To amend chapter 22 of title 44, United States Code, to ensure Presidential records are preserved, duly created when non-official electronic messaging accounts are used, and made available to the public and the next administration in a timely fashion to advance national security and accountability, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. Murphy introduced the following bill; which was read twice and referred to the Committee on __________________

A BILL

To amend chapter 22 of title 44, United States Code, to ensure Presidential records are preserved, duly created when non-official electronic messaging accounts are used, and made available to the public and the next administration in a timely fashion to advance national security and accountability, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Promoting Accountability and Security in Transitions Act of 2020” or the “PAST Act”.

SEC. 2. SENSE OF CONGRESS.

The sense of Congress is the following:

(1) The preservation of Presidential records (as defined in section 2201 of title 44, United States Code) is a legal obligation for every Presidential administration, as Presidential records are the most important and widely-used source for studying how the executive branch of the Federal Government works, how it has changed over time, and how it might evolve to serve the needs of a new era.

(2) The preservation of Presidential records is therefore vital for—

(A) the public to be able to understand and learn from the past;

(B) future policy-making to build on the past administration’s successes and experience;

(C) ensuring accountability for results, performance, and conduct; and

(D) other purposes that serve to strengthen American democracy.

(3) Any effort to destroy, alter, or remove Presidential records in violation of chapter 22 of title 44, United States Code—

(A) threatens the values described in paragraph (2); and
(B) may subject a person engaging in such efforts to other criminal penalties under section 641 or 2071 of title 18, United States Code.

(4) The lawful disposal of Presidential records that no longer have administrative, historical, informational, or evidentiary value must follow a process as described in section 2203 of title 44, United States Code.

(5) What constitutes a Presidential record is determined solely by whether the record relates to the “carrying out of constitutional, statutory, or other official or ceremonial duties of the President”, as indicated in the definition of the term “Presidential records” in section 2201 of title 44, United States Code, and by the content of the information contained in the record.

(6) For communication between agencies and the Executive Office of the President, the copy of the record belonging to the agency is retained as an agency record pursuant to section 3301 of title 44, United States Code.

(7) Consistent with section 2203 of title 44, United States Code, any Presidential records created with non-official electronic media shall be “preserved,” which includes a comprehensive documenta-
tion of all records and associated metadata and attachments.

(8) Applications or software with an automatic deleting functionality are antithetical to the legal and historical obligations described under chapter 22 of title 44, United States Code.

(9) Periods of Presidential transition are moments where the national security of the United States is most vulnerable, necessitating an early, good faith, and consistent commitment by the outgoing administration to ensure continuity of operations as it relates to national security and protecting critical infrastructure, among other reasons.

(10) Agencies and the Executive Office of the President are required by law to cooperate with the Archivist of the United States and the Federal Transition Coordinator of the General Service Administration, who is tasked with ensuring agencies comply with all statutory requirements relating to transition planning under section 4(c) of the Presidential Transition Act of 1963 (3 U.S.C. 102 note).

(11) During a Presidential transition, Presidential records, which contain valuable information regarding agreements or negotiations with foreign governments and international organizations and the
actions and beliefs of foreign nations or actors are of enormous value to the national security.

(12) Any effort to delay briefings, coordination, and sharing information regarding key national security relationships, threats, and operations with an incoming administration or the destruction, removal, or alteration of Presidential records that attest to the information described in this section could pose a grave danger to the national security.

(13) An expeditious ascertainment of the plausible President-elect and Vice-President-elect by the Administrator of General Services plays a vital role in ensuring continuity of Government and protecting national security such that the risk of redundant expenditure is overwhelmed by the advantages of an early access to transition resources to allow for transition planning.

(14) The National Archives and Records Administration plays an essential role in ensuring the official proceedings of Government are documented to improve democracy in the United States, protect national security, provide continuity of Government during a transition, and promote accountability for actions taking during a Presidency.
(15) The robust funding of the National Archives and Records Administration and protection of its officers and employees from political interference is a national imperative and must be a priority for Congress.

SEC. 3. DEFINITIONS.

Section 2201 of title 44, United States Code, is amended—

(1) in paragraph (1), by inserting ‘‘, and includes the metadata associated with all such material’’ before the period; and

(2) by adding at the end the following:

‘‘(6) The term ‘electronic messaging account’ includes electronic mail, chat or instant messaging, text messaging, voicemail messaging, and other messaging platforms or apps, such as social media or mobile applications, among other applications.

(7) The term ‘official electronic messaging account’ includes electronic messaging accounts provided by an executive agency or the Executive Office of the President.

(8) The term ‘dispose’, with respect to documentary material, means to remove, deface, alter, corrupt, delete, erase, or otherwise destroy the documentary material.’’.
SEC. 4. MANAGEMENT AND CUSTODY OF PRESIDENTIAL RECORDS.

