

118TH CONGRESS
1ST SESSION

S. 2270

To establish and maintain a database within each agency for executive branch ethics records of noncareer appointees.

IN THE SENATE OF THE UNITED STATES

JULY 12, 2023

Mr. GRASSLEY (for himself, Mr. PETERS, Mr. PADILLA, and Mr. LANKFORD) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To establish and maintain a database within each agency for executive branch ethics records of noncareer appointees.

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 “Executive Branch Ac-
5 countability and Transparency Act of 2023”.

6 **SEC. 2. AGENCY DATABASES FOR PUBLICLY AVAILABLE**

7 **GOVERNMENT ETHICS RECORDS.**

8 (a) DEFINITIONS.—In this section:

9 (1) AGENCY.—The term “agency” means each
10 Executive agency, as defined in section 105 of title

1 5, United States Code, and each component of the
2 Executive Office of the President, including those
3 components established under title 3, United States
4 Code.

5 (2) COVERED EMPLOYEE.—

6 (A) INCLUSIONS.—The term “covered em-
7 ployee” includes the following individuals:

8 (i) Each individual who is—

9 (I) a noncareer employee; and

10 (II) is described in paragraphs

11 (3) through (8) of section 13103(f) of
12 title 5, United States Code.

13 (ii) Each individual serving in a posi-
14 tion with respect to which a determination
15 has been made under section 7511(b)(2) of
16 title 5, United States Code.

17 (iii) Each special Government em-
18 ployee, as defined in section 202(a) of title
19 18, United States Code, who is employed
20 in the Executive Office of the President,
21 other than a special Government employee
22 serving solely on a Federal advisory com-
23 mittee or presidential advisory committee.

24 (iv) An individual who previously
25 served in the Federal Government in a ca-

1 capacity described in clause (i), (ii), or (iii)
2 during the preceding 10-year period.

3 (B) EXCLUSION.—The term “covered em-
4 ployee” excludes any individual described in
5 section 13107(a)(1) of title 5, United States
6 Code.

7 (3) COVERED ETHICS RECORD.—

8 (A) INCLUSIONS.—The term “covered eth-
9 ics record”—

10 (i) with respect to any individual,
11 means—

12 (I) each approval granted pursu-
13 ant to subsection (b) or subsection (c)
14 of section 908 of title 37, United
15 States Code; and

16 (II) each report to Congress re-
17 quired under section 908(d) of title
18 37, United States Code; and

19 (ii) with respect to a covered em-
20 ployee, means—

21 (I) each public financial dislo-
22 sure report filed pursuant to section
23 13103 or section 13105(l) of title 5,
24 United States Code;

1 (II) each amendment to a public
2 financial disclosure report filed pursu-
3 ant to section 13103 or section
4 13105(l) of title 5, United States
5 Code;

6 (III) each waiver of—

7 (aa) a post-employment re-
8 striction, pursuant to subsection
9 (c)(2)(C) or subsection (k) of sec-
10 tion 207 of title 18, United
11 States Code;

12 (bb) section 208(a) of title
13 18, United States Code, that has
14 been issued pursuant to section
15 208(b)(1) of title 18, United
16 States Code;

17 (cc) the cover letter regard-
18 ing a public financial disclosure
19 requirement, pursuant to section
20 13103(h)(2)(i) of title 5, United
21 States Code;

22 (dd) the cover letter regard-
23 ing the requirement to disclose a
24 gift, pursuant to section

1 13104(a)(2)(C) of title 5, United
2 States Code; and

3 (ee) a provision of any regu-
4 lation of the Office of Govern-
5 ment Ethics, supplemental agen-
6 cy ethics regulation, or executive
7 order pertaining to Government
8 ethics, or any successor thereto;

9 (IV) each written authorization
10 of an individual to participate in a
11 matter from which recusal would oth-
12 erwise be required under any provi-
13 sion of law, regulation, executive
14 order, or policy pertaining to Govern-
15 ment ethics and applicable to the indi-
16 vidual as an employee of the executive
17 branch;

