

# Does the Federal Depository Library Program Require Title 44 Revision to Improve Public Access to Government Information?

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We believe that the proposal by the Government Printing Office (GPO) to Revise Chapter 19 of Title 44 of the United States Code to allow the establishment of "Shared Regional Depository Libraries" will do more harm than good and alternatives that will improve public access should be considered. The GPO proposal is one of five made in the report, *Regional Depository Libraries in the 21<sup>st</sup> Century: A Time for Change? A Report To The Joint Committee On Printing (Final Draft Report, June 1, 2008)*,<sup>1</sup>

The specific proposal is:

To ensure regional depository libraries are able to provide unimpaired access to Government information dissemination products for future generations, GPO recommends... Revising Chapter 19 of Title 44 to allow a more flexible structure within the parameters of the, already library community-accepted, *Guidelines For Establishing Shared Regional Depository Libraries*.<sup>2</sup>

The *Guidelines* mentioned in the recommendation became effective in August 2007.<sup>3</sup> Although the proposal says that the *Guidelines* are accepted by the community, the draft *Guidelines* were very controversial and, though some changes were made before they were finalized, the library community did not agree on the basis for establishing cooperative agreements. (See the Appendix, "Background on the Guidelines and Report" for more details of the controversies.)

While both the *Draft Report* and the *Guidelines* have worthwhile features, the proposals for revising Title 44 and for setting up shared regional depositories are flawed and will not, we believe, protect the interests of the public. We believe that revising Title 44 of the United States Code should not be attempted without a comprehensive review to determine if and how the Federal Depository Library Program (FDLP) is fulfilling its legal charge to provide government information to all the public free of charge. Drastic changes to the structure of the current program without sufficient knowledge of how the program has changed for the good and bad during the last 30 years may be damaging to the program and difficult and costly to undo. Any revision of Title 44 should include consultation with all stakeholders, including federal depository librarians, other librarians, library and professional associations, and the public about which changes will benefit the program as a whole. Proposed changes should be vetted through the

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<sup>1</sup> *Regional Depository Libraries in the 21<sup>st</sup> Century: A Time for Change? (Draft) A Final Draft Report to the Joint Committee on Printing*, U. S. Government Printing Office Washington, D. C. June 2008, 144 pp. Hereafter referred to as the Draft Report.

<sup>2</sup> Draft Report, p. 21

<sup>3</sup> "Guidelines Establishing Shared Regional Depository Libraries," U. S. Government Printing Office, Washington D. C. August 2007. 2

authorization process, including hearings by the Joint Committee on Printing, the Committee on House Administration, and the Senate Committee on Rules.

The major flaw with the proposal to amend Title 44 to address the difficulties that regional depositories face is that Title 44 is not the cause of the difficulties. As the comments in the *Draft Report* demonstrate, the difficulties that regionals face are caused by local decisions to cut staff, limit space, and reduce budgets. The regionals are not being overwhelmed by new tangible deposits, in fact the percentage of FDLP information in tangible formats is decreasing each year. Even if it were possible to make very precise, limited changes to Title 44, it would not change the local conditions that are leading to staffing, space, and budget problems. Changes to Title 44 might even exacerbate those conditions.

According to the GPO *Draft Report* not all regional depository libraries cite staff and space as a problem. Some 60% say they have room for print and microform publications for the next five years. Some 80% say that on-line information has expanded service opportunities and that participation in statewide and regional consortia assists in increased services to the people of their region.

A standard for judging the worthiness of the proposal is to ask the question: "Will it help users by improving public access?" The *Guidelines* are clear about their low expectations. Rather than specifying that shared regionals will be created to improve service to the public, they require that services are maintained and not diminished. While the (May 2007) draft *Guidelines* said that agreements for shared regionals should address how the agreement "will improve or at least not diminish, service to the public," the final (August 2007) *Guidelines* lower the bar even further by saying agreements must address only how they "will maintain or, preferably, improve" access and service. In the final *Guidelines*, "will improve" services to the public has been reduced to "will maintain."

The *Guidelines* do not address public service or access, but "operational efficiencies for the participating libraries." While the *Guidelines* say that this is an "economical means to improve public access," they do not set any goals, plans, mechanisms, benchmarks, or targets for doing so. They merely "prefer" that there will be improvement. Helping users will be a secondary benefit at best -- if it happens at all -- and the *Guidelines* make this optional.

The *Guidelines* address the problem that regional depositories are strapped for funds, space, and staff to care for their collections of paper, microfiche and tangible electronic documents. The plight of regional depositories is spelled out in heart-breaking detail in the "Comments from the Federal Depository Library Community" section of the *Draft Report*.<sup>4</sup>

While regional libraries need to be efficient, efficiency and cost savings without the purpose of serving the public is meaningless. We agree, in principle, that it would be better for regional depositories to have more "flexibility". But we wonder what this undefined term "flexibility" means.<sup>5</sup> The proposal speaks of ensuring "unimpaired" access. A proposal that does no more than promote and facilitate operational efficiencies – and seeks to change the law to do so – risks creating a law with such low standards, that it

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<sup>4</sup> Final Draft Report, Appendix C

<sup>5</sup> "Regional Depository Libraries in the 21<sup>st</sup> Century: Regional Depository Libraries Perspective", reprinted in Final Draft Report, pp. C57-63.

will be harder, not easier, to enhance services to the public in the future.

