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The Presidential Records Act: An Overview

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SUMMARY

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The Presidential Records Act: An Overview

Presidential records provide Congress, members of the public, and researchers with documentation, context, and explanations for presidential actions. The Presidential Records Act (PRA; 44 U.S.C. §§2201-2207) set forth requirements regarding the maintenance, access, and preservation of presidential and vice presidential information during and after a presidency.

This report describes the institutions involved in presidential recordkeeping, explains what is and is not considered a presidential record, and identifies recordkeeping responsibilities and access policies during and after a presidency. The report concludes with information and policy options for congressional oversight and enforcement of the PRA with respect to electronic records provisions under the Presidential and Federal Records Act Amendments of 2014.

Prior to the PRA, records were considered the President's private property. Now, the PRA states that presidential records are the property of the United States. Under the PRA, the President may request advice and assistance from the National Archives and Records Administration (NARA) regarding records management practices, and the Archivist of the United States (the head of NARA) plays an important role in the maintenance and access of a former President's records.

The PRA does not establish automatic access to an incumbent President's records, which may be protected by executive privilege on a case-by-case basis. However, the PRA does statutorily narrow an incumbent President's ability to restrict records access as the Administration draws to a close. As the length of time between the conclusion of a presidency and the present day increases, presidential records become more accessible.

Access to a former President's records is governed in terms of time passed since the conclusion of the presidency:

- Less than five years out, no public access is granted due to the Archivist's processing of the records.
- Between five and 12 years out, the Archivist determines PRA restrictions with the former President in accordance with Title 44, Section 2204, of the *U.S. Code*.
- After 12 years, these PRA restrictions no longer apply.

Certain federal officials may access a former President's records within the 12-year time frame by gaining "special access" to presidential records. The PRA permits either house of Congress, committees, or subcommittees requesting information for chamber or committee business to be granted special access to the former President's records. In practice, observers have questioned what constitutes a House or Senate request for presidential records and who needs to make the request to qualify under the PRA. This statutory ambiguity may impact the ability of minority party members and general committee members to gain access to presidential records.

As a result of the Presidential and Federal Records Act Amendments of 2014, presidential records are assessed for preservation not by the media used to store the information but rather by the content of the information itself. Questions regarding the volume and completeness of records may be suitable for congressional consideration. Any delay in NARA's processing of records will directly impact timely access to those records and the ability of NARA to comply with the PRA's statutory directive to make records available as rapidly and completely as possible.

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Following his resignation as President, Richard Nixon wanted to destroy recordings created in the White House that, among other things, documented actions he and others took in response to investigations connected to a burglary in the Watergate building and his reelection campaign. Under policy at the time, presidential materials were considered the President's private property. In response, Congress passed a number of laws to preserve the integrity of documents and other information related to Nixon's presidency and made those laws applicable to all future presidencies.[1]

Enacted in 1978, the Presidential Records Act (PRA; 44 U.S.C. §§2201-2207) established public ownership of records created by Presidents and their staff in the course of discharging their official duties. The PRA additionally established procedures for congressional and public access to presidential and vice presidential information and the preservation and public availability of such records at the conclusion of a presidency.[2]

This report provides context on the institutions involved in presidential recordkeeping, explains what is and is not considered to be a presidential record, and identifies recordkeeping responsibilities and access policies during and after a presidency. The report concludes with information and policy options for congressional oversight and enforcement of the PRA with respect to electronic records provisions under the Presidential and Federal Records Act Amendments of 2014.[3]

While the PRA provides similar provisions for records created by the Vice President, this report focuses on presidential records. Also, information on the Federal Records Act (FRA), more broadly, is available in CRS Reports CRS Report R43072, *Common Questions About Federal Records and Related Agency Requirements*, by Meghan M. Stuessy and CRS In Focus IF11119, *Federal Records: Types and Treatments*, by Meghan M. Stuessy.

The Institutions

The PRA governs the records of the President, Vice President, and certain components of the Executive Office of the President (EOP).[4] The PRA specifies roles and responsibilities for the management and enforcement of presidential records policy to the President, the National Archives and Records Administration (NARA), and the Department of Justice (DOJ).

