Iron Mountain®

WHAT DOES SARBANES-OXLEY MEAN FOR RECORDS MANAGEMENT?

EXECUTIVE SUMMARY

The rash of accounting irregularities and allegations of wrongful document destruction are driving both stronger enforcement of existing regulations, as well as new laws with stronger penalties. One of the most significant of the new laws is the Sarbanes-Oxley Act of 2002. This law prescribes a sweeping system of additional federal oversight covering corporate governance and financial practices of publicly traded companies.

An enterprise-wide records management program — for paper, e-mail and electronic records — is an essential part of the sound financial controls and internal policies and procedures your company needs to prove compliance with Sarbanes-Oxley. Failure to produce requested records can lead to senior executives being held personally accountable for this lack of compliance.

To help companies meet this challenge, Iron Mountain has documented the best practices for complying with the records management provisions of Sarbanes-Oxley. In brief, the four pillars of records management are:

- Consistency — the design and implementation of records retention and destruction policies across media types, geography, and business units
- Accountability — a commitment to records management that establishes leadership and sponsorship, organization-wide performance goals, and tracking measures
- Adoption — formal rollout and training, an ongoing communication plan, and comprehensive reports and reviews
- Accessibility — universal records management systems, easily available to all authorized parties, and following a common process.

Investing in the four pillars of records management will not only support compliance obligations, but will also help organizations better manage their information assets. In the end, companies will reduce their costs and risks, and have more control over their information.

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SARBANES-OXLEY: THE NEW ENVIRONMENT FOR RESTORING CORPORATE CONFIDENCE

The Sarbanes-Oxley Act of 2002 is one of the most significant initiatives to reform corporate governance and accounting since the Securities Act of 1933 and the Securities and Exchange Act of 1934. This law prescribes a sweeping system of additional federal oversight covering corporate governance and financial practices for companies that have issued securities in U.S. public markets and that file periodic reports with the SEC, as well as their auditors, boards of directors, and lawyers.

The Act implements a new set of auditor independence rules, new top officer certification requirements, and new disclosure requirements for companies and their insiders, coupled with harsh civil and criminal penalties for people responsible for accounting or reporting violations. Some of the important directives of Sarbanes-Oxley:

- Public Company Accounting Oversight Board: This Board will provide the SEC with the authority to issue rules and to set standards. Public accounting firms must register with the Board, which will perform quality inspections, investigations, and disciplinary proceedings. This Board can suspend or bar individuals from a firm or suspend or revoke a firm's registration.
- Auditor Independence: Sarbanes-Oxley prohibits a firm from providing both auditing and many nonauditing services to the same client. Certain audit partners must rotate after a five-year period. A mandatory rotation of auditing firms is also being studied.
- Corporate Responsibility: Under Sarbanes-Oxley, audit committee members of publicly traded companies cannot accept consulting or advisory fees. Audit committees must establish whistleblower procedures for accounting matters and confidential, anonymous submission of concerns. CEOs and CFOs must certify quarterly and annual reports and implement/evaluate internal controls. In addition, personal loans to executives are prohibited.
- Enhanced Disclosures: Public companies must disclose off-balance sheet transactions. They must also include in annual reports an "internal control report" that documents its internal control structures and procedures for financial reporting and assesses the effectiveness of these measures.
- Criminal Penalties: The law creates tough penalties for those who destroy records, commit securities fraud and fail to report fraud.

The implications of Sarbanes-Oxley for records management are enormous. The clear intent is to hold companies accountable, and underscore the need for comprehensive retention and disposal policies for all types of records — paper, e-mail and electronic. As a result, records management has become more than just an important business process — it's now a critical compliance and risk management issue.

RECORDS MANAGEMENT IMPLICATIONS

Sarbanes-Oxley sets forth specific regulations for managing business records, particularly those that pertain to the auditing process. One important aspect concerns "audit work papers." The Act requires public accounting firms to retain for seven years all audit work papers and information related to any audit report that supports those conclusions and reports. This broad definition encompasses paper and electronic records that are created in connection with an audit and that contain conclusions, opinions, analyses, or financial data. As a result, public accounting firms will require rigorous records management programs with legally credible retention schedules.

The Act also requires that audit reports contain an evaluation of whether or not proper internal controls are in place, including "maintenance of records that in reasonable detail accurately reflect the transactions." As a result, public accounting firms, internal auditors, and company executives will be extending their auditing processes beyond opinions of financial statements to actually auditing a public company's records management programs to assess their effectiveness and controls.

