

## PROPOSAL TO STRENGTHEN RECORDS ACCOUNTABILITY

The President can demonstrate commitment to strengthening records accountability within the federal government by issuing on the first day in office a memorandum to all executive departments, agencies, and independent agencies directing them to take the following actions:

(1) Within six months each Senior Agency Official for Records Management, working with the National Archives and Records Administration (NARA), shall develop and implement agency-wide records management training for all agency employees and contractors performing agency functions.

(2) Within six months each Chief Technology Officer or their equivalent shall report to the agency head on the status of their agency's record keeping systems and the progress they have made toward satisfying the requirements of the August 24, 2012 memorandum issued by the Office of Management and Budget, "Managing Government Records Directive."

(3) Within nine months each Inspector General, working with each Senior Agency Official for Records Management, shall report to the agency head on steps the agency has taken with respect to subparagraphs (1) and (2).

(4) Within 12 months the head of each agency or designated senior agency official shall report to the President on the status of the agency's compliance with the August 24, 2012 OMB memorandum.

(5) Within 12 months, and every two years thereafter, each agency shall develop an open records plan, with public engagement, that identifies the key steps the agency will take to ensure ongoing compliance with all federal records requirements.

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The Problem: The issues highlighted by Secretary Clinton's preservation and long-term availability of e-mails created as a function of government business is not isolated, and has been a problem for decades. The case exposed the government-wide problems stemming from the fact that agencies do not systematically manage their email in a standardized record keeping system. It has been an issue in every administration that has used email, and relates to all electronic records preservation practices, not only email correspondence.

According to the Federal Records Act, the head of every federal agency is responsible for making sure that records of that agency's business are saved in that agency's record systems. This requirement was not changed in the *Presidential and Federal Records Act Amendments of 2014*. While practice allows government officials to separate personal or non-record material in their mail, openness advocates consider that it should be done by a professional records manager or professional archivist. Not doing so invites distrust, whether warranted or not.

Steps Taken to Date: The National Archives and Records Administration (NARA) has undertaken a number of initiatives in an attempt to address the challenges associated with electronic records management. Beginning with the current Archivist, NARA highlighted the shortcomings of agency practices with regard to electronic record preservation. In its report on [2009 self-assessments](#) issued to 242 federal agencies, NARA emphasized that "agencies' e-mail policies lack information on one or more of the basic requirements," governing the disposition of Federal Records, adding "E-mail training is also a significant weakness, with only half of agencies providing it to their employees."

As part of its commitments to the [Open Government Partnership](#) (OGP), the Obama Administration specifically addressed the need for better email records management. In the 2nd OGP National Action Plan (NAP) in 2014, NARA committed to work with federal agencies to implement new guidance for managing email, as well as to implement the [2011 Presidential Memorandum on Managing Government Records](#), enacted as a result of the first NAP and implemented by the Archivist's 2012 [Managing Government Records Directive](#). The 3rd NAP, released on October 27th, includes new commitments on improving email records management (see below).

The Memorandum and Directive give a December 31, 2016 deadline for Federal agencies to manage all *email records* in an appropriate electronic system that supports records management and litigation requirements, and December 31, 2019 for federal agencies to preserve all permanent electronic records of the U.S. government in a digital or electronic form.

In August 2013, NARA initiated a "Capstone" model approach for agencies to manage email, which recommends agencies save as permanent records all email from high-level officials and policymakers, and encourages agencies to develop a rational, practical approach to email management. Capstone is voluntary, and is one approach agencies can use to accomplish the required email preservation. Openness advocates are cautiously supportive of Capstone but concerned with the ongoing monitoring of it and other approaches agencies may take.

The Opportunity: Secretary Clinton's use of personal email on a private server to conduct official government business sparked a storm of controversy. The issues raised by the Clinton emails are not new, but the political climate and ongoing wave of media attention to the issue has led to a heightened public attention to the government's digital records preservation policies.

The email debate has served as a pivotal moment for the public to pressure the government to examine the way officials manage, preserve, and release information in the digital age, and an opportunity to channel the attention of the Executive Branch toward the fundamentally important questions relating to government openness and accountability, particularly around the government's electronic record-keeping practices.