

FDLP MODERNIZATION ACT OF 2018 (H.R. 5305)

SECTION-BY-SECTION ANALYSIS

March 19, 2018

The FDLP Modernization Act amends Title 44 of the U.S. Code to ensure the availability of no-fee public access to government information, to reform the Federal Depository Library Program (FDLP), and to authorize the activities of the Superintendent of Documents (SuDoc).

The bill incorporates five of the six [recommendations](#) AALL submitted to the Committee on House Administration of the U.S. House of Representatives as part of the Committee's review of Title 44, along with other written recommendations AALL made during the Committee's review. Bill text reflecting AALL's recommendations is noted in [\(green\)](#).

SECTION 1. SHORT TITLE.

- The Act's short title is the "FDLP Modernization Act of 2018"

SECTION 2. NO-FEE PUBLIC ACCESS TO GOVERNMENT INFORMATION; REFORM OF THE FEDERAL DEPOSITORY LIBRARY PROGRAM.

SUBCHAPTER A: SUPERINTENDENT OF DOCUMENTS

This subchapter states the findings and purpose of the act, along with definitions of key terms. It also ensures that SuDoc consults with the Library of Congress and other legislative branch officials.

§ 1701. FINDINGS; PURPOSE; DEFINITIONS

- Clearly states the public's right of no-fee permanent access to government information and government's responsibility to disseminate and provide permanent public access to information ([AALL recommendation](#))
- The purpose of the Act is to:
 - Establish a national collection of Information Dissemination Products (IDPs) and to provide no-fee permanent public access to the collection
 - Carry out cataloging and indexing program
 - Carry out a by-law distribution program
 - Collaborate with offices of the Federal government, Federal Depository Libraries, and library associations and consortia



§ 1702. SUPERINTENDENT OF DOCUMENTS

- Describes the duties, qualifications, and compensation of SuDoc
 - SuDoc “shall be an accomplished general manager and practitioner of library and information sciences, including the identification, acquisition, authentication, cataloging, dissemination, maintenance, and preservation of information dissemination products regardless of form and format.”

§ 1703. EMPLOYEES AND FACILITIES OF SUPERINTENDENT

- States that the Director of the Government Publishing Office (GPO) shall appoint necessary staff, do the printing and binding required, and provide office, storage, and distributing room as required

§ 1704. COORDINATION AND CONSULTATION WITH LIBRARY OF CONGRESS

- Requires SuDoc to coordinate and consult with the Librarian of Congress with respect to the Library’s collections and services

§ 1705. COORDINATION AND CONSULTATION WITH OTHER LEGISLATIVE BRANCH OFFICIALS

- Requires SuDoc to coordinate and consult with the Clerk of the House, the Secretary of the Senate, and the Librarian of Congress with respect to the production and dissemination of IDPs for inclusion in Congress’s legislative information system (Congress.gov)

§ 1706. DEFINITIONS

- Includes definition of printing covering processes used to capture, process, and duplicate both digital and tangible information and requires the Director of GPO to regularly review the definition of printing
- Includes definitions of dissemination, document, electronic information dissemination product, Federal information, Federal information system, fugitive document, Government publication, graphic communication, information, inter-office agreement, national collection, personally indefinable information, public information, publication, State, and trustworthy information
- Adapts the definition of “Information Dissemination Product”, as defined in Circular A-130 (AALL recommendation)



SUBCHAPTER B – NATIONAL COLLECTION OF INFORMATION DISSEMINATION PRODUCTS

This subchapter creates a national collection of information dissemination products, directs federal offices to provide SuDoc with IDPs for the national collection, and requires SuDoc to perform cataloging and other services.

§ 1721. NATIONAL COLLECTION OF INFORMATION DISSEMINATION PRODUCTS

- Creates a comprehensive national collection of IDPs that may be of public interest or educational value for permanent public access
- Defines those products excluded from public access, including cooperative publications which are sold in order to be self-sustaining and publications that include information that could constitute the invasion of personal privacy
- Defines the applicable official who is responsible for meeting the requirements of the Act as the head of the office in which the IDP originated; the Clerk of the House or Secretary of Senate; the Director of the Administrative Office of the U.S. Courts; and the Clerk of the U.S. Supreme Court

