

TESTIMONY OF PAUL M. WESTER, JR.

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BEFORE THE

COMMITTEE ON SCIENCE, SPACE AND TECHNOLOGY

SUBCOMMITTEE ON OVERSIGHT

SUBCOMMITTEE ON ENVIRONMENT

U.S. HOUSE OF REPRESENTATIVES

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Chairman Lowdermilk, Chairman Bridenstine, Ranking Member Beyer, Ranking Member Bonamici, and Distinguished Members of the Committee:

Thank you for holding this hearing on the importance of federal record keeping and the challenges agencies face managing agency records.

As background and context on government-wide records management issues and the National Archives and Records Administration's latest work in this area, I would like to review briefly the activities of the current Administration and the last Congress.

On November 28, 2011, the President issued a [Presidential Memorandum on Managing Government Records](#). As part of the administration's broader Open Government Initiative, 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 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, the Archivist of the United States, David Ferriero, 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 the National Archives and Records Administration, OMB, and all Departments and agencies of the federal government must take to modernize records management policies and practices.

Within this document, 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 two of the top line actions include:

- 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.

Our work is not done, but 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.

Last September 15, OMB and NARA provided additional guidance to federal agencies regarding their responsibilities for managing email records. The [Guidance on Managing Email Directive \(OMB-M-14-16\)](#) reiterates agencies obligations under the Managing Government Records Directive (OMB-M-12-18) and provides compilation of NARA's latest direction to agencies on managing their email records.

At the end of the 113th Congress, through the leadership of Chairman Issa and Ranking Member Cummings of the House Oversight and Government Reform Committee, the Congress passed the Presidential and Federal Records Act Amendments of 2014, now Public Law 113-187.

Among the amendments, the first substantive changes to the Federal Records Act since the 1950s, is 44 U.S.C. 2911, “Disclosure requirement for official business conducted using non-official electronic messaging accounts.” The statute states:

(a) IN GENERAL.—An officer or employee of an executive agency may not create or send a record using a non-official electronic messaging account unless such officer or employee—

(1) copies an official electronic messaging account of the officer or employee in the original creation or transmission of the record; or

(2) forwards a complete copy of the record to an official electronic messaging account of the officer or employee not later than 20 days after the original creation or transmission of the record.

(b) ADVERSE ACTIONS.—The intentional violation of subsection (a) (including any rules, regulations, or other implementing guidelines), as determined by the appropriate supervisor, shall be a basis for disciplinary action in accordance with subchapter I, II, or V of chapter 75 of title 5, as the case may be.

We believe this statutory change, and the other changes to the Federal Records Act enacted through PL 113-187, will clarify the responsibilities federal employees have in managing federal records and will improve the management of electronic records across the government.

The Federal Records Act and Federal Agency Requirements

The Federal Records Act requirements for federal agencies are found at 44 U.S.C. Chapter 31, Records Management by Federal Agencies. At a high level, agency heads are responsible for ensuring several things, including:

- The adequate and proper documentation of agency activities (44 U.S.C. 3101).
- A program of management to ensure effective controls over the creation, maintenance, and use of records in the conduct of their current business (44 U.S.C. 3102(1)).
- Compliance with NARA guidance and regulations, and compliance with other sections of the Federal Records Act that give NARA authority to promulgate guidance, regulations, and records disposition authority to federal agencies (44 U.S.C. 3102(2) and (3)).

The regulations implementing the Federal Records Act are found at 36 C.F.R. Chapter 12, Subchapter B—Records Management. NARA provides additional guidance to agencies at its records management website, <http://www.archives.gov/records-mgmt/>.

What Are Transitory Records?

Under [General Records Schedule 23, Records Common to Most Offices within Agencies](#), transitory records are defined at Item 7 as:

Records of short-term (180 days or less) interest, including in electronic form (e.g., e-mail messages), which have minimal or no documentary or evidential value. Included are such records as:

- Routine requests for information or publications and copies of replies which require no administrative action, no policy decision, and no special compilation or research for reply;
- Originating office copies of letters of transmittal that do not add any information to that contained in the transmitted material, and receiving office copy if filed separately from transmitted material;
- Quasi-official notices including memoranda and other records that do not serve as the basis of official actions, such as notices of holidays or charity and welfare fund appeals, bond campaigns, and similar records;
- Records documenting routine activities containing no substantive information, such as routine notifications of meetings, scheduling of work-related trips and visits, and other scheduling related activities;
- Suspense and tickler files or "to-do" and task lists that serve as a reminder that an action is required on a given date or that a reply to action is expected, and if not received, should be traced on a given date.

The disposition of these records is: “Destroy immediately, or when no longer needed for reference, or according to a predetermined time period or business rule (e.g., implementing the auto-delete feature of electronic mail systems).”

The disposition of transitory records is not different from the disposition of other federal records. Federal employees are encouraged to dispose of transitory records consistent with General Records Schedule 23, as they are encouraged to carry out disposition of other federal records according to the agency-specific, NARA-approved records disposition schedules.

EPA's Compliance with the Federal Records Act

As a general matter, NARA cannot speak authoritatively to agency compliance with the Federal Records Act. EPA has participated in NARA's annual Records Management Self-Assessment (RMSA) survey since it was established in 2009. The RMSA is a self-reported evaluation of compliance with NARA's records management regulations. NARA does some validation of survey responses, but the validation is limited to the verification that records management program policies are in place. Overall, the EPA has scored well on the self-assessment. More information on the RMSA can be found at <http://www.archives.gov/records-mgmt/resources/self-assessment.html>.

Like other agencies, EPA has self-reported records management issues to NARA (44 U.S.C. 3105 and § 3106), which my staff and I work to resolve with EPA records management staff. EPA has been responsive and cooperative with NARA staff in these dialogues, and has provided all supplementary information NARA requested. NARA is also aware of the EPA Inspector General Report, 13-P-0433, Congressionally Requested Inquiry Into the EPA's Use of Private and Alias Email Accounts. NARA is aware that the report found no evidence that the EPA used, promoted or encouraged the use of private "non-governmental" email accounts to circumvent records management responsibilities, and that as of the time the report was issued EPA had completed 2 of the 5 OIG recommendations. NARA is familiar with the various activities that the EPA is undertaking to address the three remaining recommendations. More broadly, NARA is aware of the ongoing work of the EPA's Federal Records Program, including an increased focus on annual records training, development of an EZ-Email Records capture tool that works with the EPA's new email system, development of new guidance specifically related to text-message records retention, and promotion of records management through periodic Agency-wide records management days.

Related to the broader government-wide oversight issue, NARA's FY 2016 budget request includes a request for additional staff to expand our oversight activities, with an emphasis on electronic records management compliance. Enhancing this oversight function will allow NARA to better understand the challenges EPA and other agencies are facing as they transition from an analog to an electronic approach to managing their federal records.

Conclusion

The management of federal records in all of their forms is a central, animating issue for the National Archives and the government as a whole. In that regard, the Science Committee's interest in records management at the EPA, and all its sister agencies, is also topic of interest to the National Archives.

The talented staff of the National Archives and Records Administration looks forward to working on records management with EPA now and for many years to come. 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.