
Report for Congress

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Public Printing Reform: Issues and Actions

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Summary

Statutory provisions governing public printing by the federal government, including production, dissemination, management, and oversight, are largely concentrated in the initial chapters of Title 44 of the United States Code. The Government Printing Office (GPO) is designated the principal agent for almost all federal government printing. Oversight of the GPO printing system is vested principally in the Joint Committee on Printing (JCP), which also has statutory responsibilities for public printing operations and the distribution of government publications. Much of the content of the public printing chapters of Title 44 derives from the Printing Act of 1895, the first comprehensive government printing law. This body of law has been amended and modified by Congress from time to time to accommodate changing technology and policy developments. During the past two decades, however, monumental challenges have arisen which have prompted a reconsideration of government printing policy and practice and the provisions of Title 44 prescribing them.

During the 105th Congress, staff of the JCP and the Senate Committee on Rules and Administration developed, on a bipartisan basis, a package of public printing reform proposals. Input was received from representatives of the Clinton Administration, as well as from exploratory hearings held by the Senate Committee on Rules and Administration. A reform bill, the Wendell H. Ford Government Publications Reform Act of 1998 (S. 2288), emerged, was refined, and was reported to the Senate during the closing days of the 105th Congress. Due to leadership changes, this omnibus reform effort was not renewed in the 106th Congress, but other reforms were realized. On May 3, 2002, the Office of Management and Budget introduced new executive branch policy concerning the procurement of printing and duplicating. Effective immediately, GPO was no longer an exclusive source for printing and the departments and agencies could select printing and duplicating services—based upon the best quality, cost, and time of delivery—available through GPO, the private sector, or other avenues. This new policy may result in a significant increase in government printing costs, a serious loss of revenue for GPO, and major disruptions of the GPO document indexing, document sales, and depository library programs. This report reviews recent legal, management, policy, and technological challenges to the GPO printing system and public printing reform efforts of the 105th through 107th Congresses, and tracks current efforts to address existing problems in this area. The statutory responsibilities of the JCP are identified in an appendix to this report. Updating of the report will occur as merited by legislative developments.

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Public Printing Reform: Issues and Actions

Statutory provisions governing public printing by the federal government, including production, dissemination, management, and oversight, are largely concentrated in the initial chapters of Title 44 of the United States Code.¹ The Government Printing Office (GPO), established in 1860,² is the principal agent for all printing 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.” Furthermore, such printing “may be done at the Government Printing Office only when authorized by law.”³

Oversight of the GPO printing system is vested principally in the Joint Committee on Printing (JCP), which was statutorily established in 1846.⁴ Composed of the senior members of the House Committee on House Administration and the Senate Committee on Rules and Administration, the JCP also has statutory responsibilities for public printing operations and the distribution of government publications.⁵

Much of the content of the public printing chapters of Title 44, United States Code, derives from the Printing Act of 1895, the first comprehensive government printing statute.⁶ This body of law has been amended and modified by Congress from time to time to accommodate changing technology and policy developments. During the past two decades, however, monumental challenges have arisen which have prompted a reconsideration of government printing policy and practice and the provisions of Title 44 prescribing them.

Background

Since the earliest days of the federal government, most aspects of government information policy and practice have been established by Congress. Statutory provision was made in the early years, for example, for the printing and distribution

¹ These are chapters 1, 3, 5, 7, 9, 11, 13, 15, 17, and 19, as well as 39 and 41 of Title 44, United States Code.

² 12 Stat. 117.

³ 44 U.S.C. 501.

⁴ 9 Stat. 114.

⁵ These responsibilities are identified in an appendix to this report.

⁶ 28 Stat. 601.

of both laws and treaties,⁷ the preservation of state papers,⁸ and the maintenance of official files in the new departments.⁹ Just before the nation erupted in civil war, a permanent printing organization—the Government Printing Office (GPO)—was statutorily mandated to produce all public printing.¹⁰ The Joint Committee on Printing, which had been established earlier, in 1846,¹¹ exercised oversight over both GPO and public printing activities, as well as remedial powers over printing operations.¹² Later, with the rise of the administrative state early in the 20th century, Congress established arrangements for the publication of related rules, regulations, and legal instruments,¹³ and for their orderly creation.¹⁴ More recent developments include legislated procedures facilitating public access to unpublished department and agency records,¹⁵ as well as the inspection by individuals of files maintained on them by these executive branch entities.¹⁶

Several developments during the past two decades have prompted congressional reconsideration of some of the longest enduring institutions and arrangements for producing and disseminating government information. These new developments include the rise of the electronic information phenomenon, the erosion of the Public Printer's authority to supervise the public printing system, constitutional challenges, and, against a background of budget reduction and government downsizing, desires for greater efficiency and economy in the production and dissemination of government information products and the provision of government information services.

Electronic Information

The phenomenon of government information being collected, maintained, used, and disseminated in electronic formats has been a recent development presenting various new opportunities, challenges, and problems. A pioneering, comprehensive assessment of the electronic collection and dissemination of information by the federal agencies, produced by the House Committee on Government Operations in the spring of 1986, offered a number of relevant and prescient findings.

⁷ See 1 Stat. 68, 443, 519, 724; 2 Stat. 302; 3 Stat. 145, 439, 576.

⁸ See 1 Stat. 168.

⁹ See 1 Stat. 28, 49, 65. These and other similar provisions were consolidated in the *Revised States of the United States* (1878) at section 161, which is presently located in the United States Code at 5 U.S.C. 301.

¹⁰ See 12 Stat. 117.

¹¹ 9 Stat. 114.

¹² 44 U.S.C. 103.

¹³ See 49 Stat. 500; 50 Stat. 304.

¹⁴ See 60 Stat. 237.

¹⁵ See 5 U.S.C. 552.

¹⁶ See 5 U.S.C. 552a.

- “Increasing amounts of information—both private and public—are being maintained in electronic data bases,” and this “trend will both continue and accelerate.”
- “Electronic collection, maintenance, and dissemination of information by Federal agencies can undermine the practical limitations and legal structures” governing public access to, as well as government collection, creation, and dissemination of, such information.
- “Electronic information systems offer the opportunity to make more government information readily available” to the public, and this same information “technology also permits government information to be used in ways that are not possible when the information is stored on paper records.”
- “The development and installation of an electronic information system requires advanced planning and may require sizable capital expenditures.”
- “The Federal Government must understand the consequences of electronic information systems and must recognize the need for new policies that will prevent these systems from being used in unintended ways.”
- “There is little communication among Federal agencies about electronic information activities, and there is little central administrative guidance.”¹⁷

These findings revealed a relatively new technology of growing use and application, one conveying considerable discretionary capability to federal agencies concerning government information management, while simultaneously outstripping the existing practical limitations and legal structures governing many aspects of the government information life cycle.

An Office of Technology Assessment (OTA) report in October 1988 gave further testimony to the impact of the electronic information phenomenon upon existing government information policy and practice. Among the “problems and challenges” identified in the OTA study were the following:

- a blurring or elimination of “many distinctions between reports, publications, databases, records, and the like, in ways not anticipated by existing statutes and policies”;
- electronic technology permitting “information dissemination on a decentralized basis that is cost-effective at low levels of demand, but in ways that may challenge traditional roles, responsibilities, and policies”;
- electronic technology “eroding the institutional roles of government-wide information dissemination agencies”; and

¹⁷ U.S. Congress, House Committee on Government Operations, *Electronic Collection and Dissemination of Information by Federal Agencies: A Policy Overview*, 99th Cong., 2nd sess., H.Rept. 99-560 (Washington: GPO, 1986), pp. 10-11.

- electronic technology that “has outpaced the major government-wide statutes that apply to Federal information dissemination.”¹⁸

Calling explicitly for a defining of “GPO’s role in the dissemination of electronic formats” and “GPO’s role relative to the growth in agency desktop and high-end electronic publishing systems,” the report concluded:

the government needs to set in motion a comprehensive planning process for creatively exploring the long-term future (e.g., 10 to 20 years from now) when the information infrastructure of the public and private sectors could be quite different. At the same time, the government needs to provide short-term direction to existing agencies and institutions with respect to electronic information dissemination.¹⁹

A subsequent response to these recommendations was the passage of the Government Printing Office Electronic Information Access Enhancement Act of 1993.²⁰ This statute directed the Superintendent of Documents to provide a system of online access to the *Congressional Record* and the *Federal Register* by June 1994. The Superintendent was given discretion to make available other appropriate publications, and responsibility for maintaining an electronic directory of federal electronic information, as well as for operating an electronic storage facility for federal electronic information. In addition to the online *Congressional Record* and *Federal Register*, GPO also created a legislation database containing all published versions of House and Senate bills introduced since the 103rd Congress. The GPO Electronic Information Access Enhancement Act provided free online access for all depository libraries and cost recovery based upon the marginal cost of dissemination for all other users. Subsequently, in December 1995, GPO announced that it was making the GPO Access service directly available over the Internet and that it was dropping the subscription fee.

Increased federal government use of the Internet to disseminate information creates enormous opportunities, but also poses potential problems. Of particular concern is the possibility that citizens without access to computer and network technologies would become information “have nots” in American society. A potential safety net exists in the federal depository libraries. The adequacy of this safety net became another consideration for congressional exploration and assessment with a view to larger reforms.

