H. R.  ----------

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

Mr. CUMMINGS introduced the following bill; which was referred to the Committee on

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 Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

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

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SEC. 2. PRESERVATION OF ELECTRONIC MESSAGES AND
OTHER RECORDS.

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

“§2912. Preservation of electronic messages and
other records

“(a) REGULATIONS REQUIRED.—The Archivist shall promulgate regulations governing Federal agency preservation of electronic messages that are determined to be records. 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;

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

“(3) include timelines for Federal agency implementation of the regulations that ensure compliance as expeditiously as practicable.

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

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

“(2) establish a process to ensure that the electronic records management system of each Federal agency meets the functional requirements established under paragraph (1).

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

“(d) COMPLIANCE BY FEDERAL AGENCIES.—Each Federal agency shall comply with the regulations promulgated under subsections (a) and (b).

“(e) REVIEW OF REGULATIONS REQUIRED.—The Archivist shall periodically review and, as necessary, amend the regulations promulgated under subsections (a) and (b).”.

(b) DEADLINE FOR REGULATIONS.—

(1) PRESERVATION OF ELECTRONIC MESSAGES.—Not later than 120 days after the date of the enactment of this Act, the Archivist shall promulgate the regulations required under section 2912(a) of title 44, United States Code, as added by subsection (a).
(2) Ensuring compliance.—Not later than 2 years after the date of the enactment of this Act, the Archivist shall promulgate the regulations required under section 2912(b) of title 44, United States Code, as added by subsection (a).

(c) Reports on implementation of regulations.—

(1) Agency report to Archivist.—Not later than 1 year after the date of the enactment of this Act, the head of each Federal agency shall submit to the Archivist a report on the agency’s compliance with the regulations promulgated under section 2912 of title 44, United States Code, as added by subsection (a), and shall make the report publicly available on the website of the agency.

(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 Reform of the House of Representatives a report on Federal agency compliance with the regulations promulgated under section 2912(a) of title 44, United States Code, as added by sub-
section (a), and shall make the report publicly available on the website of the agency.

(3) **Federal Agency Defined.**—In this subsection, the term “Federal agency” has the meaning given that term in section 2901 of title 44, United States Code.

(d) **Clerical Amendment.**—The table of sections at the beginning of chapter 29 of title 44, United States Code, is amended by adding after the item relating to section 2911 the following new item:

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

(e) **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 systems 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. 3. 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 elec-
tronic searches; and

“(C) a process to ensure 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).

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

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

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

“§2210. Certification of the President’s management
of Presidential records

“(a) ANNUAL CERTIFICATION.—The Archivist shall annually certify whether the electronic records manage-
ment controls established by the President meet requirements under sections 2203(a) and 2206(5).

“(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 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, is amended by adding at the end the following new item:

“2210. Certification of the President’s management of Presidential records.”.

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

“(5) One year following the conclusion of a President’s term of office, or if a President serves consecutive terms 1 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 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 sections 2203(a) and 2206(5).”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the date of the enactment of this Act.

SEC. 4. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.