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MANAGEMENT OF PERMANENT REGULATORY RECORDS

Multi-Agency Inspection Report

National Archives and Records Administration
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MANAGEMENT OF REGULATORY RECORDS MULTI-AGENCY RECORDS MANAGEMENT INSPECTION

INSPECTION REPORT

INTRODUCTION

The National Archives and Records Administration (NARA) is responsible for assessing the proper management of records in all media within federal agencies to protect rights, assure government accountability, and preserve and make available records of enduring value.¹ In this capacity, and based on authority granted by 44 United States Code (U.S.C.) 2904(c)(7) and 2906, NARA inspects the records management (RM) programs of agencies to ensure compliance with federal statutes and regulations and to identify specific issues or concerns. NARA then works with agencies to make improvements to their programs based on inspection findings and recommendations.

NARA inspected the management of permanent regulatory, rulemaking and enforcement records by six agencies. NARA selected these agencies and the records they maintain due to their importance to federal guidance and oversight of financial institutions, markets, and economic sectors of the United States financial system. The purpose of this inspection was to examine compliance with federal records management statutes and regulations relating to permanent records and to assess the effectiveness of related records management policies and procedures. In particular, the inspection focused on the creation, management, and transfer of permanent regulatory, rulemaking and enforcement records with an emphasis on email and other electronic records, agency policies, procedures, training, and records schedule implementation. NARA further assessed the ability of these agencies to manage permanent electronic records in an electronic format, plans to digitize or convert analog records, and transferring permanent records to the National Archives. In conducting a multi-agency inspection of this type, NARA sought to identify practices regarding permanent records that may also be common to other federal agencies.

The six agencies inspected were:

- Commodity Futures Trading Commission (CFTC)
- Consumer Finance Protection Bureau (CFPB)
- Federal Housing Finance Agency (FHFA)
- Federal Trade Commission (FTC)
- National Credit Union Administration (NCUA)
- U.S. Securities and Exchange Commission (SEC)

¹ 44 U.S.C. Chapter 29, <https://www.archives.gov/about/laws/records-management.html>.

OVERVIEW OF KEY ASPECTS OF THE RECORDS MANAGEMENT PROGRAMS

There are fundamentals of RM regardless of records retention and disposition that include the knowledge of what types of records are being created and maintained, where they are located when needed for decision-making and government accountability, and ensuring their access and availability throughout the records lifecycle. If these fundamentals are not in place or are not implemented properly, records are at risk of being lost and/or mishandled, making them inaccessible to decision makers and others. This extends further to permanent records, as these have been determined to have value to the Nation beyond that of their original business purpose or need. While in agency custody, permanent records must be identified, scheduled, preserved, and protected until they are eligible for transfer to the National Archives in accordance with NARA-approved records schedules (36 Code of Federal Regulations (CFR) 1220.32(e)). Putting records management into practice involves intellectual control (i.e., knowing the content of the records, how and why they are created, and ownership) as well as physical control (i.e., safeguarding access and preservation). Achieving both intellectual and physical control requires governance in the form of policies, procedures, inventories, file plans, records schedules, and internal controls.

Over the course of this multi-agency inspection, we found that the agencies:

- Lack records schedules covering email or the schedules need to be updated;
- Lack internal controls for the application of selection criteria for significant permanent case files designated in NARA-approved records schedules; and
- Are not routinely transferring permanent records to the National Archives.

We also found various initiatives in progress due to agency reorganizations, relocations, and consolidations at three of the six agencies. CFTC, FTC, and NCUA all mentioned having undergone recent significant changes at their agencies. This has provided the agencies with an opportunity to evaluate current RM processes, to create limited records inventories, dispose of eligible temporary records and prepare eligible permanent paper records for transfer to the National Archives, as well as conduct additional hands-on RM training for staff. While these activities are taking place in response to these particular internal drivers, it is critical that all agencies implement basic RM functions as part of routine operations, especially with regard to permanent records.

TRANSITION TO ELECTRONIC RECORDS (OMB/NARA M-19-21)

Since 2012, NARA and the Office of Management and Budget (OMB) have provided goals for federal agencies to modernize recordkeeping practices and transition to a digital government with the OMB/NARA *Managing Government Records Directive* (M-12-18). This directive was superseded on June 28, 2019, by OMB/NARA *Transition to Electronic Records* (M-19-21).²

² OMB/NARA *Transition to Electronic Records* (M-19-21), <https://www.whitehouse.gov/wp-content/uploads/2019/08/M-19-21-new-2.pdf>.

With regard to permanent records, three targets within OMB/NARA M-19-21 are of key importance to the federal RM community:

Target 1.1: By 2019, federal agencies will manage all permanent electronic records in an electronic format.

All six agencies inspected are now largely conducting business electronically, although several still have paper business processes in place for a variety of reasons, including federal regulations requiring wet signatures, public accessibility reasons, redundancy, and agency culture. One agency, FHFA, stood out from the others for having already implemented an Electronic Records Management System (ERMS) for managing both permanent and temporary records. The other five agencies are using Microsoft 365 and were in the early stages of researching and testing its RM capabilities. The SEC is moving towards the electronic management of records, but there is a continued reliance on paper records. The SEC has completed an assessment of the extent of paper-based business processes. As a result, recommendations were made to the SEC leadership on where and how to transition to electronic formats.

Target 1.2: By 2022, federal agencies will manage all permanent records in an electronic format and with appropriate metadata.

All six agencies are aware of the metadata requirements for permanent electronic records and are taking steps to ensure compliance with OMB/NARA M-19-21. This is in keeping with responses to the Annual Federal Agency Records Management Reporting on the state of their records management programs. The data received between January 19 and March 19, 2021, indicates that most agencies are working towards creating and capturing metadata.

Target 2.4: By 2022, NARA will no longer accept transfers of permanent or temporary records in analog formats and will accept records only in electronic format and with appropriate metadata.