The government also is faced with the new and significant challenge of preserving electronic material for long-term public access absent proven approaches for ensuring the durability of different formats and migrating data to new technologies as they emerge. As agencies replace traditional paper-based documents with new electronic publications, they may gain certain features, such as currency or

¹⁸ U.S. Office of Technology Assessment, *Informing the Nation: Federal Information Dissemination in an Electronic Age* (Washington: Oct. 1988), p. 8.

¹⁹ *Ibid.*, pp. 10-11.

²⁰ 107 Stat. 112; 44 U.S.C. 4101-4104.

the ability to search data, but also may lose others, such as readability or access by certain communities of users. The dynamics of electronic publishing also may shift some costs from the agency publishers to the end users. Ensuring public access to the growing amount of government information in electronic formats, both currently and in the long term, necessitates clear policy direction from Congress and a system that can adapt to the changing technological environment of government publications.

Erosion of Supervisory Authority

Another development prompting congressional reconsideration of arrangements for producing and disseminating government information is the erosion of the Public Printer's authority to supervise the public printing system. As the General Accounting Office (GAO) reported in April 1994, "for all practical purposes, the framework of laws and regulations used to manage many aspects of government publishing has become outdated" as a consequence of the emergence and use of various new electronic information technologies.²¹ GPO was deemed ill-equipped to continue to assert monopoly control over agency printing-like operations. Moreover, "some agencies want to publish their work independent of GPO involvement" and can do so as a "result of significant advances in publishing technologies."²² Remediating the situation, however, is complicated by constitutional challenges to the roles heretofore played by GPO and the JCP.

Constitutional Challenges

A third development prompting congressional reconsideration of government publication arrangements is rooted in the Supreme Court's 1983 invalidation of the legislative veto authority of Congress. In the aftermath of the ruling, the executive branch sought more independence to set publication policy and to procure its own printing and information products. In the *Chadha* decision of June 23, 1983, the Supreme Court found adoption of a simple resolution by one congressional chamber to veto executive action or policy unconstitutional because it was an exercise of legislative power which did not follow the constitutionally prescribed lawmaking process: bicameral consideration and presentation of a bill or joint resolution to the President for signature or veto.²³ The potential breadth of the Court's ruling was signaled by its definition of a legislative act. Whether an action is an exercise of legislative power will depend on its purpose and effect. This ruling concluded that, where such action has "the purpose and effect of altering legal rights, duties and relations of persons ... outside the legislative branch," it must be effected through the constitutionally-mandated lawmaking process.²⁴ The broad reach of the Court's rationale was shortly confirmed by its summary affirmance of two appeals court

²¹ U.S. General Accounting Office, *Government Printing: Legal and Regulatory Framework Is Outdated for New Technological Environment*, GAO Report GAO/NSIAD-94-157 (Washington: Apr. 1994), p. 3.

²² *Ibid.*, p. 2.

²³ *INS v. Chadha*, 462 U.S. 919 (1983).

²⁴ *Ibid.*, at 952.

rulings invalidating one- and two-house vetoes of agency rulemaking, and was shortly recognized by the Department of Justice as an effective vehicle to challenge the very foundation of Congress's control of federal printing.²⁵

Until *Chadha*, the historic prerogative of Congress to control public printing through the JCP was virtually unquestioned. The basic authority of the panel—to “use any measures it considers necessary to remedy neglect, delay, duplication, or waste in the public printing and binding and the distribution of Government publications”—is sweeping and unqualified.²⁶ Its exercise extends beyond oversight and veto to affirmative direction and control. The JCP's role has been likened to that of the board of directors of a corporation, and it assumed powers of commensurate scope without any serious challenge.²⁷ This status was confirmed by a decision of the Court of Appeals for the District of Columbia Circuit announced shortly before *Chadha*.²⁸

In sum, by 1983, the statutory scheme of Title 44, United States Code, as interpreted by the courts, GAO, and the Attorney General, appeared to prescribe a predominant role for the JCP with respect to the central tasks of satisfying the printing needs of Congress and the other branches of government, and making it possible for the broadest segment of the public to have direct access to government publications. To assure accomplishment of those tasks, Congress long ago had established the JCP to oversee the process and invested it with ample power to enforce compliance either directly pursuant to its remedial authority or indirectly through its general managing agent, the Public Printer. The JCP had three kinds of authority it could exercise over government printing: (1) statutory requirements that the Public Printer and government agencies obtain JCP approval prior to taking action, (2) regulations promulgation, and (3) managerial and remedial power. In view of this, the authority of the JCP over the Public Printer and the federal printing establishment was virtually plenary.

In the aftermath of the Supreme Court's *Chadha* decision, the Department of Justice (DOJ) and the Office of Management and Budget (OMB) began to question the longstanding assumption that Congress, through the JCP, had plenary authority to control public printing throughout the federal government. For instance, the DOJ Office of Legal Counsel (OLC) advised the Department of Defense (DOD) in a March 2, 1984, legal opinion that Pentagon compliance with 44 U.S.C. 501(2), requiring the prior approval of the JCP before printing could be undertaken, was no longer required because of the *Chadha* ruling. OLC also maintained that the veto

²⁵ *Process Gas Consumers Group v. Consumer Energy Council of America*, 463 U.S. 1216 (1983); and *United States Senate v. Federal Trade Commission*, 463 U.S. 1216 (1983).

²⁶ 44 U.S.C. 103.

²⁷ See *Congressional Record*, vol. 65, June 4, 1924, p. 10556; U.S. Congress, Senate Committee on Rules and Administration, *Report with Recommendations of the Committee on Rules and Administration on the Joint Committee on Printing*, 95th Cong., 1st sess. S.Rept. 327 (Washington: GPO, 1977), p. 2; 41 *Op. Atty. Gen.* 282, 286-287 (1957).

²⁸ *Lewis v. Sawyer*, 698 F.2d 1261 (D.C. Cir. 1983). *Lewis* was decided immediately after three D.C. Circuit rulings overturning a variety of legislative veto provisions.

condition was severable from the statute and, thus, the department retained the power to conduct printing activities outside of GPO to the extent it was so “permitted by its authorization and appropriations legislation and considerations of efficiency.” OLC suggested that the agency continue to notify the JCP of its proposed actions.²⁹

Next, OLC issued an April 11, 1984, opinion to OMB regarding the JCP’s proposed revision of its printing regulations, which had been published on November 11, 1983.³⁰ It concluded that the proposed regulations were not authorized by any statute, and that the execution of the authority purportedly vested in the JCP by the regulations not only would violate the constitutionally mandated placement of executive authority in the President,³¹ but also would be inconsistent with the provisions of Article I of the Constitution. As interpreted by the *Chadha* court, Article I forbids the legislative imposition of binding directives on the executive branch unless they comply with the article’s prescribed lawmaking procedures.³²

Several months later, the JCP published another version of its revised printing regulations, designating them “proposed policies and guidelines.”³³ OLC responded with the same conclusions it had offered previously: if the new proposals were truly guidelines, “then executive departments are under no obligation to comply with them in formulating their decisions” with respect to agency printing policy. If, however, they were intended to in any way bind executive branch officials, OLC found that there was no statutory authority to support “the promulgation of mandatory guidelines or the compulsory subordination of executive management discretion to a committee of Congress.” Moreover, said the opinion, even if such statutory authority were deemed to exist, the regulations “would represent a constitutionally impermissible legislative trespass upon the rights, duties, and responsibilities of the Executive Branch [under the *Buckley* and *Chadha* decisions].”³⁴

Three years later, the DOD, the General Services Administration (GSA), and the National Aeronautics and Space Administration published notice of their intention to implement, on July 1, 1987, a final rule supplanting the current Federal Acquisition Regulation (FAR) dealing with the acquisition of printing and related

²⁹ U.S. Dept of Justice, Office of Legal Counsel, memorandum from Theodore B. Olsen, Assistant Attorney General, for William H. Taft IV, Deputy Secretary of Defense, Dept of Defense, “Effect of *INS v. Chadha* on 44 U.S.C. §501, ‘Public Printing and Documents’” (Washington: Mar. 2, 1984).

³⁰ See *Congressional Record*, daily edition, vol. 129, Nov. 11, 1983, p. H9709.

³¹ Citing *Buckley v. Valeo*, 424 U.S. 1 (1976) (officers of the United States may not be appointed by Congress).

³² 8 *Op. O.L.C.* 53-65 (1984).

³³ See *Congressional Record*, daily edition, vol. 130, June 26, 1984, p. H7075.

³⁴ U.S. Dept. of Justice, Office of Legal Counsel, memorandum from Theodore B. Olsen, Assistant Attorney General, for Michael J. Horowitz, Counsel to the Director, Office of Management and Budget, “Government Printing, Binding, and Distribution Policies and Guidelines of the Joint Committee on Printing,” (Washington: Aug. 21, 1984).

supplies.³⁵ The agencies explained that revision of the rule was made necessary by *Chadha*'s implicit invalidation of the JCP's approval requirement under 44 U.S.C. 501(2), referencing the DOJ March 2, 1984, opinion. The new rule, it was said, "reflects the deletion of the [old rules'] approval procedure, substitution of a notification requirement, and revision of definitions to reflect the statute rather than JCP regulations."³⁶

The proposed revision of the FAR, however, would have gone beyond simply conforming the regulatory scheme to the constitutional strictures announced by the *Chadha* court. The new FAR not only would have eliminated the JCP's supervisory role and veto power, but also would have divested GPO of any role in printing decisionmaking, allowing the individual agency with printing capability, or the funds to contract out for printing, to decide where and how printing would be accomplished.

