

**THE INTERNAL REVENUE SERVICE'S RECORD
RETENTION POLICIES: IMPROVING COMPLIANCE**

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT

OF THE

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

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**THE INTERNAL REVENUE SERVICE'S RECORD
RETENTION POLICIES: IMPROVING COMPLI-
ANCE**

TUESDAY, JULY 25, 2017

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON OVERSIGHT,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:00 a.m. in Room 1100, Longworth House Office Building, Hon. Vern Buchanan [Chairman of the Subcommittee] presiding.
[The Advisory announcing the hearing follows:]



WAYS AND MEANS

CHAIRMAN KEVIN BRADY

Chairman Buchanan Announces Hearing on the Internal Revenue Service's Record Retention Policies

House Ways and Means Oversight Subcommittee Chairman Vern Buchanan (R-FL) announced today that the Subcommittee will hold a hearing on the Treasury Inspector General for Tax Administration's audit of the Internal Revenue Service's (IRS) electronic record retention policies. The hearing is entitled "IRS Electronic Record Retention Policies: Improving Compliance." The hearing will focus on how the IRS retains electronic records, how it responds to record requests, and what policies and systems the IRS has in place to more readily respond to such requests. **The hearing will take place on Tuesday, July 25, 2017 in 1100 Longworth House Office Building, beginning at 10:00 AM.**

In view of the limited time to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, <http://waysandmeans.house.gov>, select "Hearings." Select the hearing for which you would like to make a submission, and click on the link entitled, "Click here to provide a submission for the record." Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business on Tuesday, August 8, 2017**. For questions, or if you encounter technical problems, please call (202) 225-3625.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve

the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

All submissions and supplementary materials must be submitted in a single document via email, provided in Word format and must not exceed a total of 10 pages. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. The name, company, address, telephone, and fax numbers of each witness must be included in the body of the email. Please exclude any personal identifiable information in the attached submission.

Failure to follow the formatting requirements may result in the exclusion of a submission. All submissions for the record are final.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available at <http://www.waysandmeans.house.gov/>

Chairman BUCHANAN. The Subcommittee will come to order. Welcome to the Ways and Means Oversight Subcommittee hearing on the IRS Record Retention Policies: Improving compliance. Last year the IRS processed 244 million tax returns. Among them are individuals, small businesses like my own, who must retain their tax records in case the IRS ever wants to review them.

The IRS must also identify and retain records for defined lengths of time in accordance with the Federal requirements. These records may later be needed to respond to requests from Congress, private citizens, or those bringing suit against the IRS. All of these parties have a right to ask the IRS to produce complete records, and the IRS has a responsibility to provide those records.

However, TIGTA found that IRS policies do not comply totally with all the Federal requirements, which ensure that all records are readily retrievable and usable. Specifically, the production of IRS emails currently relies on the IRS's ability to search thousands of employee hard drives; or, alternatively, each employee's ability and willingness to print and file important emails. Neither system is sustainable nor reliable enough to satisfy the voluminous records requests received by the IRS.

The IRS has also changed its record retention policy three times since 2013, creating confusion across the agency. Additionally, the

IRS has failed to setup a basic email system capable of automatically archiving employee emails.

These issues ultimately reduce transparency, open the agency to exposure to civil lawsuits, and inhibit Congressional oversight of the IRS. They also create a double standard whereby the IRS is not required to maintain basic records in the same way that the average American citizen must.

No individual or small business could do the same and not be subject to punitive actions by the IRS. Furthermore, this issue has been raised repeatedly by Congress to the IRS for years without a permanent solution.

So here we are today to discuss TIGTA's most recent findings and the IRS's progress in addressing these concerns. I believe Members on both sides of the aisle want to ensure IRS has the authority and the resources it needs to administer the Code. However, in return we need to see stronger efforts by the IRS to ensure that records are properly retained and easily retrievable. We would also like to see the IRS work to improve how it procures and implements its IT system.

To that end, I look forward to hearing from the witnesses today, and now I yield to the distinguished Ranking Member, Mr. Lewis, for the purposes of an opening statement.

Mr. LEWIS. Good morning. Thank you, Mr. Chairman. Thank you for holding this hearing. I also would like to thank our witnesses for being here today.

As the broader Ways and Means Committee discusses tax reform, our Subcommittee will play a very important role in improving the Internal Revenue Service.

Today's hearing will examine IRS policies to store, archive, and produce records, including electronic mail. We will also review the IRS's ability to respond to legal, Freedom of Information Act or third party requests, including those from Members of Congress.

In 2015, the agency received over 10,000 FOIA requests and closed over 99 percent within an average of 23 business days. The few requests that took longer than 20 business days generally involved privacy or other legal issues that prevented a timely response.

We all agree that Federal agencies must process and reply to any request for relevant electronic and other records in a timely manner. For any agency, including the IRS, information technology is key to meeting this standard. This is one of the many reasons that Congress must ensure that the agency's IT systems are not only fully funded but also fully staffed.

Since 2010, Congress cut this agency's budget by almost \$1 billion. That is a lot of money. That is a big cut. In the last 5 years the agency's IT budget was cut by \$71 million, and the IRS lost nearly 290 IT employees. Many of you heard me say it many times and on different occasions that you cannot get blood from a turnip.

Early this month, the Treasury Inspector General for Tax Administration released a report on the IRS's electronic records retention policy and IT systems. The TIGTA report made five recommendations, and the IRS agreed with every single recommendation and suggestion. As we move forward, we must remember these

lessons learned, and we must be mindful of the IRS IT system needs.

Mr. Chairman, together we will begin a good, inclusive process, and I hope that we can continue our strong bipartisan work to improve the IRS. Again, I thank you, Mr. Chairman, for holding this hearing, and I look forward to the testimony of our witnesses.

And I yield back.

Chairman BUCHANAN. Without objection, other Members' opening statements will be made part of the record.

Today's witness panel includes three experts, Gregory Kutz, Assistant Inspector General for Audit for Management Services and Exempt Organizations at TIGTA; Jeffrey Tribiano, Deputy Commissioner for Operations Support at the IRS; and Edward Killen, Director of Privacy, Government Liaison, and Disclosure at the IRS.

The Subcommittees have received your written statements, and they will all be made part of the formal hearing record. You have five minutes to deliver your remarks. We will begin with you Mr. Kutz. You can begin when you are ready.

STATEMENT OF GREGORY KUTZ, ASSISTANT INSPECTOR GENERAL FOR AUDIT, MANAGEMENT SERVICES AND EXEMPT ORGANIZATIONS, TIGTA

Mr. KUTZ. Mr. Chairman, Ranking Member Lewis, and members of the Subcommittee, thank you for the opportunity to discuss electronic records management.

Today's testimony highlights the results of our recently issued report on this matter. My testimony has two parts. First I will discuss our findings, and second, I will discuss our recommendations.

First, the IRS is required by Federal law to retain and produce records when requested through appropriate means. However, the IRS has had challenges responding to several high-profile requests from the Congress, the public, and the courts. The loss or destruction of information resulting from this as a result of inadequate systems and processes along with human error.

Some key findings from our report include the current email system does not meet Federal requirements for storing and managing email messages. We reported last year that the IRS's previous attempt to implement a new email system was unsuccessful at a cost of at least \$12 million. Electronics records storage policies have changed repeatedly since May of 2013. The policy has changed from wipe and reuse information technology, to save everything, to wipe and reuse equipment for all but two parts of the IRS, to the current policy of refrain from wiping the data from any hard drive. It is not surprising that this has resulted in some confusion.

Storage of tens of thousands of laptops and hard drives at dozens of locations across the country is not a sustainable recordkeeping solution. And the interim policy for IRS executives to archive their emails was not implemented effectively.

Although many challenges remain, progress was made in several areas during our audit. For example, IRS has developed a new policy prohibiting the use of instant messaging for official business, and requiring any instant messages that are a Federal record to be retained. And improved policy for preserving records for separated

employees. In addition, the IRS' most recent attempt to implement a new email system is planned to be completed by the end of this fiscal year. We also found that IRS closed over 70 percent of Freedom of Information Act requests within 20 business days as required.

Moving on to my second point, as you mentioned, we made five recommendations to the IRS to enhance its electronic records management. These recommendations include: implementation of enterprise email solutions that enable the IRS to effectively organize and retain emails; develop an accurate list of executives and ensure that their emails are archived; enhance processes related to retention of records for separated employees; and, ensure that FOIA policy is followed by all employees responding to requests.

As Ranking Member Lewis mentioned, the IRS agreed with all five of our recommendations and is taking action. TIGTA will continue to monitor the progress of the IRS in enhancing its electronic records management.

