

## Union Calendar No. 92

113<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1233

[Report No. 113-127]

To amend chapter 22 of title 44, United States Code, popularly known as the Presidential Records Act, to establish procedures for the consideration of claims of constitutionally based privilege against disclosure of Presidential records, and for other purposes.

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### 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

JUNE 25, 2013

Reported with amendments, committed to the Committee of the Whole House  
on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in *italic*]

# **A BILL**

To amend chapter 22 of title 44, United States Code, popularly known as the Presidential Records Act, to establish procedures for the consideration of claims of constitutionally based privilege against disclosure of 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
 5 “Presidential and Federal Records Act Amendments of  
 6 2013”.

7 (b) TABLE OF CONTENTS.—The table of contents for  
 8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Presidential records.
- Sec. 3. National Archives and Records Administration.
- Sec. 4. Records management by Federal agencies.
- Sec. 5. Disposal of records.
- Sec. 6. Procedures to prevent unauthorized removal of classified records from  
National Archives.
- Sec. 7. Repeal of provisions related to the National Study Commission on  
Records and Documents of Federal Officials.
- Sec. 8. Pronoun amendments.
- Sec. 9. Records management by the Archivist.
- Sec. 10. *Disclosure requirement for official business conducted using non-official  
electronic messaging account.*

9 **SEC. 2. PRESIDENTIAL RECORDS.**

10 (a) PROCEDURES FOR CONSIDERATION OF CLAIMS  
 11 OF CONSTITUTIONALLY BASED PRIVILEGE AGAINST DIS-  
 12 CLOSURE.—

13 (1) AMENDMENT.—Chapter 22 of title 44,  
 14 United States Code, is amended by adding at the  
 15 end the following:

16 **“§ 2208. Claims of constitutionally based privilege**  
 17 **against disclosure**

18 “(a)(1) When the Archivist determines under this  
 19 chapter to make available to the public any Presidential

1 record that has not previously been made available to the  
2 public, the Archivist shall—

3 “(A) promptly provide notice of such deter-  
4 mination to—

5 “(i) the former President during whose  
6 term of office the record was created; and

7 “(ii) the incumbent President; and

8 “(B) make the notice available to the public.

9 “(2) The notice under paragraph (1)—

10 “(A) shall be in writing; and

11 “(B) shall include such information as may be  
12 prescribed in regulations issued by the Archivist.

13 “(3)(A) Upon the expiration of the 60-day period (ex-  
14 cepting Saturdays, Sundays, and legal public holidays) be-  
15 ginning on the date the Archivist provides notice under  
16 paragraph (1)(A), the Archivist shall make available to the  
17 public the Presidential record covered by the notice, except  
18 any record (or reasonably segregable part of a record) with  
19 respect to which the Archivist receives from a former  
20 President or the incumbent President notification of a  
21 claim of constitutionally based privilege against disclosure  
22 under subsection (b).

23 “(B) A former President or the incumbent President  
24 may extend the period under subparagraph (A) once for  
25 not more than 30 additional days (excepting Saturdays,

1 Sundays, and legal public holidays) by filing with the Ar-  
2 chivist a statement that such an extension is necessary  
3 to allow an adequate review of the record.

4 “(C) Notwithstanding subparagraphs (A) and (B), if  
5 the 60-day period under subparagraph (A), or any exten-  
6 sion of that period under subparagraph (B), would other-  
7 wise expire during the 6-month period after the incumbent  
8 President first takes office, then that 60-day period or ex-  
9 tension, respectively, shall expire at the end of that 6-  
10 month period.

11 “(b)(1) For purposes of this section, the decision to  
12 assert any claim of constitutionally based privilege against  
13 disclosure of a Presidential record (or reasonably seg-  
14 regable part of a record) must be made personally by a  
15 former President or the incumbent President, as applica-  
16 ble.

17 “(2) A former President or the incumbent President  
18 shall notify the Archivist, the Committee on Oversight and  
19 Government Reform of the House of Representatives, and  
20 the Committee on Homeland Security and Governmental  
21 Affairs of the Senate of a privilege claim under paragraph  
22 (1) on the same day that the claim is asserted under such  
23 paragraph.

24 “(c)(1) If a claim of constitutionally based privilege  
25 against disclosure of a Presidential record (or reasonably

1 segregable part of a record) is asserted under subsection  
2 (b) by a former President, the Archivist shall consult with  
3 the incumbent President, as soon as practicable during the  
4 period specified in paragraph (2)(A), to determine whether  
5 the incumbent President will uphold the claim asserted by  
6 the former President.

7       “(2)(A) Not later than the end of the 30-day period  
8 beginning on the date of which the Archivist receives noti-  
9 fication from a former President of the assertion of a  
10 claim of constitutionally based privilege against disclosure,  
11 the Archivist shall provide notice to the former President  
12 and the public of the decision of the incumbent President  
13 under paragraph (1) regarding the claim.

