114TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
*1st Session* } { 114–69

# IRS EMAIL TRANSPARENCY ACT

APRIL 13, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RYAN of Wisconsin, from the Committee on Ways and Means, submitted the following

# R E P O R T

[To accompany H.R. 1152]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 1152) to prohibit officers and employees of the Internal Revenue Service from using personal email accounts to conduct official business, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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49–006

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "IRS Email Transparency Act".

**SEC. 2. IRS EMPLOYEES PROHIBITED FROM USING PERSONAL EMAIL ACCOUNTS FOR OFFICIAL BUSINESS.**

No officer or employee of the Internal Revenue Service may use a personal email account to conduct any official business of the Government.

## I. SUMMARY AND BACKGROUND

### A. PURPOSE AND SUMMARY

H.R. 1152, reported by the Committee on Ways and Means, prohibits employees of the Internal Revenue Service ("IRS") from using a personal email account to conduct any official business, codifying an established administrative policy barring the use of personal email accounts by IRS employees for official governmental business.

### B. BACKGROUND AND NEED FOR LEGISLATION

Federal agencies are required to preserve certain documents defined as "records" under applicable law regardless of form. However, there is no requirement to retain all documents. Agencies' retention and disposal policies must comport with procedures dictated by the Archivist of the United States. Agencies are required to provide instruction to employees and contractors regarding the use of email. The use of personal email accounts for agency business is discouraged, but not actually prohibited by law or regulation.

In addition to Federal record retention requirements, the IRS is entrusted with sensitive and confidential taxpayer information. The Tax Code imposes criminal and civil penalties for the unauthorized use, inspection, or disclosure of such information. Because of the sensitive nature of taxpayer information and the need to retain official records, the IRS has instituted policies restricting the use of personal email accounts. In 2012, the agency revised the Internal Revenue Manual, banning the use of non-IRS or Treasury email accounts for any official purpose.

Notwithstanding internal IRS policy, the Committee's investigation of the agency's targeting practices revealed that the former Director of the IRS Exempt Organizations Division, Lois Lerner, among others, conducted official business involving taxpayer information, using a personal email account.

### C. LEGISLATIVE HISTORY

*Background*

H.R. 1152 was introduced on February 27, 2015, and was referred to the Committee on Ways and Means. The same legislation, H.R. 5418, passed the House of Representatives in the 113th Congress under suspension of the rules by voice vote on September 16, 2014.

*Committee action*

The Committee on Ways and Means marked up H.R. 1152, the "Email Transparency Act," on March 25, 2015, and ordered the bill, as amended, favorably reported (with a quorum being present) by voice vote.

*Committee hearings*

The need for permanent rules against the use of personal email use for official purposes was discussed during multiple Committee hearings during the 113th Congress:

- Oversight Subcommittee Hearing on the IRS Exempt Organizations Division Post-U.S. Treasury Inspector General for Tax Administration Audit Report (September 18, 2013).
- Oversight Subcommittee Hearing with IRS Commissioner Koskinen (February 5, 2014).
- Oversight Subcommittee Hearing on the IRS Operations and the 2014 Tax Return Filing Season (May 7, 2014).
- Full Committee Hearing with IRS Commissioner Koskinen (June 20, 2014).

## II. EXPLANATION OF THE BILL

### A. Prohibition of Use of Personal E-mail for Official Government Business (sec. 2 of the bill)

#### PRESENT LAW

Federal executive agencies are required to maintain and preserve Federal records,[1] whether in paper or electronic form, and protect against unauthorized removal of such records. Policies for the retention and disposal of records must conform to the requirements of the record-management procedures, as implemented by the Archivist of the United States.[2] Email accounts are specifically included within the scope of records subject to the record-retention policies.[3] Each agency is required to provide instruction and guidance to persons conducting business on behalf of the agency, including employees, officers and contractors, and use of personal email accounts for agency business is to be discouraged.[4]

The government-wide record-management requirements are in addition to the obligations to protect the sensitive information for which IRS is responsible. Tax information is sensitive and confidential.[5] The Code imposes civil and criminal penalties to protect it from unauthorized use, inspection or disclosure.[6] As a condition of receiving tax data, outside agencies must establish to the satisfaction of the IRS that they have adequate programs and security

[1] 44 U.S.C. sec. 3101. See 44 U.S.C. sec. 3301 for a definition of Federal records that generally includes all documentary materials that agencies receive or create in the conduct of official business and that may have evidentiary value with respect to official business, regardless of the physical form of the materials.

[2] See generally Title 44, at chapter 29 (records management by the Archivist of the United States and the General Services Administration), chapter 31 (records management of Federal agencies) and chapter 33 (disposal of records).

[3] 36 CFR sec. 1236.22(a).

[4] A quarterly bulletin published by the National Archives and Records Administration provides guidance to executive agencies. See generally NARA Bulletin 2013–03, available at *http://www.archives.gov/records-mgmt/bulletins/2013/2013-03.html.*

[5] Sec. 6103(a).

