

PRESIDENTIAL AND FEDERAL RECORDS ACT
AMENDMENTS OF 2013

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JUNE 25, 2013.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
—————

Mr. ISSA, from the Committee on Oversight and Government
Reform, submitted the following

R E P O R T

[To accompany H.R. 1233]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 1233) 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, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 9, after line 16, insert the following:

(e) DISCLOSURE REQUIREMENT FOR OFFICIAL BUSINESS CONDUCTED USING NON-OFFICIAL ELECTRONIC MESSAGING ACCOUNT.—

(1) AMENDMENT.—Chapter 22 of title 44, United States Code, as amended by subsection (a)(1), is further amended by adding at the end the following new section:

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

“(a) IN GENERAL.—An officer or employee of an executive agency may not create or send a Presidential record using a non-official electronic messaging account unless such officer or employee—

“(1) copies an official electronic messaging account of the officer or employee in the original creation or transmission of the Presidential record; or

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

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

“(c) DEFINITIONS.—In this section:

“(1) ELECTRONIC MESSAGES.—The term ‘electronic messages’ means electronic mail and other electronic messaging systems that are used for purposes of communicating between individuals.

“(2) ELECTRONIC MESSAGING ACCOUNT.—The term ‘electronic messaging account’ means any account that sends electronic messages.

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

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 22 of title 44, United States Code, as amended by subsection (a)(3), is further amended by adding at the end the following new item:

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

Page 11, beginning on line 12, strike “for deposit” and insert “a copy of”.

Page 17, line 8, strike “and” the first place it appears and insert “or”.

Page 21, line 20, insert “the first place it appears” before “and”.

Page 22, line 17, insert “the first place it appears” before “and”.

Page 24, strike lines 1 through 7, and insert the following:

(b) RECORDS CENTERS AND CENTRALIZED MICROFILMING SERVICES.—

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

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

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

(2) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 29 of title 44, United States Code, is amended in the item relating to section 2907 by inserting “or digitization” after “microfilming”.

Page 25, line 9, strike “2906(a)(1)” and insert “2906”.

Page 27, strike lines 14 through 16 and insert the following:

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

(2) CONFORMING AMENDMENT.—The table of chapters at the beginning of title 44, United States Code, is amended in the item related to chapter 29 by striking “and by the Administrator of General Services”.

At the end of the bill, insert the following (and amend the table of contents accordingly):

SEC. 10. DISCLOSURE REQUIREMENT FOR OFFICIAL BUSINESS CONDUCTED USING NON-OFFICIAL ELECTRONIC MESSAGING ACCOUNT.

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

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

“(a) IN GENERAL.—An officer or employee of an executive agency may not create or send a record using a non-official electronic messaging account unless such officer or employee—

“(1) copies an official electronic messaging account of the officer or employee in the original creation or transmission of the record; or

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

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

“(c) DEFINITIONS.—In this section:

“(1) ELECTRONIC MESSAGES.—The term ‘electronic messages’ means electronic mail and other electronic messaging systems that are used for purposes of communicating between individuals.

“(2) ELECTRONIC MESSAGING ACCOUNT.—The term ‘electronic messaging account’ means any account that sends electronic messages.

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

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

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

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 1233, the Presidential and Federal Records Act Amendments of 2013, was introduced on March 18, 2013, by Representative Elijah E. Cummings (D–MD). This legislation makes a number of modernizing reforms to federal recordkeeping procedures and requirements. As amended, H.R. 1233 would codify an executive order to fill an executive privilege related gap in the Presidential Records Act (PRA) while also streamlining outdated statutory recordkeeping language and making additional changes to improve the federal government’s ability to capture and archive electronic records.

BACKGROUND AND NEED FOR LEGISLATION

Congress first addressed federal recordkeeping in the 1930s, when the combination of growing public concern over poor agency recordkeeping practices and an expanding federal bureaucracy necessitated recordkeeping solutions for a larger volume of records. In 1934, Congress established the National Archives and the position of Archivist of the United States (Archivist) as the primary, central agent of records preservation for the federal government.¹ In 1950, Congress followed up the establishment of the National Archives with the Federal Records Act (FRA), which established basic records management authority for federal agencies and set basic records management standards, including standards for disposal of records. The intent was that agencies would manage their own records internally, while the National Archives would filter and preserve those records that were transferred to the National Archives for posterity.

In 1955, Congress addressed presidential recordkeeping in its own right with the Presidential Libraries Act,² which adopted the presidential library model, first conceptualized in 1938, for the permanent maintenance of the records of former presidents. In 1978, in the wake of Watergate, Congress passed the PRA, which was intended to be a comprehensive answer to the general issue of presidential records preservation and maintenance.

The PRA defined what did and did not qualify as a presidential record,³ clarified the ownership of presidential records,⁴ detailed guidelines for the management and custody of presidential records,⁵ established procedures for restricting access to Presidential records under certain circumstances,⁶ and granted the Ar-

¹ See generally National Archives Act, 48 Stat. 1122 (1934).

² See generally P.L. 84–695 (1955).

³ See *id.* at § 2201.

⁴ See *id.* at § 2202.

⁵ See *id.* at § 2203.

⁶ See *id.* at § 2204 and § 2205.

chivist, who heads NARA, the ability to promulgate regulations enforcing the PRA.⁷

The PRA did not, however, provide a procedure allowing former presidents to request continued restricted access to presidential records created during their respective administrations. To fill this gap, several presidents since the passage of the PRA have issued executive orders to formalize a request procedure and define the limits of such requests.⁸ To definitively address this issue, H.R. 1233 would create a framework that would enable former presidents to request continued restricted access on a very narrow basis, effectively in accord with the Reagan and Obama Administration frameworks.

In other areas, both the PRA and the FRA have become increasingly antiquated, particularly in regard to electronic information. Despite the rapid migration over the last several decades toward electronic communication and recordkeeping, federal recordkeeping laws are still focused on the media in which a record is preserved, not the information that constitutes the record itself. To correct this flaw, this legislation will shift the onus of recordkeeping onto the record and not the media it is contained in as a way to better enable NARA, and other agencies, to handle growing amounts of electronic communication. Additionally, the bill helps address a number of potential records security issues by further restricting access to presidential records for those convicted of an Archives-related crime and by explicitly codifying requirements for federal employees to file electronic communications regarding official business done through personal messaging accounts with their agency. Finally, the legislation makes changes that streamline and modernize title 44, such as repealing defunct provisions and striking unnecessary statutory references to the General Services Administration.

