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# Should Academic Law Libraries Continue to Participate in the Federal Depository Library Program?

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# Should Academic Law Libraries Continue to Participate in the Federal Depository

## Library Program?

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<sup>\*</sup> Several experienced librarians gave me answers and insights that made this article much better than it would have been otherwise. They are (in alphabetical order): Christopher C. Brown, Government Documents Librarian, Penrose Library, University of Denver; Peggy Roebuck Jarrett, Documents & Reference Librarian, Gallagher Law Library, University of Washington; Iris Lee, Head of Collection Development, Burns Law Library, George Washington University; Scott Matheson, Reference and Government Documents Librarian, Lillian Goldman Law Library, Yale Law School, and Chair, AALL Government Documents Special Interest Section; Elizabeth McKenzie, Director, Suffolk University Law Library; Larry Meyer, Director, San Bernardino County Law Library, and Vice Chair, AALL Government Documents Special Interest Section; Joyce McCray Pearson, Director, Wheat Law Library, University of Kansas; Russell Sweet, Assistant Librarian for Public Services, University of Colorado Law Library; and Pamela Tull, Outreach Services, Wheat Law Library, University of Kansas.

**Abstract**

With so much information available online, some academic law libraries are reconsidering their Federal Depository Library status. This article summarizes several articles on participation decisions from the first half of the decade, brings readers up to date on the biggest factors in those decisions, and reports trends in participation.

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## Introduction

In 2000 and 2001, several law librarians published articles discussing whether participation in the Federal Depository Library Program (FDLP) made sense for academic law libraries in light of the fact that so much government information had been made freely available online.<sup>1</sup> A few years later, several other librarians published research on the participation of general academic libraries in the FDLP.<sup>2</sup> During these years, dozens of libraries left the program,<sup>3</sup> and the Government Printing Office (GPO) made several changes to the program

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<sup>1</sup> Peggy Roebuck Jarrett & Cheryl Rae Nyberg, *Should I Stay or Should I Go Now? Law Libraries and the Federal Depository Program in the Electronic Age*, LAW LIBR. LIGHTS, Fall 2001, at 1; Iris M. Lee, *Withdrawing From the FDLP: A Responsible Solution*, LAW LIBR. LIGHTS, Fall 2001, at 6; Elizabeth M. McKenzie, Elizabeth Gemellaro & Caroline Walters, *Leaving Paradise: Dropping Out of the Federal Depository Library Program*, 92 LAW LIBR. J. 305 (2000); Elizabeth Gemellaro, *Dropping Federal Depository Library Status: A How-To Guide*, AALL SPECTRUM, June 2000, at 26.

<sup>2</sup> Yvonne T. Lev, Mary Gilbert, Carl Olson & Nancy Gonce, *Making the Decision to Relinquish U.S. Document Depository Status*, 2 PORTAL: LIBR. AND THE ACAD. 413 (2002); Ridley Kesler, *A Preliminary Analysis of the ARL Survey of Regional and ARL Selective Depository Libraries in the Federal Depository Library Program*, 143 ASS'N RES. LIBR. (2003), <http://www.arl.org/arl/proceedings/143/>.

<sup>3</sup> Cf. LIBRARY PROGRAMS SERVICE, BIENNIAL SURVEY OF DEPOSITORY LIBRARIES: 1997 RESULTS 3 (GPO, 1999), available at [http://www.access.gpo.gov/su\\_docs/fdlp/bisurvey/97survey.pdf](http://www.access.gpo.gov/su_docs/fdlp/bisurvey/97survey.pdf), (reporting the total number of depositories as of 1997 as 1363), and U.S. Government Printing Office, 2003 Biennial Survey, ADMIN. NOTES, Jan. 15, 2004, at 9, available at [http://www.access.gpo.gov/su\\_docs/fdlp/pubs/adnotes/ad011504.pdf](http://www.access.gpo.gov/su_docs/fdlp/pubs/adnotes/ad011504.pdf) (reporting the total number of depositories as of January 2004 as 1279). See also David Durant, *The Federal Depository Library Program: Anachronism or Necessity?* NORTH CAROLINA LIBRARIES (ONLINE), Spring 2004, at 30, 35, [http://www.nclaonline.org/NCL/ncl/NCL\\_62\\_1\\_Spring2004.pdf](http://www.nclaonline.org/NCL/ncl/NCL_62_1_Spring2004.pdf); and John A. Shuler, *Informing the Nation: The Future of Librarianship and Government Information Service*, 22 GOVERNMENT INFO. Q. 146, 147-148 (2005).

in an attempt to address the problems that made leaving such an attractive choice.<sup>4</sup>

However, limited staff time and shelf space continue to be a problem for most academic law libraries, and every year there are more law students and faculty members with a preference for digital information. This leaves many academic law librarians wondering whether their libraries should be withdrawn from the program. This article provides those librarians with a place to start investigating this issue by summarizing the most relevant articles and then discussing the recurring themes from those articles, focusing on what has changed since they were written.<sup>5</sup> It also includes an analysis of trends in participation based on statistics from the FDLP and the American Bar Association (ABA).

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<sup>4</sup> See, e.g., Judith C. Russell, Remarks of Superintendent of Documents Judith C. Russell, Depository Library Conference, Washington, DC (October 18, 2004), [http://www.gpo.gov/su\\_docs/fdlp/pubs/proceedings/04JudyRussell.pdf](http://www.gpo.gov/su_docs/fdlp/pubs/proceedings/04JudyRussell.pdf).