Perhaps most important are the penalties prescribed by Sarbanes-Oxley in the event of in appropriate destruction of business records. For willful destruction of corporate audit records, the punishment can include imprisonment of up to 10 years. Destroying or altering records to impede a federal investigation or bankruptcy case, tampering with records, or impeding an investigation are all punishable by prison terms of up to 20 years. The likely outcome of these new penalties is that companies will formalize their procedures to appropriately suspend records destruction in anticipation of litigation as a protective measure, therefore raising the bar on the scope of records management procedures and controls.

THE FOUR PILLARS OF SARBANES-OXLEY RECORDS MANAGEMENT

The following records management "pillars" are Iron Mountain's recommended best practices for complying with the records management provisions of Sarbanes-Oxley. The pillars provide the demonstration of good faith, prudence, and care in retaining records that courts and regulators look for in judicial or other proceedings.

PILLAR ONE: Consistency

The most important hallmark of a legally credible records management program is consistency. Consistency gives context to recordkeeping actions as ordinary practices, demonstrating good-faith efforts. Consistency in records management means performing the same sets of processes and procedures repeatedly and without exception, regardless of media type, geography or business unit.

Companies should be prepared to produce a single set of documented policies and procedures for the retention and destruction of their business records. And they should implement common systems to govern the chain of custody for those records and to execute those policies. This helps ensure that similar records are treated in a similar manner, which is one of the important tests of a legally credible records management program.

PILLAR TWO: Accountability

Accountability is an essential, but often missing, component of responsible records management. Senior stakeholders for records management, namely legal, IT and compliance, tend to be underrepresented in determining policies and controls. Internal audit processes often ignore records management. Local accountability for policy implementation at the business unit or department level is not formalized or does not exist.

Accountability can be demonstrated in a number of ways:

- **Organization:** Leadership should take the form of a steering committee with a compliance officer and risk-management stakeholders from legal, IT, and finance. There must be a designated corporate records manager to administer the program and work with representatives from business units.
- **Certification:** Administering and documenting a certification program demonstrates a company's diligence in managing its records management program.
- **Appropriate Metrics:** Carefully track key measures and performance indicators relating to the consistent retention and destruction of paper and electronic records. Records destruction should be timely, consistent, and performed in the ordinary course of business.

PILLAR THREE: **Adoption**

Unfortunately, for many companies, records management is a discipline that starts — and ends — with little more than a carefully worded memo from the legal department. Simply creating a records management policy is not sufficient to shield a company from accusations of neglect or fraud. Instead, the company must create a true multi-faceted records management program that involves rollout and training, ongoing communications, and — to ensure compliance — comprehensive reporting and reviews. Implemented properly, the records management process becomes second nature for users, like filling out an expense report.

PILLAR FOUR: **Accessibility**

The success of a records management program often hinges on the ability to retrieve information for either business support, litigation response or compliance reasons. Courts are generally unsympathetic to a company's excuses about the difficulties of obtaining information because of technology problems or excessive workload. Federal Rule 26 of Civil Procedure explicitly requires that defendants affirmatively turnover "relevant" discovery information early in the litigation process.

To achieve optimal records management accessibility, businesses need a single, consolidated, easily accessible system for all records in all media. While it isn't feasible to create a single, universally accessible archive for all media, it is feasible — and desirable — to create a universal view of multiple mixed media archives. Implementing a common identification approach will also ensure that records are properly indexed for retrieval, even years later.

RECORDS MANAGEMENT — NO LONGER OPTIONAL

Sarbanes-Oxley has called attention to what companies should have been doing all along as prudent business practices. CEOs and boards of directors now have no practical choice but to implement compliance-grade records management programs for all forms of records - paper, e-mail, instant messaging and other e-records. Management will find that investing in the four pillars of records management (Consistency, Accountability, Adoption and Accessibility) will not only support their compliance obligations, but will also help them better manage their information assets. In the end, companies will reduce their costs and risks, and have more control over their information.

WHERE TO TURN FOR HELP?

Iron Mountain's Consulting Services have implemented legally credible, enterprise-wide record management programs for businesses across a variety of industries including banking, insurance, manufacturing, pharmaceutical and business services. Our programs range from a simple Gap Analysis, to provide a quick health check of your program, to a detailed engagement including legal research and records retention schedule development and implementation. Only Iron Mountain has the expertise, resources, proven processes and responsive service to help your organization meet the records management demands of Sarbanes-Oxley.