

112TH CONGRESS
1ST SESSION

H. R. 1144

To increase the transparency of the Federal Government, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 2011

Mr. CUMMINGS (for himself, Mr. TOWNS, Mr. CLAY, Mrs. MALONEY, Ms. NORTON, Mr. KUCINICH, Mr. TIERNEY, Mr. LYNCH, Mr. COOPER, Mr. CONNOLLY of Virginia, Mr. QUIGLEY, Mr. DAVIS of Illinois, Mr. BRALEY of Iowa, Mr. WELCH, Mr. YARMUTH, Mr. MURPHY of Connecticut, and Ms. SPEIER) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

To increase the transparency of the Federal Government,
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 “Transparency and
5 Openness in Government Act”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—FEDERAL ADVISORY COMMITTEE ACT AMENDMENTS

- Sec. 101. Ensuring independent advice and expertise.
 Sec. 102. Preventing efforts to circumvent the Federal Advisory Committee Act and public disclosure.
 Sec. 103. Increasing transparency of advisory committees.
 Sec. 104. Comptroller General review and reports.
 Sec. 105. Application of Federal Advisory Committee Act to Trade Advisory Committees.
 Sec. 106. Definitions.
 Sec. 107. Effective date.

TITLE II—PRESIDENTIAL RECORDS ACT AMENDMENTS

- Sec. 201. Procedures for consideration of claims of constitutionally based privilege against disclosure.

TITLE III—PRESIDENTIAL LIBRARY DONATION REFORM

- Sec. 301. Presidential libraries.

TITLE IV—ELECTRONIC MESSAGE PRESERVATION

- Sec. 401. Preservation of electronic messages.
 Sec. 402. Presidential records.
 Sec. 403. Procedures to prevent unauthorized removal of classified records from National Archives.
 Sec. 404. Restrictions on access to presidential records.

TITLE V—GOVERNMENT ACCOUNTABILITY OFFICE
IMPROVEMENT

- Sec. 501. Authority to obtain information.
 Sec. 502. Administering oaths.
 Sec. 503. Agency reports.

1 **TITLE I—FEDERAL ADVISORY**
 2 **COMMITTEE ACT AMENDMENTS**

3 **SEC. 101. ENSURING INDEPENDENT ADVICE AND EXPER-**
 4 **TISE.**

5 (a) BAR ON POLITICAL LITMUS TESTS.—Section 9
 6 of the Federal Advisory Committee Act (5 U.S.C. App.)
 7 is amended—

8 (1) in the section heading by inserting “MEM-
 9 BERSHIP;” after “ADVISORY COMMITTEES;”;

1 (2) by redesignating subsections (b) and (c) as
2 subsections (e) and (f), respectively; and

3 (3) by inserting after subsection (a) the fol-
4 lowing:

5 “(b) APPOINTMENTS MADE WITHOUT REGARD TO
6 POLITICAL AFFILIATION OR ACTIVITY.—All appointments
7 to advisory committees shall be made without regard to
8 political affiliation or political activity, unless required by
9 Federal statute.”.

10 (b) MINIMIZING CONFLICTS OF INTEREST.—Section
11 9 of the Federal Advisory Committee Act (5 U.S.C. App.)
12 is further amended by inserting after subsection (b) (as
13 added by subsection (a)) the following:

14 “(c) PUBLIC NOMINATIONS OF COMMITTEE MEM-
15 BERS.—Prior to appointing members to an advisory com-
16 mittee, the head of an agency shall give interested persons
17 an opportunity to suggest potential committee members.
18 The agency shall include a request for comments in the
19 Federal Register notice required under subsection (a) and
20 provide a mechanism for interested persons to comment
21 through the official Web site of the agency. The agency
22 shall consider any comments submitted under this sub-
23 section in selecting the members of an advisory committee.

24 “(d) DESIGNATION OF COMMITTEE MEMBERS.—

1 “(1) An individual appointed to an advisory
2 committee who is not a full-time or permanent part-
3 time officer or employee of the Federal Government
4 shall be designated as—

5 “(A) a special government employee, if the
6 individual is providing advice based on the indi-
7 vidual’s expertise or experience; or

8 “(B) a representative, if the individual is
9 representing the views of an entity or entities
10 outside of the Federal Government.

11 “(2) An agency may not designate committee
12 members as representatives to avoid subjecting them
13 to Federal ethics rules and requirements.

14 “(3) The designated agency ethics official for
15 each agency shall review the members of each advi-
16 sory committee that reports to the agency to deter-
17 mine whether each member’s designation is appro-
18 priate, and to redesignate members if appropriate.
19 The designated agency ethics official shall certify to
20 the head of the agency that such review has been
21 made—

22 “(A) following the initial appointment of
23 members; and

1 “(B) at the time a committee’s charter is
2 renewed, or, in the case of a committee with an
3 indefinite charter, every 2 years.