LEGISLATIVE HISTORY

H.R. 1233, the Presidential and Federal Records Act Amendments of 2013, was introduced on March 18, 2013, and referred to the House Committee on Oversight and Government Reform. In the 112th Congress, the provisions contained within the introduced version of H.R. 1233 were included in H.R. 3071, as amended and ordered reported by voice vote by the Oversight Committee.

At a business meeting on March 20, 2013, the Committee considered H.R. 1233 and ordered the bill to be reported by voice vote.

SECTION-BY-SECTION

Section 1. Short title; Table of contents

Section 1 establishes the bill's short title as the "Presidential and Federal Records Act Amendments of 2013" and provides the legislation's table of contents.

⁷ See *id.* at § 2206. The PRA also provides that the same rules governing the collection, storage, and preservation of presidential records govern the collection, storage, and preservation of vice presidential records. See *id.* at § 2207.

⁸ In 1989, President Reagan—who was the first president to be subject to the PRA—issued Executive Order 12667 to establish such a procedure. In 2001, President George W. Bush issued Executive Order 13233, which dramatically increased the scope of former presidents' abilities to request and receive continued restricted access to their presidential records. In 2009, President Obama issued Executive Order 13489, which rescinded President Bush's expansive executive order and effectively restored President Reagan's request framework. See *generally* Exec. Order No. 13489, 74 Fed. Reg. 4669 (Jan. 26, 2009).

Section 2. Presidential records

Subsection (a) creates 44 U.S.C. § 2208 which establishes a clear appeals procedure by which a former president can request that an incumbent president maintain the privileged status of records of that former president that have yet to be released to the public by the Archivist.

Subsection (b) makes technical corrections to modernize a number of definitions contained in 44 U.S.C. § 2201.

Subsection (c) modifies 44 U.S.C. § 2203 to give presidential administrations the option to, in effect, allow pre-accession of physical and electronic records.

Subsection (d) amends 44 U.S.C. § 2204 to bar designated presidential representatives who have previously been convicted of a National Archives record-related crime from access to NARA facilities or records.

Subsection (e) creates 44 U.S.C. § 2209 which requires federal employees who create or send a Presidential record from a non-official electronic messaging account to forward a complete copy of the record to an official electronic messaging account within five days. In cases of intentional violation of this disclosure requirement, the section authorizes disciplinary action as determined by the appropriate supervisor, in accordance with subchapter I, II, or V of chapter 75 of title 5, U.S. Code.

Section 3. National Archives and Records Administration

Subsection (a) amends 44 U.S.C. § 2107 to outline the federal agency option of “pre-accessioning,” or the transfer of agency documents to NARA for processing and release in advance of the statutorily required date for doing so.

Subsection (b) amends 44 U.S.C. § 2111 to shift NARA’s duty to receive “recorded information” generally, rather than to receive any specific media containing information.

Subsection (c) amends provisions in 44 U.S.C. § 2114 to modernize terminology addressing the audio and visual records that NARA is likely to receive for deposit.

Subsection (d) amends 44 U.S.C. § 2116 to include digital reproductions among the categories of reproductions that federal agencies may keep when they are statutorily required to maintain copies of documents indefinitely.

Section 4. Records management by Federal agencies

Section 4 amends 44 U.S.C. § 3016 to expand the types of destruction that can be carried out to destroy federal records. The changes are intended to list damage actions that are specific to electronic records, such as “corruption,” deletion,” and “erasure,” that may not be covered under the current statutory language.

Section 5. Disposal of records

Subsection (a) amends 44 U.S.C. 3301 to adjust the federal definition of “records” to shift the emphasis to the information being stored in a given record, rather than any specific media used to store information and gives NARA the authority to define the term “record” as it applies to federal agencies, which, in effect, gives NARA the ability to issue binding regulations governing agencies’ record preservation, maintenance, and transfer requirements.

Subsections (b), (c), (e) amend 44 U.S.C. § 3302(3), § 3303(1), and § 3312, respectively, to add digitization language to provisions dealing with the scheduled disposal and evidentiary validity of federal records.

Subsection (d) amends 44 U.S.C. § 3303a(c) to update the language regarding the respective House and Senate congressional committees of jurisdiction.

Section 6. Procedures to prevent unauthorized removal of classified records from National Archives

This section creates new statutory rules governing access to NARA facilities and NARA records. It is intended to ensure against the theft of or damage to classified records under NARA's control and limit regular access to appropriate NARA officials and employees.

Section 7. Repeal of provisions related to the National Study Commission on Records and Documents of Federal Officials

Section 7 repeals provisions of Chapter 33 of title 44 governing the now-defunct National Study Commission on Records and Documents of Federal Officials.

Section 8. Pronoun amendments

Section 8 removes pronouns throughout title 44 and replaces them with gender-neutral references to the Archivist, former President, incumbent President, or other official, as appropriate.

Section 9. Records management by the Archivist

Subsection (a) amends 44 U.S.C. § 2902 to require NARA promote and pursue electronic recordkeeping and receipt of electronic records from federal agencies.

Subsection (b) amends 44 U.S.C. § 2907 to provide the Archivist with the authority to establish and use records centers with the capability of digitizing records in the same way that NARA would capture records on microfilm or other photographic processes.

Subsection (c) amends 44 U.S.C. § 2904 to delete vestigial language regarding the General Services Administration (GSA) and its Administrator.

Subsection (d) amends 44 U.S.C. § 2906 to clarify NARA's ability to inspect federal agencies' records for the purpose of ensuring their historical value.

Subsections (e), (f), and (g) amend 44 U.S.C. § 2115, the heading for chapter 29, of title 44, U.S.C., and 44 U.S.C. § 3102(2), respectively, to delete additional vestigial references to GSA and its Administrator.

Section 10. Disclosure requirement for official business conducted using non-official electronic messaging account

Section 10 creates 44 U.S.C. § 2911 which requires federal employees who create or send a federal record from a non-official electronic messaging account to forward a complete copy of the record to an official electronic messaging account within five days. In cases of intentional violation of this disclosure requirement, the section authorizes disciplinary action as determined by the appro-

appropriate supervisor, in accordance with subchapter I, II, or V of chapter 75 of title 5, U.S. Code.

