

## MEMORANDUM

TO: Davita Vance-Cooks, Director, U.S. Government Publishing Office  
FROM: James Shaw, for the Depository Library Council  
DATE: October 30, 2017  
SUBJECT: Revised recommendations for revisions to Title 44 *U.S. Code* Chapter 19

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In late June 2017, the Depository Library Council (DLC) received your charge to provide recommendations to modernize Title 44 *United States Code* Chapter 19, which governs the Federal Depository Library Program (FDLP). You specifically tasked us to consult with the FDLP community to identify changes that would promote flexibility in meeting FDLP requirements while continuing to support the FDLP's mission to keep America informed. This memorandum contains a few minor revisions to our initial memorandum dated September 25, 2017, having considered comments and questions received at the Fall 2017 DLC Meeting and FDLP Conference.

### METHODOLOGY

We asked colleagues across the country to send us their thoughts via our online comment form, and they responded with a notable vigor. They submitted over 130 messages which ranged from short, specific points to lengthy analyses of Chapter 19. We distilled their suggestions into a spreadsheet, so that we could identify both widely-held and distinctive ideas.

We monitored discussion in venues such as *GOVDOC-L* and *FGI: freegovinfo*; and we were pleased to receive letters submitted by institutions such as the University of California, Stanford University, Harvard University, the University of Colorado, and Boston Public Library; as well as professional associations such as the Association of Southeastern Research Libraries and the Association of Research Libraries.

### RECOMMENDATIONS AND JUSTIFICATIONS

The FDLP community gave us much to consider, but a number of concerns arose repeatedly. Indeed, the overlap across many comments and letters indicates a considerable measure of consensus within the community, which we address in these recommendations. We hope that you find them helpful as you confer with the Committee on House Administration and the Joint Committee on Printing about amendments to Title 44 *U.S. Code* Chapter 19:

- **§ 1901:** Amend § 1901 to redefine "Government publication" so that it may be clearly interpreted to include government information in *all* formats, so that electronic and possibly as yet undeveloped formats created to inform the

public, at government expense or as required by law, can be incorporated into the Federal Depository Library Program.

A more inclusive definition will help ensure that government information continues to be made freely available to the public, currently and in the future, as reflects the central mission and purpose of the FDLP.

- **§ 1902:** Amend § 1902 to require legislative, executive, and judicial branch agencies to deposit authenticated electronic publications with the U.S. Government Publishing Office (GPO) for inclusion in the Federal Depository Library Program. This complements our recommendation to amend § 1901, and we recommend that GPO be explicitly charged with caring for and managing these publications in a responsible and accountable manner, and with ensuring their long-term preservation.

Electronic publications are now an integral component of our nation's documentary heritage and must be included in legal deposit arrangements. We think that the GPO is uniquely well-suited to manage this enhanced role in managing electronic information through all the stages of its life-cycle. It is our intent to encompass all publicly available government information.

- **§ 1904:** Amend § 1904 to permit the Superintendent of Documents to develop and maintain a mechanism to enable depository libraries to select only those publications they need, in whatever format is available and appropriate. Remove references to a classified list.

The current item list is based on issuing agency, and it has proven very awkward in supporting selections based on topic or geography. This amendment would permit the Superintendent of Documents to create a new selection mechanism that would afford greater flexibility to depository libraries as they shape their collections to address local needs.

- **§ 1909:** Amend § 1909 to remove the requirement that a depository library hold at least 10,000 books and stipulate instead that the library have physical and/or electronic collections sufficient to indicate organizational capacity to successfully participate in the FDLP.

The 10,000 book requirement has served as a proxy for organizational capacity, marking a threshold at which space, staffing, and other resources would likely support depository operations. Changes in library collections and services in recent years have rendered the 10,000 book requirement antiquated and insufficient. Other appropriate criteria for determining the suitability to provide federal depository services may be considered.

- **§ 1911:** Amend § 1911 to permit selective depositories that are not served by a regional depository to dispose of government publications after retaining them for five years. Such withdrawals shall be conducted with guidance provided by the Superintendent of Documents, which may include oversight by another regional depository.

When a regional depository exits the depository program, the selective depositories associated with it are currently left unable to withdraw Government publications. This places an undue burden on such selective depositories, which must manage space and collections. It is vital that these materials are offered before disposal to the FDLP community.

- **§ 1912:** Amend § 1912 to permit regional depositories to share their collections and services across state lines, so long as the Senators in the involved states agree.

Regional depositories have shouldered great responsibilities and accumulated enormous collections since their advent with the *Depository Library Act of 1962* (P.L. 87-579). The burdens of finding and managing appropriate space for their collections have grown so onerous that some regional depositories may decide to leave the FDLP. Shared regional collections and services have already proven successful within several states, and the amendment would extend this flexibility across state lines.

- **§§ 1911 and 1912:** Amend §§ 1911 and 1912 to make authenticated digital copies of Government publications a format which a regional depository library may hold as deposited items so long as they are made freely available to the public.

Electronic copies of Government publications are rapidly superseding physical distribution, and the GPO hosts and provides authenticated electronic copies. This amendment would permit regional depository libraries to withdraw equivalent physical copies when they hold and make authenticated electronic copies freely available, thus reducing their burdens in finding and managing space for Government publications. This amendment also encourages wider distribution of authenticated electronic copies, which helps ensure their survival over time. Should a technical failure or government shutdown render GPO's authenticated electronic copies unavailable, copies held by regional depositories would remain available.

- **New section: grants to depository libraries:** Add a section to Chapter 19 to give GPO grant-making authority, and to enter into contracts or cooperative arrangements with depository libraries, consortia, or other entities to enhance access to Government publications. Such activities may

include, but are not limited to, digitization, preservation, and cataloging Government publications, as well as community engagement. Giving GPO grant-making authority would provide leverage to accelerate efforts to improve access to and preservation of Government publications, and to foster greater cooperation between GPO and depository libraries that participate in GPO-funded projects. These grants should not be funded at the expense of existing programs and services.

## **OTHER CONSIDERATIONS**

As you requested, our recommendations focus on Title 44, *U.S. Code* Chapter 19, but the FDLP community also expressed concerns which encompass sections of Title 44 outside of Chapter 19. We think that these additional items complement our recommendations and would further strengthen revisions to Title 44:

- Amend §§ 3502 and 4101 so that “publication” is defined to include *all* formats of information, which parallels our recommendation to amend § 1901.
- Amend §§ 4101 and 4102 to affirm that the public shall have no-fee access to electronic government information, which constitutes a governing principle for keeping America informed and the work of the FDLP.
- Amend § 4101 to add provisions governing privacy, so that the public may use electronic information resources such as those provided by govinfo.gov with an expectation of privacy.

## **FINAL THOUGHTS**

The FDLP remains a crucial component in GPO’s effort to keep America informed. However, the passage of time and the emergence of new publication technologies have eroded the effectiveness of Title 44 *U.S. Code* Chapter 19.

We consulted the FDLP community to gather their ideas for improvements, and we especially appreciate your support in bringing us to GPO in August for a day of study and conversation about possible changes. The DLC meeting and FDLP Conference earlier this month largely confirmed our initial recommendations, and we think they represent a considerable consensus within the FDLP community. We trust you will find them helpful.

cc: Laurie B. Hall, Acting Superintendent of Documents