4 “(4) The head of each agency shall inform each
5 individual appointed to an advisory committee that
6 reports to the agency whether the individual is ap-
7 pointed as a special government employee or as a
8 representative. The agency head shall provide each
9 committee member with an explanation of the dif-
10 ferences between special government employees and
11 representatives and a summary of applicable ethics
12 requirements. The agency head, acting through the
13 designated agency ethics official, shall obtain signed
14 and dated written confirmation from each committee
15 member that the member received and reviewed the
16 information required by this paragraph.

17 “(5) The Director of the Office of Government
18 Ethics shall provide guidance to agencies on what to
19 include in the summary of ethics requirements re-
20 quired by paragraph (4).

21 “(6) The head of each agency shall, to the ex-
22 tent practicable, develop and implement strategies to
23 minimize the need for written determinations under
24 section 208(b)(1) of title 18, United States Code.
25 Strategies may include such efforts as improving

1 outreach efforts to potential committee members and
2 seeking public input on potential committee mem-
3 bers.”.

4 (c) REGULATIONS IMPLEMENTING FACA.—Section
5 7(c) of the Federal Advisory Committee Act (5 U.S.C.
6 App.) is amended by inserting after “(c)” the following:
7 “The Administrator shall promulgate regulations as nec-
8 essary to implement this Act.”.

9 **SEC. 102. PREVENTING EFFORTS TO CIRCUMVENT THE**
10 **FEDERAL ADVISORY COMMITTEE ACT AND**
11 **PUBLIC DISCLOSURE.**

12 (a) DE FACTO MEMBERS.—Section 4 of the Federal
13 Advisory Committee Act (5 U.S.C. App.) is amended by
14 adding at the end the following:

15 “(d) TREATMENT OF INDIVIDUAL AS MEMBER.—An
16 individual who is not a full-time or permanent part-time
17 officer or employee of the Federal Government shall be
18 regarded as a member of a committee if the individual
19 regularly attends and fully participates in committee meet-
20 ings as if the individual were a member, even if the indi-
21 vidual does not have the right to vote or veto the advice
22 or recommendations of the advisory committee.”.

23 (b) SUBCOMMITTEES.—Section 4 of the Federal Ad-
24 visory Committee Act (5 U.S.C. App.) is amended by
25 striking subsection (a) and inserting the following:

1 “(a) APPLICATION.—The provisions of this Act or of
2 any rule, order, or regulation promulgated under this Act
3 shall apply to each advisory committee, including any sub-
4 committee or subgroup thereof, except to the extent that
5 any Act of Congress establishing any such advisory com-
6 mittee specifically provides otherwise. Any subcommittee
7 or subgroup that reports to a parent committee estab-
8 lished under section 9(a) is not required to comply with
9 section 9(f). In this subsection, the term ‘subgroup’ in-
10 cludes any working group, task force, or other entity
11 formed for the purpose of assisting the committee or any
12 subcommittee of the committee in its work.”.

13 (c) COMMITTEES CREATED UNDER CONTRACT.—
14 Section 3(2) of the Federal Advisory Committee Act (5
15 U.S.C. App.) is amended in the matter following subpara-
16 graph (C) by adding at the end the following: “An advi-
17 sory committee is considered to be established by an agen-
18 cy, agencies, or the President if it is formed, created, or
19 organized under contract, other transactional authority,
20 cooperative agreement, grant, or otherwise at the request
21 or direction of an agency, agencies, or the President.”.

22 (d) ADVISORY COMMITTEES CONTAINING SPECIAL
23 GOVERNMENT EMPLOYEES.—Section 4 of the Federal Ad-
24 visory Committee Act (5 U.S.C. App.) is further amended
25 by adding at the end the following new subsection:

1 “(e) SPECIAL GOVERNMENT EMPLOYEES.—Com-
2 mittee members appointed as special government employ-
3 ees shall not be considered full-time or permanent part-
4 time officers or employees of the Federal Government for
5 purposes of determining the applicability of this Act under
6 section 3(2).”.

7 **SEC. 103. INCREASING TRANSPARENCY OF ADVISORY COM-**
8 **MITTEES.**

9 (a) INFORMATION REQUIREMENT.—Section 11 of the
10 Federal Advisory Committee Act (5 U.S.C. App.) is
11 amended—

12 (1) by striking the section designation and
13 heading and inserting the following:

14 **“SEC. 11. DISCLOSURE OF INFORMATION.”;**

15 (2) by redesignating subsection (a) as sub-
16 section (d) and in that subsection—

17 (A) by inserting the following subsection
18 heading: “AVAILABILITY OF PAPER COPIES OF
19 TRANSCRIPTS.—”; and

20 (B) by inserting after “duplication,” the
21 following: “paper”;

22 (3) by striking “(b)” and inserting “(e) AGEN-
23 CY PROCEEDING DEFINED.—”; and

1 (4) by inserting before subsection (d), as redese-
2 gnated by paragraph (2), the following new sub-
3 sections:

4 “(a) IN GENERAL.—With respect to each advisory
5 committee, the head of the agency to which the advisory
6 committee reports shall make publicly available in accord-
7 ance with subsection (b) the following information:

8 “(1) The charter of the advisory committee.

