UNIVERSITY OF MINNESOTA

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August 19, 2024

Response to 89 FR 51537: Request for Information on the National Institutes of Health Draft Public Access Policy

1. Provide any comments on the Draft Public Access Policy below:

We appreciate the opportunity to provide comments to NIH on the Draft Public Access Policy. Our response follows the organization of the Draft Plan.

Definition of "manuscript"

We are concerned about the proposed definition of "Manuscript" in the draft policy. As demonstrated in public comments on Rights in Manuscripts, the terms "preprint", "author-accepted manuscript", and the journal "version of record" are commonly used to distinguish between versions of an article. Even if the provided definition of Manuscript is in the Notice of Grant Award, researchers may find the term confusing. NISO RP-8-202x [National Information Standards Organization (NISO). (2024). "NISO RP-8-2008, Journal Article Versions (JAV): Recommendations of the NISO/ALPSP JAV Technical Working Group," https://www.niso.org/standards-committees/jav-revision.], defines the following states for an article as it is drafted and moves through the peer review process:

AO: Author's Original

SM: Submitted Manuscript

AM: Accepted Manuscript

PF: Proof

VoR: Version of Record

Colloquially, "manuscript" is often taken to mean either the "Author's Original" or "Submitted Manuscript" by researchers—the version of the article before peer review (which may or may not have been shared publicly as a "preprint").

We suggest NIH consider using "Accepted Manuscript" or "Author Accepted Manuscript" to mean the "author's final version that has been accepted for journal publication and includes all revisions resulting from the peer review process, including all associated tables, graphics, and supplemental material", instead of "Manuscript".

Similarly, NIH might consider using "Version of Record" in place of "Final Published Article".

Under the Requirements section of the Draft Plan, the version that researchers are required to deposit in PubMed Central, the term "final peer-reviewed Manuscript" is introduced, which does not appear in "Definitions." Again, we would recommend the use of "Accepted Manuscript" here.

Peer review

Researchers might benefit from a clearer definition of "peer review" in regard to the definition of "journal". For example, if researchers were to release research findings of funded research in a non-peer

review outlet, such as a white paper, dissertation, or other gray literature source, would those documents be subject to this policy?

"Official Date of Publication"

We thank NIH for included a definition of "Official Date of Publication" to clarify that it is the first time when the article first appears online *or* in print. However, there is conflicting mention of the acceptance date. The definition for "Official Date of Publication" is "The date on which the article is first made available in final, edited form, whether in print or electronic (i.e., online) format". The term "Official Date of Publication" is used in the example language NIH provides for authors to include in the Manuscript. However, the following language is in the first bullet of the "Requirements" section: "Submission of an electronic version of the final peer-reviewed Manuscript to PubMed Central upon its acceptance for publication, for public availability without embargo upon the Official Date of Publication".

Acceptance occurs before the article is published, online or in print. NIH should clarify if authors are to submit their author-accepted manuscript immediately upon **acceptance**, when it first appears on the journal's website, or when it appears in print. We recommend making it clear whether it is the author's responsibility to determine if their journal will automatically deposit into PMC. If the journal does not automatically deposit the Version of Record, then authors should deposit the Accepted Manuscript to PMC upon acceptance and no later than the date of publication. Note that authors may not be aware of the date when their article is first published. Some journals notify authors when it is available online and others do not communicate with authors after the final proofs have been submitted.

Implementation date

We are pleased to see that NIH will implement the new Public Access Policy on October 1, 2025 for all grantees. It will simplify compliance processes for researchers and those who support them by having one deadline (upon publication) for making their article publicly accessible.

We would appreciate active communication from NIH to grantees starting immediately upon the issue of the final Public Access Policy.

As described in our response to question 2, we suggest clarifying the use of the language provided in "Guidance for Communicating Rights in Manuscripts" (https://www.federalregister.gov/d/2024-13373/p-125). If this language must be included when the article is submitted, it will not be possible for all authors who submitted their article before October 1, 2025 to comply. The length of time between article submission, acceptance, and publication is highly variable (it can reach lengths over one year) and authors will be unable to predict whether articles submitted after the final version of the Public Access Policy is published will be accepted before or after October 1, 2025.

We also encourage NIH to use this opportunity to strongly encourage authors to use persistent identifiers to track their articles, including using ORCids for author identification, DOIs of manuscripts when published, and Research Organization Registry numbers (RORs) for affiliation and funder identification. This facilitates tracking, findability, and compliance with the 2022 OSTP "Guidance to Make Federally-Funded Research Freely Available Without Delay" as well as related Federal Research Security and Research Integrity Policies.