While the COVID-19 pandemic impacted scanning projects and some records transfer activity, most agencies stated they planned to transfer all or most eligible permanent paper records to NARA-operated Federal Records Centers (FRC) or to the National Archives before the 2022 deadline, instead of digitizing the records. NCUA indicated that their permanent paper records have already been transferred. CFTC's permanent, paper records have been prepared and boxed and are pending transfer when COVID-19 restrictions have been lifted. The other four agencies are still managing large amounts of paper records. Scanning projects, though largely limited and ad hoc, were being conducted by the agencies, making progress towards meeting the target.

Even with the current momentum taking place in these agencies, more progress needs to be made to meet the targets of OMB/NARA M-19-21 and to make improvements to the management of permanent records. This report makes three findings and six recommendations that will assist the agencies in mitigating the risk to records bringing their RM programs into compliance as they relate to permanent records. From previous inspections and annual reporting data, these findings and recommendations are not unique to these agencies or these types of permanent records. Therefore, this report also provides guidelines for other federal agencies in the proper

management of permanent records.

FINDINGS AND RECOMMENDATIONS

NARA noted several findings that appeared in most of the agencies that are vital to maintaining and improving an agency records management program and, more specifically, managing permanent regulatory, rulemaking and enforcement records. For which findings and recommendations apply specifically to each of the participating agencies, see appendix A.

RECORDS SCHEDULING AND DISPOSITION REQUIREMENTS

Finding 1: Records schedules covering email are either outdated or do not exist.

Having an approved and current records schedule in place for email, and ensuring its implementation enterprise-wide, is essential for appropriately dispositioning permanent (and temporary) records and for mitigating the risk of unauthorized dispositions.³ Establishing appropriate retention periods for email also ensures an agency can more efficiently access email when needed for business purposes as well as in response to congressional, Freedom of Information Act (FOIA), or legal discovery requests. Most of the agencies have a NARA-approved Capstone schedule⁴ in place with policies for managing email.

The FTC is still exploring options. FTC staff are currently using traditional records management (i.e., retention based on content) and are directed to save project-related (and potentially permanent) emails to case files in SharePoint or to project folders within Microsoft Outlook. Some guidance has been provided to staff on this informal policy, but implementation is inconsistent across the agency, and there is a risk that permanent email is not being captured. FTC is aware of the issue and is exploring whether to schedule email using the Capstone approach or to use an agency-specific email schedule.

FHFA determined that it is more efficient and effective to continue to apply disposition authorities from the FHFA Comprehensive Records Schedule (N1-543-11-1, as approved by NARA on 1/11/2013 and amended in 2014). NARA recommends that a schedule that is almost ten years old still requires review to ensure that it remains representative of current business needs.

Recommendation 1.1: Agencies must submit a NARA Form NA-1005 or an agency-specific schedule to schedule agency email records. (36 CFR 1220.34(g), OMB/NARA M-19-21 target 1.4, NARA Bulletin 2013-02)

Recommendation 1.2: Agencies should establish policies and/or procedures to periodically review and update their respective schedules to ensure they accurately reflect organizational structure and business needs. (Frequently Asked Questions (FAQs) about GRS 6.1)

³ See also NARA's [Criteria for Managing Email Records in Compliance with the Managing Government Records Directive \(M-12-18\)](#).

⁴ See [NARA Bulletin 2013-02: Guidance on a New Approach to Managing Email Records](#) for more information on the Capstone approach to managing email.

Finding 2: Internal controls for the application of selection criteria for significant permanent case files designated in NARA-approved records schedules do not exist.

Four of the agencies (CFPB, CFTC, FTC, SEC) interviewed have NARA-approved records schedules that call for selections of significant, landmark, or historic regulatory, rulemaking or enforcement case files for permanent retention and eventual transfer to the National Archives. Cases not selected are to be marked temporary and disposed of using the cut-off and retention period defined in the records schedule.

Although the records schedule language can differ somewhat, NARA and the agencies have agreed to some common criteria for the selection of permanent case files. At present, these criteria comprise the following:

- National or International Significance
- Generated National or International Media Attention
- Resulted in New or Changed Legislation
- Significant to America's Culture and Heritage
- Impact on Agency Mission
- Case Prosecuted by the Department of Justice
- Major Cases Reported in an Agency Annual Report to Congress
- Resulted in New Procedural Practices for the Agency

Selection criteria are approved by NARA, but it is up to the agencies to develop internal controls such as procedures to ensure that significant case files are adequately defined by and for agency staff, appropriately identified, marked, maintained, and transferred to the National Archives according to the records schedule. The agencies indicated that they were selecting significant case files according to the criteria outlined in their records schedules. However, they did not have specific documented procedures or other internal controls that support the identification and selection of permanent case files by staff involved in the creation and maintenance of the files or how RM was involved in the process.

Selection of significant, landmark, or historic case files is an important process and should be well documented to ensure public understanding of the reasons for the selection or non-selection of case files. Failure to develop proper procedures or other internal controls regarding the selection process places both the concerned agency and NARA at risk of failure to preserve significant case files and a lack of public trust in the integrity of the records and the ability to provide accountability.

Recommendation 2.1: Agencies implementing records schedules that include selection of significant case files must develop internal controls to ensure that cases are identified and maintained according to the criteria. (36 CFR 1226.10, OMB A-123 and A-130)

Recommendation 2.2: Agencies must develop procedures to regularly review their internal controls for records selection. (36 CFR 1226.10, OMB A-123 and A-130)

Finding 3: Large volumes of permanent records require agency action in order to transfer them to the National Archives.

The application of NARA-approved records schedules is mandatory to conduct Government business, protect rights, and preserve permanent records for transfer to the National Archives of the United States. Failure to implement records schedules can lead to the loss of intellectual control of records and delays in transferring records to the National Archives.

