

LEGAL REQUIREMENTS & PROGRAM REGULATIONS

of the



Federal Depository
Library Program

June 2011

U.S. Government Printing Office
Office of the Superintendent of Documents

Supersedes FDLP Handbook, 2008 and
Federal Depository Library Legal Requirements, 2009

ABOUT THE REQUIREMENTS & REGULATIONS

June 2011

Dear Federal Depository Library Program Partner,

I am pleased to share with the community the Legal Requirements & Program Regulations of the Federal Depository Library Program.

In response to community comments, GPO has extracted library requirements from the Federal Depository Library Program Handbook and other policies to produce a concise document. These regulations and requirements will look very familiar to our Federal depository libraries. This document supersedes the FDLP Handbook, 2008 and the Federal Depository Library Legal Requirements, 2009, and provides member libraries with one resource to consult for the current legal and program obligations of libraries in the Federal Depository Library Program.

The document is divided into three parts. Part I, an Authority Statement prefaces the document and explains the basis for the content. Part II, the Legal Requirements, provides a concise summary of the legal requirements found in Title 44 U.S.C. §§ 1901 -1916 (2010). Part III, the FDLP Program Regulations, lists the Superintendent of Documents' most current FDLP regulations that govern the FDLP member libraries.

A team of GPO librarians and FDLP specialists worked with me to review all requirements in the Handbook, applicable laws, and various policies, to reduce and clarify member library obligations. This team, including librarians who have worked in regional and selective libraries, helped me to distill the requirements to the essentials.

As always, if you have any questions about the Legal Requirements and Program Regulations that follow or if you would simply like to speak with a FDLP specialist about any of the content found in this document, please contact us through fdlpoutreach@gpo.gov or by phone at 202-512-1119.

Sincerely,



Mary Alice Baish
Superintendent of Documents

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***Note:** Guidance, Additional Resources, and a Glossary to further assist users will be made available online on the FDLP desktop.*

I - AUTHORITY

The laws applicable to the U.S. Depository Library Program are found in Chapter 19 of Title 44 of the United States Code. Sections 1901-1916 set forth the parameters of the program.

Under Title 44 U.S.C. §1909, the Superintendent of Documents is charged to uphold U.S. Depository Library Program laws. These duties include, but are not limited to, the requirements to investigate depository library conditions, ascertain whether a library is compliant, make recommendations and, if necessary, to remove noncompliant libraries from the Depository Library Program.

What follows are Part II, Legal Requirements of Federal depository libraries, as set forth in Title 44 U.S.C. §§ 1901 -1916, and Part III, FDLP Regulations, which are to be construed together.

II- LEGAL REQUIREMENTS OF FEDERAL DEPOSITORY LIBRARIES AS SET FORTH IN TITLE 44 U.S.C. §§1901 -1916 (2010)

* NOTE: THESE REQUIREMENTS MUST BE READ IN CONJUNCTION WITH THE FEDERAL DEPOSITORY LIBRARY PROGRAM REGULATIONS.

Selective and Regional Depositories

Must be:

- Able to provide custody and service for depository materials (§1909)
- Located in an area where it can best serve the public need (§1909)
- Within an area not already adequately serviced by existing depository libraries (§1909)

Reporting

Designated depository libraries shall report to the Superintendent of Documents at least every two years concerning their condition (§1909).

Access

Shall make Government publications available for the free use of the general public (§1911).

Appropriations

Appropriations available for the Office of Superintendent of Documents may not be used to supply depository libraries documents, books, or other printed matter not requested by them, and their requests shall be subject to approval by the Superintendent of Documents (§1913).

Collections

The number of books in a depository library must be ten thousand or more, other than Government publications (§1909).

Selective Depositories Served by a Regional Depository

May dispose of government documents after retention for five years (§1911) and upon the approval of the Selective's designated Regional depository within the area after first offering them to other depository libraries within their area, then to other libraries (§1912).

Selective Depositories not Served by a Regional Depository

Shall retain Government publications permanently in either printed form or in microfacsimile form, except superseded publications or those issued later in bound form which may be discarded as authorized by the Superintendent of Documents (§1911).

