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## United States Senate

December 9, 2011

COMMITTEES:  
ENVIRONMENT AND PUBLIC WORKS  
FINANCE  
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BUDGET  
SMALL BUSINESS

COMMISSION ON SECURITY  
AND COOPERATION IN EUROPE

Ms. Patricia A. Steele  
Dean of Libraries  
University of Maryland  
Office of the Dean of Libraries  
6131 McKeldin Library  
College Park, Maryland 20742

Dear Ms. Steele:

Thank you for contacting me regarding the recent decisions made by the Superintendent of Documents of the US Government Printing Office (GPO), Mary Alice Baish, regarding the Federal Depository Library Program (FDLP). I apologize for the delay in my response. I value the service that the University of Maryland Libraries have been providing to Maryland, Delaware, and the District of Columbia in providing access to U.S. government information to the general public free of charge for the past 86 years.

I relayed your concerns to GPO and have enclosed their response. I hope this information is helpful. If you have any further questions or requests, please do not hesitate to let me know.

Sincerely,



Benjamin L. Cardin  
United States Senator



December 2, 2011

The Honorable Ben Cardin  
U.S. Senate  
509 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Cardin:

This responds to your request for comment on a letter dated November 1 that you have received from Patricia Steele, Dean of Libraries at the University of Maryland – College Park, regarding concerns over certain issues in the administration of the Federal Depository Library Program (FDLP) of the U.S. Government Printing Office (GPO), specifically: (1) a plan for the University of Minnesota to serve as the regional Federal depository library for selective depository libraries in the state of Michigan; (2) a plan for the disposal of publications by depository libraries served by libraries belonging to the Association of Southeastern Research Libraries (ASERL; the McKeldin Library at the University of Maryland – College Park is part of this association); and (3) a claim that GPO is requiring retrospective collections by regional Federal depository libraries. Dean Steele asserts that “GPO has not supported new collaborative initiatives that ensure members of the public have access to government information in ways that are effective for users and cost-effective for federal depository libraries alike.” This letter provides background on the FDLP and responds to that assertion.

**Federal Depository Library Program** As you know, Federal depository libraries make Federal Government publications—including congressional publications and information from agencies—available to the public free of charge. The publications are distributed by GPO and made available to the public through a network of more than 1,200 public, academic, law, and other libraries nationwide. There are currently 24 such libraries in Maryland.

**Regional and Selective Depository Libraries** Under the program, each state can have up to two regional depository libraries (most states have just one, and today there are fewer than 50 regional depository libraries). Regional libraries are designated by their Senators to serve their states. Regional libraries receive one copy of every publication distributed by GPO and are required to retain that copy permanently. As Dean Steele’s letter notes, the McKeldin Library is the regional library for Maryland. In addition to permanently holding publications, regional libraries must monitor which publications are discarded by the selectives in their state to maintain the integrity of the state’s depository collection for its citizens. The rest of the libraries in the program are selective depository libraries. They are designated by their Representatives (when there are vacancies) or become depositories by operation of law (for example, all ABA-accredited law school



libraries are eligible to be depositories). Selective depository libraries must choose which publications to receive and can discard them after a period of 5 years, following procedures established by GPO.

**Multi-State Regional Depository Libraries** Some states do not have a regional depository library, for various reasons. In such cases, arrangements have usually been made with a neighboring state's regional to support the selective depository libraries in the state with no regional. As Dean Steele notes, the McKeldin Library also serves as the regional depository library for the District of Columbia and Delaware, two adjoining jurisdictions. The other multi-state regional depositories currently are:

- Connecticut State Library also serves RI
- University of Florida also serves Puerto Rico and U.S. Virgin Islands
- University of Hawaii, Manoa, also serves American Samoa, Guam and the Federated States of Micronesia
- University of Maine, Orono, also serves NH and VT
- University of Minnesota also serves SD
- Washington State Library also serves AK

**CRS Legal Opinion** Dean Steele's letter says that "there clearly is precedent with approval of the state's Senators [for] [F]ederal regional depository libraries [to] serve depositories in other states." However, in 2007 a legal opinion by the American Law Division of the Congressional Research Service, which was requested by and provided to the Joint Committee on Printing, raised the issue of whether multi-state regional depository libraries serving the selectives in other states are permissible under the provisions of the 1962 Act. Although such arrangements have been established in the past—and while the Superintendent has no plans to alter those existing arrangements—the opinion persuaded GPO that any future proposals for multi-state regionals should be reviewed and approved by GPO's oversight committee, the Joint Committee on Printing, which has the statutory authority to approve "any measures [the Public Printer] considers necessary for the practical and economical implementation of" the FDLP.