In conclusion, given that the IRS expects taxpayers to retain records for years in support of their tax returns, IRS's ability to do the same is essential to maintaining public trust.

Mr. Chairman and Ranking Member Lewis, that ends my statement, and I look forward to all of your questions.

[[The prepared statement of Mr. Kutz follows:]]

**HEARING BEFORE THE
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES**

**“IRS Electronic Record Retention Policies:
Improving Compliance”**



**Testimony of
Greg Kutz
Assistant Inspector General for Audit
Treasury Inspector General for Tax Administration**

July 25, 2017

Washington, D.C.

TESTIMONY
OF
GREG KUTZ
ASSISTANT INSPECTOR GENERAL FOR AUDIT
TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION
before the
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES

"IRS Electronic Record Retention Policies: Improving Compliance"
July 25, 2017

Chairman Buchanan, Ranking Member Lewis, and Members of the Subcommittee, thank you for the opportunity to testify on the Internal Revenue Service's (IRS) electronic record retention policies and practices.

The Treasury Inspector General for Tax Administration (TIGTA) was created by Congress in 1998 and is mandated to ensure integrity in America's tax system. It provides independent audit and investigative services to improve the economy, efficiency, and effectiveness of IRS operations. TIGTA's oversight activities are designed to identify high-risk systemic inefficiencies in IRS operations and to investigate exploited weaknesses in tax administration. TIGTA plays the key role of ensuring that the approximately 85,000 IRS employees¹ who collected more than \$3.3 trillion in tax revenue, processed more than 244 million tax returns, and issued more than \$400 billion in tax refunds during Fiscal Year 2016,² have done so in an effective and efficient manner while minimizing the risk of waste, fraud, and abuse.

Today's testimony highlights the results of our recently issued report on IRS electronic record retention practices.³ This report is in response to requests from the Chairman of the House Committee on Ways and Means and the Chairman of the Senate Finance Committee.

¹ In FY 2016, the IRS employed, on average, approximately 85,000 people, including more than 16,000 temporary and seasonal staff.

² IRS, *Management's Discussion & Analysis, Fiscal Year 2016*.

³ TIGTA, Ref. No. 2017-10-034, *Electronic Record Retention Policies Do Not Consistently Ensure That Records Are Retained and Produced When Requested* (July 2017)

RESULTS OF REVIEW

TIGTA identified several areas where improvement is needed in IRS electronic record retention policies and practices. Specifically, we found that IRS policies are not in compliance with certain Federal electronic records requirements and regulations.⁴ The IRS's current e-mail system and record retention policies do not ensure that e-mail records are saved and can be searched and retrieved for as long as needed. Additionally, repeated changes in electronic media storage policies, combined with a reliance on employees to maintain records on computer hard drives, have resulted in cases in which Federal records were lost or destroyed. Examples from our case reviews show that it is especially difficult for the IRS to retain records from employees who have separated from the IRS.

Our review of Freedom of Information Act (FOIA) requests, congressional committee document requests, and litigation holds also found that, for certain cases, the IRS did not consistently ensure that potentially responsive records were identified and produced. Annually, the IRS responds to thousands of FOIA requests, congressional inquiries, and litigation discovery requests associated with court actions. In response to these external requests, specific offices within the IRS, including the Office of Chief Counsel, the Privacy, Governmental Liaison, and Disclosure (PGLD) office; and the Executive Secretariat Correspondence Office, search for responsive records and provide the records to appropriate parties. Although over 70 percent of FOIA requests are completed timely, we found that some cases were not closed timely. We also found instances in which the search methods used were not properly documented in accordance with IRS policies, did not identify all potential custodians, and erroneously concluded that records associated with separated employees had been destroyed when potentially responsive records were available.

RECORD RETENTION POLICIES

Our audit found that IRS standard policies for disposal of computer devices, including desktops, laptops, computer hard drives, and backup tapes, have been revised and reversed several times since May 2013. Specifically, during a period of less than three years, retention policies for computer devices changed from saving all devices to erasing and reutilizing some devices and then back to saving all devices. The Code of Federal Regulations (C.F.R.) requires Federal agencies to implement internal controls over Federal records in electronic information systems, ensuring that all

⁴ Our audit focused on IRS electronic record retention policies and did not evaluate the various controls that the IRS has in place to retain paper Federal records.

records are retrievable and usable for as long as needed to conduct business.⁵ However, the IRS's repeated changes impacted the effectiveness of its record retention. For example, although policy updates were put in place, those policies did not ensure that the hard drives from laptop and desktop computers stored by the IRS were associated with the name of the employee or the laptop from which the hard drive was taken. Without this correlation, successfully completing a search for specific e-mail or other electronic information residing on a stored hard drive would be highly unlikely and could result in destroyed records.

Our audit also found that the IRS's current e-mail system does not meet Federal requirements for storing and managing e-mail messages. Memorandum M-12-18, issued by the Office of Management and Budget and the National Archives and Records Administration (NARA), required that by December 31, 2016, Federal agencies manage both permanent and temporary e-mail records in an accessible electronic format. E-mail records must be retained in an appropriate electronic system with the capability to identify, retrieve, and retain the records for as long as they are needed.

However, as of September 30, 2016, the IRS reported to the NARA that it did not plan to fully deploy its enterprise e-mail solution until September 30, 2017. As previously reported by TIGTA, the delay is due to the IRS's decision in April 2016 to change the type of e-mail system it would implement, after it had already begun efforts to upgrade its enterprise e-mail system in July 2015.⁶ Because the IRS did not follow its internal policies or perform the required cost analysis, security assessments, and requirements analysis to implement the purchase of the email software subscriptions, the IRS wasted \$12 million on software that was never deployed.

As a result of limitations to the current system, the IRS stores e-mail in multiple locations, including mailbox folders, Exchange servers, network shared drives, hard drives, removable medias, and backup tapes, all of which have limitations in their ability to effectively store e-mail. Due to those limitations, the IRS risks destroying Federal records when user hard drives are erased, lost, or destroyed.

In addition, we found that the IRS instituted an interim policy requiring IRS executives to archive their e-mail to a shared network drive. However, we found that this policy was not implemented effectively because some executives did not properly configure their e-mail accounts to archive e-mail as required, and because the IRS did not have an authoritative list of all executives required to comply with the interim policy.

⁵ 36 C.F.R. § 1236.10, Electronic Records Management (Oct. 2009).

⁶ TIGTA, Ref. No. 2016-20-080, Review of the Enterprise E-Mail System Acquisition (Sept. 2016).

Specifically, early in Calendar Year 2015, the Information Technology (IT) organization compiled a list of 278 executives included in the permanent and 15-year retention groups from several executive pay plans based on information provided by the IRS Human Capital Office. Those executives were provided with instructions, training, and support to assist them in enabling the auto-archiving function of their Outlook e-mail accounts. However, there was no independent verification conducted to confirm that the e-mail accounts were actually configured to auto-archive e-mails as instructed. Therefore, all executives in this initial migration were required to self-certify that they had taken the steps, as instructed, to configure their e-mail accounts to auto-archive e-mail to a shared network drive. We tested a judgmental sample of 20 executive e-mail accounts and found that four of the 20 executives did not have Outlook properly configured to archive e-mails to a shared drive as required by the interim policy. We also found that the IRS's list of 278 executives was not complete and was not updated as new executives joined the IRS.

Finally, we found the design of the IRS's policies for preserving Federal records in the possession of separating employees did not ensure that all records were retained. The C.F.R. and the Internal Revenue Manual require that Federal records be preserved for specific retention periods and that the records be searchable, but the IRS could not ensure compliance with these requirements for records associated with separated employees. For example, the IRS policy prior to May 2016 relied on separating employees to print Federal records, including those records contained on employee computer hard drives, before leaving the IRS, rather than storing them electronically. However, the IRS issued interim policies in May 2016, which were subsequently formalized in September 2016, to address some of the identified gaps in retention of records from separating employees. Because these policies were issued during our audit, we were unable to test whether the IRS effectively implemented the changes. Prior to these policy updates, the IRS did not have an effective mechanism for preserving information that may have been contained on separated employees' electronic devices.

RESPONSES TO REQUESTS FOR RECORDS

Our review of a judgmental sample⁷ of 35 FOIA requests, two requests from congressional committees, and two court cases that required record production found that, for certain cases, IRS processes in response to requests for records did not consistently ensure that potentially responsive records were searched and produced.

⁷ A judgmental sample is a non-statistical sample, the results of which cannot be used to project to the population.

