

Calendar No. 548

118TH CONGRESS
2D SESSION**S. 4042****[Report No. 118-235]**

To amend title 44, United States Code, to reform the management of Federal records, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 21, 2024

Mr. PETERS (for himself and Mr. CORNYN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

NOVEMBER 12, 2024

Reported by Mr. PETERS, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]**A BILL**

To amend title 44, United States Code, to reform the management of Federal 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,*

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

2 (a) **SHORT TITLE.**—This Act may be cited as the
 3 “Strengthening Oversight of Federal Records Act of
 4 2024”.

5 (b) **TABLE OF CONTENTS.**—The table of contents for
 6 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FEDERAL RECORDS REFORM

Sec. 101. Preservation of Federal electronic records.

Sec. 102. Whistleblower protections.

Sec. 103. Preservation of electronic messages of certain officials.

Sec. 104. Proactive disclosure of records retention schedules.

Sec. 105. Certification regarding preservation of records.

**TITLE II—ADDITIONAL REFORMS TO PRESERVE AND PROTECT
 RECORDS AND GOVERNMENT INTEGRITY**

Sec. 201. Unlawful removal, destruction of records.

Sec. 202. Records management incorporation into performance plans.

Sec. 203. Establishment of an Advisory Committee on Records Automation.

Sec. 204. Regulations.

7 **TITLE I—FEDERAL RECORDS**
 8 **REFORM**

9 **SEC. 101. PRESERVATION OF FEDERAL ELECTRONIC**
 10 **RECORDS.**

11 (a) **PRESERVATION OF AGENCY ELECTRONIC**
 12 **RECORDS.**—Section 2911 of title 44, United States Code,
 13 is amended—

14 (1) by striking subsection (a) and inserting the
 15 following:

16 “(a) **IN GENERAL.**—An officer or employee of an ex-
 17 ecutive agency shall not—

1 “(1) destroy or delete any record created, sent,
2 or received using a non-official electronic messaging
3 account, including through any automatic mecha-
4 nism, unless the record has been copied or forwarded
5 to an official electronic messaging account of officer
6 or employee; or

7 “(2) create, receive, or send a record using a
8 non-official electronic messaging account unless—

9 “(A) the policies and procedures of the ex-
10 ecutive agency authorize such use by the officer
11 or employee;

12 “(B) the account is subject to records
13 management controls to create and preserve
14 readable records; and

15 “(C) the officer or employee—

16 “(i) copies an official electronic mes-
17 saging account of the officer or employee
18 in the original creation or transmission of
19 the record; or

20 “(ii) forwards a complete copy of the
21 record to an official electronic messaging
22 account of the officer or employee not later
23 than 20 days after the original creation or
24 transmission of the record.”;

1 (2) in subsection (b), by inserting “, unless the
2 violation involves a disclosure, as defined in section
3 2302(a)(2) of title 5” before the period at the end;
4 and

5 (3) in subsection (c)(1), by inserting “, includ-
6 ing social media and digital applications and plat-
7 forms,” after “messaging systems”.

8 (b) SAFEGUARDS.—Section 3105 of title 44, United
9 States Code, is amended, in the matter preceding para-
10 graph (1), by striking “against” and inserting “to ensure
11 the adequate and proper documentation of the organiza-
12 tion, functions, policies, decisions, procedures, and essen-
13 tial transactions of the Federal agency and to prevent”.

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

16 (1) in paragraph (15), by striking “and” at the
17 end;

18 (2) in paragraph (16)(D), by striking the period
19 at the end and inserting a semicolon; and

20 (3) by adding at the end the following:

21 “(17) the term ‘complete copy’ means a copy of
22 all of the contents of a record, including the
23 metadata with respect to the record; and

24 “(18) the term ‘readable’ means media that is
25 retrievable and usable for as long as needed to con-

1 duct Government business and to transfer perma-
 2 nent email records to the National Archives and
 3 Records Administration.”.

4 **SEC. 102. WHISTLEBLOWER PROTECTIONS.**

5 (a) DEFINITIONS.—In this section the term “whistle-
 6 blower protections” has the meaning given that term in
 7 section 2302(c)(1) of title 5, United States Code.

8 (b) WHISTLEBLOWER PROTECTIONS.—Nothing in
 9 section 2911(a)(2) of title 44, United States Code, as
 10 amended by section 101, shall prevent or impair an officer
 11 or employee of an executive agency from receiving whistle-
 12 blower protections.

13 **SEC. 103. PRESERVATION OF ELECTRONIC MESSAGES OF**
 14 **CERTAIN OFFICIALS.**

15 (a) IN GENERAL.—Chapter 29 of title 44, United
 16 States Code, is amended by adding at the end the fol-
 17 lowing:

18 **“§ 2913. Preservation of electronic messages of cer-**
 19 **tain officials**

20 “(a) REGULATIONS REQUIRED.—

21 “(1) IN GENERAL.—The Archivist shall promul-
 22 gate regulations governing Federal agency preserva-
 23 tion of electronic messages of employees, which shall,
 24 at a minimum—

1 “(A) require that the electronic messages
2 of senior officers or senior employees of Federal
3 agencies be designated as a permanent record,
4 as defined in section 1220.18 of title 36, Code
5 of Federal Regulations, or any successor there-
6 to;

7 “(B) require that the electronic messages
8 of senior officers or senior employees—

9 “(i) be stored in accordance with
10 guidelines prescribed by the Archivist; and

11 “(ii) are readily accessible for retrieval
12 through electronic searches;

13 “(C) establish general categories of posi-
14 tions in Federal agencies that constitute senior
15 officers and employees; and

16 “(D) allow for the culling of transitory
17 messages; messages that are not records; and
18 personal messages as appropriate.