One of the vital functions of regional depositories is the redundancy of collections assuring citizens in every geographic location that they will be able to access historical publications in multiple formats. Some librarians worry that with no limit on the number of libraries that can share collections that this could lead to one national regional therefore undermining the purpose of a geographically distributed system. Others worry about what would happen if some libraries object to the establishing of a shared regional. What would happen if an institution has two depository libraries and they disagree? What happens if one regional in a consortium like ASERL disagrees? What happens if after a shared regional is established, a library wishes to back out of the agreement? What happens to the collections of shared regionals if the agreement is terminated?

In addition, while the *Guidelines* acknowledge technological changes, they do not propose that these technological changes be used for anything more innovative than sharing paper, microform and tangible electronic resources. The *Guidelines* deal only with “tangible collections,” interlibrary loan, and document delivery. These “tangible” collections are almost static in size when compared to the growth of government information in digital formats. In 2004, only 14% of government information was being deposited in Federal Depository libraries and one estimate was that, by 2005 only 5% of FDLP materials would be tangible<sup>6</sup>. The growth of tangible collections is decreasing.

It seems to us that the most important development in government information is the shift to digital information. And yet, the only mention of technology in the *Guidelines* is as a means for sharing tangible resources:

In recent years, technological innovations and the online information environment have made it possible for a number of depository libraries to participate in multi-state collaborations for rapid interlibrary loan and other services. Technological innovation and the online environment have also made it possible to develop models for sharing resources and responsibilities between regional depositories in different states and the selective libraries they support. These guidelines have been developed to assist libraries in planning for single state and inter-state shared regional libraries.

There is no mention in the *Guidelines* of the Internet, the web, online access, born digital materials, or digital distribution of information. Digital deposit is not explained in these *Guidelines*. While it is necessary to have policies that deal with paper, microform and tangible electronic documents, the proposal’s narrow focus results in outcomes, which will, we believe, cause serious problems for federal depository libraries.

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<sup>6</sup> Remarks of Superintendent of Documents Judith C. Russell, Depository Library Conference in Washington D.C. October 18, 2004. Administrative Notes, 11 p.10

First, the proposal will reduce the number of copies of tangible government documents in the Federal Depository Library Program by allowing existing regionals to house partial collections outside of their own state (segmented by “date and Superintendent of Documents classification ranges” according to the *Guidelines*). This will endanger long term preservation of those titles because it violates one of the principles on which the FDLP is based: that the existence of many copies ensures against loss and damage.<sup>7</sup>

Kathleen de la Pena McCook and Alma Dawson in their article “Rebuilding Community in Louisiana After the Hurricane of 2005” point out the dangers of depending solely upon electronic materials. Disasters have left millions of people without access to digital information, sometimes for long periods.<sup>8</sup>

Second, it will mean that some users will have to wait longer for documents. Users who could once rely on a copy from their state’s regional will in some cases have to rely on interlibrary loan from out of state. Third, amending Title 44, in a way that will effectively reduce services and collections, will set a precedent for other reductions in services and collections.

Fourth, reopening Title 44 exposes it to amendments that will weaken the fragile mechanisms that still exist to preserve government information for long-term, free, public access. For example, it may threaten the Essential Titles List”

Fifth, amending Title 44 without acknowledging the “digital shift”, and without addressing how federal depository libraries are and should be using digital technologies to enhance preservation and access of digital government information is shortsighted and unwise. While “GPO does not intend to open the door to sweeping revisions of Title 44 or Chapter 19”<sup>9</sup> GPO would have no way to prevent wholesale changes to Title 44 after legislation is submitted to Congress.<sup>10</sup>

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<sup>7</sup> The regional depository library community stressed that even without trimming collections as proposed by the Final Draft Report, “It cannot be assumed that any of the 52 regional depository collections are complete. Regional depository libraries suffer losses through use, theft, and catastrophic events such as fire, flood or weather events.” Final Draft Report p. C58

<sup>8</sup> de la Pena McCook, Kathleen and Alma Dawson “Rebuilding Community in Louisiana After the Hurricane of 2005” in *Reference and User Services Quarterly* 45:4 (2006) pp 18-22

<sup>9</sup> “What Will the Future of the FDLP Look Like?” Richard Davis, Before the Joint Meeting of ALA and GODORT Legislation Committees Deliberative Dialog on the Future of the FDLP at the American Library Association 2008 Annual Conference in Anaheim, California June 28, 2008 Administrative Notes, 07-08, p. 8

<sup>10</sup> There have been repeated challenges to GPO and its authority over the last 25 years. See “Public Printing Reform: Issues and Actions” by Harold Relyea, Congressional Research Service, Library of Congress (Updated June 17, 2003) and “Information Management Electronic Dissemination of Government Publications” GAO-01-428, Appendix

Michael Gorman, Past President of the American Library Association expressed the need to weigh the benefits of changes to the depository system with the costs of those changes:

