

**Society of American Archivists
Council Meeting
May 28 - 30, 2015
Chicago, Illinois**

**Issue Brief: Strengthening the Authority of the
National Archives and Records Administration
(Prepared by the Committee on Advocacy and Public Policy)**

BACKGROUND / DISCUSSION

This issue brief addresses the following priority within the SAA Public Policy Agenda, as presented to the Council for approval in May 2015 (Agenda Item 0515-III-C-Public Policy Agenda):

“To guarantee the administrative continuity necessary for good governance, SAA will advocate for the National Archives and Records Administration’s (NARA’s) authority to regulate records designated as archival throughout the federal government.”

The Committee on Advocacy and Public Policy has prepared this issue brief for Council review and approval.

RECOMMENDATION

THAT the following issue brief on Strengthening the Authority of the National Archives and Records Administration be approved:

**SAA Issue Brief:
Strengthening the Authority of the
National Archives and Records Administration**

SAA POSITION

The Society of American Archivists supports all efforts to increase the statutory authority granted to the National Archives and Records Administration in order that NARA may more effectively carry out its crucial responsibility for the proper management of federal records. SAA further recommends that federal legislative and judicial records not currently under the authority of the Federal Records Act be made subject to it.

SAA believes that:

1. The Congress should pass, and the President should sign, legislation that gives NARA explicit enforcement powers, with appropriate penalties for noncompliance.
2. NARA should be provided additional and sufficient resources to carry out these new enforcement powers, as well as the resources to conduct regular audits of the records management practices of federal agencies to determine their level of compliance with existing laws and regulations. Agencies should be audited at least once every five years to ensure compliance.
3. Such legislation should include language permitting private citizens to initiate judicial proceedings against agencies and organizations in specific cases in which federal records laws are not being followed or enforced appropriately.
4. Additional legislation should be passed to explicitly place the papers of U.S. Senators, Members of Congress, and federal judges under NARA's authority to manage, store, and preserve federal records.
5. The National Archives and Records Administration should be elevated to Cabinet status.
6. All federal government employees and contractors should be required to complete basic records management training on an annual basis.

THE ISSUES

1. Legislation to Ensure NARA's Authority

Although the National Archives and Records Administration is the official institution responsible for the proper management of federal records (Title 44, Chapter 21, United States Code), it lacks sufficient authority to enforce existing federal records laws. Instead NARA is obliged to rely on federal agency adherence to NARA's records management training and policies and proactive internal enforcement on the part of federal agencies. The current system of relying on agency compliance without any enforcement authority for NARA is untenable, and has resulted in numerous gaps in the documentary record of the U.S. government.

NARA's response to this situation has been to state that, "We are not the records police." Unfortunately this is accurate. Without real enforcement powers – and the requisite staff and resources to implement enforcement – NARA does not have the authority to ensure that its recordkeeping guidance is followed. SAA believes that in order to carry out its vitally important functions, NARA must be vested with statutory authority to investigate potentially illegal activities related to records creation, retention, and management carried out by all federal agencies; to levy approved penalties for violations of federal records laws and regulations; and to periodically audit federal records management programs, coordinating such audits with agencies' own records management staff. NARA must also be given the resources to carry out these new authorities.

2. Resources to Support NARA's Auditing of Agencies' Compliance

Despite the fact that records management laws and regulations have been on the books for decades, non-compliance with both the letter of the laws and the spirit of accountability and transparency that is inherent in these statutes is a regular occurrence. Currently agencies are required to assess their own records management posture and report their findings to NARA, which in turn issues a consolidated report. After five years of self-assessments, however, the 2013 NARA report indicates that 71% of executive agencies are at moderate to high risk of compromising the integrity of public records.

Allowing agencies to self-determine their compliance with existing regulations has proven to be ineffective, especially given the paucity of resources that many agencies dedicate to their records management operations. Self-regulation also leaves information professionals, some of whom are SAA members, subject to political expediency and pressure from agency leadership. A proactive outside audit authority, as represented by NARA, would place agency leaders on notice that their records management decisions and practices will be reviewed and assessed against existing regulations. Furthermore, regular audits would highlight deficiencies and allow agencies to address any shortcomings before they become critical problems affecting the historical record.