19 “(2) SCOPE.—The regulations promulgated
20 under paragraph (1) shall, at a minimum, apply to
21 electronic messages of—

22 “(A) the head of each Federal agency;

23 “(B) the principal assistant to the head of
24 each Federal agency, including a member of the
25 Armed Forces serving in a comparable position;

1 “(C) an officer or employee serving as a
2 deputy, or equivalent position, of an officer, em-
3 ployee, or member described in subparagraph
4 (A) or (B);

5 “(D) an employee serving as a staff assist-
6 ant to an officer, employee, or member de-
7 scribed in subparagraph (A) or (B), including a
8 special assistant, confidential assistant, military
9 assistant, and aide;

10 “(E) an officer or employee serving in a
11 principal management position at a Federal
12 agency, including the Chief Operating Officer,
13 the Chief Information Officer, the Chief Knowl-
14 edge Officer, the Chief Technology Officer, the
15 Chief Financial Officer, and an equivalent of
16 such an officer;

17 “(F) the director, or equivalent position, of
18 a significant program office of a Federal agen-
19 cy;

20 “(G) a principal regional officer of a Fed-
21 eral agency, including a regional administrator,
22 or equivalent position;

23 “(H) an officer or employee serving in a
24 position that routinely provide advice to or over-
25 sight of a Federal agency, including advice to

1 or oversight of the activities of an officer, em-
2 ployee, or member described in subparagraph
3 (A), (B), (C), (E), (F), or (G), including an of-
4 ficer or employee serving as a general counsel,
5 chief of staff, or inspector general;

6 “(I) an officer or employee appointed by
7 the President, by and with the advice and con-
8 sent of the Senate;

9 “(J) any other officer or employee serving
10 in a position that predominantly creates perma-
11 nent records related to mission critical func-
12 tions or policy decisions of a Federal agency or
13 that are of historical significance; and

14 “(K) any officer or employee serving in a
15 position described in subparagraph (A), (B),
16 (C), (D), (E), (F), (G), (H), (I), or (J) in an
17 acting capacity.

18 “(b) AGENCY REPORT TO ARCHIVIST.—

19 “(1) IN GENERAL.—Not later than the date
20 specified in paragraph (2), and every 5 years there-
21 after, the head of each Federal agency shall submit
22 to the Archivist a report on the compliance of the
23 Federal agency with subsection (a), including statis-
24 tics on—

1 “(A) the number of senior officers and sen-
2 ior employees of the Federal agency whose elec-
3 tronic messages are being stored as permanent
4 records in accordance with guidelines prescribed
5 by the Archivist;

6 “(B) the volume of electronic messages of
7 senior officers and senior employees of the Fed-
8 eral agency designated as a permanent record
9 that are held by the Federal agency; and

10 “(C) the volume of total electronic mes-
11 sages of officers and employees of the Federal
12 agency that are held by the Federal agency.

13 “(2) DEADLINE FOR INITIAL REPORTS.—The
14 date specified in this paragraph is the earlier of—

15 “(A) the date that is 210 days after the
16 date on which the Archivist promulgates regula-
17 tions under subsection (a); or

18 “(B) the date that is 1 year after the date
19 of enactment of this section.

20 “(3) PUBLIC AVAILABILITY.—Not later than 30
21 days after submitting a report required under para-
22 graph (1) to the Archivist, the head of a Federal
23 agency shall make the report publicly available in an
24 accessible electronic format on the website of the
25 Federal agency.”.

1 (b) CONFORMING AMENDMENT.—The table of sec-
 2 tions for chapter 29 of title 44, United States Code, is
 3 amended by adding at the end the following:

“~~2913~~. Preservation of electronic messages of senior officials.”.

4 **SEC. 104. PROACTIVE DISCLOSURE OF RECORDS RETEN-**
 5 **TION SCHEDULES.**

6 (a) PROACTIVE DISCLOSURE OF RECORDS RETEN-
 7 TION SCHEDULES.—Section ~~3303~~ of title 44, United
 8 States Code, is amended—

9 (1) by striking “The head” and inserting “(a)
 10 The head”; and

11 (2) by adding at the end the following:

12 “(b)(1) For each list or schedule of records issued
 13 under subsection (a) that is approved by the Archivist, the
 14 Archivist shall—

15 “(A) not later than 30 days after the date on
 16 which the Archivist approves the list or schedule,
 17 make the list or schedule available for public inspec-
 18 tion;

19 “(B) make available and maintain the list or
 20 schedule in an accessible electronic database on a
 21 website of the National Archives and Records Ad-
 22 ministration, including the relevant crosswalk and
 23 appraisal memo; and

24 “(C) ensure the list or schedule, and all related
 25 materials, are organized in such fashion as to—

1 “(i) facilitate public understanding of the
2 operations of the records management program
3 of the Federal agency; and

4 “(ii) assist the Archivist in cataloging dis-
5 position authorities.

6 “(2) Not later than 60 days after the date of enact-
7 ment of the Strengthening Oversight of Federal Records
8 Act of 2024, the head of each Federal agency shall submit
9 to the Archivist each list or schedule of records issued
10 under subsection (a) before such date of enactment that
11 is in effect on such date of enactment, and all related ma-
12 terials, for immediate publication in the database de-
13 scribed in paragraph (1).

14 “(3) The database described in paragraph (1) shall
15 be searchable and maintained as an open Government
16 data asset, as defined in section 3502.”.

17 (b) REGULATION.—Section 3302 of title 44, United
18 States Code, is amended—

19 (1) in paragraph (1), by striking the comma at
20 the end and inserting a semicolon;

21 (2) in paragraph (2), by striking “, and” and
22 inserting a semicolon;

23 (3) in paragraph (3), by striking the period at
24 the end and inserting “; and”; and

25 (4) by adding at the end the following:

1 “(4) procedures and minimum standards of
2 ease-of-use for public inspection and online mainte-
3 nance of lists, schedules, and related materials pur-
4 suant to section 3303(b).”.

5 **SEC. 105. CERTIFICATION REGARDING PRESERVATION OF**
6 **RECORDS.**

7 (a) **IN GENERAL.**—Chapter 29 of title 44, United
8 States Code, as amended by section 103, is amended by
9 adding at the end the following:

10 **“§ 2914. Certification regarding preservation of**
11 **records**

12 “The head of each Federal agency shall establish
13 policies and procedures under which each employee of the
14 Federal agency shall, prior to separating from service as
15 an employee of the Federal agency, submit to the head
16 of the Federal agency a certification indicating whether
17 the employee has complied with the requirements under
18 this chapter relating to the preservation of records.”.

