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(Original Signature of Member)

112TH CONGRESS
1ST SESSION

H. R.

To increase the transparency of the Federal Government, 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 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;”;

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

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

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

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

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

22 “(d) DESIGNATION OF COMMITTEE MEMBERS.—

23 “(1) An individual appointed to an advisory
24 committee who is not a full-time or permanent part-

1 time officer or employee of the Federal Government
2 shall be designated as—

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

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

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

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

20 “(A) following the initial appointment of
21 members; and

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

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

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

18 “(6) The head of each agency shall, to the ex-
19 tent practicable, develop and implement strategies to
20 minimize the need for written determinations under
21 section 208(b)(1) of title 18, United States Code.
22 Strategies may include such efforts as improving
23 outreach efforts to potential committee members and
24 seeking public input on potential committee mem-
25 bers.”.

1 (c) REGULATIONS IMPLEMENTING FACA.—Section
2 7(c) of the Federal Advisory Committee Act (5 U.S.C.
3 App.) is amended by inserting after “(c)” the following:
4 “The Administrator shall promulgate regulations as nec-
5 essary to implement this Act.”.

6 **SEC. 102. PREVENTING EFFORTS TO CIRCUMVENT THE**
7 **FEDERAL ADVISORY COMMITTEE ACT AND**
8 **PUBLIC DISCLOSURE.**

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

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

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

23 “(a) APPLICATION.—The provisions of this Act or of
24 any rule, order, or regulation promulgated under this Act
25 shall apply to each advisory committee, including any sub-

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

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

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

23 “(e) SPECIAL GOVERNMENT EMPLOYEES.—Com-
24 mittee members appointed as special government employ-
25 ees shall not be considered full-time or permanent part-

1 time officers or employees of the Federal Government for
2 purposes of determining the applicability of this Act under
3 section 3(2).”.

4 **SEC. 103. INCREASING TRANSPARENCY OF ADVISORY COM-**
5 **MITTEES.**

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

9 (1) by striking the section designation and
10 heading and inserting the following:

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

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

14 (A) by inserting the following subsection
15 heading: “AVAILABILITY OF PAPER COPIES OF
16 TRANSCRIPTS.—”; and

17 (B) by inserting after “duplication,” the
18 following: “paper”;

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

21 (4) by inserting before subsection (d), as redес-
22 igned by paragraph (2), the following new sub-
23 sections:

24 “(a) IN GENERAL.—With respect to each advisory
25 committee, the head of the agency to which the advisory

1 committee reports shall make publicly available in accord-
2 ance with subsection (b) the following information:

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

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

7 “(A) The process for identifying prospec-
8 tive members.

9 “(B) The process of selecting members for
10 balance of viewpoints or expertise.

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

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

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

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

19 “(B) Whether the member is designated as
20 a special government employee or a representa-
21 tive.

22 “(C) In the case of a representative, the
23 individuals or entity whose viewpoint the mem-
24 ber represents.

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

8 “(5) Any recusal agreement made by a member
9 or any recusal known to the agency that occurs dur-
10 ing the course of a meeting or other work of the
11 committee.

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

14 “(7) Transcripts or audio or video recordings of
15 all meetings of the committee.

16 “(8) Any written determination by the Presi-
17 dent or the head of the agency to which the advisory
18 committee reports, pursuant to section 10(d), to
19 close a meeting or any portion of a meeting and the
20 reasons for such determination.

21 “(9) Notices of future meetings of the com-
22 mittee.

23 “(10) Any additional information considered
24 relevant by the head of the agency to which the advi-
25 sory committee reports.

1 “(b) MANNER OF DISCLOSURE.—

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

16 “(2) The head of an agency shall make avail-
17 able electronically, on the official public internet site
18 of the agency, a transcript or audio or video record-
19 ing of each advisory committee meeting as required
20 by subsection (a)(6) not later than 30 calendar days
21 after the meeting.

22 “(c) PROVISION OF INFORMATION BY ADMINIS-
23 TRATOR OF GENERAL SERVICES.—The Administrator of
24 General Services shall provide, on the official public inter-
25 net site of the General Services Administration, electronic

1 access to the information made available by each agency
2 under this section.”.

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

6 (1) by striking “with (1) the Administrator,”
7 and all that follows through “, or” and inserting
8 “(1) with the Administrator and”;

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

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

13 (4) by adding at the end the following new sub-
14 paragraphs:

15 “(K) the authority under which the committee
16 is established;

17 “(L) the estimated number of members and a
18 description of the expertise needed to carry out the
19 objectives of the committee;

20 “(M) a description of whether the committee
21 will be composed of special government employees,
22 representatives, or members from both categories;
23 and

1 “(N) whether the committee has the authority
2 to create subcommittees and if so, the agency official
3 authorized to exercise such authority.”.

