

113TH CONGRESS
2D SESSION

H. R. 5170

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 17 (legislative day, SEPTEMBER 16), 2014

Received; read twice and referred to the Committee on Homeland Security and
Governmental Affairs

AN ACT

To improve Federal employee compliance with the Federal
and Presidential recordkeeping requirements, and for
other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) IN GENERAL.—This Act may be cited as the
3 “Federal Records Accountability Act of 2014”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Removal for deliberate destruction of Federal records.
- Sec. 3. Use of non-official electronic messaging accounts.
- Sec. 4. Reporting of the loss or potential loss of records.
- Sec. 5. Senior Agency Official for Records Compliance.
- Sec. 6. Preservation of electronic messages and other records.
- Sec. 7. Presidential records.
- Sec. 8. Retention of electronic correspondence.

6 **SEC. 2. REMOVAL FOR DELIBERATE DESTRUCTION OF FED-**
7 **ERAL RECORDS.**

8 (a) IN GENERAL.—Chapter 75 of title 5, United
9 States Code, is amended by adding after subchapter V the
10 following:

11 “SUBCHAPTER VI—FEDERAL RECORDS

12 “§ 7551. Definitions

13 “In this subchapter the following definitions apply:

14 “(1) EMPLOYEE.—The term ‘employee’
15 means—

16 “(A) an individual in the competitive serv-
17 ice who is not serving a probationary or trial
18 period under an initial appointment or who has
19 completed 1 year of current continuous employ-
20 ment in the same or similar positions under
21 other than a temporary appointment limited to
22 1 year or less; or

1 “(B) a career appointee in the Senior Ex-
2 ecutive Service who—

3 “(i) has completed the probationary
4 period prescribed under section 3393(d) of
5 this title; or

6 “(ii) was covered by the provisions of
7 subchapter II of this chapter immediately
8 before appointment to the Senior Executive
9 Service.

10 “(2) SUSPENSION.—The term ‘suspension’ has
11 the meaning given that term in section 7501 of this
12 title.

13 **“§ 7552. Suspension and removal**

14 “(a) INSPECTOR GENERAL FINDING.—If the Inspec-
15 tor General of an agency determines an employee of the
16 agency has willfully and unlawfully concealed, removed,
17 mutilated, obliterated, falsified, or destroyed any record,
18 proceeding, map, book, document, paper, or other thing
19 in the custody of such employee, or verifies a violation
20 under section 2208 or 2911 of title 44, the Inspector Gen-
21 eral shall promptly inform the head of the agency of that
22 determination in writing.

23 “(b) SUSPENSION.—Notwithstanding any other pro-
24 vision of law, the head of an agency shall suspend an em-
25 ployee of that agency who has been determined by the In-

1 spector General under subsection (a) to have willfully and
2 unlawfully concealed, removed, mutilated, obliterated, fal-
3 sified, or destroyed any record, proceeding, map, book,
4 document, paper, or other thing in the custody of such
5 employee, or who has been verified by the Inspector Gen-
6 eral to be in violation of section 2208 or 2911 of title 44.

7 “(c) REQUIREMENTS AFTER SUSPENSION.—An em-
8 ployee suspended under subsection (b) is entitled, after
9 suspension and before removal, to—

10 “(1) be represented by an attorney or other
11 representative;

12 “(2) a written statement of the charges against
13 the employee within 15 days after suspension, which
14 may be amended within 30 days thereafter;

15 “(3) an opportunity within 15 days after the re-
16 ceipt of the written statement under paragraph (2),
17 plus an additional 15 days if the charges are amend-
18 ed, to answer the charges and submit affidavits;

19 “(4) a hearing, at the request of the employee,
20 by an agency authority duly constituted for this pur-
21 pose;

22 “(5) a review of the employee’s case by the
23 head of the agency or a designee, before a decision
24 adverse to the employee is made final; and

1 “(6) a written statement of the decision of the
2 head of the agency.

3 “(d) REMOVAL.—Subject to subsection (c) of this
4 section and after any investigation and review the head
5 of the agency considers necessary, the head of an agency
6 shall remove an employee suspended under subsection (b)
7 if such head determines that the employee willfully and
8 unlawfully concealed, removed, mutilated, obliterated, fal-
9 sified, or destroyed any record, proceeding, map, book,
10 document, paper, or other thing in the custody of such
11 employee.