14       “(B) If the incumbent President upholds the claim  
15 of privilege asserted by the former President, the Archivist  
16 shall not make the Presidential record (or reasonably seg-  
17 regable part of a record) subject to the claim publicly  
18 available unless—

19               “(i) the incumbent President withdraws the de-  
20 cision upholding the claim of privilege asserted by  
21 the former President; or

22               “(ii) the Archivist is otherwise directed by a  
23 final court order that is not subject to appeal.

24       “(C) If the incumbent President determines not to  
25 uphold the claim of privilege asserted by the former Presi-

1 dent, or fails to make the determination under paragraph  
2 (1) before the end of the period specified in subparagraph  
3 (A), the Archivist shall release the Presidential record sub-  
4 ject to the claim at the end of the 90-day period beginning  
5 on the date on which the Archivist received notification  
6 of the claim, unless otherwise directed by a court order  
7 in an action initiated by the former President under sec-  
8 tion 2204(e) of this title or by a court order in another  
9 action in any Federal court.

10 “(d) The Archivist shall not make publicly available  
11 a Presidential record (or reasonably segregable part of a  
12 record) that is subject to a privilege claim asserted by the  
13 incumbent President unless—

14 “(1) the incumbent President withdraws the  
15 privilege claim; or

16 “(2) the Archivist is otherwise directed by a  
17 final court order that is not subject to appeal.

18 “(e) The Archivist shall adjust any otherwise applica-  
19 ble time period under this section as necessary to comply  
20 with the return date of any congressional subpoena, judi-  
21 cial subpoena, or judicial process.”.

22 (2) CONFORMING AMENDMENTS.—(A) Section  
23 2204(d) of title 44, United States Code, is amended  
24 by inserting “, except section 2208,” after “chap-  
25 ter”.

1 (B) Section 2205 of title 44, United States  
2 Code, is amended—

3 (i) in the matter preceding paragraph (1),  
4 by striking “section 2204” and inserting “sec-  
5 tions 2204 and 2208 of this title”; and

6 (ii) in paragraph (2)(A), by striking “sub-  
7 pena” and inserting “subpoena”.

8 (C) Section 2207 of title 44, United States  
9 Code, is amended in the second sentence by insert-  
10 ing “, except section 2208,” after “chapter”.

11 (3) CLERICAL AMENDMENT.—The table of sec-  
12 tions at the beginning of chapter 22 of title 44,  
13 United States Code, is amended by adding at the  
14 end the following:

“2208. Claims of constitutionally based privilege against disclosure.”.

15 (4) RULE OF CONSTRUCTION.—Nothing in the  
16 amendment made by paragraph (2)(C) shall be con-  
17 strued to—

18 (A) affect the requirement of section 2207  
19 of title 44, United States Code, that Vice Presi-  
20 dential records shall be subject to chapter 22 of  
21 that title in the same manner as Presidential  
22 records; or

23 (B) affect any claim of constitutionally  
24 based privilege by a President or former Presi-  
25 dent with respect to a Vice Presidential record.

1 (b) DEFINITIONS.—Section 2201 of title 44, United  
2 States Code, is amended—

3 (1) in paragraph (1)—

4 (A) by striking “memorandums” and in-  
5 serting “memoranda”;

6 (B) by striking “audio, audiovisual” and  
7 inserting “audio and visual records”; and

8 (C) by inserting “, whether in analog, dig-  
9 ital, or any other form” after “mechanical  
10 recordations”; and

11 (2) in paragraph (2), by striking “advise and  
12 assist” and inserting “advise or assist”.

13 (c) MANAGEMENT AND CUSTODY OF PRESIDENTIAL  
14 RECORDS.—Section 2203 of title 44, United States Code,  
15 is amended—

16 (1) in subsection (a), by striking “maintained”  
17 and inserting “preserved and maintained”;

18 (2) in subsection (b), by striking “advise and  
19 assist” and inserting “advise or assist”;

20 (3) by redesignating subsection (f) as sub-  
21 section (g);

22 (4) by inserting after subsection (e) the fol-  
23 lowing new subsection:

24 “(f) During a President’s term of office, the Archivist  
25 may maintain and preserve Presidential records on behalf

1 of the President, including records in digital or electronic  
2 form. The President shall remain exclusively responsible  
3 for custody, control, and access to such Presidential  
4 records. The Archivist may not disclose any such records,  
5 except under direction of the President, until the conclu-  
6 sion of a President's term of office, if a President serves  
7 consecutive terms upon the conclusion of the last term,  
8 or such other period provided for under section 2204 of  
9 this title.”; and

10 (5) in subsection (g)(1), as so redesignated, by  
11 striking “Act” and inserting “chapter”.