9 “(2) A description of the process used to estab-
10 lish and appoint the members of the advisory com-
11 mittee, including the following:

12 “(A) The process for identifying prospec-
13 tive members.

14 “(B) The process of selecting members for
15 balance of viewpoints or expertise.

16 “(C) The reason each member was ap-
17 pointed to the committee.

18 “(D) A justification of the need for rep-
19 resentative members, if any.

20 “(3) A list of all current members, including,
21 for each member, the following:

22 “(A) The name of any person or entity
23 that nominated the member.

1 “(B) Whether the member is designated as
2 a special government employee or a representa-
3 tive.

4 “(C) In the case of a representative, the
5 individuals or entity whose viewpoint the mem-
6 ber represents.

7 “(4) A list of all members designated as special
8 government employees for whom written certifi-
9 cations were made under section 208(b) of title 18,
10 United States Code, a copy of each such certifi-
11 cation, a summary description of the conflict necessi-
12 tating the certification, and the reason for granting
13 the certification.

14 “(5) Any recusal agreement made by a member
15 or any recusal known to the agency that occurs dur-
16 ing the course of a meeting or other work of the
17 committee.

18 “(6) A summary of the process used by the ad-
19 visory committee for making decisions.

20 “(7) Transcripts or audio or video recordings of
21 all meetings of the committee.

22 “(8) Any written determination by the Presi-
23 dent or the head of the agency to which the advisory
24 committee reports, pursuant to section 10(d), to

1 close a meeting or any portion of a meeting and the
2 reasons for such determination.

3 “(9) Notices of future meetings of the com-
4 mittee.

5 “(10) Any additional information considered
6 relevant by the head of the agency to which the advi-
7 sory committee reports.

8 “(b) MANNER OF DISCLOSURE.—

9 “(1) Except as provided in paragraph (2), the
10 head of an agency shall make the information re-
11 quired to be disclosed under this section available
12 electronically on the official public Internet site of
13 the agency at least 15 calendar days before each
14 meeting of an advisory committee. If the head of the
15 agency determines that such timing is not prac-
16 ticable for any required information, he shall make
17 the information available as soon as practicable but
18 no later than 48 hours before the next meeting of
19 the committee. An agency may withhold from disclo-
20 sure any information that would be exempt from dis-
21 closure under section 552 of title 5, United States
22 Code.

23 “(2) The head of an agency shall make avail-
24 able electronically, on the official public Internet site
25 of the agency, a transcript or audio or video record-

1 ing of each advisory committee meeting as required
2 by subsection (a)(6) not later than 30 calendar days
3 after the meeting.

4 “(c) PROVISION OF INFORMATION BY ADMINIS-
5 TRATOR OF GENERAL SERVICES.—The Administrator of
6 General Services shall provide, on the official public Inter-
7 net site of the General Services Administration, electronic
8 access to the information made available by each agency
9 under this section.”.

10 (b) CHARTER FILING.—Section 9(f) of the Federal
11 Advisory Committee Act (5 U.S.C. App.), as redesignated
12 by section 101, is amended—

13 (1) by striking “with (1) the Administrator,”
14 and all that follows through “, or” and inserting
15 “(1) with the Administrator and”;

16 (2) by striking “and” at the end of subpara-
17 graph (I);

18 (3) by striking the period and inserting a semi-
19 colon at the end of subparagraph (J); and

20 (4) by adding at the end the following new sub-
21 paragraphs:

22 “(K) the authority under which the committee
23 is established;

1 “(L) the estimated number of members and a
2 description of the expertise needed to carry out the
3 objectives of the committee;

4 “(M) a description of whether the committee
5 will be composed of special government employees,
6 representatives, or members from both categories;
7 and

8 “(N) whether the committee has the authority
9 to create subcommittees and if so, the agency official
10 authorized to exercise such authority.”.

11 **SEC. 104. COMPTROLLER GENERAL REVIEW AND REPORTS.**

12 (a) REVIEW.—The Comptroller General of the United
13 States shall review compliance by agencies with the Fed-
14 eral Advisory Committee Act, as amended by this title,
15 including whether agencies are appropriately appointing
16 advisory committee members as either special government
17 employees or representatives.

18 (b) REPORT.—The Comptroller General shall submit
19 to the committees described in subsection (c) two reports
20 on the results of the review, as follows:

21 (1) The first report shall be submitted not later
22 than one year after the date of promulgation of reg-
23 ulations under section 101.

1 (2) The second report shall be submitted not
2 later than five years after such date of promulgation
3 of regulations.

4 (c) COMMITTEES.—The committees described in this
5 subsection are the Committee on Oversight and Govern-
6 ment Reform of the House of Representatives and the
7 Committee on Homeland Security and Governmental Af-
8 fairs of the Senate.

