

TESTIMONY OF DAVID S. FERRIERO
ARCHIVIST OF THE UNITED STATES
BEFORE THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
ON
PREVENTING VIOLATIONS OF FEDERAL TRANSPARENCY LAWS
SEPTEMBER 10, 2013

Chairman Issa, Ranking Member Cummings, and Distinguished Members of the Committee:

Thank you for holding this hearing on the importance of Federal record keeping, and the challenges we all face in managing the vast and growing numbers of email records.

As background and context on our latest work in this area, on November 28, 2011, the President issued a [Presidential Memorandum on Managing Government Records](#). As part of the Administration's broader Open Government Initiative, and the National Action Plan for Open Government, the Memorandum launched a multi-year, executive branch-wide effort to reform and modernize records management policies and practices.

In the Memorandum, President Obama stated:

When records are well managed, agencies can use them to assess the impact of programs, to reduce redundant efforts, to save money, and to share knowledge within and across their organizations. In these ways, proper records management is the backbone of open Government.

Essentially, what the President called on the National Archives (NARA) and the rest of the Federal government to do was move us from a traditional, analog records environment to a more sophisticated, digital records and information management world.

At the President's direction, in August 2012, I joined with the acting Director of the Office of Management and Budget (OMB) to issue an implementing Directive to all heads of executive departments and agencies and independent agencies.

This [Managing Government Records Directive \(OMB-M-12-18\)](#) describes two high-level goals and a series of actions that NARA, OMB, and all Departments and agencies of the Federal government must take to modernize records management policies and practices.

The two high-level goals are:

- 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, including:

- By November 15, 2012, each agency had to designate a Senior Agency Official to oversee and ensure compliance with records management statutes and regulations.
- By the end of 2016, Federal agencies must manage all email records in an electronic format.
- By the end of 2019, Federal agencies must manage all permanent electronic records electronically to the fullest extent possible.

To make these top line actions happen, there are a number of additional activities that NARA and other Departments and agencies are also working on. A partial listing of these activities includes:

- By the end of 2013, NARA will revise guidance for the transfer of permanent electronic records to the National Archives.
- By the end of 2013, the Office of Personnel Management will establish a formal records management occupational series.
- By the end of 2013, NARA will identify a government-wide analytical tool to evaluate the effectiveness of records management programs. This tool will supplement our analysis of the annual Records Management Self-Assessment data NARA gathers from agencies each year.
- By the end of 2013, NARA – in collaboration with the Federal CIO Council, the Federal Records Council, private industry, and other stakeholders -- will produce a comprehensive plan to describe suitable approaches for the automated management of email, social media, and other types of digital content.
- By the end of 2014, Agency Records Officers must obtain the NARA Certificate of Federal Records Management Training, and all Federal agencies must establish a method to inform all employees of their records management responsibilities and develop suitable records management training for appropriate staff.
- By the end of 2015, NARA will improve the current Request for Records Disposition Authority process.
- By the end of 2017, NARA will complete an overhaul of the General Records Schedules.

I believe that the Presidential Memorandum and the implementing Directive have set us on the path to addressing the challenges in modernizing and reforming records management.

The effective management of email records is a central, animating issue for the National Archives and the government as a whole. In that regard, the Committee's concern over the use of private, or unofficial, email accounts used to conduct Federal business is also a topic of interest to the National Archives.

The National Archives discourages the use of private email accounts to conduct Federal business, but understands that there are situations where such use does occur. Accordingly, where a private email account must be used to conduct government business – because, for example, the government-provided email service is not available for technical reasons – the Federal records generated through these private accounts must be moved to the official recordkeeping system of the agency as soon as practicable, and then managed according to the Federal Records Act, the Freedom of Information Act, and other legal requirements and their implementing regulations.

We have recently issued two NARA Bulletins that provide additional guidance to agency officials on the management of Federal records, including email. The first, NARA Bulletin 2013-02, Guidance on a New Approach to Managing Email Records – called for by the Managing Government Records Directive (M-12-18) – introduces a new approach to managing the billions of email messages that are sent or received in Federal agencies. The second, NARA Bulletin 2013-03, reminds agency heads about the need to appropriately manage and protect Federal records. In both Bulletins, we reinforce that email, like all Federal records, must be managed appropriately. I have included these Bulletins and the Directive with my testimony.

There are a number of challenges and opportunities related to the use of electronic records in the Federal government. The technological landscape is constantly changing. The focus of today's hearing is email, and the agencies covered by the Federal Records Act, but the challenges involved with records generated from social media platforms, and the other two branches of the Federal government, are every bit as difficult.

The talented staff of the National Archives and Records Administration looks forward to working through these issues. The long-term success of the National Archives – and the historical record of our nation – depends on our collective success.