Of the agencies under review, three (SEC, NCUA, and FTC) have large backlogs of permanent paper records that are awaiting agency actions to determine the proper disposition of records according to approved records schedules. In the SEC's case, one series of records, almost 40,000 cubic feet, stored at the FRC requires review to determine whether the records contain historically significant case files as defined by the current records schedule. The SEC has another 230,000 cubic feet in commercial storage that is also awaiting agency action to determine the disposition of the records. In another case, the NCUA needs to review 3,000 cubic feet of records stored at the FRC to determine if the records in a single series are permanent or temporary under a records schedule approved in 2009. The selection criteria in FTC's records schedule, approved in 2009, proved difficult to implement, resulting in a freeze in disposition for an estimated volume of 11,400 cubic feet of temporary records in the FRC that may contain potentially permanent records with probably more in commercial storage in order to determine the correct disposition of historical case matters. (For more details, see Appendix A.)

Agencies also indicated they did not have intellectual control through inventories or other methods that help identify what records are contained within the large volumes. Failing to address schedule implementation issues in the past will now incur significant labor costs and fiscal resources. Additionally, failure to apply NARA-approved records schedules puts records at risk of the loss of intellectual control and improper dispositions. Application of records schedules years after the approved retention places agency staff in a difficult position, forcing them to apply disposition to records long after mission or program activities have ceased. This requires physical reviews and decisions without proper knowledge of the records or the context in which they were created. Each agency is working with NARA to arrive at an acceptable solution to assert intellectual control and implement current records schedules or develop new ones.

This finding also applies to CFPB. Currently, the agency maintains an electronic archive of permanent records on stand-alone servers. These servers currently hold around 11 terabytes of records without clear instructions for designating the record copy. Without this procedure or instruction, record owners could manipulate files and work products even after they have been placed on the servers.

We recognize these issues as a persistent problem facing these and many other agencies and make this finding to emphasize the importance of properly applying records schedules, particularly those that use selection criteria.

Recommendation 3.1: Agencies must establish internal controls to ensure all permanent records are transferred to the National Archives on a consistent basis in accordance with NARA-approved records schedules. (36 CFR 1220.30(c))

Recommendation 3.2: Agencies must establish procedures to implement records schedules for permanent records that require agency action in order to transfer them to the National Archives. (36 CFR 1220.30(c))

NOTEWORTHY PRACTICES

During the site visits, several noteworthy practices were found by the inspection team that would be of interest and benefit to the agencies in this inspection, as well as other Federal agencies.

Senior Agency Officials for Records Management (SAORM) Support

The SAORMs for all six agencies are working with agency RM and Information Technology (IT) staff to improve RM programs and to identify necessary budgetary resources. Several agencies specifically mentioned that SAORMs were increasing the involvement of their RM programs in the Systems Development Life Cycle (SDLC) process. For the most part, the SAORMs are working towards increasing awareness, strategic direction, and support from senior agency leadership. SAORMs are also facilitating partnerships and cooperation with functional offices within the agencies.

RM Training

All the agencies had robust RM training programs. Most required annual training in policy and/or in strategic planning documentation. The agencies provided staff and contractors with basic RM training. They also offered role-based training for senior officials and records liaisons (RLs). In addition, senior officials were given additional RM guidance during the on-boarding and off-boarding process. Some agencies created numerous complementary training and guidance products to aid staff, senior officials, and RLs in their recordkeeping responsibilities. A few agencies stood out in terms of their overall training programs. CFPB created their own RL certificate program. RLs are required to take a year-long internal RM training program and exam that culminates in a certificate, issued by the Records Management Office. The certificate is renewed every two years. CFTC created a "Records Management Training Plan" that includes an option for targeted training, in which they offer specialized training by request. FHFA built a Continuous Awareness Program (CAP) into their training offerings that runs all year long.

RM Evaluations

Federal regulations require agencies to conduct formal evaluations to assess the effectiveness of their RM program and practices (36 CFR 1220.34(j)). This is an area that agencies often struggle with. All six agencies inspected, however, are conducting some form of RM evaluations. Some agencies, such as CFPB, NCUA and SEC, are conducting comprehensive RM evaluations, while others are conducting more limited evaluations of specific offices or types of records. All six agencies are using evaluations to improve agency recordkeeping practices and update RM policies, procedures and guidance products. They also provide additional opportunities for hands-on RM training. Of particular note was the evaluation program at NCUA. The RM program has each office being evaluated complete a Records and Information Management

(RIM) questionnaire and submit requested documentation. The Records Team then conducts a site visit to go over the responses and review RM practices. A final report is written that contains findings and recommendations that are addressed by management. While annual site visits were put on hold during the COVID-19 pandemic, NCUA continued to conduct evaluations virtually.

Electronic Records at FHFA

FHFA has made great strides in the transition to electronic records required by OMB/NARA M-19-21. FHFA created their own in-house document records repository that complies with guidance related to electronic records management and information systems. FHFA is largely conducting business electronically, managing both permanent and temporary records in their Information Management System (IMS) that resides on a shared drive. Most records are in IMS, but the few records on other shared drives are being moved into IMS. FHFA believes this approach is scalable and will allow for the future creation and preservation of electronic records.

Systems Development Life Cycle (SDLC) Coordination

Coordination with RM stakeholders during the SDLC process ensures permanent records are being created and managed properly throughout the records lifecycle. Most of the agencies inspected had this coordination built into agency policy, procedures, and/or guidance. For example, at the SEC, coordination with IT and others is defined in their RM Policy SECR 7-1 (Rev. 2) and is implemented through close working relationships with all Information Governance areas and stakeholders at the agency. The FHFA Agency Records Officer (ARO) serves on the SDLC Committee, taking part in the planning and retirement of systems. The RIM Team Manager is a member of the Office of Technology and Information Management (OTIM) Leadership Team to ensure any data from decommissioned systems is captured and managed. At CFTC, the RM program is a member of the Configuration Control Board (CCB). Also, while developing their Enterprise Architecture (EA), all relevant stakeholders such as Policy and Framework, Capital Planning, and the SAORM are working to formulate a charter for the EA program.

CONCLUSION

The management of permanent records is most effective when conducted as part of a comprehensive records management program. While the focus of the inspection was on permanent regulatory, rulemaking and enforcement records, the management of these records represents how all records are most likely being managed. Because of the long-term preservation needs, permanent records management can be a challenge and often requires additional focus. The six agencies inspected are moving proactively towards becoming fully electronic, but issues, particularly those involving the proper scheduling and application of records schedules for permanent records, need to be addressed regardless of format. There are most likely similar RM challenges and barriers in most federal agencies.