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

5 (a) REVIEW.—The Comptroller General of the United
6 States shall review compliance by agencies with the Fed-
7 eral Advisory Committee Act, as amended by this title,
8 including whether agencies are appropriately appointing
9 advisory committee members as either special government
10 employees or representatives.

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

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

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

20 (c) COMMITTEES.—The committees described in this
21 subsection are the Committee on Oversight and Govern-
22 ment Reform of the House of Representatives and the
23 Committee on Homeland Security and Governmental Af-
24 fairs of the Senate.

1 **SEC. 105. APPLICATION OF FEDERAL ADVISORY COM-**
2 **MITTEE ACT TO TRADE ADVISORY COMMIT-**
3 **TEES.**

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

10 **SEC. 106. DEFINITIONS.**

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

14 “(5) The term ‘special Government employee’
15 has the same meaning as in section 202(a) of title
16 18, United States Code.”.

17 **SEC. 107. EFFECTIVE DATE.**

18 This title shall take effect 30 days after the date of
19 the enactment of this Act.

1 **TITLE II—PRESIDENTIAL**
2 **RECORDS ACT AMENDMENTS**

3 **SEC. 201. PROCEDURES FOR CONSIDERATION OF CLAIMS**
4 **OF CONSTITUTIONALLY BASED PRIVILEGE**
5 **AGAINST DISCLOSURE.**

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

9 **“§ 2208. Claims of constitutionally based privilege**
10 **against disclosure**

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

15 “(A) promptly provide notice of such deter-
16 mination to—

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

19 “(ii) the incumbent President; and

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

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

22 “(A) shall be in writing; and

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

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

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

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

24 “(b)(1) For purposes of this section, the decision to
25 assert any claim of constitutionally based privilege against

1 disclosure of a Presidential record (or reasonably seg-
2 regable part of a record) must be made personally by a
3 former President or the incumbent President, as applica-
4 ble.

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

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

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

1 and the public of the decision of the incumbent President
2 under paragraph (1) regarding the claim.

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

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

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

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

24 “(d) The Archivist shall not make publicly available
25 a Presidential record (or reasonably segregable part of a

1 record) that is subject to a privilege claim asserted by the
2 incumbent President unless—

3 “(1) the incumbent President withdraws the
4 privilege claim; or

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

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

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

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

21 (c) CONFORMING AMENDMENTS.—(1) Section
22 2204(d) of title 44, United States Code, is amended by
23 inserting “, except section 2208,” after “chapter”.

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

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

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

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

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

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

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

17 **TITLE III—PRESIDENTIAL**
18 **LIBRARY DONATION REFORM**

19 **SEC. 301. PRESIDENTIAL LIBRARIES.**

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

23 “(h)(1) Any Presidential library fundraising organi-
24 zation shall submit on a quarterly basis, in accordance
25 with paragraph (2), information with respect to every con-

1 tributor who gave the organization a contribution or con-
2 tributions (whether monetary or in-kind) totaling \$200 or
3 more for the quarterly period.

4 “(2) For purposes of paragraph (1)—

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

11 “(B) the dates by which information shall be
12 submitted under that paragraph are April 15, July
13 15, October 15, and January 15 of each year and
14 of the following year (for the fourth quarterly filing);

15 “(C) the requirement to submit information
16 under that paragraph shall continue until the later
17 of the following occurs:

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

21 “(ii) The President whose archives are con-
22 tained in the depository no longer holds the Of-
23 fice of President and a period of four years has
24 expired (beginning on the date the President
25 left the Office).

1 “(3) In this subsection:

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

6 “(i) a Presidential archival depository; or

7 “(ii) any facilities relating to a Presidential
8 archival depository.

9 “(B) The term ‘information’ means the fol-
10 lowing:

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

15 “(ii) The source of each such contribution,
16 and the address of the entity or individual that
17 is the source of the contribution.

18 “(iii) If the source of such a contribution
19 is an individual, the occupation of the indi-
20 vidual.

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

22 “(4) The Archivist shall make available to the public
23 through the Internet (or a successor technology readily
24 available to the public) as soon as is practicable after each
25 quarterly filing any information that is submitted under

1 paragraph (1). The information shall be made available
2 without a fee or other access charge, in a searchable, sort-
3 able, and downloadable database.

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

9 “(B) The penalties described in section 1001 of title
10 18, United States Code, shall apply with respect to a viola-
11 tion of subparagraph (A) in the same manner as a viola-
12 tion described in such section.

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

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

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

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

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

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

6 “(B) The penalties set forth in section 309(d) of the
7 Federal Election Campaign Act of 1971 (2 U.S.C.
8 437g(d)) shall apply to a violation of subparagraph (A)
9 in the same manner as if such violation were a violation
10 of section 316(b)(3) of such Act (2 U.S.C. 441b(b)(3)).

