

118TH CONGRESS
2D SESSION

S. 4042

To amend title 44, United States Code, to reform the management of Federal records, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 21, 2024

Mr. PETERS (for himself and Mr. CORNYN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To amend title 44, United States Code, to reform the management of Federal 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 “Strengthening Oversight of Federal Records Act of
6 2024”.

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

Sec. 1. Short title; table of contents.

TITLE I—FEDERAL RECORDS REFORM

- Sec. 101. Preservation of Federal electronic records.
- Sec. 102. Whistleblower protections.
- Sec. 103. Preservation of electronic messages of certain officials.
- Sec. 104. Proactive disclosure of records retention schedules.
- Sec. 105. Certification regarding preservation of records.

TITLE II—ADDITIONAL REFORMS TO PRESERVE AND PROTECT
RECORDS AND GOVERNMENT INTEGRITY

- Sec. 201. Unlawful removal, destruction of records.
- Sec. 202. Records management incorporation into performance plans.
- Sec. 203. Establishment of an Advisory Committee on Records Automation.
- Sec. 204. Regulations.

**TITLE I—FEDERAL RECORDS
REFORM**

**SEC. 101. PRESERVATION OF FEDERAL ELECTRONIC
RECORDS.**

(a) PRESERVATION OF AGENCY ELECTRONIC
RECORDS.—Section 2911 of title 44, United States Code,
is amended—

(1) by striking subsection (a) and inserting the
following:

“(a) IN GENERAL.—An officer or employee of an ex-
ecutive agency shall not—

“(1) destroy or delete any record created, sent,
or received using a non-official electronic messaging
account, including through any automatic mecha-
nism, unless the record has been copied or forwarded
to an official electronic messaging account of officer
or employee; or

“(2) create, receive, or send a record using a
non-official electronic messaging account unless—

1 “(A) the policies and procedures of the ex-
2 ecutive agency authorize such use by the officer
3 or employee;

4 “(B) the account is subject to records
5 management controls to create and preserve
6 readable records; and

7 “(C) the officer or employee—

8 “(i) copies an official electronic mes-
9 saging account of the officer or employee
10 in the original creation or transmission of
11 the record; or

12 “(ii) forwards a complete copy of the
13 record to an official electronic messaging
14 account of the officer or employee not later
15 than 20 days after the original creation or
16 transmission of the record.”;

17 (2) in subsection (b), by inserting “, unless the
18 violation involves a disclosure, as defined in section
19 2302(a)(2) of title 5” before the period at the end;
20 and

21 (3) in subsection (c)(1), by inserting “, includ-
22 ing social media and digital applications and plat-
23 forms,” after “messaging systems”.

24 (b) SAFEGUARDS.—Section 3105 of title 44, United
25 States Code, is amended, in the matter preceding para-

1 graph (1), by striking “against” and inserting “to ensure
2 the adequate and proper documentation of the organiza-
3 tion, functions, policies, decisions, procedures, and essen-
4 tial transactions of the Federal agency and to prevent”.

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

7 (1) in paragraph (15), by striking “and” at the
8 end;

9 (2) in paragraph (16)(D), by striking the period
10 at the end and inserting a semicolon; and

11 (3) by adding at the end the following:

12 “(17) the term ‘complete copy’ means a copy of
13 all of the contents of a record, including the
14 metadata with respect to the record; and

15 “(18) the term ‘readable’ means media that is
16 retrievable and usable for as long as needed to con-
17 duct Government business and to transfer perma-
18 nent email records to the National Archives and
19 Records Administration.”.

20 **SEC. 102. WHISTLEBLOWER PROTECTIONS.**

21 (a) DEFINITIONS.—In this section the term “whistle-
22 blower protections” has the meaning given that term in
23 section 2302(c)(1) of title 5, United States Code.

24 (b) WHISTLEBLOWER PROTECTIONS.—Nothing in
25 section 2911(a)(2) of title 44, United States Code, as

1 amended by section 101, shall prevent or impair an officer
2 or employee of an executive agency from receiving whistle-
3 blower protections.