12 (d) RESTRICTIONS ON ACCESS TO PRESIDENTIAL  
13 RECORDS.—Section 2204 of title 44, United States Code,  
14 is amended by adding at the end the following new sub-  
15 section:

16 “(f) The Archivist shall not make available any origi-  
17 nal Presidential records to any individual claiming access  
18 to any Presidential record as a designated representative  
19 under section 2205(3) of this title if that individual has  
20 been convicted of a crime relating to the review, retention,  
21 removal, or destruction of records of the Archives.”.

22 (e) *DISCLOSURE REQUIREMENT FOR OFFICIAL BUSI-*  
23 *NESS CONDUCTED USING NON-OFFICIAL ELECTRONIC MES-*  
24 *SAGING ACCOUNT.*—

1           (1) *AMENDMENT.*—Chapter 22 of title 44, United  
2           *States Code, as amended by subsection (a)(1), is fur-*  
3           *ther amended by adding at the end the following new*  
4           *section:*

5           “§ 2209. ***Disclosure requirement for official business***  
6                           ***conducted using non-official electronic***  
7                           ***messaging accounts***

8           “(a) *IN GENERAL.*—An officer or employee of an exec-  
9           *utive agency may not create or send a Presidential record*  
10           *using a non-official electronic messaging account unless*  
11           *such officer or employee—*

12                   “(1) *copies an official electronic messaging ac-*  
13                   *count of the officer or employee in the original cre-*  
14                   *ation or transmission of the Presidential record; or*

15                   “(2) *forwards a complete copy of the Presidential*  
16                   *record to an official electronic messaging account of*  
17                   *the officer or employee within five days after the*  
18                   *original creation or transmission of the Presidential*  
19                   *record.*

20           “(b) *ADVERSE ACTIONS.*—The intentional violation of  
21           *subsection (a) (including any rules, regulations, or other*  
22           *implementing guidelines), as determined by the appropriate*  
23           *supervisor, shall be a basis for disciplinary action in ac-*  
24           *cordance with subchapter I, II, or V of chapter 75 of title*  
25           *5, as the case may be.*

1 “(c) *DEFINITIONS.*—*In this section:*

2 “(1) *ELECTRONIC MESSAGES.*—*The term ‘elec-*  
3 *tronic messages’ means electronic mail and other elec-*  
4 *tronic messaging systems that are used for purposes*  
5 *of communicating between individuals.*

6 “(2) *ELECTRONIC MESSAGING ACCOUNT.*—*The*  
7 *term ‘electronic messaging account’ means any ac-*  
8 *count that sends electronic messages.*

9 “(3) *EXECUTIVE AGENCY.*—*The term ‘executive*  
10 *agency’ has the meaning given that term in section*  
11 *105 of title 5.”*

12 (2) *CLERICAL AMENDMENT.*—*The table of sec-*  
13 *tions at the beginning of chapter 22 of title 44,*  
14 *United States Code, as amended by subsection (a)(3),*  
15 *is further amended by adding at the end the following*  
16 *new item:*

“2209. *Disclosure requirement for official business conducted using non-official  
electronic messaging accounts.”*

17 **SEC. 3. NATIONAL ARCHIVES AND RECORDS ADMINISTRA-**  
18 **TION.**

19 (a) **ACCEPTANCE OF RECORDS FOR HISTORICAL**  
20 **PRESERVATION.**—Section 2107 of title 44, United States  
21 Code, is amended to read as follows:

1 **“§ 2107. Acceptance of records for historical preser-**  
2 **vation**

3 “(a) IN GENERAL.—When it appears to the Archivist  
4 to be in the public interest, the Archivist may—

5 “(1) accept for deposit with the National Ar-  
6 chives of the United States the records of a Federal  
7 agency, the Congress, the Architect of the Capitol,  
8 or the Supreme Court determined by the Archivist  
9 to have sufficient historical or other value to warrant  
10 their continued preservation by the United States  
11 Government;

12 “(2) direct and effect the transfer of records of  
13 a Federal agency determined by the Archivist to  
14 have sufficient historical or other value to warrant  
15 their continued preservation by the United States  
16 Government to the National Archives of the United  
17 States, as soon as practicable, and at a time mutu-  
18 ally agreed upon by the Archivist and the head of  
19 that Federal agency not later than thirty years after  
20 such records were created or received by that agen-  
21 cy, unless the head of such agency has certified in  
22 writing to the Archivist that such records must be  
23 retained in the custody of such agency for use in the  
24 conduct of the regular business of the agency;

25 “(3) direct and effect, with the approval of the  
26 head of the originating Federal agency, or if the ex-

1       istence of the agency has been terminated, with the  
2       approval of the head of that agency’s successor in  
3       function, if any, the transfer of records, deposited or  
4       approved for deposit with the National Archives of  
5       the United States to public or educational institu-  
6       tions or associations; title to the records to remain  
7       vested in the United States unless otherwise author-  
8       ized by Congress; and

9               “(4) transfer materials from private sources au-  
10       thorized to be received by the Archivist by section  
11       2111 of this title.