EXPLANATION OF AMENDMENTS

The provisions of the legislation as ordered reported are explained in this report.

COMMITTEE CONSIDERATION

On March 20, 2013, the Committee met in open session and ordered reported favorably the bill, H.R. 1233, as amended, by voice vote, a quorum being present.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill codifies an executive order to fill an executive privilege related gap in the Presidential Records Act while also streamlining outdated statutory record-keeping language and making additional changes to improve the federal government’s ability to capture and archive electronic records. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee’s performance goals and objectives are reflected in the descriptive portions of this report.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 1233 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

H.R. 1233 requires the Archivist to promulgate regulations requiring all Federal agencies to transfer all digital or electronic records to the National Archives in digital or electronic form to the greatest extent possible.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104-4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 1233 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 1233. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1233 from the Director of Congressional Budget Office:

MAY 20, 2013.

Hon. DARRELL ISSA,
Chairman, Committee on Oversight and Government Reform, House of Representatives, Washington, DC,

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1233, the Presidential and Federal Records Act Amendments of 2013.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 1233—Presidential and Federal Records Act Amendments of 2013

H.R. 1233 would amend federal law regarding the preservation, storage, and management of federal records. The legislation would amend the Presidential Records Act to establish a process for reviewing Presidential records. The bill also would update archival laws to accommodate the government’s use of electronic and digital communications. Finally, H.R. 1233 would require the National Archives and Records Administration (NARA) to prevent unauthorized access or removal of government records.

According to NARA, most provisions in the bill would codify and expand current practices. Executive Orders and Presidential memoranda have directed NARA and agencies to better manage government records. Consequently, CBO estimates that implementing H.R. 1233 would have no significant cost over the next five years. The bill could affect direct spending by agencies not funded through annual appropriations; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would not be significant. Enacting H.R. 1233 would not affect revenues.

H.R. 1233 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 44, UNITED STATES CODE

TITLE 44—PUBLIC PRINTING AND DOCUMENTS

Chap.		Sec.
1.	Joint Committee on Printing	101
	* * * * *	
29.	Records Management by the Archivist of the United States [and by the Administrator of General Services]	2901
	* * * * *	

CHAPTER 21—NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Sec.	
2101.	Definitions.
	* * * * *

【2114. Preservation of motion-picture films, still pictures, and sound recordings.】
 2114. Preservation of audio and visual records.

* * * * *

【§ 2107. Acceptance of records for historical preservation

【When it appears to the Archivist to be in the public interest, he may—

【(1) accept for deposit with the National Archives of the United States the records of a Federal agency, the Congress, the Architect of the Capitol, or the Supreme Court determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the United States Government;

【(2) direct and effect the transfer to the National Archives of the United States of records of a Federal agency that have been in existence for more than thirty years and determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the United States Government, unless the head of the agency which has custody of them certified in writing to the Archivist that they must be retained in his custody for use in the conduct of the regular current business of the agency;

【(3) direct and effect, with the approval of the head of the originating agency, or if the existence of the agency has been terminated, then with the approval of his successor in function, if any, the transfer of records, deposited or approved for deposit with the National Archives of the United States to public or educational institutions or associations; title to the records to remain vested in the United States unless otherwise authorized by Congress; and

【(4) transfer materials from private sources authorized to be received by the Archivist by section 2111 of this title.】

§ 2107. Acceptance of records for historical preservation

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

(1) *accept for deposit with the National Archives of the United States the records of a Federal agency, the Congress, the Architect of the Capitol, or the Supreme Court determined by the Archivist to have sufficient historical or other value to warrant their continued preservation by the United States Government;*

(2) *direct and effect the transfer of records of a Federal agency determined by the Archivist to have sufficient historical or other value to warrant their continued preservation by the United States Government to the National Archives of the United States, as soon as practicable, and at a time mutually agreed upon by the Archivist and the head of that Federal agency not later than thirty years after such records were created or received by that agency, unless the head of such agency has certified in writing to the Archivist that such records must be retained in the custody of such agency for use in the conduct of the regular business of the agency;*

(3) *direct and effect, with the approval of the head of the originating Federal agency, or if the existence of the agency has*

been terminated, with the approval of the head of that agency's successor in function, if any, the transfer of records, deposited or approved for deposit with the National Archives of the United States to public or educational institutions or associations; title to the records to remain vested in the United States unless otherwise authorized by Congress; and

(4) transfer materials from private sources authorized to be received by the Archivist by section 2111 of this title.

(b) EARLY TRANSFER OF RECORDS.—The Archivist—

(1) in consultation with the head of the originating Federal agency, is authorized to accept a copy of the records described in subsection (a)(2) that have been in existence for less than thirty years; and

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

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

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

(C) any shorter period agreed to by the originating Federal agency.

* * * * *

§ 2111. Material accepted for deposit

【When the Archivist considers it to be in the public interest he may accept for deposit—

【(1) the papers and other historical materials of a President or former President of the United States, or other official or former official of the Government, and other papers relating to and contemporary with a President or former President of the United States, subject to restrictions agreeable to the Archivist as to their use; and

【(2) documents, including motion-picture films, still pictures, and sound recordings, from private sources that are appropriate for preservation by the Government as evidence of its organization, functions, policies, decisions, procedures, and transactions.

This section shall not apply in the case of any Presidential records which are subject to the provisions of chapter 22 of this title.】

§ 2111. Material accepted for deposit

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

(1) the papers and other historical materials of a President or former President of the United States, or other official or former official of the Government, and other papers relating to and contemporary with a President or former President of the United States, subject to restrictions agreeable to the Archivist as to their use; and

(2) recorded information (as such term is defined in section 3301(a)(2) of this title) from private sources that are appropriate for preservation by the Government as evidence of its organization, functions, policies, decisions, procedures, and transactions.

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

* * * * *

§2114. Preservation of motion-picture films, still pictures, and sound recordings

【The Archivist may make and preserve motion-picture films, still pictures, and sound recordings pertaining to and illustrative of the historical development of the United States Government and its activities, and provide for preparing, editing, titling, scoring, processing, duplicating, reproducing, exhibiting, and releasing for non-profit educational purposes, motion-picture films, still pictures, and sound recordings in his custody.】

§2114. Preservation of audio and visual records

The Archivist may make and preserve audio and visual records, including motion-picture films, still photographs, and sound recordings, in analog, digital, or any other form, pertaining to and illustrative of the historical development of the United States Government and its activities, and provide for preparing, editing, titling, scoring, processing, duplicating, reproducing, exhibiting, and releasing for non-profit educational purposes, motion-picture films, still photographs, and sound recordings in the Archivist’s custody.