19 (b) **CONFORMING AMENDMENT.**—The table of sec-
20 tions for chapter 29 of title 44, United States Code, as
21 amended by section 103, is amended by adding at the end
22 the following:

“2914. Certification regarding preservation of records.”.

1 **TITLE II—ADDITIONAL RE-**
 2 **FORMS TO PRESERVE AND**
 3 **PROTECT RECORDS AND GOV-**
 4 **ERNMENT INTEGRITY**

5 **SEC. 201. UNLAWFUL REMOVAL, DESTRUCTION OF**
 6 **RECORDS.**

7 Section 3106 of title 44, United States Code, is
 8 amended—

9 (1) by striking subsection (a) and inserting the
 10 following:

11 “(a) **FEDERAL AGENCY NOTIFICATION OF UNLAW-**
 12 **FUL REMOVAL OR DESTRUCTION OF RECORDS.—**

13 “(1) **IN GENERAL.—**The head of each Federal
 14 agency shall notify the Archivist if the head of the
 15 Federal agency knows or has reason to believe that
 16 there is—

17 “(A) any actual, impending, or threatened
 18 unlawful failure to create or removal, defacing,
 19 alteration, corruption, deletion, erasure, or
 20 other destruction of records in the custody of
 21 the Federal agency; or

22 “(B) any other repeated non-compliance by
 23 any employee of the Federal agency with Fed-
 24 eral record-keeping requirements that the head

1 of the Federal agency has been unable to fully
2 address.

3 ~~“(2) REMEDY.—~~With the assistance of the Ar-
4 chivist, the head of each Federal agency shall ini-
5 tiate action through the Attorney General for—

6 ~~“(A) fully recovering or restoring records~~
7 ~~unlawfully removed from the Federal agency,~~
8 ~~including records of another Federal agency~~
9 ~~that have been transferred to the legal custody~~
10 ~~of that Federal agency, or that are defaced, al-~~
11 ~~tered, corrupted, deleted, erased, or destroyed,~~
12 ~~to the extent practicable; and~~

13 ~~“(B) remedying any other repeated non-~~
14 ~~compliance by any employee of the Federal~~
15 ~~agency with record-keeping requirements.”;~~

16 ~~(2) in subsection (b), by striking “shall request~~
17 ~~the Attorney General” and all that follows and in-~~
18 ~~serting the following: “shall—~~

19 ~~“(1) request the Attorney General to initiate~~
20 ~~such an action;~~

21 ~~“(2) notify the Committee on Homeland Secu-~~
22 ~~rity and Governmental Affairs of the Senate and the~~
23 ~~Committee on Oversight and Accountability of the~~
24 ~~House of Representatives;~~

1 “(3) include with the notification under para-
2 graph (2) any relevant evidence, analysis, and sup-
3 porting documentation pertinent to the incident; and

4 “(4) in coordination with the Attorney General,
5 make regular updates to the committees specified in
6 paragraph (2) on the status of efforts to remedy the
7 unlawful action or noncompliance.”; and

8 (3) by adding at the end the following:

9 “(e) OTHER RECORDKEEPING VIOLATIONS.—

10 “(1) IN GENERAL.—If the Archivist becomes
11 aware of an alleged violation by an employee of a
12 Federal agency of his or her recordkeeping obliga-
13 tions, the Archivist shall—

14 “(A) notify the head of the Federal agency
15 and coordinate with the Federal agency to de-
16 termine whether a violation took place; and

17 “(B) subject to paragraph (2), refer the
18 matter to the head of the Federal agency for
19 corrective action, as necessary.

20 “(2) AGENCIES WITH INSPECTORS GENERAL.—

21 If the Archivist makes a referral described in para-
22 graph (1)(B) to a Federal agency that has an In-
23 specter General (as defined in section 401 of title 5),
24 the Archivist shall make a joint referral to the head

1 of the Federal agency and to the Inspector General
2 of the Federal agency.”.

3 **SEC. 202. RECORDS MANAGEMENT INCORPORATION INTO**
4 **PERFORMANCE PLANS.**

5 Section 4302 of title 5, United States Code, is
6 amended—

7 (1) by redesignating subsections (c) and (d) as
8 subsections (d) and (e), respectively; and

9 (2) by inserting after subsection (b) the fol-
10 lowing:

11 “(e) The head of each agency, in consultation with
12 the Director of the Office of Personnel Management and
13 the Archivist of the United States, shall develop criteria
14 that incorporates records management requirements that
15 should be included in employees’ performance standards
16 and reviews.”.

17 **SEC. 203. ESTABLISHMENT OF AN ADVISORY COMMITTEE**
18 **ON RECORDS AUTOMATION.**

19 (a) **ESTABLISHMENT.**—There is established within
20 the National Archives and Records Administration an ad-
21 visory committee to be known as the “Advisory Committee
22 on Records Automation” (in this section referred to as the
23 “Advisory Committee”).

24 (b) **PURPOSES.**—The purposes of the Advisory Com-
25 mittee are—

1 (1) to encourage the efforts of the Government
2 to manage records through greater use of automa-
3 tion to make electronic recordkeeping more efficient;

4 (2) to encourage the efforts of the Government
5 to more efficiently respond to access requests for
6 records of executive agencies;

7 (3) to issue recommendations relating to
8 records automation, including on how the Govern-
9 ment should use automated software to—

10 (A) automatically categorize records in
11 connection with the issuance of records sched-
12 ules required under chapter 33 of title 44,
13 United States Code;

14 (B) search for responsive records; and

15 (C) assist in determining whether records
16 may be exempt from public disclosure; and

17 (4) to receive expert advice from public and pri-
18 vate sector sources with respect to the use of auto-
19 mated software to make the management of and ac-
20 cess to records of executive agencies more efficient.

21 (c) DUTIES.—The duties of the Advisory Committee
22 include providing advice and recommendations to the Ar-
23 chivist of the United States (in this section referred to
24 as the “Archivist”) and agencies on strategic, technical,

1 financial, programmatic, and operational matters regard-
2 ing records automation.