“The federal depository system has been a successful way of ensuring that all citizens have access without charge to the government information for which, as taxpayers, they have paid. I am unalterably opposed to any changes in that system that makes it difficult or impossible to gain access to current and past government documents without having monetary and technological resources that are not available to all. If the poor or the technologically disadvantaged are denied access to government information, American democracy is weakened. I am not opposed to rational change and certainly not to any change that increases access but I am concerned about limitation on access, and in particular, to the withdrawal of previously available government information. If the proposed shared depositories result in less access to current and past government information, I am against them.”<sup>11</sup>

As Mr. Gorman points out the “digital divide” still exists in America and policies that diminish access to paper resources will lock out those without good access to digital tools.<sup>12</sup> There is also inequality in providing access to non-English language federal publications. For example many Spanish language publications are not part of GPO Access or in the paper distribution system. GPO has made progress in providing access to the digital versions through cataloging and providing URLS, but access to the paper is still needed by non-English speaking users.

## **Alternatives - the Bigger Picture**

While we disagree with the proposal to amend Title 44 to create shared regional depositories, we do believe that there are alternatives that benefit the whole depository library program and those should be pursued:

1. Gather more information in order to make good decisions about the future of the whole federal depository library program, not just about regional depositories and “tangible” collections.
2. Identify which of those needs require changes to Title 44 and which do not. Identify which of those needs depend on others being dealt with first (sequencing) and which can be dealt with alone.
3. Prioritize the changes, enhancements, and projects needed and determine how to accomplish those goals.

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<sup>11</sup> Email from Michael Gorman to Bernadine Abbott Hoduski, September 23, 2008

<sup>12</sup> Holmes, Allan, “Home Broadband Adoption, The Pew Internet and American Life Project”, July 2008 and “E-Government’s Tough Nut”, Tech Insider, NextGov, July 3, 2008.

## Major Issues

### Research Needed For Good Decisions

The Federal Depository Library Program has served the nation well and before we advocate irrevocable changes to its structure we need an in-depth study of its structure and effectiveness. Some concerns that should be addressed with new research and analysis of data collected by GPO and libraries since the passage of the 1962 Depository Library Act include:

1. Is the federal depository library program fulfilling its legal charge of providing government information to all of the public free of charge? Is the program providing access to most of the publications issued by the government, if not, why not and how can access be improved?
2. How has the lack of paper publications affected service to the public? As selective depositories receive fewer publications in paper, is there a greater demand for regionals to provide paper to selectives and their users?
3. How have the costs passed on to libraries as part of a more electronic federal depository program affected library services and collections?
4. How have users of government information been affected by the availability of government information in digital formats, particularly in those cases where the publications are only available over the Internet?
5. How have library policies, such as the amount of time patrons are allowed to spend on library computers, access and cost of printing, and availability of technical support for the public affected government information users?
6. As information delivery and the library catalog evolves, what is the best long-term strategy for expanding and maintaining the *Monthly Catalog of US Government Publications*?
7. What is the size and physical condition of the paper and microform collections? What needs to be done to preserve those publications? What will it cost?

### Recommendations to Improve the Federal Depository Library Program

#### Congressional Audit of the Federal Depository Library Program

The American Library Association should ask Congress to direct the Government Accountability Office and/or the Library of Congress Congressional Research Service Office to audit the current Federal Depository Library Program to determine how the substantial changes made over the last 30 years have changed the program.

#### GPO Inspection of All Regional Depository Libraries

A school librarian, when told that regionals are considering dropping their status, exclaimed “But being a regional is a sacred trust.” As she put it so well the depository program is built on trust among libraries, the federal government and the public. Regionals agreed to take on the responsibilities of maintaining a back up collection, including the publications entrusted to them by selective depository libraries. In return a large part of the Depository Library Program budget went to helping regionals build their collections. If there were not enough copies of a publication for all depositories selecting that item, only regionals got them. Regionals receive publications in several formats while selectives

are denied choice.

At the Depository Library Council meeting in DC in October, 2008 it was reported that at least ten regionals are considering withdrawing as regionals. It is not clear if those libraries would also drop their depository designation or become selectives. Since we do not know the names of those depositories or the states they serve, it is difficult to understand the situation. Some questions that need to be answered are what states do they serve, is there another library that would take over the regional responsibilities, are there selective depositories that would be willing to share the burden by accepting part of the collection in shared housing agreements, and is there other assistance available to help that regional do its job?

In order to evaluate the effectiveness of the regionals, an inspection of all regionals needs to be conducted during 2009. The inspections should start with those ten libraries that have indicated that they may drop their regional status. The regionals need to prepare a self study, if they have not done so already. GPO also needs to interview all of the selective depository libraries in those states in order to determine their level of satisfaction with the services of the regionals, their willingness to assist the regional and whether they would be willing to step in to take over the responsibilities. Without this kind of in-depth information, it is not possible to make a good decision about the future of depository services in those states.

#### **Update State Plans for Depositories and Develop a National Plan**

Most states have state plans concerning the depository libraries in their state. Many of those plans are sorely out of date. A national plan needs to be created taking into account the needs of all states and all depository libraries.