The recommendations in this report are intended to facilitate improvements that should minimize the risks to federal permanent records to ensure they are readily accessible to support mission

essential functions and the American people through their eventual transfer to the National Archives.

APPENDIX A

OVERVIEW AND RESULTS FOR EACH INSPECTED AGENCY

This appendix specifies how each of the consolidated findings and recommendations documented in the report relate to each respective organization. In addition to the summary analysis provided in the body of the report, the following provides specific tactical areas of improvement for each agency. Agencies should view these as a starting point for improving their respective RM programs and processes.

COMMODITY FUTURES TRADING COMMISSION

Applicable Findings: Finding 1: Recommendation 1.2; Finding 2

Program Summary: CFTC recently underwent an agency-wide reorganization in 2020, which positioned the RM Program in the Legal Division, moving it from the Division of Administration. The RM program consists of two full-time equivalents (FTE), the ARO (who is also responsible for the Controlled Unclassified Information (CUI) Program) and a RIM Specialist, as well as three support contractors. Complementing the program is a newly-designated SAORM and a network of RLs who have been designated in most offices, although the network is in the process of being revamped and realigned with the agency's new organizational structure.

The CFTC RM program is currently updating and rewriting records schedules, as well as updating and consolidating RM policies and procedures. Sample templates and draft policies and procedures submitted as part of the inspection data call demonstrate a good level of understanding of RM statutes and regulations and are, arguably, some of the best that the inspection team has seen. Additional roles and responsibilities are being added to their RM policy, such as the Chief Information Officer, Chief Data Officer, and System Owners (among other roles), to strive towards a more comprehensive records and information governance framework. The updates being made to the RM manual include the incorporation of the management of records throughout the records lifecycle (including for permanent records), email management, use of naming conventions, and access rights in SharePoint. They also conducted a limited records evaluation in preparation for two office moves and created training based on their findings. In addition, as part of their "Records Management Training Plan," they started offering targeted RM training by request alongside their other required RM training.

CFTC Management of Permanent Records: CFTC is creating and maintaining records primarily in electronic formats as opposed to paper. In fact, the agency has moved to near fully-electronic recordkeeping in alignment with OMB/NARA M-19-21 goals, and the majority of paper records have been transferred to NARA's FRC or to the National Archives. CFTC has been testing Microsoft 365 in order to enhance the current SharePoint On-Premises for the creation and management of electronic records. CFTC is still in the early stages of researching RM functionality. It is anticipated that Microsoft 365 will be rolled out to staff in 2021. CFTC plans to move SharePoint to a cloud environment in the near future. The agency also manages permanent records on network shared drives.

Specific Challenges/Barriers for Permanent Records: While CFTC is making great strides, there are challenges that need to be addressed. Due to recent reorganizations, CFTC sent a revised NA-1005 to NARA in May 2021. NARA approved it in August 2021, and CFTC is working with the NARA appraisal archivist to implement the new NA-1005 to reflect the new organizational structure. This will help to ensure that all permanent email accounts are properly identified, and the email captured until eligible for transfer to the National Archives.

One additional challenge is the application of selection criteria to significant case files. CFTC RM program staff indicated that their Division of Enforcement (DOE) has an outdated procedure for identifying cases to meet the selection criteria, but DOE staff are currently working with RM program staff on reviewing and updating the procedure since it has not been routinely implemented in DOE processes. The Division of Enforcement, stated that they do determine whether a case meets the criteria as agreed upon in the NARA-approved records schedule as part of case close-out procedures; however, no case files have yet met the criteria but the CFTC RM program staff have indicated that CFTC has matters that have been identified as meeting the criteria and are permanent records. Having a routinely documented and implemented procedure or other internal controls in place for the selection of permanent case files is important. They should be based on the established criteria and verified with the agency's NARA-assigned appraisal archivist of the adequacy of those procedures and will help to ensure that significant case files are appropriately identified, marked, maintained, and transferred to the National Archives according to the records schedule.

CONSUMER FINANCE PROTECTION BUREAU

Applicable Findings: Finding 2; Finding 3

Program Summary: The Consumer Finance Protection Bureau (CFPB) is a relatively new federal agency, established in 2010. The Bureau Records Officer (BRO) has been with the agency since its establishment. Currently, there are two full-time staff members assigned to the RIM program in addition to the BRO. Recently, the program was transferred to the Office of the Chief Data Officer who serves at the assistant director level and reports to the CFPB Chief Operating Officer (COO) who is also the agency SAORM. The CFPB RIM program has 32 Records Liaison Officers (RLO) designated throughout the agency, who manage day-to-day operations in the offices and divisions. They are supported by designated "back-ups" in each area. RLOs receive extensive role-based training and certificates upon completion of the training. Training refreshers for the RLOs are required every two years. Tiered training is also offered to CFPB employees, senior agency officials and contractors. The RIM program is engaged with agency programs and offices and is currently focusing its attention on the planned transition to Microsoft 365. This transition, along with the corresponding introduction of a new file plan, will provide RM functionality to all components of the agency.

CFPB Management of Permanent Records: Most CFPB permanent records are scheduled with a 15-year retention period and are not due for transfer to the National Archives until after Fiscal Year (FY) 2025. The RIM program transfers legacy Federal Reserve Board Housing Mortgage Disclosure Act files (HMDA) to the National Archives biannually, transferring over 14 million files in FY 2020 with only insignificant problems. CFPB produces very few textual

records and has an active scanning project to ensure that the bulk of those produced are digitized yearly for eventual transfer to the National Archives. The majority of electronic records are currently maintained on SharePoint sites. The agency has good intellectual control of records with up-to-date-file plans and is actively preparing to move their records to Microsoft 365 as mentioned above. These preparations include a new file plan, which should give the RIM program increased control over both permanent and temporary records. CFPB has implemented the Capstone schedule to capture the permanent emails of their higher officials and does a monthly review of Capstone accounts to ensure their proper designation and capture. The CFPB RIM program is actively involved in the Electronic Information System (EIS) development process and has been engaged in system migration efforts in the past. CFPB should be able to effectively meet the permanent records targets of OMB/NARA M-19-21.