12 “(e) APPEAL.—An employee who is removed under
13 subsection (d) is entitled to appeal to the Merit Systems
14 Protection Board under section 7701 of this title.”.

15 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

16 (1) TABLE OF SECTIONS.—The table of sections
17 for chapter 75 of title 5, United States Code, is
18 amended by adding at the end the following new
19 items:

“SUBCHAPTER VI—FEDERAL RECORDS

“7551. Definitions.

“7552. Suspension and removal.”.

20 (2) SUBCHAPTER II APPLICABILITY.—Section
21 7512 of such title is amended—

22 (A) in subparagraph (D), by striking “or”
23 at the end;

1 (B) in subparagraph (E), by striking the
 2 period at the end and inserting “, or”; and

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

4 “(F) a suspension or removal under section
 5 7552 of this title.”.

6 **SEC. 3. USE OF NON-OFFICIAL ELECTRONIC MESSAGING**
 7 **ACCOUNTS.**

8 (a) PRESIDENTIAL RECORDS ACT.—Chapter 22 of
 9 title 44, United States Code is amended by adding at the
 10 end the following new section:

11 **“§ 2208. Disclosure requirement for official business**
 12 **conducted using non-official electronic**
 13 **messaging accounts**

14 “(a) IN GENERAL.—The President, Vice President,
 15 or covered employee may not create or send a Presidential
 16 or Vice Presidential record using a non-official electronic
 17 messaging account (in this section, referred to as ‘applica-
 18 ble electronic message’) unless the President, Vice Presi-
 19 dent, or covered employee—

20 “(1) includes an official electronic messaging
 21 account of the President, Vice President, or covered
 22 employee, as applicable, as a recipient in the original
 23 creation or transmission of the applicable electronic
 24 message and identifies all recipients of the applicable
 25 electronic message in such message;

1 “(2) forwards a complete copy of the applicable
2 electronic message, including a complete list of the
3 recipients of such message, to an official electronic
4 messaging account of the President, Vice President,
5 or covered employee, as applicable, within fifteen
6 days after the original creation or transmission of
7 the message; or

8 “(3) prints a complete copy of the applicable
9 electronic message, including a complete list of the
10 recipients of such message, and submits the message
11 to the appropriate location or individual for appro-
12 priate archival storage by the Executive Office of the
13 President within fifteen days after the original cre-
14 ation or transmission of the message.

15 “(b) ADVERSE ACTIONS.—An intentional violation of
16 subsection (a) (including any rules, regulations, or other
17 implementing guidelines) by a covered employee, as deter-
18 mined by the appropriate supervisor, shall be forwarded
19 to the Inspector General of the agency for a verification
20 of the violation, and upon verification, shall be subject to
21 the suspension and removal provisions under section 7552
22 of title 5.

23 “(c) DEFINITIONS.—In this section:

24 “(1) COVERED EMPLOYEE.—The term ‘covered
25 employee’ means—

1 “(A) the immediate staff of the President;

2 “(B) the immediate staff of the Vice Presi-
3 dent;

4 “(C) an individual of the Executive Office
5 of the President whose function is to advise and
6 assist the President; or

7 “(D) an individual of the Office of the Vice
8 President whose function is to advise and assist
9 the Vice President.

10 “(2) ELECTRONIC MESSAGE.—The term ‘elec-
11 tronic message’ means electronic mail and all other
12 means by which individuals and groups may commu-
13 nicate with each other electronically.

14 “(3) ELECTRONIC MESSAGING ACCOUNT.—The
15 term ‘electronic messaging account’ means any ac-
16 count that sends an electronic message.”.

17 (b) FEDERAL RECORDS.—Chapter 29 of title 44,
18 United States Code is amended by adding at the end the
19 following new section:

20 **“§ 2911. Disclosure requirement for official business**
21 **conducted using non-official electronic**
22 **messaging accounts**

23 “(a) IN GENERAL.—An officer or employee of a Fed-
24 eral agency may not create or send a record using a non-
25 official electronic messaging account (in this section, re-

1 ferred to as ‘applicable electronic message’) unless such
2 officer or employee—

3 “(1) includes an official electronic messaging
4 account of the officer or employee as a recipient in
5 the original creation or transmission of the applica-
6 ble electronic message and identifies all recipients of
7 the applicable electronic message in such message;

8 “(2) forwards a complete copy of the applicable
9 electronic message, including a complete list of the
10 recipients of such message, to an official electronic
11 messaging account of the officer or employee within
12 fifteen days after the original creation or trans-
13 mission of the record; or

14 “(3) prints a complete copy of the applicable
15 electronic message, including a complete list of the
16 recipients of such message, and submits it to the ap-
17 propriate location or individual for appropriate ar-
18 chival storage by the Federal agency within fifteen
19 days after the original creation or transmission of
20 the message.