18 (V) each written approval or
19 written authorization permitting an
20 individual to accept a gift from an
21 outside source that would otherwise be
22 prohibited under section 7353 of title
23 5, United States Code, or any other
24 provision of law, regulation, executive
25 order, or policy pertaining to govern-

1 ment ethics and applicable to the indi-
2 vidual as an employee of the executive
3 branch;

4 (VI) each written determina-
5 tion—

6 (aa) that a position may be
7 excluded from otherwise applica-
8 ble public financial disclosure re-
9 quirements, pursuant to section
10 13103(f)(5) of title 5, United
11 States Code;

12 (bb) that an employee of the
13 executive branch, or the spouse
14 or minor child of an employee of
15 the executive branch, must divest
16 a financial interest; or

17 (cc) regarding an individual
18 that is required to be made pur-
19 suant to any other provision of
20 law, regulation, executive order,
21 or policy pertaining to Govern-
22 ment ethics and applicable to the
23 individual as an employee or
24 former employee of the executive
25 branch;

1 (VII) each written ethics agree-
2 ment, recusal, or screening arrange-
3 ment pertaining to employment in the
4 executive branch;

5 (VIII) each record of the comple-
6 tion by a presidential appointee of
7 ethics training required under a regu-
8 lation of the Office of Government
9 Ethics;

10 (IX) each certificate of divesti-
11 ture issued pursuant to section 1043
12 of the Internal Revenue Code of 1986
13 and each request that resulted in the
14 issuance of a certificate of divestiture;

15 (X) each qualified blind trust
16 agreement and each record described
17 in section 13104(f)(5)(D) of title 5,
18 United States Code;

19 (XI) each record submitted pur-
20 suant to section 13103(b)(1) of title
21 5, United States Code, for the pur-
22 pose of making current, with respect
23 to income and honoraria, a financial
24 disclosure filed pursuant to that para-
25 graph;

1 (XII) each notice submitted pur-
2 suant to section 13111 of title 5,
3 United States Code, and any certifi-
4 cation by a Senate-confirmed presi-
5 dential appointee as to compliance
6 with an ethics agreement, whether
7 submitted to the respective agency,
8 the Office of Government Ethics, or
9 the Senate;

10 (XIII) any written opinion issued
11 pursuant to section 847 of the Na-
12 tional Defense Authorization Act for
13 Fiscal Year 2008 (Public Law 110-
14 181; 10 U.S.C. 1701 note), except
15 that the agency may redact the name
16 of an individual or organization with
17 whom an individual has not yet ac-
18 cepted an offer of employment or
19 compensation;

20 (XIV) any notification filed pur-
21 suant to section 17 of the STOCK
22 Act (5 U.S.C. 13103 note), except
23 that the agency may withhold the
24 public release of any such notification
25 unless and until such time as the em-

1 employee has accepted an offer of em-
2 ployment or compensation from an in-
3 dividual or organization that is the
4 subject of the notification;

5 (XV) each certification made
6 pursuant to—

7 (aa) section 203(e) of title
8 18, United States Code;

9 (bb) section 205(f) of title
10 18, United States Code; or

11 (cc) section 207(j)(5) of title
12 18, United States Code; and

13 (XVI) any other category of
14 records that the Director of the Office
15 of Government Ethics determines is
16 appropriate for inclusion in the data-
17 base of an agency under this Act.

18 (B) EXCLUSIONS.—The term “covered eth-
19 ics record” excludes—

20 (i) classified information, as defined
21 in section 798 of title 18, United States
22 Code;

23 (ii) the subject of any ongoing law en-
24 forcement matter that, in the opinion of

1 the agency, requires the information or
2 record to be kept confidential;

3 (iii) information, including any con-
4 fidential financial disclosure report, filed
5 pursuant to section 13109 of title 5,
6 United States Code, except that such ex-
7 clusion shall not be construed to exclude
8 from inclusion in any database established
9 under this Act, or to authorize redaction
10 of, any conflict of interest waiver issued to
11 the filer of the confidential financial disclo-
12 sure report; or

13 (iv) individualized ethics counseling or
14 advice concerning an interpretation of ap-
15 plicable legal requirements that has been
16 provided by an ethics official to an indi-
17 vidual, except that such information or
18 record shall not be excluded if such infor-
19 mation or record is a covered record under
20 subparagraph (A).

