

Print No More: U.S. Code, Code of Federal Regulations, and the Federal Register

by Timothy L. Coggins

Imagine the following scenario in which you are representing one of your law firm's major clients.

Attorney to Librarian: I'm on my way out the door to court, and I need a copy of title 42 of the *Code of Federal Regulations*, part 179.95. I need to take the book or a copy from the original print version with me.

Librarian to Attorney: I'm sorry; I can't get that for you. Congress cut the funding to the Government Printing Office, and we don't have a print copy of the *Code of Federal Regulations* any more. I can download an unofficial copy from GPO Access, from LEXIS, or from Westlaw. Will that work?

Do you believe that this is an unlikely scenario? It isn't. If the United States Congress follows in the direction that it has been moving recently, the *United States Code* (2000 edition), the *Code of Federal Regulations*, the *Federal Register*, the official *United States Reports*, along with many other primary legal materials currently published and distributed to libraries through the Federal Depository Library Program (FDLP), will no longer be available in print for attorneys, librarians, legal assistants, and citizens. Congress has directed the Government Printing Office (GPO) to move toward electronic dissemination of materials and is reducing GPO's funding so significantly that GPO soon may no longer publish these and other titles in both electronic and print formats.

What Is the Federal Depository Library Program?

The Federal Depository Library Program dates back to 1813 when Congress first began regular distribution of government documents to libraries and has been called "American's first freedom of information" program. It is based on the principle that citizens should have unimpeded access to information by and about their government. There are 1,337 depository libraries throughout the nation, an average of three depository libraries per congressional district. The depository program serves an estimated 9.5 million people in the aggregate each year (not including

those people outside libraries using GPO's database of government information, *GPO Access*), an average of 7,100 per year per library. There are 34 depository libraries in Virginia. Alderman Library at the University of Virginia is classified as the regional depository library in Virginia, which means that Alderman receives at least one copy of every publication distributed through the Government Printing Office. The other depository libraries are selective, i.e., libraries that receive a core collection, including some primary legal materials, plus "selective" items determined by the library itself.

The U.S. Congress recognizes that the Internet has become an invaluable tool for the dissemination of information and access to government publications, and mandated in 1996 a study of the depository program. The report from that study, entitled *The Study to Identify Measures Necessary for a Successful Transition to a More Electronic Federal Depository Library Program*, developed a framework and a time frame for the GPO to make more government information available through the Internet. The study concluded with several important policy issues that had to be addressed *prior* to the reliance on a fully electronic FDLP, including the permanent public access and authenticity of electronic publications.

Permanent public access is needed to ensure that government information available only through the Internet will be available continuously and historically to the public, and authenticity is necessary to ensure that the electronic version of government publications, especially core legal titles, are certified as authentic. These issues are still unresolved today, yet the U.S. Congress expects the GPO to move more quickly to totally electronic information.

The FDLP already is relying heavily on electronic dissemination. In FY 1999, 46% of new titles were disseminated electronically. So far in FY 2000, some 50% of the new titles available to the public through the FDLP have been online. Because of electronic information dissemination, the FDLP now delivers more products than ever before. Users retrieve over 21 million documents monthly from GPO's online services, *GPO Access*. In FY 1999, the FDLP disseminated 16.1 million copies of more than 40,000 titles in paper and microfiche to depository libraries, while 15,000 were in electronic and print formats, and 25,000 were available only in tangible formats. But, once again, the important policy decisions dealing with preservation and authenticity remain unresolved.

Fiscal Year 2001 Appropriations Crisis

The latest crisis arose in May 2000, when the House Appropriations Committee reported H.R. 4516 (H. Rpt. 106-635), which would have cut the GPO's congressional printing and binding budget by 11% and the GPO's salaries and expenses budget by 61%. The House's cuts to the two budgets would have ended effectively the print publication and distribution of such key titles as the daily *Congressional Record*, the *Federal Register*, the *Code of Federal Regulations*, congressional reports, documents and hearings, the 2000 version of the official *U.S. Code*, and the *U.S. Reports*. Some House members argued that Congress simply could no longer fund government publications in dual formats and that all information should be made available only on the Internet. The GPO would continue to publish print copies of the titles listed here, but would not distribute them free of charge to depository libraries. Rather, libraries, law firms, citizens, and others who wanted access to the print copies would have to purchase them.

The library community, with support from lawyers and other citizens, argued that the government should not end the print distribution of core titles to depository libraries until it addresses two extremely challenging issues of the digital age: assurance of permanent public access and assurance of authenticity. Permanent public access is critical to guarantee that government information available today only through the Internet will be available continuously and permanently in the future. Even though 50% of the FDLP's new articles are online today, there are no government-wide policies in place to ensure permanent public access of electronic information.

One important purpose of the FDLP is to make federal government information available to historians, lawyers, and other researchers in future decades and centuries. Many depository libraries date well back into the 19th century and contain important records of the government's history. Lawyers and judges know that they can obtain copies of earlier Supreme Court opinions and repealed and amended statutes because they are available in libraries in print. It is crucial that today's court opinions, statutes, regulations, legislative history documents, and other government-produced legal materials be produced in formats that will be available to researchers forever as well.

An assurance of authenticity is especially critical with legal materials in order to guarantee that the electronic versions of government publications are certifiable as authentic. The print version of titles such as the *U.S. Code* and the *U.S. Reports* are recognized as the only official and authoritative ones at this point. Courts recognize the authenticity of cases and statutes published in these titles. Until the government can assure lawyers, judges, and citizens that there is a mechanism in place to guarantee that the electronic version is authentic, the print versions of these titles should continue to be published and distributed to depository libraries.