Our review did find that the IRS responded timely to the majority of FOIA requests. Of the almost 50,000 FOIA cases closed during the audit period, IRS records indicate that over 36,000 were closed in 20 business days or less, which is generally the required response time. For the almost 13,000 remaining cases, the average closing time was 51 business days. In reviewing the remaining cases that had much longer processing times, we found that 100 cases took between one and two years to close, and three cases took between two and two and a half years to close. For the FOIA requests that involved longer than normal processing times, the volume of responsive documents can exceed 10,000 pages, and the review process must ensure the redaction of I.R.C Section 6103 information and Privacy Act information as well as information based on FOIA exemptions specifically identified by law.

In addition to the overall analysis of FOIA responses, we also reviewed a judgmental sample of 35 FOIA requests,⁵ of which 30 had been closed by the IRS at the time of our review. We found the average time to close the 30 cases was 212 business days, and the records for some requests took over two calendar years to fully produce. However, it should be noted that we selected FOIA cases with longer response times as part of our sample so that we could determine the cause of these delays. Many of the delays we observed related to the time it took for business units to search for, gather, and provide the responses to the PGLD. The five cases open during our audit were awaiting processing by the Office of Chief Counsel, and the average elapsed time was 389 business days.

We also found instances in which the search methods used were not properly documented. For some of the cases we reviewed, the IRS did not document what records were searched and which custodians searched for the records, as required by IRS policy, and in some cases the IRS did not identify all custodians with responsive records. The FOIA requires that an agency make reasonable efforts to search for records that have been reasonably described by the requester. IRS policy requires that PGLD case workers document who searched for the records, the search terms used, the systems searched, and the time expended to search for and retrieve the records. However, for 20 of 30 closed cases reviewed, TIGTA found that the IRS did not document the search efforts as required. Without this information, the PGLD office was unable to document that an adequate search was performed. In addition, our case review found four instances in which the IRS's search efforts did not find all custodians

⁵ The 35 FOIA requests were judgmentally selected based on a variety of ranking criteria, including the type of request (individual taxpayer, administrative request, media/external party sensitive request), the disposition of the FOIA request, the complexity of the request, and the seniority of the caseworker assigned to the request.

with responsive records. Specifically, for one case, the PGLD office caseworker did not reach all the custodians who had responsive records because the caseworker did not send the request to all the functional contacts of the business unit identified in the incoming request. Instead, the request was sent only to the revenue agent named in the request. The case later went to litigation, and the judge found an inadequate search effort on the part of the IRS. Additional responsive records were found in other business units after one of the senior Office of Chief Counsel attorneys reviewed the request and expanded the search effort.

Finally, we found weaknesses in the IRS policy regarding searching for responsive records associated with separated employees. Our review found that the IRS did not have a policy regarding when or whether to search for separated employees' records in response to FOIA requests, litigation, and congressional requests. In addition, we received different responses from various business units when we inquired about policies governing the search for records associated with separated employees in response to a FOIA request. In our case reviews, we found that the IRS does not consistently search records of separated employees in response to requests for records. For example, in one of the litigation cases we examined, the IRS did not search for records associated with one of 11 employees who had separated. In October 2014, the Department of Justice, on behalf of the IRS, filed a document with the court stating that 11 former IRS employees' laptop hard drives were "likely unavailable" for electronic discovery of evidence. However, in our search, we found that, according to the IRS inventory system, one hard drive was listed as in-stock at the time the court document was filed, and thus could have been searched to determine if records were still available.

TIGTA RECOMMENDATIONS AND IRS RESPONSE

In total, TIGTA made five recommendations to the IRS on improvements that need to be made to electronic record retention practices. Specifically, we recommended that the IRS:

- Implement an enterprise e-mail solution that enables the IRS to comply with Federal records management requirements;
- Document the methodology for developing one authoritative list of executives to be included in interim e-mail auto-archiving processes and coordinate between PGLD and IT organization personnel to verify that all

identified executive e-mail accounts are properly configured to archive e-mail;

- Ensure that the newly issued policy on the collection and preservation of Federal records associated with separated employees is disseminated throughout the agency;
- Ensure that the policy for documenting search efforts is followed by all employees involved in responding to FOIA requests; and
- Develop a consistent policy that requires Federal records associated with separated employees to be searched as part of the IRS's responses to Federal requests for records.

The IRS agreed with all five recommendations and outlined responsive corrective actions including implementation of a new enterprise e-mail solution that will comply with Federal record retention requirements. However, in response to our draft report, the Director, PGLD, stated that our findings were not accurate in two areas. We have concerns about the accuracy of certain statements in the IRS's response to our draft report.

First, the IRS disagreed with our finding that its record retention policies did not comply with Federal requirements. Specifically, the IRS contended that its policy of printing and filing any electronic record was in compliance with NARA guidelines in place at the time of our audit. As detailed in our report, regulations in place during our audit period stated that agencies must ensure that all electronic records are retrievable and usable for as long as needed. The IRS's ever-changing electronic media storage policies, and the IRS's reliance on employees to store on employee hard drives electronic Federal records contained in e-mail, negatively affected the IRS's ability to comply with Federal requirements. In addition, in a review of IRS record retention practices in June 2015, NARA found that the IRS's e-mail management practices and technologies did not secure all e-mail records against potential loss. Given this finding, the IRS's statement that it was in full compliance with NARA regulations is not factual. Finally, in its response the IRS makes the statement that its print-and-file paper system helps, rather than hinders, Federal record preservation. TIGTA does not agree with that assessment. With tens of thousands of IRS employees creating potentially millions of

Federal records via e-mail, reliance on employees to print and file each record is not a viable option and not one to which the IRS has adhered.

Second, the IRS disagreed with our finding that inadequate search efforts were conducted in response to FOIA requests. Specifically, the IRS stated that, in general, it believes adequate searches took place to facilitate appropriate record production to FOIA requestors. TIGTA's findings of inadequate search efforts relate only to 30 closed FOIA cases reviewed and, as stated in our report, cannot be projected generally to all FOIA cases. However, for 20 of the 30 closed cases we reviewed, the IRS did not follow its own policies that require it to document which employees searched for responsive records and what criteria were used in the search. In four cases, the PGLD caseworker did not follow up with a lead to identify other potential custodians. For two of the four cases, the PGLD caseworker closed the case with a 'No Records' response to the requestor, and in the third case, which was still open at the time we reviewed the file, the IRS was not aware that there was an additional custodian with responsive records until a meeting between TIGTA and IRS Chief Counsel staff working the case was held in November 2016, at which point the case had been open for over 400 days. Lastly, in the fourth case, the PGLD office caseworker did not reach all the custodians who had responsive records because the caseworker did not send the request to all the functional contacts of the business unit identified in the incoming request. The case later went to litigation, and the judge found an inadequate search effort on the part of the IRS. Given these examples, we stand by our finding that some responses to FOIA requests did not ensure that all records were searched and produced.

We at TIGTA take seriously our mandate to provide independent oversight of the IRS in its administration of our Nation's tax system. As such, we plan to provide continuing audit coverage of the IRS's efforts to operate efficiently and effectively and to investigate any instances of IRS employee misconduct.

Chairman Buchanan, Ranking Member Lewis, and Members of the Subcommittee, thank you for the opportunity to share my views.



Greg Kutz

**Assistant Inspector General for Audit
Treasury Inspector General for Tax Administration**

Mr. Kutz joined the Treasury Inspector General for Tax Administration (TIGTA) in 2012 and serves as the Assistant Inspector General for Audit, Management Services and Exempt Organizations. Mr. Kutz is responsible for audits of several IRS programs including the Agency-Wide Shared Services, Human Capital, Financial Management, and the Tax Exempt and Government Entities Division. Mr. Kutz is also the Acting Deputy Inspector General for Inspections and Evaluations and has served in this role since November of 2014.

Prior to joining TIGTA, Mr. Kutz served as an executive at the Government Accountability Office (GAO) for over 14 years. At GAO, Mr. Kutz led the GAO audit of the IRS's financial statements from 1997 through 2001. Prior to GAO, Mr. Kutz worked for eight years at KPMG in Washington, D.C. and Tysons Corner, Virginia.

Mr. Kutz is a Certified Public Accountant and was a 2010 Service to America Medals Finalist for Justice and Law Enforcement.

Chairman BUCHANAN. Thank you.
Mr. Tribiano, you are recognized.

**STATEMENT OF JEFFREY TRIBIANO, DEPUTY COMMISSIONER
FOR OPERATIONS SUPPORT, IRS; ACCOMPANIED BY ED-
WARD KILLEN, DIRECTOR OF PRIVACY, GOVERNMENTAL LI-
AISON, AND DISCLOSURE, IRS**

Mr. TRIBIANO. Good morning, Chairman Buchanan, Ranking Member Lewis, and members of the Subcommittee. My name is Jeff Tribiano, and I am the Deputy Commissioner for Operations Support at the IRS. I appreciate this opportunity to testify today.