4 **SEC. 103. PRESERVATION OF ELECTRONIC MESSAGES OF**
5 **CERTAIN OFFICIALS.**

6 (a) IN GENERAL.—Chapter 29 of title 44, United
7 States Code, is amended by adding at the end the fol-
8 lowing:

9 **“§ 2913. Preservation of electronic messages of cer-**
10 **tain officials**

11 “(a) REGULATIONS REQUIRED.—

12 “(1) IN GENERAL.—The Archivist shall promul-
13 gate regulations governing Federal agency preserva-
14 tion of electronic messages of employees, which shall,
15 at a minimum—

16 “(A) require that the electronic messages
17 of senior officers or senior employees of Federal
18 agencies be designated as a permanent record,
19 as defined in section 1220.18 of title 36, Code
20 of Federal Regulations, or any successor there-
21 to;

22 “(B) require that the electronic messages
23 of senior officers or senior employees—

24 “(i) be stored in accordance with
25 guidelines prescribed by the Archivist; and

1 “(ii) are readily accessible for retrieval
2 through electronic searches;

3 “(C) establish general categories of posi-
4 tions in Federal agencies that constitute senior
5 officers and employees; and

6 “(D) allow for the culling of transitory
7 messages, messages that are not records, and
8 personal messages as appropriate.

9 “(2) SCOPE.—The regulations promulgated
10 under paragraph (1) shall, at a minimum, apply to
11 electronic messages of—

12 “(A) the head of each Federal agency;

13 “(B) the principal assistant to the head of
14 each Federal agency, including a member of the
15 Armed Forces serving in a comparable position;

16 “(C) an officer or employee serving as a
17 deputy, or equivalent position, of an officer, em-
18 ployee, or member described in subparagraph
19 (A) or (B);

20 “(D) an employee serving as a staff assist-
21 ant to an officer, employee, or member de-
22 scribed in subparagraph (A) or (B), including a
23 special assistant, confidential assistant, military
24 assistant, and aide;

1 “(E) an officer or employee serving in a
2 principal management position at a Federal
3 agency, including the Chief Operating Officer,
4 the Chief Information Officer, the Chief Knowl-
5 edge Officer, the Chief Technology Officer, the
6 Chief Financial Officer, and an equivalent of
7 such an officer;

8 “(F) the director, or equivalent position, of
9 a significant program office of a Federal agen-
10 cy;

11 “(G) a principal regional officer of a Fed-
12 eral agency, including a regional administrator,
13 or equivalent position;

14 “(H) an officer or employee serving in a
15 position that routinely provide advice to or over-
16 sight of a Federal agency, including advice to
17 or oversight of the activities of an officer, em-
18 ployee, or member described in subparagraph
19 (A), (B), (C), (E), (F), or (G), including an of-
20 ficer or employee serving as a general counsel,
21 chief of staff, or inspector general;

22 “(I) an officer or employee appointed by
23 the President, by and with the advice and con-
24 sent of the Senate;

1 “(J) any other officer or employee serving
2 in a position that predominantly creates perma-
3 nent records related to mission critical func-
4 tions or policy decisions of a Federal agency or
5 that are of historical significance; and

6 “(K) any officer or employee serving in a
7 position described in subparagraph (A), (B),
8 (C), (D), (E), (F), (G), (H), (I), or (J) in an
9 acting capacity.

10 “(b) AGENCY REPORT TO ARCHIVIST.—

11 “(1) IN GENERAL.—Not later than the date
12 specified in paragraph (2), and every 5 years there-
13 after, the head of each Federal agency shall submit
14 to the Archivist a report on the compliance of the
15 Federal agency with subsection (a), including statis-
16 tics on—

17 “(A) the number of senior officers and sen-
18 ior employees of the Federal agency whose elec-
19 tronic messages are being stored as permanent
20 records in accordance with guidelines prescribed
21 by the Archivist;

22 “(B) the volume of electronic messages of
23 senior officers and senior employees of the Fed-
24 eral agency designated as a permanent record
25 that are held by the Federal agency; and

1 “(C) the volume of total electronic mes-
 2 sages of officers and employees of the Federal
 3 agency that are held by the Federal agency.