Congress responded by placing an appropriations limitation in the FY1988 legislative branch appropriation measure, proscribing any executive agency procurement of commercial printing, with certain limited exceptions, unless authorized by the GPO.³⁷ The conference report on the legislation made clear the congressional intent to override the FAR:

The conference agreement includes a provision which requires executive branch agencies who wish to procure printing services from commercial sources to do so through the Government Printing Office. Exceptions are provided for a number of printing practices and activities that for reasons of necessity, practicality, efficiency, or statutory authority have been, and should continue to be, performed other than through the Government Printing Office. The overall intent is to maintain the status that existed prior to the implementation of the recent change in the Federal Acquisition Regulation This provision revises a provision inserted by the Senate.³⁸

The proposed FAR was subsequently withdrawn.

Congress imposed the same limiting language in legislative branch appropriations acts for FY1989, FY1990, and FY1991, the last seemingly making the provision permanent.³⁹ The legislation for FY1993 repealed the FY1991 provision and substituted one that swept more broadly.⁴⁰ GSA attempted to challenge the

³⁵ See 48 C.F.R. 8.800-8.802 (1986).

³⁶ *Federal Register*, vol. 54, Mar. 20, 1987, p. 9037.

³⁷ P.L. 101-202, sec. 309; 101 Stat. 1329-310.

³⁸ U.S. Congress, Conference Committees, *Making Further Continuing Appropriations for the Fiscal Year Ending September 30, 1988*, 100th Cong., 1st sess., H.Rept. 100-498 (Washington: GPO, 1987), p. 1001.

³⁹ See P.L. 101-520, sec. 206; 104 Stat. 2274.

⁴⁰ See P.L. 102-392, Sec. 207; 106 Stat 1719-1720; previous versions were narrower in that (continued...)

constitutionality of this version by seeking an opinion to that effect from OLC. Acting Assistant Attorney Walter Dellinger found the limitation to be constitutionally valid, saying: “It does not give the GPO the authority to refuse to print any materials, but merely requires that printing be procured ‘by or through’ the GPO.”⁴¹

In 1994, Congress again altered the limitation by requiring the executive branch agencies to obtain a certification from the Public Printer before procuring the production of certain documents outside of GPO, and by expanding the types of materials that were to be produced by GPO.⁴² This modification prompted President Clinton to comment in his July 22, 1994, signing statement that the provision “raises serious constitutional concerns” and to declare that he would “interpret the amendments to the public printing provisions in a manner that minimizes the potential constitutional deficiencies in the Act.”⁴³

Later, as revealed in a September 19, 1994, memorandum from OMB Acting Director Alice Rivlin to department and agency heads, an accommodation between the two branches was reached concerning public printing. She announced: “The leadership of the Congressional committees of jurisdiction has agreed to work with the Administration to produce a legislative approach to solving this problem” of comprehensive reform of federal government printing. As a consequence, she directed the executive departments and agencies “to maintain the *status quo* regarding present printing and duplicating arrangements during Fiscal Year 1995 to allow this initiative to go forward.”⁴⁴ However, the accommodation proved to be temporary when, several weeks later, President Clinton’s political party lost majority control of both houses of Congress and congressional reconsideration of public printing arrangements came under new leadership.

Subsequently, some post-*Chadha* judicial rulings, which substantially narrowed the ways in which Congress may directly control executive agency decisionmaking,⁴⁵ coupled with Congress’s effort to expand the definition of “printing” subject to GPO

⁴⁰(...continued)

they applied only to printing “from commercial sources” while the new version applied to virtually all spending by all executive agencies for any printing.

⁴¹ U.S. Dept. of Justice, Office of Legal Counsel, memorandum from Walter Dellinger, Assistant Attorney General, for Emily C. Hewitt, General Counsel, General Services Administration, “General Services Administration Printing Operations” (Washington: Sept. 13, 1993).

⁴² P.L. 103-283, Sec. 207; 108 Stat. 1423, 1440.

⁴³ *Weekly Compilation of Presidential Documents*, vol. 30, July 29, 1994, pp. 1541-1542.

⁴⁴ Memorandum reprinted in *Congressional Record*, daily edition, vol. 140, Sept. 29, 1994, pp. E1997-E1998.

⁴⁵ *Bowsher v. Synar*, 478 U.S. 714 (1986); *Metropolitan Washington Airport Authority v. Citizens for the Abatement of Aircraft Noise, Inc.*, 501 U.S. 252 (1991); *Federal Election Commission v. NRA Political Victory Fund*, 6 F.3d 821 (D.C.Cir. 1993), *cert. dismissed for want of jurisdiction*, 115 S.Ct. 537 (1994); *Hechinger v. Metropolitan Washington Airport Authority Board of Review*, 36 F.3d 97 (D.C. Cir. 1994), *cert. denied*, 115 S. Ct. 934 (Jan. 23, 1995).

control to include “duplicating,” in the FY1995 Legislative Branch Appropriations Act, and the collapse of the Rivlin accommodation after the fall 1994 congressional elections, prompted DOJ to issue its most direct legal challenge to congressional control of executive branch printing. In a May 31, 1996, opinion, OLC found that the current extent of congressional control over the printing operations of GPO, and, in particular, the printing needs of the executive branch, was an unconstitutional violation of the separation of powers doctrine. OLC also assured all executive branch officers and employees who acted in conformity with its opinion that they would not be subject to liability or sanction even if their actions were contrary to the views and rulings of the Comptroller General.⁴⁶ The OLC opinion was a clear indication that challenges to congressional attempts to maintain direct control of executive branch printing were not likely to abate. Indeed, OLC’s invitation to ignore the contrary views of the Comptroller General, which would ordinarily deter certifying and disbursing officers from acting contrary to his advice, reflect a serious deterioration of interbranch comity.⁴⁷

Reinventing, Downsizing, and Economizing

Shortly after his inauguration, President Clinton announced on March 3, 1993, that he was initiating a National Performance Review (NPR) to be conducted over the next six months by a task force headed by Vice President Albert Gore, Jr. The NPR report, which was delivered to the President on September 7, 1993, criticized federal government hiring, purchasing, decisionmaking structure, program duplication, and administrative procedures. To rectify the situation, over 380 major recommendations were offered, including a proposal to eliminate the GPO monopoly over the procurement of government printing. GAO had criticized the GPO’s monopoly status in 1990.⁴⁸ The NPR report also urged Congress to end the oversight role of the JCP concerning executive branch printing.⁴⁹

Congressional elections in November 1994 resulted in the loss of majority control of both houses of Congress by the President’s political party. The new House leadership began legislatively implementing their “Contract with America.” Formulated before the elections, this reform program sought dramatic changes in a government that was perceived to have become “too big and spends too much.” Thus, public printing reform was initially addressed in the 104th Congress with proposals to downsize GPO, reduce its resources, and privatize public printing. For

⁴⁶ U.S. Dept. of Justice, Office of Legal Counsel, memorandum from Walter Dellinger, Assistant Attorney General, for Emily C. Hewitt, General Counsel, General Services Administration, “Government Printing Office Involvement in Executive Branch Printing” (Washington: May 31, 1996).

⁴⁷ See 31 U.S.C. 3522-3530.

⁴⁸ U.S. General Accounting Office, *Government Printing Office: Monopoly-Like Status Contributes to Inefficiency and Ineffectiveness*, GAO Report GAO/GGD-90-107 (Washington: September 1990).

⁴⁹ Office of the Vice President, *From Red Tape to Results: Creating a Government That Works Better & Costs Less, Report of the National Performance Review* (Washington: GPO, 1993), pp. 6-7.

example, a simple resolution (H. Res. 24) used the strategy of requiring the appropriate committees of the House to develop and report original bills transferring responsibility for executive branch printing from GPO to GSA. It also would have abolished the JCP; reduced the in-house printing capacity of GPO “to the minimum level necessary”; required the procurement of other congressional printing, not produced in-house by GPO, whenever possible from the private sector through a competitive bid process; and mandated the gradual reduction of the GPO workforce to 800 positions.⁵⁰ Another measure (H.R. 1024) would have abolished the JCP; required the Public Printer to procure all government printing from the private sector through a competitive bid process; and mandated separate printing procurement accounts for each branch of the federal government.⁵¹ Neither proposal, however, advanced beyond the hearing stage during the 104th Congress.

