

## Union Calendar No. 93

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

# H. R. 1234

**[Report No. 113-128]**

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 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 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.—

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

12 **“§ 2911. Preservation of electronic messages and**  
13 **other records**

14       “(a) REGULATIONS REQUIRED.—Not later than 18  
15 months after the date of the enactment of this section,  
16 the Archivist shall promulgate regulations governing Fed-  
17 eral agency preservation of electronic messages that are  
18 determined to be records (as such term is defined under  
19 section 3301 of this title). Such regulations shall, at a  
20 minimum—

21           “(1) require the electronic capture, manage-  
22 ment, and preservation of such electronic records in  
23 accordance with the records disposition requirements  
24 of chapter 33 of this title;

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

4           “(3) establish mandatory minimum functional  
5 requirements for electronic records management sys-  
6 tems to ensure compliance with the requirements in  
7 paragraphs (1) and (2);

8           “(4) establish a process to certify that Federal  
9 agencies’ electronic records management systems  
10 meet the functional requirements established under  
11 paragraph (3); and

12           “(5) include timelines for Federal agency com-  
13 pliance with the regulations that ensure compliance  
14 as expeditiously as practicable but not later than  
15 four years after the date of the enactment of this  
16 section.

17       “(b) COVERAGE OF OTHER ELECTRONIC  
18 RECORDS.—To the extent practicable, the regulations pro-  
19 mulgated under subsection (a) shall also include require-  
20 ments for the capture, management, and preservation of  
21 other electronic records.

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

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

4       “(e) REPORTS ON IMPLEMENTATION OF REGULA-  
5 TIONS.—

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

12               “(2) ARCHIVIST REPORT TO CONGRESS.—Not  
13 later than 90 days after receipt of all reports re-  
14 quired by paragraph (1), the Archivist shall submit  
15 to the Committee on Homeland Security and Gov-  
16 ernmental Affairs of the Senate and the Committee  
17 on Oversight and Government Reform of the House  
18 of Representatives a report on Federal agency com-  
19 pliance with the regulations promulgated under sub-  
20 section (a).”.

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

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

1       (b) *DISCLOSURE REQUIREMENT FOR OFFICIAL BUSI-*  
2 *NESS CONDUCTED USING NON-OFFICIAL ELECTRONIC MES-*  
3 *SAGING ACCOUNT.*—

4           (1) *AMENDMENT.*—Chapter 29 of title 44, United  
5 *States Code, as amended by subsection (a)(1), is fur-*  
6 *ther amended by adding at the end the following new*  
7 *section:*

8       **“§2912. Disclosure requirement for official business**  
9               **conducted using non-official electronic**  
10               **messaging accounts**

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

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

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

22       “(b) *ADVERSE ACTIONS.*—The intentional violation of  
23 *subsection (a) (including any rules, regulations, or other*  
24 *implementing guidelines), as determined by the appropriate*  
25 *supervisor, shall be a basis for disciplinary action in ac-*

1 *cordance with subchapter I, II, or V of chapter 75 of title*  
 2 *5, as the case may be.*

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

4 “(1) *ELECTRONIC MESSAGES.—The term ‘elec-*  
 5 *tronic messages’ has the meaning given that term in*  
 6 *section 2901.*

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

10 “(3) *EXECUTIVE AGENCY.—The term ‘executive*  
 11 *agency’ has the meaning given that term in section*  
 12 *105 of title 5.”.*

13 (2) *CLERICAL AMENDMENT.—The table of sec-*  
 14 *tions at the beginning of chapter 29 of title 44,*  
 15 *United States Code, as amended by subsection (a)(2),*  
 16 *is further amended by adding at the end the following*  
 17 *new item:*

*“2912. Disclosure requirement for official business conducted using non-official*  
*electronic messaging accounts.”.*

18 ~~(b)~~ (c) *DEFINITIONS.—Section 2901 of title 44,*  
 19 *United States Code, is amended—*

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

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

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

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

8                   “(A) categorizing and locating records;

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

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

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

15 **SEC. 3. PRESIDENTIAL RECORDS.**

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

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

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

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

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

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

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

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

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

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

20                   “(6) The term ‘electronic messages’ has the  
21                   meaning given that term under section 2901(15) of  
22                   this title.

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

1 (b) CERTIFICATION OF PRESIDENT’S MANAGEMENT  
2 OF PRESIDENTIAL RECORDS.—

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

6 **“§ 2208. Certification of the President’s management**  
7 **of Presidential records**

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

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

17 (2) CLERICAL AMENDMENT.—The table of sec-  
18 tions at the beginning of chapter 22 of title 44,  
19 United States Code, ~~as amended by subsection~~  
20 ~~(a)(4), is further amended~~ *is amended* by adding at  
21 the end the following new item:

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

22 (c) REPORT TO CONGRESS.—Section 2203(f) of title  
23 44, United States Code, is amended by adding at the end  
24 the following:

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

8               “(A) the volume and format of electronic Presi-  
9 dential records deposited into that President’s Presi-  
10 dential archival depository; and

11               “(B) whether the electronic records manage-  
12 ment controls of that President met the require-  
13 ments under sections 2203(a) and 2206(5) of this  
14 title.”.

15       (d) EFFECTIVE DATE.—The amendments made by  
16 ~~this section~~ *subsections (a), (b), and (c)* shall take effect  
17 one year after the date of the enactment of this Act.

18       (e) *DISCLOSURE REQUIREMENT FOR OFFICIAL BUSI-*  
19 *NESS CONDUCTED USING NON-OFFICIAL ELECTRONIC MES-*  
20 *SAGING ACCOUNT.*—

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

1 **“§ 2209. Disclosure requirement for official business**  
2 **conducted using non-official electronic**  
3 **messaging accounts**

4 “(a) *IN GENERAL.*—*An officer or employee of an execu-*  
5 *tive agency may not create or send a Presidential record*  
6 *using a non-official electronic messaging account unless*  
7 *such officer or employee—*

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

11 “(2) *forwards a complete copy of the Presidential*  
12 *record to an official electronic messaging account of*  
13 *the officer or employee within five days after the*  
14 *original creation or transmission of the Presidential*  
15 *record.*

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

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

23 “(1) *ELECTRONIC MESSAGES.*—*The term ‘elec-*  
24 *tronic messages’ has the meaning given that term in*  
25 *section 2901.*

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

4           “(3) *EXECUTIVE AGENCY.*—*The term ‘executive*  
5           *agency’ has the meaning given that term in section*  
6           *105 of title 5.”.*

7           (2) *CLERICAL AMENDMENT.*—*The table of sec-*  
8           *tions at the beginning of chapter 22 of title 44,*  
9           *United States Code, as amended by subsection (b)(2),*  
10          *is further amended by adding at the end the following*  
11          *new item:*

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

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

**H. R. 1234**

[Report No. 113-128]

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**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.

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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