

June 15, 2023

Managing Electronic Messages from High-Level Officials Through Capstone

In the course of their official duties, federal employees regularly create federal records and, therefore, have records management responsibilities. The Federal Records Act (FRA; 44 U.S.C. Chapters 21, 29, 31, and 33) requires federal agency heads to “make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency” (44 U.S.C. §3101).

On January 5, 2023, the National Archives and Records Administration (NARA) expanded its existing guidance on retaining the emails of high-level officials (known as Capstone officials) to similarly apply to other electronic messages for preservation, such as messages affiliated with email, text messages, and messages from third-party applications.

Since 2014, federal and presidential records have been defined not by the media used to store the information but rather by the content of the information itself. Federal records are defined at 44 U.S.C. §3301 as

recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business ... as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them.

In 2023, NARA, in cooperation with federal agencies, updated and implemented guidance on the preservation of permanent materials in digital form (see OMB and NARA Memorandum M-23-07 and 36 C.F.R. Part 1236 Subpart E). These processes related to the preservation and archiving of electronic messages created by Capstone officials may be of interest to multiple audiences, including Congress. The ability of Capstone officials to comply with federal recordkeeping laws and the consequences of incomplete or unclear recordkeeping guidance may impact the ability of Congress to conduct oversight of executive branch activities.

This In Focus explains the Capstone approach, the records scheduling process, and guidance updates to capture a broader range of electronic messages, and concludes with issues for Congress.

What Is “Capstone”?

In recognition of the increasing and overwhelming volume of emails and other electronic records that federal agencies produce, in 2013 NARA offered federal agencies the option

to implement a role-based method of managing electronic materials known as “Capstone.” In particular, agencies are required to maintain records created by certain high-level agency officials in the method described by the Capstone approach.

In Bulletin 2013-02, NARA explains that agencies using the Capstone approach “can categorize and schedule email based on the work and/or position of the email account owner. The Capstone approach allows for the capture of records that should be preserved as permanent from the accounts of officials at or near the top of an agency or an organizational subcomponent.” These permanent records are to be preserved while in agency custody until they are transferred to NARA. (36 C.F.R. §1220.18)

Identifying Capstone Officials

To identify officials subject to the Capstone approach, agencies first submit NARA form NA-1005. The form allows agencies to list multiple types of officials for Capstone, including the agency head, such as a Secretary or Administrator; principal assistants to the agency head; directors of significant program offices; and roles or positions that routinely and directly advise such positions, such as General Counsels, Chiefs of Staff, and Inspectors General, among others.

Scheduling Permanent Records

In cooperation with NARA, agencies determine whether or not specific information meets the definition of a federal record. If the information is a federal record, agencies work with NARA to create a records schedule providing disposition authority for a certain series of records (36 C.F.R. Part 1225). Disposition authority is the legal authorization for the retention and disposal of records (36 C.F.R. §1220.18). An agency may have many separate records schedules governing different series of records.

Depending on their informational value, some records may warrant temporary retention or permanent preservation. Based upon a timeline specified in the records schedule, the record is either destroyed, if it is a temporary record, or sent to NARA for preservation, if it is a permanent record. In 2010, NARA estimated that less than 3% of records are designated as permanent records (GAO-11-15). For more information on how temporary and permanent records are treated, see CRS In Focus IF11119, *Federal Records: Types and Treatments*, by Meghan M. Stuessy.

General Records Schedules (GRS)

Agencies implementing Capstone use the General Records Schedules (GRS) 6.1 in whole or in part to provide disposition authority for email and/or electronic messaging

accounts associated with Capstone officials. Instead of agencies using multiple records schedules to determine how to maintain various types of records, NARA issues the GRS to provide disposition authority for records common to several or all agencies of the federal government. In the event an agency does not have an existing, separate records schedule for a series of records, the agency must either follow the GRS or apply for a separate records schedule (36 C.F.R. §1227.12).

Implementing GRS 6.1

In addition to identifying Capstone officials, an approved NA-1005 will indicate what items on GRS 6.1 that agency will follow for emails and electronic messages. An agency may select only certain items, indicating that the agency will instead follow an agency-specific records schedule for those items, or the agency may select “all” items, indicating that the agency will implement all items listed on GRS 6.1. Agencies must obtain NARA’s approval of its NA-1005 prior to implementing associated Capstone records schedules, and are required to resubmit the form “at least every four years.”

Corresponding to the information provided on the agency’s NA-1005, generally, the email and other electronic messages of Capstone officials are considered permanent records and are to be transferred to NARA for continuing preservation. For more information on electronic messaging recordkeeping requirements for federal employees generally, see also CRS In Focus IF11220, *Electronic Messaging Recordkeeping Requirements*, by Meghan M. Stuessy.

Updating NARA Guidance to Include Electronic Messages

Under NARA Bulletin 2013-02, agencies were able to apply the Capstone approach to certain officials’ email accounts. However, this bulletin did not directly contemplate using the Capstone approach for other types of electronic messages.

In response to concerns that other types of electronic messages were being treated differently than emails for retention and preservation purposes, in 2021, Congress required the Archivist to promulgate similar regulations governing the preservation of records materials formatted as electronic messages through the Electronic Message Preservation Act (44 U.S.C. §2912; P.L. 116-283).

Under NARA Bulletin 2023-02, NARA expanded the use of the Capstone approach to include certain types of electronic messages in accordance with the newly codified Title 44 U.S. Code Section 2912. Agencies may now similarly apply GRS 6.1 to Capstone official emails and certain other types of electronic messages.

In its FAQ on GRS 6.1, NARA explains the types of electronic messages that are in scope for the Capstone approach, including:

- Messages affiliated with email system chat or messaging functions, and where the messages are managed

independently from the email (such as Google Chat, Microsoft Outlook Chat);

- Messages from messaging services provided on mobile devices (such as messages on iOS or Android devices); and
- Messages from messaging services on third-party applications (such as WhatsApp, Signal, Telegram, WeChat, and SnapChat).

Other types of electronic messages are excluded from coverage, including:

- Messages affiliated with social media accounts or associated direct messaging services (such as Facebook Messenger, Twitter);
- Messages affiliated with video conferencing applications (such as Zoom, Google Meet/Hangouts, and Cisco WebEx);
- Messages affiliated with collaboration platforms (such as Microsoft Teams and SharePoint); and
- Messages affiliated with applications whose primary purpose is not communications.

Issues for Congress

The ability of Capstone officials to properly maintain their federal records has direct implications for the ability of Congress to conduct oversight. As a result, Congress may wish to examine whether such records policies are being clearly implemented at the governmentwide and agency level. Specifically, Congress may wish to consider the following:

Whether Capstone officials are aware of their records management responsibilities. Because electronic messages from Capstone officials are considered permanent, Congress may inspect whether agency records officers and Capstone officials themselves are sufficiently trained and informed about records management protocols.

Whether agency records officials are accurately completing NA-1005. Agencies are required to update NA-1005 every four years; however, some agencies, like the Department of Homeland Security, last submitted their NA-1005 in 2018. This ambiguity may cause confusion surrounding which officials and what materials are to be retained through the Capstone approach.

If current definitions of qualifying electronic messages sufficiently capture evidence of federal activities. Under the revised definitions in GRS 6.1, certain electronic messages are excluded from the Capstone approach. Congress may consider whether the current definitions appropriately prioritize the retention of certain electronic messages over others.

Meghan M. Stuessy, Analyst in Government Organization and Management

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