In my position at the IRS I oversee internal operations, which includes information technology, human capital, finance, and privacy, Procurement, Planning, facilities, security, enterprise risk, and the office of equity, diversity and inclusion.

Joining me today from the IRS at the witness table is Mr. Edward Killen, the IRS Chief Privacy Officer.

Over the years the IRS has worked closely with the National Archives and Records Administration, NARA, to improve our processes and protocols in regard to retention of Federal records to make sure they are appropriate and work properly.

We recently have made several significant investments in and important progress on a number of fronts to improve our records management practices for email and to update our existing records management policies, procedures, and practices. Our work continues in this area.

In particular, we are well on our way to completing the implementation of an enterprise-wide solution for the preservation of electronic records of the agency. This will bring us into compliance with the Office of Management and Budget directive requiring all Federal agencies to have email in an electronically accessible format.

More broadly, we are also taking a number of other actions to improve records management. These include the following:

We have updated policy and procedure guidance on electronic messaging usage and preservation. This includes guidance on the preservations of instant messages.

We have enhanced our clearance procedures for employees who leave the IRS, so we can identify and preserve Federal records on separating employees before the employee departs.

We are in the process of upgrading our e-Discovery capability to a modern, cloud-based set of tools. This will allow more quickly and efficiently for us to meet our discovery obligations in relation to litigation or governmental investigations.

In the area of training, we recently released the first annual Records Mandatory Briefing for all IRS employees and managers. This course is designed to heighten an understanding of records retention responsibilities.

And regarding the Freedom of Information Act, we are upgrading the software used for the day-to-day management of FOIA operations. Although the IRS already responds to more than 75 percent of FOIA requests within 20 days, this new system will facilitate automation and improve our effectiveness and efficiency in this area.

Taken together, we believe these efforts to improve electronic records management are an important step forward. They are not only bringing the IRS into compliance with NARA standards and the OMB records management directive, but will also greatly enhance our ability to timely respond to Congress, the courts, and FOIA requests.

We also appreciate the Treasury Inspector General for Tax Administration's recent review on our records retention policies and procedures. We agree with all five recommendations in the report, and we believe they are helpful in our efforts to improve in this area. We have already made significant progress toward completing action on the recommendations and have implemented two of them. We are on track to complete all of them by the end of this year.

That concludes my opening statement, and I am happy to answer any questions.

[The prepared statement of Messrs. Tribiano and Killen follows:]

**WRITTEN
TESTIMONY OF
JEFFREY J. TRIBIANO
DEPUTY COMMISSIONER FOR OPERATIONS SUPPORT
AND
EDWARD T. KILLEN
CHIEF PRIVACY OFFICER
INTERNAL REVENUE SERVICE
BEFORE THE
HOUSE WAYS AND MEANS COMMITTEE
SUBCOMMITTEE ON OVERSIGHT
ON IRS RECORDS RETENTION PRACTICES
JULY 25, 2017**

INTRODUCTION

Chairman Buchanan, Ranking Member Lewis, and Members of the Subcommittee, thank you for the opportunity to discuss the IRS's records management procedures.

The IRS has always taken seriously its responsibility to protect official records. Doing so is especially important in order to comply with the Federal Records Act and to respond in a timely manner to document requests from Congress, fulfill court-issued document preservation orders, and answer requests made under the Freedom of Information Act (FOIA).

Over the years, the IRS has worked closely with the National Archives and Records Administration (NARA) to improve our processes and protocols in regard to retention of federal records to make sure they are appropriate and work properly. We recently have made significant investments in, and important progress on, a number of fronts to improve our records management practices for email, and to update other existing records management policies, procedures and practices. Our work continues in these areas.

At the same time, the IRS has long been challenged in the area of record retention. The capabilities needed to implement new record retention mandates required investments in new technology, but one problem has been that those investment dollars were not available. As a result, some agency practices have not been up to the level of those of a typical modern organization. A case in point is the IRS's document retention process for electronic records, such as email records, which has involved individual employees printing records and storing them in paper files as the agency's record.

Previously, the "print and file" method of preserving email records complied with NARA requirements and the agency's recordkeeping policy and was a permissible method of preserving these records in the absence of an electronic recordkeeping system. "Print and file" remains a permissible method of recordkeeping with regard to non-email records, though NARA and OMB policy require agencies to manage permanent electronic records electronically by 2019. Although not the agency's official recordkeeping policy, to save storage space on their computers employees sometimes archived information on computer hard drives and network drives. Storage of electronic records on a hard drive poses risks. Searching individual hard drives to fulfill a document request is a labor-intensive, time consuming process.

This type of process poses an additional complication for the IRS, involving the need to safeguard any taxpayer data contained in electronic records created by employees who leave the agency. Additionally, computer hard drives are prone to equipment failure resulting in data loss, and the management of a large hard-drive inventory presents significant logistical challenges, even in the best of circumstances.

RECENT EFFORTS TO UPDATE ELECTRONIC RECORDS PROCEDURES

The IRS considered putting a more-modern electronic records storage system in place in 2012, to bring the agency into compliance with a joint directive issued that year by NARA and the Office of Management and Budget (OMB). The Managing Government Records Directive (M-12-18) requires all federal agencies to have email in an electronically accessible format by December 31, 2016. At that time, the IRS decided it could not proceed with the upgrade because of recent budget cuts and the need to implement significant legislative mandates, such as the Affordable Care Act, the Foreign Account Tax Compliance Act, the Achieving a Better Life Experience Act and others.

But the unprecedented volume and scope of document requests made by Congress and the public in 2013 in regard to the processing of applications for tax exempt status highlighted the need for the IRS to continue improving its maintenance of federal records that are in electronic form.

Therefore, in October 2014 the IRS developed a policy and implemented an interim solution to archive email of IRS executives. The policy is consistent with NARA guidance allowing agencies to adopt a "Capstone" approach. The Capstone approach is used to schedule and manage email based on an individual's role in the organization. Recognizing the agency's most crucial records are those of its most senior officials, who set policy documenting agency business decisions, the IRS identified senior official email accounts as appropriate for permanent retention. The IRS's Capstone Records Schedule was approved by NARA in October 2015, and established the required retention

periods for all IRS email. Currently, we are retaining email accounts of our most senior officials for permanent preservation. Going forward, we will also retain email accounts of all other IRS employees for a period of 20 years, subject to approval by NARA of our revised retention schedule. These are critical steps toward full compliance with OMB Directive M-12-18 because they give us the ability to efficiently preserve and retrieve the most significant IRS email records.

Even so, this approach is not the ultimate solution for the preservation of electronic records of the agency. We recognized the need to end any reliance on individual hard drives as an archival records store, and instead to use network databases to preserve all official records that are electronically generated by our workforce – frontline employees as well as executives. We realized that we needed to implement an agency-wide solution.

Moving toward that solution, in 2015 the IRS identified a cloud-based approach to meet the email retention requirements set out under OMB Directive M-12-18. By January 2016, we believed the plan was ready for implementation. We completed the design and secured funding. By March 2016, we had begun the appropriate requisitions to obtain hardware, software and support to meet the schedule. However, in that same month, an acquisition protest filed with the Government Accountability Office (GAO) challenged the procurement. In June 2016 the GAO upheld the protest, which put at risk our ability to have our solution in place by December 31, 2016. As a result, we worked to identify an alternative solution that involved in-house storage on servers at our data center.

While this alternative approach will bring the IRS into compliance with the OMB directive, implementing it has required new procurement actions and significant rework. Accordingly, this means the IRS will not complete development and implementation of its enterprise-wide solution for all agency email until the fall of 2017, rather than by the OMB deadline of December 31, 2016. We have previously shared our updated timeline with members of Congress, NARA, and OMB, and have been keeping them updated on our progress. In fact, we understand the difficulties we face in this area are not unique. In its April 2016, *Criteria for Managing Email Records in Compliance with the Managing Government Records Directive*, NARA acknowledged the challenges federal agencies face, and said it recognized that the effective management of email records is an ongoing process.

That being said, we are pleased to report that the IRS is well underway in its implementation of the new enterprise-wide solution. In fact, to date, we have migrated thousands of our employees' email accounts into the new solution. At this point, we are on schedule for completion of this project in accordance with the updated timeline noted above that was provided to congressional and executive branch stakeholders.

