

§ 2911. Disclosure requirement for official business conducted using non-official electronic messaging accounts

(a) IN GENERAL.—An officer or employee of an executive agency may not create or send a record using a non-official electronic messaging account unless such officer or employee—

- (1) copies an official electronic messaging account of the officer or employee in the original creation or transmission of the record; or
- (2) forwards a complete copy of the record to an official electronic messaging account of the officer or employee not later than 20 days after the original creation or transmission of the record.

(b) ADVERSE ACTIONS.—The intentional violation of subsection (a) (including any rules, regulations, or other implementing guidelines), as determined by the appropriate supervisor, shall be a basis for disciplinary action in accordance with subchapter I, II, or V of chapter 75 of title 5, as the case may be.

(c) DEFINITIONS.—In this section:

(1) ELECTRONIC MESSAGES.—The term “electronic messages” means electronic mail and other electronic messaging systems that are used for purposes of communicating between individuals.

(2) ELECTRONIC MESSAGING ACCOUNT.—The term “electronic messaging account” means any account that sends electronic messages.

(3) EXECUTIVE AGENCY.—The term “executive agency” has the meaning given that term in section 105 of title 5.

(Added Pub. L. 113-187, §10(a), Nov. 26, 2014, 128 Stat. 2014.)

§ 2912. Preservation of electronic messages and other records

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

- (1) require the electronic capture, management, and preservation of such electronic records in accordance with the records disposition requirements of chapter 33;
- (2) require that such electronic records are readily accessible for retrieval through electronic searches; and
- (3) include timelines for Federal agency implementation of the regulations that ensure compliance as expeditiously as practicable.

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

(c) REVIEW OF REGULATIONS REQUIRED.—The Archivist shall periodically review and, as necessary, amend the regulations promulgated under subsection (a).

(Added Pub. L. 116-283, div. H, title XCVI, §9602(b)(1), Jan. 1, 2021, 134 Stat. 4828.)

Statutory Notes and Related Subsidiaries

DEADLINE FOR REGULATIONS

Pub. L. 116-283, div. H, title XCVI, §9602(b)(2), Jan. 1, 2021, 134 Stat. 4828, provided that: “Not later than one year after the date of the enactment of this Act [Jan. 1, 2021], the Archivist shall propose the regulations required under section 2912(a) of title 44, United States Code, as added by paragraph (1).”

CHAPTER 31—RECORDS MANAGEMENT BY FEDERAL AGENCIES

Sec. 3101.	Records management by agency heads; general duties.
3102.	Establishment of program of management.
3103.	Transfer of records to records centers.
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Editorial Notes

AMENDMENTS

1976—Pub. L. 94-575, §3(b), Oct. 21, 1976, 90 Stat. 2727, substituted “Transfer of records to records centers” for “Storage, processing, and servicing of records” in item 3103.

§ 3101. Records management by agency heads; general duties

The head of each Federal agency shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency’s activities.

(Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1297.)

HISTORICAL AND REVISION NOTES

Based on 44 U.S. Code, 1964 ed., §396(a) (June 30, 1949, ch. 288, title V, §506(a), as added Sept. 5, 1950, ch. 849, §6(d), 64 Stat. 583).

Executive Documents

MANAGING GOVERNMENT RECORDS

Memorandum of President of the United States, Nov. 28, 2011, 76 F.R. 75423, provided:

Memorandum for the Heads of Executive Departments and Agencies

SECTION 1. *Purpose.* This memorandum begins an executive branch-wide effort to reform records management policies and practices. Improving records management will improve performance and promote openness and accountability by better documenting agency actions and decisions. Records transferred to the National Archives and Records Administration (NARA) provide the prism through which future generations will understand and learn from our actions and decisions. Modernized records management will also help executive departments and agencies (agencies) minimize costs and operate more efficiently. Improved records management thus builds on Executive Order 13589 of November 9, 2011 (Promoting Efficient Spending), which directed agencies to reduce spending and focus on mission-critical functions.

When records are well-managed, agencies can use them to assess the impact of programs, to reduce redundant efforts, to save money, and to share knowledge

within and across their organizations. In these ways, proper records management is the backbone of open Government.

Decades of technological advances have transformed agency operations, creating challenges and opportunities for agency records management. Greater reliance on electronic communication and systems has radically increased the volume and diversity of information that agencies must manage. With proper planning, technology can make these records less burdensome to manage and easier to use and share. But if records management policies and practices are not updated for a digital age, the surge in information could overwhelm agency systems, leading to higher costs and lost records.

