

Union Calendar No. 638

115TH CONGRESS
2^D SESSION

H. R. 1376

[Report No. 115–824]

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 7, 2017

Mr. CUMMINGS introduced the following bill; which was referred to the
Committee on Oversight and Government Reform

JULY 16, 2018

Committed to the Committee of the Whole House on the State of the Union,
and ordered to be printed

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 of 2017”.

6 **SEC. 2. PRESERVATION OF ELECTRONIC MESSAGES AND**
7 **OTHER RECORDS.**

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

12 **“§ 2912. Preservation of electronic messages and**
13 **other records**

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

18 “(1) require the electronic capture, manage-
19 ment, and preservation of such electronic records in
20 accordance with the records disposition requirements
21 of chapter 33;

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

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

4 “(b) ENSURING COMPLIANCE.—The Archivist shall
5 promulgate regulations that—

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

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

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

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

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

1 (b) DEADLINE FOR REGULATIONS.—

2 (1) PRESERVATION OF ELECTRONIC MES-
3 SAGES.—Not later than 120 days after the date of
4 the enactment of this Act, the Archivist shall pro-
5 mulgate the regulations required under section
6 2912(a) of title 44, United States Code, as added by
7 subsection (a).

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

13 (c) REPORTS ON IMPLEMENTATION OF REGULA-
14 TIONS.—

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

23 (2) ARCHIVIST REPORT TO CONGRESS.—Not
24 later than 90 days after receipt of all reports re-
25 quired by paragraph (1), the Archivist shall submit

1 to the Committee on Homeland Security and Gov-
2 ernmental Affairs of the Senate and the Committee
3 on Oversight and Government Reform of the House
4 of Representatives a report on Federal agency com-
5 pliance with the regulations promulgated under sec-
6 tion 2912(a) of title 44, United States Code, as
7 added by subsection (a), and shall make the report
8 publicly available on the website of the agency.

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

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

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

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

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

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

23 “(15) the term ‘electronic messages’ means
24 electronic mail and other electronic messaging sys-

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

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

6 “(A) categorizing and locating records;

7 “(B) ensuring that records are retained as
8 long as necessary;

9 “(C) identifying records that are due for
10 disposition; and

11 “(D) ensuring the storage, retrieval, and
12 disposition of records.”.

13 **SEC. 3. PRESIDENTIAL RECORDS.**

14 (a) **ADDITIONAL REGULATIONS RELATING TO PRESI-**
15 **DENTIAL RECORDS.—**

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

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

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

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

23 “(5) provisions for establishing standards nec-
24 essary for the economical and efficient management

1 of electronic Presidential records during the Presi-
2 dent's term of office, including—

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

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

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

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

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

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

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

1 the Archivist shall submit to the Committee on Homeland
2 Security and Governmental Affairs of the Senate and the
3 Committee on Oversight and Government Reform of the
4 House of Representatives a report on—

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

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

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

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