§2115. Reports; correction of violations

(a) In carrying out 【their respective】 *the* duties and responsibilities under chapters 21, 25, 29, 31, and 33 of this title, the Archivist 【and the Administrator】 may 【each】 obtain reports from any Federal agency on such agency’s activities under such chapters.

(b) When 【either】 the Archivist 【or the Administrator】 finds that a provision of any such chapter has been or is being violated, the Archivist 【or the Administrator】 shall (1) inform in writing the head of the agency concerned of the violation and make recommendations for its correction; and (2) unless satisfactory corrective measures are 【inaugurated】 *demonstrably commenced* within a reasonable time, submit a written report of the matter to the President and the Congress.

§2116. Legal status of reproductions; official seal; fees for copies and reproductions

(a) When records that are required by statute to be retained indefinitely have been reproduced by photographic, microphotographic, *digital*, or other processes, in accordance with standards established by the Archivist the indefinite retention by the photographic, microphotographic, *digital*, or other reproductions constitutes compliance with the statutory requirement for the indefinite retention of the original records. The reproductions, as well as reproductions made under regulations to carry out chapter 21, 29, 31, and 33 of this title, shall have the same legal status as the originals.

* * * * *

(c) The Archivist may charge a fee set to recover the costs for making or authenticating copies or reproductions of materials

transferred to [his] *the Archivist's* custody. Such fee shall be fixed by the Archivist at a level which will recover, so far as practicable, all elements of such costs, and may, in the Archivist's discretion, include increments for the estimated replacement cost of equipment. Such fees shall be paid into, administered, and expended as a part of the National Archives Trust Fund. The Archivist may not charge for making or authenticating copies or reproductions of materials for official use by the United States Government unless appropriations available to the Archivist for this purpose are insufficient to cover the cost of performing the work.

* * * * *

CHAPTER 22—PRESIDENTIAL RECORDS

Sec.
2201. Definitions.

* * * * *

2208. *Claims of constitutionally based privilege against disclosure.*
2209. *Disclosure requirement for official business conducted using non-official electronic messaging accounts.*

§ 2201. Definitions

As used in this chapter—

(1) The term “documentary material” means all books, correspondence, [memorandums] *memoranda*, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, and motion pictures, including, but not limited to, [audio, audiovisual] *audio and visual records*, or other electronic or mechanical recordings, *whether in analog, digital, or any other form.*

(2) The term “Presidential records” means documentary materials, or any reasonably segregable portion thereof, created or received by the President, [his] *the President's* immediate staff, or a unit or individual of the Executive Office of the President whose function is to [advise and assist] *advise or assist* the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term—

(A) includes any documentary materials relating to the political activities of the President or members of [his] *the President's* staff, but only if such activities relate to or have a direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President; but

* * * * *

§ 2203. Management and custody of Presidential records

(a) Through the implementation of records management controls and other necessary actions, the President shall take all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance of [his] *the President's* constitutional, statutory, or other official or ceremonial duties are adequately documented and that such records are [main-

tained] *preserved and maintained* as Presidential records pursuant to the requirements of this section and other provisions of law.

(b) Documentary materials produced or received by the President, [his] *the President's* staff, or units or individuals in the Executive Office of the President the function of which is to [advise and assist] *advise or assist* the President, shall, to the extent practicable, be categorized as Presidential records or personal records upon their creation or receipt and be filed separately.

(c) During [his] *the President's* term of office, the President may dispose of [those of his Presidential records] *those Presidential records of such President* that no longer have administrative, historical, informational, or evidentiary value if—

(1) * * *

(2) the Archivist states that [he] *the Archivist* does not intend to take any action under subsection (e) of this section.

(d) In the event the Archivist notifies the President under subsection (c) that [he] *the Archivist* does intend to take action under subsection (e), the President may dispose of such Presidential records if copies of the disposal schedule are submitted to the appropriate Congressional Committees at least 60 calendar days of continuous session of Congress in advance of the proposed disposal date. For the purpose of this section, continuity of session is broken only by an adjournment of Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the days in which Congress is in continuous session.

(e) The Archivist shall request the advice of the Committee on Rules and Administration and the Committee on Governmental Affairs of the Senate and the Committee on House Oversight and the Committee on Government Operations of the House of Representatives with respect to any proposed disposal of Presidential records whenever [he] *the Archivist* considers that—

(1) * * *

* * * * *

(f) *During a President's term of office, the Archivist may maintain and preserve Presidential records on behalf of the President, including records in digital or electronic form. The President shall remain exclusively responsible for custody, control, and access to such Presidential records. The Archivist may not disclose any such records, except under direction of the President, until the conclusion of a President's term of office, if a President serves consecutive terms upon the conclusion of the last term, or such other period provided for under section 2204 of this title.*

[(f)] (g)(1) Upon the conclusion of a President's term of office, or if a President serves consecutive terms upon the conclusion of the last term, the Archivist of the United States shall assume responsibility for the custody, control, and preservation of, and access to, the Presidential records of that President. The Archivist shall have an affirmative duty to make such records available to the public as rapidly and completely as possible consistent with the provisions of this [Act] *chapter*.

* * * * *

(3) The Archivist is authorized to dispose of such Presidential records which [he] *the Archivist* has appraised and determined to

have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation. Notice of such disposal shall be published in the Federal Register at least 60 days in advance of the proposed disposal date. Publication of such notice shall constitute a final agency action for purposes of review under chapter 7 of title 5, United States Code.

§ 2204. Restrictions on access to Presidential records

(a) Prior to the conclusion of [his] a *President's* term of office or last consecutive term of office, as the case may be, the President shall specify durations, not to exceed 12 years, for which access shall be restricted with respect to information, in a Presidential record, within one or more of the following categories:

(1) * * *

* * * * *

(5) confidential communications requesting or submitting advice, between the President and [his] *the President's* advisers, or between such advisers; or

* * * * *

(b)(1) Any Presidential record or reasonably segregable portion thereof containing information within a category restricted by the President under subsection (a) shall be so designated by the Archivist and access thereto shall be restricted until the earlier of—

(A) * * *

(B) upon a determination by the Archivist that such record or reasonably segregable portion thereof, or of any significant element or aspect of the information contained in such record or reasonably segregable portion thereof, has been placed in the public domain through publication by the former President, or [his] *the President's* agents.