<sup>5</sup> Librarians who are interested in the larger implications of the GPO's shift to electronic publications, such as whether (and/or in what form) the FDLP should continue to exist, have about a dozen relatively recent articles to choose from. See, e.g., Duncan M. Aldrich, Gary Cornwell & Daniel Barkley, *Changing partnerships? Government documents departments at the turn of the millennium*, 17 GOVERNMENT INFO. Q. 273-290 (2000); Wendy R. Brown, *Federal Initiatives to Promote Access to Electronic Government Information: The Impact on the Federal Depository Library Program*, 91 LAW LIBR. J. 291 (1999); Miriam A. Drake, *The Federal Depository Library Program: Safety Net for Access*, SEARCHER, Jan. 2005, at 46; Miriam A. Drake, *Government Doublethink*, SEARCHER, May 2003, at 26; Durant, *supra* note 3; James A. Jacobs, James R. Jacobs & Shinjoung Yeo, *Government Information in the Digital Age: The Once and Future Federal Depository Library Program*, 31 J. OF ACAD. LIBRARIANSHIP 198 (2005); Charles A. Seavey, *Documents to the People: Musings on the Past and Future of Government Information*, AM. LIBR., Aug. 2005, at 42; John A. Shuler, *New Economic Models for the Federal Depository System: Why Is It So Hard to Get the Question Answered?* 30 J. OF ACAD. LIBRARIANSHIP 243 (2004); Shuler, *supra* note 3; Dorothy Warner, "Why Do We Need to Keep This in Print? It's on the Web ...": A Review of Electronic Archiving Issues and Problems, PROGRESSIVE LIBR., Spring 2002, at 47, [http://www.libr.org/PL/19-20\\_Warner.html](http://www.libr.org/PL/19-20_Warner.html); Frances A. Wong, *Preserving Government Information: Whose Job Is It? Speakers Debate Who Will Throw the Life Preserver to Government Electronic Information*, AALL SPECTRUM, Sept. 2001, at 30.

## Reconsidering Participation in the First Half of the Decade

### *George Washington University Law Library*

Two of the most recent articles to address whether it makes sense for academic law libraries to participate in the FDLP were both published in the Fall 2001 issue of *Law Library Lights*, the newsletter of the Law Librarians' Society of Washington, D.C. One article presented several arguments in favor of continuing participation in the program,<sup>6</sup> while the other focused on the factors that led the George Washington University Law Library to end its participation.<sup>7</sup> These factors included the shelf space required to house the depository documents; the seating space, reference assistance, multiple copies of basic documents, and other resources required by members of the public; and GPO regulations that required the library to provide computers and printers for public use.<sup>8</sup> This article also discussed the fact that the George Washington library was required to accept, shelve, and retain *every* government document it received for five years—even coloring books, shopping bags, and advertisements for new publications.<sup>9</sup>

### *Suffolk University Law Library*

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<sup>6</sup> Jarrett & Nyberg, *supra* note 1.

<sup>7</sup> Lee, *supra* note 1.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 7.

In 2000, two articles were published about the Suffolk University Law Library's withdrawal from the FDLP.<sup>10</sup> The reasons for withdrawal cited in these articles included the law school's plan to move into a building that would require identification cards for entry, which would make public access difficult; a desire to integrate government documents into the rest of the collection, which would make it impossible to limit public access to materials other than the FDLP collection; the free availability of many government documents on the Web; the FDLP's overly broad selection system, which required the library to receive unneeded publications, combined with the requirement that the library retain all of those items for at least five years; GPO regulations requiring the library to provide computers and printers for use by the public; the staff time and expertise required to acquire and process FDLP publications and comply with FDLP regulations; the cost of purchasing commercially-published materials to support FDLP publications; and extensive reference needs of *pro se* patrons.<sup>11</sup>

### ***Other Academic Libraries***

In the early 2000s, general academic libraries were also questioning participation in the FDLP in the electronic age, and surveys of librarians at those institutions echo many of the concerns expressed by academic law librarians. One of these surveys focused on fourteen academic libraries that withdrew from the

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<sup>10</sup> McKenzie, Gemellaro & Walters, *supra* note 1; Gemellaro, *supra* note 1.

<sup>11</sup> *Id.*



FDLP between 1998 and 2001.<sup>12</sup> This survey was conducted by three librarians at the Towson University library in connection with their decision to withdraw from the program.<sup>13</sup> The reasons for leaving that the librarians at the withdrawing libraries reported were similar to those cited by the George Washington and Suffolk law librarians. They were, from most frequently cited to least: (1) electronic access to documents as an alternative to depository status; (2) staffing priorities; (3) space constraints; (4) nearby bigger, older depositories and time spent on reports, inspections, and meeting other FDLP requirements [a tie]; (5) indirect costs of document ownership; (6) lack of control over the format and content of documents received; (7) GPO pressure to increase the percentage of documents selected and GPO concern with compliance with GPO depository guidelines [a tie]; (8) the retirement of a documents librarian; and (9) a change in library's mission.<sup>14</sup> This survey also revealed that private academic libraries were more likely to leave than publicly-supported libraries, and that small selective depositories were more likely to leave the program than larger depositories, especially small selectives that were near a larger and older depository.<sup>15</sup>

The other survey, which was conducted by Ridley Kesler and other librarians in 2003, focused on all the selective depository libraries that were members of the Association of Research Libraries (ARL) and all of the regional

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<sup>12</sup> Lev, Gilbert, Olson & Gonce, *supra* note 2.

<sup>13</sup> *Id.* at 416.

<sup>14</sup> *Id.* at 417.

