

Recommendations: The Federal Depository Library Program & Title 44 Response to ALA-WO & COL from GODORT: August 31, 2017

GODORT's *FDLP / Title 44 Principles* are recommendations that seek to strengthen the promise of long-term access to federal information by building on the existing strengths of the Federal Depository Library Program (FDLP). These *Principles* focus on Chapter 19 but also address policy codified in other parts of Title 44, including Chapters 17, 35, and 41.

These recommendations are largely compatible with the *Draft Title 44 Modernization Recommendation Concepts* distributed by WO on 8/9/17. A detailed response to that document follows the *Principles*, along with a chart identifying specific sections of Title 44 addressed in this document. We see the majority of these *Principles* as supportive of activities authorized under current law, and in many cases already underway as part of existing GPO initiatives. If there is an opportunity to strengthen and clarify these provisions, we believe it is the best interest to do so.

Summary: FDLP / Title 44 Principles

1. Permanent no-fee public access to federal information can be accomplished through continued partnership between GPO and libraries.
 - a. Update the definition of "government publication."
 - b. Guarantee free access and privacy protections for users of federal information.
 - c. Improve GPO's ability to partner with depository libraries.
 - d. Maintain the regional-selective depository model with minor changes.
2. The FDLP is well-positioned to play a significant role in the long-term preservation of federal information.
 - a. Make all information dissemination products managed by GPO available to collect and preserve.
 - b. Create a role for depository libraries to accept deposit of digital federal information.
3. Improvements to broader federal information policy will facilitate better access and more reliable preservation.

Details: FDLP / Title 44 Principles

1. Permanent no-fee public access to federal information can be accomplished through continued partnership between GPO and libraries.

The core strength of the Federal Depository Library Program (FDLP) is that it is a network of libraries of all types, including academic, law, public, federal, and state libraries, working individually and in partnership with GPO and other program participants to accomplish the broad goal of ensuring public access to federal government information in all formats. The changes we have identified will strengthen the network and modernize the scope of its purview to reflect changes in how the government informs the public.

We note that any privatization of federal government information dissemination or preservation is antithetical to the public right to access this information, and would also reduce the cost-effectiveness of the current system in providing access to federal information for agencies and departments.

1.a. Update the definition of “government publication.”

The scope of Chapter 19 should be updated to include information, regardless of form or format, that a federal agency publishes, discloses, disseminates, or makes available to the public. This change reflects the ways in which government informs the public, and makes clear the government’s responsibility to ensure access to this information. This expanded definition would be interpretable to include audio and video content, databases, information from FOIA reading rooms, and other means of public information dissemination used by federal departments and agencies.

Records under the purview of NARA continue to be as such; this update addresses only public information, and reflects the government’s responsibility to ensure long-term access to all of its information dissemination products.

1.b. Guarantee free access and privacy protections for users of federal information.

While GPO does not currently use its Chapter 41 authorization to charge fees for access to its digital repository outside of depository libraries, this outdated provision stands in opposition to the mandate to provide public access. All digital products, including ebooks and databases, and their accompanying metadata should be freely available to access and download, and not subject to cost recovery under Chapter 17.

GPO’s online tools and services are subject to the same privacy protections in place for other federal web services, a fact that can be clarified in its governing authority. To further protect user privacy, users should be notified of any web tracking that is essential for the functionality of the tools and databases, and have the option to opt out or leave the website. These privacy measures are in alignment with ALA’s Bill of Rights (see: <http://www.ala.org/advocacy/intfreedom/librarybill/interpretations/privacy>).

1.c. Improve GPO’s ability to partner with depository libraries.

Depository libraries create metadata, digital surrogates, training tools, and other valuable resources on a daily basis. Currently, the law does not permit GPO to accept this content and incorporate it into its systems without providing something of value in exchange. Providing GPO with gift authority will enable the agency to set standards to ingest metadata and digital surrogates created by partner libraries into its repository without the current quid pro quo requirement. This provision will help partnerships between GPO and depository libraries to result in expanded public access.

While retention does not ensure preservation, it is the basis for all preservation activities. GPO’s coordination of retention agreements in its existing FIPNet preservation stewardship program could be enhanced with grants or in-kind support, particularly for description and conservation for print documents. Giving GPO grant-making authority would provide the agency leverage to work to balance inequities in existing practices.

1.d. Maintain the regional-selective depository model with minor changes.

The principle at the heart of the FDLP is simple: sharing responsibilities across a network of libraries accomplishes what a single government agency or library alone cannot. Regional depository libraries have agreed to permanently retain their collections for the benefit of all

selective depository libraries, other libraries in their district and state, and the general public within their state. They also ensure the appropriate disposition of government publications, which are public property, through oversight of the discard process. Both of these responsibilities are foundational to the effectiveness of the distributed network. Regional depository libraries also play a crucial role by providing guidance and other forms of support to libraries within their state, along with reference and interlibrary loan services.