We must address these challenges while using the opportunity to develop a 21st-century framework for the management of Government records. This framework will provide a foundation for open Government, leverage information to improve agency performance, and reduce unnecessary costs and burdens.

SEC. 2. Agency Commitments to Records Management Reform. (a) The head of each agency shall:

(i) ensure that the successful implementation of records management requirements in law, regulation, and this memorandum is a priority for senior agency management;

(ii) ensure that proper resources are allocated to the effective implementation of such requirements; and

(iii) within 30 days of the date of this memorandum, designate in writing to the Archivist of the United States (Archivist), a senior agency official to supervise the review required by subsection (b) of this section, in coordination with the agency's Records Officer, Chief Information Officer, and General Counsel.

(b) Within 120 days of the date of this memorandum, each agency head shall submit a report to the Archivist and the Director of the Office of Management and Budget (OMB) that:

(i) describes the agency's current plans for improving or maintaining its records management program, particularly with respect to managing electronic records, including email and social media, deploying cloud-based services or storage solutions, and meeting other records challenges;

(ii) identifies any provisions, or omissions, in relevant statutes, regulations, or official NARA guidance that currently pose an obstacle to the agency's adoption of sound, cost-effective records management policies and practices; and

(iii) identifies policies or programs that, if included in the Records Management Directive required by section 3 of this memorandum or adopted or implemented by NARA, would assist the agency's efforts to improve records management.

The reports submitted pursuant to this subsection should supplement, and therefore need not duplicate, information provided by agencies to NARA pursuant to other reporting obligations.

SEC. 3. Records Management Directive. (a) Within 120 days of the deadline for reports submitted pursuant to section 2(b) of this memorandum, the Director of OMB and the Archivist, in coordination with the Associate Attorney General, shall issue a Records Management Directive that directs agency heads to take specific steps to reform and improve records management policies and practices within their agency. The directive shall focus on:

(i) creating a Government-wide records management framework that is more efficient and cost-effective;

(ii) promoting records management policies and practices that enhance the capability of agencies to fulfill their statutory missions;

(iii) maintaining accountability through documentation of agency actions;

(iv) increasing open Government and appropriate public access to Government records;

(v) supporting agency compliance with applicable legal requirements related to the preservation of information relevant to litigation; and

(vi) transitioning from paper-based records management to electronic records management where feasible.

(b) In the course of developing the directive, the Archivist, in coordination with the Director of OMB and the Associate Attorney General, shall review relevant statutes, regulations, and official NARA guidance to identify opportunities for reforms that would facilitate improved Government-wide records management practices, particularly with respect to electronic records. The Archivist, in coordination with the Director of OMB and the Associate Attorney General, shall present to the President the results of this review, no later than the date of the directive's issuance, to facilitate potential updates to the laws, regulations, and policies governing the management of Federal records.

(c) In developing the directive, the Director of OMB and the Archivist, in coordination with the Associate Attorney General, shall consult with other affected agencies, interagency groups, and public stakeholders.

SEC. 4. General Provisions. (a) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 5. Publication. The Archivist is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 3102. Establishment of program of management

The head of each Federal agency shall establish and maintain an active, continuing program for the economical and efficient management of the records of the agency. The program, among other things, shall provide for

(1) effective controls over the creation and over the maintenance and use of records in the conduct of current business;

(2) procedures for identifying records of general interest or use to the public that are appropriate for public disclosure, and for posting such records in a publicly accessible electronic format;

(3) cooperation with the Archivist in applying standards, procedures, and techniques designed to improve the management of records, promote the maintenance and security of records deemed appropriate for preservation, and facilitate the segregation and disposal of records of temporary value; and

(4) compliance with sections 2101–2117, 2501–2507, 2901–2909, and 3101–3107, of this title and the regulations issued under them.

(Pub. L. 90–620, Oct. 22, 1968, 82 Stat. 1298; Pub. L. 94–575, §3(a)(1), (2), Oct. 21, 1976, 90 Stat. 2726; Pub. L. 98–497, title I, §107(b)(19), Oct. 19, 1984, 98 Stat. 2290; Pub. L. 113–187, §9(f), formerly §9(g), Nov. 26, 2014, 128 Stat. 2014, renumbered §9(f), Pub. L. 115–85, §2(a)(5), Nov. 21, 2017, 131 Stat. 1275; Pub. L. 114–185, §4, June 30, 2016, 130 Stat. 544.)

HISTORICAL AND REVISION NOTES

Based on 44 U.S. Code, 1964 ed., §396(b) (June 30, 1949, ch. 288, title V, §506(b), as added Sept. 5, 1950, ch. 849, §6(d), 64 Stat. 583).