<sup>15</sup> *Id.* at 418.

depository libraries, most of which were also members of the ARL.<sup>16</sup> Kesler's survey focused on libraries that were still in the program, rather than those that had dropped out.<sup>17</sup> One of the most interesting findings was that the average cost of being a depository, as estimated by the government document librarians, was \$257,304 per year, of which 67.2 percent was spent on staffing and 21.8 percent was spent on purchases to support the FDLP materials (not including equipment or software).<sup>18</sup> This survey also found that 80 percent of the government documents librarians agreed that a more electronic GPO had improved public service, and a significant majority agreed that the GPO's regulations for the FDLP were in need of significant revision.<sup>19</sup> Finally, 7 percent of the selective depositories and 14 percent of the regionals reported that they had considered leaving the FDLP.<sup>20</sup>

## **Reconsidering Participation Now (Particular Issues)**

### ***GPO Access as an Alternative to Depository Status***

The most obvious reason for withdrawing from the FDLP, both at the turn of the century and now, is the free availability of many federal government documents through GPO Access and other Web sites.<sup>21</sup> In some ways, this reason

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<sup>16</sup> Kesler, *supra* note 2.

<sup>17</sup> *Id.* at 1.

<sup>18</sup> *Id.* at 2.

<sup>19</sup> *Id.* at 2, 3.

<sup>20</sup> *Id.* at 3.

<sup>21</sup> *See, e.g.,* Jarrett & Nyberg, *supra* note 1.

for dropping depository status has gathered strength in recent years as the GPO Access search interface has improved and its content has expanded. When the Suffolk law library left the program in 2000, citing the availability of government information online as one of its reasons for doing so, only 53 percent of the FDLP titles were available online.<sup>22</sup> By August 2004, that number had risen to 86 percent, and the Superintendent of Documents reported that the GPO Access was well on its way toward meeting its goal of 95 percent by 2005.<sup>23</sup> Also, in 2000 and 2001, there was very little historical information on GPO Access; documents were simply added as they were published, and online publication did not start for most items until the mid-1990s. Now, however, the collections go back several years, and the GPO is working on coordinating the efforts of some depositories to digitize their legacy collections so that historical government documents will eventually be available online.<sup>24</sup>

However, some librarians are more reluctant to rely on online government information now because of their increasing awareness of the problems of

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<sup>22</sup> U.S. Gov't Printing Office, *Library Programs Service FY 2000 Annual Report*, ADMIN. NOTES, Oct. 15, 2000, at 1, 6 (combining the percentage of documents available through GPO Access (19.2) and the percentage of documents available through other agency sites (33.7)); McKenzie, Gemellaro & Walters, *supra* note 1, at 307.

<sup>23</sup> Russell, *supra* note 4.

<sup>24</sup> U.S. Gov't Printing Office, Depository Library Council Meeting Update October 2005 (GPO, 2005), [http://www.access.gpo.gov/su\\_docs/fdlp/pubs/proceedings/05fall/gpo\\_update\\_fall05.pdf](http://www.access.gpo.gov/su_docs/fdlp/pubs/proceedings/05fall/gpo_update_fall05.pdf); *see also* U.S. Gov't Printing Office, Registry of U.S. Government Publications Digitization Projects, <http://www.gpoaccess.gov/legacy/registry/>.

preservation, version control, and authentication of digital information.<sup>25</sup> Also, the problem of fugitive documents<sup>26</sup> has gotten worse because more agencies are now posting documents only on their own Web sites, bypassing the FDLP.<sup>27</sup>

Because of these concerns, after the GPO announced in January 2005 that it planned to distribute only the fifty titles then listed in the Essential Titles for Public Use in Paper Format beginning in October 2005, the American Association of Law Libraries (AALL) posted an Action Alert that prompted many law librarians to contact their representatives in Congress.<sup>28</sup> The AALL also adopted a resolution that opposed the plan and urged the GPO to “establish a reliable system ensuring version control, authenticity, adequate distribution, permanent public access and preservation of electronic information before discontinuing production and distribution of print documents (currently the only authenticated

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<sup>25</sup> For detailed discussions of these concerns, see Drake, *supra* note 5; Durant, *supra* note 3; Jacobs, Jacobs & Yeo, *supra* note 5; Warner, *supra* note 5; Wong, *supra* note 5; Michelle M. Wu, *Why Print and Electronic Resources Are Essential to the Academic Law Library*, 97 LAW LIBR. J. 233 (2005).

<sup>26</sup> A “fugitive document” is an item published directly by an agency, rather than through the General Printing Office. Such documents are difficult to find because they are not cataloged or distributed through the FDLP. Also, most of them are not preserved.

<sup>27</sup> Durant, *supra* note 3, at 36-37; Depository Library Council, *The Federal Government Information Environment of the 21<sup>st</sup> Century: Towards a Vision Statement and Plan of Action for Federal Depository Libraries* 2-3 (discussion paper, Sept. 2005), [http://www.access.gpo.gov/su\\_docs/fdlp/pubs/dlc\\_vision\\_09\\_02\\_2005.pdf](http://www.access.gpo.gov/su_docs/fdlp/pubs/dlc_vision_09_02_2005.pdf).

<sup>28</sup> Mary Alice Baish, *Washington Affairs Office* (part of the article *American Association of Law Libraries Reports of Chapters, Special Interest Sections, Committees, Special Committees and Task Forces, Representatives, and Washington Affairs Office 2004-2005*), 97 LAW LIBR. J. 836 (2005).

version of critical official government legal information) to depository libraries.”<sup>29</sup>

In response to these actions by the AALL and input from other librarians, the GPO has attempted to address some of the problems associated with electronic publication. In its January 2006 UPDATE FOR ALA, the GPO announced that it was taking these steps:

- Reviewing bids on an authentication system for GPO documents;
- Soliciting comments on a request for proposals outlining the duties of the contractor that will build FDsys, a program that will “manage, preserve, version, provide access to, and disseminate authentic digital content;”
- Evaluating a location for a disaster recovery site;
- Waiting for recommendations from the Depository Library Council for additional titles to be added to the Essential Titles for Public Use in Paper Format and refining the methodology for a new survey to determine which titles would be included;
- Updating the FEDERAL DEPOSITORY LIBRARY MANUAL and INSTRUCTIONS TO DEPOSITORY LIBRARIES;
- Adding federal journals to the LOCKSS pilot project;

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<sup>29</sup> AALL Executive Board, AALL Resolution Opposing GPO’s Plan to Eliminate Important Titles in Print Prior to Establishing a Reliable Electronic System (endorsed February 16, 2005), <http://www.ll.georgetown.edu/aallwash/re021605.html>.