4 “(2) DEADLINE FOR INITIAL REPORTS.—The
 5 date specified in this paragraph is the earlier of—

6 “(A) the date that is 210 days after the
 7 date on which the Archivist promulgates regula-
 8 tions under subsection (a); or

9 “(B) the date that is 1 year after the date
 10 of enactment of this section.

11 “(3) PUBLIC AVAILABILITY.—Not later than 30
 12 days after submitting a report required under para-
 13 graph (1) to the Archivist, the head of a Federal
 14 agency shall make the report publicly available in an
 15 accessible electronic format on the website of the
 16 Federal agency.”.

17 (b) CONFORMING AMENDMENT.—The table of sec-
 18 tions for chapter 29 of title 44, United States Code, is
 19 amended by adding at the end the following:

“2913. Preservation of electronic messages of senior officials.”.

20 **SEC. 104. PROACTIVE DISCLOSURE OF RECORDS RETEN-**
 21 **TION SCHEDULES.**

22 (a) PROACTIVE DISCLOSURE OF RECORDS RETEN-
 23 TION SCHEDULES.—Section 3303 of title 44, United
 24 States Code, is amended—

1 (1) by striking “The head” and inserting “(a)
2 The head”; and

3 (2) by adding at the end the following:

4 “(b)(1) For each list or schedule of records issued
5 under subsection (a) that is approved by the Archivist, the
6 Archivist shall—

7 “(A) not later than 30 days after the date on
8 which the Archivist approves the list or schedule,
9 make the list or schedule available for public inspec-
10 tion;

11 “(B) make available and maintain the list or
12 schedule in an accessible electronic database on a
13 website of the National Archives and Records Ad-
14 ministration, including the relevant crosswalk and
15 appraisal memo; and

16 “(C) ensure the list or schedule, and all related
17 materials, are organized in such fashion as to—

18 “(i) facilitate public understanding of the
19 operations of the records management program
20 of the Federal agency; and

21 “(ii) assist the Archivist in cataloging dis-
22 position authorities.

23 “(2) Not later than 60 days after the date of enact-
24 ment of the Strengthening Oversight of Federal Records
25 Act of 2024, the head of each Federal agency shall submit

1 to the Archivist each list or schedule of records issued
2 under subsection (a) before such date of enactment that
3 is in effect on such date of enactment, and all related ma-
4 terials, for immediate publication in the database de-
5 scribed in paragraph (1).

6 “(3) The database described in paragraph (1) shall
7 be searchable and maintained as an open Government
8 data asset, as defined in section 3502.”.

9 (b) REGULATION.—Section 3302 of title 44, United
10 States Code, is amended—

11 (1) in paragraph (1), by striking the comma at
12 the end and inserting a semicolon;

13 (2) in paragraph (2), by striking “, and” and
14 inserting a semicolon;

15 (3) in paragraph (3), by striking the period at
16 the end and inserting “; and”; and

17 (4) by adding at the end the following:

18 “(4) procedures and minimum standards of
19 ease-of-use for public inspection and online mainte-
20 nance of lists, schedules, and related materials pur-
21 suant to section 3303(b).”.

1 **SEC. 105. CERTIFICATION REGARDING PRESERVATION OF**
2 **RECORDS.**

3 (a) **IN GENERAL.**—Chapter 29 of title 44, United
4 States Code, as amended by section 103, is amended by
5 adding at the end the following:

6 **“§ 2914. Certification regarding preservation of**
7 **records**

8 “The head of each Federal agency shall establish
9 policies and procedures under which each employee of the
10 Federal agency shall, prior to separating from service as
11 an employee of the Federal agency, submit to the head
12 of the Federal agency a certification indicating whether
13 the employee has complied with the requirements under
14 this chapter relating to the preservation of records.”.