21 “(b) ADVERSE ACTIONS.—An intentional violation of
22 subsection (a) (including any rules, regulations, or other
23 implementing guidelines) by an officer or employee of a
24 Federal agency, as determined by the appropriate super-
25 visor, shall be forwarded to the Inspector General of the

1 agency for a verification of the violation, and upon
 2 verification, shall be subject to the suspension and removal
 3 provisions under section 7552 of title 5.

4 “(c) DEFINITIONS.—In this section:

5 “(1) ELECTRONIC MESSAGE.—The term ‘elec-
 6 tronic message’ means electronic mail and all other
 7 means by which individuals and groups may commu-
 8 nicate with each other electronically.

9 “(2) ELECTRONIC MESSAGING ACCOUNT.—The
 10 term ‘electronic messaging account’ means any ac-
 11 count that sends an electronic message.”.

12 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

13 (1) CHAPTER 22.—The table of sections at the
 14 beginning of chapter 22 of title 44, United States
 15 Code, is amended by adding at the end the following
 16 new item:

“2208. Disclosure requirement for official business conducted using non-official
 electronic messaging accounts.”.

17 (2) CHAPTER 29.—The table of sections at the
 18 beginning of chapter 29 of title 44, United States
 19 Code, is amended by adding at the end the following
 20 new item:

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

1 **SEC. 4. REPORTING OF THE LOSS OR POTENTIAL LOSS OF**
2 **RECORDS.**

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

5 **“§ 3106. Unlawful removal, destruction of records**

6 “(a) NOTIFICATION.—

7 “(1) ARCHIVIST AND PUBLIC NOTIFICATION.—

8 Whenever the actual, impending, or threatened un-
9 lawful concealment, removal, mutilation, obliteration,
10 falsification, or destruction of any record, pro-
11 ceeding, map, book, document, paper, or other thing
12 in the custody of an agency comes to the attention
13 of the head of the Federal agency, the head of the
14 agency shall—

15 “(A) notify the Archivist; and

16 “(B) publish a general description of the
17 records at risk or that have been lost on the
18 website of the agency.

19 “(2) AGENCY NOTIFICATION.—Whenever the
20 actual, impending, or threatened unlawful conceal-
21 ment, removal, mutilation, obliteration, falsification,
22 or destruction of any record, proceeding, map, book,
23 document, paper, or other thing in the custody of an
24 agency comes to the attention of a Senior Agency
25 Official for Records Management, such official shall
26 immediately notify the head of the agency.

1 “(b) RECLAMATION OF RECORDS.—With the assist-
2 ance of the Archivist, the head of a Federal agency shall
3 initiate action through the Attorney General for the recov-
4 ery of records the head knows or has reason to believe
5 have been unlawfully removed from the agency, or from
6 another Federal agency whose records have been trans-
7 ferred to the legal custody of such head.

8 “(c) ACTION BY THE ARCHIVIST.—In any case in
9 which the head of the agency does not initiate an action
10 for the recovery of records described in subsection (b) or
11 other redress within a reasonable period of time after
12 being notified of any such unlawful removal, the Archivist
13 shall request the Attorney General to initiate an action
14 described in subsection (b), and shall notify the Congress
15 not later than 5 days after the date on which such a re-
16 quest has been submitted to the Attorney General.”.

17 **SEC. 5. SENIOR AGENCY OFFICIAL FOR RECORDS COMPLI-**
18 **ANCE.**

19 (a) SENIOR AGENCY OFFICIAL.—Chapter 31 of title
20 44, United States Code, is amended by adding at the end
21 the following new section:

22 **“§ 3108. Senior Agency Official for Records Compli-**
23 **ance**

24 “(a) DESIGNATION.—Not later than November 15,
25 2014, the head of each Federal agency shall designate a

1 Senior Agency Official for Records Management, and not
2 later than November 15 of each year thereafter the head
3 of each Federal agency shall reaffirm or designate a new
4 Senior Agency Official for Records Management.