[6] See secs. 7213 (criminal unauthorized disclosure), 7213A (criminal unauthorized inspection) and 7431 (civil remedy for unauthorized inspection or disclosure).

protocols in place to protect the data received.[7] Personal email computer storage systems are not inspected by the IRS for security.

Given the sensitive and confidential nature of the information handled by the IRS and the need to be accountable for all agency records, IRS policies restrict the use of email accounts.[8] Transmission of Federal tax information is only permitted outside the IRS in limited circumstances. In 2012, the IRS published a revised section of its manual in which it updated its administrative rules on e-records generally, and banned use of non-IRS/Treasury email for any governmental or official purpose.[9]

REASONS FOR CHANGE

The Committee is concerned that IRS employees have continued to use personal email to conduct official business, contrary to administrative rules. By doing so, IRS employees place sensitive information at risk of disclosure, whether deliberately or inadvertently. In addition, to the extent that official conduct is reflected in emails on personal accounts and not in the IRS systems, the integrity of IRS record systems is compromised, making tax administration less transparent and officials less accountable. The Committee believes that the security and confidentiality of information gathered in the course of official business must be safeguarded, and records of official actions with respect to such material must be properly maintained in order to maintain public trust in the accountability of the IRS. Accordingly, notwithstanding the existing administrative rules that discourage the use of email for official business, the Committee believes that a statutory ban on use of nongovernmental email accounts by IRS employees conducting official business is necessary.

EXPLANATION OF PROVISION

The provision bars use of personal email accounts by IRS employees for official government business.

EFFECTIVE DATE

The provision is effective on the date of enactment.

## III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 1152, the "IRS Email Transparency Act," on March 25, 2015.

The Chairman's amendment in the nature of a substitute was adopted by a voice vote (with a quorum being present).

The bill, H.R. 1152, as amended, was ordered favorably reported to the House of Representatives by a voice vote (with a quorum being present).

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[7] Sec. 6103(p)(4).
[8] I.R.M. paragraphs 1.10.3 *et seq.*, and 11.3.1.
[9] I.R.M. paragraph 10.8.1.4.6.3.1, "Privately Owned E-Mail Accounts." (May 3, 2012).

## IV. BUDGET EFFECTS OF THE BILL

### A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 1152 as reported.

The bill, as reported, is estimated to have no effect on Federal budget receipts for fiscal years 2015–2025.

Pursuant to clause 8 of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the gross budgetary effect (before incorporating macroeconomic effects) in any fiscal year is less than 0.25 percent of the current projected gross domestic product of the United States for that fiscal year; therefore, the bill is not "major legislation" for purposes of requiring that the estimate include the budgetary effects of changes in economic output, employment, capital stock and other macroeconomic variables.

### B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that there are no new or increased tax expenditures.

### C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. Congress,
Congressional Budget Office,
*Washington, DC, April 3, 2015.*

Hon. Paul Ryan,
*Chairman, Committee on Ways and Means,*
*House of Representatives, Washington, DC.*

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1152, the IRS Email Transparency Act.

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

Sincerely,

Keith Hall,
*Director.*

Enclosure.

*H.R. 1152—IRS Email Transparency Act*

H.R. 1152 would amend federal law to prohibit Internal Revenue Service (IRS) employees from using personal email accounts to perform any official government business. CBO estimates that enact-

ing the legislation would have no significant impact on the federal budget.

Under current law, email records (official and personal) created in the course of official business are considered to be federal records. Guidance from the National Archives and Records Administration states that employees should generally not use personal email accounts to conduct official business. The IRS currently has a policy that employees should not contact taxpayers through social media or text messages. Consequently, CBO estimates that implementing this bill would not have a significant effect on the agency's operations or administrative costs. CBO and the staff of the Joint Committee on Taxation (JCT) estimate that enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO and JCT have determined that H.R. 1152 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, Assistant Director for Budget Analysis.

## V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

### A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee's review of the provisions of H.R. 1152 that the Committee concluded that it is appropriate to report the bill, as amended, favorably to the House of Representatives with the recommendation that the bill do pass.

### B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

### C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4). The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

### D. Applicability of House Rule XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a

vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the bill, and states that the bill does not involve any Federal income tax rate increases within the meaning of the rule.

### E. Tax Complexity Analysis

The following statement is made pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives. Section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code and that have "widespread applicability" to individuals or small businesses, within the meaning of the rule.

### F. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

### G. Duplication of Federal Programs

In compliance with Sec. 3(g)(2) of H. Res. 5 (114th Congress), the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program, (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169).

### H. Disclosure of Directed Rule Makings

In compliance with Sec. 3(i) of H. Res. 5 (114th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

## VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

With respect to clause 3(e) of rule XIII of the Rules of the House of Representatives, the bill, as reported, includes no provisions proposing to repeal or amend an existing statute or part thereof. Therefore, no additional materials otherwise required to be included in this report or an accompanying document under that clause are required to be included with respect to this bill.

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