3 ~~(d) MEMBERSHIP.—~~

4 ~~(1) COMPOSITION.—~~The Advisory Committee
5 shall be composed of not more than 15 members
6 from the public and private sectors as follows:

7 ~~(A) Three members shall be appointed by~~
8 ~~the Archivist, 1 of which shall be designated by~~
9 ~~the Archivist as the Chairperson of the Advi-~~
10 ~~sory Committee.~~

11 ~~(B) Three members shall be appointed by~~
12 ~~the Director of the Office of Management and~~
13 ~~Budget.~~

14 ~~(C) One member shall be appointed by the~~
15 ~~Attorney General of the United States.~~

16 ~~(D) One member shall be appointed by the~~
17 ~~Administrator of General Services.~~

18 ~~(E) Additional members shall appointed by~~
19 ~~the Archivist, as determined appropriate by the~~
20 ~~Archivist, in consultation with the Director of~~
21 ~~the Office of Management and Budget.~~

22 ~~(2) PUBLIC SECTOR AND PRIVATE SECTOR BAL-~~
23 ~~ANCE.—~~The Archivist shall ensure that the Advisory
24 Committee maintain a balance between members
25 from the public sector and from the private sector.

1 (3) DEADLINE FOR APPOINTMENT.—Each
2 member of the Advisory Committee shall be ap-
3 pointed not later than 45 days after the date of en-
4 actment of this Act.

5 (c) PERIOD OF APPOINTMENT; VACANCIES.—

6 (1) IN GENERAL.—A member of the Advisory
7 Committee shall be appointed for the life of the
8 Committee.

9 (2) VACANCIES.—A vacancy in the Advisory
10 Committee—

11 (A) shall not affect the powers of the Advi-
12 sory Committee; and

13 (B) shall be filled in the same manner as
14 the original appointment.

15 (f) MEETINGS.—

16 (1) INITIAL MEETING.—Not later than 60 days
17 after the date on which all members of the Advisory
18 Committee have been appointed, the Advisory Com-
19 mittee shall hold the first meeting of the Advisory
20 Committee.

21 (2) FREQUENCY.—The Advisory Committee
22 shall meet at the call of the Chairperson, but not
23 less frequently than 3 times per year, at such time
24 and place as determined by the Chairperson.

1 (3) QUORUM.—A majority of the members of
2 the Advisory Committee shall constitute a quorum,
3 but a lesser number of members may hold hearings.

4 (4) RULES OF PROCEDURE.—The Advisory
5 Committee may establish rules for the conduct of
6 the business of the Advisory Committee if such rules
7 are not inconsistent with this section or other appli-
8 cable law.

9 (g) REPORTS.—

10 (1) IN GENERAL.—Not later than 2 years after
11 the date of enactment of this Act, the Advisory
12 Committee shall submit to the Archivist, the Com-
13 mittee on Homeland Security and Governmental Af-
14 fairs of the Senate, and the Committee on Oversight
15 and Accountability of the House of Representatives
16 a report providing a detailed statement of the find-
17 ings and conclusions of the Advisory Committee, to-
18 gether with any recommendations of the Advisory
19 Committee for legislation or administrative actions.

20 (2) INTERIM REPORTS.—The Advisory Com-
21 mittee may submit to the Archivist, the Committee
22 on Homeland Security and Governmental Affairs of
23 the Senate, and the Committee on Oversight and Ac-
24 countability of the House of Representatives interim
25 reports regarding the activities and findings of the

1 Advisory Committee, as determined appropriate by
2 the Advisory Committee.

3 (h) POWERS.—

4 (1) INFORMATION FROM FEDERAL AGENCIES.—

5 The Advisory Committee may secure directly from a
6 Federal department or agency such information as
7 the Advisory Committee considers necessary to carry
8 out this section, consistent with the protection of
9 classified national security information and statu-
10 torily protected information.

11 (2) POSTAL SERVICES.—The Advisory Com-
12 mittee may use the United States mails in the same
13 manner and under the same conditions as other de-
14 partments and agencies of the Federal Government.

15 (3) DONATIONS.—The Advisory Committee may
16 accept, use, and dispose of donations of services or
17 property.

18 (i) ADVISORY COMMITTEE PERSONNEL MATTERS.—

19 (1) IN GENERAL.—A member of the Advisory
20 Committee (other than a member who is appointed
21 to the Advisory Committee in connection with an-
22 other Federal appointment) shall not be considered
23 an employee of the Federal Government by reason of
24 any service as such a member, except for the pur-

1 poses of section 5703 of title 5, United States Code,
2 relating to travel expenses.

3 (2) PAY NOT PERMITTED.—A member of the
4 Advisory Committee described in paragraph (1) may
5 not receive pay by reason of service on the Com-
6 mittee.

7 (3) PROCUREMENT OF TEMPORARY AND INTER-
8 MITTENT SERVICES.—The Chairperson of the Advi-
9 sory Committee may procure temporary and inter-
10 mittent services under section 3109(b) of title 5,
11 United States Code, at rates for individuals that do
12 not exceed the daily equivalent of the annual rate of
13 basic pay prescribed for level V of the Executive
14 Schedule under section 5316 of that title.

15 (j) TERMINATION OF ADVISORY COMMITTEE.—The
16 Advisory Committee shall terminate on the date that is
17 90 days after the submission of the report required under
18 subsection (g)(1).

19 (k) AUTHORIZATION OF APPROPRIATIONS.—There is
20 authorized to be appropriated \$3,000,000 to carry out this
21 section for each of fiscal years 2025 and 2026.

22 (l) APPLICATION OF FACA.—Chapter 10 of title 5,
23 United States Code, shall apply to the Advisory Com-
24 mittee.

1 **SEC. 204. REGULATIONS.**

2 Section 2206 of title 44, United States Code, is
3 amended—

4 (1) by inserting “(a)” before “The Archivist”;

5 (2) in subsection (a), as so designated—

6 (A) in paragraph (1), by striking

7 “2203(f)(3)” and inserting “2203(g)(4)”;

8 (B) in paragraph (3), by striking “and” at

9 the end;

10 (C) in paragraph (4), by striking the pe-

11 riod and inserting “; and”; and

12 (D) by adding at the end the following:

13 “(5) provisions for establishing procedures for

14 documenting required metadata.”; and

15 (3) by adding at the end the following:

16 “(b) The Archivist shall issue, and shall regularly up-

17 date, implementation guidance with respect to the regula-

18 tions described in subsection (a)(5).”.

