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# ACRL Legislative Agenda 2017

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## Executive Summary

ACRL's annual Legislative Agenda lists objectives for legislative action at the national level on issues that affect the welfare of academic and research libraries. This document is issued each spring, prior to National Library Legislative Day, and focuses on issues that the U.S. Congress has recently taken action on, or will act on in the year ahead. ACRL is active in advocating for policy and legislation through the ALA Washington Office, as well as through coalition work with groups such as the Open Access Working Group and the Library Copyright Alliance (LCA). The following list is in priority order and includes the issues upon which ACRL will focus in 2017:

- 1) Federal Funding for Libraries
- 2) Network Neutrality
- 3) Access to Federally Funded Research
- 4) Privacy and Government Surveillance

## 1) Federal Funding for Libraries

### Background

The [Institute of Museum and Library Services](#) (IMLS) provides vital resources to institutions that contribute significantly to Americans' economic development, education, health, and well-being. IMLS grants and programs support libraries and museums, which are essential contributors to improving Americans' quality of life.

The primary mission of IMLS is to provide federal support to approximately [120,000 libraries](#) and [35,000 museums](#) in the United States and its territories. IMLS provides more than \$210 million annually for libraries primarily through the Library Services and Technology Act (LSTA)— the vast bulk of which is the Grants to State program, population formula funding administered by IMLS comprising two-thirds of the [agency's budget](#). IMLS grants range from small amounts, for example a \$715 grant that funded the [OPUS Archives and Research Center](#) in their efforts to preserve and store 16mm film reels from their Joseph Campbell Collection, to large, institution-building grants, as with a \$10,000,000 grant that funded the National Constitution Center (FY 1999), whose [mission](#) is to "illuminate constitutional ideals and inspire active citizenship."

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## Current Status

All funding for IMLS was [eliminated](#) from the budget proposed by the current administration of President Donald Trump. Budgets adopted by Congress are typically modified from the proposed version requested by the President, with every member of Congress having the opportunity to vote on its final version. The proposed budget is also expected to receive some immediate resistance by Democrats and moderate Republicans on the Senate and House Appropriations Committees.

## Impact on Academic Libraries

Eliminating an entire program which is the primary annual source of funding for libraries is considered by some to be “a political statement from a new administration.” But, Irene M. H. Herold, president of ACRL has commented that as a community, “[w]e can't afford to view it as a political statement. We need to treat it as the serious threat that it is.” IMLS is not only a source of funding for ACRL initiatives, like the [Assessment in Action](#) program, it is the lifeline of federal support for all libraries--including college and research libraries. James G. Neal, president-elect of the ALA, says, “Public libraries, school libraries and higher education libraries are in this together, and therefore if we lose IMLS, we lose LSTA, we lose the literacy funding, that’s a statement about the future of libraries.”

## ACRL's Position

ALA and ACRL urge Congress to: 1) preserve funding for IMLS; 2) support the education, workforce, and economic development needs of Americans by providing \$186.6 million for LSTA in the Fiscal Year 2017 Labor, Health and Human Services, and Education Appropriations bill; and 3) maintain the investment in the Innovative Approaches to Literacy (IAL) grant program at the current level of \$27 million in the Fiscal Year 2017 Labor, Health and Human Services, and Education Appropriations bill. ALA and ACRL encourage grassroots advocates to take action and initiated a [grassroots campaign](#) in March to rally support from everyone in or associated with the library community by soliciting the help of patrons, library trustees, and vendors to call or email Members of Congress asking for a commitment from them specifically to oppose eliminating IMLS and support funding for libraries. This ongoing initiative will continue over several months as the budget is debated and finalized in the Congress.

## Links to more information

[Institute of Museum and Library Services](#)

[ALA Library Fact Sheet 1](#)

[Museum Stat](#)

[The Fight of Our Generation \(Inside HigherEd, March 27, 2017\)](#)

## 2) Network Neutrality

### Background

Net Neutrality is a set of principles which promote, among other things, unrestricted or uncontrolled access to all resources and applications available on the Internet via Internet Service Providers (ISPs). Whether legislation is needed to ensure this kind of access has become a focal point in the

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debate over telecommunications reform. Those opposed to access mandates claim that such action goes against the long-standing policy to keep the Internet as free as possible from regulation. In 2015, the Obama Administration asked the Federal Communications Commission (FCC) to rule in favor of net neutrality by reclassifying broadband as a common carrier under Title II of the Communications Act of 1934 and Section 706 of the Telecommunications Act of 1996. In February 2015, the FCC approved reclassifying high-speed Internet as a “telecommunications service rather than an information one, subjecting providers to regulation,” and, in June 2016, a federal appeals court confirmed the order.