21 (4) NONCAREER EMPLOYEE.—The term “non-
22 career employee” means an individual who is—

23 (A) serving in a position to which the
24 President appointed the individual (without re-
25 gard to whether the advice and consent of the

1 Senate was required with respect to that ap-
2 pointment), other than an individual who is—

3 (i) a member of a uniformed service,
4 as that term is defined in section 210(m)
5 of the Social Security Act (42 U.S.C.
6 410(m)); or

7 (ii) a member of the Foreign Service
8 serving under a career appointment, as de-
9 scribed in section 301 of the Foreign Serv-
10 ice Act of 1980 (22 U.S.C. 3941);

11 (B) a noncareer appointee, as that term is
12 defined in section 3132(a) of title 5, United
13 States Code;

14 (C) serving in a position in a Federal exec-
15 utive system that is comparable to the Senior
16 Executive Service, the appointment to which is
17 not made through merit-based procedures, such
18 as a position in the Transportation Security
19 Executive Service; or

20 (D) serving in a position with respect to
21 which a determination has been made under
22 section 7511(b)(2) of title 5, United States
23 Code.

24 (b) SPECIFICATIONS OF DATABASES.—Not later than
25 120 days after the date of enactment of this Act, the Di-

1 rector of the Office of Government Ethics shall publish
2 guidance for a searchable, sortable database created by
3 each agency through which members of the public can ac-
4 cess covered ethics records and that shall each be—

5 (1) hosted on an official website of each agency
6 without charge and without a requirement that
7 members of the public register for access;

8 (2) accessible through an application program-
9 ming interface;

10 (3) fully compliant with—

11 (A) section 508 of the Rehabilitation Act
12 of 1973 (29 U.S.C. 794d); and

13 (B) the most recent Web Content Accessi-
14 bility Guidelines (or any successor guidelines);
15 and

16 (4) accessible through the website of each agen-
17 cy and through a single webpage operated by the Of-
18 fice of Government Ethics.

19 (c) ASSEMBLY OF COVERED ETHICS RECORDS.—Ex-
20 cept as provided in subsection (f), the head of each agency
21 shall—

22 (1) not later than 270 days after publication of
23 guidance under subsection (b), compile electronic
24 copies of covered ethics records that originated with
25 the agency, in such format and through such means

1 as is necessary to permit their inclusion in the data-
2 base of the agency pursuant to the requirements
3 published under subsection (b); and

4 (2) ensure that the contents of all such records
5 are machine-readable and compliant with the re-
6 quirements published under subsection (b).

7 (d) ESTABLISHMENT OF DATABASES.—Not later
8 than 1 year after the date on which the Director of the
9 Office of Government Ethics publishes the guidance under
10 subsection (b), each agency shall create a database that
11 complies with all requirements under the guidance pub-
12 lished under subsection (b).

13 (e) APPLICABILITY OF OTHER INSPECTION PROCE-
14 DURES.—

15 (1) IN GENERAL.—Subject to paragraph (2), no
16 identifier shall be required to search or sort the data
17 contained in the databases established pursuant to
18 subsection (d).

19 (2) DOWNLOADING DATA.—A login protocol
20 that includes the name of the user shall be utilized
21 by any person downloading data contained in the
22 records compiled pursuant to subsection (c).

23 (3) INSPECTION OF REPORTS.—For purposes of
24 this section, section 13107(b) of title 5, United

1 States Code, shall not apply to any records compiled
2 pursuant to subsection (c).

3 (f) REDACTIONS.—

4 (1) CONTENTS OF REPORTS.—Nothing in this
5 section shall be construed to permit the redaction of
6 any information required to be released pursuant to
7 section 13104 of title 5, United States Code.