A provision common to both reform proposals—abolition of the JCP—came under consideration at a February 22, 1995, hearing by the House Subcommittee on Legislative Appropriations. The chairman of the JCP recommended that the panel be eliminated and made a zero budget request for it for FY1996. Because the JCP is statutorily mandated, the chairman also proposed that the appropriate language for the panel’s abolition be included in the legislative branch appropriations bill and suggested that some JCP responsibilities, staff, and funds be transferred to the Committee on House Oversight (now House Administration) and the Senate Committee on Rules and Administration. However, for various reasons, there was opposition to this course of action. When the legislative branch appropriations bill was marked up and reported in the House in mid-June, no funds were allocated to the JCP, and its proposed \$1,414,000 FY1996 allocation was reduced to \$750,000 and divided equally between the Committee on House Oversight and the Senate Committee on Rules and Administration.⁵² The Senate Committee on Appropriations disagreed with this action and allotted \$1,164,000 for the JCP, which was given floor approval on July 20.⁵³ Conferees agreed to appropriate \$750,000 for the use of the JCP, which both chambers accepted.⁵⁴

⁵⁰ H.Res. 24, introduced January 4, 1995, by Representative Scott Klug, and referred to the Committee on Rules.

⁵¹ H.R. 1024, introduced February 23, 1995, by Representative Jennifer Dunn, and referred to the Committee on House Oversight.

⁵² See U.S. Congress, House Committee on Appropriations, *Legislative Branch Appropriations Bill, 1996*, 104th Cong., 1st sess., H.Rept. 104-141 (Washington: GPO, 1995), pp. 17-18.

⁵³ See U.S. Congress, Senate Committee on Appropriations, *Legislative Branch Appropriations, 1996*, 104th Cong., 1st sess., S.Rept. 104-114 (Washington: GPO, 1995), p. 28.

⁵⁴ See U.S. Congress, Conference Committees, *Appropriations for the Legislative Branch for the Fiscal Year Ending September 30, 1996, and for Other Purposes*, 104th Cong., 1st sess., H.Rept. 104-212 (Washington: GPO, 1995), p. 9. Due to a larger budgetary dispute, the President vetoed this appropriations bill (H.R. 1854) on Oct. 3, 1995. See *Weekly Compilation of Presidential Documents*, vol. 31, Oct. 9, 1995, p. 1762. Subsequently, Congress approved a legislative branch appropriations bill (H.R. 2492) identical to the earlier conference version.

A similar pattern of action had occurred earlier with the FY1995 rescission bill. The House version trimmed \$418,000 from the JCP budget and transferred the remaining balances equally to the Committee on House Oversight and the Senate Committee on Rules and Administration.⁵⁵ The Senate disagreed with the House proposal, cut \$238,137 from the JCP budget, and left \$1,131,863 for the use of the panel.⁵⁶ The Senate position prevailed in conference.⁵⁷

Also, when reporting the non-binding budget resolution, the House Committee on the Budget, in recommending that public printing currently produced in-house by GPO be performed through competitive bid by private contractors, proposed eliminating the JCP and assigning its oversight responsibilities to the Committee on House Oversight and the Senate Committee on Rules and Administration.⁵⁸ However, because the committee had no actual jurisdiction over these matters, these views were offered only as illustrations of savings suggestions for bringing the budget into balance by FY2002.⁵⁹

In the closing days of the 104th Congress, a comprehensive public printing reform bill (H.R. 4280) was offered for discussion. Among the reforms it proposed were replacing the Joint Committee on Printing and the Joint Committee on the Library with a new Joint Committee on Information; setting new organizational and managerial arrangements for GPO; giving Congress greater flexibility in managing the production and dissemination of its publications; accommodating the production of publications in electronic forms and formats; and various innovations promoting greater efficiency and economy in the public printing system.⁶⁰

⁵⁵ See U.S. Congress, House Committee on Appropriations, *Making Emergency Supplemental Appropriations for Additional Disaster Assistance and Making Rescissions for the Fiscal Year Ending September 30, 1995, and for Other Purposes*, 104th Cong., 1st sess., H.Rept. 104-70 (Washington: GPO, 1995), p. 59.

⁵⁶ See U.S. Congress, Senate Committee on Appropriations, *Making Additional Supplemental Appropriations and Rescissions for the Fiscal Year Ending September 30, 1995, and for Other Purposes*, 104th Cong., 1st sess., S.Rept. 104-17 (Washington: GPO, 1995), pp. 79-80.

⁵⁷ See U.S. Congress, Conference Committees, *Making Emergency Supplemental Appropriations for Additional Disaster Assistance and Making Rescissions for the Fiscal Year Ending September 30, 1995, and for Other Purposes*, 104th Cong., 1st sess., H.Rept. 104-124 (Washington: GPO, 1995), p. 106. This bill (H.R. 1158) was vetoed by the President on June 7, 1995; no congressional override was attempted. See *Weekly Compilation of Presidential Documents*, vol. 31, June 12, 1995, pp. 994-995.

⁵⁸ See U.S. Congress, House Committee on the Budget, *Concurrent Resolution on the Budget—Fiscal Year 1996*, 104th Cong., 1st sess., H.Rept. 104-120 (Washington: GPO, 1995), p. 124.

⁵⁹ See *Ibid.*, p. 121; the counterpart report of the Senate Committee on the Budget made no mention of these matters.

⁶⁰ H.R. 4280, introduced Sept. 28, 1996, by Rep. William Thomas, and referred to the Committee on House Oversight, as well as the Committee on Government Reform and Oversight and the Committee on Rules.

Earlier, on April 11, 1996, a memorandum from White House Chief of Staff Leon E. Panetta reflected the willingness of the Clinton Administration to continue to pursue new printing policy that would address various pending problems to the satisfaction of both Congress and the administration. The memorandum, addressed to all heads of executive departments and agencies, reminded these officials “to make maximum use of the capabilities and expertise of the Government Printing Office in handling your agency’s printing and duplicating procurements during the next 12 months, in accordance with the following”:

- Agencies should continue to procure printing and high volume duplicating through the Government Printing Office.
- Existing agency in-house printing and duplicating operations and cross-servicing arrangements may continue to operate normally.
- Plans to downsize internal printing and duplicating capacity shall continue to be carried out.⁶¹

Approximately one month later, as noted above, a May 31, 1996, DOJ memorandum provided a sharp reminder that the constitutional problems plaguing public printing policy and practice not only had not disappeared, but also were becoming somewhat more acute. The OLC memorandum revisited the provisions in the Legislative Branch Appropriations Act of 1995 expanding the definition of printing and requiring the agencies to receive a certification from the Public Printer before procuring the production of certain official documents from sources other than GPO. These were the same provisions to which President Clinton had taken exception when signing the legislation into law. The memorandum found “that the GPO is subject to congressional control, and concludes that the GPO’s extensive control over executive branch printing is unconstitutional under the doctrine of separation of powers.” The memorandum proffered “that executive branch departments and agencies are not obligated to procure printing by or through the PO,” and “we perceive little or no risk of liability or sanction to contracting officers who act consistently with this opinion,” as DOJ would decline to prosecute them.⁶²

Reform Renewal

Shortly after the convening of the 105th Congress, Senator John Warner, as chairman of the Senate Committee on Rules and Administration, initiated an effort to develop a public printing reform bill. While addressing the various technological, managerial, and constitutional challenges, opportunities, and problems confronting the public printing system, the resulting reform proposal was to be designed to garner

⁶¹ The White House, memorandum from Leon E. Panetta, Chief of Staff, for heads of executive departments and agencies, “Procurement of Printing and Duplicating through the Government Printing Office” (Washington: Apr. 11, 1996).

⁶² U.S. Dept. of Justice, Office of Legal Counsel, memorandum from Walter Dellinger, Assistant Attorney General, for Emily C. Hewitt, General Counsel, General Services Administration, “Government Printing Office Involvement in Executive Branch Printing” (Washington: May 31, 1996), pp. 1, 18.

broad support within Congress as well as the approval of the Clinton Administration. Consequently, in April 1997, a legislative working group was formed, consisting of staff from the Senate Committee on Rules and Administration, the Joint Committee on Printing, and the Office of Management and Budget. This group met regularly during the spring, summer, and fall months.

Some members of the working group also held discussions with representatives of various organizations having a direct interest in public printing policy and practice. These deliberations provided an opportunity for exchanging ideas, recommendations, and rationales for reform. As a draft bill began to take shape, various agency representatives were consulted to obtain their reactions to the reform measure, as were House and Senate officials who would be affected by the new arrangements.

The Committee on Rules and Administration also held a series of hearings during the 105th Congress to review legislative recommendations on certain revisions to Title 44 of the United States Code. Participants in these deliberations included Public Printer Michael F. DiMario; Judge Royce C. Lamberth offering judicial branch views; OIRA Administrator Sally Katzen; OLC Deputy Assistant Attorney General Richard L. Shiffrin; organized labor, library organizations, and trade group representatives; and John W. Carlin, Archivist of the United States.⁶³

Subsequently, the resulting reform bill was introduced on July 10, 1998, by Senator John Warner as S. 2288, the Wendell H. Ford Government Publications Reform Act of 1998. The bill was referred to the Senate Committee on Rules and Administration, chaired by Senator Warner. A hearing on the measure was held on July 29 when testimony was received from Public Printer DiMario and various library organization, trade group, organized labor, and public interest group representatives. While some witnesses offered recommendations for refining the legislation, all of them expressed support for the bill. Additional testimony by trade group representatives was taken on September 16.⁶⁴

The committee initially met on September 10 to consider S. 2288, but could not conduct a markup due to the absence of a quorum. Meeting next on September 28, the panel approved a modified version of the bill's text, which was substituted in the legislation, and the amended measure was favorably ordered to be reported.⁶⁵ Many of the modifications given committee approval were technical changes suggested by witnesses who had appeared before the panel and others interested in the measure. Others were corrective, addressing omissions and errors in the text.