Regional Depositories

Shall retain Government publications permanently in either printed form or in microfacsimile form, except superseded publications or those issued later in bound form which may be discarded as authorized by the Superintendent of Documents (§1911).

These regional depositories shall receive from the Superintendent of Documents copies of all new and revised Government publications authorized for distribution to depository libraries (§1912).

Regional libraries within the region served will provide interlibrary loan, reference service, and assistance for depository libraries in the disposal of unwanted Government publications (§1912).

The 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 (§1912).

Depository Libraries within Executive Departments, Service Academies, and Independent Agencies

May dispose of unwanted Government publications after first offering them to the Library of Congress and the Archivist of the United States (§1907).

Highest State Appellate Court Libraries Designated as Depository Libraries

Highest state appellate court libraries designated as depository libraries are not subject to the requirements set forth in §1911 (§1915).

Library Designation and requirements for designation are addressed in §1906, §1907, §1909 [Par. 1], §1912, §1915, §1916 of Title 44. For information concerning how a library becomes a designated library, please refer to these articles.

III – FEDERAL DEPOSITORY LIBRARY PROGRAM REGULATIONS

* NOTE: THESE REGULATIONS ARE SUBJECT TO CHANGE BASED ON CHANGES IN THE LAW OR PROGRAM GOALS.

Overview

These regulations are based on Title 44 U.S.C. §§1901 -1916 (2010) and further refine and clarify Federal depository library obligations. They are not intended to provide in-depth guidance to help library staff gauge how to implement the regulations. For a more detailed explanation of how to implement regulations, consult the Guidance document.

Basics

1. Depository libraries must make Federal Depository Library Program content available for free use by the general public including all people in their relevant region and Congressional District.
2. In accepting the privilege and responsibility of Federal depository library status, the library director has agreed to abide fully by the laws and regulations governing officially designated Federal depository libraries.
3. Depository libraries that wish to relinquish depository status must follow all GPO requirements to properly withdraw from their Federal Depository Library partnership; including notifying GPO through email at FDLPOutreach@gpo.gov, or by phone at (202) 512-1119.
4. At least one person at each depository library must stay up-to-date with FDLP information and follow directions in announcements. This is currently accomplished by subscribing to the FDLP-L announcement service.
5. Each depository library is responsible for updating the Federal Depository Library Directory and notifying GPO of any changes in shipping addresses.

Collection Development

6. Depository libraries must develop depository collections to meet the needs and format preferences of their primary library users and the general public.
7. Each depository library must demonstrate knowledge of their library community's needs.
8. The foundation of a depository library collection includes both tangible (e.g. print, microfiche, CD-ROM/DVD) and online content. Depository libraries must provide access to FDLP content, including:
 - Publications selected, distributed, and received through the Federal Depository Library Program,
 - The FDLP Basic Collection,
 - Publications available through official FDLP partnerships,
 - Online publications cataloged in the Catalog of U.S. Government Publications (CGP), including publications found in the Federal Digital System (FDsys); demonstrated through a combination of cataloging, creation of Web pages, or integration of online material into traditional library finding aids such as subject guides.
9. Selective depository libraries may only select one tangible format of a publication or series. Regional depository libraries must select at least one tangible format of every information product available, but may select multiple tangible formats if desired.
10. All libraries must select item numbers 0556-C and 1004-E. These item numbers are used when an important title is distributed to all depository libraries.

Bibliographic Control

11. Proper bibliographic control must be provided so that depository libraries can ensure that their Federal depository resources can be located, retrieved, and accessed in a timely manner.
12. Depository libraries must maintain a piece-level record of tangible depository holdings so that individual depository receipts can be accounted for.
13. Libraries must catalog current tangible receipts or publications that meet the library's collection needs.
14. Many documents are extremely time-sensitive. All shipments must be unpacked and organized for easy access by staff while awaiting processing and cataloging.
15. All tangible depository material must be marked in some manner as depository property, which is usually accomplished with a depository property stamp.
16. Library staff must be able to identify the shipping list date, date of receipt, or the date of processing of depository material for retention purposes.
17. Depository boxes must be reviewed to ensure receipt of all selected materials and shipments. Claims for missing or damaged receipts must be made within the proper timeframe and by the prescribed methods.