(a) In General.—Section 2203 of title 44, United States Code, is amended—

(1) by redesignating subsections (e), (f), and (g) as subsections (g), (h), and (i), respectively;

(2) by redesignating subsection (d) as subsection (e);

(3) by striking subsection (c) and inserting the following:

“(c) The President shall obtain the advice of the Archivist in applying standards, procedures, and techniques designed to—

“(1) improve the management of records;

“(2) promote the maintenance and security of records determined appropriate for preservation; and

“(3) facilitate the segregation and disposal of records of temporary value.

“(d)(1) During the President’s term of office, if the President wishes to dispose of those Presidential records of such President that no longer have administrative, historical, informational, or evidentiary value—

“(A) the President shall request, in writing, the views of the Archivist concerning the proposed disposal of such Presidential records; and
“(B) the Archivist shall indicate, in writing, whether the Archivist intends to take any action under subsection (g) of this section with respect to the Presidential records.

“(2) Not later than 5 business days after the date on which the Archivist provides a written indication under paragraph (1)(B), the Archivist shall make publicly available on a website any communications received or sent by the Archivist regarding the potential disposal of Presidential records under paragraph (1).”;

(4) in subsection (e), as so redesignated—

(A) by striking “subsection (e)” and inserting “subsection (d)”; and

(B) by striking “subsection (e)” and inserting “subsection (g)”; and

(5) by inserting after subsection (e), as so redesignated, the following:

“(f) In January of each even-numbered year, the Archivist shall, in coordination with the Office of Administration of the Executive Office of the President, submit to the Chairman and Ranking Member of each committee of jurisdiction of either House of Congress, of the Committee on Appropriations of the Senate, and of the Committee on Appropriations of the House of Representatives and to the President a report that—
“(1) is based on inspections conducted by the Archivist, in coordination with the Office of Administration of the Executive Office of the President, of the Presidential records management programs of the Executive Office of the President; and

“(2) evaluates—

“(A) the records management activities and training conducted and standard operating procedures and guidance issued pursuant to this section; and

“(B) responses to any recommendations resulting from inspections or studies conducted under this section.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 2105(a)(2) of title 44, United States Code, is amended by striking “paragraph (f)(2)” and inserting “subsection (i)(2)”.

(2) Chapter 22 of title 44, United States Code, is amended—

(A) in section 2204(b)(2)(A), by striking “section 2203(d)(1)” and inserting “2203(i)(1)”; and

(B) in section 2206(1), by striking “section 2203(f)(3)” and inserting “section 2203(i)(4)”. 
SEC. 5. RESTRICTIONS ON ACCESS TO PRESIDENTIAL RECORDS.

Section 2204 of title 44, United States Code, is amended—

(1) in subsection (b)(3), by striking “shall not be subject to judicial review, except as provided” and inserting “shall be subject to judicial review, including as provided”; and

(2) in subsection (e)—

(A) by inserting “(1)” before “The United States”; and

(B) by adding at the end the following:

“(2)(A) A person seeking access to a Presidential record to which access is restricted under subsection (a) may file an action in the United States District Court for the District of Columbia seeking release of the Presidential record.

“(B) In an action filed under subparagraph (A), the court shall direct the release of a Presidential record, or a reasonably segregable portion thereof, if the court determines that the Presidential record, or the reasonably segregable portion thereof, is not within any of the categories specified in subsection (a) and there is not a valid claim of constitutionally based privilege against disclosure.”.
SEC. 6. EXCEPTIONS TO RESTRICTED ACCESS.

Section 2205(2)(C) of title 44, United States Code, is amended—

1. by striking “to any committee or sub-committee thereof” and inserting “upon request by the Chairman or Ranking Member of a committee or subcommittee thereof, to such Chairman or ranking member,”; and

2. by striking “its business” and inserting “the business of the committee or subcommittee”.

SEC. 7. REGULATIONS.

Section 2206 of title 44, United States Code, is amended—

1. by inserting “(a)” before “The Archivist”;

2. in subsection (a), as so designated—

   (A) in paragraph (3), by striking “and” at the end;

   (B) in paragraph (4), by striking the period and inserting a semicolon; and

   (C) by adding at the end the following:

   “(5) provisions—

   “(A) for what constitutes official and non-

   official electronic messaging accounts; and

   “(B) establishing procedures for docu-

   menting—
“(i) Presidential records created on non-official electronic messaging accounts (including emerging technologies, applications, and platforms); and 

“(ii) required metadata; 

“(6) provisions for the preservation of digital media, including from social media accounts, that may appear to be personal records or private property but the preservation of which may be required under this chapter; and 

“(7) provisions for the appropriate circumstances and controls for the use of messaging applications and software with automatic deleting or other similar functionalities.”; and 

(3) by adding at the end the following: 

“(b) The Archivist shall issue, and shall annually update, implementation guidance with respect to the regulations described in paragraphs (5) and (6) of subsection (a).”.