The PRA requires the President to take "all such steps as may be necessary to assure that the activities, deliberations, decisions, and policies that reflect the performance of the President's constitutional, statutory, or other official or ceremonial duties are adequately documented."[5] The President is further directed to implement records management controls to accomplish these ends and may consult NARA and DOJ on how to best comply with the statute.

NARA preserves selected government records, oversees recordkeeping throughout the government, and makes government records publicly available pursuant to the PRA and other

[1] David S. Ferriero, "NARA's Role under the Presidential Records Act and the Federal Records Act," *Prologue Magazine*, Summer 2017, https://www.archives.gov/publications/prologue/2017/summer/archivist-pra-fra.

[2] U.S. Congress, House Committee on Government Operations, *Presidential Records Act of 1978*, 95th Cong., 2nd sess., August 14, 1978, H. Rept. 95-1487, p. 2.

[3] P.L. 113-187.

[4] Details on components of the EOP that create presidential records versus federal records is provided below in the "Creators of Presidential Records" section.

[5] 44 U.S.C. §2203(a),

authorities.[6] NARA provides advice and assistance to the White House on records management practices upon request, throughout a presidential transition and a presidency, and to former Presidents.[7] The PRA details which presidential records and materials NARA is to assume responsibility for at the conclusion of a President's Administration. The PRA requires the head of NARA, the Archivist of the United States, to consult with Congress and particular congressional committees on requests for the disposal of such records deemed to be of special congressional interest.

DOJ provides guidance to the executive branch on how to comply with the legal requirements of government information policy, of which records maintenance policy, including presidential records, is a part. Additionally, the Archivist and the Attorney General jointly investigate the unlawful removal or destruction of government and presidential records.[8]

Defining *Presidential Records*

The PRA defines *presidential records* as

> documentary materials, or any reasonably segregable portion thereof, created or received by the President, the President's immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise or assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. Such term—
>
> (A) includes any documentary materials relating to the political activities of the President or members of the President's staff, but only if such activities relate to or have a direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President.[9]

This definition of *presidential records* is distinct from federal records and excludes a President's personal records.[10] Unlike federal records, which may be considered temporary or permanent records depending on their content, all presidential records are considered permanent records due to their permanent value and, as a result, should be maintained in perpetuity by the federal government, subject to some limitations described below.[11] A President's personal records—identified in the PRA as documents "of a purely private or nonpublic character"—are excluded from preservation requirements.[12]

As a result of the Presidential and Federal Records Act Amendments of 2014, all government records (both presidential and federal) are assessed for preservation not by the media used to store the information but rather by the content of the information itself.[13] In the PRA's case, *documentary materials*, of which presidential records are a part, includes "all books,

[6] 36 C.F.R. §1220.10. Selected additional authorities include those under FRA (44 U.S.C. Chapters 21, 29, 31, and 33) and the Freedom of Information Act (FOIA; 5 U.S.C. §552). FOIA for the purposes of the PRA is discussed below in "Restricted Access to Presidential Records."

[7] Ferriero, "NARA's Role under the Presidential Records Act and the Federal Records Act."

[8] 44 U.S.C. §3106.

[9] 44 U.S.C. §2201(2).

[10] 44 U.S.C. §2201(3).

[11] 36 C.F.R. §1220.18. For more information about temporary and permanent records requirements, see CRS In Focus IF11119, *Federal Records: Types and Treatments*, by Meghan M. Stuessy.

[12] 44 U.S.C. §2201(3).

[13] P.L. 113-187.

correspondence, memoranda, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, and motion pictures, including, but not limited to, audio and visual records, or other electronic or mechanical recordations, whether in analog, digital, or any other form."[14] If the content of any documentary material meets the criteria of a presidential record, the information must be preserved according to the PRA regardless of the information's format.[15]

Presidential records are additionally protected and restricted from public consumption for a set period of time. Because of these additional restrictions on presidential records versus federal records, it is important to identify which organizations within the EOP create presidential records instead of federal records. Additionally, the time during a President's life in which the documents are created may help differentiate between personal, private records and presidential records.