Physical Facilities and Maintenance of the Collection

18. If the library receives a duplicate copy of a publication, the duplicate may be discarded immediately or offered on a discard list to the regional depository library.
19. All depository materials must be housed in a manner that facilitates timely access.
20. Each depository library is entrusted with the custody of depository materials and must ensure that they are properly preserved and protected from theft, deterioration, or damage, in a manner comparable to other library collections and in a way that facilitates their use. FDLP resources must be included in the insurance coverage for the library's collections.
21. All facilities housing depository materials must meet the standards set forth in the Americans with Disabilities Act (ADA) or have a reasonable alternative to ensure access. The depository collection must be available for all library patrons, including those with disabilities.
22. Publicly accessible computer equipment must meet the public needs for the depository collection. Users must have the ability to view, download, photocopy, and print relevant depository content that is available in online and electronic resources.
23. Microfiche viewing equipment must be available to users if the format is in the depository collection.
24. If tangible electronic media cannot be viewed on public computers, at a minimum, the library must be able to circulate the material or provide alternate means of access to the content.
25. Each depository library must post the FDLP decal on or near the library entrance indicating through statutory language that the library is a Federal depository and FDLP information products can be used by the general public without charge.

FDLP Decal



26. Tangible depository publications supplied to depository libraries are Federal government property. Depository publications must be retained and kept accessible for at least the minimum retention period. Materials may only be disposed of through appropriate withdrawal mechanisms. These include:

1. 'Five-year rule': a minimum retention period of five years from date of receipt, processing, or shipping list date (for selective libraries),
2. Supersession (for all libraries),
3. Tangible substitution for tangible publications (for all libraries), and
4. Official online substitution for tangible publications (for selective libraries).

27. Depository libraries within executive branch departments, service academies, and independent agencies of the Federal government (designated Title 44 U.S.C. §1907), as well as Federal court libraries, are not obligated to retain publications for five years before discarding and may dispose of unwanted depository publications after first offering them to the Library of Congress. All depository materials remain the property of the United States Government.

28. When depository libraries undergo planned remodeling, undertake a move, or otherwise find their operations disrupted, library staff are required to submit a contingency plan to FDLPOutreach@gpo.gov outlining how the library staff will provide access to depository services and collections to the general public during the period of disruption.

29. In the event of a natural or man-made disaster, depository library staff must immediately inform Library Services and Content Management through email at FDLPOutreach@gpo.gov, or by phone at (202) 512-1119. Library staff must make every reasonable effort to replace or substitute, as appropriate, any depository receipts that have been lost or damaged.

Staffing

30. The Director of a Federal depository library is responsible for ensuring that the depository operation conforms to the legal and Program regulations of the Federal Depository Library Program.

31. At least one person must be designated by the library to serve as a point of contact with GPO. Other duties that must be filled by one or more persons at the library include the coordination of depository activities and serving as the liaison to the library's administration for all matters relating to depository libraries. The depository coordinator(s) must maintain a thorough knowledge of the current legal and Program regulations.

32. Staffing levels must be sufficient in terms of hours of service, degree of assistance, and professional expertise of staff to address depository responsibilities.

Public Service

33. The depository collection and services must be visible to library users and potential users. For example, depository or Federal government information may be visible through cataloging, information on Web pages, or other promotional efforts.

34. Depository libraries must provide free access to FDLP information resources in all formats to any member of the general public without any impediments, such as age limitations, technology barriers, or residency status limitations. Providing for free access to the depository collection is a fundamental obligation of Federal depository libraries.

35. Depository services and assistance for the depository information resources must be of the same quality or comparable to that for other collections and services in the library. Services for non-primary users must be provided in a manner comparable to services for primary users of the library, such as hours of service, degree of assistance and professional expertise of staff. For example, in academic libraries, reference interviews must be conducted for the general public to the same degree as that offered to primary patrons.