Opportunities exist for regional and selective depositories to collaboratively manage collections and provide services across state lines. When doing so fills an identified gap in the network, the FDLP should be able to accommodate multi-state and shared regionals, and other forms of regional arrangements across state lines. Given that one of the strengths of the regional depository system is the service relationship between each regional and the selective depository libraries within their jurisdiction, any multi-state arrangement should be subject to the approval of a majority of depository libraries affected by the arrangement. These arrangements must also be subject to senatorial approval.

The relationships between Congress and the libraries designated by members of Congress as depositories are crucial to Congressional support for the program. With that said, the limitations of no more than two regionals per state, and the minimum collection size of 10,000 volumes, are no longer justified in defining the program parameters and needlessly limit participation. The number of regionals can be increased per state to make it possible for libraries to share the work of retention, preservation, and reference services; and any library willing and able to provide information services to the public should have the opportunity to participate in the program.

Additionally, it is in the best interest of the program to keep the designation of law libraries as a special category in order to encourage their participation. Depository libraries should be able to select any print format published by an agency, including bound and unbound publications, in order to best serve their users.

Libraries that do not accept or manage print or digital collections still do important work in enabling and enhancing access to government information within their communities of service. However, it is misleading to refer to these libraries as depositories, as they are not receiving anything on deposit. Another FDLP participant category would better reflect these roles.

2. The FDLP is well-positioned to play a significant role in the long-term preservation of federal information.

Permanent public access requires a preservation strategy. In addition to ensuring access, the decentralized nature of the FDLP lends itself to fulfilling long-term preservation of federal information dissemination products. Many depository libraries have already undertaken preservation as part of their depository responsibilities, including conservation and description work. Chapter 19 should be amended to formally authorize GPO to assist in the preservation of federal government information to ensure that our shared aspiration for long-term public access is grounded in law. Formal acknowledgement of this role also supports continued cooperation and collaboration with federal libraries and other agency partners.

2.a. Make all information dissemination products managed by GPO available to collect and preserve.

Strengthening GPO's existing Chapter 41 mandate for an electronic storage facility, to indicate an access and preservation repository, would support continued development and maintenance of FDsys/govinfo. To fully achieve long-term access goals, this repository will require reliable funding along with appropriate staffing.

GPO currently manages content in its repository (FDsys/govinfo), on its servers ("permanent") and through vendors such as the Internet Archive. Content stored outside of FDsys/govinfo is typically made available on an access-only basis, and at this time cannot be systematically accessed or collected for inclusion in a preservation system. The collection and description of these information dissemination products is already mandated as part of the Cataloging & Indexing Program authorized in Chapter 17. To enable unmediated collection and preservation for libraries, this digital content should be ingested into FDsys/govinfo. Doing so opens a pathway for public download, access, reuse, and preservation at a wide variety of scales.

2.b. Create a role for depository libraries to accept deposit of digital federal information.

Several libraries are already playing a role in preserving digital government information. Promising models are in place at a variety of scales, such as the system currently in use by Canadian libraries, and the distributed storage of FDsys/govinfo content in LOCKSS-USDOCS (see: <https://lockss-usdocs.stanford.edu/>) in cooperation with GPO. To improve coordination of this work and raise its profile, the FDLP should include an additional formal role for selective and regional depository libraries that are willing to receive and store digital government information on behalf of the program, and preserve and/or provide access based on appropriate standards and agreements with GPO.

3. Improvements to broader federal information policy will facilitate better access and more reliable preservation.

Federal information cannot be preserved for future access if it cannot be collected. Greater agency cooperation with GPO is always desirable. However, absent a compliance scheme, incorporating principles of web design and structure that make agency websites and content easier to capture will enable better access and more reliable preservation. The Office of Management and Budget (OMB) mandate to oversee federal information policy should extend to making executive agency and commission information dissemination products amenable to collection and preservation.

Information management is similar to any form of asset management: planning and documentation defines parameters, identifies benchmarks, and prepares the organization to manage obstacles. By creating public information management plans, agencies could document and communicate existing content lifecycles. Coordinating this work fits in the existing jurisdiction of OMB and could lead to improved business efficiencies within agencies.

APPENDIX I

Additional Response to Draft Title 44 Modernization Recommendation Concepts (Confidential Draft 8/9/17)

The draft includes several proposals that could lead to increased access to federal information in libraries. Expanding participation in the FDLP also extends outreach to the public, particularly in terms of access to guidance and support in finding and using federal information. A growing FDLP will increase the base of support for the program among libraries, and may increase support for the need for additional resources for access and preservation.

In general, we agree that the primary component absent from this draft are recommendations addressing a mandate for preservation, as we have outlined above.