#### **Save Agency Web Sites and Their Publications**

The Government Printing Office, the National Archives and Records Administration, the Library of Congress and the library community should work together to save agency web sites and the publications available through those sites. Congress should fund this endeavor.

Not all versions of on line publications are being kept by the issuing agency, GPO or depository libraries. Sometimes a search for an electronic publication takes you to a catalog record with a PURL that takes you to the current edition even though the catalog record is for the older edition. In some cases some federal agencies are replacing the older publications and reusing the URL with no indication that there has been a change in the publication. GPO records do not indicate a change either. The issuing agency does not indicate on their web site whether the older edition has been saved.

A New York Times article, dated November 25, 2008 reveals that out of five White House news releases detailing the number and names of countries in the "Coalition of the Willing" only three are left on the White House web site. At least three of the five were altered after initial release even though the dates remained the same and the releases were presented as being the original. This example of history being altered adds urgency to the need for the depository library program to preserve these publications as they are issued. Libraries have always been and should continue to be the long term protectors of publications.

## **Inventory All Depository Collections**

The Government Printing Office and the depository library community should conduct a complete and continuing inventory of all government publications held by all depository libraries, not just the regionals. Regional collections vary in age, completeness, scope, and physical condition. Regionals came into existence as a result of the 1962 depository act and the makeup of their collections depends on whether they were depositories before 1962, what they received, what other depository libraries in their state entrusted to them and what they received directly from publishing agencies. It is important to inventory all depositories because some of them are former regionals, some have selected a large portion of available documents and others have specialized collections, such as law and science.

## **Catalog All Government Publications**

GPO in cooperation with the Library of Congress, the national libraries, CENDI<sup>13</sup> and the depository library community should cooperate to assure a complete catalog of all government publications. GPO under 44 U. S. C. 17 is required to produce a catalog of all government publications. GPO, recognizing the need for MARC based cataloging records for publications issued before 1976 has contracted with Progressive Technology Federal Systems to digitize some 600,000 cataloging/shelf list cards into the MARC21 format over a four to five year period. These records will become part of the on-line Monthly Catalog. Since most of these records will not provide the level of information provided in post 1976 records, GPO will need the money and staff to enhance these records.

GPO is not the only agency creating MARC based records for federal publications. These records are important because GPO did not catalog many of these publications even though they were distributed to depository libraries. Federal agencies, private publishers, and depository librarians are creating records. GPO is able to access, upgrade and include some of these records into the on-line monthly catalog but they need a plan to incorporate most of them.

The effort to produce a complete catalog will help GPO and libraries identify publications that are not getting into the program. This includes publications in languages other than English. GPO needs a system for bringing these “fugitive” publications, no matter what their format, into the depository library program.

## **Develop Best Copy Collections**

Once an inventory is complete the library community can identify the best and last copies of publications. Sometimes that best or last-known copy will be a digital copy. If so, that digital copy must be protected against being corrupted or lost. During certain publishing periods, such as WWII the paper used was highly acidic and those publications are rapidly disintegrating. It is urgent that those publications be among the first to be digitized and that the best copies of them be preserved. All depository librarians working together should assure that certain historically important series be evaluated and that steps be taken to assure that libraries in every region have a complete, carefully preserved paper set. For example while other libraries were getting rid of their paper-bound *Congressional Serial Set*, Utah State University built and preserved a complete set. The Senate

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<sup>13</sup> CENDI is an interagency working group of 13 U. S. federal agencies including GPO, LC, the national libraries, NARA, NASA, DOE, DTIC, NTIS, USGS and the National Science Foundation.



Library, discovering that 19 of their volumes were missing, found them and had them bound to match the set. Having an inventory made it possible for these libraries to complete their paper bound set and preserve it for posterity.

### **Guarantee Authenticity of Government Publications**

GPO, working with publishing agencies and the library community, should build on GPO's work of authenticating government publications. It is important to include methods of identifying versions and information that is no longer current

The possible merging of regional library collections across state lines could be troubling for users of selective depository libraries who need access to the official paper editions. There are two key issues involved.

First, it is important to law researchers to have access to the original paper version of certain documents in order to meet the needs of the courts and the citation rules followed throughout the profession. Serious legal research and scholarship, as well as the common law, depend on a concrete, verifiable, permanent record to support citation. Certain paper titles that are very important to legal researchers and the general public were taken out of the distribution program for selectives and made available only to the regionals. These include the bound *Congressional Record* and the bound *Serial Set*. Although these titles are available in paper for purchase through the GPO Sales Program, they are prohibitively expensive, and most selective depository libraries cannot afford to buy them. In addition, most academic law libraries have only participated in the FDLP since 1978<sup>14</sup> and therefore may not have older historic congressional and other federal legal resources in their depository collections.