9 **SEC. 105. APPLICATION OF FEDERAL ADVISORY COM-**
10 **MITTEE ACT TO TRADE ADVISORY COMMIT-**
11 **TEES.**

12 Section 135(f)(2)(A) of the Trade Act of 1974 (19
13 U.S.C. 2155) is amended by striking “subsection (a) and
14 (b) of sections 10 and 11 of the Federal Advisory Com-
15 mittee Act” and inserting “subsections (a) and (b) of sec-
16 tion 10 and subsections (a)(7), (a)(8), (a)(9), (d), and (e)
17 of section 11 of the Federal Advisory Committee Act”.

18 **SEC. 106. DEFINITIONS.**

19 Section 3 of the Federal Advisory Committee Act (5
20 U.S.C. App.) is amended by adding at the end the fol-
21 lowing new paragraph:

22 “(5) The term ‘special Government employee’
23 has the same meaning as in section 202(a) of title
24 18, United States Code.”.

1 **SEC. 107. EFFECTIVE DATE.**

2 This title shall take effect 30 days after the date of
3 the enactment of this Act.

4 **TITLE II—PRESIDENTIAL**
5 **RECORDS ACT AMENDMENTS**

6 **SEC. 201. PROCEDURES FOR CONSIDERATION OF CLAIMS**
7 **OF CONSTITUTIONALLY BASED PRIVILEGE**
8 **AGAINST DISCLOSURE.**

9 (a) IN GENERAL.—Chapter 22 of title 44, United
10 States Code, is amended by adding at the end the fol-
11 lowing:

12 **“§ 2208. Claims of constitutionally based privilege**
13 **against disclosure**

14 “(a)(1) When the Archivist determines under this
15 chapter to make available to the public any Presidential
16 record that has not previously been made available to the
17 public, the Archivist shall—

18 “(A) promptly provide notice of such deter-
19 mination to—

20 “(i) the former President during whose
21 term of office the record was created; and

22 “(ii) the incumbent President; and

23 “(B) make the notice available to the public.

24 “(2) The notice under paragraph (1)—

25 “(A) shall be in writing; and

1 “(B) shall include such information as may be
2 prescribed in regulations issued by the Archivist.

3 “(3)(A) Upon the expiration of the 60-day period (ex-
4 cepting Saturdays, Sundays, and legal public holidays) be-
5 ginning on the date the Archivist provides notice under
6 paragraph (1)(A), the Archivist shall make available to the
7 public the Presidential record covered by the notice, except
8 any record (or reasonably segregable part of a record) with
9 respect to which the Archivist receives from a former
10 President or the incumbent President notification of a
11 claim of constitutionally based privilege against disclosure
12 under subsection (b).

13 “(B) A former President or the incumbent President
14 may extend the period under subparagraph (A) once for
15 not more than 30 additional days (excepting Saturdays,
16 Sundays, and legal public holidays) by filing with the Ar-
17 chivist a statement that such an extension is necessary
18 to allow an adequate review of the record.

19 “(C) Notwithstanding subparagraphs (A) and (B), if
20 the 60-day period under subparagraph (A), or any exten-
21 sion of that period under subparagraph (B), would other-
22 wise expire during the 6-month period after the incumbent
23 President first takes office, then that 60-day period or ex-
24 tension, respectively, shall expire at the end of that 6-
25 month period.

1 “(b)(1) For purposes of this section, the decision to
2 assert any claim of constitutionally based privilege against
3 disclosure of a Presidential record (or reasonably seg-
4 regable part of a record) must be made personally by a
5 former President or the incumbent President, as applica-
6 ble.

7 “(2) A former President or the incumbent President
8 shall notify the Archivist, the Committee on Oversight and
9 Government Reform of the House of Representatives, and
10 the Committee on Homeland Security and Governmental
11 Affairs of the Senate of a privilege claim under paragraph
12 (1) on the same day that the claim is asserted under such
13 paragraph.

14 “(c)(1) If a claim of constitutionally based privilege
15 against disclosure of a Presidential record (or reasonably
16 segregable part of a record) is asserted under subsection
17 (b) by a former President, the Archivist shall consult with
18 the incumbent President, as soon as practicable during the
19 period specified in paragraph (2)(A), to determine whether
20 the incumbent President will uphold the claim asserted by
21 the former President.

22 “(2)(A) Not later than the end of the 30-day period
23 beginning on the date of which the Archivist receives noti-
24 fication from a former President of the assertion of a
25 claim of constitutionally based privilege against disclosure,

1 the Archivist shall provide notice to the former President
2 and the public of the decision of the incumbent President
3 under paragraph (1) regarding the claim.

4 “(B) If the incumbent President upholds the claim
5 of privilege asserted by the former President, the Archivist
6 shall not make the Presidential record (or reasonably seg-
7 regable part of a record) subject to the claim publicly
8 available unless—

9 “(i) the incumbent President withdraws the de-
10 cision upholding the claim of privilege asserted by
11 the former President; or

12 “(ii) the Archivist is otherwise directed by a
13 final court order that is not subject to appeal.