BROADER IRS EFFORTS IN THE AREA OF RECORDS MANAGEMENT

In addition to our interim and long-term approaches to efficient records management for email, the IRS has initiated substantial updates to other existing records management policies, procedures and practices, including actions in the following areas:

- **Instant messaging.** We updated policy and procedural guidance for electronic message usage and preservation. The policy provides specific guidance on the preservation of instant messages. Instant messages should not be used for substantive business communications. However, in the event a record is created while using instant messaging, the policy provides guidance on the requirement to save before the message is closed out. IRS employees have the ability to save instant messages to the Conversation History folder in their Outlook folders and archive the record as appropriate for preservation purposes.
- **Separating employees.** We enhanced our clearance procedures for employees who leave the IRS, so we could identify and preserve federal records of a separating employee before the employee departs, and to ensure the return of the employee's equipment.
- **Employee training.** We recently released the first annual *Records Mandatory Briefing* for IRS employees and managers as required by NARA Bulletin 2017-01 and OMB Circular A-130. The course is designed to heighten understanding of records retention responsibilities.
- **E-discovery.** The IRS, like all government agencies, is seeing a significant increase in the role played by electronic evidence in litigation and government investigations. In order to effectively pursue or defend such cases – some of which have billions of dollars of tax revenue at stake – the IRS recognized the need for modern software tools to more efficiently review and analyze potential evidence in electronic form. We are in the process of upgrading our e-discovery capability to a modern, cloud-based set of tools that will allow us to more quickly and efficiently meet our discovery obligations.
- **FOIA improvements.** One of the challenges associated with managing FOIA requests is the complexity and level of effort associated with manual searches, retrievals, and redactions of responsive documents. To enhance this process, we are upgrading the software used for the day-to-day management of FOIA operations. Although the IRS already responds to the vast majority – more than 75 percent – of FOIA requests within 20 days, this new system will facilitate automation and improve effectiveness and efficiency.

We believe that, taken together, the IRS's efforts to improve electronic records management are an important step forward, because they will not only bring us into compliance with NARA standards and the OMB/NARA records management

directive, but will also greatly enhance our ability to timely respond to Congress and the courts, and to FOIA requests.

TIGTA'S REPORT ON RECORDS RETENTION

The IRS appreciates the recent review by the Treasury Inspector General for Tax Administration (TIGTA) of the IRS's records retention policies and procedures. We agree with the five recommendations in the report, and we believe they are helpful to our efforts at improvement in this area. The IRS has already made significant progress toward completing action on the recommendations, having implemented two of them and we are on track to complete all of them by the end of this year.

While we agree with all of TIGTA's recommendations, the IRS does have a somewhat different perspective on some of the findings in the report. For example, we do not agree with TIGTA's finding that the IRS did not comply with NARA guidelines in place when TIGTA conducted the audit. At that time, IRS policies for maintaining official records were in full compliance with NARA standards for a paper system transitioning to an electronic system.

Additionally, TIGTA's report includes pictures taken at three IRS locations containing a total of about 32,000 pieces of equipment – laptops, desktop computers and hard drives – stored at those facilities, but the report does not provide the context for the items stored and the security measures in place to protect these items. The vast majority of the items in the photographs were generated from the replacement of aged equipment.

Under current IRS policies, electronic official records on an employee's computer should be printed and placed in the official file or managed in another appropriate recordkeeping system. In addition, when an employee's aged equipment is scheduled for replacement, it is the IRS's practice to move the data from the old hard drive and add it to the new equipment during the replacement process. Consequently, data residing on aged equipment are copies of data on the new equipment. However, in instances where that may not be the case, we will assess and formulate a plan to address this.

Chairman Buchanan, Ranking Member Lewis, and members of the Subcommittee, that concludes our statement. We would be happy to answer any questions.

Chairman BUCHANAN. Thank you, and thank you for your excellent testimony. We will now proceed to the question and answer session. And in keeping with my past precedent, I'd like to hold my questions until the end.

I now recognize the gentleman from Arizona, Mr. Schweikert.

Mr. SCHWEIKERT. Thank you, Mr. Chairman. I have a handful of things here, and I want to first wrap my head around a couple of things I was seeing in the notes here.

Was there an attempt at an enterprise solution that, shall we say, failed?

Mr. TRIBIANO. Yes, sir.

Mr. SCHWEIKERT. Why did it fail?

Mr. TRIBIANO. Back in 2015 we identified and procured a hybrid cloud-based solution to implement the NARA requirements. There was a procurement protest on the procurement that we issued. GAO upheld the procurement protest so all work on the program had to stop. We had to go to our plan B, which was an on-premise based solution for the implementation, and that caused a delay in the project.

Mr. SCHWEIKERT. Okay. So you were doing an enterprise cloud-based automated capture backup system?

Mr. TRIBIANO. We were.

Mr. SCHWEIKERT. That is what had won, and then there was a procurement protest that stopped you from adoption?

Mr. TRIBIANO. There was a procurement protest, yes, sir, and GAO upheld the protest, which means we all—

Mr. SCHWEIKERT. So you didn't rebid it?

Mr. TRIBIANO. We went out to a different solution and rebid the second solution, yes, sir.

Mr. SCHWEIKERT. And the second solution was in-house retention.

Mr. TRIBIANO. It was an on-premise solution.

Mr. SCHWEIKERT. And now you are doing—

Mr. TRIBIANO. An on-premise solution.

Mr. SCHWEIKERT. On-premise solution that will be fully automated—I mean, I am seeing a number in here of what was it 33,000 hard drives if I were to count everything that is floating around out there, it is going to be able to automatically back up and capture.

Mr. TRIBIANO. All of our electronic emails will be backed up and captured on the on-premise solution, yes, sir.

Mr. SCHWEIKERT. And direct messaging systems?

Mr. TRIBIANO. The instant messaging system, yes, sir. But there is a piece of that. I mean, instant messaging according to our policy, and Ed, Mr. Killen can explain this in more detail, but it is not supposed to be used for a formalized record. If it is, then that has to be copied into the system and stored.

Mr. SCHWEIKERT. But if it is used someone has to make that decision to save it?

Mr. KILLEN. Yes, Congressman, that is correct.

Mr. SCHWEIKERT. So you and I are working on something, and we decide we are going to use the direct messaging system. Is that how you refer to your system instead of instant?

Mr. KILLEN. Instant yes.

Mr. SCHWEIKERT. I have to actually as the employee make a decision, oh, I need to hit the button for this one to be retained?

Mr. KILLEN. That is correct. We refer to that as our office communicator system, and the employee would have to if a record is created, and we have been very clear in IRS about disseminating this guidance, but if a record is created the employee does have the affirmative obligation to save that record.

Mr. SCHWEIKERT. Wouldn't it be more elegant just to do a constant capture model?

Mr. KILLEN. I think part of the context around instant messaging is that we found that it is a tool that is effective for collaborative dialogue, as our employees are working various issues. So I think part of the challenge is that most of the information associated with those instant messages would really essentially be transitory. They would not be authoritative records.

Mr. SCHWEIKERT. So you are basically asking an employee to say this is appropriate for retention, this isn't. I see a human factor that creates a level of fragility. And, look, I know we all have certain concerns of privacy and those things, but it is still a government document even if it is transitory. I am just surprised you haven't designed an automatic capture, which is, you know, in today's price of storage, just capture everything and just, you know, build search tools that are more robust that may be easier in your life, but this is your area of expertise.

I have been asked just because—and I only know a tiny bit of it, so you are going to have to educate me here. Talk to me about the Security Summit with some of our, shall we say, folks in the private sector and what we are learning from their technology and what we can learn to adopt?

Mr. KILLEN. I appreciate that question. The security summit has been a great success story within IRS. As you know, one of our challenges has been addressing identity theft and working to protect taxpayers from that crime. And so, a couple of years ago the IRS commissioner decided that this would really be an opportunity for a public-private sector partnership to work together with the State Departments of Revenue and also with the private sector tax return preparer community in order to defend ourselves holistically against this threat, and we really refer to it as "the tax ecosystem."

And one of the things that we have found certainly is that where there are weaknesses in any one of those links on the chain it actually impacts others. So we decided that it would be great if we could all work together to try to share lead information, threat detection sort of information in an effort to protect taxpayers.

Over the past couple years this has been tremendously successful. We have to remain vigilant, but I am pleased to report that the commissioner will be announcing later on today that over the past 2 years we have seen a reduction in our identity theft inventory of over 60 percent, and I think that is in large part attributable to those efforts along with others, as well.

Mr. SCHWEIKERT. Mr. Chairman, if there is a second round I would love to do some more exploring of this. Thank you for your patience.

Chairman BUCHANAN. I now recognize the Ranking Member from Georgia, Mr. Lewis.

Mr. LEWIS. Thank you, Mr. Chairman. Mr. Deputy Commissioner, has the IRS received additional funding to implement the five recommendations? Did you get more money?

Mr. TRIBIANO. No, sir. The last increase that we had in this area to be able to implement was—and we are really appreciative for—is the \$290 million that Congress appropriated specifically for identity theft, cyber security and customer service at our call centers.

