

# MEMORANDUM

TO: Jim Bradley, Acting Director, U.S. GPO  
FROM: James Shaw, for the Depository Library Council  
DATE: January 8, 2018  
SUBJECT: DLC comments and concerns about the draft Title 44 bill (12/11/2017)

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The Depository Library Council (DLC) examined the draft of the bill to amend Title 44 dated 12/11/2017, and we appreciate your invitation to comment on it. In our estimation the sections of the draft bill which directly address the Federal Depository Library Program (FDLP) would considerably improve the program. Indeed, these sections, chiefly in Chapter 5, incorporate ideas which have repeatedly been discussed within the FDLP community.

We also noted several areas of concern, particularly in Chapter 3, which prompt us to urge caution. In our reading these sections could hinder GPO's capacity to provide procurement and production services to agencies and to Congress. GPO has a strong record of timely and efficient work rooted in a highly specialized infrastructure of staff and equipment. Great care is due when addressing changes that may affect the production and distribution of Federal publications, including such foundational documents such as the *Congressional Record* and *U.S. Statutes at Large*.

## **Chapter 5 and Sections Directly Addressing the FDLP**

*Chapter 5--No-Fee Access to Public Information* enshrines in its very name a central mission of the FDLP. We are confident that you also recognize the following provisions of the draft bill as ideas often discussed within the FDLP community:

- All three branches of the Federal government are explicitly required to work with GPO to make publications (Information Dissemination Products, or IDP's) available via the FDLP.
- Places clear responsibility on "applicable officials" in each branch to include IDP's in the FDLP.
- Establishes a national collection and online repository, including agencies' cooperation with GPO in the provision of metadata for indexing, cataloging, and discovery.
- Explicitly makes preservation for permanent public access an affirmative responsibility of government in regards to the online repository.
- Electronic IDP's to be authenticated, such that chain of custody or provenance is identified and documents are verified as complete and unaltered.
- Explicitly addresses privacy of users of the online repository.
- Allows for flexibility in managing regional collections by effectively recognizing the current regional discard policy.
- Introduces greater flexibility for libraries to participate in the FDLP.
- Authorizes digital deposit as an option for FDLP libraries to receive IDP's.

- Authorizes GPO to award grants to FDLP libraries.
- Authorizes GPO to accept gifts and services in support of the FDLP.

The draft bill includes additional provisions addressing Regional Depository Libraries. While clearly providing greater flexibility for Regional Depositories to share collections and services across state lines, it also states that “to the greatest extent practicable, provide for the designation of 2 Regional Depository Libraries in each census region.” This provision gives us some pause, given that over time it could lead to a notable decline in the number of Regional Depositories.

The draft bill also describes Preservation Depositories, but we think this provision needs clarification. Section 545 specifies that a library which is designated as a Federal Depository Library may request designation as a Preservation Depository Library but does not specify if this includes the currently existing preservation partners or if a library could be a stand-alone Preservation Depository Library. This provision could be read as legislative instantiation of the current Preservation Stewards, but we think the language needs clarification in any event.

### **Chapter 3 Provisions**

While we find much to appreciate in the draft bill, we noted provisions which could adversely affect GPO and consequently the FDLP. These provisions may reflect that the draft bill is still only a draft, but we find them serious enough to urge caution.

For example, different sections of the draft bill appear to work against each other. *Section 301* begins with the strong statement that:

In General—Except as otherwise provided in this subchapter, the Government Printing Office is the only entity of the Federal government authorized to produce or procure printing, binding, and blank-book work for each office of the legislative branch, each office of the executive branch (including independent establishments of the government), and each office of the judicial branch (other than the Supreme Court of the United States.)

This provision, in concert with those directly addressing the FDLP in Chapter 5, goes far in placing GPO at the center of the production and dissemination of Federal publications and thus strengthens the FDLP. However, a few pages later in *Section 303 Delegation of Authority*, we find bypass provisions that could severely undercut GPO’s business operations and actually increase the potential for documents to become fugitives that elude the FDLP.

*Section 303(a)(1)* envisions a scenario in which agencies could procure or produce their own IDP’s whose value “does not exceed the simplified purchase threshold under the Federal Acquisitions Regulations.” The threshold currently sits at \$150,000, and in FY 2017 over 90% of the orders managed by GPO fell below the threshold. In actual practice, this provision could well complicate GPO’s efforts to acquire copies for the FDLP as agencies become less tied to GPO. In our estimation GPO and the agencies need to be closely linked in the processes of procurement, production, and distribution so that overall coordination of effort remains efficient and effective.

