

113TH CONGRESS
2D SESSION

H. R. 5170

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

IN THE HOUSE OF REPRESENTATIVES

JULY 23, 2014

Mr. MEADOWS (for himself and Mr. ISSA) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

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,*

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

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

6 (b) TABLE OF CONTENTS.—The table of contents for
7 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.

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

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

6 “SUBCHAPTER VI—FEDERAL RECORDS

7 “§ 7551. Definitions

8 “In this subchapter the following definitions apply:

9 “(1) EMPLOYEE.—The term ‘employee’
10 means—

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

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

20 “(i) has completed the probationary
21 period prescribed under section 3393(d) of
22 this title; or

23 “(ii) was covered by the provisions of
24 subchapter II of this chapter immediately
25 before appointment to the Senior Executive
26 Service.

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

4 **“§ 7552. Suspension and removal**

5 “(a) INSPECTOR GENERAL FINDING.—If the Inspec-
6 tor General of an agency determines an employee of the
7 agency has willfully and unlawfully concealed, removed,
8 mutilated, obliterated, falsified, or destroyed any record,
9 proceeding, map, book, document, paper, or other thing
10 in the custody of such employee, or verifies a violation
11 under section 2208 or 2911 of title 44, the Inspector Gen-
12 eral shall promptly inform the head of the agency of that
13 determination in writing.

14 “(b) SUSPENSION.—Notwithstanding any other pro-
15 vision of law, the head of an agency shall suspend an em-
16 ployee of that agency who has been determined by the In-
17 spector General under subsection (a) to have willfully and
18 unlawfully concealed, removed, mutilated, obliterated, fal-
19 sified, or destroyed any record, proceeding, map, book,
20 document, paper, or other thing in the custody of such
21 employee, or who has been verified by the Inspector Gen-
22 eral to be in violation of section 2208 or 2911 of title 44.

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

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

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

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

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

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

16 “(6) a written statement of the decision of the
17 head of the agency.

18 “(d) REMOVAL.—Subject to subsection (c) of this
19 section and after any investigation and review the head
20 of the agency considers necessary, the head of an agency
21 shall remove an employee suspended under subsection (b)
22 if such head determines that the employee willfully and
23 unlawfully concealed, removed, mutilated, obliterated, fal-
24 sified, or destroyed any record, proceeding, map, book,

1 document, paper, or other thing in the custody of such
2 employee.

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

6 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

7 (1) TABLE OF SUBCHAPTERS.—The table of
8 subchapters for chapter 75 of title 5, United States
9 Code, is amended by adding at the end the following
10 new items:

“SUBCHAPTER VI—FEDERAL RECORDS

“7551. Definitions.

“7552. Suspension and removal.”.

11 (2) SUBCHAPTER II APPLICABILITY.—Section
12 7512 of such title is amended—

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

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

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

18 “(F) a suspension or removal under sec-
19 tion 7552 of this title.”.

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

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

6 **“§ 2208. Disclosure requirement for official business**
7 **conducted using non-official electronic**
8 **messaging accounts**

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

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

21 “(2) forwards a complete copy of the applicable
22 electronic message, including a complete list of the
23 recipients of such message, to an official electronic
24 messaging account of the President, Vice President,
25 or covered employee, as applicable, within fifteen

1 days after the original creation or transmission of
2 the message; or

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

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

18 “(c) DEFINITIONS.—In this section:

19 “(1) COVERED EMPLOYEE.—The term ‘covered
20 employee’ means—

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

22 “(B) the immediate staff of the Vice Presi-
23 dent;

1 “(C) an individual of the Executive Office
2 of the President whose function is to advise and
3 assist the President; or

4 “(D) an individual of the Office of the Vice
5 President whose function is to advise and assist
6 the Vice President.

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

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

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

17 **“§ 2911. Disclosure requirement for official business**
18 **conducted using non-official electronic**
19 **messaging accounts**

20 “(a) IN GENERAL.—An officer or employee of a Fed-
21 eral agency may not create or send a record using a non-
22 official electronic messaging account (in this section, re-
23 ferred to as ‘applicable electronic message’) unless such
24 officer or employee—

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

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

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

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

1 verification, shall be subject to the suspension and removal
 2 provisions under section 7552 of title 5.

3 “(c) DEFINITIONS.—In this section:

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

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

11 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

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

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

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

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

1 **“§ 3106. Unlawful removal, destruction of records**

2 “(a) NOTIFICATION.—

3 “(1) ARCHIVIST AND PUBLIC NOTIFICATION.—

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

11 “(A) notify the Archivist; and

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

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

23 “(b) RECLAMATION OF RECORDS.—With the assist-
24 ance of the Archivist, the head of a Federal agency shall
25 initiate action through the Attorney General for the recov-
26 ery of records the head knows or has reason to believe

1 have been unlawfully removed from the agency, or from
2 another Federal agency whose records have been trans-
3 ferred to the legal custody of such head.

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

13 **SEC. 5. SENIOR AGENCY OFFICIAL FOR RECORDS COMPLI-**
14 **ANCE.**

15 (a) SENIOR AGENCY OFFICIAL.—Chapter 31 of title
16 44, United States Code, is amended by adding at the end
17 the following new section:

18 **“§ 3108. Senior Agency Official for Records Compli-**
19 **ance**

20 “(a) DESIGNATION.—Not later than November 15,
21 2014, the head of each Federal agency shall designate a
22 Senior Agency Official for Records Management, and not
23 later than November 15 of each year thereafter the head
24 of each Federal agency shall reaffirm or designate a new
25 Senior Agency Official for Records Management.

1 “(b) **AUTHORITIES AND RESPONSIBILITIES.**—The
2 Senior Agency Official for Records Management shall—

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

5 “(2) be responsible for coordinating with the
6 appropriate Agency Records Officer and appropriate
7 agency officials to ensure compliance with all appli-
8 cable records management statutes, regulations, and
9 any guidance issued by the Archivist.

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

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

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

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