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U.S. GOVERNMENT
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113TH CONGRESS
2D SESSION

# H. R. 5170

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# AN ACT

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

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

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

(a) IN GENERAL.—This Act may be cited as the ''Federal Records Accountability Act of 2014''.

(b) TABLE OF CONTENTS.—The table of contents for 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.

**SEC. 2. REMOVAL FOR DELIBERATE DESTRUCTION OF FEDERAL RECORDS.**

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

''SUBCHAPTER VI—FEDERAL RECORDS

**''§ 7551. Definitions**

''In this subchapter the following definitions apply:

''(1) EMPLOYEE.—The term 'employee' means—

''(A) an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less; or

"(B) a career appointee in the Senior Executive Service who—

"(i) has completed the probationary period prescribed under section 3393(d) of this title; or

"(ii) was covered by the provisions of subchapter II of this chapter immediately before appointment to the Senior Executive Service.

"(2) SUSPENSION.—The term 'suspension' has the meaning given that term in section 7501 of this title.

**"§ 7552. Suspension and removal**

"(a) INSPECTOR GENERAL FINDING.—If the Inspector General of an agency determines an employee of the agency has willfully and unlawfully concealed, removed, mutilated, obliterated, falsified, or destroyed any record, proceeding, map, book, document, paper, or other thing in the custody of such employee, or verifies a violation under section 2208 or 2911 of title 44, the Inspector General shall promptly inform the head of the agency of that determination in writing.

"(b) SUSPENSION.—Notwithstanding any other provision of law, the head of an agency shall suspend an employee of that agency who has been determined by the In-

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

"(c) REQUIREMENTS AFTER SUSPENSION.—An employee suspended under subsection (b) is entitled, after suspension and before removal, to—

"(1) be represented by an attorney or other representative;

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

"(3) an opportunity within 15 days after the receipt of the written statement under paragraph (2), plus an additional 15 days if the charges are amended, to answer the charges and submit affidavits;

"(4) a hearing, at the request of the employee, by an agency authority duly constituted for this purpose;

"(5) a review of the employee's case by the head of the agency or a designee, before a decision adverse to the employee is made final; and

"(6) a written statement of the decision of the head of the agency.

"(d) REMOVAL.—Subject to subsection (c) of this section and after any investigation and review the head of the agency considers necessary, the head of an agency shall remove an employee suspended under subsection (b) if such head determines that the employee willfully and unlawfully concealed, removed, mutilated, obliterated, falsified, or destroyed any record, proceeding, map, book, document, paper, or other thing in the custody of such employee.

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

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

"SUBCHAPTER VI—FEDERAL RECORDS

"7551. Definitions.
"7552. Suspension and removal.".

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

(A) in subparagraph (D), by striking "or" at the end;

(B) in subparagraph (E), by striking the period at the end and inserting ", or"; and

(C) by adding at the end the following:

"(F) a suspension or removal under section 7552 of this title.".

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

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

**"§ 2208. Disclosure requirement for official business conducted using non-official electronic messaging accounts**

"(a) IN GENERAL.—The President, Vice President, or covered employee may not create or send a Presidential or Vice Presidential record using a non-official electronic messaging account (in this section, referred to as 'applicable electronic message') unless the President, Vice President, or covered employee—

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

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

"(3) prints a complete copy of the applicable electronic message, including a complete list of the recipients of such message, and submits the message to the appropriate location or individual for appropriate archival storage by the Executive Office of the President within fifteen days after the original creation or transmission of the message.

"(b) ADVERSE ACTIONS.—An intentional violation of subsection (a) (including any rules, regulations, or other implementing guidelines) by a covered employee, as determined by the appropriate supervisor, shall be forwarded to the Inspector General of the agency for a verification of the violation, and upon verification, shall be subject to the suspension and removal provisions under section 7552 of title 5.

"(c) DEFINITIONS.—In this section:

"(1) COVERED EMPLOYEE.—The term 'covered employee' means—

"(A) the immediate staff of the President;

"(B) the immediate staff of the Vice President;

"(C) an individual of the Executive Office of the President whose function is to advise and assist the President; or

"(D) an individual of the Office of the Vice President whose function is to advise and assist the Vice President.

"(2) ELECTRONIC MESSAGE.—The term 'electronic message' means electronic mail and all other means by which individuals and groups may communicate with each other electronically.