- Devising a strategy to migrate data from CD-ROMS that have been distributed through the FDLP; and
- Working with the Environmental Protection Agency on a pilot project to use Web discovery and harvesting to gather fugitive documents.<sup>30</sup>

However, until these discussions, comment periods, and pilot projects become functioning realities, academic law librarians cannot rely exclusively on GPO Access for federal information, particularly if, like the law library at the University of Colorado, their libraries also serve as archives of legal materials.<sup>31</sup> Thus, law librarians considering whether to leave the FDLP should include the cost of purchasing the print versions of these materials in their calculations. Also, librarians considering leaving the program should consider the fact that, as employees of libraries with depository status, they have much more input on the future of the program than outsiders.<sup>32</sup>

### ***Public Access and Public Relations***

The requirement that participating libraries provide public access to their collections is a fundamental part of the FDLP, and has not changed significantly

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<sup>30</sup> U.S. GOV'T PRINTING OFFICE, UPDATE FOR ALA (January 2006), [http://www.access.gpo.gov/su\\_docs/fdlp/events/ala\\_update06.pdf](http://www.access.gpo.gov/su_docs/fdlp/events/ala_update06.pdf).

<sup>31</sup> Telephone interview with Russell Sweet, Assistant Librarian for Pub. Services, Univ. of Colo. Law Library, in Boulder, Colo. (Nov. 21, 2005).

<sup>32</sup> E-mail from Scott Matheson, Reference and Government Documents Librarian, Lillian Goldman Law Library, Yale Law School, and Chair, Government Documents Special Interest Section of the American Association of Law Libraries (Jan. 23, 2006, 9:15 A.M. EST) (on file with author).

since the articles about the George Washington and Suffolk law libraries were published. Also, nothing has changed about the fact that, because most law libraries integrate government documents with the rest of their materials, limiting public access to items other than FDLP documents is not a practical option for these libraries.<sup>33</sup> However, it is significant that both of the law libraries whose departures from the FDLP are discussed in these articles are parts of private universities, rather than public institutions.<sup>34</sup>

Most public academic law libraries make their entire collections available to the public, including both depository and non-depository items, because their missions include supporting the civic communities that fund them as well as their students and faculty members.<sup>35</sup> For example, the law libraries at the University of Colorado School of Law, the University of Kansas, and the University of Washington all allow public access to most of their collections, design their reference departments with public users in mind, and consider public access to FDLP documents a vital part of their missions.<sup>36</sup> Many public academic law libraries also serve as depositories for state and local materials, and thus are

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<sup>33</sup> Telephone interview with Elizabeth McKenzie, Director, Suffolk University Law Library, Boston, Mass. (Jan. 11, 2006); Telephone interview with Pamela Tull, Outreach Services, Wheat Law Library, Univ. of Kan., Lawrence, Kan. (Nov. 14, 2005); Telephone interview with Russell Sweet, *supra* note 31.

<sup>34</sup> Suffolk University, About Suffolk University, <http://www.suffolk.edu/about.html> (last visited January 28, 2006); Lee, *supra* note 1, at 6.

<sup>35</sup> Jarrett & Nyberg, *supra* note 1, at 4-5.

<sup>36</sup> Telephone interview with Russell Sweet, *supra* note 31; Telephone Interview with Pamela Tull, *supra* note 33; Telephone interview with Peggy Roebuck Jarrett, Documents & Reference Librarian, Gallagher Law Libr., Univ. of Wash., Seattle, Wash. (Jan. 18, 2006).

required to provide service to the public, whether or not they participate in the FDLP.<sup>37</sup>

On the other hand, law libraries at private universities generally see supporting their own students and faculty as their primary mission, and this mission is often in direct conflict with the public access requirement.<sup>38</sup> In the words of the Suffolk law librarians, “The conflict engendered by the depository mandate of public access is probably clearer at private institutions than at public ones.”<sup>39</sup> This is well illustrated in the article on the George Washington law library. This library prohibited use by local attorneys, students from other law schools, and undergraduates from the same university, but its limited seating areas were often occupied by members of the public taking advantage of the FDLP requirement of public access.<sup>40</sup> Also, the fact that some of the public users did not limit their use to FDLP materials and made extensive demands on the reference librarians was discussed in the article at length and seemed to be one of the most important reasons for the library’s withdrawal.<sup>41</sup> Since its withdrawal, this library has employed a student worker to check identification as users enter the library

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<sup>37</sup> E-Mail from Larry Meyer, Director, San Bernardino County Law Library, and Vice Chair, Government Documents Special Interest Section of the American Association of Law Libraries (Jan. 23, 2006, 5:47 p.m. PT) (on file with author).

<sup>38</sup> Jarrett & Nyberg, *supra* note 1, at 4-5; Telephone interview with Russell Sweet, *supra* note 31.

<sup>39</sup> McKenzie, Gemellaro & Walters, *supra* note 1, at 310.

<sup>40</sup> Lee, *supra* note 1, at 6.