Mr. LEWIS. How have IRS budget reductions in IT impacted your operation? What more could you have done or accomplished with more money?

Mr. TRIBIANO. Well, I appreciate that question. Our infrastructure in the IRS is very unique. It is large. It is complex. If you step back and look at all the stuff that happens within that infrastructure, we process over 200 million electronic returns a year within the IRS infrastructure. We have two data centers that operate on a 24-hour, 7-day-a-week basis.

We have over 187 million taxpayer accounts on the system. We collect and process all the records for \$3 trillion in tax revenue. We process and release about \$400 billion a year in refunds through this system.

If you look at it from all the things that we support, we have one of the world's largest audit and collection firms that we have to support with 14,000 revenue agents and revenue officers. We have one of the largest law firms that have unique requirements within the IRS that we have to support from an IT perspective. We also have and operate a large call center that handles about 64 million calls a year. That comes out of our IT.

We also have a large criminal investigation force that has unique IT requirements that we have to support. We have also processed, received, and digitalized over 80 million paper records that come in with tax returns and correspondence within the IT infrastructure. So all of that, all of that work, is what we protect every year for filing season, and when we have reduced funds we have to then re-allocate resources to the areas within that system that we believe need it just to maintain filing season.

And what that does is it causes us to shift funds out of development projects that we are working on or other areas within the system itself to be able to fund the filing season systems.

And what I would really like to do at some point is bring up my CIO and maybe meet with the staffs or any Members of the Committee and go through the complexities of the IT system.

Now, I will give you a few statistics on why it is important. We have over 400 tailored applications in support of our lines of business. We have over 2,000 individual COTS products working across work station servers and mainframes. We have over 14,000 physical and virtual servers that run the IRS. We have over 7,700 databases that support the servers in the mainframe environment, and we support over 82,000 desktops and laptops throughout the agency.

So any time that we have to shift funds because we have a lack of them to true up our filing season systems it makes the other systems more vulnerable for down time, for longer times of repair. We

have to shift technical experts around. We have a gapping in some of our technical expertise within it.

So we have to shift physical resources to the systems for filing season, which takes them off-line for development and production of new systems or upgrades. So it has an impact on our ability to operate.

Mr. LEWIS. Mr. Assistant Inspector General, what is your reaction to what has just been stated? I don't understand how you can continue to function, the agency has been cut by more than \$1 billion in the past few years.

Mr. KUTZ. Certainly in the information technology area they have had turnover, they have had a reduction in staff, and they are thin in a lot of areas with expertise, and there are a large number of people, 40 percent of the people, can retire by 2019, so they do have a human capital challenge within information technology.

The topic of today's hearing I think is a combination of systems, processes, and training of people involved in this. So money is one factor, but so is management processes and in human beings that are trained, and there are internal controls in place to follow up to make sure that in this case records are retained and preserved in the way they are supposed to.

Mr. LEWIS. Thank you very much. Thank you for being here. Thank you for your testimony. I yield back.

Chairman BUCHANAN. Mrs. Walorski you are recognized.

Mrs. WALORSKI. Thank you, Mr. Chairman. Thanks to our witnesses for being here, as well. The General Services Administration offers something called Blanket Purchase Agreements or BPAs, that cover a wide range of supplies and services but are generally designed to streamline the procurement process by functioning as sort of a charge account with trusted suppliers.

One such service covered under a BPA is what is called cloud-based email as a service, which we touched on a second ago, solutions. It is basically a fancy term for things like email calendar contacts, collaboration services, such as instant messenger, and to aid in record retention requirements, archiving, and searchability.

This particular BPA allows an agency to pick from a range of services from 14 different companies. To make it even easier, the GSA even breaks down the services into this handy grid to make it easy to see what is being offered and by whom, correct?

Mr. TRIBIANO. Yes, ma'am.

Mrs. WALORSKI. Okay. However, the TIGTA report on the IRS's failed acquisition of an enterprise email system showed that despite going through the BPA process, the IRS purchased items that weren't on the BPA. They purchased something with a similar name as the one on the BPA list, but it was a different product. A company successfully challenged the purchase with the GAO, and the IRS had to abandon the contacts and start over.

Taxpayers spent \$12 million on software that was never used. Mr. Tribiano, can you walk us through how something like this happens, and what you are going to do to prevent it from happening again? Because basically what it boils down to is you pick from something not on the list, taxpayers get stuck with a \$12 million bill, and this isn't used.

So what safeguards are in place from that experience to say, oh, my gosh, we made a mistake, we are never going to do this again. Because in my district to all the Hoosiers in the state of Indiana, \$12 million is a lot of money, especially for something not used sitting on a shelf. So what safeguards are in place now that weren't before?

Mr. TRIBIANO. Yes, ma'am. At that time that that was done it was my understanding there was an assessment done on that blanket purchase agreement, and that the products that we were going to purchase off the blanket purchase agreement was allowed within the range of products that were being offered. It was only when the protest happened, I think—

Mrs. WALORSKI. The lawsuit? When the GAO came back and basically said you purchased something that is not on this list?

Mr. TRIBIANO. I don't remember—or read the language that GAO said. I know that GAO came back to us and said we are upholding the protest that was filed by a vendor. And then when that happened we turned to what our plan B would be, which would be the on-premise solution, and we went out then and contracted for that.

So the safeguards that are in place is we have a mechanism now within our procurement office that has a policy and process in place that has a secondary view of any schedule that we go to on blanket purchase agreements that allows us to have that secondary sign off.

Mrs. WALORSKI. And have they caught anything? This new group, have they been able to catch those same kinds of actions? Have they been like the watch guard to make sure this doesn't happen again? Has that been successful?

Mr. TRIBIANO. I think it has been successful. I have not seen anything or when I talk with the chief procurement officer I haven't seen anything that would stand out as a large item that went through or was stopped. I am being briefed that it is a successful process, and that a process that happened like that in the past should not happen again within the IRS.

Mrs. WALORSKI. I appreciate it. And then, Mr. Kutz, do you believe these actions are sufficient, these safeguards, that they will be the net that catches this kind of cross confusion, and especially to the tune of \$12 million just with one action alone?

Mr. KUTZ. Yeah. I mean, we and GAO, concluded that the blanket purchase agreement, the cloud solution, was outside the scope of the blanket purchase agreement. We, and GAO, both believe that at this time. But we will see. I mean, they are supposed to have their new email solution done by the end of this fiscal year and whether they are there, we are going to be doing work to follow up on that and determine whether it is implemented effectively.

Mrs. WALORSKI. I appreciate that.

Thank you, Mr. Chairman. I yield back.

Chairman BUCHANAN. Ms. DelBene, you are recognized.

Ms. DELBENE. Thank you, Mr. Chair, and thanks to all of you for being with us this morning.

Mr. Kutz, in your testimony you state that there are many security measures in place for documents that are pictured in the pho-

tographs that are attached to the end of your report, and that the vast majority of the items in the photographs are generated from the replacement of aged equipment.

I wondered if you could talk to us about the reasons why an electronic storage option wasn't used? So if you are phasing out old equipment really the question is, why not store documents in the cloud or in some other electronic format that could be searched and secured?

Mr. KUTZ. Well, their email solution does not automatically archive as everyone has talked about at the beginning here. So they have been saving, and I mentioned they were changing the policies in my opening statement. Well, the policy that has resulted in the old technology and hard drives and other things being at all these locations is that they are saving it now because there are potentially Federal records on this information.

And so I think we have an issue here of we are all talking about going forward. Once IRS has processes to go forward, then we have to deal with the going backward, and they have tens of thousands of these devices at 50 something locations across the country that they are going to have to deal with at some point. Some of them they may be able to find records in, the other ones the actual hard drive may not be matched to the person.

So I think when we talk today about the solutions, there is the going forward solution, and then Congress is going to have to work with IRS as to what to do with the issues going backward, all these devices being stored around the country that potentially have Federal records that shouldn't necessarily be destroyed.

Ms. DELBENE. And right now they would be kind of just kept in some printed form?

Mr. KUTZ. Well, it is growing. They are still keeping more and more items. Now with the email solution going forward, that should help to some extent, but right now the policy is backup tapes are being kept, hard drives are being kept, et cetera, indefinitely.

And, again, I think if we can fix the problems going forward, then the question is what do we do looking backward to eventually destroy this information because it is a storage problem.

There are large rooms filled with old equipment and hard drives and old laptop shells that are going to be there indefinitely until a solution is determined.

Ms. DELBENE. And old systems that people may not know how to access well over time?

Mr. KUTZ. Well, that is a separate issue, the old technology with respect to—they have hardware aged, and then they also have systems that they are trying to upgrade and modernize.