Creators of Presidential Records

As defined in statute, the President and the President's immediate staff create presidential records. However, certain EOP components create presidential records, while others create federal records. The difference in statutory application between these components may have implications for access to their records. According to NARA, EOP components considered to "solely advise and assist the President" and therefore create presidential records include:

- The White House Office,
- The Office of the Vice President,
- The Office of Policy Development,
- The Council of Economic Advisors,
- The National Security Council,
- The President's Foreign Intelligence Advisory Board,
- The President's Intelligence Oversight Board,
- The National Economic Council, and
- The Office of Administration.

Conversely, NARA has identified EOP components that create federal records and *not* presidential records as follows:

- The Office of Management and Budget,
- The Office of the United States Trade Representative,
- The Council on Environmental Quality,
- The Office of Science and Technology Policy, and
- The Office of National Drug Control Policy.[16]

[14] 44 U.S.C. §2201(1).

[15] For additional information on the scope of intended social and digital media record capture in the Trump Administration, see Stefan C. Passatino, *FW: Compliance Reminder; Presidential Records Act*, Office of the White House Counsel, October 2, 2017, https://www.archives.gov/files/foia/Passantino%20Email%201%20of%202_redacted.pdf.

[16] NARA, *Guidance on Presidential Records*, p. 5, https://www.archives.gov/files/presidential-records-guidance.pdf.

Presidential versus Personal Records

The PRA distinguishes between a President's personal records and presidential records. Personal records of a purely private or nonpublic character include such things as diaries or journals but also include (1) materials relating exclusively to the President's own election and to the election of a particular individual or individuals to federal, state, or local office that "have no relation to or direct effect upon the carrying out of constitutional, statutory, or other official or ceremonial duties of the President;" and (2) materials relating to private political associations.[17] Because personal records are not presidential records, they are not subject to the same materials retention or access requirements.[18]

Presidential Transition Materials

Records created by the President-elect and his transition team prior to inauguration are considered personal records. However, NARA notes, "To the extent that these records are received and used after the inauguration by the incoming Presidential Administration, they may become Presidential or Federal records. Former Presidents have traditionally donated these personal transition records to [NARA] for deposit in their Presidential Library."[19]

During the 2016 election cycle, NARA issued additional guidance relating to President-elect transition team materials where it specified how the PRA would govern such materials. As the statute makes clear, materials relating to the President's own election (e.g., campaign materials) are not considered presidential records. Similarly, transition team materials are considered personal and private, not presidential records. In instances where the transition team receives briefing materials from a federal agency, however, the briefing materials are considered federal records of the briefing agency and maintained accordingly.[20]

Who Decides If Information Is a Presidential Record?

While statute allows for materials relating to campaign events and private political associations to be considered personal records so long as the materials have no relation to or direct effect upon the carrying out of the President's various duties, critically, the President has a high degree of discretion over what materials are to be preserved under the PRA.

NARA does not have direct oversight authority over the White House records program as it does over federal agencies' records programs. Instead, NARA "provides advice and assistance to the White House on records management practices upon request," which would appear to give the President discretion over which materials might be included under the PRA.[21] As noted previously, whether these records are classified as presidential or personal records affects public

[17] 44 U.S.C. §2201(3).oj

[18] In addition to the statutory text of 44 U.S.C. §2201, DOJ has provided some guidance on what constitutes personal records, albeit in the context of federal, not presidential, records. The guidance is located at DOJ, Office of Information Policy, *FOIA Update: OIP Guidance: "Agency Records" vs. "Personal Records,"* January 1, 1984, https://www.justice.gov/oip/blog/foia-update-oip-guidance-agency-records-vs-personal-records.

[19] NARA, *Guidance on Presidential Records*, p. 5.

[20] Laurence Brewer, Memorandum to Federal Agency Records Officers: Guidance Relating to President-Elect Transition Team Materials, NARA, November 16, 2016, https://www.archives.gov/records-mgmt/memos/ac09-2017.

[21] Ferriero, "NARA's Role under the Presidential Records Act and the Federal Records Act."

and congressional access to such materials. For example, the PRA does not provide an access mechanism for personal records.