Thank you for the opportunity to appear today. I look forward to answering your questions.

The White House

Office of the Press Secretary

For Immediate Release

November 28, 2011

Presidential Memorandum -- Managing Government Records

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Managing Government Records

Section 1. Purpose. This memorandum begins an executive branch wide effort to reform records management policies and practices. Improving records management will improve performance and promote openness and accountability by better documenting agency actions and decisions. Records transferred to the National Archives and Records Administration (NARA) provide the prism through which future generations will understand and learn from our actions and decisions. Modernized records management will also help executive departments and agencies (agencies) minimize costs and operate more efficiently. Improved records management thus builds on Executive Order 13589 of November 9, 2011 (Promoting Efficient Spending), which directed agencies to reduce spending and focus on mission critical functions.

When records are well managed, agencies can use them to assess the impact of programs, to reduce redundant efforts, to save money, and to share knowledge within and across their organizations. In these ways, proper records management is the backbone of open Government.

Decades of technological advances have transformed agency operations, creating challenges and opportunities for agency records management. Greater reliance on electronic communication and systems has radically increased the volume and diversity of information that agencies must manage. With proper planning, technology can make these records less burdensome to manage and easier to use and share. But if records management policies and practices are not updated for a digital age, the surge in information could overwhelm agency systems, leading to higher costs and lost records.

We must address these challenges while using the opportunity to develop a 21st-century framework for the management of Government records. This framework will provide a foundation for open Government, leverage information to improve agency performance, and reduce unnecessary costs and burdens.

Sec. 2. Agency Commitments to Records Management Reform. (a) The head of each agency shall:

- (i) ensure that the successful implementation of records management requirements in law, regulation, and this memorandum is a priority for senior agency management;
- (ii) ensure that proper resources are allocated to the effective implementation of such requirements; and
- (iii) within 30 days of the date of this memorandum, designate in writing to the Archivist of the United States (Archivist), a senior agency official to supervise the review required by subsection (b) of this section, in coordination with the agency's Records Officer, Chief Information Officer, and General Counsel.

(b) Within 120 days of the date of this memorandum, each agency head shall submit a report to the Archivist and the Director of the Office of Management and Budget (OMB) that:

- (i) describes the agency's current plans for improving or maintaining its records management program, particularly with respect to managing electronic records, including email and social media, deploying cloud based services or storage solutions, and meeting other records challenges;

(ii) identifies any provisions, or omissions, in relevant statutes, regulations, or official NARA guidance that currently pose an obstacle to the agency's adoption of sound, cost effective records management policies and practices; and

(iii) identifies policies or programs that, if included in the Records Management Directive required by section 3 of this memorandum or adopted or implemented by NARA, would assist the agency's efforts to improve records management.

The reports submitted pursuant to this subsection should supplement, and therefore need not duplicate, information provided by agencies to NARA pursuant to other reporting obligations.

Sec. 3. Records Management Directive. (a) Within 120 days of the deadline for reports submitted pursuant to section 2(b) of this memorandum, the Director of OMB and the Archivist, in coordination with the Associate Attorney General, shall issue a Records Management Directive that directs agency heads to take specific steps to reform and improve records management policies and practices within their agency. The directive shall focus on:

(i) creating a Government wide records management framework that is more efficient and cost effective;

(ii) promoting records management policies and practices that enhance the capability of agencies to fulfill their statutory missions;

(iii) maintaining accountability through documentation of agency actions;

(iv) increasing open Government and appropriate public access to Government records;

(v) supporting agency compliance with applicable legal requirements related to the preservation of information relevant to litigation; and

(vi) transitioning from paper-based records management to electronic records management where feasible.

(b) In the course of developing the directive, the Archivist, in coordination with the Director of OMB and the Associate Attorney General, shall review relevant statutes, regulations, and official NARA guidance to identify opportunities for reforms that would facilitate improved Government wide records management practices, particularly with respect to electronic records. The Archivist, in coordination with the Director of OMB and the Associate Attorney General, shall present to the President the results of this review, no later than the date of the directive's issuance, to facilitate potential updates to the laws, regulations, and policies governing the management of Federal records.

(c) In developing the directive, the Director of OMB and the Archivist, in coordination with the Associate Attorney General, shall consult with other affected agencies, interagency groups, and public stakeholders.

Sec. 4. General Provisions. (a) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 5. Publication. The Archivist is hereby authorized and directed to publish this memorandum in the *Federal Register*.

