivist of the United States shall prescribe internal procedures to prevent the unauthorized removal of classified records from the National Archives and Records Administration or the destruction or damage of such records, including when such records are accessed or searched electronically. The procedures shall apply to all National Archives and Records Administration facilities authorized to store classified records and include the following prohibitions:
(1) No person, other than covered personnel, shall view classified records in any room that is not secure except in the presence of National Archives and Records Administration personnel or under video surveillance.

(2) No person, other than covered personnel, shall at any time be left alone with classified records, unless that person is under video surveillance.

(3) No person, other than covered personnel, shall conduct any review of classified records while in the possession of any cell phone or other personal communication device.

(4) All persons seeking access to review classified records, as a precondition to such access, must consent to a search of their belongings upon conclusion of their records review.

(5) All notes and other writings prepared by persons other than covered personnel during the course of a review of classified records shall be retained by the National Archives and Records Administration in a secure facility until such notes and other writings are determined to be unclassified, are declassified, or are securely transferred to another secure facility.
(b) DEFINITIONS.—In this section:

(1) The term “records” has the meaning provided in section 3301 of title 44, United States Code.

(2) The term “covered personnel” means any individual—

(A) who has an appropriate and necessary reason for accessing classified records, as determined by the Archivist; and

(B) who is either—

(i) an officer or employee of the Federal Government with appropriate security clearances; or

(ii) any personnel with appropriate security clearances of a Federal contractor authorized in writing to act for purposes of this section by an officer or employee of the Federal Government.

SEC. 5. RESTRICTIONS ON ACCESS TO PRESIDENTIAL RECORDS.

Section 2204 of title 44, United States Code (relating to restrictions on access to presidential records) is amended by adding at the end the following new subsection:

“(f) The Archivist shall not make available any original presidential records to any individual claiming access
to any presidential record as a designated representative under section 2205(3) of this title if that individual has been convicted of a crime relating to the review, retention, removal, or destruction of records of the Archives.”.

**SEC. 6. BUDGETARY EFFECTS OF PAYGO LEGISLATION FOR THIS ACT.**

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Passed the House of Representatives March 17, 2010.

Attest:

_Clerk._
AN ACT

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

H. R. 1387

111th Congress

2d Session