12       “(b) EARLY TRANSFER OF RECORDS.—The Archi-  
13       vist—

14               “(1) in consultation with the head of the origi-  
15       nating Federal agency, is authorized to accept ~~for~~  
16       ~~deposit~~ *a copy of* the records described in subsection  
17       (a)(2) that have been in existence for less than thir-  
18       ty years; and

19               “(2) may not disclose any such records until  
20       the expiration of—

21               “(A) the thirty-year period described in  
22       paragraph (1);

23               “(B) any longer period established by the  
24       Archivist by order; or

1                   “(C) any shorter period agreed to by the  
2                   originating Federal agency.”.

3           (b) MATERIAL ACCEPTED FOR DEPOSIT.—Section  
4 2111 of title 44, United States Code, is amended to read  
5 as follows:

6 **“§ 2111. Material accepted for deposit**

7           “(a) IN GENERAL.—When the Archivist considers it  
8 to be in the public interest the Archivist may accept for  
9 deposit—

10                   “(1) the papers and other historical materials  
11 of a President or former President of the United  
12 States, or other official or former official of the Gov-  
13 ernment, and other papers relating to and contem-  
14 porary with a President or former President of the  
15 United States, subject to restrictions agreeable to  
16 the Archivist as to their use; and

17                   “(2) recorded information (as such term is de-  
18 fined in section 3301(a)(2) of this title) from private  
19 sources that are appropriate for preservation by the  
20 Government as evidence of its organization, func-  
21 tions, policies, decisions, procedures, and trans-  
22 actions.

23           “(b) EXCEPTION.—This section shall not apply in the  
24 case of any Presidential records which are subject to the  
25 provisions of chapter 22 of this title.”.

1 (c) PRESERVATION OF AUDIO AND VISUAL  
2 RECORDS.—

3 (1) IN GENERAL.—Section 2114 of title 44,  
4 United States Code, is amended to read as follows:

5 **“§ 2114. Preservation of audio and visual records**

6 “The Archivist may make and preserve audio and vis-  
7 ual records, including motion-picture films, still photo-  
8 graphs, and sound recordings, in analog, digital, or any  
9 other form, pertaining to and illustrative of the historical  
10 development of the United States Government and its ac-  
11 tivities, and provide for preparing, editing, titling, scoring,  
12 processing, duplicating, reproducing, exhibiting, and re-  
13 leasing for non-profit educational purposes, motion-picture  
14 films, still photographs, and sound recordings in the Ar-  
15 chivist’s custody.”.

16 (2) CLERICAL AMENDMENT.—The table of sec-  
17 tions at the beginning of chapter 21 of title 44,  
18 United States Code, is amended by striking the item  
19 for section 2114 and inserting the following:

“2114. Preservation of audio and visual records.”.

20 (d) LEGAL STATUS OF REPRODUCTIONS; OFFICIAL  
21 SEAL; FEES FOR COPIES AND REPRODUCTIONS.—Section  
22 2116(a) of title 44, United States Code, is amended by  
23 inserting “digital,” after “microphotographic,” each place  
24 it appears.

1 **SEC. 4. RECORDS MANAGEMENT BY FEDERAL AGENCIES.**

2 Section 3106 of title 44, United States Code, is  
3 amended to read as follows:

4 **“§ 3106. Unlawful removal, destruction of records**

5 “(a) FEDERAL AGENCY NOTIFICATION.—The head  
6 of each Federal agency shall notify the Archivist of any  
7 actual, impending, or threatened unlawful removal, defac-  
8 ing, alteration, corruption, deletion, erasure, or other de-  
9 struction of records in the custody of the agency, and with  
10 the assistance of the Archivist shall initiate action through  
11 the Attorney General for the recovery of records the head  
12 of the Federal agency knows or has reason to believe have  
13 been unlawfully removed from that agency, or from an-  
14 other Federal agency whose records have been transferred  
15 to the legal custody of that Federal agency.

16 “(b) ARCHIVIST NOTIFICATION.—In any case in  
17 which the head of a Federal agency does not initiate an  
18 action for such recovery or other redress within a reason-  
19 able period of time after being notified of any such unlaw-  
20 ful action described in subsection (a), or is participating  
21 in, or believed to be participating in any such unlawful  
22 action, the Archivist shall request the Attorney General  
23 to initiate such an action, and shall notify the Congress  
24 when such a request has been made.”.