## Current Status

The current administration endorses reversing the regulations to allow more freedom to ISPs, and the newly appointed FCC commissioner Ajit Varadaraj Pai has voiced objections to the Open Internet Order now in force. Pai has stated that he plans to “modernize” FCC policies to “match the reality of the modern marketplace,” but has not yet decided whether the FCC would attempt to overturn net neutrality policies.

## Impact on Academic Libraries

Educational institutions, including libraries, rely on the high-bandwidth applications and services, which support access to resources, collaboration, content creation, and learning—activities core to their mission. Yet, these are the institutions and organizations that are the least able to pay for priority, high-bandwidth access. As colleges and universities seek to be equal access providers of digital content and applications of all types via the Internet, eliminating the net neutrality rules promulgated by the Obama Administration would invite discriminatory practices by ISPs. ACRL and ALA assert that “[w]ithout ‘net neutrality’ policies, such providers could act as gatekeepers—they could give enhanced or favorable transmission to some Internet traffic, block access to certain web sites or applications, or otherwise discriminate against certain Internet services for their own commercial reasons, or for any reason at all.”

## ACRL’s Position

ACRL, along with other library and higher education groups, support regulations classifying ISPs as “common carriers” as a means to compel those companies providing Internet access to keep a level playing field. In open letters to the FCC and leaders of Congress’s Commerce Committees, ACRL and ALA, along with other higher education and library organizations, have delineated their concerns about changes in the regulations that may allow commercial ISPs to “interfere with the openness of the Internet” for financial gain. As they state, “[p]reserving the unimpeded flow of information over the public Internet and ensuring equitable access for all people is critical to our nation’s social, cultural, educational, and economic well-being.” The letter also reaffirmed a set of [principles](#) around maintaining net neutrality.

## Links to more information

[F.C.C. Sets Net Neutrality Rules \(New York Times, March 12, 2015\)](#)

[Network Neutrality in the Crosshairs \(ALA District Dispatch Blog, January 9, 2017\)](#)

[The Next Move for Net Neutrality \(ALA District Dispatch Blog, March 29, 2017\)](#)

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## 3) Access to Federally Funded Research

### Background

Every year, the U.S. federal government funds more than \$60 billion in basic and applied research, which is primarily concentrated in 11 departments/agencies and results in a significant number of articles being published each year (approximately 100,000 annually as result of National Institutes of Health [NIH] funding alone). Because this research is funded by U.S. taxpayers, there is public interest in seeing it disseminated and used as widely as possible, including access to articles reporting on the results of funded research. A number of measures have made important progress toward this goal, such as the NIH Public Access Policy (which became mandatory with passage of the Consolidated Appropriations Act of 2007) and the 2013 directive from the White House Office of Science and Technology Policy, which requires federal agencies with research and development budgets in excess of \$100 million to increase access to federally funded scientific research.

While the directives for agencies have not been codified in law, other related legislation has created momentum for improving access to federally funded research. Libraries, higher education, and other groups which advocate greater access to federally funded information have supported these kinds of initiatives, including the U.S. National Cancer Moonshot Initiative; the Open, Permanent, Electronic, and Necessary (OPEN) Government Data Act (reintroduced in the 115th Congress as S. 760/H.R. 1770); the Affordable College Textbook Act (introduced in the 114th Congress as S. 2176/H.R. 3721, which did not advance); and the U.S. Department of Education open licensing policy for grant-funded educational resources.

### Current Status

The Federal Research Public Access Act (FRPAA) was first introduced in 2006, reintroduced in 2009, and reintroduced again in the 112th Congress on February 9, 2012. It was superseded by the Fair Access to Science and Technology Research Act (FASTR) originally introduced in 2013 and refiled on March 18, 2015, as S.779/H.R.1477 with bipartisan support in both the House and the Senate chambers. Legislation has not been introduced in the 115th Congress.

### Impact on Academic Libraries

Federal legislation supporting open access to federally funded research will increase opportunities for academics to share research results across institutions and disciplines, collaborate widely, and reuse results. Sharing the results of research will allow new research efforts to be accelerated, resulting in greater innovation, new products and services, and long-term economic growth. In addition, articles and data available in a digital environment allow new fields of research and analysis to emerge through the use of computational analysis tools, which could revolutionize academic research.