<sup>41</sup> *Id.*



and has started a friends program, in which organizations and individuals make donations to the library in exchange for the right to use its resources.<sup>42</sup>

Suffolk University is also a private institution, and one of the articles on its withdrawal discussed the conflict between serving students and faculty and serving members of the public without legal training, noting that these users required more reference services than students and faculty and created “real or perceived” security issues.<sup>43</sup>

The survey of academic libraries that left the FDLP from 1998 through 2001 also indicated that private academic libraries were more likely to leave the program and that libraries at public institutions were more likely to join the program.<sup>44</sup>

Depository status is a badge of honor for a law library, whether private or public. Before its withdrawal, the Suffolk law school advertised that status in its catalog,<sup>45</sup> and the librarians at George Washington law library worried about “the potential public relations fall out” of the withdrawal, although it turned out there

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<sup>42</sup> Telephone interview with Iris Lee, Head of Collection Development, Burns Law Libr., George Wash. Univ., Washington, D.C. (Jan. 16, 2006).

<sup>43</sup> McKenzie, Gemellaro & Walters, *supra* note 1, at 309-310. Depository libraries are instructed that they must “ensure that their security or access policies, or those of their parent bodies, do not hinder public access to depository materials,” and that, if the library determines a necessary security precaution is to require identification for use of library resources by public patrons, the library may ask for identification, but staff must be mindful of local, state, and Federal privacy laws. U.S. GOV’T PRINTING OFFICE, INSTRUCTIONS TO DEPOSITORY LIBRARIES 31 (Ch. 7, Pt. A) (GPO, 2000), *available at* [http://www.access.gpo.gov/su\\_docs/fdlp/pubs/instructions/in\\_ch7.html](http://www.access.gpo.gov/su_docs/fdlp/pubs/instructions/in_ch7.html).

<sup>44</sup> Lev, Gilbert, Olson & Gonce, *supra* note 2, at 419.

<sup>45</sup> McKenzie, Gemellaro & Walters, *supra* note 1, at 309.

was no such fallout.<sup>46</sup> However, law libraries at public institutions may see this honor as much more important to their mission and their public relations, particularly with librarians from other institutions and the officials who make decisions about their funding.<sup>47</sup>

### ***Computers and Printers for the Public***

Depository libraries are required to provide the public with computers and printers that meet detailed specifications for use in accessing online government information.<sup>48</sup> This requirement was mentioned briefly as support for the decisions to leave the program by both the Suffolk University Law Library<sup>49</sup> and the George Washington University Law Library.<sup>50</sup>

Since these articles were published, the specifications for the computers have changed annually, and some law libraries have continued to struggle with this requirement. At the University of Kansas law library, for example, the librarians are still struggling to create a workable way to allow members of the public to print large documents.<sup>51</sup> However, the University of Colorado uses a

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<sup>46</sup> Lee, *supra* note 1, at 7.

<sup>47</sup> Interview with Pamela Tull, *supra* note 33.

<sup>48</sup> U.S. Gov't Printing Office, 2005 Minimum Technical Requirements for Public Access Workstations in Federal Depository Libraries, [http://www.access.gpo.gov/su\\_docs/fdlp/computers/mtr.html](http://www.access.gpo.gov/su_docs/fdlp/computers/mtr.html).

<sup>49</sup> McKenzie, Gemellaro & Walters, *supra* note 1, at 307-308.

<sup>50</sup> Lee, *supra* note 1, at 7.

<sup>51</sup> Interview with Pamela Tull, *supra* note 33.

product from Pharos Systems that allows the library to recoup the costs of public printing through use of printing cards.<sup>52</sup>

### ***Potential Loss of Existing FDLP Collection***

The possibility of losing the library's existing collection of FDLP documents was a major concern at the Suffolk law library; the librarians there did not make a final decision to leave the program until they had been informally reassured by their regional depository librarian that the regional would take only a few items from their collection.<sup>53</sup> However, this issue was not mentioned at all in the article on the George Washington law library.<sup>54</sup>

The GPO regulation on this issue the library says that, after a library has decided to withdraw, it should "request instructions from its regional depository concerning disposition of the depository publications on hand."<sup>55</sup> The regional has the authority to claim whatever documents it wants for its own collection or other selective depository needs in the state or region.<sup>56</sup> If the library wants to keep some or all of the documents, it must submit a request that lists each document and then wait for the regional to announce its "retention decision."<sup>57</sup> These regulations have not been revised since 2000, and a presentation at the Fall 2005

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<sup>52</sup> Interview with Russell Sweet, *supra* note 31.

<sup>53</sup> Gemellaro, *supra* note 1, at 26; McKenzie, Gemellaro & Walters, *supra* note 1, at 311.

<sup>54</sup> Lee, *supra* note 1.

<sup>55</sup> U.S. GOV'T PRINTING OFFICE, INSTRUCTIONS TO DEPOSITORY LIBRARIES 2 (Ch. 1, Pt. C) (GPO, 2000), available at [http://www.access.gpo.gov/su\\_docs/fdlp/pubs/instructions/in\\_ch1.html](http://www.access.gpo.gov/su_docs/fdlp/pubs/instructions/in_ch1.html).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

Depository Library Conference indicated that no major changes will be made to this process in the revised manual<sup>58</sup> that the GPO plans to post by the end of January 2006.<sup>59</sup>

Most depository law libraries have invested a huge amount of time in cataloging, processing, and shelving FDLP documents, all of which would be lost if the items were reclaimed. Also, because many of the older FDLP documents in existing collections are not yet included in GPO Access, those documents would no longer be available at the library if they were reclaimed during the termination process.

Although it may seem unlikely that a regional depository would want or need a significant portion of a law library's collection, this actually became an issue for the Suffolk law library because, after the decision to withdraw had been made, the regional suffered a catastrophic flood that destroyed many of its older materials.<sup>60</sup> Also, the collections of law libraries may be more attractive targets than those of other selective depositories because law libraries tend to select some of the most valuable FDLP documents.<sup>61</sup>

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<sup>58</sup> Janet M. Scheitle, The New Electronic Depository Manual (PowerPoint slides presented at the Fall 2005 Depository Library Conference), [http://www.access.gpo.gov/su\\_docs/fdlp/pubs/proceedings/05fall/janet\\_scheitle\\_manual\\_oct05.ppt#15](http://www.access.gpo.gov/su_docs/fdlp/pubs/proceedings/05fall/janet_scheitle_manual_oct05.ppt#15)

<sup>59</sup> U.S. Gov't Printing Office, *supra* note 24.