BARACK OBAMA

August 24, 2012

M-12-18

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND
AGENCIES AND INDEPENDENT AGENCIES

FROM: Jeffrey D. Zients
Acting Director
Office of Management and Budget

David S. Ferriero
Archivist of the United States
National Archives and Records Administration

SUBJECT: Managing Government Records Directive

On November 28, 2011, President Obama signed the Presidential Memorandum—Managing Government Records. This memorandum marked the beginning of an Executive Branch-wide effort to reform records management policies and practices and to develop a 21st-century framework for the management of Government records. The expected benefits of this effort include:

- improved performance and promotion of openness and accountability by better documenting agency actions and decisions;
- further identification and transfer to the National Archives and Records Administration (NARA) of the permanently valuable historical records through which future generations will understand and learn from our actions and decisions; and
- assistance to executive departments and agencies (referred to collectively as agencies) in minimizing costs and operating more efficiently.

Records are the foundation of open government, supporting the principles of transparency, participation, and collaboration. Well-managed records can be used to assess the impact of programs, to improve business processes, and to share knowledge across the Government. Records protect the rights and interests of people, and hold officials accountable for their actions. Permanent records document our nation's history.

This Directive creates a robust records management framework that complies with statutes and regulations to achieve the benefits outlined in the Presidential Memorandum. This Directive was informed by agency reports submitted pursuant to Sec. 2 (b) of the Presidential Memorandum and feedback from consultations with agencies, interagency groups, and public stakeholders.

This Directive requires that to the fullest extent possible, agencies eliminate paper and use electronic recordkeeping. It is applicable to all executive agencies and to all records, without regard to security classification or any other restriction.

This Directive also identifies specific actions that will be taken by NARA, the Office of Management and Budget (OMB), and the Office of Personnel Management (OPM) to support agency records management programs. In addition, NARA will undertake a review to update relevant portions of the Code of Federal Regulations to take into account the provisions of this Directive.

Attachment

Part I.

Federal agencies shall work toward two central goals.

Goal 1: Require Electronic Recordkeeping to Ensure Transparency, Efficiency, and Accountability

To promote openness and accountability and reduce costs in the long term, the Federal Government should commit immediately to the transition to a digital government. Agencies must meet the following targets:

1.1 *By 2019, Federal agencies will manage all permanent electronic records in an electronic format*

By December 31, 2019, all permanent electronic records in Federal agencies will be managed electronically to the fullest extent possible for eventual transfer and accessioning by NARA in an electronic format. By December 31, 2013, each agency will develop and begin to implement plans to achieve this transition. Agencies should also consider the benefits of digitizing permanent records created in hard-copy format or other analog formats (e.g., microfiche, microfilm, analog video, analog audio).

1.2 *By 2016, Federal agencies will manage both permanent and temporary email records in an accessible electronic format*

By December 31, 2016, Federal agencies must manage all email records in an electronic format. Email records must be retained in an appropriate electronic system that supports records management and litigation requirements (which may include preservation-in-place models), including the capability to identify, retrieve, and retain the records for as long as they are needed. Beginning one year after issuance of this Directive, each agency must report annually to OMB and NARA the status of its progress toward this goal.

Goal 2: Demonstrate Compliance with Federal Records Management Statutes and Regulations

The Federal Government should commit to manage more effectively all records consistent with Federal statutes and regulations and professional standards. Agencies must meet the following requirements:

2.1 *Agencies Must Designate a Senior Agency Official (SAO)*

The Presidential Memorandum previously required all agencies to designate a Senior Agency Official (SAO) to oversee a review of their records management program. This Directive also requires agencies to designate an SAO, but with broader agency-wide responsibilities with respect to records management. By November 15, 2012, each agency will name its SAO, and by November 15th of each subsequent year, all agencies

will reaffirm or name any new SAO. The SAO is responsible for coordinating with the Agency Records Officer and appropriate agency officials to ensure the agency's compliance with records management statutes and regulations.

The SAO is a senior official at the Assistant Secretary level or its equivalent who has direct responsibility for ensuring that the department or agency efficiently and appropriately complies with all applicable records management statutes, regulations, and NARA policy, and the requirements of this Directive. The SAO must be located within the organization so as to make adjustments to agency practices, personnel, and funding as may be necessary to ensure compliance and support the business needs of the department or agency.

2.2 *SAO Shall Ensure that Permanent Records are Identified for Transfer and Reported to NARA*

By December 31, 2013, the SAO shall ensure permanent records that have been in existence for more than 30 years are identified for transfer and reported to NARA.

2.3 *Agency Records Officers Must Obtain NARA Certificate of Federal Records Management Training*

By December 31, 2014, the designated Agency Records Officer for each agency must hold the NARA certificate of Federal Records Management Training. New incumbents must possess the certificate within one year of assuming the position of Agency Records Officer. Agency Records Officers are generally responsible for overseeing the day to day agency recordkeeping requirements outlined in 36 CFR 1222.22, Subpart B.

2.4 *Agencies Must Establish Records Management Training*

By December 31, 2014, all Federal agencies must establish a method to inform all employees of their records management responsibilities in law and policy, and develop suitable records management training for appropriate staff.