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

20 (a) *SHORT TITLE.*—*This Act may be cited as the*

21 *“Strengthening Oversight of Federal Records Act of 2024”.*

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

23 *this Act is as follows:*

Sec. 1. Short title; table of contents.

TITLE I—FEDERAL RECORDS REFORM

Sec. 101. Preservation of Federal electronic records.

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*TITLE II—ADDITIONAL REFORMS TO PRESERVE AND PROTECT
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Sec. 201. Unlawful removal, destruction of records.

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1 **TITLE I—FEDERAL RECORDS**
2 **REFORM**

3 **SEC. 101. PRESERVATION OF FEDERAL ELECTRONIC**
4 **RECORDS.**

5 (a) *PRESERVATION OF AGENCY ELECTRONIC*
6 *RECORDS.—Section 2911 of title 44, United States Code,*
7 *is amended—*

8 (1) *by striking subsection (a) and inserting the*
9 *following:*

10 “(a) *IN GENERAL.—An officer or employee of an execu-*
11 *utive agency shall not—*

12 “(1) *destroy or delete any record created, sent, or*
13 *received using a non-official electronic messaging ac-*
14 *count, including through any automatic mechanism,*
15 *unless the record has been copied or forwarded to an*
16 *official electronic messaging account of the officer or*
17 *employee; or*

18 “(2) *create, receive, or send a record using a*
19 *non-official electronic messaging account unless—*

1 “(A) the policies and procedures of the execu-
2 tive agency authorize such use by the officer or
3 employee;

4 “(B) the account is subject to records man-
5 agement controls to create and preserve readable
6 records; and

7 “(C) the officer or employee—

8 “(i) copies an official electronic mes-
9 saging account of the officer or employee in
10 the original creation or transmission of the
11 record; or

12 “(ii) forwards a complete copy of the
13 record to an official electronic messaging
14 account of the officer or employee not later
15 than 20 days after the original creation or
16 transmission of the record.”;

17 (2) in subsection (b), by inserting “, unless the
18 violation involves a disclosure, as defined in section
19 2302(a)(2) of title 5” before the period at the end; and

20 (3) in subsection (c)(1), by inserting “, including
21 social media and digital applications and platforms,”
22 after “messaging systems”.

23 (b) SAFEGUARDS.—Section 3105 of title 44, United
24 States Code, is amended, in the matter preceding paragraph
25 (1), by striking “against” and inserting “to ensure the ade-

1 *quate and proper documentation of the organization, func-*
 2 *tions, policies, decisions, procedures, and essential trans-*
 3 *actions of the Federal agency and to prevent”.*

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

6 *(1) in paragraph (15), by striking “and” at the*
 7 *end;*

8 *(2) in paragraph (16)(D), by striking the period*
 9 *at the end and inserting a semicolon; and*

10 *(3) by adding at the end the following:*

11 *“(17) the term ‘complete copy’ means a copy of*
 12 *all of the contents of a record, including the metadata*
 13 *with respect to the record; and*

14 *“(18) the term ‘readable’ means media that is re-*
 15 *trievable and usable for as long as needed to conduct*
 16 *Government business and to transfer permanent*
 17 *email records to the National Archives and Records*
 18 *Administration.”.*

19 **SEC. 102. WHISTLEBLOWER PROTECTIONS.**

20 *(a) DEFINITION.—In this section, the term “whistle-*
 21 *blower protections” has the meaning given that term in sec-*
 22 *tion 2302(c)(1) of title 5, United States Code.*

23 *(b) WHISTLEBLOWER PROTECTIONS.—Nothing in sec-*
 24 *tion 2911(a)(2) of title 44, United States Code, as amended*
 25 *by section 101, shall prevent or impair an officer or em-*

1 *ployee of an executive agency from receiving whistleblower*
 2 *protections.*

3 **SEC. 103. PRESERVATION OF ELECTRONIC MESSAGES OF**
 4 **CERTAIN OFFICIALS.**

5 *(a) IN GENERAL.—Chapter 29 of title 44, United*
 6 *States Code, is amended by adding at the end the following:*

7 **“§ 2913. Preservation of electronic messages of certain**
 8 **officials**

9 *“(a) REGULATIONS REQUIRED.—*

10 *“(1) IN GENERAL.—The Archivist shall promul-*
 11 *gate regulations governing Federal agency preserva-*
 12 *tion of electronic messages of employees, which shall,*
 13 *at a minimum—*

14 *“(A) require that the electronic messages of*
 15 *senior officers or senior employees of Federal*
 16 *agencies be designated as a permanent record, as*
 17 *defined in section 1220.18 of title 36, Code of*
 18 *Federal Regulations, or any successor thereto;*

19 *“(B) require that the electronic messages of*
 20 *senior officers or senior employees of Federal*
 21 *agencies—*

22 *“(i) be stored in accordance with*
 23 *guidelines prescribed by the Archivist; and*

24 *“(ii) are readily accessible for retrieval*
 25 *through electronic searches;*

1 “(C) establish general categories of positions
2 in Federal agencies that constitute senior officers
3 and senior employees; and

4 “(D) allow for the culling of transitory mes-
5 sages, messages that are not records, and per-
6 sonal messages as appropriate.