<sup>60</sup> McKenzie, Gemellaro & Walters, *supra* note 1, at 312.

<sup>61</sup> Interview with Pamela Tull, *supra* note 33.

Law libraries that participate in selective housing agreements risk losing more than their own collections of federal documents if they drop depository status. Selective housing agreements, which are sanctioned by the GPO under some circumstances,<sup>62</sup> provide that one depository library may select, receive, process, and be responsible for documents to be housed at another library.<sup>63</sup> Because it is easier to get a depository designation for a law library than for other kinds of academic libraries,<sup>64</sup> some universities obtain depository designation only for the law library and use a selective housing agreement to get government documents for the main campus library through the law library.<sup>65</sup>

A law library that houses documents from another depository under a selective housing agreement, such as the Lillian Goldman Law Library at Yale Law School, could lose those documents as well as its own depository documents if it drops its depository status.<sup>66</sup> On the other hand, an academic law library that selects documents to be housed in another library puts the other library's government documents collection at risk if it drops out of the program.<sup>67</sup>

### ***Inspections, Self Studies, and other Reports***

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<sup>62</sup> U.S. GOV'T PRINTING OFFICE, INSTRUCTIONS TO DEPOSITORY LIBRARIES 10 (Ch. 2, Pt. F) (GPO, 2000), available at [http://www.access.gpo.gov/su\\_docs/fdlp/pubs/instructions/in\\_ch2.html](http://www.access.gpo.gov/su_docs/fdlp/pubs/instructions/in_ch2.html);

<sup>63</sup> Blackburn, Sharon. *Spreading the Riches Around: Administering Selective Housing Arrangements From the Law Library Perspective: An Overview*, 8 FED. DEPOSITORY LIBR. CONF. 67 (1999), available at [http://www.access.gpo.gov/su\\_docs/fdlp/pubs/proceedings/99pro.html](http://www.access.gpo.gov/su_docs/fdlp/pubs/proceedings/99pro.html).

<sup>64</sup> 44 U.S.C.A. §1916 (West 1991).

<sup>65</sup> Matheson, *supra* note 32.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

“Time spent on reports, inspections, and meeting FDLP requirements” tied for fourth place with “nearby bigger, older depositories” on the list of most frequently cited reasons for leaving the program in the survey of academic libraries that gave up depository status between 1998 and 2001.<sup>68</sup> This factor was not mentioned in any of the articles about the law libraries, probably because, beginning in 1996, the GPO gradually switched from regular on-site inspections by GPO officials to self-studies by librarians.<sup>69</sup> These self-studies are now followed by on-site inspections only if the library does not meet depository standards, has never been inspected, requests an inspection, or reports exemplary services or accomplishments like a new building.<sup>70</sup>

The self-study is a 40-page booklet that contains detailed fill-in-the-blank and multiple-choice questions about the library’s collection, facilities, and policies.<sup>71</sup> Completing a self study does consume a significant amount of staff time. However, a majority of academic librarians reported in 2003 that the self-study and inspection process was a benefit to their libraries.<sup>72</sup>

Recently, the GPO has attempted to address the remaining concerns about the inspection process by transforming the inspectors into consultants who work

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<sup>68</sup> Lev, Gilbert, Olson & Gonce, *supra* note 2, at 417.

<sup>69</sup> Gail Snider & Stephen Henson, *Writing the Depository Self-Study*, 7 FED. DEPOSITORY LIBR. CONF. 29 (1998), available at [http://www.access.gpo.gov/su\\_docs/fdlp/pubs/proceedings/98pro11.html](http://www.access.gpo.gov/su_docs/fdlp/pubs/proceedings/98pro11.html).

<sup>70</sup> *Id.*

<sup>71</sup> LIBRARY PROGRAMS SERVICE, FEDERAL DEPOSITORY LIBRARY MANUAL SUPPLEMENT 3 (REVISED): SELF-STUDY OF A FEDERAL DEPOSITORY LIBRARY (GPO, 1999).

<sup>72</sup> Kesler, *supra* note 2, at Question 25.

out of offices provided by the regional depositories but receive salaries from the GPO. In 2005, the GPO placed one consultant in a regional depository.<sup>73</sup> However, the program was not funded in 2006.<sup>74</sup> Also, this initiative is not especially relevant to law librarians because very few law libraries employ full-time government documents librarians with the time and motivation to take advantage of such consultations, and law librarians generally do not deal with the census data, maps, and other specialized publications that are the topics of most GPO training.<sup>75</sup>

### ***Shelf Space and Selection Methods***

In November 2005, in the office of Pamela Tull, the outreach services librarian at the University of Kansas law library, there were about two shelves of government documents that were almost completely useless to the library.<sup>76</sup> These documents were received through the FDLP through an overly broad selection system, and FDLP regulations required the library to hold them for a minimum of five years, after which they could be discarded only with the permission of the regional depository.<sup>77</sup> In the meantime, they had to be checked in, recorded, and stored in the library. Many of these items were ephemera like the coloring books, shopping bags, and advertisements that Iris Lee mentioned in her article on the

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<sup>73</sup> Russell, *supra* note 4.

<sup>74</sup> U.S. Gov't Printing Office, *supra* note 24.

<sup>75</sup> Interview with Pamela Tull, *supra* note 33.

<sup>76</sup> *Id.*

<sup>77</sup> U.S. GOV'T PRINTING OFFICE, *supra* note 55, at 21 (Ch. 4, Pt. E).