**Michigan/Minnesota Proposal** Due to funding restrictions, the State Library of Michigan – Michigan's regional depository library – recently announced it would have to relinquish its regional status. This would leave Michigan's selectives with no regional library to support them. Subsequently, the State Librarian of Michigan proposed that the regional depository library for Minnesota at the University of Minnesota serve as the regional for Michigan.

GPO had serious concerns about this proposal and said so in a September 15 letter to the Michigan State Librarian. The letter said the proposal is not practical and would not ensure equal and equitable public access to the historic materials which have been



distributed to the Library of Michigan through the FDLP. Part of the concerns were related to the distance of Minnesota from Michigan, and to the financial ability of the Minnesota library (which already supports selective depository libraries in South Dakota as well as Minnesota) to support the needs of Michigan's selective libraries. GPO also was informed that the MI/MN agreement included plans to send many regional materials from the Library of Michigan to be used as part of a destructive scanning project by the Committee on Institutional Cooperation (CIC). These Google-scanned digital files, which when digitized would no longer be official Government resources, would then be included in a digital repository at the University of Michigan with certain restrictions on easy public accessibility for Michigan's citizens. In effect, regional materials from the Library of Michigan would be taken out of the state, would no longer be available to Michigan citizens for research and learning, and would be destroyed. Because of these concerns, Superintendent of Documents Mary Alice Baish, who was appointed by Public Printer Bill Boorman, said GPO would not recommend the MI/MN agreement to the Joint Committee on Printing for approval.

**Indiana State Library Proposal** In August 2010, the Indiana State Library communicated to the Michigan State Library a willingness to consider serving as the regional depository library for Michigan. This communication does not appear to have been relayed to other Michigan depository libraries. This offer has recently been reiterated.

GPO believes that the proposal offered by the Indiana State Library to serve as the regional depository library for Michigan is the preferable alternative to the MI/MN proposal. The two states are adjoining. The Indiana State Library is well supported by its administration and is currently not dealing with the space and monetary issues as is the Library of Michigan. The Indiana State Library has assured GPO that one of its primary goals would be to keep the Federal documents currently housed in Michigan's selective depository libraries in Michigan for ease of use for all Michigan residents and librarians. Also, there is no destructive digitization plan as part of Indiana's proposal. Accordingly, GPO has notified the Michigan selective libraries of this proposal. GPO believes that this proposal more closely comports with longstanding practice related to multi-state regional depository libraries as a means of ensuring the continuation of convenient, equal, and equitable access to Federal Government information for the citizens of Michigan.

**ASERL Proposal** ASERL, involving the regional Federal depository libraries serving approximately 300 selective depositories in 11 southeastern states, has developed a plan for region-wide collaboration in making depository resources available to the public. Part of this plan involves the development of "Centers of Excellence" (COEs), whereby specific libraries would be made responsible for the assembly of comprehensive collections of Federal information in certain categories.



In general, GPO supports this innovative approach to providing public access to Government information. However, one of the key tools to be used in implementing the COE concept is ASERL's disposition tool, the process by which publications discarded by selective depositories in the ASERL region will be provided to COE libraries first, rather than following the state-based system established by law and current administrative practice. GPO has objected to the way this tool is designed to operate and has asked ASERL to change it to bring it into compliance with current law and administrative practice.

According to ASERL, "the ASERL plan modifies the traditional state-based discard process for a region-based discard and acquisition process. This change provides libraries that are serving as a Center of Excellence—wherever they may be located in the region—first priority to select items that related to their area of specialization." In fact, however, the FDLP discard process is not a "tradition" but is standard operating procedure that has been developed to implement the requirements of 44 U.S.C. 1912. This law states that: "[t]he libraries designated as regional depositories may permit depository libraries, *within the areas served by them*, to dispose of Government publications which they have retained for five years after *first offering them to other depository libraries within their area*, then to other libraries" (emphasis added).

ASERL's proposal offers discards first to COEs within the ASERL region, regardless of where they are located, rather than those libraries within the discarding library's area. As a result, ASERL's proposed disposition plan could deprive depository libraries in participating states—such as Maryland—of their ability to ensure the integrity of the collections of Federal documents with which they have been provided, and so does not comport with current law.