14 “(C) If the incumbent President determines not to
15 uphold the claim of privilege asserted by the former Presi-
16 dent, or fails to make the determination under paragraph
17 (1) before the end of the period specified in subparagraph
18 (A), the Archivist shall release the Presidential record sub-
19 ject to the claim at the end of the 90-day period beginning
20 on the date on which the Archivist received notification
21 of the claim, unless otherwise directed by a court order
22 in an action initiated by the former President under sec-
23 tion 2204(e) of this title or by a court order in another
24 action in Federal court.

1 “(d) The Archivist shall not make publicly available
2 a Presidential record (or reasonably segregable part of a
3 record) that is subject to a privilege claim asserted by the
4 incumbent President unless—

5 “(1) the incumbent President withdraws the
6 privilege claim; or

7 “(2) the Archivist is otherwise directed by a
8 final court order that is not subject to appeal.

9 “(e) The Archivist shall adjust any otherwise applica-
10 ble time period under this section as necessary to comply
11 with the return date of any congressional subpoena, judi-
12 cial subpoena, or judicial process.”.

13 (b) RESTRICTIONS.—Section 2204 of title 44, United
14 States Code (relating to restrictions on access to presi-
15 dential records) is amended by adding at the end the fol-
16 lowing new subsection:

17 “(f) The Archivist shall not make available any origi-
18 nal presidential records to any individual claiming access
19 to any presidential record as a designated representative
20 under section 2205(3) if that individual has been convicted
21 of a crime relating to the review, retention, removal, or
22 destruction of records of the Archives.”.

23 (c) CONFORMING AMENDMENTS.—(1) Section
24 2204(d) of title 44, United States Code, is amended by
25 inserting “, except section 2208,” after “chapter”.

1 (2) Section 2205 of title 44, United States Code, is
2 amended by inserting “and 2208” after “2204”,

3 (3) Section 2207 of title 44, United States Code, is
4 amended in the second sentence by inserting “, except sec-
5 tion 2208,” after “chapter”.

6 (d) CLERICAL AMENDMENT.—The table of sections
7 at the beginning of chapter 22 of title 44, United States
8 Code, is amended by adding at the end the following:

“2208. Claims of constitutionally based privilege against disclosure.”.

9 (e) RULE OF CONSTRUCTION.—Nothing in the
10 amendment made by subsection (c)(3) shall be construed
11 to—

12 (1) affect the requirement of section 2207 of
13 title 44, United States Code, that Vice Presidential
14 records shall be subject to chapter 22 of that title
15 in the same manner as Presidential records; or

16 (2) affect any claim of constitutionally based
17 privilege by a President or former President with re-
18 spect to a Vice Presidential record.

19 **TITLE III—PRESIDENTIAL**
20 **LIBRARY DONATION REFORM**

21 **SEC. 301. PRESIDENTIAL LIBRARIES.**

22 (a) IN GENERAL.—Section 2112 of title 44, United
23 States Code, is amended by adding at the end the fol-
24 lowing new subsection:

1 “(h)(1) Any Presidential library fundraising organi-
2 zation shall submit on a quarterly basis, in accordance
3 with paragraph (2), information with respect to every con-
4 tributor who gave the organization a contribution or con-
5 tributions (whether monetary or in-kind) totaling \$200 or
6 more for the quarterly period.

7 “(2) For purposes of paragraph (1)—

8 “(A) the entities to which information shall be
9 submitted under that paragraph are the Administra-
10 tion, the Committee on Oversight and Government
11 Reform of the House of Representatives, and the
12 Committee on Homeland Security and Governmental
13 Affairs of the Senate;

14 “(B) the dates by which information shall be
15 submitted under that paragraph are April 15, July
16 15, October 15, and January 15 of each year and
17 of the following year (for the fourth quarterly filing);

18 “(C) the requirement to submit information
19 under that paragraph shall continue until the later
20 of the following occurs:

21 “(i) The Archivist has accepted, taken title
22 to, or entered into an agreement to use any
23 land or facility for the archival depository.

24 “(ii) The President whose archives are con-
25 tained in the depository no longer holds the Of-

1 fice of President and a period of four years has
2 expired (beginning on the date the President
3 left the Office).

4 “(3) In this subsection:

5 “(A) The term ‘Presidential library fundraising
6 organization’ means an organization that is estab-
7 lished for the purpose of raising funds for creating,
8 maintaining, expanding, or conducting activities at—

9 “(i) a Presidential archival depository; or

10 “(ii) any facilities relating to a Presidential
11 archival depository.

12 “(B) The term ‘information’ means the fol-
13 lowing:

14 “(i) The amount or value of each contribu-
15 tion made by a contributor referred to in para-
16 graph (1) in the quarter covered by the submis-
17 sion.