1. Expand library participation in the Federal Depository Library Program
 - a. Create a user service library role
 - b. Create an educational program

A user service library role has been discussed in the past, including an affiliate access library model described in the 2015 *National Plan for Access to U.S. Government Information*.

Training and education produced by GPO should continue to be available free of charge and not contingent on FDLP participation. However, metadata and discovery are essential to the success of the program; one current benefit of FDLP participation is expanded support for incorporation and reuse of GPO's metadata to enhance discovery for library users based on the model of the Cataloging Record Distribution Program. Giving GPO gift authority to accept metadata and high-quality digital surrogates from depository libraries would increase the attractiveness of this benefit, since all participating libraries would thereby expand the content available for their users to discover. Marketing and promotional materials are also useful for participating libraries. An expanded virtual reference service could be promising as well; however, expanded or specialized access to interlibrary loan seems difficult to guarantee in practice.

Access to deaccessioned material is a minor benefit, since discarded materials can already be offered to non-depository libraries after they have been offered first to the regional depository and then to other depository libraries in the state; and a library wishing to build its collection could in many cases be designated as a selective depository library. However, GPO's sales program is already used by depository libraries to fill in collection gaps or replace damaged volumes, and exempting participating libraries from sales fees for print documents, or providing print-on-demand for depository collections, would help libraries to build a collection that is curated for local needs.

Nearly all of these changes are possible under current statutory authority, and most build on excellent work already underway at GPO. Expanding the FDLP to permit additional libraries to be designated could be a low-cost, high-benefit opportunity to increase public access. At the same time, we note that a mandate for training, education, and other benefits without expanded resources to fund that mandate could harm the effectiveness of the program because it would use resources that could otherwise support access and preservation.

2. Ensure the permanent preservation of government information

Requiring a comprehensive preservation plan is not a substitute for maintaining retention requirements; as we are seeing with the development of FIPNet, strategies intended to support preservation take time and require buy-in that are not immediately forthcoming. Retention has demonstrably resulted in long-term access and has laid the groundwork for preservation; weakening retention requirements does not serve either preservation or access.

Preservation activities extend beyond retention to include description as well as conservation. Extending the development of the National Bibliography of U.S. Government Publications as currently instantiated by the National Bibliographic Records Inventory Initiative (NBRII) should be considered part of this work. At the same time, preservation is not an either/or proposition. Libraries within the program already demonstrate the robustness and durability of providing access along with retention. Cooperation and collaboration are the hallmarks of sound preservation policy as well as a good access program.

The current system of shared housing agreements (SHAs) provides regional depository libraries substantial flexibility in how existing tangible collections are managed. Beyond this flexibility, regional depositories that are no longer willing or able to meet the obligations of their role can choose to relinquish regional status; the proposed inclusion of multi-state regional depository libraries formalizes the existing practice of providing oversight to selective depositories that are no longer served by a regional depository within the state.

3. Modernize provisions to better collect and preserve digital information
 - a. Improve collection of digital government information
 - b. Digitize historical FDLP materials
 - c. Ensure no-fee access to online government information

The recommendations in this section pertain to collections, but do not address preservation as such.

Improved collection development practices for GPO are contingent on staffing and agency cooperation. It is not clear how a requirement for agencies to cooperate would be enforced, absent enforcement powers adjudicated by the Joint Committee on Printing. Agencies should see the value in preserving their own information; additional incentives may be needed to expand public access to agency information.

Digitization is an access provision, not a preservation provision; it does not obviate the need to preserve print publications. Digitizing publications requires measures to assure the quality of the resulting digital surrogate. Digital surrogates must then be made accessible and preserved. Mandating that GPO digitize publications is unnecessary and inefficient. Asking GPO to set standards and ingest appropriate high-quality digital content into FDsys/govinfo is a more cost-effective approach.

APPENDIX 2: Mapping GODORT's *Principles* to Title 44

Below, we have compiled a pathway to enacting legislative changes in support of these *Principles*. We note that nearly all of GODORT's recommendations, and the recommendations made in the Washington Office's *Draft Title 44 Modernization Recommendation Concepts*, can already be accomplished under the current authority of Title 44. Therefore, we also see these as provisions that, at a minimum, we should protect in their current form rather than lose entirely.

The proposed additions underlined below are the only provisions that would be strictly necessary to change; others already fall under existing mandates, including §1914 and elsewhere.

1. Permanent no-fee public access to federal information can be accomplished through continued partnership between GPO and libraries.

1.a. Expand the definition of "government publication."

- Change the definition in §1901 from "Government publication" to "public information" as defined in §3502(12); use this wording throughout Chapters 17, 19, and 41.
- Update definition in §4104 to include federal public information that is disseminated or stored in digital formats.

1.b. Guarantee free access and privacy protections for users of federal information.