SEC. 8. DISCLOSURE REQUIREMENT FOR OFFICIAL BUSINESS CONDUCTED USING NON-OFFICIAL ELECTRONIC MESSAGING ACCOUNTS. 

(a) In General.—Section 2209(a) of title 44, United States Code, is amended—
(1) in the matter preceding paragraph (1), by striking “create or send” and inserting “create, send, or receive”;

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and adjusting the margin accordingly; and

(3) by striking “The President,” and inserting the following:

“(1) LIMITATIONS.—Not later than 90 days after assuming office, the President shall publicly release guidelines for officers and employees of the Executive Office of the President who create or receive documentary material that—

“(A) prohibit the use of non-official electronic messaging accounts that cannot be easily copied or forwarded to an official electronic messaging account for official business; and

“(B) prohibit the use of messaging accounts or software with automatic deleting or other similar functionalities.

“(2) REQUIREMENTS FOR USE.—The President,”.


The Presidential Transition Act of 1963 (3 U.S.C. 102 note) is amended—
(1) in section 3—

(A) in subsection (a)(8)(A), by striking clause (v) and inserting the following:

“(v)(I)(aa) Activities under this paragraph shall include the preparation of a detailed classified, compartmented summary by the relevant outgoing executive branch officials of—

“(AA) specific strategic, tactical, and operational threats to national security;

“(BB) major military or covert operations; and

“(CC) pending decisions on possible uses of military force or covert actions.

“(bb) The summary prepared under item (aa) shall be provided to the President-elect and members of office staff with appropriate clearances that are designated by the President-elect as soon as possible after the date of the general elections held to determine the electors of President and Vice President under section 1 or 2 of title 3, United States Code.

“(II) The Archivist of the United States shall collaborate with the Federal Transition Coordinator and agencies, including the Executive Office of the President, to ensure that the President-elect and members of office staff with appropriate clearances that are designated by the President-elect can easily access national security informa-
tion (including documents, videos, audio, and briefings) created by the previous administration after the inauguration of the President-elect.

“(III) The Archivist of the United States shall submit to the Chairman and Ranking Member of each committee of jurisdiction of either House of Congress, of the Committee on Appropriations of the Senate, and of the Committee on Appropriations of the House of Representatives a report if the Archivist of the United States believes there appears to be noncompliance with the requirements under this clause.”; and

(B) in subsection (c)—

(i) by inserting “(1)” before “The terms”; and

(ii) by adding at the end the following:

“(2)(A) Not later than 6 days after the date of a general election described in paragraph (1), the Administrator shall make the ascertainment described in paragraph (1) without any interference or undue pressure from the President or a candidate for President, or any representative thereof, based on provisional results from State election officials and expert analysis of results.

“(B) Given the imperatives of an orderly transition, if there is a plausible chance that the apparent successful
candidate for the office of President and Vice President, respectively, are not the incumbent, or if the incumbent was not a candidate, the Administrator shall provide a portion of the services and facilities authorized to be provided under this section to all parties with a plausible chance of being the successful candidate.”; and

(2) in section 4—

(A) in subsection (d)—

(i) in paragraph (2)—

(I) in subparagraph (B), by striking “and” at the end;

(II) in subparagraph (C), by striking the period at the end and inserting “; and”; and

(III) by adding at the end the following:

“(D) under the guidance of the Archivist of the United States, monitor compliance with chapter 22 of title 44, United States Code, including the preservation of all records and prevention of any records from being disposed unless done in accordance with such chapter.”;

(ii) in paragraph (3)—
(I) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively; and

(II) by inserting after subparagraph (B) the following:

“(C) the Archivist of the United States;”;

and

(iii) by adding at the end the following:

“(5) ROLE OF THE ARCHIVIST.—

“(A) IN GENERAL.—Not later than 120 days before the date of a Presidential election, the Archivist of the United States shall send a written communication to all officers and employees of the Executive Office of the President who create or receive documentary material (as defined under section 2201 of title 44, United States Code)—

“(i) describing the requirements under chapter 22 of title 44, United States Code; and

“(ii) establishing a timeline for cooperation with the Archivist of the United States to ensure an orderly and timely
transition of records subject to such chapter if there is a Presidential transition.

“(B) REPORTING.—

“(i) IN GENERAL.—Not later than 30 days after the date of a Presidential election which results in a Presidential transition, the Archivist of the United States, in coordination with the Federal Transition Coordinator, shall submit to the Chairman and Ranking Member of each committee of jurisdiction of either House of Congress, of the Committee on Appropriations of the Senate, and of the Committee on Appropriations of the House of Representatives a report discussing the status of the transition activities of the White House Transition Coordinating Council and identifying concerns, if any, regarding compliance with chapter 22 of title 44, United States Code.