* * * * *

(3) During the period of restricted access specified pursuant to subsection (b)(1), the determination whether access to a Presidential record or reasonably segregable portion thereof shall be restricted shall be made by the Archivist, in [his] *the Archivist's* discretion, after consultation with the former President, and, during such period, such determinations shall not be subject to judicial review, except as provided in subsection (e) of this section. The Archivist shall establish procedures whereby any person denied access to a Presidential record because such record is restricted pursuant to a determination made under this paragraph, may file an administrative appeal of such determination. Such procedures shall provide for a written determination by the Archivist or [his designee] *the Archivist's designee*, within 30 working days after receipt of such an appeal, setting forth the basis for such determination.

* * * * *

(d) Upon the death or disability of a President or former President, any discretion or authority the President or former President may have had under this chapter, *except section 2208*, shall be exercised by the Archivist unless otherwise previously provided by

the President or former President in a written notice to the Archivist.

* * * * *

(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.*

§ 2205. Exceptions to restricted access

Notwithstanding any restrictions on access imposed pursuant to [section 2204] sections 2204 and 2208 of this title—

(1) * * *

(2) subject to any rights, defenses, or privileges which the United States or any agency or person may invoke, Presidential records shall be made available—

(A) pursuant to [subpena] subpoena or other judicial process issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation or proceeding;

(B) to an incumbent President if such records contain information that is needed for the conduct of current business of [his] the incumbent President's office and that is not otherwise available; and

* * * * *

(3) the Presidential records of a former President shall be available to such former President or [his] the former President's designated representative.

* * * * *

§ 2207. Vice-Presidential records

Vice-Presidential records shall be subject to the provisions of this chapter in the same manner as Presidential records. The duties and responsibilities of the Vice President, with respect to Vice-Presidential records, shall be the same as the duties and responsibilities of the President under this chapter, *except section 2208*, with respect to Presidential records. The authority of the Archivist with respect to Vice-Presidential records shall be the same as the authority of the Archivist under this chapter with respect to Presidential records, except that the Archivist may, when the Archivist determines that it is in the public interest, enter into an agreement for the deposit of Vice-Presidential records in a non-Federal archival depository. Nothing in this chapter shall be construed to authorize the establishment of separate archival depositories for such Vice-Presidential records.

§ 2208. Claims of constitutionally based privilege against disclosure

(a)(1) *When the Archivist determines under this chapter to make available to the public any Presidential record that has not previously been made available to the public, the Archivist shall—*

(A) promptly provide notice of such determination to—

- (i) the former President during whose term of office the record was created; and
 - (ii) the incumbent President; and
- (B) make the notice available to the public.
- (2) The notice under paragraph (1)—
- (A) shall be in writing; and
 - (B) shall include such information as may be prescribed in regulations issued by the Archivist.
- (3)(A) Upon the expiration of the 60-day period (excepting Saturdays, Sundays, and legal public holidays) beginning on the date the Archivist provides notice under paragraph (1)(A), the Archivist shall make available to the public the Presidential record covered by the notice, except any record (or reasonably segregable part of a record) with respect to which the Archivist receives from a former President or the incumbent President notification of a claim of constitutionally based privilege against disclosure under subsection (b).
- (B) A former President or the incumbent President may extend the period under subparagraph (A) once for not more than 30 additional days (excepting Saturdays, Sundays, and legal public holidays) by filing with the Archivist a statement that such an extension is necessary to allow an adequate review of the record.
- (C) Notwithstanding subparagraphs (A) and (B), if the 60-day period under subparagraph (A), or any extension of that period under subparagraph (B), would otherwise expire during the 6-month period after the incumbent President first takes office, then that 60-day period or extension, respectively, shall expire at the end of that 6-month period.
- (b)(1) For purposes of this section, the decision to assert any claim of constitutionally based privilege against disclosure of a Presidential record (or reasonably segregable part of a record) must be made personally by a former President or the incumbent President, as applicable.
- (2) A former President or the incumbent President shall notify the Archivist, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate of a privilege claim under paragraph (1) on the same day that the claim is asserted under such paragraph.
- (c)(1) If a claim of constitutionally based privilege against disclosure of a Presidential record (or reasonably segregable part of a record) is asserted under subsection (b) by a former President, the Archivist shall consult with the incumbent President, as soon as practicable during the period specified in paragraph (2)(A), to determine whether the incumbent President will uphold the claim asserted by the former President.
- (2)(A) Not later than the end of the 30-day period beginning on the date of which the Archivist receives notification from a former President of the assertion of a claim of constitutionally based privilege against disclosure, the Archivist shall provide notice to the former President and the public of the decision of the incumbent President under paragraph (1) regarding the claim.
- (B) If the incumbent President upholds the claim of privilege asserted by the former President, the Archivist shall not make the Presidential record (or reasonably segregable part of a record) subject to the claim publicly available unless—

- (i) *the incumbent President withdraws the decision upholding the claim of privilege asserted by the former President; or*
- (ii) *the Archivist is otherwise directed by a final court order that is not subject to appeal.*

(C) *If the incumbent President determines not to uphold the claim of privilege asserted by the former President, or fails to make the determination under paragraph (1) before the end of the period specified in subparagraph (A), the Archivist shall release the Presidential record subject to the claim at the end of the 90-day period beginning on the date on which the Archivist received notification of the claim, unless otherwise directed by a court order in an action initiated by the former President under section 2204(e) of this title or by a court order in another action in any Federal court.*

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

- (1) *the incumbent President withdraws the privilege claim; or*
- (2) *the Archivist is otherwise directed by a final court order that is not subject to appeal.*

(e) *The Archivist shall adjust any otherwise applicable time period under this section as necessary to comply with the return date of any congressional subpoena, judicial subpoena, or judicial process.*

§ 2209. Disclosure requirement for official business conducted using non-official electronic messaging accounts

(a) *IN GENERAL.—An officer or employee of an executive agency may not create or send a Presidential record using a non-official electronic messaging account unless such officer or employee—*

- (1) *copies an official electronic messaging account of the officer or employee in the original creation or transmission of the Presidential record; or*
- (2) *forwards a complete copy of the Presidential record to an official electronic messaging account of the officer or employee within five days after the original creation or transmission of the Presidential record.*

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

(c) *DEFINITIONS.—In this section:*

- (1) *ELECTRONIC MESSAGES.—The term “electronic messages” means electronic mail and other electronic messaging systems that are used for purposes of communicating between individuals.*
- (2) *ELECTRONIC MESSAGING ACCOUNT.—The term “electronic messaging account” means any account that sends electronic messages.*
- (3) *EXECUTIVE AGENCY.—The term “executive agency” has the meaning given that term in section 105 of title 5.*

CHAPTER 29—RECORDS MANAGEMENT BY THE ARCHIVIST OF THE UNITED STATES [AND BY THE ADMINISTRATOR OF GENERAL SERVICES]

Sec.