15 (b) **CONFORMING AMENDMENT.**—The table of sec-
16 tions for chapter 29 of title 44, United States Code, as
17 amended by section 103, is amended by adding at the end
18 the following:

“2914. Certification regarding preservation of records.”.

1 **TITLE II—ADDITIONAL RE-**
2 **FORMS TO PRESERVE AND**
3 **PROTECT RECORDS AND GOV-**
4 **ERNMENT INTEGRITY**

5 **SEC. 201. UNLAWFUL REMOVAL, DESTRUCTION OF**
6 **RECORDS.**

7 Section 3106 of title 44, United States Code, is
8 amended—

9 (1) by striking subsection (a) and inserting the
10 following:

11 “(a) **FEDERAL AGENCY NOTIFICATION OF UNLAW-**
12 **FUL REMOVAL OR DESTRUCTION OF RECORDS.—**

13 “(1) **IN GENERAL.—**The head of each Federal
14 agency shall notify the Archivist if the head of the
15 Federal agency knows or has reason to believe that
16 there is—

17 “(A) any actual, impending, or threatened
18 unlawful failure to create or removal, defacing,
19 alteration, corruption, deletion, erasure, or
20 other destruction of records in the custody of
21 the Federal agency; or

22 “(B) any other repeated non-compliance by
23 any employee of the Federal agency with Fed-
24 eral record-keeping requirements that the head

1 of the Federal agency has been unable to fully
2 address.

3 “(2) REMEDY.—With the assistance of the Ar-
4 chivist, the head of each Federal agency shall ini-
5 tiate action through the Attorney General for—

6 “(A) fully recovering or restoring records
7 unlawfully removed from the Federal agency,
8 including records of another Federal agency
9 that have been transferred to the legal custody
10 of that Federal agency, or that are defaced, al-
11 tered, corrupted, deleted, erased, or destroyed,
12 to the extent practicable; and

13 “(B) remedying any other repeated non-
14 compliance by any employee of the Federal
15 agency with record-keeping requirements.”;

16 (2) in subsection (b), by striking “shall request
17 the Attorney General” and all that follows and in-
18 serting the following: “shall—

19 “(1) request the Attorney General to initiate
20 such an action;

21 “(2) notify the Committee on Homeland Secu-
22 rity and Governmental Affairs of the Senate and the
23 Committee on Oversight and Accountability of the
24 House of Representatives;

1 “(3) include with the notification under para-
2 graph (2) any relevant evidence, analysis, and sup-
3 porting documentation pertinent to the incident; and

4 “(4) in coordination with the Attorney General,
5 make regular updates to the committees specified in
6 paragraph (2) on the status of efforts to remedy the
7 unlawful action or noncompliance.”; and

8 (3) by adding at the end the following:

9 “(c) OTHER RECORDKEEPING VIOLATIONS.—

10 “(1) IN GENERAL.—If the Archivist becomes
11 aware of an alleged violation by an employee of a
12 Federal agency of his or her recordkeeping obliga-
13 tions, the Archivist shall—

14 “(A) notify the head of the Federal agency
15 and coordinate with the Federal agency to de-
16 termine whether a violation took place; and

17 “(B) subject to paragraph (2), refer the
18 matter to the head of the Federal agency for
19 corrective action, as necessary.

20 “(2) AGENCIES WITH INSPECTORS GENERAL.—

21 If the Archivist makes a referral described in para-
22 graph (1)(B) to a Federal agency that has an In-
23 spector General (as defined in section 401 of title 5),
24 the Archivist shall make a joint referral to the head

1 of the Federal agency and to the Inspector General
2 of the Federal agency.”.

3 **SEC. 202. RECORDS MANAGEMENT INCORPORATION INTO**
4 **PERFORMANCE PLANS.**

5 Section 4302 of title 5, United States Code, is
6 amended—

7 (1) by redesignating subsections (c) and (d) as
8 subsections (d) and (e), respectively; and

9 (2) by inserting after subsection (b) the fol-
10 lowing:

11 “(c) The head of each agency, in consultation with
12 the Director of the Office of Personnel Management and
13 the Archivist of the United States, shall develop criteria
14 that incorporates records management requirements that
15 should be included in employees’ performance standards
16 and reviews.”.