George Washington law library<sup>78</sup> and the “unwanted documents” that were cited as one of the biggest reasons for the Suffolk law library’s withdrawal.<sup>79</sup>

A lot of progress has been made in this area in the last few years. The FDLP has gradually narrowed the item numbers that are used to select documents so that libraries receive fewer irrelevant items, and many librarians have started selecting minimally useful items only in electronic formats so that they do not require shelf space.<sup>80</sup> Also, in 2004, the FDLP revised its regulations to allow depositories to discard publication announcements, dated announcements, and some other items before the five-year period has expired.<sup>81</sup> As a result of these changes, by January 2006, almost all of the items on those two shelves at the University of Kansas were gone or on a discard list, and Ms. Tull was looking forward to using her shelves for other things.<sup>82</sup>

The GPO is currently working on a system that will allow depositories to select some tangible items automatically and review others online before accepting them.<sup>83</sup> This new system may also include separate selection systems

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<sup>78</sup> Lee, *supra* note 1, at 7.

<sup>79</sup> McKenzie, Gemellaro & Walters, *supra* note 1, at 307-308.

<sup>80</sup> Interview with Pamela Tull, *supra* note 36.

<sup>81</sup> U.S. Gov’t Printing Office, *Progress Report: How’s the Carrot Crop Doing?* (Fall 2005) [http://www.access.gpo.gov/su\\_docs/fdlp/pubs/proceedings/incentives\\_progress\\_oct2004.pdf](http://www.access.gpo.gov/su_docs/fdlp/pubs/proceedings/incentives_progress_oct2004.pdf).

<sup>82</sup> E-mail from Pamela Tull, Outreach Services, Wheat Law Library, Univ. of Kan. (Jan. 9, 2006, 2:45 CST) (on file with author).

<sup>83</sup> U.S. Gov’t Printing Office, *supra* note 24.



for electronic and tangible publications. However, it will not be implemented until the June 2006 selection cycle at the earliest.<sup>84</sup>

### ***Print Resources as an Incentive to Stay in the Program***

One of the biggest incentives for law libraries to participate in the FDLP is the free acquisition of print government publications from one centralized source.<sup>85</sup> Thus, it is not surprising that the expense and staff time required to acquire these publications through other channels were mentioned as negative consequences of leaving the FDLP in the articles about the George Washington and Suffolk law libraries.<sup>86</sup>

Law libraries need government publications in print for many reasons. Perhaps most importantly, the print version from the Government Printing Office is, for many kinds of government information, the only official form, which lawyers, students, and others must consult before citing those documents to a court.<sup>87</sup> Also, many legal materials, such as statutes and codes, are much easier to browse and have a more obvious structure in their print forms. This is one reason that legal research classes generally start with print resources and cover electronic forms only after the students have gained some proficiency with the print

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<sup>84</sup> *Id.*

<sup>85</sup> Jarrett & Nyberg, *supra* note 1.

<sup>86</sup> Lee, *supra* note 1; McKenzie, Gemellaro & Walters, *supra* note 1.

<sup>87</sup> AALL Executive Board, *supra* note 29.

materials.<sup>88</sup> Finally, the law is an area in which it is especially important to be aware of the consequences of the digital divide. Many of the users of public academic law libraries are non-lawyers representing themselves in negotiations or litigation. While most of these users now understand the basics of computer keyboards and mice, many of them are not yet able to search a database or update a publication online.<sup>89</sup>

The latest GPO policy statement on this issue says that, if an item is available in both tangible and electronic form, depository libraries will receive only the electronic form unless an exception applies.<sup>90</sup> One of the exceptions applies to online forms that are not recognized as official by the publishing agency, are located on Web sites that are changed randomly, are “very difficult to use,” are not cost-effective, or are fee-based.<sup>91</sup> Another exception applies to tangible products that are “of significant reference value to most types of FDLP libraries, as may be the case with certain compilations, legal resources, permanent legal records or products of historical importance.”<sup>92</sup> Finally, an exception applies to all of the items that are included in the Essential Titles for Public Use in Paper or other Tangible Format.<sup>93</sup> This list currently includes many legal titles.<sup>94</sup>

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<sup>88</sup> Interview with Russell Sweet, *supra* note 31.

<sup>89</sup> *Id.*

<sup>90</sup> U.S. Gov’t Printing Office, Information Dissemination Policy Statement, ID 71 (June 21, 2005), [http://www.access.gpo.gov/su\\_docs/fdlp/pubs/policies/](http://www.access.gpo.gov/su_docs/fdlp/pubs/policies/).

<sup>91</sup> *Id.* at Guideline 3.

<sup>92</sup> *Id.* at Guideline 4.b.

<sup>93</sup> *Id.* at Guideline 4.

However, there is no guarantee that any particular title will remain on the list; since it was first posted online on December 15, 2000, this list has already been revised twice (on May 16, 2003, and March 3, 2005),<sup>95</sup> and the GPO is currently designing a new survey to determine which titles should be included.<sup>96</sup>

### *Staff Time*

One of the triggering events for the decision to withdraw the Suffolk law library from the FDLP was the departure of the government documents librarian, and the article on that library's withdrawal mentions the demands of public users on reference and circulation staff as one of the reasons for leaving the program.<sup>97</sup> These problems were also reflected in the articles on general academic libraries. The survey of academic libraries that were still participating in the FDLP in 2003 showed that the average cost of participating in the program was \$257,304 per year, of which 67.2 percent was spent on staffing.<sup>98</sup> Also, in the survey of academic libraries that left the program, "staffing priorities" was the second most frequently cited reason for leaving the program, and the retirement of a documents librarian was the eighth.<sup>99</sup>

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<sup>94</sup> Essential Titles for Public Use in Paper or Tangible Format, [http://www.access.gpo.gov/su\\_docs/fdlp/pubs/estitles.html](http://www.access.gpo.gov/su_docs/fdlp/pubs/estitles.html) (last updated March 31, 2005; last visited January 28, 2006)

<sup>95</sup> *Id.*

<sup>96</sup> U.S. Gov't Printing Office, *supra* note 30.