"(3) ELECTRONIC MESSAGING ACCOUNT.—The term 'electronic messaging account' means any account that sends an electronic message.".

(b) FEDERAL RECORDS.—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 a Federal agency may not create or send a record using a non-official electronic messaging account (in this section, re-

ferred to as 'applicable electronic message') unless such officer or employee—

"(1) includes an official electronic messaging account of the officer or employee as a recipient in the original creation or transmission of the applicable electronic message and identifies all recipients of the applicable electronic message in such message;

"(2) forwards a complete copy of the applicable electronic message, including a complete list of the recipients of such message, to an official electronic messaging account of the officer or employee within fifteen days after the original creation or transmission of the record; or

"(3) prints a complete copy of the applicable electronic message, including a complete list of the recipients of such message, and submits it to the appropriate location or individual for appropriate archival storage by the Federal agency within fifteen days after the original creation or transmission of the message.

"(b) ADVERSE ACTIONS.—An intentional violation of subsection (a) (including any rules, regulations, or other implementing guidelines) by an officer or employee of a Federal agency, as determined by the appropriate supervisor, shall be forwarded to the Inspector General of the

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

"(c) DEFINITIONS.—In this section:

"(1) ELECTRONIC MESSAGE.—The term 'electronic message' means electronic mail and all other means by which individuals and groups may communicate with each other electronically.

"(2) ELECTRONIC MESSAGING ACCOUNT.—The term 'electronic messaging account' means any account that sends an electronic message.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

(2) CHAPTER 29.—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.".

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

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

**"§ 3106. Unlawful removal, destruction of records**

"(a) NOTIFICATION.—

"(1) ARCHIVIST AND PUBLIC NOTIFICATION.—Whenever the actual, impending, or threatened unlawful concealment, removal, mutilation, obliteration, falsification, or destruction of any record, proceeding, map, book, document, paper, or other thing in the custody of an agency comes to the attention of the head of the Federal agency, the head of the agency shall—

"(A) notify the Archivist; and

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

"(2) AGENCY NOTIFICATION.—Whenever the actual, impending, or threatened unlawful concealment, removal, mutilation, obliteration, falsification, or destruction of any record, proceeding, map, book, document, paper, or other thing in the custody of an agency comes to the attention of a Senior Agency Official for Records Management, such official shall immediately notify the head of the agency.

"(b) RECLAMATION OF RECORDS.—With the assistance of the Archivist, the head of a Federal agency shall initiate action through the Attorney General for the recovery of records the head knows or has reason to believe have been unlawfully removed from the agency, or from another Federal agency whose records have been transferred to the legal custody of such head.

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

**SEC. 5. SENIOR AGENCY OFFICIAL FOR RECORDS COMPLIANCE.**

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

**"§ 3108. Senior Agency Official for Records Compliance**

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

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

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

"(1) be at least at the level of an Assistant Secretary or the equivalent; and

"(2) be responsible for the coordinating with the appropriate Agency Records Officer and appropriate agency officials to ensure compliance with all applicable records management statutes, regulations, and any guidance issued by the Archivist.

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

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

"3108. Senior Agency Official for Records Compliance.".

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

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

**"§ 2912. Preservation of electronic messages and other records**

"(a) REGULATIONS REQUIRED.—Not later than 18 months after the date of the enactment of this section, the Archivist shall promulgate regulations governing Federal agency preservation of electronic messages that are determined to be records (as such term is defined under section 3301 of this title). Such regulations shall, at a minimum—

"(1) require the electronic capture, management, and preservation of such electronic records in accordance with the records disposition requirements of chapter 33 of this title;

"(2) require that such electronic records are readily accessible for retrieval through electronic searches;

"(3) establish mandatory minimum functional requirements for electronic records management systems to ensure compliance with the requirements in paragraphs (1) and (2);

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

"(5) include timelines for Federal agency compliance with the regulations that ensure compliance as expeditiously as practicable but not later than 2 years after the date of the enactment of this section.

"(b) COVERAGE OF OTHER ELECTRONIC RECORDS.—To the extent practicable, the regulations promulgated under subsection (a) shall also include requirements for the capture, management, and preservation of other electronic records.

"(c) COMPLIANCE BY FEDERAL AGENCIES.—Each Federal agency shall comply with the regulations promulgated under subsection (a).

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

"(e) REPORTS ON IMPLEMENTATION OF REGULATIONS.—

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

compliance with the regulations promulgated under this section.