In the event of potentially unlawful removal or destruction of government records, Title 44, Section 3106, of the *U.S. Code* requires the head of a federal agency to notify the Archivist, who initiates action with the Attorney General for the possible recovery of such records.[22] The Archivist is not authorized to independently investigate removal or recover records.[23]

Custody and Control of Presidential Records

Policies concerning the custody of presidential materials informs the way such information is controlled, accessed, and released during and after a President's time in office. Prior to the PRA's enactment, presidential papers were traditionally the private property of the President, who would then donate the materials to institutions for public consumption. The PRA fundamentally changed the status of presidential records as publicly owned materials.[24]

The PRA is explicit: "The United States shall reserve and retain complete ownership, possession, and control of Presidential records; and such records shall be administered in accordance with the provisions of this chapter."[25] In passing the PRA, Congress required that "public access to the materials would be consistent under standards fixed in law."[26] The PRA provides records maintenance requirements and permissions depending on whether a presidency is in progress or has concluded.

During a Presidency

During a presidency, the incumbent President is exclusively responsible for custody, control, and access to presidential records, and the Archivist may maintain and preserve the records on behalf of the President.[27] While the PRA establishes the President's responsibility, NARA notes that the agency is available for the President to consult with regarding records management practices upon request, although the PRA does not require such a consultation.[28]

Disposal of Presidential Records

An incumbent President also has authority under the PRA to seek the disposal of records, which routinely occurs with temporary records under the Federal Records Act.[29] All presidential records

[22] Under Title 18, Section 2071, of the *U.S. Code*, anyone found guilty of "willfully and unlawfully" concealing, removing, mutilating, obliterating, destroying, or attempting to do any such action against a record can be fined and imprisoned for up to three years. In addition to fines and possible imprisonment, anyone holding federal office who is convicted of this crime can lose his or her position and be disqualified from holding federal office in the future.

[23] 44 U.S.C. §3106.

[24] The PRA applies only to presidential records created on or after January 20, 1981. As a result, presidential records created since President Ronald Reagan are owned by the United States. Portions of President Nixon's records are also owned by the United States, per the Presidential Recordings and Materials Preservation Act at 44 U.S.C. §2111 note.

[25] 44 U.S.C. §2202.

[26] U.S. Congress, House Committee on Government Operations, *Presidential Records Act of 1978*, 95th Cong., 2nd sess., August 14, 1978, H.Rept. 95-1487, p. 2.

[27] 44 U.S.C. §2203(f).

[28] Ferriero, "NARA's Role under the Presidential Records Act and the Federal Records Act."

[29] 36 C.F.R. §1270.30.

are initially considered permanent records,[30] but the PRA provides a process for the incumbent President to seek a change in the disposal schedule of the President's own records by obtaining the Archivist's written approval.

Additionally, such presidential records may be disposed of if the President submits copies of the intended disposal schedule to (a) the Senate Committee on Rules and Administration and the Senate Committee on Homeland Security and Governmental Affairs, and (b) the House Committee on Oversight and Government Reform (now the House Committee on Oversight and Reform) and the House Committee on Government Operations (now the House Subcommittee on Government Operations) at least 60 calendar days before the proposed disposal date.[31]

If the Archivist considers the identified records in the President's proposed disposal schedule to be of special interest to Congress or that consultation with Congress is necessary to assess the disposal request, the Archivist shall request the advice of the listed committees.

After a Presidency

After a presidency, the responsibility for the custody, control, preservation of, and access to presidential records shifts to the Archivist.[32] Additionally, statute requires the Archivist to make the former President's records publicly available as rapidly and as completely as possible.

The PRA does not provide the former President with a process for disposing of presidential records after leaving office. In contrast to the disposal request process for incumbent Presidents, the Archivist may dispose of a former President's presidential records if they are deemed by the Archivist to have insufficient value to warrant their continued preservation. The Archivist must publish a notice in the *Federal Register* at least 60 days in advance of the proposed disposal date.[33]

Designating a Presidential Library

Because the United States owns all presidential records, a former President must seek the Archivist's permission to display presidential records in a different facility, such as a presidential library. The Archivist is directed to deposit all of the former President's records in a presidential archival depository[34] or another federal archival facility and is authorized to designate, after consultation with the former President, a director of the chosen facility who is responsible for the

[30] Ferriero, "NARA's Role under the Presidential Records Act and the Federal Records Act."

[31] 44 U.S.C. §2203(d). The statute requires these 60 days to occur when Congress is in continuous session. The section specifies that "continuity of session is broken only by an adjournment of Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the days in which Congress is in continuous session."