Specific Challenges/Barriers for Permanent Records: There were some areas of concern that the CFPB RIM program should address as a result of this inspection. A primary procedural concern is the selection and designation of permanent significant enforcement case files according to the NARA-approved records schedule of 2012. CFPB does not have an established procedure or other internal controls to select historically significant case files and has designated only one enforcement case as permanent since 2010. CFPB should develop a procedure to designate historically significant case files.

NARA also noted issues with designating the permanent record copy. Currently, the agency maintains an electronic archive of permanent records that are collected from program areas and offices and downloaded to stand-alone servers. These servers currently hold around 11 terabytes of records. There are no clear instructions whether the copy of the file downloaded to the server was the record copy, or programs could continue to manipulate files and work products even after they have been placed on the servers. Establishing an internal control that includes clear procedures and instructions will assist with records schedule implementation.

FEDERAL HOUSING FINANCE AGENCY

Applicable Findings: Finding 1: Recommendation 1.2

Program Summary: The FHFA RM program falls under the Office of Technology and Information Management (OTIM) and consists of one full-time ARO, a RIM Team Manager and two other RM support staff, as well as a network of RLs. The newly designated SAORM, who is the Chief Information Officer (CIO), also provides support to the program. The RM program works closely with the Office of General Counsel (OGC) and the Division of Housing Mission and Goals to address records issues. They are also very active and engaged within the agency. The ARO serves on the SDLC Committee, participating in the planning and retirement of systems, and the RIM Team Manager is a member of the OTIM Leadership Team to ensure any data from decommissioned systems is captured and managed.

All FHFA employees and contractors are required to complete annually FHFA's RM training, "RIM Rules of Behavior," which covers all bullet points in NARA Bulletin 2017-01.⁵ The agency also conducts role-based training for both RLs and SAORMs. Additionally, as part of their training offerings, they have rolled out a Continuous Awareness Program (CAP) that runs throughout the year.

Training is also conducted during RM evaluations. The RM program was audited by the FHFA Office of Inspector General (OIG) in 2020. As part of that activity, OIG conducted a File Plan Search and Review Project that asked staff to find permanent records on their file plans to test the plans. This process also uncovered records that had not yet been declared through the electronic Collaboration and Clearance (eCC) workflow. The RM program followed up with training and outreach to the RLs. The audit resulted in a final report with findings and recommendations, all of which have since been closed out. Seeing value in the OIG report, the RM program plans to conduct similar evaluations at least every couple of years.

FHFA Management of Permanent Records: FHFA is largely creating and maintaining records in electronic formats. Of the six agencies that were included in this inspection, FHFA was the only agency to have RM functionality built into its recordkeeping system. Most of their records are stored in the agency's home-grown system, Information Management System (IMS), also known as the M: Drive. Championed by their CIO, the system was initially developed as a document management system that had RM functionality added later. The integrated electronic Records and Information Management (eRIM) module of the IMS enables users to declare records and assign the appropriate records schedule category. RM staff can also filter for all permanent records in the IMS, and see their approved disposition authority and exact disposition dates. The IMS has been moved to the cloud and is scalable to allow for the agency to implement application programming interfaces (API) for the future creation, integration, and preservation of electronic records. The effective utilization of the IMS system has significantly lowered any barriers FHFA has regarding the management of permanent records.

While most permanent records are now in IMS, there are still a few records being maintained on other shared drives and in paper. The RM program is currently working with offices to identify important paper collections for digitization; however, scanning is largely being done on an ad hoc basis. FHFA plans to transfer any remaining textual records to the FRC or the National Archives before the end of 2022.

Specific Challenges/Barriers for Permanent Records: FHFA has a NARA-approved, media-neutral Comprehensive Records Schedule (N1-543-11-1, approved by NARA on 1/11/2013 and amended in 2014).

FHFA applies an appropriate retention category to each employee and contractor personnel's Enterprise Vault (Evault), a commercial-off-the-shelf (COTS) software archive which captures all email. To ensure that permanent email is being identified, appropriately managed, and dispositioned based on a NARA-approved records schedule, FHFA adopted a "modified Capstone approach" in which Executives' and their support staff's emails are retained permanently by applying an approved disposition authority from the NARA-approved records

⁵ [NARA Bulletin 2017-01: Agency Records Management Training Requirements](#) (November 29, 2016).

schedule to each individual's Evault archive. Permanent retentions are also applied to the email archives of employees and contractor personnel that work in the Office of Communications and Congressional Affairs and the Office of Resolutions (formerly Conservatorship).

They are coming up on the seven-year retention mark as Evault has been in use at FHFA since 2014 with the first retention periods for temporary records coming in 2022. Disposition of permanent email will not start until 2035. FHFA will need to ensure they have migration strategies for long-term preservation and ensure that the current schedule that is now seven years old is reviewed periodically and updated if business needs change over time.

FEDERAL TRADE COMMISSION

Applicable Findings: Finding 1: Recommendation 1.1; Finding 2; Finding 3

Program Summary: FTC is undergoing a reorganization that has elevated the FTC RM program by placing the program within the Office of the Secretary (OS). The FTC RM program has two FTE, the ARO and the Records Management Specialist, who report to the newly designated SAORM, the Director of Records and Information Management (RIM). The RM program is supported by a Records and Information Liaisons (RIL) network, which was implemented in 2019 to support RM messaging and to gain support for RM across the agency.

The RM program is currently working with its NARA-assigned appraisal archivist to schedule mission and policy records. As a part of this effort, FTC received NARA approval for a permanent social media records schedule for records created on Twitter. They are also updating FTC's 2009 records schedule and selection criteria for permanent records. In May 2020, NARA and FTC agreed to a freeze on the destruction and deletion of temporary records covered under the existing records schedule until rescheduling efforts have been completed and complete sets of historical permanent records have been identified.