⁶³ See U.S. Congress, Senate Committee on Rules and Administration, *Title 44, U.S. Code—Proposals for Revision*, hearings, 105th Cong., 1st sess., Apr. 24, May 8 and 23, 1997 (Washington: GPO, 1997).

⁶⁴ U.S. Congress, Senate Committee on Rules and Administration, *The Wendell H. Ford Government Publications Act of 1998*, hearings, 105th Cong., 2nd sess., July 29 and Sept. 16, 1998 (Washington: GPO, 1998).

⁶⁵ See U.S. Congress, Senate Committee on Rules and Administration, *Wendell H. Ford Government Publications Reform Act of 1998*, 105th Cong., 2nd sess., S.Rept. 105-413 (Washington: GPO, 1998).

The reported bill would have abolished the JCP and transferred many of its responsibilities to the House Committee on House Oversight and the Senate Committee on Rules and Administration or to the Public Printer, who was designated the administrator of the Government Publications Office, the latter being the new denomination of GPO. All federal government publications production, regardless of form or format, would have been centralized in the new Government Publications Office, except such production required by the Supreme Court and certain national security entities. A presidentially-appointed Superintendent of Government Publications Access Programs would have assumed the duties of the current Superintendent of Documents, administering the GPO sales, depository libraries, and GPO electronic documents access programs. The House and the Senate, at the outset of each Congress, each would have determined the style, form, manner, and quantity of publications to be produced for them. Throughout the bill, the term “publication” was used in lieu of “printing” to indicate that both traditional paper and new electronic forms and formats were included under the former term. Also, a general thrust of the legislation was to restrain the quantity of government documents being printed without harm to the conduct of official business and the public’s right to know about the activities and operations of government—online depository library access to government documents constituting major safety nets in this regard.

The reform bill reached the Senate floor on October 16, resulting in no opportunity for its consideration prior to the October 21 final adjournment of the 105th Congress. Due to leadership changes—Senator Warner left the chairmanship of the Committee on Rules and Administration to head the Committee on Armed Services—this omnibus reform effort was not renewed in the 106th Congress. However, anticipating that the reform bill would be enacted prior to the conclusion of the 105th Congress, the Senate, on September 25, cleared the conference committee version a FY1999 legislative branch appropriations bill for the President’s signature which provided sufficient amounts to meet the JCP payroll only through the remaining three months of the year and an additional, small transition allowance.⁶⁶ Consequently, with the convening of the next Congress, the JCP continued to have responsibility for many administrative tasks assigned by provisions of Title 44, but had no staff or offices of its own. To relieve the JCP of some of this responsibility, Senator Warner, the panel’s departing chairman, requested, in a December 17, 1998, letter to the Public Printer, that official to carry out certain of the committee’s Title 44 authorities; review agency reports and plans required under the government printing and binding regulations; grant agency waivers to enable direct procurement of printing, binding, and blank-book work; continue GPO procurement of printing, binding, and blank-book work from the private sector; and report to the JCP regularly on these matters.⁶⁷

As the 106th Congress moved toward final adjournment, the National Commission on Libraries and Information Science (NCLIS) issued a November 27 discussion draft of *A Comprehensive Assessment of Public Information*

⁶⁶ 112 Stat. 2430, at 2440.

⁶⁷ U.S. Congress, Joint Committee on Printing, letter from John Warner, chairman, to Michael DiMario, public printer (Washington: Dec. 17, 1998) (copy in the possession of the author).

*Dissemination.*⁶⁸ The assessment had initially been requested by Senator John McCain, the chairman of the Senate Committee on Commerce, Science, and Transportation, in mid-June as a followup on assistance the commission had provided to his committee regarding the future of the National Technical Information Service of the Department of Commerce.⁶⁹ In his letter to NCLIS, Senator McCain recalled testimony received by his committee “on the need for a formal study on the proposed organizational changes to the National Technical Information service (NTIS) and overall government information dissemination policy.” In making his request for “a review of the reforms necessary for the federal government’s information dissemination practices,” Senator McCain asked that the study “include assessments of the need for”:

- proposing new or revised laws, rules, regulations, missions, and policies;
- modernizing organization structures and functions so as to reflect greater emphasis on electronic information planning, management, and control capabilities, and the need to consolidate, streamline, and simplify missions and functions to avoid or minimize unnecessary overlap and duplication;
- revoking [the] NTIS [financial] self-sufficiency requirement; and
- strengthening other key components of the overall federal information dissemination infrastructure.

A month later, in a mid-July letter, Senator Joseph I. Lieberman, the ranking minority member of the Senate Committee on Governmental Affairs, joined Senator McCain’s request, and suggested two additions to the NCLIS study: “include ... any relevant sections of the Paperwork Reduction Act that may need revision, because [the Governmental Affairs] Committee will be considering the law’s reauthorization next Congress,” and “consider the viability of maintaining NTIS as a centralized fully electronic repository of federal scientific and technical information, accessible via the Internet and equipped with search and retrieval capabilities.”

The November 27 discussion draft of *A Comprehensive Assessment of Public Information Dissemination* began with a working definition of “public information as information created, compiled and/or maintained by the federal government. We assert,” the report continued, “that public information is information owned by the people, held in trust by their government, and should be available to the people except where restricted by law.” These restrictions, it was stated, were “stipulated

⁶⁸The report and related documents are available at the NCLIS Web site [<http://www.nclis.gov/govt/assess/assess.html>].

⁶⁹In mid-August 1999, the Secretary of Commerce announced his intention to close the NTIS and transfer its holdings to the Library of Congress. Self-supporting through the public sale of scientific and technical reports sponsored by federal agencies, the NTIS, according to the Secretary, was experiencing rapidly declining revenues due to the free availability of its salable information via the Internet.

in various statutes such as the Freedom of Information Act, the Privacy Act, national security legislation, and a few other laws.”⁷⁰

The definition included the information holdings of all three branches of the federal government, and, while recognizing that restrictions on the public availability of some types of information existed, tended to regard these restrictions as being only statutorily prescribed and few in number. Such a view neglected the non-statutory authority of congressional bodies, the President, and federal judges to limit information availability. It also appeared to be uninformed regarding the numerous instances when Congress has legislated provisions protecting information from disclosure. The Commission on Federal Paperwork reported in July 1977 that it had identified “approximately 200 statutes concerning confidentiality [of information], about 90 of which relate to the disclosure of business or commercial data.”⁷¹ A 1984 survey conducted by the American Society of Access Professionals identified 135 statutory provisions cited by a total of 40 federal executive agencies during 1975-1982 in conjunction with the Freedom of Information Act (FOIA) exemption recognizing statutory protection of various kinds of information.⁷² Also, in addition to the Privacy Act, there are at least two dozen additional statutory provisions restricting the disclosure of personally identifiable information by executive agencies.

The report offered numerous findings, conclusions, and recommendations, and some statements of findings appeared to be expressed in terms of a recommendation. Major recommendations proffered by the report included the following:

- formally recognizing and affirming the concept that public information is a strategic national resource, with the President issuing a directive to the heads of executive departments and agencies designating government “knowledge holdings” as a strategic national asset and emphasizing the importance of agency proactive initiatives in making their information resources accessible to all Americans;
- creating, as a new independent executive agency, a Public Information Resources Administration to provide overall policy leadership, management, oversight, and accountability for public information resources, with both new relevant authorities and responsibilities and transfers of existing relevant authorities and responsibilities from extant government entities;
- transferring the National Technical Information service (NTIS) to the new Public Information Resources Administration once it is established;

⁷⁰U.S. National Commission on Libraries and Information Science, *A Comprehensive Assessment of Public Information Dissemination; First Draft* (Washington: Nov. 27, 2000), p. 6.

⁷¹U.S. Commission on Federal Paperwork, *Confidentiality and Privacy: A Report of the Commission on Federal Paperwork* (Washington: July 29, 1977), p. 26.

⁷²American Society of Access professionals, “The (b)(3) Project: Citations by Federal Agencies (1975-1982)” (Washington: American Society of Access Professionals, 1984); the FOIA exemption may be found at 5 U.S.C. 552(b)(3).

- requiring an Information Dissemination Budget line item at the individual agency level and establishing an overall Information Dissemination Budget line item in the President's budget that aggregates individual agency requirements with those of the new Public Information Resources Administration;
- enacting the draft Public Information Resources Reform Act of 2001 to provide a new statutory foundation for the formal establishment of government's "knowledge holdings" as a strategic national asset;
- establishing a new Congressional Information Resources Office, incorporating the Government Printing Office, to execute programs necessary to support legislative branch public information resources management responsibilities;
- establishing a new Judicial Information Resources Office within the Administrative Office of the U.S. Courts to execute programs necessary to support judicial branch public information resources management responsibilities;
- supporting NTIS information collection, editing, and related tasks with appropriated funds; and
- updating NTIS revenue sources to include appropriated funds, sales income, and reimbursements from other agencies for services provided.