7 “(2) SCOPE.—The regulations promulgated
8 under paragraph (1) shall, at a minimum, apply to
9 electronic messages of—

10 “(A) the head of each Federal agency;

11 “(B) the principal assistant to the head of
12 each Federal agency, including a member of the
13 Armed Forces serving in a comparable position;

14 “(C) an officer or employee serving as a
15 deputy, or equivalent position, of an officer, em-
16 ployee, or member described in subparagraph (A)
17 or (B);

18 “(D) an employee serving as a staff assist-
19 ant to an officer, employee, or member described
20 in subparagraph (A) or (B), including a special
21 assistant, confidential assistant, military assist-
22 ant, and aide;

23 “(E) an officer or employee serving in a
24 principal management position at a Federal
25 agency, including the Chief Operating Officer,

1 *the Chief Information Officer, the Chief Knowl-*
2 *edge Officer, the Chief Technology Officer, the*
3 *Chief Financial Officer, and an equivalent of*
4 *such an officer;*

5 *“(F) the director, or equivalent position, of*
6 *a significant program office of a Federal agency;*

7 *“(G) a principal regional officer of a Fed-*
8 *eral agency, including a regional administrator,*
9 *or equivalent position;*

10 *“(H) an officer or employee serving in a po-*
11 *sition that routinely provides advice to or over-*
12 *sight of a Federal agency, including advice to or*
13 *oversight of the activities of an officer, employee,*
14 *or member described in subparagraph (A), (B),*
15 *(C), (E), (F), or (G), including an officer or em-*
16 *ployee serving as a general counsel, chief of staff,*
17 *or inspector general;*

18 *“(I) an officer or employee appointed by the*
19 *President, by and with the advice and consent of*
20 *the Senate;*

21 *“(J) any other officer or employee serving*
22 *in a position that predominantly creates perma-*
23 *nent records related to mission critical functions*
24 *or policy decisions of a Federal agency or that*
25 *are of historical significance; and*

1 “(K) any officer or employee serving in a
2 position described in subparagraph (A), (B), (C),
3 (D), (E), (F), (G), (H), (I), or (J) in an acting
4 capacity.

5 “(b) AGENCY REPORT TO ARCHIVIST.—

6 “(1) IN GENERAL.—Not later than the date spec-
7 ified in paragraph (2), and every 5 years thereafter,
8 the head of each Federal agency shall submit to the
9 Archivist a report on the compliance of the Federal
10 agency with subsection (a), including statistics on—

11 “(A) the number of senior officers and sen-
12 ior employees of the Federal agency whose elec-
13 tronic messages are being stored as permanent
14 records in accordance with guidelines prescribed
15 by the Archivist;

16 “(B) the volume of electronic messages of
17 senior officers and senior employees of the Fed-
18 eral agency designated as a permanent record
19 that are held by the Federal agency; and

20 “(C) the volume of total electronic messages
21 of officers and employees of the Federal agency
22 that are held by the Federal agency.

23 “(2) DEADLINE FOR INITIAL REPORTS.—The
24 date specified in this paragraph is the earlier of—

1 “(A) not later than 30 days after the date on
2 which the Archivist approves the list or schedule,
3 make the list or schedule available for public inspec-
4 tion;

5 “(B) make available and maintain the list or
6 schedule in an accessible electronic database on a
7 website of the National Archives and Records Admin-
8 istration, including the relevant crosswalk and ap-
9 praisal memo; and

10 “(C) ensure the list or schedule, and all related
11 materials, are organized in such fashion as to—

12 “(i) facilitate public understanding of the
13 operations of the records management program
14 of the Federal agency; and

15 “(ii) assist the Archivist in cataloging dis-
16 position authorities.

17 “(2) Not later than 60 days after the date of enactment
18 of the Strengthening Oversight of Federal Records Act of
19 2024, the head of each Federal agency shall submit to the
20 Archivist each list or schedule of records issued under sub-
21 section (a) before such date of enactment that is in effect
22 on such date of enactment, and all related materials, for
23 immediate publication in the database described in para-
24 graph (1).

1 “(3) *The database described in paragraph (1) shall be*
 2 *searchable and maintained as an open Government data*
 3 *asset, as defined in section 3502.*”.

4 (b) *REGULATION.*—Section 3302 of title 44, United
 5 States Code, is amended—

6 (1) *in paragraph (1), by striking the comma at*
 7 *the end and inserting a semicolon;*

8 (2) *in paragraph (2), by striking “, and” and*
 9 *inserting a semicolon;*

10 (3) *in paragraph (3), by striking the period at*
 11 *the end and inserting “; and”; and*

12 (4) *by adding at the end the following:*

13 “(4) *procedures and minimum standards of ease-*
 14 *of-use for public inspection and online maintenance*
 15 *of lists, schedules, and related materials pursuant to*
 16 *section 3303(b).*”.

17 **SEC. 105. CERTIFICATION REGARDING PRESERVATION OF**
 18 **RECORDS.**

19 (a) *IN GENERAL.*—Chapter 29 of title 44, United
 20 States Code, as amended by section 103, is amended by add-
 21 ing at the end the following:

22 **“§2914. Certification regarding preservation of**
 23 **records**

24 “The head of each Federal agency shall establish poli-
 25 cies and procedures under which each employee of the Fed-

1 eral agency shall, prior to separating from service as an
 2 employee of the Federal agency, submit to the head of the
 3 Federal agency a certification indicating whether the em-
 4 ployee has complied with the requirements under this chap-
 5 ter relating to the preservation of records.”.

6 (b) *CONFORMING AMENDMENT.*—The table of sections
 7 for chapter 29 of title 44, United States Code, as amended
 8 by section 103, is amended by adding at the end the fol-
 9 lowing:

“2914. Certification regarding preservation of records.”.

10 **TITLE II—ADDITIONAL REFORMS**
 11 **TO PRESERVE AND PROTECT**
 12 **RECORDS AND GOVERNMENT**
 13 **INTEGRITY**

14 **SEC. 201. UNLAWFUL REMOVAL, DESTRUCTION OF**
 15 **RECORDS.**

16 Section 3106 of title 44, United States Code, is amend-
 17 ed—

18 (1) by striking subsection (a) and inserting the
 19 following:

20 “(a) *FEDERAL AGENCY NOTIFICATION OF UNLAWFUL*
 21 *REMOVAL OR DESTRUCTION OF RECORDS.*—

22 “(1) *IN GENERAL.*—The head of each Federal
 23 agency shall notify the Archivist if the head of the
 24 Federal agency knows or has reason to believe that
 25 there is—

1 “(A) any actual, impending, or threatened
2 unlawful failure to create or removal, defacing,
3 alteration, corruption, deletion, erasure, or other
4 destruction of records in the custody of the Fed-
5 eral agency; or

6 “(B) any other repeated non-compliance by
7 any employee of the Federal agency with Federal
8 record-keeping requirements that the head of the
9 Federal agency has been unable to fully address.