17 **SEC. 203. ESTABLISHMENT OF AN ADVISORY COMMITTEE**
18 **ON RECORDS AUTOMATION.**

19 (a) ESTABLISHMENT.—There is established within
20 the National Archives and Records Administration an ad-
21 visory committee to be known as the “Advisory Committee
22 on Records Automation” (in this section referred to as the
23 “Advisory Committee”).

24 (b) PURPOSES.—The purposes of the Advisory Com-
25 mittee are—

1 (1) to encourage the efforts of the Government
2 to manage records through greater use of automa-
3 tion to make electronic recordkeeping more efficient;

4 (2) to encourage the efforts of the Government
5 to more efficiently respond to access requests for
6 records of executive agencies;

7 (3) to issue recommendations relating to
8 records automation, including on how the Govern-
9 ment should use automated software to—

10 (A) automatically categorize records in
11 connection with the issuance of records sched-
12 ules required under chapter 33 of title 44,
13 United States Code;

14 (B) search for responsive records; and

15 (C) assist in determining whether records
16 may be exempt from public disclosure; and

17 (4) to receive expert advice from public and pri-
18 vate sector sources with respect to the use of auto-
19 mated software to make the management of and ac-
20 cess to records of executive agencies more efficient.

21 (c) DUTIES.—The duties of the Advisory Committee
22 include providing advice and recommendations to the Ar-
23 chivist of the United States (in this section referred to
24 as the “Archivist”) and agencies on strategic, technical,

1 financial, programmatic, and operational matters regard-
2 ing records automation.

3 (d) MEMBERSHIP.—

4 (1) COMPOSITION.—The Advisory Committee
5 shall be composed of not more than 15 members
6 from the public and private sectors as follows:

7 (A) Three members shall be appointed by
8 the Archivist, 1 of which shall be designated by
9 the Archivist as the Chairperson of the Advi-
10 sory Committee.

11 (B) Three members shall be appointed by
12 the Director of the Office of Management and
13 Budget.

14 (C) One member shall be appointed by the
15 Attorney General of the United States.

16 (D) One member shall be appointed by the
17 Administrator of General Services.

18 (E) Additional members shall appointed by
19 the Archivist, as determined appropriate by the
20 Archivist, in consultation with the Director of
21 the Office of Management and Budget.

22 (2) PUBLIC SECTOR AND PRIVATE SECTOR BAL-
23 ANCE.—The Archivist shall ensure that the Advisory
24 Committee maintain a balance between members
25 from the public sector and from the private sector.

1 (3) DEADLINE FOR APPOINTMENT.—Each
2 member of the Advisory Committee shall be ap-
3 pointed not later than 45 days after the date of en-
4 actment of this Act.

5 (e) PERIOD OF APPOINTMENT; VACANCIES.—

6 (1) IN GENERAL.—A member of the Advisory
7 Committee shall be appointed for the life of the
8 Committee.

9 (2) VACANCIES.—A vacancy in the Advisory
10 Committee—

11 (A) shall not affect the powers of the Advi-
12 sory Committee; and

13 (B) shall be filled in the same manner as
14 the original appointment.

15 (f) MEETINGS.—

16 (1) INITIAL MEETING.—Not later than 60 days
17 after the date on which all members of the Advisory
18 Committee have been appointed, the Advisory Com-
19 mittee shall hold the first meeting of the Advisory
20 Committee.

21 (2) FREQUENCY.—The Advisory Committee
22 shall meet at the call of the Chairperson, but not
23 less frequently than 3 times per year, at such time
24 and place as determined by the Chairperson.

1 (3) QUORUM.—A majority of the members of
2 the Advisory Committee shall constitute a quorum,
3 but a lesser number of members may hold hearings.

4 (4) RULES OF PROCEDURE.—The Advisory
5 Committee may establish rules for the conduct of
6 the business of the Advisory Committee if such rules
7 are not inconsistent with this section or other appli-
8 cable law.

