

**TESTIMONY OF DAVID S. FERRIERO
ARCHIVIST OF THE UNITED STATES**

BEFORE THE

HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

ON

“IRS OBSTRUCTION: LOIS LERNER’S MISSING E-MAILS, PART II”

TUESDAY, JUNE 24 2014

Thank you for the opportunity to provide testimony on recent activities of the National Archives and Records Administration (NARA) related to managing email in Federal agencies and our response to the recent reports regarding the alleged unauthorized disposal of email records at the Internal Revenue Service (IRS). Accompanying me today is Paul Wester, the Chief Records Officer for the U.S. Government and a member of my senior management team at NARA.

First, concerning the reported unauthorized disposal, NARA and Federal agencies are responsible for preventing the unauthorized disposition of Federal records, including their unlawful or accidental destruction, deletion, alteration, or removal from Federal custody. Agencies should carefully monitor the implementation of approved records schedules to prevent such unauthorized destruction.

In accordance with the Federal Records Act (44 U.S.C. §§ 2905(a) and 3106) and its implementing regulations (36 CFR Part 1230), when an agency becomes aware of an incident of unauthorized destruction, they must report the incident to us. The report should describe the records, the circumstances in which the unauthorized destruction took place, and the corrective steps being taken to properly manage the records in the future. If we hear about the incident before the agency has reported it, we will notify the agency and request similar information. The goal of this process is to ensure that the circumstances that may have led to the loss of Federal records are corrected and not repeated.

NARA learned of the alleged unauthorized disposal by the IRS through a letter, dated June 13, 2014, from the IRS to Senators Ron Wyden and Orrin Hatch of the Senate Committee on Finance. In this letter, the IRS reported the loss of email records of Lois Lerner, the former head of the IRS’ Exempt Organization Division, dating from 2009-2011, as the result of the failure of a hard drive.

Accordingly, NARA asked the IRS to investigate the alleged disposal of the items in question and whether the alleged disposal was broader than was reported in the June 13, 2014, letter. A

report of the investigation into this matter is required within 30 days, as stated in 36 CFR § 1230.16(b).

On a daily basis, National Archives staff in the Chief Records Officer organization, and records and information professionals in each federal agency, work to ensure records management policies and practices meet the needs of agencies, protect the rights and interests of the government and its citizens, and identify and eventually make available to the public the permanently valuable records that document the national experience.

In November 2011, the [President issued a Memorandum to all agencies on Managing Government Records](#), which directed the Archivist of the United States and the Director of the Office of Management and Budget to issue an implementing directive, which they did in August 2012 – [the Managing Government Records Directive, OMB M12-18](#). Through this directive, NARA and OMB identified two high-level goals:

- First, require electronic recordkeeping to ensure transparency, efficiency, and accountability.
- Second, demonstrate compliance with federal records management statutes and regulations.

There are a number of activities associated with each of these goals, but the two major actions are:

- By the end of 2016, Federal agencies must manage all email records in an electronic format.
- By the end of 2019, all permanent electronic records in Federal agencies will be managed electronically to the fullest extent possible.

The effective management of email is a central, animating issue for the National Archives and the government as a whole as we work to meet the requirements of OMB M12-18. To help agencies meet the goal of managing their email in electronic form by the end of 2016, NARA was required to issue updated email guidance by December 31, 2013.

This revised [email guidance](#), known as “Capstone,” was released on August 29, 2013. NARA developed the Capstone approach as part of our ongoing efforts to evaluate how agencies have used various email repositories to manage email records. This approach was developed in recognition of the difficulty in practicing traditional records management on the overwhelming volume of email that Federal agencies produce. Capstone provides agencies with workable and cost efficient solutions to email records management challenges, especially as they consider cloud-based solutions. Capstone also offers agencies the option of using a more simplified and automated approach to managing email, as opposed to using either print-and-file or click-and-file systems or records management applications that require staff to file email records individually.

Using this approach, an agency can categorize and schedule email based on the work and/or position of the email account owner. The Capstone approach allows for the capture of records that should be preserved as permanent from the accounts of officials at or near the top of an agency or an organizational subcomponent. An agency may designate email accounts of additional employees as Capstone when they are in positions that are likely to create or receive permanent email records. Following this approach, an agency can schedule all of the email in Capstone accounts as permanent records. The agency could then schedule the remaining email accounts in the agency or organizational unit, which are not captured as permanent, as temporary and preserve all of them for a set period of time based on the agency's needs. Alternatively, approved existing or new disposition authorities may be used for assigning disposition to email not captured as permanent.

Because of the novel approach in this guidance, agencies have requested a number of briefings and training sessions. Staff from several NARA offices have participated in dozens of these sessions and continue to attend as necessary. Resources have also been placed on NARA's portal for email (<http://www.archives.gov/records-mgmt/email-mgmt.html>). Several training sessions have also been recorded and made available on NARA's Records Management Training YouTube playlist.

Also earlier this year, NARA released expanded guidance on the formats acceptable for transferring permanent electronic records. This revised guidance applies to all electronic records that have been appraised and scheduled for permanent retention, including email.

The Capstone approach and our expanded format guidance are NARA's first efforts at providing assistance to agencies to enable them to meet the requirement in OMB M12-18 that they manage their email in an electronic form. We will continue to provide additional information and guidance to agencies, not only on email, but on all Federal records as we strive to meet all of the mandates in OMB M12-18.

There are a number of challenges and opportunities related to the use of electronic records in the Federal government. The talented staff of the National Archives and Records Administration – particularly those I work most closely with on a daily basis on these challenges – look forward to working through these issues now and for many years to come. The long-term success of the National Archives – and the historical records of our nation – depends on our collective success.

Thank you for the opportunity to appear today. Mr. Wester and I look forward to answering your questions about Federal records management and the Capstone approach to managing Federal email records.