36. If the library establishes different privileges for primary and non-primary library users that impact access to the depository collection (e.g. shorter hours for non-primary users), any signage, policies, or online messages must make exceptions known for those wishing to use the library's depository collection.

37. Access to the depository collection must be provided in a reasonable amount of time regardless of its format; electronic media must be installed or circulated and online material must be accessible. Likewise, access must be provided in a reasonable amount of time regardless of their housing arrangement; documents must be retrievable if they are stored off-site or in closed stacks.

38. Depository libraries that have a library Web page or site must identify themselves as a Federal depository library on their Web page or site by displaying the FDLP logo, provide the statutory language found on the FDLP decal, or otherwise identify the library as a public access point for FDLP material. Statutory language found on the FDLP decal currently states,

“This library is a congressionally designated depository for U.S. Government documents. Public access to the government documents collection is guaranteed by public law. (Title 44 United States Code)”

FDLP Decal



FDLP Logo



39. Depository libraries must ensure that their security or access policies, or those of their parent bodies, do not hinder public access to depository materials. Access policies, posting of signs, library Web pages, and public service hours must conform to this requirement. Signage and other physical facilities of the library and parent institution cannot inhibit public access, and all library employees must be aware of the free, public access requirements for depository resources.

40. Security measures to protect library users, staff, and collections are permitted, provided that access to depository collections is not hindered. All depository users must adhere to the same standards of behavior expected of other library users. Depository libraries have the right to bar or remove any individual who poses a threat to library staff, other patrons, or the security of their collections.

41. Federal agency libraries that have heightened security measures and libraries with limited public access must still provide depository access and services to the general public.

42. Depository operations must conform to local, state, and Federal privacy and confidentiality laws.

43. Computer security actions and measures to mitigate heavy-demand of resources, e.g. sign-up sheets, are permitted provided they adhere to FDLP requirements.

Cooperative Efforts

44. All depository libraries must be familiar with the depository libraries in the area, state or region, and consortia in order to make proper referrals, perform efficient collection development, and take advantage of continuing education and promotional activity opportunities.

45. All responses to GPO communication (e.g. mandatory surveys and publication withdrawal or recall notifications) must be fulfilled in a timely manner.

46. Title 44 U.S.C. §1909 requires all depository libraries to report on their condition every two years. The Government Printing Office uses the Biennial Survey of Depository Libraries questionnaire as its vehicle to fulfill this legal obligation. This survey must be completed by the due date.

47. Depository libraries must cooperate in the depository library assessment program. Investigations of the conditions in depository libraries are required by Title 44 U.S.C. §1909. The program, now called Public Access Assessments, is designed to ensure that depository libraries fulfill their legal and Program obligations.

48. Depository libraries must comply with any recall, withdrawal, or destruction requests of depository publications by the GPO deadline. Only the Public Printer, the Superintendent of Documents, or their agents are authorized to order a library to withdraw a document from its depository collection.

49. A depository library may selectively house some of its depository publications at other libraries or institutions. If the institution is under the administrative purview of another administrator, a Selective Housing Agreement is needed. Selective Housing Agreements (SHAs) must be signed by the institutions' directors and kept on file at the designated depository library, selective housing site, regional depository library and GPO.

50. Selective housing sites must abide by the legal and Program requirements of the FDLDP.

51. Depository libraries cannot materially or financially benefit from the disposal of depository holdings, as these materials remain the property of the U.S. Government. After following the normal withdrawal procedures, the depository materials entrusted to the depository library may be sold as publications or as waste paper. The proceeds of the sale, together with a letter of explanation, must be sent to the Superintendent of Documents. Depository materials may never be bartered for goods or services. Selective depository libraries must follow the direction of their regional depository library when discarding depository materials (Title 44 U.S.C. §1912). Discarding is a privilege granted by the regional library and not a right of the selective library. The regional library may refuse to grant permission for disposal of any publication that it feels should be kept by one of its depositories for a longer period of time. After the regional library's permission is granted to withdraw depository material and selective libraries have made reasonable efforts to find a recipient, documents may be disposed of in any appropriate manner.

