

January 28, 2021

The Honorable David S. Ferriero
Archivist of the United States
National Archives and Records Administration
700 Pennsylvania Ave. NW
Washington, DC 20408

RE: The National Archives and Records Administration proposed rule concerning Federal Records Management: Digitizing Permanent Records and Reviewing Records Schedules
Docket number 2020-26239
RIN 3095-AB99

Dear Mr. Ferriero,

We write to request that the National Archives and Records Administration revise its proposed rule regarding the digitization of permanent federal records. The pending rule would both clarify how often agencies must review records schedules, as well as establish standards for digitizing permanent paper and photographic records. We welcome the clarification that agencies should review records schedules that are at least ten years old every five years, but ask that NARA reconsider the subpart on digitizing permanent records.

While digitizing permanent records is critical to many aspects of NARA's mission, including sustaining archival capacity and facilitating public access, it is equally important that no relevant metadata or other information is lost to the public when records are digitized. NARA's proposed rule leaves many important questions related to preservation and oversight unanswered. For instance, it is not clear how involved NARA will be in ensuring that digitization is carried out properly and that no disposition of paper or photographic records occurs before NARA can verify that all relevant information is preserved. The proposed rule also does not sufficiently address what safeguards will be in place to protect against losing digital records entirely if they are compromised or corrupted.

Given that some agencies have proven themselves to be irresponsible in their disposition of important records, it is a serious concern that valuable historical information could be improperly disposed of in the digitization process.¹ In some cases, even NARA's oversight of records schedules is not enough to prevent agencies from disposing of records that researchers and advocates consider extremely important, leaving the public to scramble to save what they can through the difficult and frustrating Freedom of Information Act process.² A 2019 report by NARA's Inspector General confirms this concern, finding that NARA is not

¹ See, for example, "CIA Destroyed 92 Interrogation Tapes," ABC News, March 2, 2009, available at: <https://abcnews.go.com/TheLaw/DOJ/story?id=6989426&page=1>

² See, for example, "ICE's Destruction of Records Must Be Stopped," ACLU, February 18, 2020, available at: <https://www.aclu.org/news/immigrants-rights/ices-destruction-of-records-must-be-stopped/>

effectively exercising its authority to conduct oversight of electronic records management, and that “permanent electronic records are still at a serious risk of loss or destruction.”³

The gaps left in this proposed rule will only exacerbate existing problems with NARA’s oversight of electronic records management by federal agencies. We instead ask NARA to draw upon the expertise of outside historians, researchers, and archival experts to create a plan for the digitization of permanent records that adequately addresses oversight concerns.

Thank you for your attention to this matter. Please direct any questions to Emily Manna at emanna@openthegovernment.org.

Thank you,

Emily Manna
Policy Director
Open The Government

³ “Audit of NARA’s Oversight of Electronic Records Management in the Federal Government,”
OIG Report No. 19-AUD-10, NARA, June 11, 2019, available at: <https://www.archives.gov/files/oig/reports/audit-report-19-aud-10.pdf>