2.5 *SAO Shall Ensure that Records are Scheduled*

By December 31, 2016, the SAO shall work with the Agency Records Officer to ensure records schedules have been submitted to NARA for all existing paper and other non-electronic records. To facilitate this goal, the Agency Records Officer will work with NARA to identify all unscheduled records, by December 31, 2013. This should include all records stored at NARA and at agencies' records storage facilities that have not yet been properly scheduled.

Part II.

NARA and other agencies (OMB and OPM) will take the following actions to assist agencies in meeting the two central goals of this Directive.

Section A: Require Electronic Recordkeeping to Ensure Transparency, Efficiency, and Accountability

A1 *Revise NARA transfer guidance for permanent electronic records*

By December 31, 2013, NARA will complete, and make available, revised guidance, including metadata requirements, for transferring permanent electronic records, to include additional sustainable formats commonly used to meet agency business needs. NARA will update this guidance regularly as required to stay current with technology changes.

A2 *Create new email guidance*

By December 31, 2013, NARA will issue new guidance that describes methods for managing, disposing, and transferring email.

A3 *Investigate and stimulate applied research in automated technologies to reduce the burden of records management responsibilities*

A3.I NARA, the Federal Chief Information Officers Council and the Federal Records Council will work with private industry and other stakeholders to produce economically viable automated records management solutions. By December 31, 2013, NARA will produce a comprehensive plan in collaboration with its stakeholders to describe suitable approaches for the automated management of email, social media, and other types of digital record content, including advanced search techniques. The plan will detail expected outcomes and outline potential associated risks.

A3.2 By December 31, 2014, the Federal Chief Information Officers Council, and the Federal Records Council, working with NARA, will obtain external involvement for the development of open source records management solutions.

A4 *Embed records management requirements into cloud architectures and other Federal IT systems and commercially-available products*

A4.I By December 31, 2013, NARA will incorporate into existing reporting requirements an annual agency update on new cloud initiatives, including a description of how each new initiative meets Federal Records Act obligations and the goals outlined in this Directive. For the initial report the agency will identify any existing use of cloud services or storage, and the date of implementation.

A4.2 By the next revision of OMB Circular A-130, OMB will update A-130 to explicitly require that agencies must incorporate records management requirements when moving to cloud-based services or storage solutions.

A5 *Evaluate the feasibility for secure "data at rest" storage and management services for Federal agency-owned electronic records*

By December 31, 2013, NARA will determine the feasibility of establishing a secure cloud-based service to store and manage unclassified electronic records on behalf of agencies. This basic, shared service will adhere to NARA records management regulations and provide standards and tools to preserve records and make them accessible within their originating agency until NARA performs disposition.

Section B: Create a Robust Records Management Framework that Demonstrates Compliance with Federal Statutes and Regulations and Promotes Partnerships

B1 *The Archivist of the United States will convene the first of periodic meetings of all Senior Agency Officials*

By December 31, 2012, the Archivist of the United States will convene the first of periodic meetings of all SAOs to discuss progress in implementation of this Directive; agency Federal records management responsibilities; and partnerships for improving records management in the Federal Government. Additionally, NARA will complete a review of all of its records management reporting requirements by December 31, 2012, and produce a report template for a single annual report that each SAO will send to the Chief Records Officer for the U.S. Government commencing on October 1, 2013.

B2 *Create a Community of Interest to solve records management challenges*

By December 31, 2013, NARA, in cooperation with the Federal Chief Information Officers Council, the Federal Records Council, and other Government-wide councils that express interest, will establish a Community of Interest (COI) to bring together leaders from the information technology, legal counsel, and records management communities to solve specific records management challenges. The COI will develop and propose guidance, share information, create training, and identify tools that support electronic records management.

B3 *Establish a formal records management occupational series*

By December 31, 2013, OPM will establish a formal records management occupational series to elevate records management roles, responsibilities, and skill sets for agency records officers and other records professionals.

B4 *Continue to improve the effectiveness of Federal records management programs through analytical tools and enhanced NARA oversight*

By December 31, 2013, NARA will identify a government-wide analytical tool to evaluate the effectiveness of records management programs. While continuing to conduct assessments, inspections, and studies of agency records management programs, NARA expects that a tool or similar analytical approach will help NARA and the agencies to measure program compliance more effectively, assess risks, and aid in agency decision-making. The use of a new analytical tool in these ongoing activities will identify issues that undermine effective agency records management programs as well as highlight the best practices that will inform agency-specific or government-wide opportunities for improvement.