52. Selective depository libraries not served by a designated regional depository library must permanently retain one copy of all Federal government publications selected and received through depository distribution. The only exceptions are for superseded publications, and those issued later in another format (bound, microfiche, or electronic media).

53. Selective depository libraries may substitute tangible commercially produced products (e.g. microforms, DVDs, etc.) or online content, for any depository holdings held in the library for at least one year. Depository material being substituted with online content must meet official substitution criteria. Permission to substitute must first be obtained from the regional depository library. Substituted material is subject to the same rules and regulations that govern the care, treatment, and public access while the library holds the material or until the regional depository library has authorized for the withdrawal of it.

Regional Depository Libraries

54. Designated regional depository libraries must:

- Ensure the comprehensiveness and integrity of a tangible FDLDP collection in their state or region,
- Provide interlibrary loan,
- Manage the publication withdrawal process in their state or region they serve, and
- Provide reference services to depository libraries within the region they serve.

55. One person at the regional depository library must be designated as the regional coordinator to communicate and

cooperate with GPO and participate in Public Access Assessments of the selective libraries located within their region. This person may also be the primary point of contact for the selective depository libraries.

56. Regional depository libraries must receive and retain at least one copy of all Federal government publications made available under the FDLP in printed form, microfiche, or tangible electronic (e.g. DVD) format. Regional libraries may discard depository materials that have been authorized for regional discard by the Superintendent of Documents, such as superseded items, or those later issued in bound form. A Selective Housing Agreement between the regional library and another depository library is a mechanism to ensure that a tangible copy is available if a regional library is not able to maintain the tangible collection in a library facility under their library administration.

57. Regional depository libraries are permitted to substitute tangible versions of depository material with another tangible format; they are not permitted to substitute tangible versions of depository material with electronic versions. When choosing to substitute depository material with an alternate tangible format, the needs of the state or region and the comprehensiveness of the FDLP collection should be kept in mind.

58. Regional depository libraries must maintain a file for each of the selective depository libraries they serve. Each file should include copies of Public Access Assessment (PAA) reports, Selective Housing Agreements (SHAs), Self-Study Evaluations, Inspection Reports, correspondence, and other relevant information.

59. Federal agency depository libraries designated under Title 44 U.S.C. §1907 are responsible only to the Superintendent of Documents and their parent agency. Regional depository libraries do not have jurisdiction over depository libraries in the various agencies of the Federal government or those designated as the highest state appellate court libraries.

60. Title 44 U.S.C. §1912 authorizes regional depository libraries to manage the withdrawal of material from selective depository libraries in their state or region. Regional libraries also oversee the process of substitution within the state or region. Regional libraries must create procedures for selective libraries to follow when discarding and substituting depository material. Material may not be disposed of until the regional library has given permission to do so. Discarding depository material is a privilege granted by the regional library and not a right of the selective library. The regional library may refuse to grant permission for disposal of any publication that it feels should be kept by one of its depositories for a longer period of time.

61. There are three approval options that Regional depository libraries may use to manage the withdrawal of depository material from selective depository libraries.

- Require selective libraries to compile lists of publications they wish to withdraw from their collection (specific categories or formats may be exempted from the listing requirement),
- Conduct an in-person review of the publications to be discarded,
- Require selective libraries to check discards against the regional's or a union "needs" list.

62. Regional depository libraries must oversee the withdrawal of depository libraries from within their state or region. A depository library seeking to relinquish its status must consult with the regional library and with GPO. The regional library will instruct the withdrawing depository library regarding the disposition of its depository collection. The disposition of depository material must follow established regulations. At the regional library's discretion, the selective library may be permitted to retain all or part of its depository collection.

63. A regional depository library considering leaving the FDLP or changing its depository status to selective must first notify and then consult with GPO through email at FDLPOutreach@gpo.gov, or by phone at (202) 512-1119.

Highest State Appellate Court Libraries

64. Depository libraries designated as highest state appellate court libraries (Title 44 U.S.C. §1915) are not obligated to provide for public access to depository material (per Title 44 U.S.C. §1911). They are not obligated to retain publications for five years before discarding nor do they have to discard depository materials through the regional depository library. All depository materials remain the property of the United States Government.

