

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of this title.

§ 2111. Material accepted for deposit

When the Archivist considers it to be in the public interest he may accept for deposit—

(1) the papers and other historical materials of a President or former President of the United States, or other official or former official of the Government, and other papers relating to and contemporary with a President or former President of the United States, subject to restrictions agreeable to the Archivist as to their use; and

(2) documents, including motion-picture films, still pictures, and sound recordings, from private sources that are appropriate for preservation by the Government as evidence of its organization, functions, policies, decisions, procedures, and transactions.

This section shall not apply in the case of any Presidential records which are subject to the provisions of chapter 22 of this title.

(Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1288, § 2107; Pub. L. 95-591, § 2(b)(2), Nov. 4, 1978, 92 Stat. 2528; renumbered § 2111 and amended Pub. L. 98-497, title I, §§ 102(a)(1), 107(a)(5), Oct. 19, 1984, 98 Stat. 2280, 2286.)

HISTORICAL AND REVISION NOTES

Based on 44 U.S. Code 1964 ed., § 397(e) (June 30, 1949, ch. 288, title V, § 507, as added Sept. 5, 1950, ch. 849, § 6(d), 64 Stat. 583; July 12, 1952, ch. 703, § 1(p), 66 Stat. 594; July 12, 1955, ch. 329, 69 Stat. 297; Aug. 12, 1955, ch. 859, 69 Stat. 695).

PRIOR PROVISIONS

A prior section 2111 was renumbered section 2115 of this title.

AMENDMENTS

1984—Pub. L. 98-497, § 107(a)(5), substituted “Archivist” for “Administrator of General Services” in provisions preceding par. (1), and substituted “Archivist” for “Administrator” in par. (1).

1978—Pub. L. 95-591 inserted provision excluding Presidential records which are subject to provisions of chapter 22 of this title from application of this section.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-591 effective with respect to Presidential records created during a term of office of President beginning on or after Jan. 20, 1981, see section 3 of Pub. L. 95-591, set out as an Effective Date note under section 2201 of this title.

PRESIDENTIAL RECORDINGS AND MATERIALS PRESERVATION ACT

Pub. L. 93-526, title I, §§ 101-106, Dec. 19, 1974, 88 Stat. 1695-1698, as amended by Pub. L. 98-497, title I, § 107(c), Oct. 19, 1984, 98 Stat. 2291; Pub. L. 108-199, div. F, title V, § 543(a), Jan. 23, 2004, 118 Stat. 346, provided: “That this Act [enacting this note, sections 3315 to 3324 of this title, and provisions set out as a note under section 3315 of this title] may be cited as the ‘Presidential Recordings and Materials Preservation Act’.

“TITLE I—PRESERVATION OF PRESIDENTIAL RECORDINGS AND MATERIALS

“DELIVERY AND RETENTION OF CERTAIN PRESIDENTIAL MATERIALS

“SEC. 101. (a) Notwithstanding any other law or any agreement or understanding made pursuant to section 2111 of title 44, United States Code any Federal employee in possession shall deliver, and the Archivist of the United States (hereinafter referred to as the ‘Archivist’) shall receive, obtain, or retain, complete possession and control of all original tape recordings of conversations which were recorded or caused to be recorded by any officer or employee of the Federal Government and which—

“(1) involve former President Richard M. Nixon or other individuals who, at the time of the conversation, were employed by the Federal Government;

“(2) were recorded in the White House or in the office of the President in the Executive Office Buildings located in Washington, District of Columbia; Camp David, Maryland; Key Biscayne, Florida; or San Clemente, California; and

“(3) were recorded during the period beginning January 20, 1969, and ending August 9, 1974.

“(b)(1) Notwithstanding any other law or any agreement or understanding made pursuant to section 2111 of title 44, United States Code, the Archivist shall receive, retain, or make reasonable efforts to obtain, complete possession and control of all papers, documents, memorandums, transcripts, and other objects and materials which constitute the Presidential historical materials of Richard M. Nixon, covering the period beginning January 20, 1969, and ending August 9, 1974.

“(2) For purposes of this subsection, the term ‘historical materials’ has the meaning given it by section 2101 of title 44, United States Code.

“AVAILABILITY OF CERTAIN PRESIDENTIAL MATERIALS

“SEC. 102. (a) None of the tape recordings or other materials referred to in section 101 shall be destroyed, except as hereafter may be provided by law.

“(b) Notwithstanding any other provision of this title, any other law, or any agreement or understanding made pursuant to section 2111 of title 44, United States Code, the tape recordings and other materials referred to in section 101 shall, immediately upon the date of enactment of this title, be made available, subject to any rights, defenses, or privileges which the Federal Government or any person may invoke, for use in any judicial proceeding or otherwise subject to court subpoena or other legal process. Any request by the Office of Watergate Special Prosecution Force, whether by court subpoena or other lawful process, for access to such recordings or materials shall at all times have priority over any other request for such recordings or materials.

“(c) Richard M. Nixon, or any person whom he may designate in writing, shall at all times have access to the tape recordings and other materials referred to in section 101 for any purpose which is consistent with the provisions of this title, subsequent and subject to the regulations which the Archivist shall issue pursuant to section 103.

“(d) Any agency or department in the executive branch of the Federal Government shall at all times have access to the tape recordings and other materials referred to in section 101 for lawful Government use, subject to the regulations which the Archivist shall issue pursuant to section 103.