Section C: Improve NARA Processes to Serve Agency Needs

C1 *Improve the Current Request for Records Disposition Authority Process*

By December 31, 2015, NARA will improve the current Request for Records Disposition Authority process. Consistent with current Federal records management statutes, or with changes to existing statutes (if required), NARA will also develop criteria that agencies can apply to the scheduling, appraisal, and overall management of temporary records that can be effectively monitored with appropriate NARA oversight.

C2 *Overhaul the General Records Schedules*

By December 31, 2017, to reduce the need for unique records schedules submitted for approval to the Archivist, NARA, in consultation with appropriate oversight agencies, will make substantive changes to the General Records Schedules (GRS). These significant changes will include, combining the records series into more appropriate aggregations for easier disposition action by agencies, and expanding the number of permanent records series in the GRS to reduce the scheduling and appraisal burden on agencies.

NARA BULLETIN
NO. 2013-02

TO: Heads of Federal Agencies

SUBJECT: Guidance on a New Approach to Managing Email Records

EXPIRATION DATE: August 31, 2016

1. What is the purpose of this Bulletin?

This Bulletin provides agencies with a new records management approach, known as “Capstone,” for managing their Federal record emails electronically. This Bulletin discusses the considerations that agencies should review if they choose to implement the Capstone approach to manage their email records.

NARA developed the Capstone approach as part of NARA's continuing efforts to evaluate how agencies have used various email repositories to manage email records (see [NARA Bulletin 2011-03, “Guidance Concerning the use of E-mail Archiving Applications to Store E-mail”](#)). 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 will provide agencies with feasible solutions to email records management challenges, especially as they consider cloud-based solutions. Moreover, the Capstone approach supports the [Presidential Memorandum on Managing Government Records](#) and allows agencies to comply with the requirement in [OMB/NARA M-12-18 Managing Government Records Directive](#) to “manage both permanent *and* temporary email records in an accessible electronic format” by December 31, 2016.

NARA bulletins provide fundamental guidance to Federal agency staff, who must then determine the most appropriate ways to incorporate recordkeeping requirements into their business processes and identify the specific means by which their agencies will fulfill their responsibilities under the Federal Records Act.

2. What is the Capstone approach?

Capstone offers agencies the option of using a more simplified and automated approach to managing email, as opposed to using either print 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.

While this approach has significant benefits, there are also risks that the agency must consider, including choosing the appropriate Capstone accounts, the possible need to meet other records management responsibilities, and the possibility of incidentally collecting personal and other non-record email. Agencies must determine whether end users may delete non-record, transitory, or personal email from their accounts. This will depend on agency technology and policy requirements.

3. What are the advantages of the Capstone approach?

The Capstone approach simplifies electronic management of email records for agencies and may provide the following advantages:

- Cuts down reliance on print-and-file, click-and-file drag and drop, or other user-dependent policies;
- Optimizes access to records responsive to discovery or FOIA requests;
- Preserves permanent email records for eventual transfer to NARA;
- Provides a practical approach to managing legacy email accounts;
- Eases the burden of email management on the end-user;
- Represents a simplified approach to the disposition of temporary and permanent email records;
- Reduces the risk of unauthorized destruction of email records; and
- Leverages technologies that exist at many agencies for other purposes – e.g., email archives/e-vaults used for e-discovery, including in cloud-based platforms.

4. What should an agency consider before deciding to use the Capstone approach?

Before implementing Capstone, an agency must determine its suitability for individual agency programs. This determination is made in consultation with appropriate stakeholders from the Office of the Chief Information Officer, Office of the General Counsel, and other agency decision makers.

Within an agency, the appropriate organizational level to implement Capstone may vary. An agency may have multiple implementations of Capstone depending on the business functions of their programs. Considerations when using Capstone include:

- Is the Capstone approach compatible with an agency's current email and other records management/archiving systems?
- Does the current email repository capture metadata required in 36 CFR 1236.22, or can it be configured to do so?

- Do all permanent email records contain required metadata at the time of transfer to NARA?
- Are records accessible to authorized staff for business purposes?
- Does the agency's repository have appropriate security controls to prevent unauthorized access, modification, or deletion of email records?
- Can the technology be configured to allow Capstone officials to remove or delete personal and non-record emails from permanent capture?
- Depending on agency technology and implementation, is the tradeoff of potentially capturing personal and non-record messages in Capstone accounts acceptable?
- Will new agency policies addressing FOIA, discovery, IT security, and other issues need to be developed to implement Capstone?
- What specific training will be required to implement Capstone?
- Will records be retained too long or too short a time in terms of agency needs when implementing the Capstone approach?
- Will Capstone records be duplicated in separate filing systems?
- Do some Capstone records have legal requirements to be destroyed after a specific time?