10 “(2) REMEDY.—With the assistance of the Archi-
11 vist, the head of each Federal agency shall initiate ac-
12 tion through the Attorney General for—

13 “(A) fully recovering or restoring records
14 unlawfully removed from the Federal agency, in-
15 cluding records of another Federal agency that
16 have been transferred to the legal custody of that
17 Federal agency, or records that are defaced, al-
18 tered, corrupted, deleted, erased, or destroyed, to
19 the extent practicable; and

20 “(B) remedying any other repeated non-
21 compliance by any employee of the Federal agen-
22 cy with Federal record-keeping requirements.”;

23 (2) in subsection (b), by striking “shall request
24 the Attorney General” and all that follows and insert-
25 ing the following: “shall—

1 “(1) request the Attorney General to initiate
2 such an action;

3 “(2) notify the Committee on Homeland Security
4 and Governmental Affairs of the Senate and the Com-
5 mittee on Oversight and Accountability of the House
6 of Representatives;

7 “(3) include with the notification under para-
8 graph (2) any relevant evidence, analysis, and sup-
9 porting documentation pertinent to the incident; and

10 “(4) in coordination with the Attorney General,
11 make regular updates to the committees specified in
12 paragraph (2) on the status of efforts to remedy the
13 unlawful action or noncompliance.”; and

14 (3) by adding at the end the following:

15 “(c) *OTHER RECORDKEEPING VIOLATIONS.*—

16 “(1) *IN GENERAL.*—If the Archivist becomes
17 aware of an alleged violation by an employee of a
18 Federal agency of his or her recordkeeping obliga-
19 tions, the Archivist shall—

20 “(A) notify the head of the Federal agency
21 and coordinate with the Federal agency to deter-
22 mine whether a violation took place; and

23 “(B) subject to paragraph (2), refer the
24 matter to the head of the Federal agency for cor-
25 rective action, as necessary.

1 “(2) *AGENCIES WITH INSPECTORS GENERAL.*—If
2 *the Archivist makes a referral described in paragraph*
3 *(1)(B) to a Federal agency that has an Inspector*
4 *General (as defined in section 401 of title 5), the Ar-*
5 *chivist shall make a joint referral to the head of the*
6 *Federal agency and to the Inspector General of the*
7 *Federal agency.”.*

8 **SEC. 202. RECORDS MANAGEMENT INCORPORATION INTO**
9 **PERFORMANCE PLANS.**

10 *Section 4302 of title 5, United States Code, is amend-*
11 *ed—*

12 (1) *by redesignating subsections (c) and (d) as*
13 *subsections (d) and (e), respectively; and*

14 (2) *by inserting after subsection (b) the fol-*
15 *lowing:*

16 “(c) *The head of each agency, in consultation with the*
17 *Director of the Office of Personnel Management and the Ar-*
18 *chivist of the United States, shall develop criteria that in-*
19 *corporates records management requirements that should be*
20 *included in employees’ performance standards and re-*
21 *views.”.*

22 **SEC. 203. ESTABLISHMENT OF AN ADVISORY COMMITTEE**
23 **ON RECORDS AUTOMATION.**

24 (a) *ESTABLISHMENT.*—*There is established within the*
25 *National Archives and Records Administration an advisory*

1 *committee to be known as the “Advisory Committee on*
2 *Records Automation” (in this section referred to as the “Ad-*
3 *visory Committee”).*

4 (b) *PURPOSES.—The purposes of the Advisory Com-*
5 *mittee are—*

6 (1) *to encourage the efforts of the Government to*
7 *manage records through greater use of automation to*
8 *make electronic recordkeeping more efficient;*

9 (2) *to encourage the efforts of the Government to*
10 *more efficiently respond to access requests for records*
11 *of executive agencies;*

12 (3) *to issue recommendations relating to records*
13 *automation, including on how the Government should*
14 *use automated software to—*

15 (A) *automatically categorize records in con-*
16 *nection with the issuance of records schedules re-*
17 *quired under chapter 33 of title 44, United*
18 *States Code;*

19 (B) *search for responsive records; and*

20 (C) *assist in determining whether records*
21 *may be exempt from public disclosure; and*

22 (4) *to receive expert advice from public and pri-*
23 *vate sector sources with respect to the use of auto-*
24 *mated software to make the management of and ac-*
25 *cess to records of executive agencies more efficient.*

1 (c) *DUTIES.*—*The duties of the Advisory Committee*
2 *include providing advice and recommendations to the Ar-*
3 *chivist of the United States (in this section referred to as*
4 *the “Archivist”) and agencies on strategic, technical, finan-*
5 *cial, programmatic, and operational matters regarding*
6 *records automation.*

7 (d) *MEMBERSHIP.*—

8 (1) *COMPOSITION.*—*The Advisory Committee*
9 *shall be composed of not more than 15 members from*
10 *the public and private sectors as follows:*

11 (A) *Three members shall be appointed by*
12 *the Archivist, 1 of which shall be designated by*
13 *the Archivist as the Chairperson of the Advisory*
14 *Committee.*

15 (B) *Three members shall be appointed by*
16 *the Director of the Office of Management and*
17 *Budget.*

18 (C) *One member shall be appointed by the*
19 *Attorney General of the United States.*

20 (D) *One member shall be appointed by the*
21 *Administrator of General Services.*

22 (E) *Additional members shall appointed by*
23 *the Archivist, as determined appropriate by the*
24 *Archivist, in consultation with the Director of*
25 *the Office of Management and Budget.*

1 (2) *PUBLIC SECTOR AND PRIVATE SECTOR BAL-*
2 *ANCE.—The Archivist shall ensure that the Advisory*
3 *Committee maintains a balance between members*
4 *from the public sector and from the private sector.*