9 (g) REPORTS.—

10 (1) IN GENERAL.—Not later than 2 years after
11 the date of enactment of this Act, the Advisory
12 Committee shall submit to the Archivist, the Com-
13 mittee on Homeland Security and Governmental Af-
14 fairs of the Senate, and the Committee on Oversight
15 and Accountability of the House of Representatives
16 a report providing a detailed statement of the find-
17 ings and conclusions of the Advisory Committee, to-
18 gether with any recommendations of the Advisory
19 Committee for legislation or administrative actions.

20 (2) INTERIM REPORTS.—The Advisory Com-
21 mittee may submit to the Archivist, the Committee
22 on Homeland Security and Governmental Affairs of
23 the Senate, and the Committee on Oversight and Ac-
24 countability of the House of Representatives interim
25 reports regarding the activities and findings of the

1 Advisory Committee, as determined appropriate by
2 the Advisory Committee.

3 (h) POWERS.—

4 (1) INFORMATION FROM FEDERAL AGENCIES.—

5 The Advisory Committee may secure directly from a
6 Federal department or agency such information as
7 the Advisory Committee considers necessary to carry
8 out this section, consistent with the protection of
9 classified national security information and statu-
10 torily protected information.

11 (2) POSTAL SERVICES.—The Advisory Com-
12 mittee may use the United States mails in the same
13 manner and under the same conditions as other de-
14 partments and agencies of the Federal Government.

15 (3) DONATIONS.—The Advisory Committee may
16 accept, use, and dispose of donations of services or
17 property.

18 (i) ADVISORY COMMITTEE PERSONNEL MATTERS.—

19 (1) IN GENERAL.—A member of the Advisory
20 Committee (other than a member who is appointed
21 to the Advisory Committee in connection with an-
22 other Federal appointment) shall not be considered
23 an employee of the Federal Government by reason of
24 any service as such a member, except for the pur-

1 poses of section 5703 of title 5, United States Code,
2 relating to travel expenses.

3 (2) PAY NOT PERMITTED.—A member of the
4 Advisory Committee described in paragraph (1) may
5 not receive pay by reason of service on the Com-
6 mittee.

7 (3) PROCUREMENT OF TEMPORARY AND INTER-
8 MITTENT SERVICES.—The Chairperson of the Advi-
9 sory Committee may procure temporary and inter-
10 mittent services under section 3109(b) of title 5,
11 United States Code, at rates for individuals that do
12 not exceed the daily equivalent of the annual rate of
13 basic pay prescribed for level V of the Executive
14 Schedule under section 5316 of that title.

15 (j) TERMINATION OF ADVISORY COMMITTEE.—The
16 Advisory Committee shall terminate on the date that is
17 90 days after the submission of the report required under
18 subsection (g)(1).

19 (k) AUTHORIZATION OF APPROPRIATIONS.—There is
20 authorized to be appropriated \$3,000,000 to carry out this
21 section for each of fiscal years 2025 and 2026.

22 (l) APPLICATION OF FACA.—Chapter 10 of title 5,
23 United States Code, shall apply to the Advisory Com-
24 mittee.

1 **SEC. 204. REGULATIONS.**

2 Section 2206 of title 44, United States Code, is
3 amended—

4 (1) by inserting “(a)” before “The Archivist”;

5 (2) in subsection (a), as so designated—

6 (A) in paragraph (1), by striking
7 “2203(f)(3)” and inserting “2203(g)(4)”;

8 (B) in paragraph (3), by striking “and” at
9 the end;

10 (C) in paragraph (4), by striking the pe-
11 riod and inserting “; and”; and

12 (D) by adding at the end the following:

13 “(5) provisions for establishing procedures for
14 documenting required metadata.”; and

15 (3) by adding at the end the following:

16 “(b) The Archivist shall issue, and shall regularly up-
17 date, implementation guidance with respect to the regula-
18 tions described in subsection (a)(5).”.

○