2901. Definitions.

* * * * *

2907. Records centers and centralized microfilming or digitization services.

* * * * *

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

§ 2901. Definitions

As used in this chapter, and chapters 21, 25, 31, and 33 of this title—

(1) * * *

* * * * *

(11) the term “National Archives of the United States” means those official records which have been determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the Federal Government, and which have been accepted by the Archivist for deposit in [his] *the Archivist’s* custody;

* * * * *

§ 2902. Objectives of records management

It is the purpose of this chapter, and chapters 21, 31, and 33 of this title, to require the establishment of standards and procedures to assure efficient and effective records management. Such records management standards and procedures shall seek to implement the following goals:

(1) * * *

* * * * *

(4) Simplification of the activities, systems, and processes of records [creation and of records maintenance and use] *creation, maintenance, transfer, and use.*

* * * * *

(6) Direction of continuing attention on records from their initial creation to their final disposition, with particular emphasis on the prevention of unnecessary Federal paperwork and the transfer of records from Federal agencies to the National Archives of the United States in digital or electronic form to the greatest extent possible.

(7) Establishment and maintenance of such other systems or techniques as [the Administrator or] the Archivist considers necessary to carry out the purposes of this chapter, and chapters 21, 31, and 33 of this title.

* * * * *

§ 2904. General responsibilities for records management

(a) * * *

(b) **[The Administrator]** *The Archivist* shall provide guidance and assistance to Federal agencies to ensure economical and effective records management by such agencies.

(c) In carrying out **[their]** *the* responsibilities under **[subsection (a) or (b), respectively]** *subsections (a) and (b)*, the Archivist **[and the Administrator]** shall **[each]** have the responsibility—

(1) * * *

* * * * *

(6) to conduct records management studies and, in **[his]** *the Archivist's* discretion, designate the heads of executive agencies to conduct records management studies with respect to establishing systems and techniques designed to save time and effort in records management;

* * * * *

(8) to report to the appropriate oversight and appropriations committees of the Congress and to the Director of the Office of Management and Budget in January of each year and at such other times as the Archivist **[or the Administrator (as the case may be)]** deems desirable—

(A) * * *

* * * * *

[(d) In addition, the Administrator, in carrying out subsection (b), shall have the responsibility to promote economy and efficiency in the selection and utilization of space, staff, equipment, and supplies for records management.]

(d) The Archivist shall promulgate regulations requiring all Federal agencies to transfer all digital or electronic records to the National Archives of the United States in digital or electronic form to the greatest extent possible.

§ 2905. Establishment of standards for selective retention of records; security measures

(a) The Archivist shall establish standards for the selective retention of records of continuing value, and assist Federal agencies in applying the standards to records in their custody. **[He]** *The Archivist* shall notify the head of a Federal agency of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of the agency that shall come to **[his]** *the Archivist's* attention, and assist the head of the agency in initiating action through the Attorney General for the recovery of records unlawfully removed and for other redress provided by law. In any case in which the head of the agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.

* * * * *

§ 2906. Inspection of agency records

(a)(1) In carrying out **[their respective]** *the* duties and responsibilities under this chapter, **[the Administrator of General Services and]** the Archivist (or the **[designee of either]** *the Archivist's*

designee) may inspect the records or the records management practices and programs of any Federal agency **【solely】** for the purpose of rendering recommendations for the improvement of records management practices and programs *and for determining whether the records of Federal agencies have sufficient value to warrant continued preservation or lack sufficient value to justify continued preservation*. Officers and employees of such agencies shall cooperate fully in such inspections, subject to the provisions of paragraphs (2) and (3) of this subsection.

(2) Records, the use of which is restricted by law or for reasons of national security or the public interest, shall be inspected, in accordance with regulations promulgated by **【the Administrator and】** the Archivist, subject to the approval of the head of the agency concerned or of the President. **【The regulations promulgated by the Administrator and the Archivist under this paragraph shall, to the extent practicable, be identical.】**

(3) If **【the Administrator or】** the Archivist (or the **【designee of either】** *Archivist's designee*) inspects a record, as provided in this subsection, which is contained in a system of records which is subject to section 552a of title 5, such record shall be—

(A) maintained by **【the Administrator, the Archivist,】** *the Archivist* or such designee as a record contained in a system of records; or

* * * * *

(b) In conducting the inspection of agency records provided for in subsection (a) of this section, **【the Administrator and】** the Archivist (or the **【designee of either】** *Archivist's designee*) shall, in addition to complying with the provisions of law cited in subsection (a)(3), comply with all other Federal laws and be subject to the sanctions provided therein.

§2907. Records centers and centralized microfilming or digitization services

The Archivist may establish, maintain, and operate records centers and centralized microfilming *or digitization* services for Federal agencies.

* * * * *

§2911. Disclosure requirement for official business conducted using non-official electronic messaging accounts

(a) *IN GENERAL.*—*An officer or employee of an executive agency may not create or send a record using a non-official electronic messaging account unless such officer or employee—*

(1) *copies an official electronic messaging account of the officer or employee in the original creation or transmission of the record; or*

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

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

(c) *DEFINITIONS.*—*In this section:*

(1) *ELECTRONIC MESSAGES.*—*The term “electronic messages” means electronic mail and other electronic messaging systems that are used for purposes of communicating between individuals.*

(2) *ELECTRONIC MESSAGING ACCOUNT.*—*The term “electronic messaging account” means any account that sends electronic messages.*

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

CHAPTER 31—RECORDS MANAGEMENT BY FEDERAL AGENCIES

* * * * *

§ 3102. Establishment of program of management

The head of each Federal agency shall establish and maintain an active, continuing program for the economical and efficient management of the records of the agency. The program, among other things, shall provide for

(1) * * *

(2) cooperation with [the Administrator of General Services and] the Archivist in applying standards, procedures, and techniques designed to improve the management of records, promote the maintenance and security of records deemed appropriate for preservation, and facilitate the segregation and disposal of records of temporary value; and

* * * * *

§ 3103. Transfer of records to records centers

When the head of a Federal agency determines that such action may affect substantial economies or increased operating efficiency, [he] *the head of such agency* shall provide for the transfer of records to a records center maintained and operated by the Archivist, or, when approved by the Archivist, to a center maintained and operated by the head of the Federal agency.