5 “(b) AUTHORITIES AND RESPONSIBILITIES.—The
6 Senior Agency Official for Records Management shall—

7 “(1) be at least at the level of an Assistant Sec-
8 retary or the equivalent; and

9 “(2) be responsible for the coordinating with
10 the appropriate Agency Records Officer and appro-
11 priate agency officials to ensure compliance with all
12 applicable records management statutes, regulations,
13 and any guidance issued by the Archivist.

14 “(c) FEDERAL AGENCY COORDINATION.—In addition
15 to the designation made pursuant to subsection (a), the
16 head of a Federal agency may designate additional Senior
17 Agency Officials for Records Management as the head of
18 the agency determines to be necessary.”.

19 (b) TECHNICAL AND CONFORMING AMENDMENT.—
20 The table of sections at the beginning of chapter 31 of
21 title 44, United States Code, is amended by adding at the
22 end the following new item:

“3108. Senior Agency Official for Records Compliance.”.

1 **SEC. 6. PRESERVATION OF ELECTRONIC MESSAGES AND**
2 **OTHER RECORDS.**

3 (a) REQUIREMENT FOR PRESERVATION OF ELEC-
4 TRONIC MESSAGES.—Chapter 29 of title 44, United
5 States Code, as amended by section 3(b), is further
6 amended by adding at the end the following new section:

7 **“§ 2912. Preservation of electronic messages and**
8 **other records**

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

16 “(1) require the electronic capture, manage-
17 ment, and preservation of such electronic records in
18 accordance with the records disposition requirements
19 of chapter 33 of this title;

20 “(2) require that such electronic records are
21 readily accessible for retrieval through electronic
22 searches;

23 “(3) establish mandatory minimum functional
24 requirements for electronic records management sys-
25 tems to ensure compliance with the requirements in
26 paragraphs (1) and (2);

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

5 “(5) include timelines for Federal agency com-
6 pliance with the regulations that ensure compliance
7 as expeditiously as practicable but not later than 2
8 years after the date of the enactment of this section.

9 “(b) COVERAGE OF OTHER ELECTRONIC
10 RECORDS.—To the extent practicable, the regulations pro-
11 mulgated under subsection (a) shall also include require-
12 ments for the capture, management, and preservation of
13 other electronic records.

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

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

20 “(e) REPORTS ON IMPLEMENTATION OF REGULA-
21 TIONS.—

22 “(1) AGENCY REPORT TO ARCHIVIST.—Not
23 later than 3 years after the date of the enactment
24 of this section, the head of each Federal agency shall
25 submit to the Archivist a report on the agency’s

1 compliance with the regulations promulgated under
2 this section.

3 “(2) ARCHIVIST REPORT TO CONGRESS.—Not
4 later than 90 days after receipt of all reports re-
5 quired by paragraph (1), the Archivist shall submit
6 to the Committee on Homeland Security and Gov-
7 ernmental Affairs of the Senate and the Committee
8 on Oversight and Government Reform of the House
9 of Representatives a report on Federal agency com-
10 pliance with the regulations promulgated under sub-
11 section (a).”.

12 (b) CLERICAL AMENDMENT.—The table of sections
13 at the beginning of chapter 29 of title 44, United States
14 Code, as amended by section 3(c)(2), is further amended
15 by adding after the item relating to section 2911 the fol-
16 lowing new item:

“2912. Preservation of electronic messages and other records.”.

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

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

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

23 “(15) the term ‘electronic messages’ means
24 electronic mail and other electronic messaging sys-

1 tems that are used for purposes of communicating
2 between individuals; and

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

6 “(A) categorizing and locating records;

7 “(B) ensuring that records are retained as
8 long as necessary;

9 “(C) identifying records that are due for
10 disposition; and

11 “(D) ensuring the storage, retrieval, and
12 disposition of records.”.