Ms. DELBENE. Okay. I also wondered if any of you could elaborate a bit on the role that HR and IT play in retaining electronic records. There is a lot of talk about, employees printing records out and keeping them, but how are decisions made to ensure that important information is backed up on a hard drive, and what are you doing to make sure it is not just maintained on a hard drive because that is also—if there is a crash or anything you lose all of that information, so what is being done there?

Mr. KILLEN. Thank you for the question. One of the opportunities that we have as we are moving forward with our new email solution is indeed to move away from that historical reliance on hard drives and on people saving things on their local machines because that is not an optimal way to preserve and archive records. You have limitations in the way you can search and produce documents when needed.

And so I think the good news is that the process that we are currently implementing to move to our new email system will address a significant aspect of that challenge because the emails, and that is predominantly in most of these sort of instances where authoritative records would lie, the email record will be in the server.

There are requirements around what constitutes an appropriate electronic recordkeeping system. That will ensure that we are actively able to search, produce records as appropriate. As we move away—and one of the benefits of this is that we will no longer need the utilization of the hard drives because it has been previously a storage issue, which is why people were—

Ms. DELBENE. You are talking about email. What about other documents? Aren't there documents outside of email that you also would want to make sure are backed up?

Mr. KILLEN. Yes, ma'am. That is a fair question, as well. And so it really is a combination of tools that will move us into a better direction. It is the policies associated with informing people that you should not be storing Federal records on your hard drives because there is limited access to that.

So we are moving to collaborative sites, sharepoint sites, where records should be and can be held but we will not have the storage limitations and so that people have a place to put those records.

The email solution we think will address a large segment of it because think about it from a practical standpoint, a record is of limited utility if you are the only one who has access to it.

Most records that are created are actually being shared or disseminated somewhere, so we think the email solution will help some of that. For the remaining issues that we have, we are formulating a plan to address that to make sure that we have no gaps when we are done with this process because we do want to get it right.

Ms. DELBENE. Thank you. I yield back.

Chairman BUCHANAN. Mr. Holding, you are recognized.

Mr. HOLDING. Thank you, Mr. Chairman.

Mr. Killen, how many executives are at the IRS?

Mr. TRIBIANO. We have 251 SES executives. We have around seven senior leaders. And we still have two members that will be expiring shortly on the streamline critical pay.

Mr. HOLDING. So these are the individuals that I guess for lack of a term of art are the critical decision makers within the IRS, would that be kind of how you describe executives to the IRS?

Mr. TRIBIANO. Yes, sir.

Mr. HOLDING. And I think as we pointed out, TIGTA reported there has been an independent verification that confirmed the email accounts of these executives are actually configured to auto archive emails, so that was a finding.

And, you know, you are testifying today that changes have been made, so are you able to say today that the emails from those number of executives are being auto archived today, and if not, what steps are you taking to ensure that they are being auto archived?

Mr. KILLEN. What I am able to say today, sir, is that we are actively implementing the solution that should address that. And when I say that we are actively implementing it, I mean that we are currently in flight in migrating all of our IRS employees into the new email environment where all of their emails will be saved and archived appropriately.

Chairman BUCHANAN. Excuse me, Mr. Killen, is your mike on?

Mr. KILLEN. The light is on, yes.

So we are actively migrating to that new email environment, and when I say, "active," meaning that we have literally moved over already tens of thousands of IRS employees into the new environment.

We think that for the most part all of our executives have migrated over. That is important because the root cause of the finding where some of our executive emails were not configured properly was a part of an interim solution that we put in place as a stop-gap measure on the path to our permanent solution which we are executing again.

So the important thing about that is that was a manual process. It depended upon people to configure their email inboxes—

Mr. HOLDING. So the new platform that you were migrating to will not be a manual process, it will be an auto archive? You won't be able to switch it on or switch it off?

Mr. KILLEN. Correct, sir. It will be automatic and systemic.

Mr. HOLDING. Which one of you would be able to address the question of what forms of predictive statistical analysis is the IRS using to combat fraud, abuse, and so forth?

Mr. TRIBIANO. I cannot speak to that, nor can Mr. Killen.

Mr. HOLDING. Most financial institutions when they are looking for fraud or money laundering, compromised accounts, they use forms of predictive statistical analysis that they run all their data through, and that is the reason why you get the call from your bank that says did you just charge this on your credit card? It sets off red flags, and one would assume that the IRS uses something similar to what financial institutions would use to find that?

Mr. KUTZ. I would say that they do. I think they have a lot of filters in place to prevent refunds from going out improperly. And so that would be similar, I think, to what you are talking about where credit card companies see indicators in the data that lead them to call you or to cancel your transactions to prevent you from making a transaction. But they do try to filter up front before refunds are issued looking for fraud indicators.

So if that is what you are talking about, they have quite a bit of that, over 100 of those types of filters.

Mr. TRIBIANO. Thank you, and if that was where that question—

Mr. HOLDING. That is some of it, but predictive statistical analysis is something a little bit different, as well. You know, it is an analysis of all the data that you have.

Are you aware of any software that the IRS buys from outside vendors that provides, you know, these services, and can you relate as to whether it has been effective for the IRS? Do you use it if you do buy it?

Mr. TRIBIANO. We do purchase outside software to help with some of our analysis work, and when we talk about return filing, we have a robust system of filters to stop anti-fraud.

We also have a team of researchers within the IRS that do research and apply analytics and statistics that can predict and show patterns that are happening. I just can't speak to what they are using and how they actually do that work. It falls underneath another group that I am just not—

Mr. HOLDING. Thank you. Mr. Chairman, I yield back.

Chairman BUCHANAN. Mr. Curbelo, you are recognized.

Mr. CURBELO. Mr. Chairman, thank you very much for this hearing.

This hearing focuses on an issue that I think many of our constituents are concerned about, which is government competence. And last week we had, I think, a similar hearing on Medicare fraud. I get a lot of questions back home from Floridians who wonder why if credit card companies can be so effective at preventing fraud, why the government seems to be more focused on chasing fraud.

Well, here we are exploring a similar issue, whether the government can be competent, can be trusted, whether we can help restore the trust and confidence in our government and in our institutions.

One of the issues that the report we are discussing raises is the inability of PGLD to compel business units to respond to requests for records and to document their search efforts.

Mr. Killen, is that still the case today?

Mr. KILLEN. We are working aggressively to improve our Freedom of Information Act request process. I would note that on the whole I think we do a good job of that, and we have 80 percent timeliness in responding to the FOIA requests that we receive.

But one of the important aspects of FOIA is that you do rely on the custodian who has the record in order to be able to produce those records.

So what we are doing is that we are revising our communication mechanisms. We are revising our search memorandums to make it very clear what the responsibility of the custodian is in performing an adequate search for those records. We are revising our training. We are revising our internal quality review process to ensure that we have a quality process to ensure the efficacy of the search.

So we are taking a variety of tools. We are making new investments and additional tools to help us locate responsive documents. And so, this is really an area where we have been intensely focused because document retention and production are intrinsically linked. You have to have both working in concert in order to be successful. We have got certainly work to do, and we are committed to refining that and making improvements where needed, so we appreciate the perspective of the IG in identifying areas that we can improve upon, and we embrace that.

And so this is an area that we are focused on, and we feel like on the whole we do a good job, but we certainly have opportunities for improvement, and so we are focused on that.

Mr. CURBELO. So you are confident that at the end of this process that you are undertaking, you will be able to effectively compel the agency to conduct these searches and to document them?

Mr. KILLEN. I am. I am certainly confident that at the end of this process we will have two things. First of all, we will be in a materially better place than we have been historically.

And secondly, I am confident that we should be able to improve the process that we currently have, and that is what we are focused on. And I do think that we will be in a better place.

When you look at some of the things that really routinely cause us challenges and complications, and Mr. Lewis spoke to it, it really is those very complicated requests we get. Complicated by virtue of the fact that the responsive documents could be hundreds or thousands or tens of thousands in some instances, of pages.

And so the additional investments in our new recordkeeping system, in our new FOIA and e-Discovery tool, should put us in a better place. It is an area where we will have to remain vigilant because it is complicated and nuanced, but we are squarely focused on making improvements because we realize that taxpayers have a right to request information of their government, and we are committed to being able to provide that information.

Mr. CURBELO. Thank you. Thank you, Mr. Killen.

Mr. Tribiano, in the time, what is the agency doing to cooperate with these efforts to make sure that we can get the desired result?

Mr. TRIBIANO. Well, two of the things that Ed mentioned were the actual training that is happening right now and the ability of our new e-FOIA, e-Discovery systems. So once we get our new email electronic records system in place where we can search emails and have the ability to search all the email records quickly, the other piece of that is having the tools to be able to go out from the e-Discovery perspective and from a FOIA perspective to get through the documents to be able to redact whatever needs to be redacted and produce the documents to go forward.