FTC is conducting RM training for all staff, using the Federal Records Officer Network (FRON) RM 101 course. All new RILs and senior and appointed officials, including incoming and newly promoted, must also take RM training. FTC maintains two additional RM tip sheets to aid senior officials in their recordkeeping responsibilities as well. The agency plans to add slides on email management to their mandatory annual Information and Systems Security training during the spring of 2022, which will help to ensure awareness and management of these potentially permanent records.

FTC Management of Permanent Records: As of FY 2018, FTC is creating and maintaining all records in electronic formats. FTC is storing permanent rulemaking case files in an in-house document management system called Matter Records Search System (MaRS) with the supplementary Matter Management System 2, a metadata indexing system. FTC uses MaRS to record, track and report administrative and statistical information about FTC matters. The OS saves Portable Document Format (PDF) files of permanent record memos, decision-making votes, and other permanent records to the MaRS system. Both systems are built on a SharePoint platform and do not currently include RM functionality. FTC also maintains permanent records in other systems and databases outside MaRS within SharePoint and in shared network drives.

Although the agency now conducts business electronically, they store a large amount of legacy textual records in the FRC and in commercial storage as well.

Specific Challenges/Barriers for Permanent Records: Other than having a policy prohibiting staff from using personal email accounts for government business, FTC lacks a comprehensive policy for managing email. The agency has been managing email using traditional RM (i.e., retention based on content and usually applied on an email-by-email basis using multiple NARA-approved disposition authorities). The ARO indicated some emails, such as the votes of the Commission, are converted to and saved in MaRS as PDF files. The emails of the work of FTC staff (e.g., rulemaking) are preserved as PST files in staff “archive” folders on shared drives. While some guidance has been provided to staff, it is being implemented inconsistently and there are no internal controls in place to ensure full compliance. Staff use various techniques for moving email to folders. Some staff move everything into the folders, while others are more selective and may not capture all applicable email. Some move the emails on a monthly or other regular basis, while others move them as the emails are received. This inconsistency in capturing email puts the agency at risk of not capturing all record email, especially email that would be permanent. FTC is aware of the issue and is exploring implementing the Capstone approach for managing email under General Records Schedule (GRS) 6.1 or creating an agency-specific records schedule for email to provide improved controls for managing email.

The other significant issue is the inability to implement selection criteria. This contributed to a large volume of legacy textual records that need to be reviewed for historical cases. The problem was identified when transferring permanent records in early 2020 under records schedule N1-122-09-1, Schedules 2 and 3. This contributed to the freeze and rescheduling efforts mentioned earlier for mission and policy records. This freeze will remain in place until a new records schedule is approved. At that time, FTC will be given authority to restart all dispositioning activity that will include the review and disposition of any records determined to be permanent, including the large volume of legacy textual records. If selection criteria are included in the new records schedule, FTC should implement the recommendations of Findings 2 and 3.

NATIONAL CREDIT UNION ADMINISTRATION

Applicable Findings: Finding 3

Program Summary: The NCUA RM program is located in the OGC. The ARO is an attorney in the Information and Access Law Division of OGC and is supported by three RIM specialists. The Associate General Counsel for Information and Access Law Division is the NCUA SAORM. The agency utilizes a network of RLs and records custodians (RC) to manage records in programs and offices throughout the agency, including the NCUA regions. These RLs received specialized training tailored to their positions. NCUA operates under an RM Instruction dated January 13, 2018, that lays out roles and responsibilities for records management in the agency as well as policies and procedures for managing email records, transferring permanent records to the National Archives and integrating records management into system designs. NCUA recently issued an updated comprehensive records schedule to all agency staff. The NCUA RM program has also instituted a very effective evaluation program, which utilizes written reports and recommendations to management in its offices and divisions. Currently, the

NCUA RM program is working to update records schedules and is investigating the implementation of an electronic records management for the agency.

NCUA Management of Permanent Records: NCUA has made significant strides to restructure and reinvigorate its RM program since 2017 and is addressing self-identified needs for improvement in the areas of electronic records management and records scheduling. In FY 2020, the agency completed its first transfer of electronic records to the National Archives. The agency maintains very few paper records and has transitioned almost fully to electronic record keeping. As part of mid- to long-range planning, the RM program is working with the Office of the Chief Information Officer (OCIO) to obtain and implement an ERMS for agency records. The RM program is also engaged in the SDLC up to the SAORM level, and is currently working to develop guidance for RM involvement in the decommissioning of systems. NCUA only has one system with permanent data that has been discontinued, and is working on procedures to identify and transfer all permanent system records to the National Archives. Data from the closed system has been frozen to await the full term of its disposition. NCUA implemented the Capstone schedule for email in 2016, and the RM program works with OCIO to ensure that permanent accounts are captured and maintained according to the records schedule. The RM program and OCIO have also developed procedures for the transfer of Capstone official email to NARA. The RM program recently issued an updated comprehensive records schedule to agency staff and has created new file plans for almost every office in the agency. NCUA has instructions for the capture of metadata for permanent records and has detailed procedures for the capture of documents in an agency permanent records repository known as eLibrary. NCUA should be able to effectively meet the requirements of OMB/NARA M-19-21.

Specific Challenges/Barriers for Permanent Records: NCUA has a significant backlog of textual records in “pending agency action” status, stored in NARA’s FRCs. These records total over 3,000 cubic feet and consist primarily of credit union “chartering and insurance” files from 1990-2010. Transferred to storage as “active” credit union files, these records should be reviewed by NCUA to determine their exact disposition and whether they need to be transferred to the National Archives according to the records schedule. The schedule requires transfer of the records to the National Archives five years after the dissolution of a member institution, or its successor or ten years if the institution is liquidated. In line with Finding 3, NCUA must develop a plan to implement their current records schedule to address this backlog of records.