These arguments made by citizens, the library community, and others affected the Senate legislation. In May 2000 the Senate reported S. 2603 (S. Rept. 106-229), which provided basic level

funding for GPO's congressional printing and binding budget and salaries and expenses budget and rejected the House's proposed cuts. Although the Senate's version was far more generous than the House's bill and showed strong support for the FDLP, it did not offer sufficient funding to ensure the print publication and distribution to depository libraries of the 2000 version of the *U.S. Code*.

Good News This Year: Print Copies Saved

The House and Senate conferees met on July 25 to finalize H.R. 4516. The conference report (H. Rept. 106-796) agreed on a \$27,954,000 for the FY 2001 appropriations for the GPO salaries and expenses, an even split between the \$25.6 million proposed by the House and the \$30.2 million proposed by the Senate. In addition, the GPO was given authority to transfer unexpended salaries and expenses funding in its budget to the FY 2001 budget.

The conference committee report language superseded the House's report language that would have ended dual distribution of titles to depository libraries. The conference report placed an emphasis "on streamlining the distribution of traditional paper copies of publications which may include providing online access and less expensive electronic formats." The conference committee report also directs the General Accounting Office to conduct a comprehensive study on the impact of providing documents to the public solely in electronic format. The study must include a current inventory of publications and documents which are provided to the public and the frequency with which each type of publication or document is requested for deposit at non-regional depository libraries.

Nonetheless, this is merely a stopgap measure. Titles such as the *Federal Register* and the *Code of Federal Regulations* will be published in dual formats and distributed to regional and other depository libraries. It appears likely that the print version of the 2000 edition of the *U.S. Code* will be published on time and distributed to depository libraries as well. But it is imperative that librarians and other users of these materials continue strong advocacy with representatives and senators to show the importance of continued access to these materials and the importance of the permanent preservation of government information.

How Does This Affect Lawyers, Law Firms, and Law Libraries?

You will have continued access to print version of these primary legal materials. If your law firm does not purchase the materials directly from GPO or another vendor, you or your librarian can expect to find the titles in one of the 34 depository libraries in Virginia. If, however, the budget for GPO is cut next year, the fate of the official, print versions of titles such as the *Code of Federal Regulations*, the *Federal Register*, and the *U.S. Code* will surface again.

What's likely to happen in the future? There are several likely results from congressional efforts to reduce the GPO's budget

and to move toward more electronic dissemination of government information.

- There *will* be cuts in the appropriations to the Government Printing Office's budget for the Federal Depository Library Program. The publication of government information in dual formats will be discontinued.
- There clearly will be more government information published only in electronic format. Print versions of many government-produced titles will disappear.
- Libraries will have to purchase print versions of some items, perhaps even the 2000 edition of the official *United States Code*, if the lawyers, citizens, and other users of those libraries want print access.
- Preservation of government information will remain a crucial issue to be addressed. Lawyers, citizens, and others will discover that important government information is no longer available electronically or in print if this preservation issue is not addressed soon.
- Lawyers, judges, and other court officials must be assured that electronic versions of documents from titles such as the *U.S. Code*, *U.S. Reports*, and the *Code of Federal Regulations* are authentic. Some mechanism must be in place to ensure authenticity.
- Some current selective depository libraries will drop their depository status, thereby reducing access to important legal information for lawyers, citizens, and others. Some law libraries, especially those in private institutions, will determine that the costs associated with serving as a depository library outweigh the actual purchase of the documents that these libraries might want to purchase. In Richmond where there are six depository libraries, this may not be a problem. If the University of Richmond School of Law Library, for example, opted out of the depository program and purchased the government information titles that it needed, other libraries in Richmond such as the Library of Virginia, the Virginia State Law Library, and the Virginia Commonwealth University library would probably remain depository libraries. But, access to government-produced legal information in some rural areas could be affected significantly if university and college libraries in those areas opted out of the program.
- Indirect costs for computers, printers, Internet access, paper to print documents, and computer expertise to help users, etc. will increase for depository libraries and private libraries where print copies are not available.
- And, perhaps more significantly, access to important government information for citizens would be limited.

How Can We Guarantee Access to Primary Legal Materials?

Ask your librarian to alert you when proposed legislation would affect the dissemination of primary legal materials from the U.S. government. If possible, write a letter to, e-mail, or call your rep-

resentatives and senators. (See sidebar for URL addresses for U.S. Congress members). Tell them the importance of access to government information and the need to preserve cases, statutes, etc. Let them know exactly how limitations on access to government information, especially primary legal materials, would affect you, your clients, and your citizen friends. (See sidebar for sample letter.)

With luck our scenario changes to the following:

Attorney to Librarian: I have to be in court today, and the judge wants a copy of the print Code of Federal Regulation, title 42, part 179.95. Can you get it for me?

Librarian to Attorney: No problem, do you want the part copied, or do you want to take the volume with you to court today? ☺

Contacting Your Congressional Representatives

Use the following URLs to locate e-mail and other addresses and telephone numbers for your U.S. Congress representatives and senators.

Senate: <http://www.senate.gov/senators/index.cfm>

House: <http://www.house.gov/house/MemberWWW.html>

If you would like to see a sample letter to a congressperson about this issue, go to the Virginia Association of Law Libraries Web site and click on "VALL Legislative Awareness Activities."

VALL Web site: <http://law.richmond.edu/VALL/default.htm>



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