

115TH CONGRESS
2D SESSION

H. R. 1376

IN THE SENATE OF THE UNITED STATES

JULY 17, 2018

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

AN ACT

To amend title 44, United States Code, to require preservation of certain electronic records by Federal agencies, to require a certification and reports relating to Presidential records, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Electronic Message
3 Preservation Act of 2017”.

4 **SEC. 2. PRESERVATION OF ELECTRONIC MESSAGES AND**
5 **OTHER RECORDS.**

6 (a) REQUIREMENT FOR PRESERVATION OF ELEC-
7 TRONIC MESSAGES.—Chapter 29 of title 44, United
8 States Code, is amended by adding at the end the fol-
9 lowing new section:

10 **“§ 2912. Preservation of electronic messages and**
11 **other records**

12 “(a) REGULATIONS REQUIRED.—The Archivist shall
13 promulgate regulations governing Federal agency preser-
14 vation of electronic messages that are determined to be
15 records. Such regulations shall, at a 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;

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

23 “(3) include timelines for Federal agency imple-
24 mentation of the regulations that ensure compliance
25 as expeditiously as practicable.

1 “(b) ENSURING COMPLIANCE.—The Archivist shall
2 promulgate regulations that—

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

7 “(2) establish a process to ensure that the elec-
8 tronic records management system of each Federal
9 agency meets the functional requirements estab-
10 lished under paragraph (1).

11 “(c) COVERAGE OF OTHER ELECTRONIC
12 RECORDS.—To the extent practicable, the regulations pro-
13 mulgated under subsections (a) and (b) shall also include
14 requirements for the capture, management, and preserva-
15 tion of other electronic records.

16 “(d) COMPLIANCE BY FEDERAL AGENCIES.—Each
17 Federal agency shall comply with the regulations promul-
18 gated under subsections (a) and (b).

19 “(e) REVIEW OF REGULATIONS REQUIRED.—The Ar-
20 chivist shall periodically review and, as necessary, amend
21 the regulations promulgated under subsections (a) and
22 (b).”.

23 (b) DEADLINE FOR REGULATIONS.—

24 (1) PRESERVATION OF ELECTRONIC MES-
25 SAGES.—Not later than 120 days after the date of

1 the enactment of this Act, the Archivist shall pro-
2 mulgate the regulations required under section
3 2912(a) of title 44, United States Code, as added by
4 subsection (a).

5 (2) ENSURING COMPLIANCE.—Not later than 2
6 years after the date of the enactment of this Act, the
7 Archivist shall promulgate the regulations required
8 under section 2912(b) of title 44, United States
9 Code, as added by subsection (a).

10 (c) REPORTS ON IMPLEMENTATION OF REGULA-
11 TIONS.—

12 (1) AGENCY REPORT TO ARCHIVIST.—Not later
13 than 1 year after the date of the enactment of this
14 Act, the head of each Federal agency shall submit
15 to the Archivist a report on the agency's compliance
16 with the regulations promulgated under section 2912
17 of title 44, United States Code, as added by sub-
18 section (a), and shall make the report publicly avail-
19 able on the website of the agency.

20 (2) ARCHIVIST REPORT TO CONGRESS.—Not
21 later than 90 days after receipt of all reports re-
22 quired by paragraph (1), the Archivist shall submit
23 to the Committee on Homeland Security and Gov-
24 ernmental Affairs of the Senate and the Committee
25 on Oversight and Government Reform of the House

1 of Representatives a report on Federal agency com-
2 pliance with the regulations promulgated under sec-
3 tion 2912(a) of title 44, United States Code, as
4 added by subsection (a), and shall make the report
5 publicly available on the website of the agency.

6 (3) FEDERAL AGENCY DEFINED.—In this sub-
7 section, the term “Federal agency” has the meaning
8 given that term in section 2901 of title 44, United
9 States Code.

10 (d) CLERICAL AMENDMENT.—The table of sections
11 at the beginning of chapter 29 of title 44, United States
12 Code, is amended by adding after the item relating to sec-
13 tion 2911 the following new item:

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

14 (e) DEFINITIONS.—Section 2901 of title 44, United
15 States Code, is amended—

16 (1) by striking “and” at the end of paragraph
17 (14); and

18 (2) by striking paragraph (15) and inserting
19 the following new paragraphs:

20 “(15) the term ‘electronic messages’ means
21 electronic mail and other electronic messaging sys-
22 tems that are used for purposes of communicating
23 between individuals; and

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

4 “(A) categorizing and locating records;

5 “(B) ensuring that records are retained as
6 long as necessary;

7 “(C) identifying records that are due for
8 disposition; and

9 “(D) ensuring the storage, retrieval, and
10 disposition of records.”.

11 **SEC. 3. PRESIDENTIAL RECORDS.**

12 (a) ADDITIONAL REGULATIONS RELATING TO PRESI-
13 DENTIAL RECORDS.—

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

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

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

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

21 “(5) provisions for establishing standards nec-
22 essary for the economical and efficient management
23 of electronic Presidential records during the Presi-
24 dent’s term of office, including—

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

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

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

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

16 “(6) The term ‘electronic messages’ has the
17 meaning given that term under section 2901(15).

18 “(7) The term ‘electronic records management
19 system’ has the meaning given that term under sec-
20 tion 2901(16).”.

21 (b) CERTIFICATION OF PRESIDENT’S MANAGEMENT
22 OF PRESIDENTIAL RECORDS.—

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

1 **“§ 2210. Certification of the President’s management**
2 **of Presidential records**

3 “(a) ANNUAL CERTIFICATION.—The Archivist shall
4 annually certify whether the electronic records manage-
5 ment controls established by the President meet require-
6 ments under sections 2203(a) and 2206(5).

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

12 (2) CLERICAL AMENDMENT.—The table of sec-
13 tions at the beginning of chapter 22 of title 44,
14 United States Code, is amended by adding at the
15 end the following new item:

“2210. Certification of the President’s management of Presidential
records.”.

16 (c) REPORT TO CONGRESS.—Section 2203(g) of title
17 44, United States Code, is amended by adding at the end
18 the following new paragraph:

19 “(5) One year following the conclusion of a Presi-
20 dent’s term of office, or if a President serves consecutive
21 terms 1 year following the conclusion of the last term, the
22 Archivist shall submit to the Committee on Homeland Se-
23 curity and Governmental Affairs of the Senate and the

1 Committee on Oversight and Government Reform of the
2 House of Representatives a report on—

3 “(A) the volume and format of electronic Presi-
4 dential records deposited into that President’s Presi-
5 dential archival depository; and

6 “(B) whether the electronic records manage-
7 ment controls of that President met the require-
8 ments under sections 2203(a) and 2206(5).”.

9 (d) EFFECTIVE DATE.—The amendments made by
10 this section shall take effect 1 year after the date of the
11 enactment of this Act.

Passed the House of Representatives July 16, 2018.

Attest:

KAREN L. HAAS,

Clerk.