In general, the report sought formal recognition and affirmation of the concept that public information is a strategic national resource, although many would contend that this objective had already been met with the Paperwork Reduction Act of 1995. Many of its findings and recommendations promoted proactive agency information dissemination activities and practices. These efforts, as the commission was warned, "could result in a misuse of agency resources to promote the agency and generate propaganda," a caution the report dismissed as "unreasonable fears."⁷³ Nonetheless, longstanding congressional displeasure with zealous information activities was benchmarked almost a century ago with the Gillett Act prohibition on using appropriated funds to pay a publicity expert, unless specifically provided for that purpose.⁷⁴

Finally, three new information resources offices and funding NTIS, in part, with appropriated monies were recommended. These proposals, however, were offered in a climate of opinion supportive of government downsizing, cost reduction, and decentralized administration, the Internet, for some, making the latter particularly attractive regarding information dissemination. Prospects that new public printing reforms might be realized through the implementation of the recommendations provided in the NCLIS comprehensive assessment soon waned.

⁷³U.S. National Commission on Libraries and Information Science, *A Comprehensive Assessment of Public Information Dissemination; First Draft*, p. 33.

⁷⁴The prohibition may be found at 5 U.S.C. 3107.

New Policy

On May 3, 2002, the director of the Office of Management and Budget (OMB), in a memorandum to the heads of federal departments and agencies, unexpectedly announced a new executive branch policy concerning the procurement of printing and duplicating. Effective immediately, GPO was no longer an exclusive source for printing, and the departments and agencies could select printing and duplicating services—based upon the best quality, cost, and time of delivery—available through GPO, the private sector, or other avenues. Competitive bidding for printing contracts was not mentioned, but a footnote indicated “[d]epartments and agencies shall continue to ensure that all government publications ... are made available to the depository library program through the Superintendent of Documents.”⁷⁵ Public Printer Michael DiMario noted that this policy was at odds with statutory requirements, but said that GPO had no plans for legal action to challenge the administration on the matter. Instead, GPO expected to express its concerns during the public comment period when modification of the Federal Acquisition Regulation to reflect the new printing procurement policy occurred. A GPO spokesman also indicated skepticism that agencies would comply with depository library obligations.⁷⁶ Moreover, a GPO analysis, released in June, “found that the OMB policy change would raise Government printing costs significantly, jeopardize the ability of small businesses to compete for Government printing contracts, and reduce public access to Government information.” Concerning costs increases, “GPO’s analysis shows that the cost to the Government could potentially increase over current levels by a range of \$231.5 million to \$335.2 million in the first year, and from \$152.8 million to \$256.5 million annually thereafter.”⁷⁷

Responding to the new printing procurement policy announced by OMB, Congress specified in its initial resolution (H.J.Res 111) making continuing appropriations for FY2003 that none of the funds made available by the Act, or any other act, shall be used by an executive agency to implement any activity in violation of the statutory requirement that printing be procured through GPO.⁷⁸ When signing the resolution into law, President Bush took exception to the printing provision, saying:

⁷⁵U.S. Office of Management and Budget, memorandum from Mitchell E. Daniels, Jr., Director, for heads of executive departments and agencies, “Procurement of Printing and Duplicating through the Government Printing Office” (Washington: May 3, 2002); available at [<http://www.whitehouse.gov/omb/memoranda/m02-07.pdf>].

⁷⁶Jennifer Yachnin and Kelly Field, “GPO Won’t Challenge Printing Rules,” *Roll Call*, May 9, 2002, p. 3.

⁷⁷ U.S. Government Printing Office, “GPO Analysis Shows OMB Printing Policy Change Would Raise Costs, Reduce Public Access,” News Release 02-19, June 28, 2002, Washington, DC, p. 1; U.S. Government Printing Office, Office of the Public Printer, “Cost Impact Scenario: Loss of Executive Branch Work from GPO Under OMB Memorandum M-02-07, ‘Printing and Duplicating Through the Government Printing Office’ (May 3, 2002,” undated, Washington, DC).

⁷⁸ 116 Stat. 1465, 1468.

That section would require executive branch agencies to procure printing from the Government Printing Office, a legislative branch entity. The longstanding position of the executive branch, memorialized in a May 1996 opinion by the Department of Justice, is that this language violates the constitutional principles of separation of powers and therefore is not binding on the executive branch.⁷⁹

Later, in a subsequent continuing resolution (H.J.Res. 122), the earlier provision was amended with more explicit language concerning statutory printing requirements and prohibiting the expenditure of appropriated funds to implement or comply with the new printing procurement policy announced by OMB or to pay for the printing of the President's budget by a means other than through GPO.⁸⁰

A little more than two weeks after this continuing resolution was signed into law, the director of OMB, on October 28, issued a determination, with supporting documentation, for an individual deviation from the Federal Acquisition Regulation concerning the printing of the President's budget. This action allows OMB to seek competitive bids for the production of the four-volume budget set totaling over 3,000 pages. Supporting documentation cited for the determination included the May 1996 opinion by the Department of Justice which President Bush had cited. An October 22 opinion by Deputy Assistant Attorney General Sheldon Bradshaw reaffirmed that opinion, adding that "executive branch officers would face no realistic risk of liability for failing to abide by" the section of the joint resolution concerning printing procurement.⁸¹

An opposing view to that of the Department of Justice was issued in mid-November by GAO at the request of Senator Robert Byrd, the chairman of the Senate Committee on Appropriations. Commenting that it was "too well established to require much discussion that the Constitution grants to the Congress the power to appropriate the resources of the government," the opinion observed "that the Congress may restrict, condition, or limit the executive branch's use of appropriations, including the use of funds for particular purposes, consistent with the Constitution. There is no constitutional imperative," it continued, "that requires a presidential budget, let alone a printed one." The printing provision in the continuing resolution "represents Congress' judgment not to authorize the use of appropriated funds for printing the budget other than by or through GPO."⁸²

⁷⁹ *Weekly Compilation of Presidential Documents*, vol. 38, Oct. 7, 2002, p. 1660.

⁸⁰ P.L. 107-240, Section 4.

⁸¹ U.S. Office of Management and Budget, Office of the Director, "Individual Deviation: In Support of the Office of Management and Budget Acquisition: Printing of the President's Fiscal Year 2004 Budget," Oct. 28, 2002, Washington, DC; U.S. Department of Justice, Office of Legal Counsel, Office of the Deputy Assistant Attorney General, "Memorandum for Adam F. Greenstone, General Counsel, Office of Administration, Executive Office of the President," Oct. 22, 2002, Washington, DC, p. 3; Alan Cooperman, "Printing of Budget in Dispute," *Washington Post*, Dec. 20, 2002, p. A41.

⁸² U.S. General Accounting Office, letter to Senator Robert Byrd, B-300192, Nov. 13, 2002, Washington, DC, p. 5.

In mid-November, OMB moved ahead with modification of the Federal Acquisition Regulation to reflect the new executive branch printing procurement policy announced in May.⁸³

A few days before Christmas, OMB indicated that GPO had offered to cut the cost of printing the President's FY2004 budget by 23%, with a bid of \$387,000 compared to \$505,370 to print the FY2003 budget.⁸⁴ GPO was notified of the acceptance of its bid on December 24; the larger issue of executive branch printing being produced by a source other than GPO remains in contention.

Reform Actions

During the 106th Congress, conferees on the legislative branch appropriations bill (H.R. 1516) agreed to an amended House provision which, as modified, authorizes the appropriation to the Clerk of the House such sums as may be necessary for congressional printing and binding services for the House of Representatives during FY2001; the preparation of estimated expenditures and proposed appropriations for congressional printing and binding services by the Clerk of the House in accordance with Title 31, United States Code, beginning with FY2003; and, during FY2001, the conduct by the Clerk of a comprehensive study of the needs of the House for congressional printing and binding services during FY2003 and succeeding years, including an analysis of the most cost-effective program or programs for providing printed or other media-based publications for House uses. The required study, upon completion, is to be submitted to the Committee on House Administration for review and the preparation of such regulations or other materials as considered appropriate to enable the Clerk to carry out congressional printing and binding services for the House.⁸⁵ The original House provision would have applied to both the Clerk of the House and the Secretary of the Senate.⁸⁶

Conferees on the legislative branch appropriations bill also modified language in the House report directing the Congressional Research Service to conduct a study concerning the transfer of the functions of the Superintendent of Documents from GPO to the Library of Congress.⁸⁷ In their report, the conferees direct GAO to "conduct a comprehensive study of the impact of providing documents to the public solely in electronic format." Continuing, the report said:

⁸³ See *Federal Register*, vol. 67, Nov. 13, 2002, pp. 68914-68918.

⁸⁴ Brian Friel, "GPO Offers to Cut Cost of Printing Budget Document," *GovExec.com*, Dec. 19, 2002, available at [<http://www.govexec.com/news>].

⁸⁵ U.S. Congress, Conference Committees, *Making Appropriations for the Legislative Branch for the Fiscal Year Ending September 30, 2001, and for Other Purposes*, 106th Cong., 2nd sess., H.Rept. 106-796 (Washington: GPO, 2000), pp. 19-20, 43.

⁸⁶ U.S. Congress, House Committee on Appropriations, *Legislative Branch Appropriations Bill, 2001*, 106th Cong., 2nd sess., H.Rept. 106-635 (Washington: GPO, 2000), p. 22.