1 **SEC. 5. DISPOSAL OF RECORDS.**

2 (a) DEFINITION OF RECORDS.—Section 3301 of title  
3 44, United States Code, is amended to read as follows:

4 **“§ 3301. Definition of records**

5 “(a) RECORDS DEFINED.—

6 “(1) IN GENERAL.—As used in this chapter, the  
7 term ‘records’—

8 “(A) includes all recorded information, re-  
9 gardless of form or characteristics, made or re-  
10 ceived by a Federal agency under Federal law  
11 or in connection with the transaction of public  
12 business and preserved or appropriate for pres-  
13 ervation by that agency or its legitimate suc-  
14 cessor as evidence of the organization, func-  
15 tions, policies, decisions, procedures, operations,  
16 or other activities of the United States Govern-  
17 ment or because of the informational value of  
18 data in them; and

19 “(B) does not include—

20 “(i) library and museum material  
21 made or acquired and preserved solely for  
22 reference or exhibition purposes; or

23 “(ii) duplicate copies of records pre-  
24 served only for convenience.

25 “(2) RECORDED INFORMATION DEFINED.—For  
26 purposes of paragraph (1), the term ‘recorded infor-

1       mation’ includes all traditional forms of records, re-  
2       gardless of physical form or characteristics, includ-  
3       ing information created, manipulated, commu-  
4       nicated, or stored in digital or electronic form.

5       “(b) DETERMINATION OF DEFINITION.—The Archi-  
6       vist’s determination whether recorded information, regard-  
7       less of whether it exists in physical, digital, or electronic  
8       form, is a record as defined in subsection (a) shall be bind-  
9       ing on all Federal agencies.”.

10       (b) REGULATIONS COVERING LISTS OF RECORDS  
11       FOR DISPOSAL, PROCEDURE FOR DISPOSAL, AND STAND-  
12       ARDS FOR REPRODUCTION.—Section 3302(3) of title 44,  
13       United States Code, is amended by striking “photographic  
14       or microphotographic processes” and inserting “photo-  
15       graphic, microphotographic, or digital processes”.

16       (c) LISTS AND SCHEDULES OF RECORDS TO BE  
17       SUBMITTED TO THE ARCHIVIST BY HEAD OF EACH GOV-  
18       ERNMENT AGENCY.—Section 3303(1) of title 44, United  
19       States Code, is amended by striking “photographed or  
20       microphotographed” and inserting “photographed, micro-  
21       photographed, or digitized”.

22       (d) EXAMINATION BY ARCHIVIST OF LISTS AND  
23       SCHEDULES OF RECORDS LACKING PRESERVATION  
24       VALUE; DISPOSAL OF RECORDS.—Section 3303a(c) of  
25       title 44, United States Code, is amended by striking “the

1 Committee on Rules and Administration of the Senate and  
2 the Committee on House Oversight of the House of Rep-  
3 resentatives” and inserting “the Committee on Oversight  
4 and Government Reform of the House of Representatives  
5 and the Committee on Homeland Security and Govern-  
6 mental Affairs of the Senate”.

7 (e) PHOTOGRAPHS OR MICROPHOTOGRAPHS OF  
8 RECORDS CONSIDERED AS ORIGINALS; CERTIFIED RE-  
9 PRODUCTIONS ADMISSIBLE IN EVIDENCE.—Section 3312  
10 of title 44, United States Code, is amended—

11 (1) in the first sentence, by striking “Photo-  
12 graphs ~~and~~ *or* microphotographs of records” and in-  
13 sserting “Photographs, microphotographs of records,  
14 or digitized records”; and

15 (2) in the second sentence, by striking “photo-  
16 graphs or microphotographs” and inserting “photo-  
17 graphs, microphotographs, or digitized records”,  
18 each place it appears.

19 **SEC. 6. PROCEDURES TO PREVENT UNAUTHORIZED RE-**  
20 **MOVAL OF CLASSIFIED RECORDS FROM NA-**  
21 **TIONAL ARCHIVES.**

22 (a) CLASSIFIED RECORDS.—Not later than 90 days  
23 after the date of the enactment of this Act, the Archivist  
24 shall prescribe internal procedures to prevent the unau-  
25 thorized removal of classified records from the National

1 Archives and Records Administration or the destruction  
2 or damage of such records, including when such records  
3 are accessed or searched electronically. Such procedures  
4 shall include, at a minimum, the following prohibitions:

5           (1) An individual, other than covered personnel,  
6           may not view classified records in any room that is  
7           not secure, except in the presence of National Ar-  
8           chives and Records Administration personnel or  
9           under video surveillance.

