

DITTO ACT OF 2016

JUNE 21, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CHAFFETZ, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 4921]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 4921) to amend chapter 31 of title 44, United States Code, to require the maintenance of certain records for 3 years, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 4921, the Ditto Act of 2016, ensures that the Internal Revenue Service (IRS) maintains the same record-keeping standards as the agency expects from taxpayers. H.R. 4921 amends Chapter 31 of title 44 U.S.C. to require the IRS to maintain any preserved record it obtains for at least three years. Further, the bill requires the IRS to maintain all additional records generated in relation to that produced record.

BACKGROUND AND NEED FOR LEGISLATION

The IRS recommends or requires that taxpayers maintain certain tax-related documents for several years depending on “the action, expense, or event which the document records.”¹ Specifically, IRS policy states that taxpayers “must keep [] records that support an item of income, deduction or credit shown on [a] tax return until the period of limitations for that tax return runs out.”² The IRS defines “period of limitations” as “the period of time in which you can amend your tax return to claim a credit or refund, or the IRS can assess additional tax.”³ Under these guidelines, the IRS requires taxpayers to maintain records from three to seven years, and indefinitely “if you do not file a return.”⁴

However, the IRS’s current internal policy controls concerning record maintenance are far less stringent than those required of the American taxpayer. Indeed, according to Jeff Tribiano, the Deputy Commissioner for Operations Support for the IRS, there is a significant need “to preserve all records that are electronically generated by the workforce,” which “became apparent when an issue arose in connection with the [IRS’s] collection and production of documents related to a Freedom of Information Act case captioned *Microsoft v. IRS*.”⁵

The IRS’s struggle in appropriately retaining documents was also highlighted by its erasing of 422 backup tapes containing as many as 24,000 emails from Lois Lerner, the now former Director of the Exempt Organizations Division, on March 4, 2014. The destruction of the backup tapes happened despite multiple legal obligations to preserve Lerner documents, including a subpoena issued by the Committee on Oversight and Government Reform on August 2, 2013 for “[a]ll communications sent or received by Lois Lerner, from January 1, 2009, to August 2, 2013.”⁶

The destruction of the backup tapes was even more egregious given the confusion the IRS had regarding the state of Lerner’s emails. On June 13, 2014, the IRS informed Congress that it was not able to recover all emails sent and received by Lerner between

¹Internal Revenue Serv., How Long Should I Keep Records? (May 13, 2016), <https://www.irs.gov/businesses/small-businesses-self-employed/how-long-should-i-keep-records>.

²*Id.*

³*Id.*

⁴*Id.*

⁵*IRS: Reviewing Its Legal Obligations, Document Preservation, and Data Security: Hearing Before the H. Comm. On Oversight and Gov’t Reform*, 114th Cong. 29–30 (2016) (statement of Jeff Tribiano, Deputy Comm’r for Operations Support, Internal Revenue Service) [hereinafter *IRS Document Preservation Hearing*]; *Microsoft Corp. v. Internal Revenue Serv.*, No. 2:15CV00369 (W.D. Wash.).

⁶H. Comm. on Oversight & Gov’t Reform, Subpeona to Jacob Lew, Sec’y, Dep’t of the Treasury (Aug. 2, 2013).

January 2009 and April 2011 because Lerner’s hard drive had crashed.⁷ To date, no one has been held accountable for the loss of those documents.

Recordkeeping failures such as these should be unacceptable at the IRS. If the IRS is going to require taxpayers to diligently maintain information, the IRS should be held to the same standards. To reinforce this principle, H.R. 4921 provides further clarity that the IRS must maintain records submitted by taxpayers for at least three years. Additionally, just as the IRS asks taxpayers to keep supporting information, under H.R. 4921 the IRS is also required to preserve any records created or derived from records submitted by a taxpayer for three years.

Importantly, H.R. 4921 does not allow the IRS to destroy any records earlier than it would have if not for the bill. Rather, the bill would ensure a minimum preservation period for records the agency generates from documents it has asked the taxpayer to independently maintain. If enacted, this legislation will have two clear effects. First, it will better ensure the IRS is aware of the importance of its role as a record keeper. Second, it will encourage the IRS to be cognizant of the burdens it places on taxpayers in order to ensure it only asks of them what is necessary.

LEGISLATIVE HISTORY

H.R. 4921, the Ditto Act of 2016, was introduced by Congressman Mark Walker (R–NC) on April 13, 2016 and referred to the Committee on Oversight and Government Reform.

The Committee on Oversight and Government Reform considered H.R. 4921 at a business meeting on April 14, 2016. The Committee ordered H.R. 4921 favorably reported by voice vote.

SECTION-BY-SECTION

Section 1. Short title

Designates the short title of the bill as the “Ditto Act of 2016”.

Section 2. Requirement to maintain records

Amends Chapter 31 of title 44 to require the IRS to maintain any preserved record it obtains for at least three years. The IRS must also maintain any record related to the preserved record.

Defines “preserved record” as any record maintained by a person other than the government pursuant to a rule, guidance, or other directive of the IRS that requires or recommends a person maintain a record for a period of time.