Second, since only paper or microform legal materials are accepted to meet the needs of the court and legal citation rules, unauthenticated, insecure, ephemeral digital surrogates do not serve research and legal needs at this time. GPO has begun to use technology to authenticate the online Public and Private Laws of the 110<sup>th</sup> Congress using digital signatures and Public Key Infrastructure. Beginning with the 111<sup>th</sup> Congress, GPO will similarly authenticate House and Senate bills. This is a step in the right direction. However, no other online legal titles today are capable of digital authentication, with the exception of the 2009 President's Budget which GPO authenticated, and therefore cannot be relied upon as legal authority. So while digital access copies enhance library patrons' access to government materials, they do not suffice. Having a single regional several states away would actually reduce access for those patrons who need ready access to the authentic documents. Therefore, any dramatic reduction in the number of regionals with comprehensive collections should only be undertaken after careful consideration by all of the parties involved, including selective documents librarians and library users.

### **Identify Infrastructure Needs of the Federal Depository Library Program**

GPO working with the depository library community should identify the essential infrastructure needs of the Federal Depository Library Program that will assist libraries in improving public access and services. Infrastructure includes means to accept digital deposit, equipment for storing and accessing tangible government documents, and equipment for transferring publications in microform to a digital format.

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<sup>14</sup> An act to amend Title 44 United States Code, to provide for the designation of libraries of accredited law schools as depository libraries of government publications, Public Law 95-261, April 17, 1978, 92 Stat. 199

GPO needs to complete work on their electronic publishing system. The system needs to include updated software and a mirror site for GPO Access. The system should include electronic services for capturing born-digital materials, capturing web sites, migrating formats as needed for preservation, and techniques for creating, capturing and preserving metadata.

### **Develop a Program to Assist New Depository Librarians**

GPO encouraged the libraries of Indian colleges to join the program and five of them have. Indian college librarians and other new depository librarians should be assisted with a specialized training course geared to new librarians. Mentors should be assigned to each new depository librarian. Funds should be found to send them to training classes and to bring a master documents librarian to their library for at least a week of one on one training..

## **Policy Issues**

### **Choice of Format**

Although some “publications” are not suitable for paper and ink delivery, many still are. When a publication is available to agency staff and their immediate clientele in paper, depository libraries should have the opportunity to receive those publications in paper. All depository libraries should be able to also select all publications in digital format.

Many current and future clients of depository libraries need paper copies of publications. In July 2008, the Pew Internet Project estimated that 27% of adult Americans are not internet users. These nearly 61,000,000 Americans have a median age of 61 and are concentrated in rural areas. According to Pew, only 10% of this population is interested in connecting to the internet. Should they be denied ready access to government information simply because the internet is not a part of their lives? Millions more are dial-up users. The slow speed of dial-ups can make a web-based report inaccessible due to download times.<sup>15</sup>

A recent study of Internet services in Montana “...demonstrates that the rural and remote regions of the state are under served and falling behind.” Ellie Hill, director of a homeless shelter in Missoula said “It is clear that the poor, the elderly, the disenfranchised and our rural Montanans do not have equal access to e-government participation in their community and their own democracy. Their voices need to be heard.”<sup>16</sup>

Much paper has been eliminated from the program, not because it is better for the user, but because it saves money for the government. The Congressional appropriations committees have insisted each year on eliminating more and more paper. At least one member of Congress advocates eliminating the

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<sup>15</sup> Home Broadband 2008 and American Factfinder, 2006 ACS Fact Sheet US

<sup>16</sup> Helena Independent Record, November 25, 2008 Final Draft Reporting on study by Montana Common Cause and Professor Richard S. Wolff of Montana State University, 2008

paper version of the *Congressional Record* for both members of Congress and libraries. We would oppose any change to 44 U. S. C. 1900 denying depositories choice of format. Every year depositories can choose fewer and fewer publications in paper. Eliminating paper entirely would disenfranchise millions of government information users.

### **National Back Up Library of Government Publications**

A national back-up library of government publications needs to be established. Such a library should be required by law to keep copies of all government publications in multiple formats. This library should be authorized to preserve publications in all formats, fill in the gaps in the collection, provide inter library loan, reference, assistance to selective depositories in disposing of publications and coordinate training of depository librarians.

NARA accepts the GPO cataloged publications as a record set, but that set lacks many publications and others have been damaged and NARA is not filling in the gaps. The NARA Library is no longer treated as a by-law recipient but as a selective so it does not get paper copies of such publications as telephone directories. The Library of Congress receives multiple sets of government publications but decides on whether they will be kept, cataloged and preserved. Other national libraries keep and preserve federal publications that fit the mission of their agency.

### **Funding the Federal Depository Library Program**

The library community must convince Congress that access to government information is a fundamental right of citizenship and that the depository library program was established to fulfill that right. We must also convince Congress to fund the program at a level that will make it possible for every citizen to benefit from the program. The arguments for more money and how it will help improve the infrastructure of the program needs to be developed. A marketing campaign run by the library associations needs to be developed. We need something like the read posters promoting the value of depository libraries.

Establishing a permanent endowment fund for depository libraries needs to be explored. This fund could be used to assist libraries in preserving their collections.

We need to be on the alert for any effort to start charging for access to the GPO Access System. Providing free access through GPO has encouraged other agencies to provide free access to their electronic publications and data bases. Even though the Joint Committee on Printing, the Congressional Appropriations Committees and GPO agreed in the middle 1990s that GPO Access would be free to libraries and the public, the current law still allows GPO to charge.