<sup>97</sup> McKenzie, Gemellaro & Walters, *supra* note 1.

<sup>98</sup> Kesler, *supra* note 2, at 2.

<sup>99</sup> Lev, Gilbert, Olson & Gonce, *supra* note 2, at 417.

The cost of staffing for government documents at law libraries is probably much less than the figure reported by Kesler's survey, which included the kinds of libraries that tend to employ fulltime government documents librarians—large selective research libraries and regionals. Law libraries, on the other hand, tend to select a relatively small portion of the GPO's output and generally spread the government documents tasks among several librarians and assistants. Also, although complying with regulations and processing shipments is still time-consuming, improvements in the FDLDP selection system have made it possible for law librarians to receive far fewer items that are outside the scopes of their collections, so that the time spent on acquiring and processing materials from the FDLDP is not wasted; it is simply expended on free materials, rather than purchased materials.<sup>100</sup> Finally, librarians should note that leaving the FDLDP does not solve staffing problems in the short term; it took the libraries in the articles discussed in this paper from ten months to three years to process their government documents after they had given up depository status,<sup>101</sup> and libraries that withdraw have to invest a large amount of time to prevent and correct gaps and overlaps in serial publications, both before and after the withdrawal.<sup>102</sup>

## **Reconsidering Participation in the Future (Trends)**

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<sup>100</sup> Jarrett & Nyberg, *supra* note 1, at 4; Interview with Pamela Tull, *supra* note 36.

<sup>101</sup> Gemellaro, *supra* note 1, at 27; Lev, Gilbert, Olson & Gonce, *supra* note 2, at 415.

<sup>102</sup> Telephone interview with Lee, *supra* note 42; Telephone interview with McKenzie, *supra* note 33.

As of early 2006, it is difficult to determine whether the Suffolk and George Washington law libraries were just two libraries responding to unique circumstances or the first of many academic law libraries to leave the FDLP. The number of academic law libraries participating in the FDLP is now 152,<sup>103</sup> which is down only slightly from the 154 academic law libraries reported in the 1999 Biennial Survey of Depository Libraries<sup>104</sup> and the 156 reported in the 1997 survey.<sup>105</sup> This decrease is so slight that it may seem insignificant.

However, the decrease seems much more significant if the number of law schools accredited by the American Bar Association (ABA) is taken into account. If the number of academic law libraries listed in the 1997 Biennial Survey of Depository Libraries (156)<sup>106</sup> is subtracted from the number of law schools that were accredited by the American Bar Association that year (180),<sup>107</sup> the difference is 24, which means that, in 1997, about<sup>108</sup> 24 ABA-accredited law schools had libraries without depository status. Just a few years later, the results are very different: If the number of academic law libraries currently listed in the

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<sup>103</sup> U.S. Gov't Printing Office, Federal Depository Library Directory (database; number was obtained by searching the directory for all records that included both "academic" and "law" in the Library Type field on January 9, 2006), [http://www.access.gpo.gov/su\\_docs/fdlp/tools/ldirect.html#2F](http://www.access.gpo.gov/su_docs/fdlp/tools/ldirect.html#2F)

<sup>104</sup> LIBRARY PROGRAMS SERVICE, BIENNIAL SURVEY OF DEPOSITORY LIBRARIES: 1999 RESULTS iii (GPO, 2001), *available at* [http://www.access.gpo.gov/su\\_docs/fdlp/bisurvey/99survey.pdf](http://www.access.gpo.gov/su_docs/fdlp/bisurvey/99survey.pdf).

<sup>105</sup> LIBRARY PROGRAMS SERVICE, *supra* note 3.

<sup>106</sup> *Id.*

<sup>107</sup> American Bar Association, Legal Education and Bar Admission Statistics, 1963-2005, [http://www.abanet.org/legaled/statistics/le\\_bastats.html](http://www.abanet.org/legaled/statistics/le_bastats.html).

<sup>108</sup> Because these surveys were conducted by separate groups, covered slightly different time periods, and applied different standards, the results of the calculations should be taken only as estimates. For example, there are academic law libraries with depository status at law schools that are not accredited by the ABA, and some new depository libraries were added during this period.

Federal Depository Library Directory (152)<sup>109</sup> is subtracted from the number of ABA-accredited law schools as of August 2005 (191),<sup>110</sup> the difference is 39. This sharp increase in the number of ABA-accredited law school libraries not participating in the FDLP—from 24 to 39 schools, or from about 13 percent to 20 percent of all ABA-accredited law schools—shows a strong trend away from participation.

## Conclusion

Each of the 152 academic law libraries currently participating in the FDLP has a unique relationship with its funding source and community, a unique collection development policy, and a unique user group, all of which are important considerations bearing on FDLP participation. Also, the FDLP itself is still in so much flux that many academic law libraries are wisely waiting to see what will happen before they make a permanent decision to leave the program.<sup>111</sup> However, it is more important now than ever for law librarians to know about these issues and to use their influence to ensure that this vital information will continue to be available to law library users, both now and in the future. All librarians depend on the FDLP to preserve and provide access to government documents, whether or not they work at depository libraries.

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<sup>109</sup> U.S. Gov't Printing Office, *supra* note 103.

<sup>110</sup> American Bar Association, ABA-Approved Law Schools, <http://www.abanet.org/legaled/approvedlawschools/approved.html>.

<sup>111</sup> Interview with Russell Sweet, *supra* note 31.