§ 1722. RESPONSIVITY OF OFFICE OF GOVERNMENT TO FURNISH PRODUCTS TO SUPERINTENDENT OF DOCUMENTS

- Requires offices to furnish SuDoc with IDPs for the national collection
- States that an office may not charge SuDoc for an IDP disseminated electronically, but may charge for a tangible IDP as long as the cost does not exceed the actual cost to the office of producing an additional copy
- Establishes requirements for form and format of IDPs furnished to SuDoc so that SuDoc may perform cataloging, indexing, and other services
- Establishes special rules for incompatible formats, so that those IDPs are cataloged, made available to the public, and preserved
- Requires that SuDoc publish in the Federal Register and provide notice to Federal Depository Libraries (FDLs) if an office intends to terminate a product or eliminate the tangible format, or otherwise limit access
- Restricts an office from eliminating the production of an IDP, eliminating the tangible version, or limiting public access except after a 70 day period after the head of the office notifies the SuDoc
- Allows SuDoc to obtain an IDP by any legal means if not otherwise provided by the official
- Requires agencies to share metadata and copies with SuDoc
- Allows SuDoc to enter into agreement with FDLs to obtain any IDPs in the library's collection

for inclusion in the national collection, along with the associated metadata

- Requires that officials establish guidelines and procedures to meet the requirements of this section, and requires that the official submit reports to GPO to ensure official's compliance
- Requires officials to provide SuDoc with an inventory of, and access to, all electronic IDPs not later than two years after enactment
- Requires that IDPs be distributed to FDLs at no cost to the libraries

§ 1723. REQUIREMENTS FOR AGREEMENTS TO PRODUCE OR PROCURE PRODUCTS

- Requires agencies to notify SuDoc before entering into a contract for procurement of production of IDP, and states that the contract must require that the product will be furnished to SuDoc and that the IDP must be available for no-fee public access
- The production or procurement of an IDP may not occur until the office verifies that the notice of the contract has been provided to SuDoc

§ 1724. SPECIAL REQUIREMENTS FOR ELECTRONIC INFORMATION DISSEMINATION PRODUCTS

- States that the official shall promptly provide SuDoc with copies of, or access to, electronic files and metadata:
 - If a product is made available on the office's website, the office must ensure that the SuDoc has the needed metadata
 - If an IDP is offered through a fee-for-service program (e.g. NIST, NLM advanced databases), the office must ensure SuDoc has access and SuDoc must make it available to the FDLs at no charge to the FDLs
 - If the online repository is ever not in operation, requires the official to provide permanent public access to IDPs

§ 1725. CATALOGING AND RELATED SERVICES FOR INFORMATION DISSEMINATION PRODUCTS

- Directs SuDoc to perform cataloging, indexing, identification, location, availability, and format designation services for any product included in the national collection (including IDPs in the historical collection)
- Establishes the Catalog of Government Products, and directs SuDoc to bring fugitive documents under bibliographic control and make records available through the Catalog
- Authorizes GPO to digitize IDPs created at any time and requires GPO to provide for the authentication of the IDPs to the greatest extent practicable (**AALL recommendation**)
- Authorizes SuDoc to enter into an agreement with another entity (including an FDL) to carry

out activities in this section, in accordance with regulations promulgated by SuDoc

- Includes clear statement that works of the federal government are not subject to copyright (“For purposes of section 105 of title 17, any work product produced under an agreement entered into under paragraph (1) shall be considered a work of the United States Government.”)
- Requires coordination with other legislative branch officials

§ 1726. COLLECTION DEVELOPMENT PLAN

- Directs SuDoc to establish a collection development plan for the national collection, in accordance with regulations developed by SuDoc

§ 1727. REPLACEMENT AND REMOVAL OF PRODUCTS FROM NATIONAL COLLECTION

- States that an IDP may not be replaced or removed from the national collection without the development of policies for replacement and removal. The policies must include provision for notification to the public and the FDLs and compliance with the law, including the need for preservation with the National Archives and Records Administration
- Requires the policies be carried out in accordance with regulations promulgated by SuDoc

SUBCHAPTER C – ONLINE REPOSITORY

This subchapter establishes GPO’s online repository for no-fee access (currently govinfo), requires authentication of IDPs, and directs SuDoc to protect user privacy.

§ 1731. ESTABLISHMENT AND OPERATION OF ONLINE REPOSITORY FOR NO-FEE ACCESS TO INFORMATION DISSEMINATION PRODUCTS

- Establishes a trustworthy online repository for no-fee access to information dissemination products (AALL recommendation)
- Requires access to open and bulk formats
- Requires preservation of IDPs included in the repository (AALL recommendation)

§ 1732. AUTHENTICATION OF PRODUCTS

- Requires authentication of IDPs to the greatest extent practicable, and identification of those IDPs that are not authenticated (AALL recommendation)

§ 1733. PRIVACY OF USERS

- Requires SuDoc to take steps to protect the privacy of individuals using the online repository
- Requires measures be carried out in accordance with regulations promulgated by SuDoc



SUBCHAPTER D – FEDERAL DEPOSITORY LIBRARY PROGRAM

This subchapter establishes requirements for SuDoc and FDLs in providing no-fee access to members of the public. It changes the requirements for selectives and regionals, establishes a new category of Preservation Depository Library, and allows for digital deposit.

§ 1741. NO-FEE ACCESS TO PRODUCTS THROUGH FEDERAL DEPOSITORY LIBRARIES

- Establishes the Program under which SuDoc shall designate FDLs, including Selective Depository Libraries, Regional Depository Libraries, and Preservation Depository Libraries (AALL recommendation)
- Establishes that SuDoc will provide access to the national collection, including cataloging and indexing information and access to the online repository
- Requires that FDLs provide no-fee access to members of the public (AALL recommendation)
- Requires GPO to print Congressional documents for furnishing to FDLs. This includes the Congressional Record. (Note: Printing of the United States Statutes at Large is not affected by this bill.) (AALL recommendation)

§ 1742. REQUIREMENTS FOR FEDERAL DEPOSITORY LIBRARIES

- Establishes basic requirements for access to IDPs, including providing member of the public with no-fee access to IDPs furnished to the library, in electronic format and in any tangible format as required
- Removes requirements for minimum number of books (AALL recommendation)
- Allows for all-digital depositories (AALL recommendation)
- Requires that a member of the staff who is knowledgeable about FDL services be available to assist patrons
- Establishes that SuDoc shall develop policies for maintenance and removal of deposited IDPs
- Allows tangible IDPs to be donated to FDLs, under regulations promulgated by the SuDoc
- Requires that FDLs meet any other additional requirements established by SuDoc through regulations. Regulations developed by SuDoc must encourage participation by a diverse group of libraries, and may not establish a limit on the number of libraries designated

§ 1743. SERVICES AVAILABLE FOR DEPOSITORY LIBRARIES

- Allows for optional digital deposit (AALL recommendation)
- Requires FDLs comply with SuDoc measures to protect the privacy of patrons who seek access to IDPs through the online repository (govinfo)
- Allows SuDoc to donate IDPs to a library in accordance with regulations developed by SuDoc.

This will allow libraries to more easily discard items that are no longer needed in the FDLP or by the library

- Establishes optional training and continuing education program for FDLs

§ 1744. SELECTIVE DEPOSITORY LIBRARIES

- Allows libraries to be designated as selective if the library:
 - Meets requirements to provide access to selected IDPs in tangible form under regulations promulgated by SuDoc
 - Maintains its collection of tangible IDPs for a minimum of 5 years, unless SuDoc authorizes earlier withdrawal
 - Collaborates with a regional on the maintenance of a regional collection
 - Is recommended by a member of Congress to be designated as a selective
- Requires SuDoc to promulgate regulations to provide for “an adequate number and distribution” of selectives in order “meet the information needs of the public.” The regulations may not prevent the designation of at least one selective in each congressional district

§ 1745. REGIONAL DEPOSITORY LIBRARIES

- Allows libraries to be designated as regional if the library:
 - Agrees to receive IDPs in tangible form. May decline to receive a tangible IDP if the authenticated IDP is available through online repository
 - Provides access to all IDPs regardless of form or format
 - Coordinates and collaborates with selectives to maintain access to IDPs within the region, including access to the historical collection. May do so by housing some of its collection at one more selectives if the selective agrees
 - Provides services to selectives in accordance with regulations
 - Is recommended by a Senator to serve as a regional
- Allows a regional to withdraw a tangible IDP if the IDP is authenticated and available in the online repository, and if SuDoc has identified for preservation “an appropriate number of copies of the IDPs in tangible form in a sufficient number of Federal Depository Libraries.”
- Allows GPO to pay the cost of relocation of tangible IDPs. Unlike an earlier version of the bill, GPO is not required to pay relocation costs.
- Directs SuDoc to develop regulations to:
 - Establish criteria for agreements between regionals and selectives that give preference to consortia and collaborative efforts without regard to geography



- Limit the number of regionals in any state to two
- Provide for the designation of at least two Regional Depository Libraries in each census region” unless impracticable. This would provide for a minimum of eight regionals
- Requires SuDoc to consult with selectives and regionals in developing these regulations

