

Presidential Transitions: Government Records

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In Section 2 of the Presidential Transition Act of 1963 (as amended; 3 U.S.C. 102 note), Congress declared that “[t]he national interest requires that [presidential] transitions ... be accomplished so as to assure continuity in the faithful execution of the laws and in the conduct of the affairs of the Federal Government, both foreign and domestic.” The crux of such a transition is the transfer of executive power from the incumbent to the President-elect. The executive’s power manifests in a variety of processes with application to a broad range of policy areas and issues. CRS has produced a set of products examining selected processes and policies that may be of particular interest during a presidential transition. This Insight discusses presidential records access, federal records, and electronic records considerations. Other related products examine clemency, executive orders, presidential appointments (executive branch), rulemaking, and presidential transitions generally.

At the conclusion of a presidency, both the President and the Administration likely have generated millions of government records, which document the actions and decisionmaking processes of the executive branch and may be of long-term interest to Congress, federal agencies, incoming Presidents, researchers, and members of the general public. The [Presidential Records Act](#) (PRA; 44 U.S.C. §§2201-2207) governs materials created by the President and certain components of the Executive Office of the President. The [Federal Records Act](#) (FRA; 44 U.S.C. Chapters 21, 29, 31, and 33) governs materials created by agencies.

In 2014, the [Presidential and Federal Records Act Amendments of 2014](#) required presidential and federal records to be assessed for preservation not by the type of media used to store the information but by the [content of the information itself](#), encompassing digital and electronic records more clearly into the statute. The [National Archives and Records Administration \(NARA\)](#) plays a supporting role in the case of presidential records and a coordinating and directing role in the case of federal records, explained in further detail below.

Presidential Records

The PRA defines *presidential records* as “documentary materials ... 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.”

Prior to the PRA’s [1978 enactment](#), 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

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may request advice and assistance from 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 an 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 5 and 12 years out, the Archivist determines PRA restrictions with the former President in accordance with 44 U.S.C. §2204.
- After 12 years, the 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 possible statutory ambiguity may affect the ability of minority party members and general committee members to gain access to presidential records.

Federal Records

Under the FRA, [federal records](#) are defined as

all 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 and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of the data in them.

At the end of any presidential Administration, many political appointees in federal agencies may leave their positions. Upon their departure from federal service, these appointees will have to ensure the federal records they created are properly managed and preserved. To facilitate this process, NARA issues [bulletins](#) to federal agencies regarding records management, [blogs](#) about NARA's role in a presidential transition, and produces resources [directly for political employees](#) by communicating their records responsibilities throughout their tenure.

Electronic Records

In an [increasingly digital age](#), federal agencies and appointees have adapted to [electronic records](#) management and preservation. Congress may consider if current guidance and recordkeeping processes are sufficient. NARA's 2013 "[Capstone](#)" [approach](#) encourages an agency to categorize and assess preservation value of email based on the work and/or position of the email account owner, rather than by the individual content of the email record. NARA continues to build the [Electronic Records Archives \(ERA\)](#) system to facilitate records schedule updates and timely transfer of records materials. NARA also

has issued specific guidance on the [removal of records](#) and the management of [social media](#), [email](#), and [instant and text message](#) records.

In all cases, however, the preservation of records materials depends on federal employees to understand and properly apply records management guidance. Preservation of records at the agency level, while often [considered a support activity](#), also involves the preservation of valuable material vital to performing essential government functions and providing information for public and congressional oversight. Looking forward, electronic records management and retrieval may continue to be an area of policy interest as Congress looks beyond the presidential transition and toward [NARA's 2022 goal](#) of moving to all-electronic format records accessioning.

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