NCUA has utilized an eLibrary since 1998. This library is maintained on a SharePoint platform and serves as an agency-wide resource for documents of importance to NCUA. Documents are placed on the platform and managed by eLibrarians. Collections in the eLibrary include temporary as well as permanent series of records. Examples of temporary records include series such as telephone directories and delegations of authority, while examples of permanent series include directives and NCUA Board meetings. The operation and maintenance of the eLibrary is well documented through job aids issued by the eLibrary staff and an agency Instruction. Of concern, however, is the lack of clear procedures to ensure the proper disposition of records contained in the eLibrary. Specifically, the designation of records schedule information for records stored in the system and whether the eLibrary is retaining copies of original documents. Even if the eLibrary is retaining copies of documents, NCUA is still responsible for the disposition of all records in the repository according to NARA-approved records schedules.

Continued maintenance of the records past their scheduled disposition dates requires that NCUA meet legal and FOIA obligations for the preservation and presentation of pertinent information upon request. NCUA should develop a procedure to ensure the proper designation and disposition of records maintained in the eLibrary.

U.S. SECURITIES AND EXCHANGE COMMISSION

Applicable Findings: Finding 2; Finding 3

Program Summary: The SEC RM program is situated in the Office of Records Management Services (ORMS) which currently operates under the Office of Support Services. ORMS is managed by the ARO as well as the SEC Archivist, who oversees the day to day RM operations of the agency. The ARO and the Archivist work closely with the SAORM who is currently the Acting Director of the Office of Support Services and the SEC's Chief FOIA officer.

ORMS currently employs 14 FTE and is composed of two branches: the Records Policy, Training, and Compliance Branch; and the Records Operations Branch. These branches are responsible for the development of policies and procedures for the agency and are overseen by two Branch Chiefs. Divisions and Offices in the agency are staffed by RLs who are trained RM professionals. There is also a tiered training curriculum for agency staff. The RLs implement ORMS policy within their areas of responsibility and have operational authority in their offices and divisions. The RLs can also utilize RCs in their offices and divisions to implement RM procedures such as the creation of file plans and inventories. ORMS and the RLs hold frequent Records Council meetings to discuss RM needs throughout the agency. In addition to the work of the Records Council, ORMS coordinates with RLs and RCs to ensure policy and procedures are implemented in accordance with guidance produced by the office. To ensure compliance with applicable federal laws, regulations, and government-wide initiatives, ORMS undertakes biennial assessments, having just completed a review on agency progress towards OMB/NARA M-19-21 targets in June 2020.

SEC Management of Permanent Records: The SEC RM program actively manages permanent records throughout the agency. Each RL creates and maintains file plans and inventories that track permanent records. ORMS maintains a comprehensive records schedule for the agency and an electronic inventory of permanent records that can produce reports on records eligible for transfer to the National Archives.

ORMS has robust procedures and FAQs in place to designate, track, and capture permanent email accounts. ORMS receives quarterly reports about Capstone accounts and is in the process of reviewing the current Capstone schedule to more accurately capture the transition of agency officials whose email accounts require permanent retention.

ORMS coordinates through the SDLC with the Office of Information Technology (OIT). Coordination has included RM requirements for new systems and controls for the decommissioning of older systems as well as the capture of permanent records with their associated metadata. ORMS has produced an excellent requirements worksheet to ensure the

proper inclusion of records management in the development of systems. In addition, the office has produced a checklist to ensure RM inclusion in the decommissioning of systems.

In terms of the general management of electronic records, the SEC is moving towards compliance with OMB/NARA M-19-21, but there is a continued reliance on paper records in the divisions interviewed by NARA. Until recently, divisions engaged in print and file activities for series such as enforcement cases files and rulemaking records. This heavy reliance on paper is due in part to regulatory and legal requirements. ORMS is working to address the situation and undertook the assessment to study the extent of paper-based business processes among agency divisions and offices.

In addition, ORMS is working with various units to digitize records, where feasible, but envisions the transfer of most paper records to FRCs before the OMB/NARA M-19-21 deadline of December 31, 2022. ORMS prefers to allow offices to continue to work with paper records if that suits their business needs. ORMS is also investigating the utilization of Microsoft 365 RM functions to manage all agency records. However, the disparate management of records interferes with the agency's transition to fully electronic record keeping. ORMS should work with SEC leadership, agency RLs, divisions, and offices to develop an enterprise-wide plan to implement the recommendations of their recent assessment.

Specific Challenges/Barriers for Permanent Records: The SEC is, by its own admission, a vastly paper-based organization. The problem of the lack of identification of permanent case files has been growing for close to ten years or longer. In a 2012 records schedule appraisal, NARA noted the SEC had approximately 200,000 cubic feet of enforcement case records in FRCs and other storage facilities that needed to be reviewed by the agency. In a 2014 inspection, NARA noted a 60-year gap in the identification of landmark enforcement cases by the SEC.

As of 2021, the SEC retains almost 40,000 cubic feet of enforcement case files in the FRCs. The case files, some as old as 1933, are stored in archival sample status awaiting the determination of the need for the application of landmark case selection criteria to the records. The SEC is currently in discussions with NARA to determine an appropriate solution to this problem and determine how to effectively identify and transfer records that should have already been transferred per the current records schedule. (The schedule indicates that selected permanent records are to be transferred to the National Archives 10 years after the close of the case files.) In addition, the SEC maintains over 230,000 cubic feet of records in storage at a commercial records center. ORMS is uncertain of the exact disposition of these records and is undertaking a project to identify the records and either transfer or dispose of them according to the records schedule. The maintenance of such a large volume of textual records is of serious concern to NARA, is costly to the agency, and hampers SEC's ability to manage permanent records.

Regarding electronic records, the SEC does well with email management and coordinates with OIT in the SDLC process through the widespread use of shared drives and SharePoint that are controlled via a network of administrators who implement OIT's policies and procedures. Divisions and Offices are provided with flexibility to determine how to utilize SharePoint and shared drives to meet their business needs within the parameters of OIT and ORMS policies and procedures.

