

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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<http://oversight.house.gov>

December 6, 2016

The Honorable Ernest Moniz
Secretary
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Dear Mr. Secretary:

As the 114th Congress and the current administration conclude our respective affairs, I write to encourage you to be mindful of ongoing oversight matters, and specifically the Committee's current outstanding requests. I trust you will take a leadership role in ensuring your department preserves and retains all documents and communications in accordance with federal recordkeeping requirements such as 44 U.S.C. §§ 3101-3314 and criminal statutes that prohibit the destruction of records relevant to congressional investigations.

During the 112th, 113th, and 114th Congresses, the Committee's oversight and investigative matters were frequently delayed and impeded by executive branch officials who inappropriately deleted relevant documents¹³ or conducted government business on unauthorized, non-government accounts.¹⁴ Accordingly, I urge you to make sure your top officials do not purge, delete, or destroy any official government records.

To ensure the integrity of congressional investigations that may be necessary in the 115th Congress, please preserve all official records. The Committee requests and expects you will exercise an abundance of caution, and keep everything. Further, according to news accounts, certain agencies are rushing to issue regulations prior to the end of the current administration.¹⁵

¹³ John D. McKinnon, *Former IRS Official's Email Lost When Backup Tapes Routinely Erased*, WALL ST. J., June 25, 2015, available at <http://www.wsj.com/articles/former-irs-officials-email-lost-when-backup-tapes-routinely-erased-1435234390>. See e.g. Robert W. Wood, *IRS Wipes Another Hard Drive Defying Court Order...But You Must Keep Tax Records*, FORBES, Jan. 20, 2016, available at <http://www.forbes.com/sites/robertwood/2016/01/20/irs-wipes-another-hard-drive-defying-court-order-but-you-must-keep-tax-records/#734f5f5e726b>.

¹⁴ M. Scott Mahaskey, *What the FBI Files Reveal About Hillary Clinton's Email Server*, POLITICO MAGAZINE, Sept. 30, 2016, available at <http://www.politico.com/magazine/story/2016/09/hillary-clinton-emails-2016-server-state-department-fbi-214307>. See e.g. Alicia Parlapiano, *What We Know About the Investigation Into Hillary Clinton's Private Email Server*, N.Y. TIMES, Oct. 28, 2016, available at http://www.nytimes.com/interactive/2016/05/27/us/politics/what-we-know-about-hillary-clintons-private-email-server.html?_r=0.

¹⁵ Bob King and Nick Juliano, *Obama's Agencies Push Flurry of 'Midnight' Actions*, POLITICO, Nov. 27, 2016, available at <http://www.politico.com/story/2016/11/obama-regulations-231820>.

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The regulatory process should be open and transparent. To that end, the Committee also specifically requests that you preserve all records related to any regulation or rule, including: advance notice of proposed rulemaking, proposed regulation, or finalized rule since July 1, 2016.

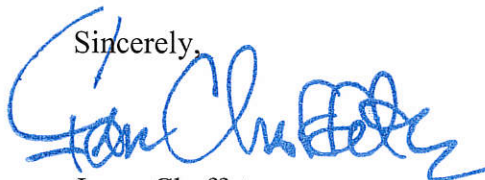
This preservation request should be construed as an instruction to preserve all documents, communications, and other data ("records"). Records are defined broadly, and include log files and metadata. For the purposes of this request, "preserve" means taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, or mutation of electronic records, as well as negligent or intentional handling that would make such records incomplete or inaccessible. Specifically, you should:

1. Exercise reasonable efforts to identify and notify former employees and contractors, subcontractors and consultants who may have access to such electronic records that they are to be preserved;
2. Exercise reasonable efforts to identify, recover, and preserve any electronic records which have been deleted or marked for deletion but are still recoverable; and
3. If it is the routine practice of any agency employee or contractor to destroy or otherwise alter such electronic records, either halt such practices or arrange for the preservation of complete and accurate duplicates or copies of such records, suitable for production, if requested.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.

If you have any questions about this request, please have your staff contact Andrew Dockham of my staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,



Jason Chaffetz
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member