

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—118th Cong., 2d Sess.

S. 2270

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

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. PETERS

Viz:

1 Strike all after the enacting clause and insert the following:
2

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Executive Branch Accountability and Transparency Act of 2024”.
5

6 **SEC. 2. AGENCY DATABASES FOR PUBLICLY AVAILABLE GOVERNMENT ETHICS RECORDS.**
7

8 (a) DEFINITIONS.—In this section:

9 (1) AGENCY.—The term “agency” means each
10 Executive agency, as defined in section 105 of title
11 5, United States Code, and each component of the
12 Executive Office of the President, including those

1 components established under title 3, United States
2 Code.

3 (2) COVERED EMPLOYEE.—

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

6 (i) Each individual who is—

7 (I) a noncareer employee; and

8 (II) is described in paragraphs
9 (3) through (8) of section 13103(f) of
10 title 5, United States Code.

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

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

22 (iv) An individual who previously
23 served in the Federal Government in a ca-
24 pacity described in clause (i), (ii), or (iii)
25 during the preceding 6-year period.

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

5 (3) COVERED ETHICS RECORD.—

6 (A) INCLUSIONS.—The term “covered eth-
7 ics record”—

8 (i) with respect to any individual,
9 means—

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

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

17 (ii) with respect to a covered em-
18 ployee, means—

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

23 (II) each amendment to a public
24 financial disclosure report filed pursu-
25 ant to section 13103 or section

1 13105(l) of title 5, United States
2 Code;

3 (III) each waiver of—

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

9 (bb) section 208(a) of title
10 18, United States Code, that has
11 been issued pursuant to section
12 208(b)(1) of title 18, United
13 States Code;

14 (cc) a publicly available re-
15 quest for a waiver of any public
16 financial disclosure requirement
17 made pursuant to section
18 13103(i) of title 5, United States
19 Code; and

20 (dd) a publicly available re-
21 quest for a waiver of the require-
22 ment to aggregate a gift for re-
23 porting purposes made pursuant
24 to section 13104(a)(2)(C) of title
25 5, United States Code;

1 (IV) any written authorization,
2 as applicable, of an individual to par-
3 ticipate in a matter from which
4 recusal would otherwise be required
5 under any provision of law, regulation,
6 executive order, or policy pertaining to
7 Government ethics and applicable to
8 the individual as an employee of the
9 executive branch;

10 (V) each written approval or
11 written authorization permitting an
12 individual to accept a gift from an
13 outside source that would otherwise be
14 prohibited under section 7353 of title
15 5, United States Code, or any other
16 provision of law, regulation, executive
17 order, or policy pertaining to Govern-
18 ment ethics and applicable to the indi-
19 vidual as an employee of the executive
20 branch;

21 (VI) each written determina-
22 tion—

23 (aa) that a position may be
24 excluded from otherwise applica-
25 ble public financial disclosure re-

1 requirements, pursuant to section
2 13103(f)(5) of title 5, United
3 States Code; or

4 (bb) that an employee of the
5 executive branch, or the spouse
6 or minor child of an employee of
7 the executive branch, must divest
8 a financial interest;

9 (VII) each written ethics agree-
10 ment, recusal, or screening arrange-
11 ment pertaining to employment in the
12 executive branch;

13 (VIII) each record of the comple-
14 tion by a presidential appointee of
15 ethics training required under a regu-
16 lation of the Office of Government
17 Ethics;

18 (IX) each certificate of divesti-
19 ture issued pursuant to section 1043
20 of the Internal Revenue Code of 1986
21 and each request that resulted in the
22 issuance of a certificate of divestiture;

23 (X) each qualified blind trust
24 agreement and each record described

1 in section 13104(f)(5)(D) of title 5,
2 United States Code;

3 (XI) each record submitted pur-
4 suant to section 13103(b)(1) of title
5 5, United States Code, for the pur-
6 pose of making current, with respect
7 to income and honoraria, a financial
8 disclosure filed pursuant to that para-
9 graph;

10 (XII) each notice submitted pur-
11 suant to section 13111 of title 5,
12 United States Code, and any certifi-
13 cation by a Senate-confirmed presi-
14 dential appointee as to compliance
15 with an ethics agreement, whether
16 submitted to the respective agency,
17 the Office of Government Ethics, or
18 the Senate;

19 (XIII) any written opinion issued
20 pursuant to section 847 of the Na-
21 tional Defense Authorization Act for
22 Fiscal Year 2008 (Public Law 110-
23 181; 10 U.S.C. 1701 note), except
24 that the agency may redact the name
25 of an individual or organization with

1 whom an individual has not yet ac-
2 cepted an offer of employment or
3 compensation; and

4 (XIV) any notification filed pur-
5 suant to section 17 of the STOCK
6 Act (5 U.S.C. 13103 note), except
7 that the agency may withhold the
8 public release of any such notification
9 unless and until such time as the em-
10 ployee has accepted an offer of em-
11 ployment or compensation from an in-
12 dividual or organization that is the
13 subject of the notification.