GPO has a strong record of timely and efficient work for Congress, and we read *Section 303(B)* as introducing a potential wrinkle into a process that currently works very well. Publications addressing Congressional deliberations and lawmaking, especially the *Congressional Record*, *U.S. Statutes at Large*, and House and Senate committee hearings, are utterly core to GPO's mission to Keep America Informed, and we consider their tangible distribution through the FDLP enormously important. *Section 303(B)* would permit the Clerk of the House of Representatives and the Secretary of the Senate to bypass GPO and "enter into agreements with entities other than the Public Printer," which creates a troubling scenario similar to that envisioned for agencies in *Section 301(a)(1)*.

We do not think that the bypass provisions reflect a due consideration of GPO's current efficiency. As noted in a post to the FDLP news blog on December 18, 2017:

Nearly 75% of all printing ordered by Federal agencies from GPO is performed by private sector firms working under contract with the agency. GPO typically awards contracts to 2,500-3,000 printing contractors a year on a purely competitive basis.

In our estimation, GPO does a laudable job of seeking efficiencies by contracting with private sector entities whenever it makes good sense. Highly-specialized publications such as the *Congressional Record* and *U.S. Statutes at Large* are best handled in-house by those with exceptional expertise and infrastructure. GPO's oversight and coordination of agency procurement and production remain essential to making IDP's available to the FDLP and for minimizing those that go fugitive.

*Section 107 Authority to Issue Regulations* would grant GPO authority to promulgate regulations and engage in rulemaking to carry out its responsibilities under Chapter 3 and Chapter 5. One could read this as giving GPO authority that would ameliorate concerns over the bypass provisions in *Section 303*. However, we remain very concerned that the U.S. Supreme Court's ruling in *INS v. Chadha* (1983) creates a separation-of-powers issue that would ultimately undercut GPO's regulatory capacity.

*Section 322, Style, Form, and Manner of Products* also raises concerns for GPO's ability to make the best use of its resources. This provision would permit the House and Senate to establish new publication guidelines for each Congress, but this could easily work against the efficient and accurate extraction of metadata for indexing, cataloging, and discovery. Consistency matters a great deal to insure that automated processes work well.

Taken together, several provisions of Chapter 3 work against GPO's capacity to support the FDLP. The bypass provisions could seriously erode oversight of procurement and production, and they could reduce revenues necessary to support GPO's mission. At the extreme, the draft bill could leave GPO with only passports and secure documents as stable, reliable revenue sources.

We think that the Chapter 3 bypass provisions would undercut procurement and production processes that currently work reasonably well. GPO's record of efficiency stands to its credit, and we strongly recommend that the bypass provisions be dropped from the draft bill.

## **Other Considerations**

The draft bill would eliminate the Joint Committee on Printing and replace its oversight of GPO with that of the Committee on House Administration and the Senate Committee on Rules and Administration. Effective management practice generally observes that it is unwise to have two supervisors. For instance, one can imagine the two oversight committees having distinctly different ideas about matters addressed in *Section 322, Style, Form, and Manner of Products*. Resolving such differences could prove difficult and introduce unnecessary inefficiencies into production. We urge that more consideration be given to the oversight of GPO with an eye toward streamlining and efficiency. We think that a redesign of the Joint Committee on Printing and its operation would ultimately prove a better course.

We find it curious that the draft bill uses the former terms "Government Printing Office" and "Public Printer" rather than the current "Government Publishing Office" and "Director of the Government Publishing Office." No explanation is provided in the definitions or elsewhere in the draft bill, so we do not know the logic behind reverting to the former terms. While we are fond of tradition, "Government Publishing Office" and "Director" are better descriptors given the many transformative changes the agency has engaged in moving into the largely electronic era. Given that the draft bill is rooted in an effort to modernize Title 44, we think that retaining the current modern nomenclature makes better sense.

## **Conclusions**

In our estimation, the draft Title 44 bill of 12/11/2017 represents a truly remarkable improvement for the FDLP. We have received comments from the FDLP community suggesting that the provisions in Chapter 5 could actually be expressed in a stand-alone bill. We are truly grateful to see items of great concern to the FDLP addressed in legislative language after many years of discussion within the community. We extend our gratitude to the Committee on House Administration for incorporating them into the draft bill.

However, as it stands the draft Title 44 bill raises serious concerns that prompt us to urge great caution. GPO's involvement with and coordination of procurement, production, and distribution of Federal government publications could be severely impaired. Should this occur, we anticipate grave and unnecessary impediments to continued free and open public access to Federal government information. We ask that GPO and the Committee on House Administration consult to refine the draft, so that the particular expertise and efficiency that GPO provides is fully incorporated.

Cc/Laurie B. Hall, Superintendent of Documents, U.S. GPO