After considering the above questions, an agency will be able to determine if Capstone will enhance its records management program. If an agency decides to use the approach, the agency must identify their Capstone accounts and determine if they will apply the Capstone approach to legacy email accounts. Once these decisions are made, agencies will need to apply an appropriate disposition authority. Agencies are encouraged to consult with their NARA Appraisal Archivists to determine the appropriate strategy for managing email records created in their agency.

5. Does Capstone change agencies' recordkeeping responsibilities for email?

Capstone can reduce the burden on individual end-users by encouraging the greater use of automated methods for managing email accounts. Agencies are responsible for managing their records in accordance with NARA regulations and to fulfill the requirements of the Managing Government Records Directive. When using the Capstone approach for capturing and managing email, agencies must continue to:

- Ensure email records are scheduled.*
Agencies should work with their NARA Appraisal Archivist to ensure email records are covered by an approved disposition authority. This may include creating new schedules, using existing schedules, or using an applicable General Records Schedule.
- Prevent the unauthorized access, modification, or deletion of declared records.*
Agencies must ensure the email repository has appropriate security measures in place to prevent unauthorized access and/or destruction of records. Records must retain authenticity, reliability, and trustworthiness throughout capture, maintenance, and transfer.
- Ensure all records in the repository are retrievable and usable.*
Email records maintained in a repository must be accessible to appropriate staff for as long as needed to conduct agency business. Agencies should also consider retrievability

and usability when migrating from one repository to another.

d. *Consider whether email records and attachments can or should be associated with related records under agency guidance.*

As a supplement to the Capstone approach, an agency may want or need to associate certain email records that relate to other records, such as case files or project files, with the related records. This consideration depends on an agency's needs and how it chooses to implement its Capstone approach. This may be accomplished by:

1. Using electronic pointers (such as metadata tags) to establish linkages, or
2. In select cases, filing with associated paper or electronic case or project files.

e. *Capture and maintain required metadata.*

An agency is responsible for ensuring that email metadata listed in 36 CFR 1236.22, Parts (1) and (3) are preserved. Required metadata elements include the date of the email and the names and email addresses of all senders and recipients particularly if the system uses nicknames, distribution lists, or a blind copy feature. The agency may wish to retain and preserve additional metadata for legal and business purposes. Regardless of the repository, agencies must examine email upon transfer to another repository or to NARA to ensure that names and addresses are appropriately associated with each email.

Agencies are responsible for working with vendors and their information technology departments to confirm that their repository is capturing and can export the required metadata elements.

6. How do agencies identify Capstone email accounts?

When adopting the Capstone approach, agencies must identify those email accounts most likely to contain records that should be preserved as permanent. Agencies will determine Capstone accounts based on their business needs. They should identify the accounts of individuals who, by virtue of their work, office, or position, are likely to create or receive permanently valuable Federal records. NARA's Appraisal Archivists can assist agencies in helping to determine Capstone accounts. For example, these accounts may include:

[H]eads of departments and independent agencies; their deputies and assistants; the heads of program offices and staff offices including assistant secretaries, administrators, and commissioners; directors of offices, bureaus, or equivalent; principal regional officials; staff assistants to those aforementioned officials, such as special assistants, confidential assistants, and administrative assistants; and career Federal employees, political appointees, and officers of the Armed Forces serving in equivalent or comparable positions. ([GRS 23](#), Item 5)

Agencies may wish to use the U.S. Government Manual or the [United States Government Policy and Supporting Positions \(Plum Book\)](#) as a starting point to identify potential Capstone accounts. The goal is to capture the email accounts of high level policy/decision makers-- including any secondary or alias accounts-- and the accounts of those authorized to communicate on their behalf in the development of agency policy or important decision-making. There may be other

accounts containing permanent records not covered by these suggestions that relate to the mission of the agency and would meet the criteria for a Capstone account.

7. Must agencies use a specific technology to implement Capstone?

No, Capstone implementation is not dependent on a specific technology or software. This approach is designed to utilize technologies that already exist at many agencies. Agencies may use native email systems, email archiving applications (which many agencies are already utilizing for other purposes), or other repositories to implement Capstone. Evolving technologies, such as auto-categorization and advanced search capabilities, may enable agencies to cull out transitory, non-record, and personal email. In the absence of a technological solution, agencies must rely on policy, procedures, and training to fully implement Capstone.

8. How does NARA's Pre-accessioning policy apply to Capstone?

Pre-accessioning is an option for agencies when implementing the Capstone approach. Pre-accessioning is when NARA receives and fully processes a copy of permanently valuable electronic records before those records are scheduled to legally become part of the National Archives of the United States. In other words, pre-accessioning means that NARA assumes physical custody of a *copy* of the records, usually well before it is time to assume legal custody. The transferring agency retains a complete and fully functional copy of the transferred records even after a pre-accessioning transfer, and that copy must be maintained until NARA assumes legal custody at a future date.