### ACRL's Position

Federal legislation should be passed in order to codify White House Directives calling for public access to federally funded research and to extend the limited measures brought about by the 2015 Consolidated and Further Continuing Appropriations Act. We oppose unnecessarily long embargo periods and other measures that restrict public access to federally funded research.

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[Links to more information](#)

[FAQ for the Fair Access to Science and Technology Research Act \(SPARC\)](#)

[Public Access Plans from Federal Agencies](#)

## 4) Privacy and Government Surveillance

### Background

The individual's right to privacy has long been an issue of interest for the library community which values the principles of free speech, personal rights, and open government. The ongoing concern over the erosion of individual privacy rights and increased government surveillance warrants the continued attention, engagement, and advocacy with the government for increased protections of the individual. The following legislation, proposed legislation or executive orders are still areas of concern for those who value privacy.

### USA PATRIOT Act

In 2011, Congress extended the USA PATRIOT Act, which was originally a means to “allow surveillance of all communications used by terrorists, including emails, the Internet, and cell phones.” The law was reauthorized without amendments limiting those provisions that allowed almost unfettered powers for gathering and storing personal information about private individuals, whether those individuals were suspected of involvement with terrorism or illegal activities. Government agencies including the National Security Agency (NSA) and the Federal Bureau of Investigation (FBI) collected and stored telecommunications [metadata](#) on U.S. citizens through the use of Section 215, the “library provision” of the USA PATRIOT Act, and their data collection activities were consistently supported by the Foreign Intelligence Surveillance Act (FISA) court, which oversees requests for surveillance warrants. As the activities of the NSA and FBI in collecting and storing large amounts of personal information about millions of people became publicly known via leaks of NSA internal memos, the “revelations raised questions, not just about personal privacy and surveillance, but also about open government and transparency.” The USA Freedom Act, signed by President Obama in 2015, was expected to weaken and reform FISA and other surveillance programs. While the law did curtail the phone record surveillance and provided some transparency requirements for the FISA court, its final version has been criticized for allowing the continuance of these government data collection programs without meaningful limitations and oversight. Further, the USA Freedom Act did not address [mass surveillance or bulk collection practices](#) that may be occurring under other laws or regulations, such as Section 702 of the [FISA Amendments Act](#) or [Executive Order 12333](#). In addition, the Cybersecurity Information Sharing Act (CISA), also enacted in 2015, actually restored many of the NSA's powers that had been in place under the USA PATRIOT Act.

### FISA Amendments Act Section 702

According to James Clapper, former Director of National Intelligence (DNI) “Section 702 is a provision of the FISA Act designed to facilitate the acquisition of foreign intelligence information concerning non-U.S. persons located outside the United States. It cannot be used to intentionally target any U.S. citizen, any other U.S. person, or anyone located within the United States.” But Section 702 is one of the primary legal provisions that allows the government to engage in mass surveillance of U.S. citizens' online communications and a loophole in the law allows a kind of “backdoor” search of phone and Internet communications: FISA does not require the government to identify targets of their surveillance—which could potentially be used to circumvent traditional

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warrant protections and search for the communications of a large number of American citizens all at once.

## Executive Order 12333

The Obama Administration, in December 2016, put into place new rules allowing NSA to disseminate “raw signals intelligence” (intelligence-gathering by interception of signals). NSA analysts have previously been responsible for filtering the information for the rest of the government—searching and evaluating the information directly, passing on only those portions of emails and phone calls that they determine relevant to colleagues at other agencies, and masking names and other information about innocent U.S. citizens. The new rules are intended to provide more intelligence agencies across the federal government direct access to raw information collected by NSA. While they do not change or expand communications collection, they do put into place procedures that allow NSA to share certain raw intelligence information with other agencies. The concerns about these changes are that the filtering out of private information would be left to the many agencies receiving the unfiltered intelligence and that this type of distribution could lead to the misuse of private information.

## Email Privacy Act

The Email Privacy Act updates the Electronic Communications Privacy Act (ECPA), which was enacted in 1986 and intended to provide protection for email and other electronic communications. The bill specifies standards for law enforcement access to electronic communication and its associated data, standards that not only incorporate important privacy protections to subscribers of emerging wireless and Internet technologies, but also account for the changes in society and technology in the past three decades since the passage of ECPA. Specifically, the Email Privacy Act requires “law enforcement authorities to obtain a judicial search warrant based on probable cause in order to obtain the actual content of an individual’s email, texts, tweets, cloud-stored files and photos or other electronic information” and would end the “180-day rule,” which allows email communications to be obtained without a warrant after 180 days.