“REGULATIONS TO PROTECT CERTAIN TAPE RECORDINGS AND OTHER MATERIALS

“SEC. 103. The Archivist shall issue at the earliest possible date such regulations as may be necessary to assure the protection of the tape recordings and other materials referred to in section 101 from loss or destruction, and to prevent access to such recordings and materials by unauthorized persons. The Archivist may

transfer such recordings and materials to a Presidential archival depository in accordance with section 2112 of title 44, United States Code.

“REGULATIONS RELATING TO PUBLIC ACCESS

“SEC. 104. (a) The Archivist shall, within ninety days after the date of enactment of this title [Dec. 19, 1974], submit to each House of the Congress a report proposing and explaining regulations that would provide public access to the tape recordings and other materials referred to in section 101. Such regulations shall take into account the following factors:

“(1) the need to provide the public with the full truth, at the earliest reasonable date, of the abuses of governmental power popularly identified under the generic term ‘Watergate’;

“(2) the need to make such recordings and materials available for use in judicial proceedings;

“(3) the need to prevent general access, except in accordance with appropriate procedures established for use in judicial proceedings to information relating to the Nation’s security;

“(4) the need to protect every individual’s right to a fair and impartial trial;

“(5) the need to protect any party’s opportunity to assert any legally or constitutionally based right or privilege which would prevent or otherwise limit access to such recordings and materials;

“(6) the need to provide public access to those materials which have general historical significance, and which are not likely to be related to the need described in paragraph (1); and

“(7) the need to give to Richard M. Nixon, or his heirs, for his sole custody and use, tape recordings and other materials which are not likely to be related to the need described in paragraph (1) and are not otherwise of general historical significance.

“(b) The regulations proposed by the Archivist in the report required by subsection (a) shall not take effect until the expiration of the first period of 60 calendar days of continuous session of the Congress after the date of the submission of such regulations to each House of the Congress. For the purposes of this subsection, continuity of session is broken only by an adjournment of Congress sine die, but the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded.

“(c) The provisions of this title shall not apply, on and after the date upon which regulations proposed by the Administrator take effect under subsection (b), to any tape recordings or other materials given to Richard M. Nixon, or his heirs, pursuant to subsection (a)(7).

“(d) The provisions of this title shall not in any way affect the rights, limitations or exemptions applicable under the Freedom of Information Act, 5 U.S.C. § 552 et seq.

“JUDICIAL REVIEW

“SEC. 105. (a) The United States District Court for the District of Columbia shall have exclusive jurisdiction to hear challenges to the legal or constitutional validity of this title or of any regulation issued under the authority granted by this title, and any action or proceeding involving the question of title, ownership, custody, possession, or control of any tape recording or material referred to in section 101 or involving payment of any just compensation which may be due in connection therewith. Any such challenge shall be treated by the court as a matter requiring immediate consideration and resolution, and such challenge shall have priority on the docket of such court over other cases.

“(b) If, under the procedures established by subsection (a), a judicial decision is rendered that a particular provision of this title, or a particular regulation issued under the authority granted by this title, is unconstitutional or otherwise invalid, such decision shall

not affect in any way the validity or enforcement of any other provision of this title or any regulation issued under the authority granted by this title.

“(c) If a final decision of such court holds that any provision of this title has deprived an individual of private property without just compensation, then there shall be paid out of the general fund of the Treasury of the United States such amount or amounts as may be adjudged just by that Court.

“AUTHORIZATION OF APPROPRIATIONS

“SEC. 106. There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.”

[Pub. L. 108–199, div. F, title V, § 543(b), Jan. 23, 2004, 118 Stat. 346, provided that: “Nothing in section 103 of the Presidential Recordings and Materials Preservation Act (Public Law 93–526; 44 U.S.C. 2111 note), as amended by subsection (a), may be construed as affecting public access to the recordings and materials referred to in that section as provided in regulations promulgated pursuant to section 104 of such Act.”]

CLASSIFIED NATIONAL SECURITY INFORMATION

For provisions authorizing Archivist to review, downgrade, and declassify information of former Presidents under control of Archivist pursuant to this section or provisions set out as a note under this section, see Ex. Ord. No. 13526, § 3.5(b), Dec. 29, 2009, 75 F.R. 718, set out as a note under section 435 of Title 50, War and National Defense.

§ 2112. Presidential archival depository

(a)(1) When the Archivist considers it to be in the public interest, the Archivist may—

(A)(i) accept, for and in the name of the United States, land, a facility, and equipment offered as a gift to the United States for the purpose of creating a Presidential archival depository;

(ii) take title to the land, facility, and equipment on behalf of the United States; and

(iii) maintain, operate, and protect the land, facility, and equipment as a Presidential archival depository and as part of the national archives system;

(B)(i) make agreements, upon terms and conditions the Archivist considers proper, with a State, political subdivision, university, institution of higher learning, institute, or foundation to use as a Presidential archival depository land, a facility, and equipment of the State, subdivision, university, or other organization, to be made available by it without transfer of title to the United States; and

(ii) maintain, operate, and protect the depository as a part of the national archives system; and

(C) accept, for and in the name of the United States, gifts offered for the purpose of making any physical or material change or addition to a Presidential archival depository.

(2) The Archivist shall promulgate architectural and design standards applicable to Presidential archival depositories in order to ensure that such depositories (A) preserve Presidential records subject to chapter 22 of this title and papers and other historical materials accepted for deposit under section 2111 of this title and (B) contain adequate research facilities.

(3) Prior to accepting and taking title to any land, facility, or equipment under subparagraph (A) of paragraph (1), or prior to entering into