10           (2) An individual, other than covered personnel,  
11           may not be left alone with classified records, unless  
12           that individual is under video surveillance.

13           (3) An individual, other than covered personnel,  
14           may not review classified records while possessing  
15           any cellular phone, electronic personal communica-  
16           tion device, or any other devices capable of  
17           photographing, recording, or transferring images or  
18           content.

19           (4) An individual seeking access to review clas-  
20           sified records, as a precondition to such access, must  
21           consent to a search of their belongings upon conclu-  
22           sion of their records review.

23           (5) All notes and other writings prepared by an  
24           individual, other than covered personnel, during the  
25           course of a review of classified records shall be re-

1       tained by the National Archives and Records Admin-  
2       istration in a secure facility until such notes and  
3       other writings are determined to be unclassified, are  
4       declassified, or are securely transferred to another  
5       secure facility.

6       (b) DEFINITIONS.—In this section:

7           (1) COVERED PERSONNEL.—The term “covered  
8       personnel” means any individual—

9           (A) who has an appropriate and necessary  
10       reason for accessing classified records, as deter-  
11       mined by the Archivist; and

12          (B) who is either—

13           (i) an officer or employee of the  
14       United States Government with appro-  
15       priate security clearances; or

16           (ii) any personnel with appropriate se-  
17       curity clearances of a Federal contractor  
18       authorized in writing to act for purposes of  
19       this section by an officer or employee of  
20       the United States Government.

21          (2) RECORDS.—The term “records” has the  
22       meaning given that term under section 3301 of title  
23       44, United States Code.

1 **SEC. 7. REPEAL OF PROVISIONS RELATED TO THE NA-**  
2 **TIONAL STUDY COMMISSION ON RECORDS**  
3 **AND DOCUMENTS OF FEDERAL OFFICIALS.**

4 (a) **IN GENERAL.**—Sections 3315 through 3324 of  
5 title 44, United States Code, are repealed.

6 (b) **CLERICAL AMENDMENT.**—The table of sections  
7 at the beginning of chapter 33 of title 44, United States  
8 Code, is amended by striking the items relating to sections  
9 3315 through 3324.

10 **SEC. 8. PRONOUN AMENDMENTS.**

11 Title 44, United States Code, is amended—

12 (1) in section 2116(c), by striking “his” and in-  
13 sserting “the Archivist’s”;

14 (2) in section 2201(2), by striking “his” and in-  
15 sserting “the President’s”, each place it appears;

16 (3) in section 2203—

17 (A) in subsection (a), by striking “his” and  
18 inserting “the President’s”;

19 (B) in subsection (b), by striking “his”  
20 and inserting “the President’s”;

21 (C) in subsection (c)—

22 (i) in the matter preceding paragraph

23 (1)—

24 (I) by striking “his” and insert-  
25 ing “the President’s”; and

- 1 (II) by striking “those of his  
2 Presidential records” and inserting  
3 “those Presidential records of such  
4 President”; and
- 5 (ii) in paragraph (2), by striking “he”  
6 and inserting “the Archivist”;
- 7 (D) in subsection (d), by striking “he” and  
8 inserting “the Archivist”;
- 9 (E) in subsection (e), by striking “he” and  
10 inserting “the Archivist”; and
- 11 (F) in subsection (g), as so redesignated,  
12 by striking “he” and inserting “the Archivist”;
- 13 (4) in section 2204—
- 14 (A) in subsection (a)—
- 15 (i) in the matter preceding paragraph  
16 (1), by striking “his” and inserting “a  
17 President’s”; and
- 18 (ii) in paragraph (5), by striking  
19 “his” and inserting “the President’s”; and
- 20 (B) in subsection (b)—
- 21 (i) in paragraph (1)(B), by striking  
22 “his” and inserting “the President’s”; and
- 23 (ii) in paragraph (3)—

1 (I) by striking “his” *the first*  
2 *place it appears* and inserting “the  
3 Archivist’s”; and

4 (II) by striking “his designee”  
5 and inserting “the Archivist’s des-  
6 ignee”;

7 (5) in section 2205—

8 (A) in paragraph (2)(B), by striking “his”  
9 and inserting “the incumbent President’s”; and

10 (B) in paragraph (3), by striking “his”  
11 and inserting “the former President’s”;

12 (6) in section 2901(11), by striking “his” and  
13 inserting “the Archivist’s”;

14 (7) in section 2904(c)(6), by striking “his” and  
15 inserting “the Archivist’s”;

16 (8) in section 2905(a)—

17 (A) by striking “He” and inserting “The  
18 Archivist”; and

19 (B) by striking “his” and inserting “the  
20 Archivist’s”;

21 (9) in section 3103, by striking “he” and in-  
22 serting “the head of such agency”;