3. Legislation Permitting Private Citizens to Sue to Ensure Compliance with Federal Records Laws

Because the United States government answers to the American people and protects their liberties and interests, the people have a particular and vital interest in ensuring that the documentary record of their government is complete and accurate and that public officials follow the law. Any hint of impropriety is unacceptable.

Thus SAA believes that any legislation that expands NARA's records authority must also allow private citizens to sue the government to ensure that agencies do not violate federal records law. When a public official or agency willfully disobeys that law, they do violence to the historical record and prevent citizens from having a full and proper understanding of what the government does in their name. Therefore, a citizen should have the right and standing to sue the government and force compliance with the law.

4. Legislation to Ensure Access to All Public Papers

It is a dissonance in American federal government that the public papers of the President of the United States are considered the legal property of the National Archives and Records Administration, whereas U.S. Senators, Representatives, Supreme Court Justices, and other federal judges are permitted to deposit the records from their government offices (which document government activities just as much as do those of the President) in a repository of their choosing. This logically inexplicable exemption allows these crucially important public records potentially to evade free and open public access.

In 1977, the National Study Commission on Records and Documents of Federal Officials stated in its final report that "personal papers" should be narrowly defined to include only those materials of a purely private or non-official character. The Commission further recommended that the public papers of members of Congress and the Judiciary should be the property of the United States. It is time to act on all of the Commission's recommendations regarding the legislative and judicial branches of government.

To achieve consistency and to ensure that all branches of the government are adequately and equally documented, SAA believes that all government records, including legislative and judicial records not under the authority of federal records law, should be placed under that authority. NARA should be vested with explicit authority to manage, store, and provide access to these records.¹

SAA recognizes that some of the information found in the documents of the legislative and judicial branches of government should remain confidential, and thus recommends that legislative and judicial

¹ The 1977 Report recommended that legislative and judicial records, although federal records, could be placed in an institution of the legislator's or judge's choice. SAA finds this recommendation unworkable, in that it would require diverse and multiple repositories to assume responsibility for the administration of the nation's federal records.

records that would be legally made public records should enjoy the same Freedom of Information Act exemptions as currently granted to executive records.

5. Elevation of NARA to Cabinet Status

The Cabinet of the United States represents the most senior-level executive officers in the U.S. Currently the Archivist of the United States falls under Level III of the Executive Schedule, which is on par with under-secretaries in other executive branch departments. In order that NARA can properly carry out its responsibilities regarding government-wide records management, the Archivist of the United States should have the authority and stature of a Cabinet-level official.

6. Requirement to Complete Records Management Training

Currently there is no requirement that federal employees receive any sort of records management training. Therefore, it is unrealistic to expect these employees to understand their responsibilities, much less be equipped to comply with records management statutes and policies. By comparison, every federal contractor employee and volunteer is required, under the Federal Information Security Management Act (FISMA), to successfully complete annual, online information security training in order to have access to government computer systems.

The fact that employees are trained in how to safeguard government computer systems but not in how to properly manage public records during their lifecycle seems inconsistent and incompatible with the expectation that agencies adhere to proper records management practices. Therefore, anyone who creates or receives public records, including staff and contractors, should be required to complete annual training that explains their records management responsibilities.

The Chief Information Officer, Records Officer, and General Counsel of each agency or office should certify compliance with this requirement.

ADDITIONAL RESOURCES

NARA Records Management Self-Assessment (RMSA): <http://www.archives.gov/records-mgmt/resources/self-assessment.html>.

Final report of the National Study Commission on Records and Documents of Federal Officials, 1977: <http://catalog.hathitrust.org/Record/007412697>.

Approved by the SAA Council, May 2015.

Support Statement: In support of SAA's Public Policy Agenda, the issue brief provides members and other prospective audiences with SAA's considered opinion on the topic of strengthening the authority of the National Archives and Records Administration.

Relation to Strategic Plan: Addresses Goal 1 (Advocating for Archives and Archivists), Strategies 1.1. (Provide leadership in promoting the value of archives and archivists to institutions, communities, and society) and 1.2. (Educate and influence decision makers about the importance of archives and archivists).

Fiscal Impact: Approval of the issue brief does not commit SAA to expend funds on any particular advocacy effort.