

UC Office of the President

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UC Comments in Response to NIH's RFI on the NIH Draft Public Access Policy

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Submitted through: <https://osp.od.nih.gov/comment-form-national-institutes-of-health-draft-public-access-policy/>

August 19, 2024

Dr. Lawrence A. Tabak, D.D.S., Ph.D.
Principal Deputy Director
National Institutes of Health
9000 Rockville Pike
Bethesda, Maryland 20892

RE: UC Comments in Response to the [Request for Information on the NIH Draft Public Access Policy](#) (89 FR 51537)

Dear Dr. Tabak:

I write on behalf of the University of California (UC) system in response to the Request for Information (RFI) on the National Institutes of Health (NIH) Draft Public Access Policy issued on June 18, 2024.

The UC system is comprised of ten campuses, six academic health centers, and three affiliated U.S. Department of Energy national laboratories. UC has demonstrated a strong commitment to open scholarship practices and supports immediate public access to scholarly works. This commitment is evident in several key initiatives, such as the Academic Senate and Presidential [open access policies](#), the [Faculty Declaration of Rights and Principles to Transform Scholarly Communication](#), and [efforts](#) to shift from subscription-based models to sustainable open access publishing.

UC welcomes NIH's efforts to enhance public access, in line with the 2022 Office of Science and Technology Policy (OSTP) [memorandum](#) aimed at accelerating access to scholarly publications. We strongly support the NIH Draft Public Access Policy and the accompanying supplemental guidance on the Government Use Licenses and publication costs. We especially applaud NIH for emphasizing the rights under the Government Use Licenses that enable broad circulation of scholarly publications. We offer comments below to support the refinement of the Draft Public Access Policy and supplemental guidance as well as suggest an additional step NIH can take to support its grantees' compliance in this space.

1. Feedback on the Government Use License

First and foremost, UC commends NIH on its Draft Guidance on Government Use License and Rights. We support the proposed submission statement regarding NIH's right to nonexclusive license for scholarly works it funds. We believe that the proposed submission statement will create consistency with institutional open access policies. For example, UC authors have already been exposed to the concept of granting a prior non-exclusive right through UC's open access policies, and this consistency in approaches between agencies and universities will go a long way towards making a complex environment more navigable for grantees.

UC especially finds important the explicit mention of the right to create derivative works, emphasized in bold below:

*"I hereby grant to NIH, a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use this work for Federal purposes, and to authorize others to do so. **This grant of rights includes the right to create derivative works and make the final, peer-reviewed manuscript publicly available upon the Official Date of Publication.**"*

Given the NIH Data Management and Sharing Policy and its positive impact on research outputs, we are confident that treating manuscripts like datasets that can be shared and re-used widely will similarly accelerate the pace of discovery and significantly enhance the return on investment for federally funded research.

Second, UC appreciates the reference to the Government Use License at "[45 CFR 75.322\(b\)](#) or its successor regulation." We recognize that the Department of Health and Human Services (HHS) codifies their agency specific Uniform Administrative Requirements, Cost Principles, and Audit Requirements (UAR) for HHS Awards at 45 CFR Part 75. With recent revisions made to the Office of Management and Budget (OMB) [Guidance for Federal Financial Assistance](#), we are aware that HHS has not yet codified the changes. When HHS does so, UC hopes that 2 CFR 200.315 is adopted in its entirety. The mirroring of 2 CFR 200.315 enables the kind of harmonization across federal agency public access plans the OSTP memorandum itself calls out as desirable. As the outcome statement of an event on deposit rights co-organized by the University of California [elaborates](#), "[t]he Federal purpose license provides clear language that supports deposit and re-use of research outputs, offers a pre-existing mechanism to achieve uniformity across federal agencies, reduces the risk of any non-compliance issues for grant recipients, and maximizes the return-on-investment for taxpayers and the public-at-large." This statement was endorsed by [consortia representing over 300 institutions and their libraries](#).

2. Feedback on Publication Costs

Continue to Remind Stakeholders of Publishing Needs

UC appreciates NIH's confirmation that publication costs are allowable costs in project budgets as either direct or indirect costs. UC asks that NIH prominently and consistently continue to remind grantees to consider their publishing needs when finalizing their budgets. As a further step, we hope that NIH can provide guidance to its reviewers that publication costs should be considered an

essential component of a grant application and to ensure that project budgets routinely include publications cost and are not cut from budgets during the review process.

Support for PubMed Central as a Cost-Free Approach to Sharing Scholarly Works

In addition, UC welcomes NIH's specification in the Draft Public Access Policy that Manuscripts submitted to "PubMed Central remains free for authors." Since UC supports multiple approaches to public access, we appreciate authors being able to practice this cost-free approach to sharing their scholarly works openly. We also welcome the further clarification that "publisher fees for submitting the Manuscript to PubMed Central that may arise during the course of the publication process are not allowable costs." We are aware of at least one publisher who currently conditions the ability to deposit a subscription article on [a separate fee](#); we are also aware of several publishers whose policies tie zero-embargo deposit of a final manuscript to a fee payment for an open access version of record. UC would like to see NIH specify that the ability of an author to make a zero-embargo deposit of their final manuscript should not be contingent upon the author paying *any* publisher facing fee.

Need for Supplemental Funding Mechanism for Post-Award Publication Costs

NIH's inability to pay publication costs after an award's closeout creates an additional burden on institutions. Research often leads to publications well after a grant period ends, and the current requirement to make these publications publicly accessible without corresponding funding support creates a funding gap for any publications occurring after the grant period, as many do. UC asks that NIH create a separate supplemental funding mechanism for post-award publication costs to allow institutions to meet the obligation of the final policy.

3. Feedback on Compliance Burdens

While outside the scope of the Draft Public Access Policy, there are significant compliance and administrative burdens associated with multiple scholarly publication deposits. Depending on the situation, a researcher may be required to deposit the same publication in multiple repositories to comply with institutional, funder, and federal policy requirements. This creates significant administrative burden in addition to posing compliance risks. We ask that NIH work with universities and publishers to automate multi-repository deposits as a single workflow to decrease burden on authors. Through automation, an author publishes their work as part of the normal publication process, and the article is then routed to the appropriate repositories to ensure high rates of policy compliance.

Thank you for the opportunity to comment on this important issue and we look forward to continued engagement on this issue as further policies and other guidance are developed. If you have any questions regarding UC's comments, please contact Agnes Balla, Director, Research Policy Analysis and Coordination, at Agnes.Balla@ucop.edu.

Sincerely,



Deborah Motton, Ph.D.

Executive Director

Research Policy Analysis and Coordination

University of California, Office of the President