

Inter-Association Working Group on Government Information Policy

American Association of Law Libraries á American Library Association á Association of
Research Libraries á Chief Officers of State Library Agencies á Medical Library
Association á Special Libraries Association á Urban Libraries Council

October 17, 1997

The Honorable John W. Warner, Chairman
Committee on Rules and Administration
United States Senate
Washington, D.C. 20510-4601

Dear Senator Warner:

On behalf of the members of the Inter-Association Working Group on Government Information Policy (IAWG), I would like to express our appreciation for the willingness of your staff to meet with us to discuss revisions to Title 44 of the United States Code to enhance public access to government information. Our national associations represent more than 80,000 librarians, information specialists, library trustees, friends of libraries, and their institutions, all dedicated to public access to government information.

We commend you and the other members of the Senate Committee on Rules and Administration for your efforts to revise Title 44 on a bicameral, bipartisan consensus basis to enhance public access and to strengthen the Federal Depository Library Program (FDLP). We are pleased to participate and assist in this important endeavor.

Our latest meeting with Eric Peterson, Staff Director of the Joint Committee on Printing, and representatives from the Office of Management and Budget was held on September 30, 1997. Mr. Peterson was unable to share drafts of the proposed legislation with us at that time; however, he did articulate many of its provisions that relate to access to government information and the FDLP. While we have not seen the actual bill language, we would like to reiterate five concerns that we expressed to Mr. Peterson at that meeting.

1. Definition of Government Publication and Scope of the FDLP.

One of the most important goals in reforming Title 44 is to make clear, once and for all, that government information in all formats, including electronic, must be included under chapter 19 so that the American public is assured no-fee access to government information. It is critical that the definition of government information be as broad as possible to ensure that all current and future formats are accessible to the public. The use of the term "government publication" in the draft legislation is very narrow and connotes tangible information products (e.g., paper, microfiche, CD-ROMs). We believe that use of the broader term "government information," as proposed in our chapter 19 language transmitted to you in June 1997, is essential since it reflects the diverse media formats that must be made publicly accessible through the FDLP.

Further, we are concerned about the scope of information available to the public through the FDLP. The draft legislation proposes that an agency must make an active determination before an information product is made available to the public. It also appears to allow the agency the discretion to determine

that a potential publication has no public interest or educational value.

We believe that the Office of the Superintendent of Documents, because of its unique and historic relationship with depository libraries and its understanding of the broader needs and uses of government information by the general public, is better positioned to recognize the public interest and educational value of government information. Decentralizing this responsibility would create an additional barrier by limiting the public's access to the information created and paid for by their tax dollars.

We recommend your serious consideration of the following definitions that are included in our legislative proposal for chapter 19:

- a) the term "Government information" means that information, regardless of form or format, which is created or compiled by employees of a component of the Government, or at Government expense, or as required by law, except that which is required for official use only, or for strictly administrative or operational purposes having no public interest or educational value;
- b) the term "Government information product" means a Government publication or other discrete set of Government information, either conveyed in a tangible physical format, including electronic media, or disseminated through a Government electronic information service;
- c) the term "Government electronic information service" means the system or method by which a component of the Government directly or indirectly disseminates Government information product to the public through a telecommunications network or successor technology.

While we recognize that our definition of "Government information" may need to be modified to accommodate concerns raised by the scientific and research communities, we believe this basic definition is a more inclusive starting point for materials to be covered under chapter 19 than the definition of "Government publication" included in the draft bill.

2. Compliance and Enforcement.

The library community firmly believes that public access to government information must be guaranteed through full compliance by agencies in all three branches of government as well as strong enforcement mechanisms. We agree with your resolve to improve agency compliance through this legislation, particularly considering the current high level of agency non-compliance that was highlighted during the hearings last spring. It is important that the legislation to reform Title 44 establish workable and enforceable compliance mechanisms that guarantee public access to government information through the FDLP. Further, we recognize that a system that improves compliance must be supported with adequate appropriations to ensure that the information is produced and made available to the public.

Mr. Peterson described a notification system designed to improve the flow of government information into the FDLP. We applaud any effort to integrate the Superintendent of Documents into every stage of the life-cycle of government information. Well-crafted legislation to bring the Superintendent of Documents into the procurement bidding process through a comprehensive notification process could create an easy and efficient means of identifying and selecting government information in all formats for the program.

However, we have serious reservations about the feasibility of the proposed interagency billing mechanism for ensuring compliance that Mr. Peterson described at our last meeting. It is our understanding that the Superintendent of Documents cannot debit an agency account unless an order is placed or an agreement made between the agency and the Superintendent. This is clearly expressed in the Economy Act of 1920. The draft legislation as presented by Mr. Peterson offered no guarantee that the procedures to establish these necessary agreements would be in place.