“(ii) NONCOMPLIANCE.—The Archivist of the United States shall submit to the Chairman and Ranking Member of each committee of jurisdiction of either House of Congress, of the Committee on Appropriations of the Senate, and of the
Committee on Appropriations of the House of Representatives a report if the Archivist of the United States believes there appears to be noncompliance with the requirements or timeline described in subparagraph (A).”;

(B) in subsection (e)(2)—

(i) in subparagraph (D), by striking “and” at the end;

(ii) in subparagraph (E), by striking the period at the end and inserting “; and”;

(iii) by adding at the end the following:

“(F) under the guidance of the Archivist of the United States, monitor compliance with chapter 22 of title 44, United States Code, including the preservation of all records and prevention of any records from being disposed unless done in accordance with such chapter.”;

(C) by redesignating subsection (i) as subsection (j); and

(D) by inserting after subsection (h) the following:

“(i) ROLE OF THE ARCHIVIST.—
“(1) IN GENERAL.—Not later than 120 days before the date of a Presidential election, the Archivist of the United States shall send a written communication to the head of each agency—

“(A) describing the requirements under chapter 33 of title 44, United States Code; and

“(B) establishing a timeline for cooperation with the Archivist of the United States to ensure an orderly and timely transition of records subject to such chapter if there is a Presidential transition.

“(2) REPORTING.—

“(A) IN GENERAL.—Not later than 30 days after the date of a Presidential election which results in a Presidential transition, the Archivist of the United States, in coordination with the Federal Transition Coordinator, shall submit to the Chairman and Ranking Member of each committee of jurisdiction of either House of Congress, of the Committee on Appropriations of the Senate, and of the Committee on Appropriations of the House of Representatives a report discussing the status of the transition activities of agencies and identifying con-
cerns, if any, regarding compliance with chapter 33 of title 44, United States Code.

“(B) NONCOMPLIANCE.—The Archivist of the United States shall submit to the Chairman and Ranking Member of each committee of jurisdiction of either House of Congress, of the Committee on Appropriations of the Senate, and of the Committee on Appropriations of the House of Representatives a report if the Archivist of the United States believes there appears to be noncompliance with the requirements or timeline described in paragraph (1).”.

SEC. 10. FORMER PRESIDENTS.

The Act entitled “An Act to provide retirement, clerical assistants, and free mailing privileges to former Presidents of the United States, and for other purposes”, approved August 25, 1958 (commonly known as the “Former Presidents Act of 1958”) (3 U.S.C. 102 note), is amended by adding at the end the following:

“(h) If the Archivist of the United States determines that a former President did not comply with major requirements under chapter 22 of title 44, United States Code, or the Presidential Transition Act of 1963 (3 U.S.C. 102 note), the monetary amounts described in subsections (a) and (b) shall be withheld until the later of—
“(1) 1 year after the date on which the Archivist makes that determination; or
“(2) the date on which the Archivist determines the former President has adequately complied with the requirements.”.

SEC. 11. PRESIDENTIAL ARCHIVAL DEPOSITORY.

Section 2112 of title 44, United States Code, is amended—

(1) in subsection (b)—

(A) by striking “When the Archivist” and inserting “(1) Subject to paragraph (2), when the Archivist”; and

(B) by adding at the end the following:

“(2) The Archivist may not deposit papers, documents, or other historical materials accepted under section 2111 of this title or other Federal records appropriate for preservation in a Presidential archival depository relating to a former President under paragraph (1) until after the date on which the Archivist determines that the former President has adequately complied with the requirements under chapter 22 relating to Presidential records (as defined in section 2201).”;

(2) in subsection (g), by adding at the end the following:
“(6)(A) Notwithstanding paragraphs (3), (4) and (5) (to the extent that such paragraphs are inconsistent with this paragraph), this subsection shall be administered in accordance with this paragraph with respect to any Presidential archival depository created as a depository for the papers, documents, and other historical materials and Presidential records pertaining to any President who takes any action, including destruction, alteration, concealment, or removal, that threatens or damages the integrity and statutory preservation requirements under chapter 22 for Presidential records (as defined in section 2201).

“(B) For purposes of subparagraphs (A)(ii), (B)(i)(II), and (B)(ii)(II) of paragraph (3) the percentage of 100 percent shall apply instead of 60 or 20 percent.”;

and

(3) by adding at the end the following:

“(h) None of the funds in the account in the National Archives Trust Fund that may be expended for the benefit and in the interest of a Presidential archival depository relating to a former President may be used for the cost of digitizing records the former President wishes to deposit in and make available through the Presidential archival depository.”.