[32] 44 U.S.C. §2208.

[33] 44 U.S.C. §2203(g)(4).

[34] All presidential records in federal presidential libraries dedicated to the records of previous presidential Administrations not covered by the PRA (Herbert Hoover through Jimmy Carter) are materials donated to the libraries' collections. Those records are released according to the dictates of the applicable President (if living) or the dictates of the families of the former President (if deceased). For more information on presidential libraries, see CRS Report R41513, *The Presidential Libraries Act and the Establishment of Presidential Libraries*, by Wendy Ginsberg, Erika K. Lunder, and Daniel J. Richardson, which is available to congressional clients upon request.

care and preservation of the records.[35] Presidential libraries are not constructed using federal funds but are operated and maintained by NARA through its budget.[36]

Restricted Access to Presidential Records

The PRA does not establish automatic access for an incumbent President's records, which may be protected by executive privilege on a case-by-case basis.[37] However, the PRA does statutorily narrow an outgoing President's ability to restrict records access. As the length of time between the conclusion of a presidency and the present day increases, presidential records become more accessible.[38]

Access to a former President's records is governed in terms of time passed since the conclusion of the presidency:

- Less than five years out, no public access is granted due to the Archivist's processing of the records.
- Between five and 12 years out, the Archivist determines PRA restrictions in accordance with Title 44, Section 2204, of the *U.S. Code* with the former President.
- After 12 years, these PRA restrictions no longer apply.

The Freedom of Information Act (FOIA; 5 U.S.C. §552) governs the public release of government information, including presidential records.[39] Throughout these time periods, FOIA exemptions (for example, information that is prohibited from disclosure by another federal law) may additionally restrict records access. However, records created by a former President are not subject to FOIA's (b)(5) deliberative process exemption (which incorporates the deliberative process, executive, and attorney-client privileges, among others).[40]

The PRA (44 U.S.C. §2204) permits the outgoing President to restrict access to six categories of presidential records for specified durations of time, not to exceed 12 years. The records categories for which a former President can restrict access include:

1. Records described in an executive order[41] as in the interest of national defense or foreign policy or are otherwise classified documents,
2. Records relating to appointments to federal office,
3. Records specifically exempted from disclosure by statute,
4. Records that contain trade secrets and commercial or financial information,

[35] 44 U.S.C. §2203(g)(2).

[36] NARA, "Learn about Presidential Libraries: Frequently Asked Questions," https://www.archives.gov/presidential-libraries/about/faqs.html.

[37] For more information on access for congressional oversight purposes, see CRS Report RL30240, *Congressional Oversight Manual*, by L. Elaine Halchin et al.

[38] NARA, *Guidance on Presidential Records*, p. 12.

[39] NARA's Office of Government Information Services (OGIS) helps resolve disputes regarding whether or not information should be released. Additionally, the DOJ Office of Information Policy and OGIS jointly provide information on and oversee FOIA's implementation.

[40] 44 U.S.C. §2204(c)(1). For more information on FOIA, see CRS Report R41933, *The Freedom of Information Act (FOIA): Background, Legislation, and Policy Issues*, by Meghan M. Stuessy.

[41] Presidents have updated the executive order guiding this exemption over time. The current executive order is Executive Order 13489. Executive Order 13489, "Presidential Records," 74 *Federal Register* 4669, January 21, 2009.

5. Records of confidential communications requesting or submitting advice between the President and the President's advisers or between such advisers, and
6. Records of personnel and medical files whose disclosure would constitute an invasion of personal privacy.[42]

After the expiration of the 12-year period, under Executive Order 13489, incumbent and former Presidents must be notified of the Archivist's intent to disclose materials at least 30 days in advance of the release of the records.[43] Prior to this release, incumbent and former Presidents may assert a claim of executive privilege over certain presidential records, thereby limiting public access. If an incumbent President invokes a claim of executive privilege over the release of a former President's records, the Attorney General and the Counsel to the President shall review and decide whether the invocation of executive privilege is justified.