Pre-accessioning allows NARA to preserve permanently valuable electronic records early in their lifecycle while the agency retains its authority and responsibility for providing access. This is done in part to mitigate risk over time, since electronic records are subject to potential obsolescence between the time they are created and the time that they are ready for NARA to assume legal custody, which may be many years in the future. It also gives NARA a means to provide agencies with off-site, no-cost security copies of the pre-accessioned records. For more information about Pre-accessioning, refer to [NARA Bulletin 2009-03: Pre-accessioning permanent electronic records](#) and [Pre-accessioning: A Strategy for Preserving Electronic Records](#).

9. What other NARA resources are available?

NARA has the following additional resources that may be useful:

- [Guidance on Managing Records in Cloud Computing Environments](#): A NARA bulletin addressing records management considerations in cloud computing environments.
- [Toolkit for Managing Electronic Records](#): A resource for agencies to share and access records management guidance and best practices. Examples include tools that address the creation of business rules for managing email and related issues.

- [Records Express](#): The official blog of the Office of the Chief Records Officer at NARA highlights guidance and upcoming events. It also discusses how we are working with our agency partners to improve records management in the Federal government.
- [Frequently Asked Questions about Records Management](#): Provides a list of FAQs on noteworthy records management topics.

10. Whom should I contact for more information?

If additional information is needed, or if you have any questions, please contact your agency Records Officer or the NARA Appraisal Archivist or records management contact with whom you regularly work. Please refer to the List of NARA Contacts for Your Agency, available at <http://www.archives.gov/records-mgmt/appraisal/>.

DAVID S. FERRIERO
Archivist of the United States

NARA BULLETIN
NO. 2013-03

TO: Heads of Federal Agencies

SUBJECT: Guidance for agency employees on the management of Federal records, including email accounts, and the protection of Federal records from unauthorized removal

EXPIRATION DATE: September 30, 2016

1. What is the purpose of this bulletin?

This bulletin is being issued to reaffirm that agencies and agency employees must manage Federal records appropriately and protect them from unauthorized removal from agency custody. Also, this bulletin clarifies records management responsibilities regarding the use of personal email accounts for official business and the use of more than one Federal email account. NARA recommends that Federal agencies refer to this guidance when advising incoming and departing agency employees about their records management responsibilities.

2. What must heads of Federal agencies do to implement this bulletin?

Heads of Federal agencies must provide guidance on the proper management of Federal records, including the handling of records containing information exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552), the Privacy Act (5 U.S.C. 522a), or other applicable laws. Managing records effectively ensures that permanently valuable records become part of the National Archives and Records Administration (NARA) while other records and information of temporary value are retained for as long as needed and then properly disposed. In addition, the heads of Federal agencies must issue instructions to staff on the identification, management, retention, and disposition of email messages determined to be Federal records (36 CFR 1236.22(a)). Finally, they must notify employees that there are criminal penalties for the unlawful removal or destruction of Federal records (18 U.S.C. 2071 and 36 CFR 1230.12) and the unlawful disclosure of national security information (18 U.S.C. 793, 794, and 798).

3. What materials are Federal records?

As defined in 44 U.S.C. 3301, Federal records are documentary materials that agencies create and receive while conducting business that provide evidence of the agency's organization, functions, policies, decisions, procedures, and operations, or that contain information of value. Government employees, including Federal contractors, create and maintain Federal records as part of their duties and responsibilities. Federal records can exist in a variety of electronic forms including images, video and audio recordings, websites, social media and collaboration tools, databases, shared drive files, and email.

In certain cases, drafts and notes may be “working files and similar materials” that should be maintained as Federal records (see 36 CFR 1222.12). Whether they are in electronic or paper form, “preliminary drafts and rough notes” and other similar materials must be maintained as records if they meet the criteria specified in 36 CFR 1222.12(c).

4. Can email messages be Federal records?

Yes, email messages created or received in the course of official business are Federal records if they meet the definition mentioned above, and agency employees must manage them accordingly. Under NARA’s current policy and regulations, defined in 36 CFR 1236.22(a), agencies must issue instructions to staff on the identification, management, retention, and disposition of email messages determined to be Federal records. Employees who create a significant amount of permanent email records should consult with their records officer to determine the most effective way to manage them, including using NARA’s recent “Capstone” guidance, [NARA Bulletin 2013-02, entitled “Guidance on a New Approach to Managing Email Records.”](#)

5. What are agencies’ and agency employees’ recordkeeping responsibilities when the use of personal email accounts is authorized?

While agency employees should not generally use personal email accounts to conduct official agency business, there may be times when agencies authorize the use of personal email accounts, such as in emergency situations when Federal accounts are not accessible or when an employee is initially contacted through a personal account. In these situations, agency employees must ensure that all Federal records sent or received on personal email systems are captured and managed in accordance with agency recordkeeping practices. Agency policies and procedures must also ensure compliance with other statutes and obligations, such as FOIA and discovery.