23 (10) in section 3104—

24 (A) by striking “his” *the first place it ap-*  
25 *pears* and inserting “such official’s”; and

1 (B) by striking “him or his” and inserting  
2 “such official or such official’s”;

3 (11) in section 3105, by striking “he” and in-  
4 serting “the head of such agency”;

5 (12) in section 3302(1), by striking “him” and  
6 inserting “the Archivist”; and

7 (13) in section 3303a—

8 (A) in subsection (a)—

9 (i) by striking “him” and inserting  
10 “the Archivist”, each place it appears; and

11 (ii) by striking “he” and inserting  
12 “the Archivist”;

13 (B) in subsection (c), by striking “he” and  
14 inserting “the Archivist”;

15 (C) in subsection (e), by striking “his” and  
16 inserting “the Archivist’s”; and

17 (D) in subsection (f), by striking “he” and  
18 inserting “the Archivist”.

19 **SEC. 9. RECORDS MANAGEMENT BY THE ARCHIVIST.**

20 (a) OBJECTIVES OF RECORDS MANAGEMENT.—Sec-  
21 tion 2902 of title 44, United States Code, is amended—

22 (1) in paragraph (4), by striking “creation and  
23 of records maintenance and use” and inserting “cre-  
24 ation, maintenance, transfer, and use”;

1           (2) in paragraph (6), by inserting after “Fed-  
 2           eral paperwork” the following: “and the transfer of  
 3           records from Federal agencies to the National Ar-  
 4           chives of the United States in digital or electronic  
 5           form to the greatest extent possible”; and

6           (3) in paragraph (7), by striking “the Adminis-  
 7           trator or”.

8           (b) *RECORDS CENTERS AND CENTRALIZED MICRO-*  
 9 *FILMING SERVICES.*—Section 2907 of title 44, United  
 10 States Code, is amended—

11           (1) in the subject heading by inserting “**or**  
 12           **digitization**” after “**microfilming**”; and

13           (2) by inserting “or digitization” after “micro-  
 14           filming”.

15           (b) *RECORDS CENTERS AND CENTRALIZED MICRO-*  
 16 *FILMING SERVICES.*—

17           (1) *AMENDMENT.*—Section 2907 of title 44,  
 18           United States Code, is amended—

19           (A) in the section heading by inserting “**or**  
 20           **digitization**” after “**microfilming**”; and

21           (B) by inserting “or digitization” after  
 22           “microfilming”.

23           (2) *CONFORMING AMENDMENT.*—The table of sec-  
 24           tions at the beginning of chapter 29 of title 44,  
 25           United States Code, is amended in the item relating

1       to section 2907 by inserting “or digitization” after  
2       “microfilming”.

3       (c) GENERAL RESPONSIBILITIES FOR RECORDS  
4 MANAGEMENT.—Section 2904 of title 44, United States  
5 Code, is amended—

6           (1) in subsection (b), by striking “The Adminis-  
7       trator” and inserting “The Archivist”;

8           (2) in subsection (c)—

9               (A) in the matter preceding paragraph

10          (1)—

11                   (i) by striking “their” and inserting  
12                   “the”;

13                   (ii) by striking “subsection (a) or (b),  
14                   respectively” and inserting “subsections  
15                   (a) and (b)”;

16                   (iii) by striking “and the Adminis-  
17                   trator”; and

18                   (iv) by striking “each”; and

19               (B) in paragraph (8), by striking “or the  
20       Administrator (as the case may be)”;

21          (3) subsection (d) is amended to read as fol-  
22       lows:

23           “(d) The Archivist shall promulgate regulations re-  
24       quiring all Federal agencies to transfer all digital or elec-  
25       tronic records to the National Archives of the United

1 States in digital or electronic form to the greatest extent  
2 possible.”.

3 (d) INSPECTION OF AGENCY RECORDS.—Section  
4 ~~2906(a)(1)~~ 2906 of title 44, United States Code, is amend-  
5 ed—

6 (1) in subsection (a)—

7 (A) in paragraph (1)—

8 (i) by striking “their respective” and  
9 inserting “the”;

10 (ii) by striking “the Administrator of  
11 General Services and”;

12 (iii) by striking “designee of either”  
13 and inserting “the Archivist’s designee”;

14 (iv) by striking “solely”; and

15 (v) by inserting after “for the im-  
16 provement of records management prac-  
17 tices and programs” the following: “and  
18 for determining whether the records of  
19 Federal agencies have sufficient value to  
20 warrant continued preservation or lack suf-  
21 ficient value to justify continued preserva-  
22 tion”;

23 (B) in paragraph (2)—

24 (i) by striking “the Administrator  
25 and”; and

1 (ii) by striking the second sentence;

2 and

3 (C) in paragraph (3)—

4 (i) in the matter preceding subpara-  
5 graph (A)—

6 (I) by striking “the Adminis-  
7 trator or”; and

8 (II) by striking “designee of ei-  
9 ther” and inserting “Archivist’s des-  
10 ignee”; and

11 (ii) in subparagraph (A), by striking  
12 “the Administrator, the Archivist,” and in-  
13 serting “the Archivist”; and

14 (2) in subsection (b)—

15 (A) by striking “the Administrator and”;

16 and

17 (B) by striking “designee of either” and  
18 inserting “Archivist’s designee”.