Similarly, if a former President invokes a claim of executive privilege, the current Archivist, Attorney General, and Counsel to the President are to confer and determine whether to honor the former President's claim of executive privilege. The incumbent President may extend the time period to withhold the records and is to provide a reason for the extension.[44]

Exceptions to Restricted Access of a Former President's Records

Certain federal officials may access a former President's records within the 12-year time frame by gaining "special access" to presidential records. Per the PRA:

> [S]ubject to any rights, defenses, or privileges which the United States or any agency or person may invoke, Presidential records shall be made available—
>
> (A) pursuant to subpoena or other judicial process issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation or proceeding;
>
> (B) to an incumbent President if such records contain information that is needed for the conduct of current business of the incumbent President's office and that is not otherwise available; and
>
> (C) to either House of Congress, or, to the extent of matter within its jurisdiction, to any committee or subcommittee thereof if such records contain information that is needed for the conduct of its business and that is not otherwise available.[45]

Observers have questioned what constitutes a House or Senate request for presidential records and who needs to make the request for the records for it to qualify under Section 2205(C). However, NARA explains that its "longstanding and consistent practice has been to respond only to requests from the Chair of Congressional Committees, regardless of which political party is in power."[46] This practice as a result of statutory ambiguity may impact the ability of minority party members or general committee members to gain access to presidential records.

[42] 44 U.S.C. §2204.

[43] The 30-day review period is identical to the review period established by President Ronald Reagan in Executive Order 12667.

[44] Executive Order 13489, "Presidential Records," 74 *Federal Register* 4669, January 21, 2009, pp. 4669-4670.

[45] 44 U.S.C. §2205.

[46] NARA, "National Archives Works to Release Records Related to Judge Kavanaugh," NARA, August 15, 2018, https://www.archives.gov/news/articles/archives-staff-release-records-related-to-judge-kavanaugh.

Issues for Congress: Enforcement of the PRA

The PRA's effectiveness relies on its ability to be enforced, both in terms of accessing presidential records for oversight purposes through the mechanisms described in statute and in terms of maintaining the records themselves so that they may be accessed. In light of the Presidential and Federal Records Act Amendments of 2014 requirement to collect presidential records regardless of their media but based on their content, questions regarding the volume and the meaning of an electronic record's completeness are creating policy implications that may be suitable for congressional consideration. These matters may be of particular interest to Congress as it carries out its oversight activities and ensures that emerging formats of presidential records are effectively collected and controlled.

Volume of Electronic Presidential Records

The volume of presidential records has increased exponentially in the digital age, as indicated by reporting on the amount of such records at the conclusion of a presidency. According to NARA's 2009 *Report on Alternative Models for Presidential Libraries*, the Clinton Administration provided NARA 20 million presidential record emails at the conclusion of the President's eight-year tenure. The George W. Bush Administration provided 150 million email records after its eight-year tenure—more than seven times the number of emails provided by the previous Administration.[47] To date, the Barack Obama Presidential Library estimates that NARA has received 300 million emails, doubling the amount from the previous Administration.[48]

"Huge volumes of electronic information" are a "major challenge" in record management, according to the Government Accountability Office (GAO, and "electronic information is increasingly being created in volumes that pose a significant technical challenge to our ability to organize it and make it accessible."[49]

NARA's ability to process the volume of presidential records is closely linked to information access issues. In its FY2020 congressional budget justification, NARA noted it has "a significant backlog of unanswered [FOIA] requests at Presidential Libraries covered" by the PRA in part because of the volume of records and the information restriction process:

> NARA must review all Presidential papers page-by-page, to identify and redact national security and other restricted information, which means it will take decades to make all of the records available to the public. Processing records in response to FOIA requests is even more time-consuming than processing the same number of pages in a systematic, archival fashion and does not produce discrete records collections that would be meaningful to the general public.[50]

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[47] NARA, "Report on Alternative Models for Presidential Libraries," September 25, 2009, p. 25, http://www.archives.gov/presidential-libraries/reports/report-for-congress.pdf.

[48] Barack Obama Presidential Library, "National Archives Announces a New Model for the Preservation and Accessibility of Presidential Records," May 3, 2017, https://www.obamalibrary.gov/news/national-archives-announces-new-model-preservation-and-accessibility-presidential-records.

[49] GAO noted that it did not independently verify these reported volumes of records. See GAO, *Information Management: The Challenges of Managing Electronic Records*, GAO-10-838T, June 17, 2010 http://gao.gov/assets/130/124883.pdf, pp. 10-11.