The library community needs to launch a plan to encourage Congressional committees to encourage federal agencies, who do not provide their digital information through GPO Access, to do so. Some agencies are authorized or directed by Congress to charge for access to their digital publications.

### **Preservation and Access to Depository Collections**

GPO, publishing agencies and the depository library community working together should be responsible for long-term preservation and access to government information in all formats. In recent years, GPO has assumed the role that once went to depository libraries. In a 1998 "transition plan," GPO declared that, "In an electronic FDL, the responsibility for ensuring long-term access shifts from

the depository libraries to the Superintendent of Documents (SOD). In the electronic FDLP, connections to electronic access services operated under the authority of the SOD replace the geographically-dispersed collections of books and microfiche.”<sup>17</sup> As recently as June 2008, Richard Davis, the Acting Superintendent of Documents, repeated this assumption: “There has been a paradigm shift in preservation of depository materials. Regional depositories have the responsibility for permanent public access in the tangible publication environment. In the online information environment, GPO has assumed primary responsibility for ensuring content availability and permanent public access, the requirements for which are included in GPO’s Federal Digital System.”<sup>18</sup>

GPO, as sole source of electronic information might have seemed appropriate 15 years ago when the GPO Access Act was passed, but much has changed. There are two problems with this position. First, while the GPO Access Act<sup>19</sup> required GPO to "provide a system of online access" and to "operate an electronic storage facility for Federal electronic information," it did not change the roles of the depository libraries. Second, many libraries are developing institutional repositories and other digital collections. In a survey in August of 2005, 85% of responding Federal depository libraries expressed "high" or "very high" interest in being able to "pull" content from GPO and 65% were interested in

GPO "pushing" digital content to depository libraries. In the current survey of Regionals, 52% expressed a willingness to receive digital files on deposit.

Having only one source of any information in any format creates a danger for public access. For example, the 1994/1995/1996 *Congressional Record* is missing from the GPO Access system. In April of 2008 librarians asked about the missing years and GPO responded “The CR content for 1994/1995/1996 is temporarily unavailable and we are working to correct this and have it back up as soon as possible.”<sup>20</sup> Eight months later the CR is still not available from GPO, but it is available from LC’s Thomas. Redundancy is important!

As we look at new models for Federal Depository libraries, it is time to implement digital deposit as a crucial back-up system. It is time to drop the now-old model of relying on GPO having primary responsibility for ensuring content and permanent public access. Since commercial and open-source software for managing digital collections is widely available it is the right time to determine which models will achieve long-term preservation and access.

Government publishing agencies play an important role in the preservation of digital publications and information. The E-Government Act of 2002 section 207 (f.2.a.ii) requires agencies to “establish a process for determining which Government information the agency intends to make available and accessible to the public on the Internet and by other means.” but does not require them to assure permanent public access to this information, even though the requirement was in the original bill. If

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<sup>17</sup> The Electronic Federal Depository Library Program: Transition Plan, FY 1996-FY1998.

<sup>18</sup> Davis. 2008, p. 6

<sup>19</sup> Government Printing Office Electronic Information Access Enhancement Act of 1993, 107 Statute 112; 44 U. S. C. 4104-4104

<sup>20</sup> Message on the GPO FDLP List as of April 25, 2008

agencies were required to provide their information to and through GPO Access permanent access could be ensured.

The public assumes that someone in the federal government is preserving federal web resources, particularly during a time of Presidential transition, but this is not true. New administrations in the past have eliminated or changed much on agency web sites. Since the National Archives and Records Administration decided not to do a 2008 end of year web harvest, the University of North Texas partnered with the Library of Congress, Internet Archive and the California Digital Library to conduct a harvest to preserve the current administrations' web publications for the depository library program. Since so much of government information is now only available over agency web sites it is essential that Congress require that GPO, NARA and LC cooperate to preserve this information.

### **The American Library Association Needs to Do Its Own Examination of the Federal Depository Library Program**

A lot has happened since the passage of the 1962 Depository Act to improve public and library access to government information. Agencies that had not been part of the program before 1962 are now providing their publications, including maps. GPO is providing electronic cataloging records using library standards and the MARC format. More and more publications are being made available electronically by GPO and other federal agencies. All depository libraries are no longer required to take and keep everything that GPO sends them. Only libraries that have agreed to be regionals must take and keep everything. GPO has brought agency publishers, depository librarians and staff of GPO together twice a year to share information, educate each other and plan for the future.

The library community is making changes in how they handle government documents. Some libraries have merged documents departments with other departments, some have eliminated documents specialists assuming that everyone can assist the user, some have assumed that everything is electronic and have cut back drastically on their paper selections, some are assuming that the government and other libraries have the publications so they no longer need to keep them, some have decided that other library services are more important and want the documents space for other activities such as computer access rooms. Sometimes these changes have happened in spite of the documents librarians' arguments that the all-electronic world is not here yet and that electronic information is neither secure nor permanent, therefore necessitating paper back up collections. They have also argued that the broad scope of government information still requires document specialists who understand the content and can assist the casual user and the researcher.

Just as the changes in how government produces, catalogs, and disseminates government information needs to be examined so do the methods used by libraries to house, protect and provide that information free to the public. ALA needs to conduct its own evaluation of the effectiveness of the depository library program and develop a white paper and strategic plan for a viable Federal Depository Library Program good for another 50 years.