6. What are agency responsibilities when employees have more than one Federal email account?

NARA recognizes that employees may have a business need for more than one agency-administered email account. Business needs may include, but are not limited to:

- Using separate accounts for public and internal correspondence;
- Creating accounts for a specific agency initiative which may have multiple users; and
- Using separate accounts for classified information and unclassified information.

Regardless of how many Federal email accounts individuals use to conduct official business, agencies must ensure that all accounts are managed, accessible, and identifiable according to Federal recordkeeping requirements, as established in 36 CFR 1236.22. Agencies must ensure that the name of an individual employee is linked with each account in order to comply with FOIA, discovery, and the requirement to transfer permanent email records (or accounts if the agency is using the [Capstone](#) approach) to NARA. In most cases, this requires the full name or readily identifiable nickname that is maintained on a distribution list.

7. Are there Federal documentary materials that do not qualify as records?

Materials such as extra copies of records kept solely for convenience of reference, library or museum materials, and stocks of publications and processed documents are excluded from the definition of "record" (44 U.S.C. 3301). These "non-record" work-related materials nevertheless belong to and are controlled by the Government (36 CFR 1222.14) and must not be removed unless approved as cited in 36 CFR 1222.18.

8. Under what circumstances may employees remove records and documentary materials from Government custody?

- a. Employees must not remove Federal records from Government custody without proper authorization. Under 36 CFR 1222.24, agencies must develop procedures to ensure that departing employees do not remove Federal records.
- b. Within agency guidelines, employees may remove extra copies of records or other work-related, non-record materials when they leave the agency, with the approval of a designated official of the agency, such as the agency's records officer or legal counsel.
 1. When determining whether to permit departing employees to remove extra copies, the agency should also consider the extent to which such removal could affect the agency's ability to invoke various legal privileges, and should consider the use of nondisclosure agreements in appropriate cases.
 2. Copies of records that are national security classified must remain under the control of the agency. If the agency permits removal, they must be transferred to a facility that has an appropriate level security storage area and safeguarded in accordance with Information Security Oversight Office requirements for national security classified materials (36 CFR 1222.18 and 32 CFR 2001.40 - 2001.53).
 3. Copies of records that are otherwise restricted (e.g., as privileged or under the Privacy Act) must be maintained in accordance with the appropriate agency requirements.
- c. Employees may remove documentary materials that are of a purely personal nature when they leave the agency. Personal materials include family and personal correspondence and materials documenting professional activities and outside business or political pursuits (36 CFR 1220.18 and 36 CFR 1222.20). However, in many cases, employees intermingle their personal and official files. In those cases, the agency may need to review and approve the removal of personal materials to ensure that all agency policies are followed properly.

9. What does an agency do if there is an unauthorized removal of records?

If an agency knows of any actual or potential threat to records (e.g., removal, alteration, or destruction), it must contact NARA as required by 44 U.S.C. 2905 & 3106 and 36 CFR 1230.14. NARA will assist the agency in the recovery of any unlawfully removed records, including contacting the Attorney General, if necessary. It is also important to follow all agency internal reporting requirements, which may include reporting the threat to the agency's legal counsel and to its Inspector General.

10. Is further information available within my agency?

Each agency's records officer has more information about the maintenance and disposition of records and other documentary materials. The agency's records officer, legal counsel, Senior Agency Official for records management, or information security officer has more information about the agency's policies on the removal of extra copies of records and how to secure approval. The list of agency records officers is available online at <http://www.archives.gov/records-mgmt/agency/officers-lists.html>.

11. Is further information available from NARA?

- a. NARA's publication *Agency Recordkeeping Requirements* is available online at <http://www.archives.gov/records-mgmt/policy/agency-recordkeeping-requirements.html>.
- b. NARA's records management regulations (36 CFR Chapter XII, Subchapter B), including the identification and protection of Federal records, is available online at <http://www.archives.gov/about/regulations/regulations.html>.

12. What assistance is available from NARA?

- a. In addition to contacting the agency's records officer, employees may refer to NARA's records management web site for relevant regulations, guidance, publications, and tools for managing Federal records and documentary materials. These and other helpful resources may be found at: <http://www.archives.gov/records-mgmt/>.
- b. NARA's Records Management Services Division, within the Office of the Chief Records Officer, provides assistance and advice to agency records officers in the Washington, DC, area, and in the field. The agency's records officer may contact the NARA appraisal archivist with whom that agency normally works. A list of the appraisal and scheduling teams is posted on the NARA web site at <http://www.archives.gov/records-mgmt/appraisal/>.

DAVID S. FERRIERO
Archivist of the United States

