



Bill Summary

H.R. 5811: The Electronic Message Preservation Act

Rep. Henry A. Waxman

Chairman, Committee on Oversight and Government Reform

Investigations by the Oversight Committee have revealed significant deficiencies in the preservation of e-mail by the White House and federal agencies. H.R. 5811, the Electronic Message Preservation Act, introduced on April 15, 2008, by Reps. Waxman, Clay, and Hodes, modernizes the requirements of the Presidential Records Act and the Federal Records Act to ensure that these vital records are preserved for historians.

Preservation of Federal Records

Under current law, federal agencies have broad discretion to determine how electronic messages are preserved. Committee investigations and the Government Accountability Office (GAO) have found that many agencies rely on unreliable "print and file" systems for preserving electronic records, including e-mails. GAO, in a report released on July 8, 2008, found that senior agency officials are not compliant with key e-mail preservation requirements. GAO reviewed the practices of senior agency officials and determined that e-mails were not retained in adequate recordkeeping systems, making the e-mail records easier to lose or delete and harder to find and use.

H.R. 5811 directs the Archivist to issue regulations requiring agencies to preserve electronic messages in an electronic format. These regulations must cover, at minimum, the capture, management, preservation, and electronic retrieval of electronic messages. In addition, the Archivist would be required to establish certification standards for any electronic records management systems implemented at agencies.

Preservation of Presidential Records

Under President Bush, the White House may have lost hundreds of thousands of e-mails. Committee investigations have revealed that numerous White House officials — including Senior Advisor Karl Rove — used e-mail accounts maintained by the Republican National Committee, which regularly deleted the e-mails from its servers. In addition, the White House grossly mismanaged its own e-mail records and ignored concerns raised by the National Archives about the way it was storing its e-mails. At the time of these losses, the White House used an e-mail archiving system that a former White House information technology officer described as "primitive."

To ensure the retention of these important records, H.R. 5811 directs the Archivist of the United States to establish standards for the capture, management, and preservation of electronic messages that are presidential records. The bill requires the Archivist to certify annually whether the records management controls established by the President meet these standards.