⁸⁷ *Ibid.*, pp. 27-28.

The study shall include: (1) a current inventory of publications and documents which are provided to the public, (2) the frequency with which each type of publication or document is requested for deposit at non-regional depository libraries, and (3) an assessment of the feasibility of transfer of the depository library program to the Library of Congress that: Identifies how such a transfer might be accomplished; Identifies when such a transfer might optimally occur; Examines the functions, services, and programs of the Superintendent of Documents; Examines and identifies administrative and infrastructure support that is provided to the Superintendent by the Government Printing Office, with a view to the implications for such a transfer; Examines and identifies the costs, for both the Government Printing Office and the Library of Congress, of such a transfer; Identifies measures that are necessary to ensure the success of such a transfer.⁸⁸

President Clinton vetoed the legislative branch appropriations bill on October 30, 2000, for reasons not pertinent to the matters discussed above. The text of the measure was subsequently included in the Consolidated Appropriations Act, 2001, which cleared Congress on December 15 and was signed into law by President Clinton on December 21.⁸⁹

As statutorily required, GAO submitted the completed study to the Committee on House Administration and the Senate Committee on Rules and Administration on March 30, 2001.⁹⁰ The report cautioned that, while the electronic dissemination of government documents offered the opportunity to reduce the costs of dissemination and make government information more usable and accessible, some formidable challenges would need to be overcome in the event documents were to be disseminated solely in electronic format. These challenges, said the report, include ensuring that documents are authentic, permanently maintained, and equally accessible to all individuals. It was also recognized that certain cost issues, including the effect of shifting printing costs to depository libraries and end users, would have to be addressed.

Regarding the feasibility of transferring the depository library program to the Library of Congress, the report foresaw both advantages and disadvantages. The program was seen as appropriate for the Library to administer, and its relocation to the Library, said the report, “could facilitate the development of governmentwide solutions to issues surrounding the acquisition, management, and dissemination of electronic documents.” Indeed, it was thought that three other GPO programs closely linked with the depository library program—cataloging and indexing; GPO Access, including the depository library program’s electronic collection; and the international exchange service—might also be considered for transfer. Among the disadvantages cited by the report were “potential negative effects on public access to information and concern about the availability of funds to maintain the current program.” The report acknowledged the numerous concerns offered by the Public Printer and the Librarian of Congress concerning its content (letters from both officials commenting

⁸⁸ H.Rept. 106-796, p. 46.

⁸⁹ P.L. 106-554.

⁹⁰ See U.S. General Accounting Office, *Information Management: Electronic Dissemination of Government Publications*, GAO Report GAO-01-428 (Washington: March 2001).

on the draft report were included in appendices), as well as the concerns raised by library organizations and GPO employee unions. It was proffered that these issues might be addressed by a joint GPO/Library transition team “to develop appropriate strategies” and “a detailed transition plan including a schedule and detailed cost estimates.”

Reform Issues

As the recent history of public printing reform suggests, a variety of issues surround this policy area. Some of these issues are identified and discussed in the paragraphs below.

JCP Role and Future

The Joint Committee on Printing (JCP) operated during the 106th and 107th Congresses without a budget, staff, or offices. Staff and office resources were largely borrowed, on a limited basis, by the JCP chair. Also, many of the functions of the JCP were performed, by delegation, by the Public Printer. The situation raises questions concerning the efficiency, economy, and effectiveness of the JCP and whether or not its responsibilities might be better performed by other entities. Options include returning the JCP to its former status, with a budget, staff, offices, and performance of the responsibilities assigned to it. Another option, reflected in a recommendation of the Senate members of the Joint Committee on the Organization of Congress in 1993 and proffered in the omnibus printing reform bill of the 105th Congress, would be to dissolve the JCP and reassign its responsibilities, as appropriate, to the Committee on House Administration and the Senate Committee on Rules and Administration, as well as to the Public Printer.⁹¹ A third option would be to reconstitute the JCP with an expanded jurisdiction. This possibility was recommended by the House members of the Joint Committee on the Organization of Congress in 1993 and proposed in a comprehensive public printing reform bill (H.R. 4280) introduced in the closing days of the 104th Congress.⁹² The JCP and the Joint Committee on the Library of Congress would have been abolished and their responsibilities would have been transferred to a new Joint Committee on Information (Management). In view of the *Chadha* decision, it is not likely that the JCP’s remedial powers responsibility would be transferred to another congressional committee for exercise.

⁹¹ See U.S. Congress, Joint Committee on the Organization of Congress, *Organization of the Congress: Final Report of the Senate Members of the Joint Committee on the Organization of Congress*, 103rd Cong., 1st sess., S.Rept. 103-215 Vol. I (Washington: GPO, 1993), pp. 10-11.

⁹² U.S. Congress, Joint Committee on the Organization of Congress, *Organization of the Congress: Final Report of the House Members of the Joint Committee on the Organization of Congress*, 103rd Cong., 1st sess., H.Rept. 103-413 Vol. I (Washington: GPO, 1993), p. 24.

GPO Role and Future

As recent history reflects, the GPO monopoly on public printing, the adequacy of the Public Printer's authority to supervise the public printing system, and the efficient and economical production of information products and services by GPO have come into question during the past few years. Options include eliminating the GPO printing monopoly so that federal entities of all three branches would no longer be required to use GPO production services (but would be required to identify for the Superintendent of Documents (SUDOCS) the information products and services they procured so that these might be available for public sale (44 U.S.C. 1702, 1705-1707), indexing (44 U.S.C. 1710), distribution to the Library of Congress and depository libraries (44 U.S.C. 1718, 1901-1916) and electronic access (44 U.S.C. 4101-4104)). In this arrangement, GPO might be permitted to compete with the private sector for the printing production work of federal entities, and might also be made mandatorily responsible for some minimal production (e.g., the *Congressional Record* and/or the *Federal Register*). Another option would be to eliminate or reduce to a minimum GPO in-house printing production (e.g., only the *Congressional Record* and/or the *Federal Register*) and make GPO the central agency for the procurement, from the private sector, of information products for all federal entities. A third option would be to abolish GPO and allow federal entities to contract directly with the private sector for printing services (but also identify the information products they procured so that these might be available for public sale, indexing, distribution to the Library of Congress and depository libraries, and electronic access through the relocated SUDOCS or a successor).

SUDOCS Role and Future

During both the 103rd and 106th Congress, efforts were made in the House to remove SUDOCS responsibilities from GPO and transfer them to the Library of Congress. As noted above, those responsibilities would largely involve public document sales, indexing, distribution to the Library of Congress and depository libraries, and electronic access. The feasibility of such a transfer, in whole or in part, is the subject of a comprehensive study conducted by GAO, as noted above.

Appendix:

Statutory Responsibilities of the Joint Committee on Printing

Statutes at Large, United States Code, and District of Columbia Code

- directs the printing, binding, and distribution of new editions of and cumulative supplements to the *United States Code* and to the *District of Columbia Code* (1 U.S.C. 208; 2 U.S.C. 285b note); and
- controls the number and distribution of the copies of the *United States Statutes at Large* printed by the Public Printer (44 U.S.C. 728).

Precedents of the House

- directs the distribution of surplus sets of the *Precedents of the House of Representatives* (2 U.S.C. 28e); and
- authorizes and directs that additional sets of the *Precedents of the House of Representatives* be printed, bound, and distributed in such manner as the Committee determines will best carry out the purposes of 2 U.S.C. 28b-28e (2 U.S.C. 28e).

Joint Committee on Printing

- exercises, when Congress is not in session, all Committee powers and duties as when Congress is in session (44 U.S.C. 102);
- uses any measures the Committee considers necessary to remedy neglect, delay, duplication, or waste in the public printing and binding and the distribution of Government publications (44 U.S.C. 103);
- procures the temporary or intermittent services of individual consultants, or organizations thereof, or the services of personnel, information, or the facilities of a consenting agency in accordance with statutorily prescribed conditions (44 U.S.C. 103 note); and
- receives periodic reports on the progress of any review and analysis of Government Printing Office operations conducted by consultants hired for such purposes by the Committee (44 U.S.C. 103 note).

Government Printing Office

- approves the rates and compensation for Government Printing Office night and overtime work for more than 10 employees of the same occupation (44 U.S.C. 305);
- makes a final decision in cases appealed to it when the Public Printer and a committee representing the trade fail to agree as to wages, salaries, and compensation (44 U.S.C. 305);

- approves requisitions by the Public Printer for serviceable machinery, material, equipment, or supplies for printing, binding, and blank-book work, that an officer of the Government is disposing of for reasons of being no longer required or authorized for his service (44 U.S.C. 312);
- designates a person to serve on a board with the Deputy Public Printer and the superintendent of printing to examine and report in writing on material, except paper, for the use of the bindery at the Government Printing Office (44 U.S.C. 313);
- designates a person to serve on a board with the Deputy Public Printer and the superintendent of printing to determine, at the request of the Public Printer, the condition of presses and other machinery and material used in the Government Printing Office, with a view to condemnation (44 U.S.C. 313);
- regulates the printing by the Public Printer of additional copies of Government publications, not confidential in character, required for sale to the public by the Superintendent of Documents (44 U.S.C. 1705); and
- approves the Public Printer's exercise of his authority to use any measures he considers necessary for the economical and practical implementation of the depository library program (44 U.S.C. 1914).