## Current Status

The [Email Privacy Act](#) (H.R. 699), introduced in the 114th Congress, passed the House of Representatives by unanimous vote, but stalled in the Senate. At the onset of the 115th Congress, the bill (H.R. 387) was reintroduced and passed the House on February 6 by voice vote. Librarians and library advocates should continue to monitor the timing and progress of this bill and look for opportunities to voice their support as the bill approaches its next hurdle in the Senate.

Sections of FISA, including 702, are scheduled to sunset in 2017. While library advocates have fought unsuccessfully for changes to this law, which protects individual privacy, opposition to this provision of FISA needs to continue and intensify as Congress considers reauthorization.

## Impact on Academic Libraries

Libraries retain and take careful steps to safeguard a great deal of patron data, including circulation records, database searches, and Internet browsing usage histories. The protection of the patron’s right to privacy and freedom from monitoring of their selection and use of information sources is a core value of professional librarians. Access to and surveillance of this data by third parties, like ISP providers, essentially destroys any assurance of privacy when using library resources.

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## ACRL's Position

ALA has strongly supported the revision of ECPA in the 115th Congress as a means to “bring ECPA into the Internet age by clearly requiring authorities to obtain a judicial warrant to compel access to Americans’ electronic communications of any kind immediately upon their creation.” Also, ALA and ACRL are committed to “reforming Section 702 of the Foreign Intelligence Surveillance Act ...to preclude the warrantless ‘back door’ search of U.S. citizens’ phone and Internet communications facilitated by the targeting of non-U.S. citizens domestically or abroad....”

## Links to more information

[Privacy and Surveillance \(ALA District Dispatch Blog\)](#)

[Everything You Need to Know About the Patriot Act Debate \(CNN, May 23, 2015\)](#)

[Here's the Law the Obama Administration Is Using As Legal Justification For Broad Surveillance \(Business Insider, June 7, 2013\)](#)

[FISA Resources \(Office of Civil Liberties, Privacy and Transparency. Director of National Intelligence\)](#)

[N.S.A. Gathers Data on Social Connections of U.S. Citizens \(New York Times, September 28, 2013\)](#)

[Obama Administration Releases Long Awaited New E.O. 12333 Rules on Sharing of Raw Signals Intelligence Information Within IC \(Lawfare, January 12, 2017\)](#)

[Why Is Obama Expanding Surveillance Powers Right Before He Leaves Office? \(The Atlantic, January 13, 2017\)](#)

[The Email Privacy Act's Time is Now! \(ALA District Dispatch blog February 3, 2017\)](#)

[Privacy Issues and Legislation \(ALA Office of Government Relations\)](#)

## WATCH LIST

There are additional policy issues of great concern to academic librarians that are not included above because there is no pending legislation or we believe legislation may not be necessary. Nevertheless, if legislation does arise or becomes necessary, ACRL will advocate for the best interests of academic and research libraries by relying on past precedent and current analysis.

## Access to Government Data

Early indications are that the Trump Administration's policies will have a significant effect on the quality and accessibility of government data collection and systems. Groups monitoring government websites have reported a number of take downs or [alteration of data and information on government websites](#), such as removing climate change data charts on the Energy Information Administration's "Energy Kids" website, statistics on animal cruelty on the Department of Agriculture's website, and the Department of Energy's web-based employee phonebook. These actions have prompted groups, including professors, scientists, and others (including librarians), to begin a "data rescue" effort by

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downloading and archiving information from federal databases that were vulnerable to change or removal.

The anticipated budget cuts will likely affect the collection and management of data. While census data is mandated by law and somewhat protected, budget cuts can be easily applied to other government statistical agencies to affect their data collection programs. The budget proposed by the Trump Administration includes an 18% cut to the Commerce Department. Within that department, NOAA(National Oceanic and Atmospheric Administration) [would lose 26% of its funding](#) with the largest single cut proposed for the National Centers for Environmental Information, a repository of climate and environmental information. The Bureau of Labor Statistics and the Census Bureau, already characterized as struggling, are also included in proposed cuts, with a possible discontinuation of the [American Community Survey](#). These are reductions characterized by the Office of Management and Budget as the “efficiencies” of fiscal responsibility within a budget that prioritizes military spending.

The Director of the Office of Information and Regulatory Affairs is a post yet to be filled in the Trump Administration. This individual, when appointed, will hold a [“key position in the federal collection of data”](#) and have significant influence on the Administration’s policies on data collection, as well as the budgets that will affect those statistical agencies that collect, curate, and disseminate data.