In a November 4 letter to ASERL, GPO commended its proposed regional approach overall, but urged adjustments to the disposition tool to ensure conformance with the statute and administrative practice. In GPO's view, this need not impair the operation of the COEs, while it would assure the integrity of state-based depository library programs under current law, including the depository libraries in Maryland. We are waiting for ASERL's response to GPO's request.

**Comprehensive and Retrospective Collection** The statutory antecedents of the FDLP date to 1813, when Congress first authorized the distribution of certain documents to certain historical societies and other libraries. GPO was assigned control of the program in 1895 (and in the following years, in fact, distributed to depository libraries large numbers of retrospective publications that had been accumulating in Government agencies in Washington for many years). The Depository Library Act of 1962, which forms the basis of current law on the FDLP, established regional depository libraries which "shall receive...copies of all *new and revised* Government publications authorized for distribution to depository libraries" (emphasis added). This language serves as one of





the authorizations of appropriations for the FDLP, which are used to pay for distributing copies of Government publications to the regional and selective depositories. There is no statutory authorization for GPO to pay for distributing copies of retrospective publications, nor is there a requirement in law or GPO administrative practice that requires regional depositories to collect retrospectively.

However, at the time the 1962 Act was passed, there were many libraries in the FDLP that had been collecting Government documents for many years, and many extensive historical collections of such documents had been established that continue to have great value to the public. Along with setting up a system for managing the acquisition of new and revised publications, the 1962 Act established a system for the regional and selective libraries within each state to manage these historical collections. GPO's administration of the program is consistent with the language of the statute, and we do not make it a requirement to collect retrospectively. However, at the same time we recognize and support the authority that regional and selective depository libraries have under the law to ensure the integrity of their documents collections that have been built up over the years, both before and after the passage of the 1962 Act, and to manage their collections in a manner that best serves the information needs of the users in their states.

**Collaborative Research Project to Explore the Future of the FDLP** In October GPO convened the annual meeting of Federal depository librarians from around the Nation. At that meeting, GPO proposed to create two tools that will assist in determining a national FDLP forecast and a national strategy that complements the work of the depository library community in every state. This research effort is an initial step in an outcomes-based collaborative process on the future of the FDLP Program. The state forecast will be used to cumulatively represent the conditions of all types of FDLP libraries in a state and identify issues that libraries are facing now and in the future. The state-focused action plan, which builds on the information identified in state forecasts, will be composed of initiatives and activities that FDLP members in a state or region plan to implement in the next five years.

The quantitative and qualitative data derived from FDLP member libraries at the state and regional level through completed state forecasts and state-focused action plans will be analyzed and used to inform the creation of the national plan for the future of the FDLP. GPO is currently refining forecast and action plan templates in response to community feedback. Once finalized these research tools will be pilot tested by FDLP community members representing each type of library in the FDLP. Public release of finalized state forecast and state-focused action plan templates is anticipated in within the next 60 days. GPO is requesting completed templates from the community by June 30, 2012. Analysis will begin thereafter and discussion of the preliminary findings of this study is slated for the fall 2012 Federal Depository Library Conference.

**Conclusion** To summarize, the claim that “GPO has not supported new collaborative initiatives that ensure members of the public have access to government information in



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ways that are effective for users and cost-effective for federal depository libraries alike” does not appear to be substantiated. GPO supports the Indiana State Library’s offer to serve as the regional depository for Michigan depository libraries, a plan which more closely comports with established practice for the provision of multi-state regional depository library services. GPO supports ASERL’s regional plan in general but has asked for a change to ensure that the plan’s disposition tool comports with law and administrative policy. GPO has not required regional depository libraries to collect retrospectively. Under the leadership of Public Printer Boorman and Superintendent of Documents Baish, GPO moving forward with a structured, data-based process involving the entire Federal depository library community for establishing a plan for the future of the FDLP.

I hope this responds to your inquiry satisfactorily. If you need additional information, please do not hesitate to contact me on 202-512-1991, or by email at [asherman@gpo.gov](mailto:asherman@gpo.gov).

Sincerely,

A handwritten signature in black ink that reads "Andrew M. Sherman". The signature is fluid and cursive, with the first name "Andrew" and last name "Sherman" clearly legible.

ANDREW M. SHERMAN  
Chief Communications Officer