November 14, 2017

Laurence Brewer
U.S. Chief Records Officer
National Archives and Records Administration
700 Pennsylvania Avenue, NW
Washington, DC 20408

Re: Improving Management of Federal Web Records

Dear Mr. Brewer,

On behalf of the undersigned organizations concerned with government transparency, we encourage the National Archives and Records Administration (NARA) to update its Guidance on Managing Web Records[1] and take other actions in order to better protect the public's access to government information. In light of recent controversies regarding changes to federal website content, we believe that updated guidance from NARA at this time could promote agency compliance with the Federal Records Act (FRA) and increase public confidence that government records are being properly managed.

Thank you for your leadership in initiating a review of the guidance. We appreciated the opportunity to meet with you and your team recently to discuss our ideas for improving the guidance. To assist in your review, we offer the following recommendations:

1. Issue clear policy guidance on agency responsibilities
2. Manage web records in line with their value
3. Emphasize managing web records for public access
4. Modernize approach to "snapshots" and web archiving
5. Increase transparency of records scheduling

1. Issue clear policy guidance on agency responsibilities

NARA's 2005 guidance is 28 pages long. We believe that more succinct policy guidance on agencies' responsibilities would better promote agency compliance. We suggest that NARA issue shorter updated guidance focusing on agency responsibilities.[2] Additional technical details and

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[1] National Archives and Records Administration, "NARA Guidance on Managing Web Records," January 2005, *available at* https://www.archives.gov/records-mgmt/policy/managing-web-records-index.html.

[2] One option for the format of guidance would be as a NARA Bulletin; *see* https://www.archives.gov/records-mgmt/bulletins.

practical suggestions, such as selected examples of approved schedules for web records, could be included in attachments to the guidance.

In addition to guidance, we encourage NARA to update its records management regulations to more clearly explain agencies' essential responsibilities for managing web records. Currently, NARA's records management regulations include few references to web records.[3] By comparison, the regulations contain an entire part dedicated to microform records.[4] Given the ways that web records are distinct from other types of records, we believe it would be appropriate to discuss web records more thoroughly in the regulations. Even if NARA updates its guidance, regulations have greater visibility and may carry greater weight with agencies than guidance. Updated regulations could reinforce agency compliance and increase public understanding.

2. Manage web records in line with their value

We believe that NARA's approach to web records should recognize the significant administrative, legal, research, or other value that Federal web content may have.[5] NARA's updated guidance should explain to agencies how to consider this value. Additionally, we encourage NARA to review its appraisal policy to ensure this value is appropriately considered in records scheduling.

In current practice, Federal websites are often the primary access point for information needed for administrative purposes by agency employees. For documents such as agency guidance, the record on a Federal website may be considered the authoritative version. If these records are not properly managed, and any changes to access carefully considered and effectively communicated, then agency activities are likely to be disrupted.

Furthermore, the contents of Federal websites are considered primary sources for many research purposes. Federal websites often document historically significant events and activities. In some cases, even the website itself may be considered historically significant: for instance, imagine future historians attempting to research the impacts of healthcare reform without being able to access some record of Healthcare.gov.

Therefore, we believe that NARA's guidance and appraisal policy should ensure access to web records for a sufficient length of time, consistent with their value.

3. Emphasize managing web records for public access

We recommend that the updated guidance place greater emphasis on the relationship between records management and public access to Federal web content. As noted above, changes in

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[3] *See* 36 C.F.R. § 1225.22(h)(3), 36 C.F.R. § 1235.48(e), and 36 C.F.R. § 1235.50(e).
[4] Part 1238 of title 36.
[5] *See* 44 U.S. Code § 3303(1).

access to web records can negatively impact important Federal and non-Federal activities. The guidance or attachments should suggest practical considerations when an agency is considering significant changes to web content. For instance, the guidance should advise agencies on how to communicate about changes[6] in order to minimize public confusion[7] (such as through press releases, social media, notice on the website itself, or other means). In addition, the guidance should advise agencies how to indicate alternative methods for accessing the record (such as links to publicly available web archives or information on how to make a Freedom of Information Act request).

4. Modernize approach to "snapshots" and web archiving

We recommend that the updated guidance modernize its approach to Federal web archiving and "snapshots" of web content. Because certain web records are likely to change over time, it is important that NARA provide agencies with a practical approach to ensure that valuable records are not lost.

We suggest that the guidance should more clearly explain when agencies should take snapshots of web content. Snapshots should be taken, at minimum, before any significant changes to content. The guidance or attachments should advise agencies how to identify significant changes, such as by classifying the type and magnitude of change[8] and instructing agencies what subsequent actions should be taken. In addition, the guidance should advise how to anticipate when significant changes are likely (such as with changes in presidential administration, agency leadership, law or regulation, program operations, etc.).

In addition, the guidance or attachments should provide technical advice to facilitate effective snapshots and web archiving. For instance, the guidance should identify technical obstacles (such as robots.txt files) that could inhibit the agency from taking an authentic snapshot or interfere with other Federal web archiving activities. The guidance might also address common technologies, such as version control, and explain whether and how they can be used for records management.

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[6] *Cf.* 44 U.S.C. § 3506(d)(3) (directing agencies to "provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products").

[7] For an example of website change generating public confusion, *see* Toly Rinberg and Andrew Bergman, "Changes to USGS website highlight the importance of search for public access," Sunlight Foundation, Sep. 22, 2017, *available at* https://sunlightfoundation.com/2017/09/22/changes-to-usgs-website-highlight-the-importance-of-search-for-public-access/.

[8] *See e.g.,* Toly Rinberg and Andrew Bergman, "How to classify changes to government websites," Sunlight Foundation, Oct. 5, 2017, *available at* http://sunlightfoundation.com/wp-content/uploads/2017/10/How-to-classify-changes-to-government-websites.pdf.

When agencies or NARA hold archived web records that may be of interest to the public, we encourage them to make the archives publicly available online.

While primary responsibility to manage web records under the Federal Records Act lies with agencies, we believe that web archiving activities outside the agency also play important roles. Non-agency web archiving, such as by the Federal Web Archiving Working Group or the private Internet Archive, can improve access, particularly since most agency records are not permanent. The guidance should advise agencies how to cooperate with archiving of publicly-accessible web content. Additionally, we encourage NARA to explore whether it could offer technical services to promote consistent and cost-effective management of web records across agencies.

5. **Increase transparency of records scheduling**

We believe that confusion about changes in access to Federal web content is exacerbated by the public's lack of familiarity with the Federal Records Act and records schedules in particular. As a key step to increase transparency of records scheduling, we encourage NARA, when publishing notice of proposed records schedules in the *Federal Register*, to post the proposed schedules and associated appraisal memos online. NARA should post these supporting materials on its website or a Regulations.gov docket and link to the materials from the *Federal Register* notice. In addition to increasing transparency, this change in practice would reduce the need for NARA to respond to individual requests for these documents.

Thank you for considering our views on this important matter. If we can provide any additional information or assistance, please do not hesitate to contact us.

Sincerely,

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