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August 6, 2024

Lawrence A. Tabak
Principal Deputy Director
National Institutes of Health

Submitted via online [comment form](#)

Re: Docket Number: 2024-13373

Dear Dr. Tabak:

I am writing on behalf of SPARC, a non-profit advocacy organization that supports systems for research and education that are open by default and equitable by design. Our membership includes over 200 academic and research libraries across the U.S., with institutions that range from community colleges to large research intensive universities. SPARC believes that sharing knowledge is a human right, and that everyone should be able to access, contribute to, and benefit from the knowledge that shapes our world. We deeply appreciate the National Institutes of Health's (NIH) commitment to making the results of federally funded research available to the public, and thank you for the opportunity to provide comments on NIH's draft public access policy and guidance.

Our comments are organized in line with the sections outlined on NIH's online portal: 1) Draft Public Access Policy; 2) Draft Guidance on Government Use License and Rights; and 3) Draft Guidance on Publication Costs.

Comments on Draft Public Access Policy

We applaud NIH for removing the previously allowed 12-month embargo on publications resulting from federally funded research. Communities and individuals across the country face urgent health challenges every day and cannot wait up to a year to access critical research. With this change to NIH's draft policy, patients, doctors, and researchers will now have the latest

information at their fingertips to more quickly turn discoveries into cures and treatments. One immediate example of what can happen when the public is given immediate and free access to research is what happened during the COVID-19 pandemic, when paywalls on research were voluntarily lifted to accelerate knowledge of an emerging virus. Now, families across the U.S who deal with health concerns ranging from diabetes to cancer will benefit from the same rapid knowledge sharing that led the research community to develop vaccines and treatments for COVID-19 in record time.

We also offer our strong support for the proposed language in the draft policy that clearly states that submission of manuscripts to PubMed Central (PMC) remains free for authors and that any fee requested during the publication process for submission to PMC (e.g., “article development charges” or similar) is not an allowable cost. Ensuring authors do not face financial barriers like publication costs to comply with the agency’s new requirements will support equity among NIH’s grantees and make compliance easier for all researchers.

To further strengthen this aspect of NIH’s draft policy, we encourage the agency to clearly communicate to grantees that there is a no-cost compliance option available to all researchers and institutions. We consistently hear from our member institutions that many on their campuses mistakenly assume that compliance with the new policy **requires** the payment of a publishing fee to a journal. It is incumbent upon the agency, with support from the research community, to educate grantees about the free option available to authors so that they do not end up paying unnecessary publication fees.

We strongly support the OSTP Memorandum’s explicitly-stated requirement that agencies should make articles immediately available in formats that enable machine-readability. This ensures that these articles are broadly accessible via assistive devices, and also that they are readily available for state of the art computational uses. We appreciate the NIH’s consistent use of standards that promote this, including the NISO 39.96-2015 JATS XML standard.

The Memorandum also asks agencies to clarify what use and reuse rights accompany these articles, and we recommend that NIH make adjustments to its draft policy to explicitly authorize the public to fully reuse publications resulting from its research. To this end, we specifically recommend that NIH add the following language to the “Government Use License and Rights” section of its draft policy:

“NIH hereby exercises its right under this license to authorize members of the public to reuse the work for any purpose so long as the authors and the original publisher receive attribution in a reasonable manner.”

Adding this language will enable NIH to make all research articles available under terms that allow for full reuse and secondary analysis—just as it did when it made more than [350,000](#) coronavirus-related articles immediately available in PMC to respond to the COVID-19 health crisis. NIH’s swift action during the pandemic was critical to the creation of the [CORD-19 dataset](#), a machine-readable corpus of articles that allowed researchers to deploy novel machine-learning techniques to answer key questions about the virus.

Without the accompanying rights to fully reuse the articles, the CORD-19 dataset would not have been nearly as useful to researchers. The ability to fully reuse publications should not be limited to a public health emergency, but should apply to advancing progress in all areas where NIH conducts research from curing cancer to addressing economic disparities in healthcare.

