

111TH CONGRESS  
1ST SESSION

# H. R. 1387

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.

---

## IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2009

Mr. HODES (for himself, Mr. TOWNS, and Mr. CLAY) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

---

## A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Electronic Message  
5 Preservation Act”.

6 **SEC. 2. PRESERVATION OF ELECTRONIC MESSAGES.**

7 (a) **REQUIREMENT FOR PRESERVATION OF ELEC-**  
8 **TRONIC MESSAGES.—**

1           (1) IN GENERAL.—Chapter 29 of title 44,  
2           United States Code, is amended by adding at the  
3           end the following new section:

4   **“§ 2911. Electronic messages**

5           “(a) REGULATIONS REQUIRED.—Not later than 18  
6           months after the date of the enactment of this section,  
7           the Archivist shall promulgate regulations governing agen-  
8           cy preservation of electronic messages that are records.  
9           Such regulations shall, at a minimum—

10           “(1) require the electronic capture, manage-  
11           ment, and preservation of such electronic records in  
12           accordance with the records disposition requirements  
13           of chapter 33 of this title;

14           “(2) require that such electronic records are  
15           readily accessible for retrieval through electronic  
16           searches;

17           “(3) establish mandatory minimum functional  
18           requirements for electronic records management sys-  
19           tems to ensure compliance with the requirements in  
20           paragraphs (1) and (2);

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

1           “(5) include timelines for agency compliance  
2           with the regulations that ensure compliance as expe-  
3           ditiously as practicable but not later than four years  
4           after the date of the enactment of this section.

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

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

13          “(d) REVIEW OF REGULATIONS REQUIRED.—The  
14          Archivist shall periodically review and, as necessary,  
15          amend the regulations promulgated under this section.

16          “(e) REPORTS ON IMPLEMENTATION OF REGULA-  
17          TIONS.—

18                 “(1) AGENCY REPORT TO ARCHIVIST.—Not  
19                 later than four years after the date of the enactment  
20                 of this section, the head of each Federal agency shall  
21                 submit to the Archivist a report on the agency’s  
22                 compliance with the regulations promulgated under  
23                 this section.

24                 “(2) ARCHIVIST REPORT TO CONGRESS.—Not  
25                 later than 90 days after receipt of all reports re-

1       quired by paragraph (1), the Archivist shall submit  
2       to the Committee on Homeland Security and Gov-  
3       ernmental Affairs of the Senate and the Committee  
4       on Oversight and Government Reform of the House  
5       of Representatives a report on Federal agency com-  
6       pliance with the regulations promulgated under this  
7       section.”.

8               (2) CLERICAL AMENDMENT.—The table of sec-  
9       tions for chapter 29 of title 44, United States Code,  
10       is amended by adding after the item relating to sec-  
11       tion 2910 the following new item:

“2911. Electronic messages.”.

12       (b) DEFINITIONS.—Section 2901 of title 44, United  
13       States Code, is amended—

14               (1) by striking “and” at the end of paragraph  
15       (14);

16               (2) by striking the period at the end of para-  
17       graph (15) and inserting a semicolon; and

18               (3) by adding at the end the following new  
19       paragraphs:

20               “(16) 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

24               “(17) the term ‘electronic records management  
25       system’ means a software system designed to man-

1       age electronic records within an information tech-  
2       nology system, including by—

3               “(A) categorizing and locating records;

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

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

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

10 **SEC. 3. PRESIDENTIAL RECORDS.**

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

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

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

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

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

20               “(5) provisions for establishing standards nec-  
21       essary for the economical and efficient management  
22       of Presidential records during the President’s term  
23       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 certify 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) DEFINITION.—Section 2201 of title 44,  
14          United States Code, is amended by adding at the  
15          end the following new paragraphs:

16                 “(5) The term ‘electronic messages’ has the  
17                 meaning provided in section 2901(16) of this title.

18                 “(6) The term ‘electronic records management  
19                 system’ has the meaning provided in section  
20                 2901(17) of this title.”.

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 **“§ 2208. Certification of the President’s management**  
2 **of Presidential records**

3 “(a) ANNUAL CERTIFICATION.—The Archivist shall  
4 annually certify whether the records management controls  
5 established by the President meet requirements under sec-  
6 tions 2203(a) and 2206(5) of this title.

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 for chapter 22 of title 44, United States Code,  
14 is amended by adding at the end the following new  
15 item:

“2208. Certification of the President’s management of Presidential records.”.

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

19 “(4) One year following the conclusion of a Presi-  
20 dent’s term of office, or if a President serves consecutive  
21 terms one year following the conclusion of the last term,  
22 the Archivist shall submit to the Committee on Homeland  
23 Security and Governmental Affairs of the Senate and the  
24 Committee on Oversight and Government Reform of the  
25 House of Representatives a report on—

1           “(A) the volume and format of Presidential  
2 records deposited into that President’s Presidential  
3 archival depository; and

4           “(B) whether the records management controls  
5 of that President met the requirements under sec-  
6 tions 2203(a) and 2206(5) of this title.”.

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

○