Makes clear that nothing in the legislation shall be construed to limit the preservation of a preserved record for more than three years or shorten the period of time a preserved record is otherwise required to be maintained.

Specifies that the amendments shall take effect on the date of enactment of this Act.

⁷Letter from Leonard Oursler, Internal Revenue Serv. to Hon. Ron Wyden & Hon. Orrin Hatch, S. Comm. On Finance (June 13, 2014).

EXPLANATION OF AMENDMENTS

No amendments were offered during Full Committee consideration of the bill.

COMMITTEE CONSIDERATION

On April 14, 2016 the Committee met in open session and ordered reported favorably the bill, H.R. 4921, by voice vote, a quorum being present.

ROLL CALL VOTES

No roll call votes were requested or conducted during Full Committee consideration of H.R. 4921.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill clarifies IRS’s record-keeping responsibilities. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee’s performance goal and objective of the bill is to amend chapter 31 of title 44, United States Code, to require the maintenance of certain records for 3 years.

DUPLICATION OF FEDERAL PROGRAMS

No provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting this bill does not direct the completion of any specific rule makings within the meaning of 5 U.S.C. 551.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104-4) requires a statement as to whether the provisions of the reported bill include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST
ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

MAY 17, 2016.

Hon. JASON CHAFFETZ,
Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4921, the Ditto Act of 2016.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 4921—Ditto Act of 2016

H.R. 4921 could require the Internal Revenue Service (IRS) to keep all records it obtains related to tax filers for at least three years if the agency requires tax filers to keep those same records.

The IRS could react to this legislation in a number of different ways. For example, the IRS might retain records for a longer period of time, or it might require less information to be preserved by tax filers. Based on discussions with the IRS, CBO expects that under the bill the IRS would retain at least some records for a longer period than they now retain them, resulting in higher storage costs. CBO estimates that those costs would total about \$2 million over the 2017–2021 period; such spending would be subject to the availability of appropriated funds.

Because enacting the bill would not affect direct spending or revenues, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 4921 would not increase direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 4921 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

TITLE 44, UNITED STATES CODE

* * * * *

CHAPTER 31—RECORDS MANAGEMENT BY FEDERAL AGENCIES

Sec.

3101. Records management by agency heads; general duties.

* * * * *

3108. *Requirement to maintain records.*

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§3108. *Requirement to maintain records*

(a) *IN GENERAL.—If the Internal Revenue Service obtains a preserved record, the Internal Revenue Service shall preserve for not less than 3 years from the date on which the record was obtained—*

- (1) the preserved record or a copy of the preserved record; and*
- (2) all records related to the preserved record.*

(b) *PRESERVED RECORD DEFINED.—In this section, the term “preserved record” means any record that is maintained by a person other than the Federal Government pursuant to a rule, guidance, or other directive from the Internal Revenue Service that requires or*

recommends the person maintain records for a particular period of time on a particular matter.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as—

(1) limiting the preservation of a preserved record for a longer period of time than is required by this section; or

(2) shortening the period of time a preserved record is otherwise required to be maintained.

* * * * *

MINORITY VIEWS

I oppose H.R. 4921. This bill would target only one agency, the Internal Revenue Service (IRS). Under this bill, the IRS would be required to comply with a special set of records requirements fashioned only for that agency.

This bill would establish an arbitrary three-year retention period for any record “maintained by a person other than the Federal Government pursuant to a rule, guidance or other directive” from the IRS “that requires or recommends the person maintain records for a particular period of time on a particular matter.”

The IRS is already subject to the Federal Records Act just like every other federal agency. The IRS is already required to comply with records schedules approved by the National Archives and Records Administration (NARA) that ensure compliance with the Federal Records Act. The schedules require records to be preserved for set time periods depending on the type and value of the record.

The majority has not identified a single example of an IRS records schedule that is deficient.

NARA expressed concerns with this bill. NARA offered to work with the Committee to address any specific issues the Committee could identify with the IRS’ recordkeeping practices. That is what the Committee should do if there is a legitimate concern rather than moving forward with this unnecessary bill. But the majority has declined to do so.

The majority’s report cites the IRS’ erasure, or “degaussing,” of backup tapes as part of its investigation of Lois Lerner’s emails. The Treasury Inspector General for Tax Administration (TIGTA) found the tapes were erased as part of the IRS’ normal recycling process and that IRS employees responsible for handling the backup tapes “did not understand their responsibility to comply” with a May 22, 2013, e-mail directive to preserve the tapes in light of ongoing investigations.¹

TIGTA found no evidence that any IRS employees purposefully destroyed the tapes to conceal any emails. To the contrary, TIGTA concluded: “No evidence was uncovered that any IRS employees had been directed to destroy or hide information from Congress, the DOJ, or TIGTA.”²

This bill is unnecessary and does nothing to advance federal recordkeeping policies.

ELIJAH E. CUMMINGS,
Ranking Member.



¹Treasury Inspector General for Tax Administration, *Report of Investigation: Exempt Organizations Data Loss* (June 30, 2015) (#54-1406-0008-1).

²*Id.*