§ 3104. Certifications and determinations on transferred records

An official of the Government who is authorized to certify to facts on the basis of records in [his] *such official’s* custody, may certify to facts on the basis of records that have been transferred by [him or his] *such official or such official’s* predecessors to the Archivist, and may authorize the Archivist to certify to facts and to make administrative determinations on the basis of records transferred to the Archivist, notwithstanding any other law.

§ 3105. Safeguards

The head of each Federal agency shall establish safeguards against the removal or loss of records [he] *the head of such agency* determines to be necessary and required by regulations of the Archivist. Safeguards shall include making it known to officials and employees of the agency—

(1) * * *

* * * * *

§ 3106. Unlawful removal, destruction of records

【The head of each Federal agency shall notify the Archivist of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of the agency of which he is the head that shall come to his attention, and with the assistance of the Archivist shall initiate action through the Attorney General for the recovery of records he knows or has reason to believe have been unlawfully removed from his agency, or from another Federal agency whose records have been transferred to his legal custody. In any case in which the head of the agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.】

§ 3106. Unlawful removal, destruction of records

(a) FEDERAL AGENCY NOTIFICATION.—The head of each Federal agency shall notify the Archivist of any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of records in the custody of the agency, and with the assistance of the Archivist shall initiate action through the Attorney General for the recovery of records the head of the Federal agency knows or has reason to believe have been unlawfully removed from that agency, or from another Federal agency whose records have been transferred to the legal custody of that Federal agency.

(b) ARCHIVIST NOTIFICATION.—In any case in which the head of a Federal agency does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action described in subsection (a), or is participating in, or believed to be participating in any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.

* * * * *

CHAPTER 33—DISPOSAL OF RECORDS

Sec.
3301. Definition of records.

* * * * *

- 【3315. Definitions.
- 【3316. Establishment of Commission.
- 【3317. Duties of Commission.
- 【3318. Membership.
- 【3319. Director and staff; experts and consultants.
- 【3320. Powers of Commission.
- 【3321. Support services.
- 【3322. Report.
- 【3323. Termination.
- 【3324. Authorization of appropriations.】

[§ 3301. Definition of records

[As used in this chapter, “records” includes all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included.]

§ 3301. Definition of records

(a) *RECORDS DEFINED.*—

(1) *IN GENERAL.*—As used in this chapter, the term “records”—

(A) *includes all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them; and*

(B) *does not include—*

(i) *library and museum material made or acquired and preserved solely for reference or exhibition purposes; or*

(ii) *duplicate copies of records preserved only for convenience.*

(2) *RECORDED INFORMATION DEFINED.*—For purposes of paragraph (1), the term “recorded information” includes all traditional forms of records, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form.

(b) *DETERMINATION OF DEFINITION.*—The Archivist’s determination whether recorded information, regardless of whether it exists in physical, digital, or electronic form, is a record as defined in subsection (a) shall be binding on all Federal agencies.

§ 3302. Regulations covering lists of records for disposal, procedure for disposal, and standards for reproduction

The Archivist shall promulgate regulations, not inconsistent with this chapter, establishing—

(1) procedures for the compiling and submitting to [him] the Archivist of lists and schedules of records proposed for disposal,

* * * * *

(3) standards for the reproduction of records by [photographic or microphotographic processes] *photographic, micro-*

photographic, or digital processes with a view to the disposal of the original records.

§ 3303. Lists and schedules of records to be submitted to the Archivist by head of each Government agency

The head of each agency of the United States Government shall submit to the Archivist, under regulations promulgated as provided by section 3302 of this title—

(1) lists of any records in the custody of the agency that have been **[photographed or microphotographed]** *photographed, microphotographed, or digitized* under the regulations and that, as a consequence, do not appear to have sufficient value to warrant their further preservation by the Government;

* * * * *

§ 3303a. Examination by Archivist of lists and schedules of records lacking preservation value; disposal of records

(a) The Archivist shall examine the lists and schedules submitted to **[him]** *the Archivist* under section 3303 of this title. If the Archivist determines that any of the records listed in a list or schedule submitted to **[him]** *the Archivist* do not, or will not after the lapse of the period specified, have sufficient administrative, legal, research, or other value to warrant their continued preservation by the Government, **[he]** *the Archivist* may, after publication of notice in the Federal Register and an opportunity for interested persons to submit comment thereon—

(1) * * *

* * * * *

(c) The Archivist may request advice and counsel from **[the Committee on Rules and Administration of the Senate and the Committee on House Oversight of the House of Representatives]** *the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate* with respect to the disposal of any particular records under this chapter whenever **[he]** *the Archivist* considers that—

(1) * * *

* * * * *

(e) The Archivist may approve and effect the disposal of records that are in **[his]** *the Archivist's* legal custody, provided that records that had been in the custody of another existing agency may not be disposed of without the written consent of the head of the agency.

(f) The Archivist shall make an annual report to the Congress concerning the disposal of records under this chapter, including general descriptions of the types of records disposed of and such other information as **[he]** *the Archivist* considers appropriate to keep the Congress fully informed regarding the disposal of records under this chapter.

* * * * *

§ 3312. Photographs or microphotographs of records considered as originals; certified reproductions admissible in evidence

【Photographs or microphotographs of records】 *Photographs, microphotographs of records, or digitized records* made in compliance with regulations under section 3302 of this title shall have the same effect as the originals and shall be treated as originals for the purpose of their admissibility in evidence. Certified or authenticated reproductions of the 【photographs or microphotographs】 *photographs, microphotographs, or digitized records* shall be admitted in evidence equally with the original 【photographs or microphotographs】 *photographs, microphotographs, or digitized records*.