5 (3) *DEADLINE FOR APPOINTMENT.—Each mem-*
6 *ber of the Advisory Committee shall be appointed not*
7 *later than 45 days after the date of enactment of this*
8 *Act.*

9 (e) *PERIOD OF APPOINTMENT; VACANCIES.—*

10 (1) *IN GENERAL.—A member of the Advisory*
11 *Committee shall be appointed for the life of the Advi-*
12 *sory Committee.*

13 (2) *VACANCIES.—A vacancy in the Advisory*
14 *Committee—*

15 (A) *shall not affect the powers of the Advi-*
16 *sory Committee; and*

17 (B) *shall be filled in the same manner as*
18 *the original appointment.*

19 (f) *MEETINGS.—*

20 (1) *INITIAL MEETING.—Not later than 60 days*
21 *after the date on which all members of the Advisory*
22 *Committee have been appointed, the Advisory Com-*
23 *mittee shall hold the first meeting of the Advisory*
24 *Committee.*

1 (2) *FREQUENCY.*—*The Advisory Committee shall*
2 *meet at the call of the Chairperson of the Advisory*
3 *Committee, but not less frequently than 3 times per*
4 *year, at such time and place as determined by the*
5 *Chairperson.*

6 (3) *QUORUM.*—*A majority of the members of the*
7 *Advisory Committee shall constitute a quorum, but a*
8 *lesser number of members may hold hearings.*

9 (4) *RULES OF PROCEDURE.*—*The Advisory Com-*
10 *mittee may establish rules for the conduct of the busi-*
11 *ness of the Advisory Committee if such rules are not*
12 *inconsistent with this section or other applicable law.*

13 (5) *REPORTS.*—

14 (1) *IN GENERAL.*—*Not later than 2 years after*
15 *the date of enactment of this Act, the Advisory Com-*
16 *mittee shall submit to the Archivist, the Committee on*
17 *Homeland Security and Governmental Affairs of the*
18 *Senate, and the Committee on Oversight and Account-*
19 *ability of the House of Representatives a report pro-*
20 *viding a detailed statement of the findings and con-*
21 *clusions of the Advisory Committee, together with any*
22 *recommendations of the Advisory Committee for legis-*
23 *lation or administrative actions.*

24 (2) *INTERIM REPORTS.*—*The Advisory Com-*
25 *mittee may submit to the Archivist, the Committee on*

1 *Homeland Security and Governmental Affairs of the*
2 *Senate, and the Committee on Oversight and Account-*
3 *ability of the House of Representatives interim re-*
4 *ports regarding the activities and findings of the Ad-*
5 *visory Committee, as determined appropriate by the*
6 *Advisory Committee.*

7 *(h) POWERS.—*

8 *(1) INFORMATION FROM FEDERAL AGENCIES.—*
9 *The Advisory Committee may secure directly from a*
10 *Federal department or agency such information as*
11 *the Advisory Committee considers necessary to carry*
12 *out this section, consistent with the protection of clas-*
13 *sified national security information and statutorily*
14 *protected information.*

15 *(2) POSTAL SERVICES.—The Advisory Com-*
16 *mittee may use the United States mails in the same*
17 *manner and under the same conditions as other de-*
18 *partments and agencies of the Federal Government.*

19 *(3) DONATIONS.—The Advisory Committee may*
20 *accept, use, and dispose of donations of services or*
21 *property.*

22 *(i) ADVISORY COMMITTEE PERSONNEL MATTERS.—*

23 *(1) IN GENERAL.—A member of the Advisory*
24 *Committee (other than a member who is appointed to*
25 *the Advisory Committee in connection with another*

1 *Federal appointment) shall not be considered an em-*
2 *ployee of the Federal Government by reason of any*
3 *service as such a member, except for the purposes of*
4 *section 5703 of title 5, United States Code, relating*
5 *to travel expenses.*

6 (2) *PAY NOT PERMITTED.—A member of the Ad-*
7 *visory Committee described in paragraph (1) may not*
8 *receive pay by reason of service on the Committee.*

9 (3) *PROCUREMENT OF TEMPORARY AND INTER-*
10 *MITTENT SERVICES.—The Chairperson of the Advi-*
11 *sory Committee may procure temporary and inter-*
12 *mittent services under section 3109(b) of title 5,*
13 *United States Code, at rates for individuals that do*
14 *not exceed the daily equivalent of the annual rate of*
15 *basic pay prescribed for level V of the Executive*
16 *Schedule under section 5316 of that title.*

17 (j) *TERMINATION OF ADVISORY COMMITTEE.—The Ad-*
18 *visory Committee shall terminate on the date that is 90*
19 *days after the submission of the report required under sub-*
20 *section (g)(1).*

21 (k) *AUTHORIZATION OF APPROPRIATIONS.—There is*
22 *authorized to be appropriated \$500,000 to carry out this*
23 *section for each of fiscal years 2025 and 2026.*

24 (l) *APPLICATION OF FACCA.—Chapter 10 of title 5,*
25 *United States Code, shall apply to the Advisory Committee.*

1 **SEC. 204. REGULATIONS.**

2 *Section 2206 of title 44, United States Code, is amend-*
3 *ed—*

4 *(1) by inserting “(a)” before “The Archivist”;*

5 *(2) in subsection (a), as so designated—*

6 *(A) in paragraph (1), by striking*
7 *“2203(f)(3)” and inserting “2203(g)(4)”;*

8 *(B) in paragraph (3), by striking “and” at*
9 *the end;*

10 *(C) in paragraph (4), by striking the period*
11 *and inserting “; and”; and*

12 *(D) by adding at the end the following:*

13 *“(5) provisions for establishing procedures for*
14 *documenting required metadata.”; and*

15 *(3) by adding at the end the following:*

16 *“(b) The Archivist shall issue, and shall regularly up-*
17 *date, implementation guidance with respect to the regula-*
18 *tions described in subsection (a)(5).”.*

Calendar No. 548

118TH CONGRESS
2^D SESSION

S. 4042

[Report No. 118-235]

A BILL

To amend title 44, United States Code, to reform the management of Federal records, and for other purposes.

NOVEMBER 12, 2024

Reported with an amendment