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

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

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

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

1 **TITLE IV—ELECTRONIC**
2 **MESSAGE PRESERVATION**

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

4 (a) REQUIREMENT FOR PRESERVATION OF ELEC-
5 TRONIC MESSAGES.—

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

9 **“§ 2911. Electronic messages**

10 “(a) REGULATIONS REQUIRED.—Not later than 18
11 months after the date of the enactment of this section,
12 the Archivist shall promulgate regulations governing agen-
13 cy preservation of electronic messages that are records.
14 Such regulations shall, at a minimum—

15 “(1) require the electronic capture, manage-
16 ment, and preservation of such electronic records in
17 accordance with the records disposition requirements
18 of chapter 33 of this title;

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

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

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

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

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

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

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

20 “(e) REPORTS ON IMPLEMENTATION OF REGULA-
21 TIONS.—

22 “(1) AGENCY REPORT TO ARCHIVIST.—Not
23 later than four years after the date of the enactment
24 of this section, the head of each Federal agency shall
25 submit to the Archivist a report on the agency’s

1 compliance with the regulations promulgated under
2 this section.

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

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

“2911. Electronic messages.”.

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

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

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

22 (3) by adding at the end the following new
23 paragraphs:

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

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

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

6 “(A) categorizing and locating records;

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

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

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

13 **SEC. 402. PRESIDENTIAL RECORDS.**

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

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

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

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

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

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

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

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

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

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

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

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

20 “(6) The term ‘electronic records management
21 system’ has the meaning provided in section
22 2901(17) of this title.”.

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

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

5 **“§ 2209. Certification of the President’s management**
6 **of Presidential records**

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

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

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

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

20 (c) REPORT TO CONGRESS.—Section 2203(f) of title
21 44, United States Code, is amended by adding at the end
22 the following:

23 “(4) One year following the conclusion of a Presi-
24 dent’s term of office, or if a President serves consecutive
25 terms one year following the conclusion of the last term,

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

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

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

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

15 **SEC. 403. PROCEDURES TO PREVENT UNAUTHORIZED RE-**
16 **MOVAL OF CLASSIFIED RECORDS FROM NA-**
17 **TIONAL ARCHIVES.**

18 (a) IN GENERAL.—The Archivist of the United
19 States shall prescribe internal procedures to prevent the
20 unauthorized removal of classified records from the Na-
21 tional Archives and Records Administration or the de-
22 struction or damage of such records, including when such
23 records are accessed or searched electronically. The proce-
24 dures shall apply to all National Archives and Records Ad-

1 ministration facilities authorized to store classified records
2 and include the following prohibitions:

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

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

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

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

20 (5) All notes and other writings prepared by
21 persons other than covered personnel during the
22 course of a review of classified records shall be re-
23 tained by the National Archives and Records Admin-
24 istration in a secure facility until such notes and
25 other writings are determined to be unclassified, are

1 declassified, or are securely transferred to another
2 secure facility.

3 (b) DEFINITIONS.—In this section:

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

7 (2) The term “covered personnel” means any
8 individual—

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

12 (B) who is either—

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

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

21 **SEC. 404. RESTRICTIONS ON ACCESS TO PRESIDENTIAL**
22 **RECORDS.**

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

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

7 **TITLE V—GOVERNMENT AC-**
8 **COUNTABILITY OFFICE IM-**
9 **PROVEMENT**

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

11 (a) **AUTHORITY TO OBTAIN RECORDS.**—Section 716
12 of title 31, United States Code, is amended in subsection
13 (a)—

14 (1) by striking “(a)” and inserting “(2)”; and
15 (2) by inserting after the section heading the
16 following:

17 “(a)(1) The Comptroller General is authorized to ob-
18 tain such agency records as the Comptroller General re-
19 quires to discharge his duties (including audit, evaluation,
20 and investigative duties), including through the bringing
21 of civil actions under this section. In reviewing a civil ac-
22 tion under this section, the court shall recognize the con-
23 tinuing force and effect of the authorization in the pre-
24 ceding sentence until such time as the authorization is re-
25 pealed pursuant to law.”.

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

7 (c) RULES OF CONSTRUCTION.—Section 716 of title
8 31, United States Code, is amended by adding at the end
9 the following new subsection:

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

19 **SEC. 502. ADMINISTERING OATHS.**

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

22 “(4) administer oaths to witnesses, except that,
23 in matters other than auditing and settling accounts,
24 the authority of an officer or employee to administer
25 oaths to witnesses pursuant to a delegation under

1 paragraph (2) shall not be available without the
2 prior express approval of the Comptroller General
3 (or a designee).”.

4 **SEC. 503. AGENCY REPORTS.**

5 Section 720(b) of title 31, United States Code, is
6 amended—

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

9 (2) by amending paragraph (1) to read as fol-
10 lows:

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