* * * * *

【§ 3315. Definitions

【For purposes of this section and section 3316 through section 3324 of this title—

【(1) the term “Federal official” means any individual holding the office of President or Vice President of the United States, or Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States, or any officer of the executive, judicial, or legislative branch of the Federal Government;

【(2) the term “Commission” means the National Study Commission on Records and Documents of Federal Officials; and

【(3) the term “records and documents” shall include handwritten and typewritten documents, motion pictures, television tapes and recordings, magnetic tapes, automated data processing documentation in various forms, and other records that reveal the history of the Nation.

【§ 3316. Establishment of Commission

【There is established a commission to be known as the National Study Commission on Records and Documents of Federal Officials.

【§ 3317. Duties of Commission

【It shall be the duty of the Commission to study problems and questions with respect to the control, disposition, and preservation of records and documents produced by or on behalf of Federal officials, with a view toward the development of appropriate legislative recommendations and other recommendations regarding appropriate rules and procedures with respect to such control, disposition, and preservation. Such study shall include consideration of—

【(1) whether the historical practice regarding the records and documents produced by or on behalf of Presidents of the United States should be rejected or accepted and whether such practice should be made applicable with respect to all Federal officials;

【(2) the relationship of the findings of the Commission to the provisions of chapter 19 of this title, section 2101 through section 2108 of this title, and other Federal laws relating to the control, disposition, and preservation of records and documents of Federal officials;

[(3) whether the findings of the Commission should affect the control, disposition, and preservation of records and documents of agencies within the Executive Office of the President created for short-term purposes by the President;

[(4) the recordkeeping procedures of the White House Office, with a view toward establishing means to determine which records and documents are produced by or on behalf of the President;

[(5) the nature of rules and procedures which should apply to the control, disposition, and preservation of records and documents produced by Presidential task forces, commissions, and boards;

[(6) criteria which may be used generally in determining the scope of materials which should be considered to be the records and documents of Members of the Congress;

[(7) the privacy interests of individuals whose communications with Federal officials, and with task forces, commissions, and boards, are a part of the records and documents produced by such officials, task forces, commissions, and boards; and

[(8) any other problems, questions, or issues which the Commission considers relevant to carrying out its duties under section 3315 through section 3324 of this title.

[(§ 3318. Membership

[(a)(1) The Commission shall be composed of seventeen members as follows:

[(A) one Member of the House of Representatives appointed by the Speaker of the House upon recommendation made by the majority leader of the House;

[(B) one Member of the House of Representatives appointed by the Speaker of the House upon recommendation made by the minority leader of the House;

[(C) one Member of the Senate appointed by the President pro tempore of the Senate upon recommendation made by the majority leader of the Senate;

[(D) one Member of the Senate appointed by the President pro tempore of the Senate upon recommendation made by the minority leader of the Senate;

[(E) one member of the Federal judiciary appointed by the Chief Justice of the United States;

[(F) one person employed by the Executive Office of the President or the White House Office, appointed by the President;

[(G) three appointed by the President, by and with the advice and consent of the Senate, from persons who are not officers or employees of any government and who are specially qualified to serve on the Commission by virtue of their education, training, or experience;

[(H) one representative of the Department of State, appointed by the Secretary of State;

[(I) one representative of the Department of Defense, appointed by the Secretary of Defense;

[(J) one representative of the Department of Justice, appointed by the Attorney General;

[(K) the Administrator of General Services (or his delegate);

[(L) the Librarian of Congress;

[(M) one member of the American Historical Association, appointed by the counsel of such Association;

[(N) one member of the Society of American Archivists, appointed by such Society; and

[(O) one member of the Organization of American Historians, appointed by such Organization.

[(2) No more than two members appointed under paragraph (1)(G) may be of the same political party.

[(b) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

[(c) If any member of the Commission who was appointed to the Commission as a Member of the Congress leave such office, or if any member of the Commission who was appointed from persons who are not officers or employees of any government becomes an officer or employee of a government, he may continue as a member of the Commission for no longer than the sixty-day period beginning on the date he leaves such office or becomes such an officer or employee, as the case may be.

[(d) Members shall be appointed for the life of the Commission.

[(e)(1) Members of the Commission shall serve without pay.

[(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses in the same manner as persons employed intermittently in the service of the Federal Government are allowed expenses under section 5703 of title 5, United States Code, except that per diem in lieu of subsistence shall be paid only to those members of the Commission who are not full-time officers or employees of the United States or Members of the Congress.

[(f) The Chairman of the Commission shall be designated by the President from among members appointed under subsection (a)(1)(G).

[(g) The Commission shall meet at the call of the Chairman or a majority of its members.

§ 3319. Director and staff; experts and consultants

[(a) The Commission shall appoint a Director who shall be paid at a rate not to exceed the rate of basic pay in effect for level V of the Executive Schedule (5 U.S.C. 5316).

[(b) The Commission may appoint and fix the pay of such additional personnel as it deems necessary.

[(c)(1) The Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS-15 of the General Schedule (5 U.S.C. 5332).

[(2) In procuring services under this subsection, the Commission shall seek to obtain the advice and assistance of constitutional scholars and members of the historical, archival, and journalistic professions.

[(d) Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist it in carrying out its duties under sections 3315 through 3324 of this title.

【§ 3320. Powers of Commission

[(a) The Commission may, for the purpose of carrying out its duties under sections 3315 through 3324 of this title, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission may deem desirable.

[(b) When so authorized by the Commission, any member or agent of the Commission may take any action which the Commission is authorized to take by this section.

[(c) The Commission may secure directly from any department or agency of the United States information necessary to enable the Commission to carry out its duties under section 3315 through section 3324 of this title. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

【§ 3321. Support services

[(a) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services and assistance as the Commission may request.

[(b) The Archivist of the United States shall provide to the Commission on a reimbursable basis such technical and expert advice, consultation, and support assistance as the Commission may request.

【§ 3322. Report

[(The Commission shall transmit to the President and to each House of the Congress a report not later than March 31, 1977. Such report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation, administrative actions, and other actions, as it deems appropriate.)

【§ 3323. Termination

[(The Commission shall cease to exist sixty days after transmitting its report under section 3322 of this title.)

【§ 3324. Authorization of appropriations

[(There is authorized to be appropriated such sums as may be necessary to carry out section 3315 through section 3324 of this title.)

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