[White House Proposes Steep Budget Cut to Leading Climate Science Agency \(Washington Post, March 3, 2017\)](#)

[How Trump’s White House Could Mess With Government Data \(FiveThirtyEight, December 15, 2016\)](#)

## Proposed Budget Cuts

The Trump Administration has requested an additional \$54 billion for military spending in the federal budget for 2018 and, at the same time, has indicated an intention to shrink the federal bureaucracy. The resulting proposed budget eliminates entire programs and drastically cuts others, creating the “Skinny Budget.” While it is unclear where all the cuts in discretionary funding would be, some changes mentioned by several sources include 1) eliminating the National Endowment for the Arts and the National Endowment for the Humanities; 2) “dramatic” funding reductions in the [Department of Commerce and the Department of Energy](#), with some programs being eliminated or moved to other agencies; 3) privatizing the Corporation for Public Broadcasting, including PBS and NPR; and 4) reducing and reorganizing the Justice Department, State Department, and Department of Transportation.

The President’s proposed budget also includes a \$9 billion cut to U.S. Department of Education programs. Some carryover funds for Pell Grants would be taken from that program for other purposes, but the Pell Grant Program would remain protected. There would also be \$200 million in cuts to federal programs that assist disadvantaged students in their higher education pursuits. Also Federal Work-Study and the Supplemental Opportunity Grants would face “significant” cuts.

While the [full budget is not available, it is expected to be released mid-April](#) and is generally key to setting the agenda for the President’s administration. It is expected to receive some resistance by Democrats and moderate Republicans on the Appropriations Committee.

[Trump’s Defense Spending Increase Isn’t Extraordinary, But Its Impact Could Be \(Washington Post, March 2, 2017\)](#)



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[What Trump's Budget Outline Would Mean for Higher Ed \(Chronicle of Higher Education, March 16, 2017\)](#)

[Trump Team Prepares Dramatic Cuts \(The Hill, January 19, 2017\)](#)

## Activities of the Congressional House Education and the Workforce Committee

The [House Committee on Education and the Workforce](#), chaired by Congresswoman Virginia Foxx (R-North Carolina), works on issues relating to the U.S. education system and workforce and provides oversight of policies administered by the U.S. Departments of Labor, Education, Agriculture, and Health and Human Services. The [Subcommittee on Higher Education and Workforce Development](#), chaired by Representative Brett Guthrie (R-Kentucky), covers issues on post-secondary education. Some of the issues for which they have jurisdiction are: the Higher Education Act, Title IX of the Education Amendments of 1972, all programs relating to museums and library services, and postsecondary career and technical education.

In the incoming 115th Congress, [dozens of bills have been introduced and have been referred to the House Education and the Workforce Committee](#). The following are just a few of those introduced this year. [H.R. 483](#)-No Funding for Sanctuary Campuses Act was introduced January 12, 2017, and was referred to this committee. This bill would amend Title IV of the Higher Education Act of 1965 to prohibit the provision of funds under such title to institutions of higher education that violate the immigration laws, and for other purposes. [H.R. 899](#)-to terminate the Department of Education was introduced and referred to this committee on February 7, 2017. [H.R. 1123](#)- HBCU Capital Financing Improvement Act was introduced February 16, 2017, and was referred to this committee. It aims to amend Title III (Institutional Aid) of the Higher Education Act of 1965 to modify the historically black colleges and universities (HBCU) Capital Financing Program. The program guarantees low-cost private loans to HBCUs to finance infrastructure repairs, maintenance, and construction. These and any new bills or regulations will continue to be monitored.

Also related to higher education was the confirmation in February of Betsy DeVos as the new U.S. Secretary of Education. It appears that DeVos's main focus will be a diminished role of the federal government in education policies and regulations. House Committee on Education and the Workforce Chair Foxx has [shown strong support for DeVos](#).

President Trump recently appointed Liberty University President Jerry Falwell Jr. to a new federal task force on higher education to "identify changes that should be made to the U.S. Department of Education's policies and procedures." As yet, no activities have been observed, and no website was found for this new taskforce.

[US House of Representatives Education and the Workforce Committee](#)

[US House of Representatives Education and the Workforce Committee: Higher Education](#)

[What Trump's Budget Outline Would Mean for Higher Ed \(Chronicle of Higher Education, March 16, 2017\)](#)

[H.R.899 - To terminate the Department of Education](#)

[Jerry Falwell Jr. Says He Will Lead Federal Task Force on Higher-Ed Policy \(Chronicle of Higher Education, January 31, 2017\)](#)