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

16 (i) classified information, as defined
17 in section 798 of title 18, United States
18 Code;

19 (ii) the subject of any ongoing law en-
20 forcement matter that, in the opinion of
21 the agency, requires the information or
22 record to be kept confidential;

23 (iii) information, including any con-
24 fidential financial disclosure report, filed
25 pursuant to section 13109 of title 5,

1 United States Code, except that such ex-
2 clusion shall not be construed to exclude
3 from inclusion in any database established
4 under this Act, or to authorize redaction
5 of, any conflict of interest waiver issued to
6 the filer of the confidential financial disclo-
7 sure report; or

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

16 (4) DIRECTOR.—The term “Director” means
17 the Director of the Office of Government Ethics.

18 (5) NONCAREER EMPLOYEE.—The term “non-
19 career employee” means an individual who is—

20 (A) serving in a position to which the
21 President appointed the individual (without re-
22 gard to whether the advice and consent of the
23 Senate was required with respect to that ap-
24 pointment), other than an individual who is—

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

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

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

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

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

22 (b) SPECIFICATIONS OF DATABASES.—Not later than
23 1 year after the date of the enactment of this Act, the
24 Director shall publish guidance for a bulk downloadable
25 database created by each agency through which members

1 of the public can access covered ethics records and that
2 shall each be—

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

6 (2) updated quarterly;

7 (3) accessible through an application program-
8 ming interface;

9 (4) fully compliant with—

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

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

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

18 (c) ASSEMBLY OF COVERED ETHICS RECORDS.—Ex-
19 cept as provided in subsection (f), not later than 270 days
20 after publication of guidance under subsection (b), the
21 head of each agency shall compile electronic copies of cov-
22 ered ethics records that originated with the agency in such
23 format and through such means as is necessary to permit
24 their inclusion in the database of the agency pursuant to
25 the requirements published under subsection (b).

1 (d) ESTABLISHMENT OF DATABASES.—Not later
2 than 3 years after the date on which the Director pub-
3 lishes the guidance under subsection (b), each agency shall
4 create a database that complies with all requirements
5 under the guidance published under subsection (b).

6 (e) APPLICABILITY OF OTHER INSPECTION PROCE-
7 DURES.—

8 (1) IN GENERAL.—Subject to paragraph (2), no
9 identifier shall be required to search or sort the data
10 contained in the databases established pursuant to
11 subsection (d).

12 (2) DOWNLOADING DATA.—A login protocol
13 that includes the information required under section
14 13107(b)(2) of title 5, United States Code, shall be
15 utilized by any person downloading data contained
16 in the records compiled pursuant to subsection (c) of
17 this section.

18 (3) INSPECTION OF REPORTS.—Except as pro-
19 vided in paragraph (2), section 13107(b) of title 5,
20 United States Code, shall not otherwise apply for
21 purposes of this section to any records compiled pur-
22 suant to subsection (c).

23 (f) REDACTIONS.—

24 (1) CONTENTS OF REPORTS.—Nothing in this
25 section shall be construed to permit the redaction of

1 any information required to be released pursuant to
2 section 13104 of title 5, United States Code.

3 (2) PROHIBITIONS.—Covered ethics records
4 may not be redacted except to the extent necessary
5 to—

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

8 (B) prevent the release of trade secrets or
9 commercial information that is privileged or
10 confidential, unless the disclosure of such infor-
11 mation is required pursuant to section 13104 of
12 title 5, United States Code; or

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

20 (g) 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 6 years after

1 the date on which the covered ethics record is first pub-
2 lished in the database.

3 (h) 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 submit a report to the Director that cer-
8 tifies the completeness of records in the database of
9 the agency and any information that is known to be
10 incomplete under the guidance published under sub-
11 section (b).

12 (2) ANNUAL REPORTS.—The Director shall
13 submit a report to the Committee on Homeland Se-
14 curity and Governmental Affairs of the Senate and
15 the Committee on Oversight and Accountability of
16 the House of Representatives regarding compliance
17 with the requirements under this Act each year until
18 each agency has complied with subsection (d). The
19 Director may include in any such annual report any
20 information contained in any report submitted to the
21 Office pursuant to section 2638.207 of title 5, Code
22 of Federal Regulations.

23 (i) 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.