Agency offices and divisions can use either shared drives or SharePoint or a combination of both. According to the ORMS assessment, however, over half of the offices and divisions interviewed noted issues with the management of electronic records including shared drive and SharePoint management, version control, and records maintenance and disposition. NARA interviews with the Division of Enforcement revealed that case files on shared drives are kept indefinitely, with no attempt to segregate significant cases or apply any disposition at all. To complicate matters further, case files are being kept in both electronic and paper format, with no determination of duplication or disposition contributing to the volume of paper. Interviews with the Division of Trading and Markets indicated that while the division is using shared drives and SharePoint, there is a continued reliance on paper records. The disparate methods of the management of paper and electronic records raises concerns about the duplication of records in both formats and the resultant issues with intellectual control over the records.

APPENDIX B INSPECTION PROCESS

OBJECTIVE AND SCOPE

The objective of this inspection was to determine how well the six agencies that were included in this multi-agency inspection comply with federal records management statutes and regulations relating to permanent records and to assess the effectiveness of their records management policies and procedures.

METHODOLOGY

Due to the COVID-19 pandemic, NARA carried out this inspection by conducting video- and tele-conferences with the AROs at the six agencies. In addition, the inspection team:

- Reviewed records management policies, directives, and other documentation provided by the agencies;
- Used a detailed checklist of questions based on federal statutes and regulations, and NARA guidance;
- Reviewed responses to current and past annual Records Management Self-Assessments (RMSA), SAORM annual reports, and Federal Electronic Records and Email Management reports; and
- Reviewed internal NARA data regarding agency records schedules and records transfers and accessions.

APPENDIX C

RELEVANT INSPECTION DOCUMENTATION

The inspection team received and reviewed copies of the following documentation provided by each of the agencies, if applicable:

- Organizational charts
- RM program strategic plans, goals and objectives
- RM policies, directives, manuals, standards and other RM-related issuances relating to the management of permanent records
- Internal controls or guidance used to manage permanent records
- Agency permanent records schedules
- Documentation of RM training related to permanent records
- Inventory of scheduled and unscheduled electronic systems that contain permanent records
- Migration and metadata standards and practices in use for permanent records
- Inspection, audit, or evaluation reports of RM permanent records practices and any follow-up actions
- Notices of permanent records freezes or holds
- Departing staff exit clearance procedures and/or checklist, particularly around safeguarding against unauthorized removal of records, the identification of permanent records eligible for transfer to the National Archives, including senior executive staff, political appointees, and other senior agency officials.
- Records management language in contractual agreements

APPENDIX D AUTHORITIES AND FOLLOW-UP ACTIONS

AUTHORITIES

- 44 U.S.C. Chapter 29
- 36 CFR Chapter XII, Subchapter B
- 36 CFR 1239, Program Assistance and Inspections

OTHER GUIDANCE

- OMB/NARA *Transition to Electronic Records* (M-19-21)
- Other NARA Bulletins currently in effect - <https://www.archives.gov/records-mgmt/bulletins>

STATUTES AND REGULATIONS

36 CFR Chapter XII, Subchapter B, specifies policies for federal agencies' records management programs relating to proper records creation and maintenance, adequate documentation, and records disposition. The regulations in this Subchapter implement the provisions of 44 U.S.C. Chapters 21, 29, 31, and 33. NARA provides additional policy and guidance to agencies at its records management website - <http://www.archives.gov/records-mgmt/>.

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)); and
- 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)).

FOLLOW-UP ACTIONS

Each agency will be required to submit to NARA a Plan of Corrective Action (PoCA), specific to their respective findings and recommendations listed above, that specifies how the agency will address each inspection report recommendation, including a timeline for completion and proposed progress reporting dates. Plans must be submitted within 60 days after the date of transmittal of the final report to the head of each agency.

NARA will analyze the adequacy of the action plans, provide comments to each agency on their plans within 60 calendar days of receipt, and assist each agency in implementing recommendations.

The AROs will be required to submit to NARA progress reports on the implementation of their respective action plans until all actions are completed. NARA will inform each agency when progress reports are no longer needed.

APPENDIX E
ACRONYMS AND ABBREVIATIONS

API	Application Programming Interface
ARO	Agency Records Officer
BRO	Bureau Records Officer
CAP	Continuous Awareness Program
CCB	Configuration Control Board
CFPB	Consumer Financial Protection Bureau
CFR	Code of Federal Regulations
CFTC	Commodities Futures Trading Commission
CIO	Chief Information Officer
COO	Chief Operating Officer
COTS	Commercial-off-the-Shelf
CUI	Controlled Unclassified Information
DOE	Division of Enforcement
EA	Enterprise Architecture
eCC	Electronic Collaboration and Clearance
EIS	Electronic Information System
eRIM	Electronic Records and Information Management
ERMS	Electronic Records Management System
Evault	Enterprise Vault
FAQ	Frequently Asked Questions
FHFA	Federal Housing Finance Agency
FOIA	Freedom of Information Act
FRC	Federal Records Center
FRON	Federal Records Officer Network
FTC	Federal Trade Commission
FTE	Full-Time Equivalent
FY	Fiscal Year
GRS	General Records Schedule
HMDA	Housing Mortgage Disclosure Act
IMS	Information Management System
IT	Information Technology
MaRS	Matter Records Search System
NARA	National Archives and Records Administration
NCUA	National Credit Union Administration
OCIO	Office of the Chief Information Officer
OGC	Office of General Counsel
OIG	Office of Inspector General
OIT	Office of Information Technology
OMB	Office of Management and Budget
ORMS	Office of Records Management Services
OS	Office of the Secretary
OTIM	Office of Technology and Information Management
PDF	Portable Document Format

PoCA	Plan of Corrective Action
RC	Records Custodian
RIL	Records and Information Liaison
RIM	Records and Information Management
RL	Records Liaison
RLO	Records Liaison Officer
RM	Records Management
RMSA	Records Management Self-Assessment
SAORM	Senior Agency Official for Records Management
SDLC	Systems Development Life Cycle
SEC	Securities and Exchange Commission
U.S.C.	United States Code



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