Absent specific provisions in statute, the Economy Act of 1920 would prevail, requiring that written

agreements be in place between agencies before any transfer of funds could occur. Numerous Comptroller General opinions support this requirement. The proposed legislation would have to specify that the Economy Act of 1920 does not apply in this case or it would be unenforceable. In addition, the Anti-deficiency Act prevents an agency from over-spending and requires the identification of a specific account from which funds are to be drawn. The proposed billing mechanism might invoke new separation of powers issues, and congressional appropriations committees might question the authority of one agency to force spending from an account of another agency.

Compliance and enforcement are extremely important, especially since the draft legislation would separate the current organizational relationship between the Superintendent of Documents and the Government Printing Office. The library community is extremely reluctant to sever the link between production and dissemination of government information as this historically has been the only reliable means for ensuring that materials are included in the FDLP. Any new organizational model must include an effective compliance system strong enough to resolve the problem of "fugitive" information and to ensure no-fee public access through the FDLP to government information from all three branches of government.

3. Notification and Access.

We believe that a comprehensive notification process through the Superintendent of Documents for tangible and online products is a key component to the successful implementation of a system that ensures public access to government information. By requiring agencies to notify the Superintendent when a product is procured or produced, the Superintendent has the opportunity to identify which products should be included in the program. The Superintendent would be able to irideî production orders in a manner that makes efficient use of the program's appropriations.

Legislation should enable the Superintendent of Documents to acquire copies of tangible products at the incremental "rider" rate of production and to acquire access to fee-based online services at no more than the incremental cost of dissemination. A comprehensive notification process also would enable the Superintendent to fulfill required cataloging and locator responsibilities. Notification at the time a product is substantially modified or terminated would allow the Superintendent to take appropriate action to provide access to and preserve the information for permanent public access.

4. Congressional Designation of Depository Libraries.

For more than 180 years, Congress has exercised primary responsibility for the dissemination of government information to the American public. The FDLP plays an important and unique role because depository libraries in virtually every congressional district provide the local link to government information from all three branches of government. The process of congressional designation of depository libraries has worked very successfully over the lifetime of the FDLP and must remain in statute. There will continue to be a need to designate new program libraries as populations grow or shift from one area to another, or as needs for new by-law designations arise. It is important that the substantial and ongoing commitment that libraries make to fulfill their depository responsibilities be properly recognized and supported by congressional designation.

Some might argue that continuing the congressional designation process places an undue burden on the system. We disagree, and in fact, while the program continues to accommodate new libraries as necessary, the overall number of depository libraries has declined over the past twenty years. We strongly oppose eliminating the provision for congressional designations from statute, undoing nearly two centuries of vigilant congressional protection of the FDLP and placing this authority under the discretionary powers of a single, presidentially-appointed official.

5. Advisory Council to the Superintendent of Documents.

We are pleased that, according to Mr. Peterson's description of the draft legislation, the bill would

establish an advisory council to the Superintendent of Documents with representation from the depository library community. We are concerned, however, that the council would be exempt from the Federal Advisory Committee Act (FACA). We believe it is important that the activities and deliberations of this and other advisory councils be open to the public. If the purpose of this exemption is to avoid the termination requirement of federal advisory committees under FACA, we agree with the intent but suggest instead that the statute establish it as a permanent council whose meetings should be open to the public.

More generally, we question placing fundamental operational, enforcement and oversight responsibilities in an advisory council comprised of part-time volunteers. While the advisory council can play an important role in the workings of the FDLP, its purpose should be to complement other established mechanisms that serve as the primary means for selection, enforcement, oversight, and other program responsibilities.

Conclusion

Senator Warner, the library community remains committed to working with you and your colleagues to revise Title 44 during this Congress. To facilitate the broad input and consensus that are critical to this process, we strongly urge you to hold public hearings on the legislation. As described to us by Mr. Peterson, the latest proposal is substantially different from the earlier draft bill that was the basis for hearings this past spring. It is imperative that the public be given the opportunity to fully review and evaluate the impact of this proposal, and to provide comments in public hearings for the legislative record.

The system established by this revision will serve as the foundation for the dissemination of and public access to government information well into the 21st century. Given the importance of this legislation, there should be ample time and opportunity for full consideration and public comment.

Once again, thank you for your leadership regarding the reform of Title 44 and for the willingness of your staff to consult with the library community on an ongoing basis. We look forward to Mr. Peterson's discussion of these issues at the upcoming Depository Library Council meeting in Clearwater, Florida, as well as at future meetings with the IAWG and other library organizations.

Sincerely,

Inter-Association Working Group on Government Information Policy

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Last Modified: May 5, 1998