- Exclude digital federal public information from §1708.
- Eliminate §4102; add a provision to §4101 that the system be made available to the general public without charge.
- Clarify §4101 to reflect compliance with provisions of §3506 and §3507 that pertain to any collection of information from individuals accessing federal information systems. These provisions should also require the disclosure of technologies that track individual user activity.

1.c. Improve GPO's ability to partner with depository libraries.

- Insert a provision into Chapter 19 authorizing the Superintendent of Documents to accept non-monetary gifts of physical materials or digital content appropriate to the scope of their purview.
- Insert a provision into Chapter 19 authorizing the Superintendent of Documents to make grants for the furtherance of activities within the scope of their purview.

1.d. Maintain the regional-selective depository model with minor changes.

For regional depositories:

- Eliminate the maximum of two regional depositories per state from §1912.
- Keep retention provisions in §1912 for print or microfacsimile, and provision for regional depository oversight of selective depositories wishing to dispose of print publications.
- Add language to §1912 clarifying that formal retention arrangements made by regional depository libraries with other depository libraries that cross state boundaries should be subject to the approval of a majority of the depository libraries in the affected state(s).

Arrangements to house collections outside of the state, or otherwise delegate regional depository responsibilities across state lines, must also be subject to the approval of the Senators of the affected states.

For selective depositories:

- Keep the stipulation in §1903 that the Superintendent of Documents shall receive the necessary number of copies of publications required for distribution
- Clarify in §1904 that publications available for selection in print shall be provided in the requested format (i.e., bound or unbound) whenever practical.
- Eliminate the minimum collection size of ten thousand volumes from §1909; stipulate that the Superintendent of Documents evaluates appropriate provision of services to the public and adequate maintenance for depository collections.
- Retain the additional categories of libraries eligible for designation as defined in §1906, §1907, §1915, and §1916.

2. The FDLP is well-positioned to play a significant role in the long-term preservation of federal information.

- Add text to §1902 indicating that federal information products are made available through the depository program in order to ensure permanent no-fee public access; authorize the Superintendent of Documents to take measures as appropriate to ensure access to and preservation of federal information products.

2.a. Make all information dissemination products managed by GPO available to collect and preserve.

- Modify §4101(a) to authorize an access and preservation repository for all digital federal information as defined in §4104.
- Add text to §4101 requiring GPO to preserve and provide free public access to all the digital content that has been added to the repository.
- Amend §1710 and §1711 to authorize the preparation and maintenance of a national bibliography of federal information as defined in §1901.
- Clarify the scope of the repository as authorized in §4101 to include content indexed and cataloged pursuant to §1710 and §1711 to the extent practicable; provide an exception if the head of a department or agency makes alternate arrangements for access and preservation that meet the standards set by Chapter 41, subject to the approval of the Superintendent of Documents.

2.b. Create a role for depository libraries to accept deposit of digital federal information.

- Update §1904 and §1905 to include digital federal public information that will be deposited by GPO making digital files available to depository libraries in an appropriate format with accompanying metadata.
- Add a provision to Chapter 19 to define a designated category of “digital depository libraries” that agree to receive digital content made available through the depository program, maintain deposited content in a digital repository, and make it available for the free use of the general public; authorize the Superintendent of Documents to designate, oversee, inspect, and terminate depository libraries from this category.

3. Improvements to broader federal information policy will facilitate better access and more reliable preservation.

- Clarify that §3504(d)(2) includes responsibility for ensuring that information is appropriately structured for preservation.
- Include a provision in §3504 similar to §3504(f) that clarifies the mandate of the Director of the Office of Management and Budget to include cooperation with the Director of the Government Publishing Office in the administration of Chapter 19, by issuing appropriate standards and guidelines regarding information dissemination as it pertains to collection and preservation of federal digital information.

NB. Additional sections affected by the Draft Title 44 Modernization Recommendation Concepts:

Benefits to participating libraries:

- Make changes to §1705 to include the printing of additional copies for distribution to depository libraries, upon requirement on the Superintendent of Documents.
- Modify §1708 to exempt designated depository libraries from fees for sales publications with the approval of the Superintendent of Documents.

For non-depository access libraries:

- Add a provision to Chapter 19 to define a category of “federal information access libraries” as an additional designation within the program; this category would be exempt from the provision of §1909 requiring capacity to provide custody and service for depository materials.
- Eliminate from §1905 the limit of two designated libraries per Congressional district or Senatorial designation; keep the requirement of justification for the necessity of additional designation and concurrence of the heads of existing depository libraries in the district or head of library authority in the state.**
- Eliminate §1910.
- Amend §1911 to clarify that participating libraries shall make federal public information available for the free use of the public.

**While this recommended change will also permit new selective and potentially even regional depository libraries to join the FDLP, we see no reason to believe that doing so will result in a dramatic increase to publications selected in print.