18 “(ii) The source of each such contribution,
19 and the address of the entity or individual that
20 is the source of the contribution.

21 “(iii) If the source of such a contribution
22 is an individual, the occupation of the indi-
23 vidual.

24 “(iv) The date of each such contribution.

1 “(4) The Archivist shall make available to the public
2 through the Internet (or a successor technology readily
3 available to the public) as soon as is practicable after each
4 quarterly filing any information that is submitted under
5 paragraph (1). The information shall be made available
6 without a fee or other access charge, in a searchable, sort-
7 able, and downloadable database.

8 “(5)(A) It shall be unlawful for any person who
9 makes a contribution described in paragraph (1) to know-
10 ingly and willfully submit false material information or
11 omit material information with respect to the contribution
12 to an organization described in such paragraph.

13 “(B) The penalties described in section 1001 of title
14 18, United States Code, shall apply with respect to a viola-
15 tion of subparagraph (A) in the same manner as a viola-
16 tion described in such section.

17 “(6)(A) It shall be unlawful for any Presidential li-
18 brary fundraising organization to knowingly and willfully
19 submit false material information or omit material infor-
20 mation under paragraph (1).

21 “(B) The penalties described in section 1001 of title
22 18, United States Code, shall apply with respect to a viola-
23 tion of subparagraph (A) in the same manner as a viola-
24 tion described in such section.

1 “(7)(A) It shall be unlawful for a person to knowingly
2 and willfully—

3 “(i) make a contribution described in paragraph
4 (1) in the name of another person;

5 “(ii) permit his or her name to be used to effect
6 a contribution described in paragraph (1); or

7 “(iii) accept a contribution described in para-
8 graph (1) that is made by one person in the name
9 of another person.

10 “(B) The penalties set forth in section 309(d) of the
11 Federal Election Campaign Act of 1971 (2 U.S.C.
12 437g(d)) shall apply to a violation of subparagraph (A)
13 in the same manner as if such violation were a violation
14 of section 316(b)(3) of such Act (2 U.S.C. 441b(b)(3)).

15 “(8) The Archivist shall promulgate regulations for
16 the purpose of carrying out this subsection.”.

17 (b) APPLICABILITY.—Section 2112(h) of title 44,
18 United States Code (as added by subsection (a))—

19 (1) shall apply to an organization established
20 for the purpose of raising funds for creating, main-
21 taining, expanding, or conducting activities at a
22 Presidential archival depository or any facilities re-
23 lating to a Presidential archival depository before,
24 on or after the date of the enactment of this Act;
25 and

1 (2) shall only apply with respect to contribu-
2 tions (whether monetary or in-kind) made after the
3 date of the enactment of this Act.

4 **TITLE IV—ELECTRONIC**
5 **MESSAGE PRESERVATION**

6 **SEC. 401. PRESERVATION OF ELECTRONIC MESSAGES.**

7 (a) REQUIREMENT FOR PRESERVATION OF ELEC-
8 TRONIC MESSAGES.—

9 (1) IN GENERAL.—Chapter 29 of title 44,
10 United States Code, is amended by adding at the
11 end the following new section:

12 **“§ 2911. Electronic messages**

13 “(a) REGULATIONS REQUIRED.—Not later than 18
14 months after the date of the enactment of this section,
15 the Archivist shall promulgate regulations governing agen-
16 cy preservation of electronic messages that are records.
17 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 of this title;

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

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

5 “(4) establish a process to certify that Federal
6 agencies’ electronic records management systems
7 meet the functional requirements established under
8 paragraph (3); and

9 “(5) include timelines for agency compliance
10 with the regulations that ensure compliance as expe-
11 ditiously as practicable but not later than four years
12 after the date of the enactment of this section.

13 “(b) COVERAGE OF OTHER ELECTRONIC
14 RECORDS.—To the extent practicable, the regulations pro-
15 mulgated under subsection (a) shall also include require-
16 ments for the capture, management, and preservation of
17 other electronic records.

18 “(c) COMPLIANCE BY FEDERAL AGENCIES.—Each
19 Federal agency shall comply with the regulations promul-
20 gated under subsection (a).

21 “(d) REVIEW OF REGULATIONS REQUIRED.—The
22 Archivist shall periodically review and, as necessary,
23 amend the regulations promulgated under this section.

24 “(e) REPORTS ON IMPLEMENTATION OF REGULA-
25 TIONS.—

1 “(1) AGENCY REPORT TO ARCHIVIST.—Not
2 later than four years after the date of the enactment
3 of this section, the head of each Federal agency shall
4 submit to the Archivist a report on the agency’s
5 compliance with the regulations promulgated under
6 this section.

7 “(2) ARCHIVIST REPORT TO CONGRESS.—Not
8 later than 90 days after receipt of all reports re-
9 quired by paragraph (1), the Archivist shall submit
10 to the Committee on Homeland Security and Gov-
11 ernmental Affairs of the Senate and the Committee
12 on Oversight and Government Reform of the House
13 of Representatives a report on Federal agency com-
14 pliance with the regulations promulgated under this
15 section.”.