Production and Procurement of Printing and Binding Generally

- determines classes of work to be urgent or necessary to have done elsewhere other than the Government Printing Office (44 U.S.C. 501);
- approves printing in field printing plants operated by executive branch entities (44 U.S.C. 501);
- approves the award of contracts by the Public Printer for the procurement of printing, binding, and blank-book work authorized by law which the Government Printing Office is not able or equipped to produce (44 U.S.C. 502);
- permits the Public Printer to authorize an executive department, independent office, or establishment of the Government to purchase direct for its use such printing, binding, and blank-book work, otherwise authorized by law, as the Government Printing Office is not able or suitably equipped to execute or as may be more economically or in the better interest of the Government executed elsewhere (44 U.S.C. 504);
- establishes regulations to be observed by the Public Printer when selling, to persons who may apply, additional or duplicate stereotype or electrotype plates from which a Government publication is printed in accordance with statutorily specified cost conditions (44 U.S.C. 505);

- receives at the beginning of each session of Congress the submission of the Public Printer estimating the quantity of paper of all descriptions required for the public printing and binding during the ensuing year (44 U.S.C. 508);
- fixes upon standards for paper used in public printing (44 U.S.C. 509);
- determines, for advertisements for same, minimum portions of each quality of paper required for public printing for 3, 6, and 12 month periods (44 U.S.C. 510);
- observes the opening of sealed proposals to furnish paper and envelopes (44 U.S.C. 511);
- determines, for advertisements for same, minimum portions of each quality of paper required for public printing for 3, 6, and 12 month periods (44 U.S.C. 510);
- observes the opening of sealed proposals to furnish paper and envelopes (44 U.S.C. 511);
- sets the amount of and approves bonds that contractors furnishing paper shall post (44 U.S.C. 512);
- accepts lots of delivered paper or envelopes which do not conform to the set standard of quality at a discount that, in the opinion of the Committee, is sufficient to protect the interests of the Government (44 U.S.C. 513);
- determines differences of opinion between the Public Printer and a contractor for paper respecting the paper's quality, with the decision of the Committee being final as to the United States (44 U.S.C. 514);
- directs, when a contractor fails to comply with his contract, the Public Printer in entering into a new contract with the lowest, best, and most responsible bidder for the interest of the Government among those whose proposals were rejected at the last opening of bids or the advertising for new proposals under the regulations prescribed by law (44 U.S.C. 515);
- directs the Public Printer, during an interval of contractor default, in purchasing in open market, at the lowest market price, paper necessary for public printing (44 U.S.C. 515);
- authorizes the Public Printer to purchase paper in the open market when the Committee considers the quantity required so small or the want so immediate as not to justify advertisement for proposals (44 U.S.C. 517); an
- directs the manner of binding sets of congressional numbered documents and reports and State library and depository library editions of Government publications distributed in unbound form (44 U.S.C. 738).

Congressional Printing and Binding Generally

- determines the suitable quality of parchment or paper for the printing of enrolled bills and resolutions of either House of Congress (1 U.S.C. 107);
- directs the binding of copies of documents or reports in addition to “the usual number” in paper or cloth (44 U.S.C. 702);
- orders the printing of additional copies in addition to “the usual number” within a limit of \$700 in cost in any one instance (44 U.S.C. 703);
- authorizes the printing of a bill or resolution, with index and ancillaries, in the style and form the Committee considers most suitable in the interest of economy and efficiency, and to so continue until final enactment in both Houses of Congress (44 U.S.C. 707);
- curtails the number of copies of bills or resolutions, including the slip form of a public Act or public resolution, printed (44 U.S.C. 707);
- controls the number and distribution of copies of public and private laws, postal conventions, and treaties printed in slip form (44 U.S.C. 709);
- establishes rules to be observed by the Public Printer, by which public documents and reports printed for Congress, or either House, may be printed in two or more editions, to meet the public requirements (44 U.S.C. 714);
- orders the cost of the printing of a document or report printed by order of Congress to be charged to the allotment of appropriation for printing and binding for Congress when such cost cannot be properly charged to another appropriation or allotment of appropriation already made (44 U.S.C. 717);
- approves orders for subsequent editions of a document or report, or a publication authorized by law to be printed, for distribution by Congress, after the apse of the authority to print (44 U.S.C. 718); and
- exercises discretion concerning the procurement by the Public Printer of illustrations to accompany bound volumes of memorial addresses delivered in Congress and charged to the allotment for printing and binding for Congress (44 U.S.C. 721).

Congressional Directory

- directs the preparation of a *Congressional Directory*, to be printed and distributed during the first session of each Congress, and a subsequent supplement to same, to be printed and distributed during the second session of each Congress (44 U.S.C. 721);
- controls the number and distribution of the *Congressional Directory* and each supplement (44 U.S.C. 721); and

- directs the printing of sale copies of the *Congressional Directory* by the Public Printer (44 U.S.C. 722).

Congressional Record

- directs the style, form, and manner of compilation, preparation, and printing of the legislative proceedings of Congress and the exercises at the general memorial services held in the House of Representatives during each session relative to the death of a Member of Congress or a former Member of Congress who served as Speaker, together with all relevant memorial addresses and eulogies published in the *Congressional Record* during the same session of Congress, and any other matter the Committee considers relevant (44 U.S.C. 723);
- controls the arrangement and style of the *Congressional Record* and, while providing that it shall be substantially a verbatim report of proceedings, takes all needed action for the reduction of unnecessary bulk (44 U.S.C. 901);
- provides for the publication of an index of the *Congressional Record* semimonthly during and at the close of sessions of Congress (44 U.S.C. 901);
- designates to the Public Printer competent persons to prepare the semimonthly and the session index to the *Congressional Record* (44 U.S.C. 902);
- fixes the compensation to be paid by the Public Printer for the preparation of the semimonthly and session index to the *Congressional Record* (44 U.S.C. 902);
- directs the form and manner of the publication and distribution of the semimonthly and session index to the *Congressional Record* (44 U.S.C. 902);
- directs the issuance of the *Congressional Record* in daily form during each session of Congress, and its revision, printing, and binding in permanent form for distribution during and after the close of each session of Congress (44 U.S.C. 903);
- approves the insertion of maps, diagrams, or illustrations in the *Congressional Record* (44 U.S.C. 904);
- provides for printing in the daily edition of the *Congressional Record* the legislative program for the day together with a list of congressional committee meetings and hearings, and the place of meeting and subject matter (44 U.S.C. 905);
- causes a brief resume of congressional activities for the previous day to be incorporated in the *Congressional Record*, together with an index of its contents prepared under the supervision of the Secretary of the Senate and the Clerk of the House of Representatives, respectively (44 U.S.C. 905); and

- directs the supply and delivery of the daily edition of the *Congressional Record* according to a schedule other than promptly on the day after the actual day's proceedings as originally published (44 U.S.C. 906).

Executive and Judiciary Printing and Binding Generally

- prescribes limitations and conditions concerning Federal Power Commission contracting for and the performance of printing making use of engraving, lithography, and photolithography (16 U.S.C. 825k);⁹³
- determines where Federal Power Commission printing making use of engraving, lithography, and photolithography shall be performed (16 U.S.C. 825k);⁹⁴
- controls the number and distribution of the copies of the decisions of the Supreme Court of the United States printed in preliminary prints and bound volumes of the *United States Reports* (28 U.S.C. 411);
- regulates the printing by the Public Printer for sale to the public by the Superintendent of Documents of additional copies of journals, magazines, periodicals, and similar publications produced by executive branch entities, in accordance with pertinent statutory requirements (44 U.S.C. 1108);
- orders that annual reports of executive officers shall be printed in other than the same type and form as the report of the head of the department which it accompanies (44 U.S.C. 1112); and
- directs the Public Printer in procuring paper and envelopes for executive entities in the District of Columbia (44 U.S.C. 1121).

Particular Reports and Documents

- directs the Public Printer in supervising the execution of illustrations for part 2 of the annual report of the Secretary of Agriculture (44 U.S.C. 1301);
- approves the provision by the Public Printer of such printing services and distribution with respect to publications of the United States Capitol Historical Society, the Supreme Court Historical Society, or the White House Historical Association as such Society or Association may request, in accordance with pertinent statutory requirements (44 U.S.C. 1320A);
- directs the quantity to be printed and the distribution of additional copies of the compilations on the national high school debate topics and the compilations on the national college debate topics (44 U.S.C. 1333); and

⁹³ The Federal Power Commission was abolished and its functions were transferred to the Department of Energy by an act of August 4, 1977 (91 Stat. 578).

⁹⁴ See 1 Stat. 68, 443, 519, 724; 2 Stat. 302; 3 Stat. 145, 439, 576.

- makes determinations and prescribes limitations and conditions concerning printing and lithography or photolithography for the Patent and Trademark Office (44 U.S.C. 1338).

Indexes for Congressional and Public Documents

- approves plans of the Superintendent of Documents for preparing and publishing a statutorily required comprehensive index of public documents (44 U.S.C. 1710); and
- directs the Superintendent of Documents in preparing and printing in one volume a consolidated index of congressional documents and in the indexing of single volumes of documents as required by statute (44 U.S.C. 1710).