8 (2) PROHIBITIONS.—Covered ethics records
9 may not be redacted except to the extent necessary
10 to—

11 (A) ensure the exclusion of information de-
12 scribed in subsection (a)(3)(B);

13 (B) prevent the release of trade secrets or
14 commercial information that is privileged or
15 confidential, unless the disclosure of such infor-
16 mation is required pursuant to section 13104 of
17 title 5, United States Code; or

18 (C) prevent the release of information,
19 other than information required to be reported
20 under section 13104 of title 5, United States
21 Code, that, in the opinion of the agency, poses
22 an identifiable risk to the safety of an indi-
23 vidual, such as a street address, the name of a
24 minor, or a brokerage account number.

1 (g) RECORDS PREDATING ESTABLISHMENT OF THE
2 DATABASE.—

3 (1) SEARCH FOR OLDER INFORMATION.—Not
4 later than 18 months after the publication of guid-
5 ance under subsection (b), each agency shall com-
6 plete a search reasonably calculated to find covered
7 ethics records that were created during the 9-year
8 period preceding the date of enactment of this Act.

9 (2) INCLUDED INFORMATION AND CERTIFI-
10 CATION.—Each search carried out pursuant to para-
11 graph (1) shall include all materials in the posses-
12 sion of the ethics office of an agency or readily ac-
13 cessible materials in any other office within the
14 agency that the designated agency ethics official cer-
15 tifies in writing is the most likely office to possess
16 covered ethics records.

17 (3) EXCLUSION FROM SEARCH.—In carrying
18 out this subsection, each agency shall exclude infor-
19 mation described in subsection (a)(3)(B) from the
20 search carried out pursuant to paragraph (1).

21 (4) REPORT.—Not later than 30 days after the
22 completion of the search carried out pursuant to
23 paragraph (1), each designated agency ethics official
24 shall provide the Director of the Office of Govern-
25 ment Ethics with a report that describes—

1 (A) the scope of the search and steps un-
2 dertaken to identify information;

3 (B) a copy of the certification required
4 under paragraph (2);

5 (C) the best estimate as to the complete-
6 ness of the collection of information provided to
7 the Director of the Office of Government Eth-
8 ics;

9 (D) an identification of any categories of
10 information known to the agency that the agen-
11 cy was unable to find; and

12 (E) a certification signed by the designated
13 agency ethics official affirming that the agency
14 made reasonable efforts in good faith to identify
15 and obtain covered ethics records.

16 (5) PUBLICATION.—The Director of the Office
17 of Government Ethics shall publish the report under
18 paragraph (4) on the official website of the Office of
19 Government Ethics.

20 (h) REMOVAL OF RECORDS.—Notwithstanding any
21 other law regarding the disposition of records or informa-
22 tion, all covered ethics records relating to noncareer em-
23 ployees that are required to be included in the database
24 of an agency pursuant to this section shall remain publicly
25 available through the database for a period of not less

1 than 10 years after the date on which the covered ethics
2 record is first published in the database.

3 (i) REPORTS.—

4 (1) INITIAL REPORT.—Not later than 30 days
5 after the establishment of a database under sub-
6 section (d), the relevant designated agency ethics of-
7 ficial shall provide the Director of the Office of Gov-
8 ernment Ethics with a report that certifies the com-
9 pleteness of records in the database of the agency
10 and any information that is known to be incomplete
11 under the guidance published under subsection (b).

12 (2) ANNUAL REPORTS.—Based on the informa-
13 tion collected under subsection (g)(4), and as nec-
14 essary under section 2638.207 of title 5, Code of
15 Federal Regulations, the Director of the Office of
16 Government Ethics shall report to the Committee on
17 Homeland Security and Governmental Affairs of the
18 Senate and the Committee on Oversight and Ac-
19 countability of the House of Representatives regard-
20 ing compliance with the requirements under this Act
21 each year until each agency has complied with sub-
22 sections (d) and (g).

23 (j) SEVERABILITY.—If any provision of this Act or
24 the application of such provision to any person or cir-
25 cumstance is held to be unconstitutional, the remainder

1 of this Act, and the application of the remaining provisions
2 of this Act to any person or circumstance, shall not be
3 affected.

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