16 (2) CLERICAL AMENDMENT.—The table of sec-
17 tions for chapter 29 of title 44, United States Code,
18 is amended by adding after the item relating to sec-
19 tion 2910 the following new item:

“2911. Electronic messages.”.

20 (b) DEFINITIONS.—Section 2901 of title 44, United
21 States Code, is amended—

22 (1) by striking “and” at the end of paragraph
23 (14);

24 (2) by striking the period at the end of para-
25 graph (15) and inserting a semicolon; and

1 (3) by adding at the end the following new
2 paragraphs:

3 “(16) the term ‘electronic messages’ means
4 electronic mail and other electronic messaging sys-
5 tems that are used for purposes of communicating
6 between individuals; and

7 “(17) the term ‘electronic records management
8 system’ means software designed to manage elec-
9 tronic records, including by—

10 “(A) categorizing and locating records;

11 “(B) ensuring that records are retained as
12 long as necessary;

13 “(C) identifying records that are due for
14 disposition; and

15 “(D) ensuring the storage, retrieval, and
16 disposition of records.”.

17 **SEC. 402. PRESIDENTIAL RECORDS.**

18 (a) ADDITIONAL REGULATIONS RELATING TO PRESI-
19 DENTIAL RECORDS.—

20 (1) IN GENERAL.—Section 2206 of title 44,
21 United States Code, is amended—

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

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

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

2 “(5) provisions for establishing standards nec-
3 essary for the economical and efficient management
4 of electronic Presidential records during the Presi-
5 dent’s term of office, including—

6 “(A) records management controls nec-
7 essary for the capture, management, and pres-
8 ervation of electronic messages;

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

13 “(C) a process to certify the electronic
14 records management system to be used by the
15 President for the purposes of complying with
16 the requirements in subparagraphs (A) and
17 (B).”.

18 (2) DEFINITION.—Section 2201 of title 44,
19 United States Code, is amended by adding at the
20 end the following new paragraphs:

21 “(5) The term ‘electronic messages’ has the
22 meaning provided in section 2901(16) of this title.

23 “(6) The term ‘electronic records management
24 system’ has the meaning provided in section
25 2901(17) of this title.”.

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

3 (1) CERTIFICATION REQUIRED.—Chapter 22 of
4 title 44, United States Code, as amended by section
5 201, is further amended by adding at the end the
6 following new section:

7 **“§ 2209. Certification of the President’s management**
8 **of Presidential records**

9 “(a) ANNUAL CERTIFICATION.—The Archivist shall
10 annually certify whether the electronic records manage-
11 ment controls established by the President meet require-
12 ments under sections 2203(a) and 2206(5) of this title.

13 “(b) REPORT TO CONGRESS.—The Archivist shall re-
14 port annually to the Committee on Homeland Security and
15 Governmental Affairs of the Senate and the Committee
16 on Oversight and Government Reform of the House of
17 Representatives on the status of the certification.”.

18 (2) CLERICAL AMENDMENT.—The table of sec-
19 tions for chapter 22 of title 44, United States Code,
20 as amended by section 201, is further amended by
21 adding at the end the following new item:

“2209. Certification of the President’s management of Presidential records.”.

22 (c) REPORT TO CONGRESS.—Section 2203(f) of title
23 44, United States Code, is amended by adding at the end
24 the following:

1 “(4) One year following the conclusion of a Presi-
2 dent’s term of office, or if a President serves consecutive
3 terms one year following the conclusion of the last term,
4 the Archivist shall submit to the Committee on Homeland
5 Security and Governmental Affairs of the Senate and the
6 Committee on Oversight and Government Reform of the
7 House of Representatives a report on—

8 “(A) the volume and format of electronic Presi-
9 dential records deposited into that President’s Presi-
10 dential archival depository; and

11 “(B) whether the electronic records manage-
12 ment controls of that President met the require-
13 ments under sections 2203(a) and 2206(5) of this
14 title.”.

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

18 **SEC. 403. PROCEDURES TO PREVENT UNAUTHORIZED RE-**
19 **MOVAL OF CLASSIFIED RECORDS FROM NA-**
20 **TIONAL ARCHIVES.**

21 (a) IN GENERAL.—The Archivist of the United
22 States shall prescribe internal procedures to prevent the
23 unauthorized removal of classified records from the Na-
24 tional Archives and Records Administration or the de-
25 struction or damage of such records, including when such

1 records are accessed or searched electronically. The proce-
2 dures shall apply to all National Archives and Records Ad-
3 ministration facilities authorized to store classified records
4 and include the following prohibitions:

5 (1) No person, other than covered personnel,
6 shall view classified records in any room that is not
7 secure except in the presence of National Archives
8 and Records Administration personnel or under
9 video surveillance.