### **How Do We Persuade Congress and the Administration that the Federal Depository Library Program Benefits Everyone In America?**

The library community needs to educate the new Presidential Administration and the Congress about the value of the Federal Depository Library Program and the need to fund it so it can do its job. This includes convincing them that the depository program benefits all of society because it provides

widespread free permanent public access to government information in many formats. They need to understand that their constituents still need libraries, that everything is not on the Internet and even if it were, many users would still need the expert assistance of librarians to find what they need in the vast internet world. They need to understand the program faces many dangers, including deteriorating paper collections, the cost of electronic equipment and infrastructure, cost of storage and preservation of multi format collections, and the costs of serving a public with varying needs.

The library community needs to educate the Administration and Congress as to the scope of the depository library program, which includes several national libraries, other government agency libraries, as well as academic, public, law, and special libraries. They need to recognize that when an agency library is downsized or eliminated, other libraries have to pick up those services. Other depository libraries may not be able to serve new clients because they do not have all the agency's publications, may not have the specialized expertise in the agency's subject areas or the staff.

## CONCLUSION

Before the American Library Association supports any proposal to change Title 44, there needs to be a clear understanding, backed up by data, of how the current system falls short and what changes, if any, are needed to ensure a robust Federal Depository Library Program in the 21st century. We strongly believe that improving public access to government information is the goal because an informed public is critical to our democracy. Clearly, we need to build allies within Congress to support improved funding for the FDLP, as well as any changes to the program. Failure to educate members of Congress and to cultivate their support could result in changes that will fail to serve the information needs of the public.

## Update

*Regional Depository Libraries in the 21st Century: A Preliminary Assessment*<sup>21</sup> was transmitted to the Joint Committee on Printing on January 6, 2009. This report is a very different document than the *Draft Report*. The *Final Report* is 9 pages long with 3 recommendations, the *Draft Report* was 21 pages, with 2 pages of references and 116 pages of appendices and 5 recommendation.

The letter of transmittal<sup>22</sup> describes this as the final report and states that it supplants the June draft. The recommendations are markedly different from those articulated in the *Draft Report* and worth noting here:

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<sup>21</sup> Regional Depository Libraries in the 21st Century: A Preliminary Assessment U. S. Government Printing Office Washington, D. C. January 2009. [http://www.fdlp.gov/component/docman/doc\\_download/564-regional-depository-libraries-in-the-21st-century-a-preliminary-assessment?ItemId=45](http://www.fdlp.gov/component/docman/doc_download/564-regional-depository-libraries-in-the-21st-century-a-preliminary-assessment?ItemId=45) Here after referred to as the Final Report.

<sup>22</sup> Letter transmitting the final report to the Joint Committee on Printing dated January 6, 2009 [http://www.fdlp.gov/component/docman/doc\\_download/565-letter-transmitting-the-final-report-to-the-joint-committee-on-printing?ItemId=45](http://www.fdlp.gov/component/docman/doc_download/565-letter-transmitting-the-final-report-to-the-joint-committee-on-printing?ItemId=45)

“To ensure regional depository libraries are able to provide unimpaired access to Government information dissemination products for future generations, GPO recommends to the JCP:

1. Support continued appropriations for GPO’s initiative to create machine-readable bibliographic records for the tangible collection of pre-1976 depository publications to ensure its completion in a timelier manner;
2. Undertake a more in-depth look at the organizational, financial, and technological issues affecting the FDLP in its entirety, regionals and selectives alike, and analyze the results to develop recommendations for policy and/or statutory revision that will provide for effective operation of the FDLP in the 21<sup>st</sup> century; and
3. Continue to support GPO’s initiatives to authenticate the Government’s digital information dissemination products.”

Gone are recommendations to open Title 44 and to approve the Kansas/ Nebraska shared regional proposal.

The American Library Association needs to address the issues affecting the Federal Depository Library Program. We stand by our conclusion and hope that the Association will address these issues seriously in order to preserve this successful program.

## Appendix

### Background on the Guidelines and Report

In 2006 the Government Printing Office (GPO) issued draft guidelines for regional depository libraries to share collections and services. The Superintendent of Documents initially asked library groups to provide comments on these guidelines with the understanding that a public commentary period would follow. The library community did not agree on the basis for establishing cooperative agreements.

The American Library Association Government Documents Round Table (GODORT) and the ALA Committee on Legislation Government Information Services Subcommittee (ALA/COL/GIS), the Special Libraries Association (SLA) and the American Association of Law Libraries (AALL) agreed that two issues were of particular concern. The first one was omitting the Joint Committee on Printing in the process of authorization of agreements. The draft guidelines allowed Regional librarians to make agreements across state lines where each library would specialize in given subject areas and therefore be able to send publications from the non-chosen subjects to other regional depositories. Regionals are charged with providing backup services to selective depositories in order to meet the needs of all the people in their state. Once agreements cross state lines, the senators who sponsored the regional depositories more than likely would want assurances that their constituents would continue to receive all the services promised under the law. Since the four library groups believed these agreements are an exception to 44 U. S. C. 19, they argued for the inclusion of an exemption from the Congressional Joint Committee on Printing.