As the transformative potential use of AI in research comes into focus, it further highlights the need to ensure that the public has full reuse rights to the articles reporting on federally funded research. By doing so, NIH will avoid making researchers reliant on proprietary platforms in order to use the most innovative AI-enabled analysis techniques on the wealth of knowledge produced with NIH funding. If NIH does not enable productive reuse, the agency risks limiting the impact of its investment in research.

SPARC and our member libraries have long supported the development of institutional repositories as a critical component of our shared national research infrastructure. Institutional repositories can (and do) serve as a convenient locus for faculty to deposit articles. They also provide institutions with an important mechanism to ensure that scientists and scholars—and their institutions—retain control of their intellectual output. Institutional repositories can also play an important role in easing policy compliance burdens on authors, improving discoverability of research outputs, and providing long-term preservation support for publications.

Over the past few years, the U.S. Repository Network (USRN) has been working to increase the technical readiness of repositories, improve their ease of use, and increase interoperability, and facilitate the critical link between research articles and the data underlying their conclusions. To help educate the community, the USRN recently released a document outlining “[Desirable Characteristics of Digital Publication Repositories](#).”

We recommend that NIH’s draft policy include language that would allow for the deposit of the author’s manuscript into local, institutional repositories—not just PMC. We recognize that technical developments to fully support this option are ongoing, and also suggest that NIH

engage with the USRN to develop a pathway for identifying additional repositories for authors to deposit their manuscripts into.

Comments on Draft Guidance on Government Use License and Rights

In our feedback on the draft policy, we recommended that NIH add specific language that states that the agency authorizes the public to fully reuse the research articles resulting from its funded research.

In addition to adding the recommended language to the policy itself, we recommend adding language in two additional places in the guidance to explicitly authorize the public to reuse publications:

1) In the statement NIH requires of authors submitting manuscripts to PMC, add to the end:

"I acknowledge that this includes the right of NIH to authorize members of the public to reuse the work for any purpose so long as the authors and the original publisher receive attribution in a reasonable manner."

2) In the sample language NIH recommends that authors attach to manuscripts, add to the end:

"Members of the public are authorized to reuse this work for any purpose so long as the authors and the original publisher receive attribution in a reasonable manner."

Incorporating language that explicitly authorizes public reuse in these two places is an important implementation aspect of the policy and will ensure that authors and users of the publications understand the public can make broad reuse of the work.

Comments on Draft Guidance on Publication Costs

In its draft policy, NIH ensures there is always a free path to compliance and this additional guidance equips grantees to better assess when—and when not—to pay fees required by some publishers. We appreciate the clarity that the updated guidance provides on the types of publisher fees that will not be considered allowable costs (e.g., "article development charges") along with the helpful guidance for assessing whether any costs levied are "reasonable." We particularly appreciate the call for funding recipients to consider the potential impact of these fees on library and institutional budgets.

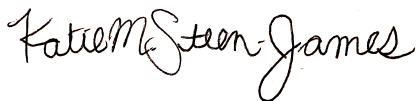
As the [cost of fee-based Open Access options continues to increase](#) (specifically those for “article processing charges (APCs)”), this guidance will play an increasingly important role in helping funding recipients make informed choices that avoid the inequities resulting from article fee-based business models that require authors to pay to publish.

It is also important that NIH’s policy and guidance do not inadvertently undermine new and innovative models for research communication that are emerging. Models like preprints, the “Publish, Review, Curate” model, and Diamond Open Access provide important opportunities for the research community to incentivize and reward a much wider variety of research outputs and not limit the ability for researchers to be credited only for publication of an article in a “reputable” journal.

To encourage a robust, diverse, and equitable research ecosystem, we recommend that the NIH consider adding additional language to clarify that publication costs may be allowed for models that produce other outputs of value—not just a journal article. We are concerned that, as written, the current language limits allowable costs to only those associated with APC-based models.

We thank NIH for the proposed forward-looking improvements to the current public access policy and accompanying guidance and we look forward to working with the agency to continue to support effective and equitable implementation of this important policy.

Sincerely,



Katie Steen-James
Manager of Public Policy & Advocacy



Heather Joseph
Executive Director