



## H.R. 35 – Presidential Records Act Amendments of 2009

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### FLOOR SITUATION

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H.R. 35 is being considered on the floor under suspension of the rules and will require a two-thirds majority vote for passage. This legislation was introduced by Representative Edolphus Towns (D-NY).

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### SUMMARY

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H.R. 35 nullifies President George W. Bush's [Executive Order 13233](#) and establishes procedures for the consideration of privilege claims by a former or incumbent President regarding disclosure of Presidential records.

Claims of privilege against disclosure: When the Archivist of the United States decides to make publicly available any Presidential record, the Archivist is directed to inform both the incumbent President and the former President during whose term of office the record was created.

This bill directs the Archivist to then make the records publicly available within 20 days, unless the incumbent or former President asserts a privilege claim against making the records public. The former or incumbent President may extend the deadline to decide whether to make a privilege claim for an additional 20 days by filing an extension with the Archivist. A deadline for review may not expire before July 20<sup>th</sup> of the year that an incumbent President first takes office.

A privilege claim must be made personally by either a President or former President. If a former President makes a privilege claim, the Archivist is directed to hold off on releasing the records to the public for 20 days. After 20 days, the Archivist is directed to release the records, notwithstanding the incumbent President's privilege claim, unless a court rules otherwise.

If the incumbent President makes a privilege claim, the Archivist is directed to hold off on releasing the records until either the President withdraws the claim or a final court decision directs that the records be released. This provision does not apply to records required to be made available in connection with judicial or Congressional proceedings.

No individual may claim access to original Presidential records as a representative of a President, if he or she was convicted of a crime involving the review, retention, removal, or destruction of Presidential records.

Repeal of Executive Order: The bill repeals President George W. Bush's executive order issued on November 1, 2001. This executive order extended the right to make privilege claims against the release of records to current and former Vice Presidents and established a process requiring the concurrence of the incumbent and former President for records to be released.

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### BACKGROUND

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Virtually identical legislation to the bill now under consideration, [H.R. 1255](#), was passed by the House in the 110<sup>th</sup> Congress, but was never considered in the Senate. According to a March 13, 2007, Statement of Administration Policy, the White House opposed that bill on grounds that it "would be counterproductive and invite unnecessary litigation, is misguided, and would improperly impinge on the President's constitutional authority, in violation of settled separation of powers principles."

The Presidential Records Act of 1978 transferred ownership of Presidential records to the National Archives. The legislation allowed the President to establish time periods, not to exceed 12 years, for information to become public.



The legislation now under consideration by the House would essentially revoke an Executive Order, E.O. 13233, which was issued by President George W. Bush on November 1, 2001. Executive Order 13233 allows an incumbent President to withhold the public disclosure of records of recent former Presidents and Vice President or to delay their release indefinitely. The Executive Order also allows the Archivist of the United States to resume control of access to the records of recent former Presidents. President Bush issued E.O. 13233 in large part to prevent the release of records containing national security secrets, Presidential communications, legal advice, and sensitive details of Presidential deliberations with advisers.

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#### COST

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There is no current Congressional Budget Office cost estimate available for H.R. 35, but last year's version of the bill was not expected to affect spending or revenues.

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#### STAFF CONTACT

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For questions or further information contact Adam Hepburn at 6-2302.