19 (e) REPORTS; CORRECTION OF VIOLATIONS.—Sec-  
20 tion 2115 of title 44, United States Code, is amended—

21 (1) in subsection (a)—

22 (A) by striking “their respective” and in-  
23 serting “the”;

24 (B) by striking “and the Administrator”;

25 and

1 (C) by striking “each”; and

2 (2) in subsection (b)—

3 (A) by striking “either”;

4 (B) by striking “or the Administrator”,  
5 each place it appears; and

6 (C) by striking “inaugurated” and insert-  
7 ing “demonstrably commenced”.

8 (f) RECORDS MANAGEMENT BY THE ARCHIVIST.—

9 The heading for chapter 29 of title 44, United States  
10 Code, is amended by striking “**AND BY THE ADMIN-  
11 ISTRATOR OF GENERAL SERVICES**”.

12 (1) *AMENDMENT.*—*The heading for chapter 29 of*  
13 *title 44, United States Code, is amended by striking*  
14 *“**AND BY THE ADMINISTRATOR OF***  
15 ***GENERAL SERVICES**”.*

16 (2) *CONFORMING AMENDMENT.*—*The table of*  
17 *chapters at the beginning of title 44, United States*  
18 *Code, is amended in the item related to chapter 29 by*  
19 *striking “and by the Administrator of General Serv-*  
20 *ices”.*

21 (g) ESTABLISHMENT OF PROGRAM OF MANAGE-  
22 MENT.—Section 3102(2) of title 44, United States Code,  
23 is amended by striking “the Administrator of General  
24 Services and”.

1 **SEC. 10. DISCLOSURE REQUIREMENT FOR OFFICIAL BUSI-**  
2 **NESS CONDUCTED USING NON-OFFICIAL**  
3 **ELECTRONIC MESSAGING ACCOUNT.**

4 (a) *AMENDMENT.*—Chapter 29 of title 44, United  
5 States Code is amended by adding at the end the following  
6 new section:

7 **“§2911. Disclosure requirement for official business**  
8 **conducted using non-official electronic**  
9 **messaging accounts**

10 *“(a) IN GENERAL.*—An officer or employee of an execu-  
11 tive agency may not create or send a record using a non-  
12 official electronic messaging account unless such officer or  
13 employee—

14 *“(1) copies an official electronic messaging ac-*  
15 *count of the officer or employee in the original cre-*  
16 *ation or transmission of the record; or*

17 *“(2) forwards a complete copy of the record to an*  
18 *official electronic messaging account of the officer or*  
19 *employee within five days after the original creation*  
20 *or transmission of the record.*

21 *“(b) ADVERSE ACTIONS.*—The intentional violation of  
22 subsection (a) (including any rules, regulations, or other  
23 implementing guidelines), as determined by the appropriate  
24 supervisor, shall be a basis for disciplinary action in ac-  
25 cordance with subchapter I, II, or V of chapter 75 of title  
26 5, as the case may be.

1       “(c) *DEFINITIONS.—In this section:*

2               “(1) *ELECTRONIC MESSAGES.—The term ‘elec-*  
3       *tronic messages’ means electronic mail and other elec-*  
4       *tronic messaging systems that are used for purposes*  
5       *of communicating between individuals.*

6               “(2) *ELECTRONIC MESSAGING ACCOUNT.—The*  
7       *term ‘electronic messaging account’ means any ac-*  
8       *count that sends electronic messages.*

9               “(3) *EXECUTIVE AGENCY.—The term ‘executive*  
10       *agency’ has the meaning given that term in section*  
11       *105 of title 5.”.*

12       (b) *CLERICAL AMENDMENT.—The table of sections at*  
13       *the beginning of chapter 29 of title 44, United States Code,*  
14       *is amended by adding at the end the following new item:*

      “2911. *Disclosure requirement for official business conducted using non-official*  
          *electronic messaging accounts.”.*

Union Calendar No. 92

113<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**H. R. 1233**

[Report No. 113-127]

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**A BILL**

To amend chapter 22 of title 44, United States Code, popularly known as the Presidential Records Act, to establish procedures for the consideration of claims of constitutionally based privilege against disclosure of Presidential records, and for other purposes.

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JUNE 25, 2013

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed