

**FAR Secretariat
General Services Administration
Comments on FAR case 2002-011
Submitted via the Internet to--farcase.2002-011@gsa.gov
December 13, 2002**

RE: FAR CASE 2002-011

We are pleased to have the opportunity to comment formally on the proposed FAR amendments to implement OMB Memorandum No. M-02-07 entitled "Procurement of Printing and Duplicating through the Government Printing Office" (GPO) (May 3, 2002). This proposed rule was published in the *Federal Register*, Vol. 67, No. 219, November 13, 2002, 68914-8. Our comments today are submitted on behalf of the American Library Association, the American Association of Law Libraries, the Association of Research Libraries, the Medical Library Association and the Special Libraries Association.

The library community has a strong interest in federal information policy and, collectively, our associations represent thousands of libraries and librarians across the Nation, including the more than 1300 institutions that participate in the Federal Depository Library Program (FDLP). Our members know first-hand, on a daily basis, the importance and impact that government information has on the health and lives of all Americans, on the economic well being of our Nation and on the preservation of our democracy.

Libraries across the Nation are key access points for the American public. Librarians are the information professionals who assist thousands of members of the public on a daily basis in locating and using the government information they need, or connecting our citizens with government services or agency personnel. We are the knowledge experts who understand the complexities and importance of organizing information by building directories and catalogs, and of preserving information, which in the electronic environment is one of our most difficult challenges.

The Public's Right to Access Government Information

Access to government information is an essential principle of a democratic society and a valuable public good created at taxpayer expense. The American public relies on unfettered access to information by and about their government to actively participate in our democracy and to hold government accountable for its actions. Concurrently, government has an affirmative obligation to disseminate and provide broad public access to its information, to guarantee its authenticity and integrity, to ensure that government information remains in the public domain, and to ensure its continuous, permanent availability and preservation.

In the print environment, the FDLP has proven to be an extremely effective partnership program among Congress, federal depository libraries, agencies and the Government Printing Office (GPO) to provide government publications to the American public. The FDLP requires a strong system of coordination and centralization, including an effective and transparent system to bring government publications into the FDLP. Any proposed change to the public access program currently in place must continue to meet these critical goals. The proposed FAR changes do not create such a system, as many important implementation questions are not addressed, and the changes would, in effect, create a void. As we will discuss below, such a system is as necessary in the electronic environment as it is in the print world to ensure that agency publications in all formats are permanently accessible by the public.

Introductory Comments on Proposed FAR Amendments

The proposed changes to the FAR are in violation of 44 U.S.C. §501 which states that “All printing, binding, and blank-book work for Congress, the Executive Office, the Judiciary, other than the Supreme Court of the United States, and every executive department, independent office and establishment of the Government, shall be done at the Government Printing Office....” The link between print procurement through GPO and the Office of the Superintendent of Documents (SuDocs) that administers the FDLP has served the American public very well. When agencies procure publications through the GPO as mandated by law, the Superintendent of Documents determines whether that publication falls under the Title 44 §1901 definition of “Government publication.” If so, the Superintendent of Documents is able to ride the procurement order so that sufficient copies for federal depository libraries, the GPO Sales Program and other dissemination services are procured at very low cost.

The proposed changes to the FAR are also in violation of 44 U.S.C. §1903 which states that "The cost of printing and binding those publications distributed to depository libraries obtained elsewhere than from the Government Printing Office, shall be borne by components of the Government responsible for their issuance..." According to the law, when agencies procure outside of GPO, the agency itself is responsible for the costs associated with providing a sufficient number of copies for depository distribution. The Superintendent of Documents is not authorized to bear the costs of obtaining copies of publications produced outside of GPO. The FAR amendment proposing that the GPO/Superintendent of Documents would bear the costs of producing agency publications for public access through the FDLP is contrary to current law.

Additionally, Congress has explicitly voiced its strong disagreement with the Administration on the proposed amendments to the FAR by including provisions in the continuing resolutions funding government operations that would prevent agencies from using any appropriated funds to procure publications outside of GPO. Most recently, the language in Public Law 107-294 (H.J.Res.124) extending funding through January 11, 2003, explicitly states that:

“Sec. 117. (a) The Congress finds that section 501 of title 44, United States Code, and section 207(a) of the Legislative Branch Appropriations Act, 1993 (44 U.S.C. 501 note) require that (except as otherwise provided in such sections) all printing, binding, and blankbook work for Congress, the Executive Office, the Judiciary, other than the Supreme Court of the United States, and every executive department, independent office, and establishment of the Government, shall be done at the Government Printing Office.

“(b) No funds appropriated under this joint resolution or any other Act may be used--

“(1) to implement or comply with the Office of Management and Budget Memorandum M-02-07, ‘Procurement of Printing and Duplicating through the Government Printing Office’, issued May 3, 2002, or any other memorandum or similar opinion reaching the same, or substantially the same, result as such memorandum; or

“(2) to pay for the printing (other than by the Government Printing Office) of the budget of the United States Government submitted by the President of the United States under section 1105 of title 31, United States Code.”

Agencies that today legally bypass GPO for printing procurement, such as through a waiver, are obliged to provide: a) one tangible copy to the Superintendent of Documents for cataloging purposes under 44 U.S.C. §1710; and, b) the necessary number of copies for federal depository libraries. Unfortunately, the record of compliance with these dual requirements by agencies that receive a printing waiver is not reassuring. For example, a 1998 review by the Department of Health and Human Services Inspector General found that components of the National Institutes of Health receiving such waivers had not complied with either requirement (44 USC §1903 and §1710) for 77% of the publications they produced outside of GPO. This discouraging statistic offers a snapshot of the difficulties of enforcing agency compliance when government publications are produced outside of GPO.

The impact on the FDLF will be felt as well as in the diminishing number of publications collected for by-law distribution to the Library of Congress and the National Archives and Records Administration, as well as those collected for the International Exchange Program.

The summary of the proposed FAR changes state that “Moreover, specific new actions are proposed to improve dramatically the depository library system by ensuring that all Government publications are in fact made available to the nations’ depository libraries.” Although it is laudable that this language is included in the proposed FAR amendments, the implementation procedures proposed are contrary to existing law and would most

likely result in reduced public access. Agencies would be allowed to bypass the existing system, which allows printing and distribution to federal depository libraries to occur transparently, and GPO/Superintendent of Documents would have to provide the necessary funding. The strong language that Congress has added to the Continuing Resolution raises concerns about whether Congress would fund GPO/Superintendent of Documents through the annual appropriations cycle to support agencies that violate the law.

COMMENTS ON SEC. (d)

Subpart 8.8—Acquisition of Printing and Related Supplies

8.801 (d)

The proposed amendment states that “For each Government publication to be printed, the agency shall ensure a copy of the publication is provided to the GPO’s Superintendent of Documents for distribution to the Federal Depository Libraries and any other official use as may be necessary for the GPO to carry out its responsibilities. ... Transmission to the Superintendent shall be made using electronic means unless such means are unavailable.” Similar language is also found in the proposed clause to be inserted into contracts for the printing of government publications: “To assist the Government in ensuring effective distribution of Government publications printed under this contract, the contractor shall submit one copy of each Government publication, as identified by the Government in the contract, to the Superintendent of Documents from the Government Printing Office. Transmission shall be made using electronic means unless such means are unavailable.”

This paragraph and the proposed contract clause are apparently intended as the “concrete steps” to be taken to “ensure that all Government publications are in fact provided to the GPO’s Superintendent of Documents for distribution to the Federal Depository Library Program.” We appreciate that the proposed amendments acknowledge the importance of agency compliance with the FDLP and set it as a goal, but there is no concrete history to support the assumption that such compliance will occur. To date, when agencies procure outside of GPO or print in-house, there is neither an economic incentive nor an enforcement mechanism in place today—nor one proposed under this amendment to the FAR—to ensure that agencies provide federal depository and cataloging copies to the Superintendent of Documents.

The effect of the FAR amendment will be to further exacerbate a problem that it purports to solve: fugitive documents. It will more likely than not result in less access to government information for the American public. When agencies do not utilize GPO services as set forth in statute, the public suffers because that information is often inaccessible and sometimes lost. The 1998 review of the National Institutes of Health—an agency that has statutory authority to procure and print some of its publications—determined that only 22 percent of the NIH titles within the scope of the FDLP were actually provided to GPO for inclusion in the FDLP. This means that only about one out of every five publications issued by the NIH has been cataloged by GPO and provided to the public through federal depository libraries as mandated by law.

The amendment appears to presume that agencies would transmit electronic files to GPO in standardized, usable formats that could then be efficiently made available to the public in electronic formats in a cost-effective way. Without such specifications and a coordinated national program to systematically capture, preserve, and maintain ongoing

access to electronic government data, important information may be lost every day as files come and go from agency Web sites and computer servers. The information becomes inaccessible and thus useless to the American public whose tax dollars have supported its creation.

Moreover, absent specifications and a coordinated program, the risks are high that GPO would receive such copies in proprietary formats or in a variety of formats used to create reproducible pages. As such, they may be in formats that could not be readily disseminated via the Internet for search and retrieval. In addition, the transmissions may not be in formats that are compliant with §508 of the Rehabilitation Act of 1973.

Finally, the stated goal of the proposed amendment to the FAR is to improve both access to and cost effectiveness in dissemination of government information. The result of this proposal, however, is likely to be neither. The lack of standards for the proposed transmission of a copy would require a substantial increase in the workforce needed to receive, open, and analyze the format, language, and file structure to enable preparation and use. All of this would impose a significant time delay in making information accessible to the public and would call into question the authentication, exact replication and official nature of the reproduced versions. It would, moreover, obviate any alleged cost savings to the public.

COMMENTS ON SEC. (e)

Subpart 8.8—Acquisition of Printing and Related Supplies

8.801 (e)

The proposed amendment states that “Whenever feasible, the agency should consult with the GPO’s Public Printer before issuing a solicitation for a printing acquisition to determine the number of copies of a Government publication the GPO may wish to obtain and the agency shall take reasonable and appropriate steps to assist GPO if GPO wishes to purchase copies from a private contractor employed by the agency.” This paragraph violates 44 U.S.C. §1903, which states that “[t]he cost of printing and binding those publications distributed to depository libraries obtained elsewhere than from the Government Printing Office, shall be borne by the components of Government responsible for their issuance...” For the purposes of the Federal Depository Library Program, GPO is not authorized to bear the cost of copies produced “elsewhere.” Moreover, as the supplementary information to this proposed amendment notes, specific language in the final continuing resolution for FY 2003, Public Law 107-294 (H.J. Res. 124) prohibits the expenditure of appropriated funds for printing outside GPO. It is legal neither for the agencies nor for GPO to pay for depository copies produced “elsewhere.”

Even were it legal for GPO to bear these costs, the proposed amendment sets up no guidelines nor mechanism for the over 6,000 entities generating printing in the federal government to assist these entities to follow the requirement to interact with GPO. It simply assumes that the federal entities will accomplish what to them is, more often than

not, a secondary goal, the provision of copies to federal depository libraries. With no oversight proposed and no enforcement mechanism in place, this provision obviates the stated intent of the amendment: “to improve dramatically the depository library system by ensuring that all Government publications are in fact made available to the nation’s depository libraries.”

As noted in the Introductory Comments, the proposed amendment would result not only in a degradation of the number of publications available for distribution to federal depository libraries, but also of the number of publications collected for by-law distribution to the Library of Congress and the National Archives and Records Administration, as well as those collected for the International Exchange Program. It would also have a deleterious impact on the availability of government publications for sale since there is a legal question as to whether the Superintendent of Documents is authorized to buy government publications from commercial printers for resale as suggested. 44 U.S.C. §1705 indicates that the Public Printer shall print publications for the Sales Program. Moreover, Superintendent of Documents is the only Federal agency authorized to run a centralized sales program for the broad range of government publications.

Comments on Supplemental Information: (3) Information Distribution

The FAR Council is asking for comments on a draft clause on Information Distribution that contracting officers would be required to insert in contracts for the printing of government publications where a contractor will assist the government in ensuring the Superintendent receives a copy of the publication. We have commented on this clause concurrent with our comments on 8.801 (d) above. We consider that this proposed clause creates not only the same difficulties as we noted above, but also adds an additional layer of improbability and difficulty in ensuring compliance.

This section also notes that, “OMB, in consultation with interested stakeholders, will also determine whether current policies or practices related to the publication of Government information need to be changed to ensure maximum possible reliance on distribution in cost-effective electronic formats.” We are pleased that OMB recognizes the need for this planned consultation. We would note that such an examination would need to be wide-ranging and look at a diverse set of policies and practices. This Administration has a commitment to citizen-centric e-government, including growth towards a fuller electronic environment and financial investments in technology, and there has been individual progress in many agency programs.

Nonetheless, overall progress government-wide toward the availability, usability, and permanent public accessibility of government information from the users' perspective has been slow, uncoordinated and without a clear vision for the future. This is particularly the case with government information that is “born digital.” The move to an e-government has not been accompanied by the development of a comprehensive policy framework

focusing on the life-cycle of electronic government information. Access in many cases has been disorganized and untimely and there is often no recognition of the value of that information to the public and the need for it to be available for continuous future use and for preservation. A strong and positive framework is absolutely necessary to ensure that the public will have seamless, continuous and permanent access to important electronic information. We believe that a strong, centralized, coordinated and managed federal information dissemination and access program, such as the FDLP, is one key component necessary to achieve these important goals.

The “new FAR coverage,” however, militates against the development of a comprehensive policy framework focusing on the life-cycle of electronic government information. Such a framework is long overdue and crucial to the success of e-government. As noted above, 8.801(d) will, if complied with at all, likely result in agencies transmitting electronic files to GPO in a myriad of electronic formats that cannot be efficiently made available to the public in a cost-effective way.

CONCLUSION

The proposed FAR change is very problematic in two respects: first, it violates provisions in current law that mandate agency use of GPO to procure publications and that charge agencies the costs for depository copies when they procure elsewhere; and second, it will likely make the problem of fugitive documents—a longstanding problem that it intends to ameliorate—even worse. This proposed change in regulation has drawn strong opposition from Congress on a bipartisan and bicameral basis. While the Office of Management and Budget may disagree with these provisions of Title 44, they should not propose a change to the FAR that ignores the law.

As written, without specific detail as to how agencies would comply with providing publications to the Superintendent of Documents for cataloging and distribution of print materials, the proposed change fails to adequately support the needs of the federal depository community or, more importantly, the public. While attempting to solve the fugitive documents problem, agency responsibilities in the proposed FAR amendment are so vague that the result will be more fugitive publications, not fewer. Moreover, the lack of any proposed oversight and any enforcement mechanism obviates the stated intent of the amendment: “to improve dramatically the depository library system by ensuring that all Government publications are in fact made available to the nation’s depository libraries.”

While the proposed change may seem reasonable to those unfamiliar with the workings of the FDLP, it lacks the necessary ingredients of coordination and centralization that are necessary for meaningful public access to government information. Today, the Superintendent of Documents, working with professional library personnel, provides a strong, centralized, coordinated and managed federal information dissemination and access program through the FDLP.

To achieve the stated goals of the proposed FAR amendments, it would be beneficial for OMB to invest its time and resources in:

- ensuring that agencies are committed to dissemination and public access;
- facilitating the ability of agencies to participate in the FDLP and make their publications broadly accessible to the public; and
- enforcing compliance where needed to ensure that agencies participate in the Federal Depository Library Program.

If the Office of Management and Budget considers that changes to the law are necessary to accomplish these goals, it could commission an independent outside study to examine these complex issues and then work with Congress to make any necessary changes. We urge the FAR Council to withdraw this proposal and keep in place the current system of procurement and printing through the Government Printing Office.

ORGANIZATIONAL BIOGRAPHIES

THE AMERICAN ASSOCIATION OF LAW LIBRARIES (AALL)

The American Association of Law Libraries is a nonprofit educational organization of over 5,000 members who respond to the legal information needs of legislators, judges, and other public officials at all levels of government, corporations and small businesses, law professors and students, attorneys, and members of the general public. AALL's mission is to promote and enhance the value of law libraries, to foster law librarianship, and to provide leadership and advocacy in the field of legal information and information policy. Contact: Mary Alice Baish (202-662-9200)

THE AMERICAN LIBRARY ASSOCIATION (ALA)

The American Library Association is a nonprofit educational organization of over 65,000 librarians, library educators, information specialists, library trustees, and friends of libraries representing public, school, academic, state, and specialized libraries. ALA is dedicated to the improvement of library and information services, to the public's right to a free and open information society--intellectual participation--and to the idea of intellectual freedom. Contact: Patrice McDermott (202-628-8410)

THE ASSOCIATION OF RESEARCH LIBRARIES (ARL)

The Association of Research Libraries is a not-for-profit organization representing 124 research libraries in the United States and Canada. Its mission is to identify and influence forces affecting the future of research libraries in the process of scholarly communication. ARL programs and services promote equitable access to, and effective use of, recorded

knowledge in support of teaching, research, scholarship, and community service. Contact: Prue Adler (202-296-2296)

THE MEDICAL LIBRARY ASSOCIATION (MLA)

MLA is a professional organization established in 1898 and headquartered in Chicago that represents over 4,000 individuals and 1,200 institutions involved in the management and dissemination of biomedical information to support patient care, education, and research. Contact: Mary Langman (312-419-9095 x.27)

THE SPECIAL LIBRARIES ASSOCIATION (SLA)

SLA is an international professional association serving more than 14,000 members of the information profession, including special librarians, information managers, brokers, and consultants. Contact: Doug Newcomb (202-939-3676)

ENDORSED BY

Arizona Toxics Information

Contact: Michael Gregory (520-432-5374)

Awake In Philly Community Education Group

Contact: Dave Jackson (215-722-7008)

Consumer Project on Technology

Contact: James Love (202-387-8030)

Electronic Freedom Foundation

Contact: Ren Bucholz (415-436-9333 x 121)

Federation of American Scientists

Contact: Steven Aftergood (202-454-4691)

OMB Watch

Contact: Sean Moulton (202-234-8494)

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