"(2) ARCHIVIST REPORT TO CONGRESS.—Not later than 90 days after receipt of all reports required by paragraph (1), the Archivist shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on Federal agency compliance with the regulations promulgated under subsection (a).".

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

"2912. Preservation of electronic messages and other records.".

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

(1) by striking "and" at the end of paragraph (14); and

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

"(15) the term 'electronic messages' means electronic mail and other electronic messaging sys-

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

"(16) the term 'electronic records management system' means software designed to manage electronic records, including by—

"(A) categorizing and locating records;

"(B) ensuring that records are retained as long as necessary;

"(C) identifying records that are due for disposition; and

"(D) ensuring the storage, retrieval, and disposition of records.".

**SEC. 7. PRESIDENTIAL RECORDS.**

(a) ADDITIONAL REGULATIONS RELATING TO PRESIDENTIAL RECORDS.—

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

(A) by striking "and" at the end of paragraph (3);

(B) by striking the period at the end of paragraph (4) and inserting "; and"; and

(C) by adding at the end the following:

"(5) provisions for establishing standards necessary for the economical and efficient management

of electronic Presidential records during the President's term of office, including—

"(A) records management controls necessary for the capture, management, and preservation of electronic messages;

"(B) records management controls necessary to ensure that electronic messages are readily accessible for retrieval through electronic searches; and

"(C) a process to certify the electronic records management system to be used by the President for the purposes of complying with the requirements in subparagraphs (A) and (B).".

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

"(6) The term 'electronic messages' has the meaning given that term under section 2901(15) of this title.

"(7) The term 'electronic records management system' has the meaning given that term under section 2901(16) of this title.".

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

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

**"§ 2209. Certification of the President's management of Presidential records**

"(a) ANNUAL CERTIFICATION.—The Archivist shall annually certify whether the electronic records management controls established by the President meet requirements under sections 2203(a) and 2206(5) of this title.

"(b) REPORT TO CONGRESS.—The Archivist shall report annually to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives on the status of the certification.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 22 of title 44, United States Code, as amended by section 3(c)(1), is further amended by adding at the end the following new item:

"2209. Certification of the President's management of Presidential records.".

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

"(4) One year following the conclusion of a President's term of office, or if a President serves consecutive

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

"(A) the volume and format of electronic Presidential records deposited into that President's Presidential archival depository; and

"(B) whether the electronic records management controls of that President met the requirements under subsection (a) and section 2206(5) of this title.".

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

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

(a) RETENTION OF RECORDS OF HIGH LEVEL OFFICIALS.—Section 3102 of title 44, United States Code, is amended—

(1) in paragraph (2), by striking "; and" and inserting a semicolon;

(2) in paragraph (3), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(4) the identification of electronic messaging accounts (as defined in section 2911) that should be preserved because such accounts are most likely to contain records that should be preserved as permanent Federal records and the automatic retention of those records, including the accounts of each head of a Federal agency, the deputies and assistants of such head, the head of each program office and staff office, each assistant secretary, each administrator, each commissioner, each director of an office, bureau, or the equivalent, each principal regional official, each staff assistant to such official (such as a special assistant, confidential assistant, and administrative assistant), each career Federal employee, each political appointee, and each member of the Armed Forces serving in equivalent or comparable positions; and

"(5) electronic capture, management, and preservation of the electronic messaging accounts (as defined in section 2911) described in paragraph (4), in accordance with the records disposal requirements of chapter 33 of this title such that—

"(A) electronic records are readily accessible for retrieval through electronic searches; and

"(B) there are mandatory minimum functional requirements for electronic records management systems to ensure compliance with this section.".

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

(1) by striking "Chapters 21" and inserting "(a) IN GENERAL.—Chapters 21"; and

(2) by adding at the end the following:

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

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

(1) in paragraph (4), by striking "; and" and inserting a semicolon;

(2) in paragraph (5), by striking the period at the end and inserting "; and"; and

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

"(6) to review existing and proposed legislation and regulations relating to records retention require-

ments under the chapters 21, 29, 31 and 33 of title 44, United States Code (commonly referred to as the Federal Records Act) for programs and operations of such establishment and to make recommendations in the semiannual reports required by section 5(a) concerning compliance with records retention requirements.''.

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on December 31, 2016.

Passed the House of Representatives September 16, 2014.

Attest:

*Clerk.*

113th CONGRESS
2d Session

# H. R. 5170

## AN ACT

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