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BEFORE THE SUBCOMMITTEE ON
INFORMATION POLICY, CENSUS AND NATIONAL ARCHIVES

OF THE

HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

ON

"FEDERAL ELECTRONIC RECORDS MANAGEMENT: A STATUS REPORT"

JUNE 17, 2010

Good afternoon Chairman Clay, Ranking Member McHenry, and members of the Subcommittee. My name is Paul Wester and I am the Director of the Modern Records Programs at the National Archives and Records Administration (NARA). I am pleased to appear before you to provide a status report on Federal electronic records management.

The Federal Records Act (FRA) gives NARA responsibility to conduct studies, inspections, or surveys of the records and the records management programs and practices within and between Federal agencies; and to report to the appropriate oversight and appropriations committees of the Congress on these inspections, surveys, and other records management matters.

On April 20, 2010, NARA issued a report entitled "Records Management Self-Assessment, 2009: An Assessment of Records Management Programs in the Federal Government." In this report we analyzed the responses to a mandatory records management self-assessment survey NARA sent to 242 Federal Cabinet Level Agencies, their components, and independent agencies. The goal of the self-assessment was to gather data to determine how effective Federal agencies are in meeting the statutory and regulatory requirements for Federal records management.

Based on our analysis and scoring of 220 agency responses, we rated 36% of Federal agencies as being at High Risk and 43% of Federal agencies as being at Moderate Risk in their records management programs. Only 21% of Federal agencies were found to be at Low Risk in their records management programs.

In the report, we offered the following findings:

- There are varying levels of agency compliance with NARA's required records management regulations and policy, and there are a wide variety of approaches that Federal agencies take in attempting to meet their responsibilities.

- Records management training is not offered consistently or required across the Federal Government, and where it is offered or even required, it is unevenly offered within each Federal agency. If an agency trains only a fraction of its employees – and trains them in an ad hoc manner – it is unlikely that training will significantly improve an agency's ability to manage its records.

- Agencies still struggle to address electronic records, web records, and e-mail management issues. Nearly half of responding records officers do not participate in Capital Planning and Investment Control (CPIC), Systems Development Life Cycle (SDLC), or Business Process Design (BPD) processes in their agencies.

Overall, the findings from the self-assessment are troubling. It is unacceptable that 79% of reporting Federal agencies have moderate to high levels of risk associated with their records management programs, particularly their electronic records management programs.

In June 2010, we issued a second electronic records management report entitled, "NARA's Electronic Records Project, Summary Report: FY 2005 – FY 2009." In this report we detailed Federal agency compliance with NARA Bulletin 2006-02, NARA Guidance for Implementing Section 207(e) of the E-Government Act of 2002. In this Bulletin, issued in December 2005, NARA formally established a September 30, 2009, deadline for all Federal agencies to submit records schedules to NARA for all of their existing electronic records and the scheduling of new electronic records systems as they are developed. In subsequent years, we issued additional Bulletins providing agencies with more direction and information on how to meet the September 30, 2009, deadline to assure compliance with the Bulletin.

By the September 30, 2009, deadline, NARA had received electronic records scheduling reports from 160 of 240 Federal agencies for a 67% response rate. Of the reporting agencies, 42% were considered low risk, with records schedules submitted for 90% or more of their existing electronic records.

However, 25% of the reporting agencies were categorized as moderate to high risk, having submitted records schedules to NARA for less than 90 percent of their electronic records, and 33% of agencies did not respond to the deadline at all.

Again, as with the self-assessment, the results of our electronic records project work are troubling. While a great number of Federal electronic records series have been identified and scheduled between FY 2005 and FY 2009-- 2,404 separate series were approved during the period – it is unacceptable that a third of Federal agencies did not respond to the requirement and that 25% of the reporting agencies are at high risk with regard to scheduling their electronic records.