13 **SEC. 7. PRESIDENTIAL RECORDS.**

14 (a) ADDITIONAL REGULATIONS RELATING TO PRESI-
15 DENTIAL RECORDS.—

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

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

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

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

23 “(5) provisions for establishing standards nec-
24 essary for the economical and efficient management

1 of electronic Presidential records during the Presi-
2 dent's term of office, including—

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

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

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

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

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

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

24 (b) CERTIFICATION OF PRESIDENT'S MANAGEMENT
25 OF PRESIDENTIAL RECORDS.—

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

5 **“§ 2209. Certification of the President’s management**
 6 **of Presidential records**

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

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

16 (2) CLERICAL AMENDMENT.—The table of sec-
 17 tions at the beginning of chapter 22 of title 44,
 18 United States Code, as amended by section 3(c)(1),
 19 is further amended by adding at the end the fol-
 20 lowing new item:

“2209. Certification of the President’s management of Presidential records.”.

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

24 “(4) One year following the conclusion of a Presi-
 25 dent’s term of office, or if a President serves consecutive

1 terms one year following the conclusion of the last term,
2 the Archivist shall submit to the Committee on Homeland
3 Security and Governmental Affairs of the Senate and the
4 Committee on Oversight and Government Reform of the
5 House of Representatives a report on—

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

9 “(B) whether the electronic records manage-
10 ment controls of that President met the require-
11 ments under subsection (a) and section 2206(5) of
12 this title.”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall take effect one year after the date of
15 the enactment of this Act.

16 **SEC. 8. RETENTION OF ELECTRONIC CORRESPONDENCE.**

17 (a) RETENTION OF RECORDS OF HIGH LEVEL OFFI-
18 CIALS.—Section 3102 of title 44, United States Code, is
19 amended—

20 (1) in paragraph (2), by striking “; and” and
21 inserting a semicolon;

22 (2) in paragraph (3), by striking the period at
23 the end and inserting “; and”; and

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

1 “(4) the identification of electronic messaging
2 accounts (as defined in section 2911) that should be
3 preserved because such accounts are most likely to
4 contain records that should be preserved as perma-
5 nent Federal records and the automatic retention of
6 those records, including the accounts of each head of
7 a Federal agency, the deputies and assistants of
8 such head, the head of each program office and staff
9 office, each assistant secretary, each administrator,
10 each commissioner, each director of an office, bu-
11 reau, or the equivalent, each principal regional offi-
12 cial, each staff assistant to such official (such as a
13 special assistant, confidential assistant, and adminis-
14 trative assistant), each career Federal employee,
15 each political appointee, and each member of the
16 Armed Forces serving in equivalent or comparable
17 positions; and

18 “(5) electronic capture, management, and pres-
19 ervation of the electronic messaging accounts (as de-
20 fined in section 2911) described in paragraph (4), in
21 accordance with the records disposal requirements of
22 chapter 33 of this title such that—

23 “(A) electronic records are readily acces-
24 sible for retrieval through electronic searches;
25 and

1 “(B) there are mandatory minimum func-
2 tional requirements for electronic records man-
3 agement systems to ensure compliance with this
4 section.”.

5 (b) REVIEW BY THE COMPTROLLER GENERAL OF
6 THE UNITED STATES.—Section 3107 of title 44, United
7 States Code, is amended—

8 (1) by striking “Chapters 21” and inserting
9 “(a) IN GENERAL.—Chapters 21”; and

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

11 “(b) COMPTROLLER GENERAL EVALUATION.—The
12 Comptroller General shall evaluate and report to Congress
13 not less than every two years on agency management of
14 electronic mail records required under paragraphs (4) and
15 (5) of section 3102.”.

16 (c) REVIEW BY INSPECTOR GENERAL.—Section 4(a)
17 of the Inspector General Act (5 U.S.C. App) is amended—

18 (1) in paragraph (4), by striking “; and” and
19 inserting a semicolon;

20 (2) in paragraph (5), by striking the period at
21 the end and inserting “; and”; and

22 (3) by adding at the end the following new
23 paragraph:

24 “(6) to review existing and proposed legislation
25 and regulations relating to records retention require-

1 ments under the chapters 21, 29, 31 and 33 of title
2 44, United States Code (commonly referred to as
3 the Federal Records Act) for programs and oper-
4 ations of such establishment and to make rec-
5 ommendations in the semiannual reports required by
6 section 5(a) concerning compliance with records re-
7 tention requirements.”.

8 (d) EFFECTIVE DATE.—This section and the amend-
9 ments made by this section shall take effect on December
10 31, 2016.

 Passed the House of Representatives September 16,
2014.

Attest:

KAREN L. HAAS,
Clerk.