

**WRITTEN TESTIMONY OF  
THE INTERNAL REVENUE SERVICE  
BEFORE THE  
HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE  
ON IRS RECORDS MANAGEMENT PROCEDURES  
FEBRUARY 11, 2016**

Chairman Chaffetz, Ranking Member Cummings and Members of the Committee, thank you for the opportunity to discuss the IRS's records management procedures.

The IRS has been working for more than a year to revamp our records retention practices in regard to emails and other electronic records. While we have made significant progress in this area, we recognize the need to continue improving upon these efforts, which are described in more detail below.

The IRS has long been challenged in this area, because for many years our operations have relied on extremely outdated technology. In fact, despite more than a decade of upgrades to the agency's core business systems, we still have very old technology running alongside our more modern systems. As a result, some agency practices are not up to the level of those of a typical modern organization. A case in point is the IRS's document retention program for electronic records, which historically has relied on individual employees either archiving information on their computer hard drives and network drives, or printing records and storing them in paper files.

While these methods are in compliance with National Archives and Records Administration (NARA) standards, there are still risks and vulnerabilities inherent in such a system. Searching individual hard drives to fulfill a document request is a labor-intensive, time consuming process. This type of system poses an additional complication for the IRS, involving the need to safeguard any taxpayer data contained in electronic records created by employees who leave the agency. Additionally, computer hard drives are prone to equipment failure resulting in data loss, and the management of a large hard-drive inventory presents significant logistical challenges, even in the best of circumstances. Our standard practice has been to erase departed employees' hard drives prior to reusing or scrapping them.

The IRS considered putting a more modern electronic records storage system in place in 2012, but was unable to do so because of budget constraints. Since then, the unprecedented volume and scope of the document requests made by Congress and the public in 2013 in regard to the processing of applications for tax exempt status highlighted the need for the IRS to continue improving its

maintenance of federal records that are in electronic form, to the extent our limited funding will allow.

A key part of our current effort to improve the management and storage of electronic records began in October 2014. In this effort, we have been in close consultation with NARA to ensure the best approach. Our interim solution has been to adopt a process created by NARA, termed the “Capstone” approach, to secure the email records of all senior officials in the agency by copying them to the network. This process for senior IRS executives was initiated in late 2014 and completed for all existing executives in April 2015. As additional executives are hired, promoted, or appointed, their email records are saved on the network.

While adoption of the Capstone approach was an important step forward, it is not the ultimate solution for the preservation of electronic records of the agency. We need to end any reliance on individual hard drives as an archival records store, and instead use network databases to preserve all official records that are electronically generated by our workforce – frontline employees as well as executives. To reach that end, we are working toward having systems in place by the end of Calendar Year (CY) 2016 that will allow us to copy material off the hard drive of every employee who leaves the agency, and store that information in a digital format.

As we have continued making improvements for the long term, we recently realized the need for additional interim measures, to ensure we are doing everything possible to retain official electronic records until we have implemented the more comprehensive solution and tested it to ensure it is working as intended.

This need became apparent when an issue arose in connection with the Service’s collection and production of documents related to a Freedom of Information Act (FOIA) case captioned *Microsoft v. IRS*. This document collection effort has included analyzing the computer hard drives of current and former IRS employees who were identified as potentially having information pertinent to the case. In December 2014 the IRS implemented a “litigation hold” that covered many of the topics and custodians identified by Microsoft. We took this action as a proactive measure – not in reaction to a court-issued document preservation order or Congressional investigative request – to preserve information that was relevant or could become relevant in the future.

In January of this year, as the IRS was producing information responsive to Microsoft’s FOIA request, we advised the Court that we had discovered an issue regarding the computer hard drive of Samuel Maruca, a former IRS employee whom we identified in this litigation hold effort, but who had separated from the Service on August 1, 2014. Shortly after he left the IRS, Mr. Maruca’s hard drive was designated for erasure, so that it could be securely reused or scrapped, in line with standard IRS procedures. Because Mr. Maruca’s hard drive was

designated for erasure before the issuance of our litigation hold, the hold did not prevent the erasure of this hard drive, which occurred in late 2014 or early 2015.

However, we believe the erasure of Mr. Maruca's hard drive will have minimal effect on our ability to complete the necessary document production in this instance. We now know that Mr. Maruca's hard drive was copied on July 16, 2014, in connection with a document collection being undertaken for separate litigation. We have therefore determined that the data stored on his computer hard drive as of July 16, 2014, has been preserved. We are in the process of searching this data set for information responsive to the Microsoft document request, and to fulfill any related obligations. We are also searching emails that we copied from Mr. Maruca's network account in July 2014. Particularly given that we have the aforementioned copy sets, we do not know, at this point, if we will need to access back-up tapes or disaster recovery tapes in order to produce documents in the future, but we are prepared to do so if necessary. Backup tapes have been preserved for periods after November 2012.

Although we were fortunate in this instance to have had overlapping litigation holds and taken redundant document collection measures, we nonetheless recognize that this situation reflected a shortcoming in our document controls. Therefore, pending further review of the IRS's litigation hold procedures, Commissioner Koskinen has ordered a halt to the erasure and recycling of all employee devices, including computer hard drives and mobile devices, for all departing employees. This is in addition to the halt on erasure and reuse of disaster recovery tapes backing up our network server, which began in 2013 and remains in effect.

We are also broadening our litigation hold procedures, to ensure that hold instructions are provided not only to the pertinent employees, but also to the employees' supervisors. In addition, we will update our procedures for processing employees who leave the Service, to ensure that appropriate personnel are advised of pending litigation holds and document collection efforts involving records in the custody of departing employees.

It is important to note that the timing of Mr. Maruca's departure was the main issue in this situation, given that it occurred before the IRS began phasing in the Capstone approach for the preservation of IRS executives' emails. Indeed, were Mr. Maruca an IRS executive now, his emails would have been copied to the network and preserved pursuant to the Capstone approach prior to his departure.

Longer term, we need to continue making improvements in our processes for searching for and producing relevant information. Our goal is to develop enhanced search capability for various types of documents, which will allow us to respond to Congressional inquiries and FOIA requests more timely, and put us in a better position to support e-discovery within civil litigation or government investigations.

The President's Fiscal Year (FY) 2017 Budget request for the IRS includes \$18.5 million in additional funding to improve electronic enterprise records management, which includes funds to further improve our document search capability. The IRS urges Congress to approve this funding, so that we can move forward on this critically important initiative.

Chairman Chaffetz, Ranking Member Cummings and Members of the Committee, this concludes the IRS's statement.