The second issue of concern was the vague language used regarding the selective depositories role in the development of a shared regional agreement. Many librarians in the selective depositories were concerned that they would only be consulted in the process and would have no power to change or stop these agreements. Since depository libraries include academic, public, federal, court, law, medical, state and other specialized libraries and are represented by a variety of library associations, it was agreed that selective depository librarians need a stronger voice in the development and approval of such agreements than which seemed to be indicated in the draft guidelines.

The concerns outlined above were not supported by the American Library Association's Academic and Research Libraries Division (ACRL) and the Association of Research Libraries (ARL); instead they supported the proposed guidelines as written.

So far two proposals for shared regionals have been developed. The first is the proposal from the states of Kansas and Nebraska. The second is the proposal from the Association of Southeastern Research Libraries (ASERL).

The Association of Southeastern Research Libraries, the "Collaborative Federal Depository Library Program" proposed by ASERL caused the most concern. It would create "'centers of excellence' that would ensure we have multiple, complete retrospective collections of Federal publications by subject area distributed throughout the region, supported by subject experts who are able to provide sophisticated, in-depth reference services in the areas of their specialization." 16



ASERL is a regional consortium of research libraries representing the 37 largest academic libraries in ten Southeastern states, including 11 regional and 26 selective depositories. As of 2008 ASERL is still proposing “centers of excellence” but no longer a ten-state regional depository.

In response to these two proposals, GPO issued guidelines with the provision that “Proposals for shared regional collections and services involving two or more states will require approval of the Joint Committee on Printing because they involve the sharing of resources and responsibilities outside the jurisdiction the libraries were originally designated to serve.”

Based on the issued guidelines, the Public Printer requested the Joint Committee on Printing’s approval to designate the libraries at the University of Kansas and the University of Nebraska-Lincoln as shared regional depository libraries.

The JCP letter of February 27, 2008 replied

“While Congress has given the Joint Committee broad authority over operations of the Government Printing Office (GPO), which administers the Federal Depository Library Program (FDLP), that authority has limits. JCP turned to the Library of Congress Congressional Research Service for its opinion and “CRS concluded that neither the language nor legislative history of 44 U.S.C. 1914 supports GPO’s interpretation of the statute. After careful review, the Joint Committee finds the CRS analysis persuasive; if the Public Printer may not authorize shared regional depository libraries under 44 U.S.C. 1914, the JCP cannot approve such action.”

The JCP continued

“Although the Joint Committee cannot approve the Public Printer’s request, it is nonetheless concerned that this request to share resources and responsibilities may signal that growing challenges confront regional depository libraries in maintaining and supporting effective public access through the FDLP. Accordingly, the Joint Committee directs you, in consultation with all concerned elements of the library community, to undertake a thorough examination of the current state of regional depository libraries nationwide. The purpose of the study will be to evaluate the extent to which public access via the FDLP may be impaired by current or projected organizational, financial, technological, or other conditions affecting these institutions. You are further directed to provide the Joint Committee with your finding on or before June 1, 2008, together with any legislative recommendations for improvements to the program that you may choose to offer.”

GPO issued its draft report “Regional Depository Libraries in the 21st Century: A Time For Change?” to the Joint Committee on Printing in June of 2008 with five recommendations. ALA supported additional funding for GPO to create machine readable bibliographic records for pre-1976 publications; revising Title 44 Chapter 19 section 1912 to establish shared regional depository libraries; approving the Kansas/Nebraska shared regional proposal with the understanding that it is only one of a number of possible models; providing funds to regional depositories for the storage and preservation of depository publications; supporting a more in depth study of the entire depository library program.

Richard Davis, Superintendent of Documents reported on the regional study at the Depository Library Council meeting in Washington D. C. in October of 2008.

“I want to take a moment to speak on the Study on the Conditions of Regional Depository Libraries. As we all know, The FDLP operates under the authority and mandates of Title 44, U.S. Code. The existing structure of selective and regional depository libraries dates back to the Depository Library Act of 1962, which established regional depository libraries. Over the years, there have been attempts to revise Chapter 19, and variations within the regional/selective model have been implemented. GPO was subsequently directed by the JCP to conduct a study on the conditions of regional depository libraries. The purpose of the study was to evaluate the extent to which public access to Federal depository resources may be impaired by current or projected organizational, financial, technological, or other conditions affecting regional libraries.”

“After consultation with and input from depository libraries, in June 2008, GPO released a draft report entitled, "Regional Depository Libraries in the 21st Century: A Time for Change?" and made it available for depository comment. All comments were reviewed, and a final report of findings was created. This report is currently going through final review and approval by senior management at GPO, and we plan to submit it to the JCP soon after this meeting, and then share these findings along with their approval for specific actions. I don't think there will be any surprises here. We all recognize what the challenges are from the initial report, and we need to take steps to address them not only for regionals, but for selective depository libraries as well.”

Regional Depository Libraries in the 21st Century: A Preliminary Assessment was transmitted to the JCP on January 6th 2009. The final report supplants the draft version.

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