10 (2) No person, other than covered personnel,
11 shall at any time be left alone with classified
12 records, unless that person is under video surveil-
13 lance.

14 (3) No person, other than covered personnel,
15 shall conduct any review of classified records while
16 in the possession of any cell phone or other personal
17 communication device.

18 (4) All persons seeking access to review classi-
19 fied records, as a precondition to such access, must
20 consent to a search of their belongings upon conclu-
21 sion of their records review.

22 (5) All notes and other writings prepared by
23 persons other than covered personnel during the
24 course of a review of classified records shall be re-
25 tained by the National Archives and Records Admin-

1 istration in a secure facility until such notes and
2 other writings are determined to be unclassified, are
3 declassified, or are securely transferred to another
4 secure facility.

5 (b) DEFINITIONS.—In this section:

6 (1) The term “records” has the meaning pro-
7 vided in section 3301 of title 44, United States
8 Code.

9 (2) The term “covered personnel” means any
10 individual—

11 (A) who has an appropriate and necessary
12 reason for accessing classified records, as deter-
13 mined by the Archivist; and

14 (B) who is either—

15 (i) an officer or employee of the Fed-
16 eral Government with appropriate security
17 clearances; or

18 (ii) any personnel with appropriate se-
19 curity clearances of a Federal contractor
20 authorized in writing to act for purposes of
21 this section by an officer or employee of
22 the Federal Government.

1 **SEC. 404. RESTRICTIONS ON ACCESS TO PRESIDENTIAL**
 2 **RECORDS.**

3 Section 2204 of title 44, United States Code (relating
 4 to restrictions on access to presidential records) is amend-
 5 ed by adding at the end the following new subsection:

6 “(f) The Archivist shall not make available any origi-
 7 nal presidential records to any individual claiming access
 8 to any presidential record as a designated representative
 9 under section 2205(3) of this title if that individual has
 10 been convicted of a crime relating to the review, retention,
 11 removal, or destruction of records of the Archives.”.

12 **TITLE V—GOVERNMENT AC-**
 13 **COUNTABILITY OFFICE IM-**
 14 **PROVEMENT**

15 **SEC. 501. AUTHORITY TO OBTAIN INFORMATION.**

16 (a) **AUTHORITY TO OBTAIN RECORDS.**—Section 716
 17 of title 31, United States Code, is amended in subsection
 18 (a)—

19 (1) by striking “(a)” and inserting “(2)”; and
 20 (2) by inserting after the section heading the
 21 following:

22 “(a)(1) The Comptroller General is authorized to ob-
 23 tain such agency records as the Comptroller General re-
 24 quires to discharge his duties (including audit, evaluation,
 25 and investigative duties), including through the bringing
 26 of civil actions under this section. In reviewing a civil ac-

1 tion under this section, the court shall recognize the con-
2 tinuing force and effect of the authorization in the pre-
3 ceding sentence until such time as the authorization is re-
4 pealed pursuant to law.”.

5 (b) COPIES AND INTERVIEWS.—Section 716(a) of
6 title 31, United States Code, as amended by subsection
7 (a), is further amended in the second sentence of para-
8 graph (2) by striking “inspect an agency record” and in-
9 serting “inspect, and make and retain copies of, an agency
10 record and interview agency officers and employees”.

11 (c) RULES OF CONSTRUCTION.—Section 716 of title
12 31, United States Code, is amended by adding at the end
13 the following new subsection:

14 “(f) No provision of any law in existence on the date
15 of the enactment of this section or enacted after such date
16 shall be construed to limit, amend, or supersede the au-
17 thority of the Comptroller General to obtain any informa-
18 tion, to inspect any record, or to interview any officer or
19 employee under this section, except to the extent such pro-
20 vision expressly and specifically refers to this section and
21 provides for such limitation, amendment, or superses-
22 sion.”.

23 **SEC. 502. ADMINISTERING OATHS.**

24 Paragraph (4) of section 711 of title 31, United
25 States Code, is amended to read as follows:

1 “(4) administer oaths to witnesses, except that,
2 in matters other than auditing and settling accounts,
3 the authority of an officer or employee to administer
4 oaths to witnesses pursuant to a delegation under
5 paragraph (2) shall not be available without the
6 prior express approval of the Comptroller General
7 (or a designee).”.

8 **SEC. 503. AGENCY REPORTS.**

9 Section 720(b) of title 31, United States Code, is
10 amended—

11 (1) in the matter preceding paragraph (1), by
12 inserting “or planned” after “action taken”; and

13 (2) by amending paragraph (1) to read as fol-
14 lows:

15 “(1) the Committee on Homeland Security and
16 Governmental Affairs of the Senate, the Committee
17 on Oversight and Government Operations of the
18 House of Representatives, the congressional commit-
19 tees with jurisdiction over the agency program or ac-
20 tivity that is the subject of the recommendation, and
21 the Government Accountability Office before the
22 61st day after the date of the report; and”.

○