[50] NARA, *National Archives and Records Administration: FY2020 Congressional Justification*, March 11, 2019, pp. OE12-OE13, https://www.archives.gov/files/about/plans-reports/performance-budget/fy2020-performance-budget.pdf.

Because of this increased volume, NARA's ability to keep pace with the explosion of records will be dependent on NARA's staffing, funding, and training levels. Any delay in NARA's processing of records may impact the ability of interested parties to access materials in a timely fashion, and NARA's ability to comply with the PRA's statutory directive to make records available as rapidly and completely as possible.[51]

Completeness of Electronic Presidential Records

The increasing use of electronic records also requires the institutions involved in presidential records oversight to ensure the record information's authenticity and completeness. The EOP and NARA need to ensure that record materials are appropriately protected from corruption or destruction, but these protections take on a different meaning in a digital, instead of analog, environment.

Given the increase in presidential records, Congress may consider whether or not the presidential records institutions are able to consistently meet NARA directives, bearing in mind that while NARA supervises agency implementation of the FRA, NARA provides advice and assistance to the White House on records management practices *upon request*.[52] NARA has provided guidance on including metadata elements[53] in the collection of federal records under the FRA that the EOP may adopt as well. However, data on implementation is self-reported by agencies,[54] and similar information is not required to be provided for presidential records on a routine basis.

Last updated in 2005, NARA's guidance on identifying and maintaining trustworthy websites says that such records have the following characteristics:

- reliability: content is trusted as a full and accurate representation of transactions, activities, or facts;
- authenticity: proven to be what it purports to be;
- integrity: complete and unaltered; and
- usability: can be located, retrieved, presented, and interpreted.[55]

NARA's guidance suggests that agencies "maintain the content, context, and sometimes the structure of" their websites to ensure that their records are trustworthy.[56]

One instructive example is NARA's attempts to archive underlying documents and web materials on whitehouse.gov.[57] While collecting records material appears to be a straightforward task, policy decisions such as when and what to collect impact the material's context (i.e., the circumstances that situate the material and give it meaning), usability, and completeness. Some

[51] 44 U.S.C. §2203(g).

[52] Ferriero, "NARA's Role under the Presidential Records Act and the Federal Records Act."

[53] For example, the specific elements include the file name, title, description, creator, and creation date. NARA, Bulletin 2015-04, September 15, 2015, https://www.archives.gov/records-mgmt/bulletins/2015/2015-04.html.

[54] NARA, "Records Management Self-Assessment (RMSA)," https://www.archives.gov/records-mgmt/resources/self-assessment.html.

[55] NARA, "NARA Guidance on Managing Web Records," January 2005, https://www.archives.gov/records-mgmt/policy/managing-web-records.html.

[56] NARA, "NARA Guidance on Managing Web Records."

[57] NARA, "Archived Presidential White House Websites," https://www.archives.gov/presidential-libraries/archived-websites.

accompanying digital information, such as who accessed the information or reviewed the document, may not be available without holistic preservation.

For example, NARA acknowledges that it does not archive the user interface of the White House website, but it has attempted to "freeze" an approximation of the website as it appeared at the conclusion of a presidency and not at various points during an Administration. Further, NARA notes, "These 'frozen in time' sites are representations of the original websites and approximate the interface and functionality for easy access by the public. These websites are no longer updated so links to external websites and some internal pages will not work."[58] Such decisions may have implications on the type of information available to future researchers, federal agencies, and Congress.[59]

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[58] NARA, "Archived Presidential White House Websites."

[59] Other government agencies, educational institutions, and private organizations have worked to fill such gaps both at the conclusion of a presidency and throughout a presidency by allowing users to capture the page or subpage as it appeared on a particular day. While NARA is tasked with collecting and retaining records materials, these additional institutions may collect broader information that, while not record information, may provide valuable context to presidential documents. See End of Term Web Archive, "Project Partners," http://eotarchive.cdlib.org/partners.html; and Internet Archive, "Join Us for a White House Social Media and Gov Data Hackathon!," January 2, 2017, https://blog.archive.org/2017/01/02/join-us-for-a-white-house-social-media-and-gov-data-hackathon/.