So we are putting in place the policies that wrap around that to make sure that the information is flowing forward and that we are able to access all the records and get them through the process and if it is a FOIA request, getting to whoever requested it. If it is a legal aspect, getting them to our attorneys to go out.

Mr. CURBELO. Thank you, Mr. Chairman. I yield back.

Chairman BUCHANAN. Mr. Kutz, let me ask you, there are a lot of good findings and recommendations in the report from everything that you have presented today. What are the top one or two steps that the IRS has yet to complete that are critical to beginning the IRS in terms of compliance?

Mr. KUTZ. I would say the electronic, the new email system that they are supposed to have implemented. Apparently they are starting to roll it out now. Having that done as quickly as possible takes some of the human element out of it.

We talked about it that IRS relies on printing paper or saving to a hard drive or something, if you take that out of it, you are going to have a higher level of compliance.

And I think then once we get to the point as I mentioned earlier going forward, something has to be done about going backward and the tens of thousands of devices across the country and all of the storage of that and what you are going to do to deal with that because that is a major problem, and it is something that I think—it is costly for them to keep it like it is now.

So some solution to that, perhaps working with Congress on that is going to be critical.

Chairman BUCHANAN. In terms of working with Congress, do you have any suggestions or things that we could do to be more helpful?

Mr. KUTZ. Well, today is a great example. I think your oversight of this on a bipartisan basis is very important and holding IRS accountable for the dollars they get, the promises they have made, and making sure that they follow through on the actions that they say they are going to take.

So certainly with respect to the email system, follow up to see that they get it done at the end of the fiscal year, whatever their plan is.

And then we are going to do work in the future AND we will report back to you and IRS on the actual implementation of that email system. That is something we have planned for fiscal 2018, and we are very hopeful that they will be successful, but we will do the trust but verify with you.

Chairman BUCHANAN. Mr. Tribiano, you touched emails questions which have been brought up. This concept of the future state initiative, where are you in terms of that process as it relates to emails?

Mr. TRIBIANO. Thank you, Mr. Chairman. We are on schedule to have the new email on-premise solution that backs up electronically all the emails from all the IRS employees, taking the human element out of it. We are scheduled to have that completed by the end of September. We have an end of probably another 30 days after that for some work that has to happen in order to take the old email system off-line and have everything over there.

But what we are going to do beyond that before our partners at TIGTA come in and take a look at what we are doing is we are going to have two independent verifications and validations done.

First we are going to go out while we are in flight in the month of October and ask MITR, a Federally funded research and development team, to come in and take a look at where we are and make sure we met the requirements.

And then we are going to ask NARA to come over and take a look at it and make sure we met all the NARA requirements, so we can be confident that everything is backed up, everything is moved over, everything is where it is supposed to be. And then I know our partners at TIGTA will come in after that and take a look and offer their opinions and suggestions about anything else we can do to improve that.

Now, that is just the future state of where we are going with the emails. You know, one of the issues, and my colleague brought it up, is all the hard drives that we currently have stored, and what are we going to do with those? Well, I tell you, the majority of

those hard drives were refreshers, meaning we purchased a new laptop.

So we copied everything off of one hard drive onto the new hard drive, which is now with an IRS employee. But we didn't destroy the old hard drive because we are nervous about doing anything that is going to remove any piece of digital information, until we are sure that we have the new solution in place. Then we will go through a systematic process to remove the hard drives and laptops that were just refreshers in the process. Get our disaster recovery tapes back into the cycle of copying over, which is what they are supposed to be doing.

Chairman BUCHANAN. Let me touch on one point. You thought you were going to have it in place by the end of September? We are almost in August. In two months? This is a future initiative? It seems like a lot of work in two months.

Mr. TRIBIANO. Well, we have been working on it, sir, since we initiated the secondary to plan B procurement for the on-premise solution. We did that in September of last year, and we started the implementation process and testing of it in January. Our first migration, the first people that started moving over started happening in March.

So we were working through it systematically to be able to make sure that we worked out the kinks on how employees would be moved over. We have been in flight in that process and we have a committed team of professionals working on it. We will have it done by the end of September of this year.

Chairman BUCHANAN. Well, great. That is nice, because I know they talked about September—to actually hit the target around here is pretty tough, but good for you guys. Mr. Schweikert, do you have another question?

Mr. SCHWEIKERT. Thank you, Mr. Chairman. I was hoping just because I have the talent here to go just a couple side questions that I have always been somewhat curious about.

You are a taxpayer. Your records burn up, something horrible happens, like my house right now with the monsoon leaking through my house. So I turn to the IRS and say, hey, could I get copies of my last seven years of records? Tell me the process.

Mr. TRIBIANO. Sir, I am not exactly familiar with how that would happen. There is a process that taxpayers can go through in order to receive information and get past records. There is information out there on how to get transcripts in other forms.

Mr. SCHWEIKERT. So where I am going with this is many of us have great interest in highly secure methodologies where I can actually use this to be able to access everything from my college transcripts to my IRS records to my vaccination records, those things, and look, you are all very smart, you have all probably been tracking, you know, the double path systems in regards to a distributive ledger.

My understanding is even just with a number of servers you have throughout the IRS community, you could actually build your own node network. And then build a world where, you know, NIST, as you may know about 10 days ago published an encryption agreement or document saying I could carry my medical records on this, and here are the types of encryption they would believe would be

safe and uniform and could be commonly adopted across platforms. The ability to have a biometric and a password.

Could you imagine a world where myself as a taxpayer, could log in with my thumbprint, my passcode, see my quarterly payments, see my IRS records, see my documentation, see how they relate to all my filings, and would that also change just even the paperwork load you have when I am getting a loan, and I have to document because I am an independent contractor, so I have to have the IRS document my last couple years' worth of income?

What type of visioning is going on at the agency to understand this world of technology that is out there that could make all of our lives much more efficient, much more elegant? Where are you going with it?

Mr. TRIBIANO. That is a great question, and I know you guys have been in discussions with the IRS about the IRS future state about where we believe the IRS should go. It is very similar to what you described.

It is offering the ability for taxpayers to proactively interact with the IRS digitally, if that is their choice of medium. We still have to offer walk-in centers, call centers and so forth for those that want to communicate in different means, but the majority of the public in the research we did says they want to be able to communicate and work with the IRS digitally like they would with a bank.

Mr. SCHWEIKERT. Well, you are already doing the project, and this ties into the discussion with the Security Summit. If I use one of the package softwares on the TurboTax, the TaxCut, whatever it may be, I can log in and see all my filings I have done through them going back several years, correct?

So in some ways we already know it is being done on the private side of the ledger. It would be an interesting elegance that from the Security Summit and then the concepts that if we are truly almost to a national standard for encryption using a distributive ledger, and the fact that you have servers all up and down the chain, you could actually become one of the great node networks and control it.

Mr. TRIBIANO. Yes, sir. Everything that you described is always doable. The concern I would bring up from my side of the house, not from the service and enforcement side, from my side, is that infrastructure.

As we transition to whatever that future state looks like, however we are going to interact with the taxpayers, however we are going to do that work, I have to still deliver a successful filing season. That is what we talk about with the things that could be done to help us. It is to true up our current state of systems and protect the current filing season as we do the development towards that future.

Mr. SCHWEIKERT. And, Mr. Chairman and Ranking Member, where this thought moves through my mind if we are truly going to deliver a tax reform that is much more elegant and simple also at the same time delivering a methodology where American taxpayers have a more elegant way to use their base technology to see their relationship, see their filing, see their history, it is sort of a

unified theory of simplicity and technology, and with that I yield back, Mr. Chairman.

Chairman BUCHANAN. Thank you. And let me just close on one other thought because obviously all of you have been in this space for a long time.

Our goal is as a Committee on a bipartisan basis to try to produce an IRS reform bill by tax filing day next year. Maybe it is ambitious, but that is our goal. So we would like to get your best thoughts and ideas as we move toward that.

It has been 20 years. We want to try to be helpful in terms of the agency being more productive and effective long-term. So that is the idea of a lot of these hearings, and we are going to be doing more of them. Any thoughts or ideas you have on that? I like the idea we talked about the Future State because my mind says being in business for a long time I am very big on planning and kind of thinking about where we need to be in the next 10 or 20 years or five or 10 years down the road.

Okay. I would like to thank our witnesses for appearing before us today. Please be advised Members have two weeks to submit written questions to be answered later in writing. Those questions and your answers will be made part of the formal hearing record. With that the Subcommittee stands adjourned.

[Whereupon, at 10:57 a.m., the Subcommittee was adjourned.]