§ 1746. PRESERVATION DEPOSITORY LIBRARIES

- Creates new category of Preservation Depository Libraries, which may enter agreements with GPO to preserve IDPs in the national collection. FDLs may request to be designated as a Preservation Depository Library
- A Preservation Depository Library may preserve IDPs in any format by housing the IDPs or by coordinating and management all or part of collections housed at other FDLs
- Allows SuDoc to enter into agreements with other entities not designated as FDLs
- Requires SuDoc to promulgate regulations under this section. Under the regulations, SuDoc is directed to promote geographic diversity in designating Preservation Depository Libraries (AALL recommendation)

§ 1747. PROCEDURES FOR DESIGNATION

- Allows SuDoc to designate a library as an FDL if the library meets SuDoc’s requirements. This will allow alternative designations for libraries, such as those that are all-electronic
- Provides that FDLs may have their status terminated if SuDoc determines a library does not meet the requirements under this subchapter, or at the request of the library
- SuDoc shall promulgate regulations with criteria for this determination

SUBCHAPTER E – SALES PROGRAM

This subchapter authorizes the Director of GPO to operate a sales program.

§ 1751. PROCEDURES FOR DESIGNATION

- Authorizes the Director of GPO to operate a sales program. Previously, the sales program was operated by SuDoc
- Allows products for sale in any format
- Excludes products that are confidential in nature
- Authorizes production or procurement of additional copies of IDPs for sale
- Authorizes the Director of GPO to authorize resale of IDPs by book dealers and other commercial vendors, subject to terms and conditions



- States that nothing in this section shall have an effect on no-fee public access, and that IDPs may not be removed from the public domain

§ 1752. DETERMINATION OF COSTS OF PRODUCTS

- Directs the Director of GPO to operate the sales program on a self-sustaining basis to the greatest extent possible
- Requires that the Director ensure that any IDP available for sale is offered to SuDoc for no greater than the applicable price so that SuDoc may make the IDP available to FDLs for no cost to the FDLs

§ 1752. DETERMINATION OF COSTS OF PRODUCTS

- Requires the Director of the Government Publishing Office to conduct an inventory of the sales program each fiscal year to determine stock levels
- Prior to destroying or remaindering any inventory, the inventory must be offered at no cost to SuDoc. If SuDoc rejects the offer, the inventory must be offered to the applicable office

SUBCHAPTER F – OTHER PROGRAMS AND AUTHORITIES

§ 1761. BY-LAW DISTRIBUTION PROGRAM

- Sets requirements for by-law distribution, including distribution to Clerk of the House and Secretary of the Senate, the National Archives, United States and foreign legations, the Library of Congress, and the Congressional Research Service

§ 1762. INTERNATIONAL EXCHANGE SERVICE PROGRAM

- Requires dissemination through the Librarian of Congress

§ 1763. ACCEPTANCE OF GIFTS

- Allows the Director of GPO to accept and use gifts (including digital files) in support of SuDoc responsibilities

§ 1764. AUTHORITIES OF DIRECTOR OF THE GOVERNMENT PUBLISHING OFFICE

- Establishes plenary authority to promote public access and allows GPO to promulgate any regulations that are necessary to carry out the requirements of this chapter
- Requires the Director to conduct a review of each regulation every three years
- To ensure accountability and transparency, each regulation must be retained permanently by GPO and made fully accessible to the public



§ 1765. SOURCES OF FUNDS USED TO CARRY OUT PROGRAMS AND ACTIVITIES

- States that the costs of carrying out the programs and activities under this chapter shall be paid for by a separate appropriation. This is to ensure the programs fall under the Public Information Programs appropriations, and not the Revolving Fund or any other account

§ 1766. CONGRESSIONAL OVERSIGHT

- Requires the Director of GPO to submit to Congress a report on the activities of SuDoc, including the gifts accepted, actions taken to protect privacy, and the status of various requirements under subchapter D
- Requires that the report be posted for no-fee public access

SEC. 3. TRANSITION.

- Permits the current SuDoc to remain SuDoc after the effective date of the act
- Establishes that current FDLs may remain depositories under the act

SEC. 4. GAO STUDY AND REVIEW OF IMPLEMENTATION OF CHANGES TO RULES GOVERNING PUBLIC ACCESS TO GOVERNMENT INFORMATION.

- Requires GAO to conduct a study on the implementation of this act and issue a report no later than three years after enactment

SEC. 5. EFFECTIVE DATE.

- The act will apply as of the first fiscal year which begins after the date of enactment