Litigation is focusing more public attention on how agencies manage their electronic records. At least two prominent lawsuits from the past two decades have involved preservation of White House e-mail records. One result of the lawsuit captioned *Armstrong v. Executive Office of the President*, filed in 1989 and originally involving records on National Security Council backup tapes, was that NARA revised its electronic recordkeeping regulations in 1995 to expressly provide for management of e-mail communications as Federal records. In a subsequent lawsuit, *Public Citizen v. Carlin*, the Archivist's authority to promulgate a general records schedule covering e-mail records was upheld. More recently, we understand that in various settings Federal records are increasingly being demanded in their native or "electronic" format, so as to meet the Government's e-discovery litigation obligations. This trend supports our view that agencies need to pay more attention to long-term management of their electronic records in electronic form.

Toward this end, and beyond the two reports cited above and other ongoing work based on our current statutory authority, we have undertaken a number of activities.

First, building on existing work done by the leading information policy agencies like the Office of Management and Budget and the General Services Administration – as well as formal advisory or policymaking groups like the CIO Council, the Federal Records Council, and others – we are working to increase awareness of electronic records management requirements and raise accountability for noncompliance with those requirements.

Second, in conjunction with an audit from NARA's Office of the Inspector General that coincided with the appointment of a new Archivist of the United States in November 2009, we are undertaking a year-long study of ways to improve NARA's oversight of records management practices. A particular area of interest will be an evaluation of the Archivist's statutory authority to conduct oversight responsibilities. We expect this work to be completed in June 2011.

NARA is also reviewing areas where it may be useful to clarify the direction in which the Federal Government must move to improve the management of electronic records, while analyzing the costs and benefits of different approaches.

While we will likely identify others in the course of our analysis, there are two broad areas that we know we must examine.

First, we need to identify cost efficient ways to ensure that agencies manage electronic records electronically and transition away from relying on official recordkeeping systems for electronic records that require the printing and filing of e-mail and other electronic records. Currently, most agencies have "print and file" policies for managing their e-mail. These policies require agency personnel print out and file individual e-mails into official, usually paper-based, recordkeeping systems. Without changing recordkeeping policies to reflect the current environment, while simultaneously also supporting the development and deployment of more robust electronic recordkeeping systems, the permanent record of our nation that is in electronic form will be compromised.

Second, given the special long-term preservation and access challenges associated with electronic records, NARA plans to identify ways in which Federal agencies can be encouraged – to transfer preservation copies of permanently valuable electronic records to the National Archives as soon as possible.

Under existing authorities, agencies can retain permanently valuable records for more than thirty years or when no longer needed for agency business purposes. If NARA is not actively engaged with agencies to fully understand the electronic formats being used, then records may become at risk when they are eventually accessioned and the formats are no longer widely used. As part of its comprehensive review of records management practices, NARA plans to review options for mitigating this potential issue.

While our staff are often able to negotiate early transfers of electronic and special media records, and while we are increasingly working with Federal agencies to pre-accession permanent electronic records into the National Archives, the current piecemeal approach does not ensure NARA's long-term ability to preserve and eventually provide continuing access to electronic records of enduring value.

For every case where we are able to negotiate the early transfer of preservation copies of permanent electronic records – as we are currently working with the Bureau of the Census to transfer the 2010 enumeration with its 500 terabytes of scanned images which will come to the National Archives in the next 18 to 24 months for preservation until their release in 2082 – there are many, many other series of permanently valuable electronic records that are in jeopardy because we are unaware of them or a preservation copy has not been provided to the National Archives for safekeeping.

As we state in our strategic plan:

> *Fundamental changes in the Federal Government's business processes, and in the wider information management environment, have critical implications for the records lifecycle. Today, the Federal Government creates the bulk of its records and information in electronic form. To deal with these challenges and carry out our mission, NARA must provide leadership and be more agile in adapting to change in information technology and in the Federal recordkeeping environment.*
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> *NARA's role as the nation's record keeper is vital to the future of our nation. Without a vigorous, forward-thinking records management program, we risk losing the information that documents the daily work of our Government and, ultimately, the history of our nation.*

We look forward to meeting these challenges and carrying out the mission of the National Archives and Records Administration for many years into the future.

Thank you for this opportunity to discuss Federal electronic records management with the Committee, and I look forward to answering your questions.