2. Provide any comments on the Draft Guidance on Government Use License and Rights below:

We applaud NIH on the inclusion of the Government Use License in the Draft Plan as a means for researchers to share their work without paying article processing charges (APCs). This ensures that there is an equitable path to compliance, available to all authors regardless of the amount of funding they have available. It also enables maximum use of taxpayer money to support research, rather than for paying publisher charges.

Timeline of usage

In "Guidance for Communicating Rights in Manuscripts", NIH helpfully provides a statement authors can include in their manuscript (https://www.federalregister.gov/d/2024-13373/p-125). Related to the concerns outlined in our response to question 1, it is unclear when authors should use this language. Should the statement be included in the submitted version? Or are authors expected to add this to their accepted manuscript, post-peer review? In which cases might authors not include it? We recommend clarifying the language in this section of the policy.

Publisher systems

We have concerns about the use of the recommended license language given limitations of publisher manuscript submission systems. In many cases, authors only have the choice to "click through" statements agreeing to transfer their copyright to the publisher. Clarification for how authors can insert or append publisher contracts with the provided language would be helpful.

Clarify purpose of licenses from authors

We understand the proposed guidance to affirm that a license exists as a basic condition of grant funding that enables government use (i.e., the Government Use License (GUL)), and that the GUL allows for public access sharing of articles resulting from NIH funding.

The proposed guidance suggests that authors should include a statement in their manuscripts affirming the Government Use License. We think this is a good suggestion.

The proposed guidance then also suggests the inclusion of what seems to be a separate license from authors to PubMed Central (PMC). This separate license seems to provide an additional layer of rights assurance for PMC beyond the existing Government Use License, and possibly an additional reminder for authors about their public access obligations under grant conditions. However, some authors may find it confusing to be required to execute a license to PMC, especially if they have already included a statement in their manuscript affirming the GUL.

We suggest that additional information be provided to authors about any license requested at the time of submission to PMC. One possible way to do that would be to provide information around that license explaining that it is an additional assurance around rights, and/or that it is a reaffirmation of shared rights required as part of the grant agreement.

3. Provide any comments on the Draft Guidance on Publication Costs below:

Clarification on reasonable, allowable, allocatable, and consistent

There is ongoing research and data collection on what are reasonable and actual costs for publications—we recommend that NIH use language that aligns with the current standard guidelines

(reasonable, allowable, allocatable and consistent) until there is more information about specific guidelines. It also is worth emphasizing that allowable and reasonable costs for direct charge to grants may change from the timeline of budget development to publication.

Article processing charges (APCs)

We greatly appreciate that NIH has emphasized the no-fee methods to public access policy compliance. We recognize that authors may still choose to publish in journals that require payment of an article processing charge (APC) for publication; that is, for fully open access journals that charge APCs. NIH should consider adding more emphasis that APCs for hybrid journals are unnecessary for compliance with the policy. Communication and education around this point are crucial to ensure authors understand they do not need to pay to meet open access requirements.

We propose NIH might be more specific about what is "reasonable" to ensure that the Policy does not introduce more inequities into the publishing system. The work of Butler et al. shows how APC prices increased between 2019 and 2023, with an average (of hybrid and fully OA APCs) of $2,860 across publishers, and a maximum of $11,600 in 2023.[1] In 2024, the APC for *Nature* increased to $12,290. Again, NIH should emphasize to authors that hybrid APCs are not required for compliance with the NIH policy; this will ensure that taxpayer money is spent on research, not publication.

In considering NIH-funded articles, the average APC for the top journals in which UMN authors publish is close to the average reported in OSTP's June 2024 Updated Report to the U.S. Congress on Financing Mechanisms for Open Access Publishing of Federally Funded Research[2], $3800. We estimate up to 2500 articles based on NIH-funded research may be published by UMN authors each year, which would cost taxpayers over $9.4 million if APC payment were to be required. With our collections budget of approximately $18 million, the University Libraries would be unable to cover the cost with APCs for funded authors, without creating deep inequities for unfunded versus funded authors. (Our authors publish roughly 8000 to 9000 articles per year; even if our entire budget were spent on APCs, we would not be able to support all authors.)

If it is not possible to define a "reasonable" APC at this time, we suggest that NIH should monitor APC prices. This could be done through tracking where NIH-funded authors publish and how often their articles are published OA (i.e., paid hybrid or published in a fully OA journal), monitoring broader trends in APC prices, or through a pilot project to monitor costs for a set of grants.

Other publisher charges

We appreciate that NIH has provided clear prohibition of use of grant funding to pay publishers for activities other than publishing articles. Subsidizing publisher business models in this way would be a poor use of taxpayer money. Like many who work in open/public access, we were disappointed when the American Chemical Society (ACS) introduced its "article development charge" (ADC), for which authors pay $2500 at the time of submission. With this model, if the article is rejected, the author is not refunded the money; if the article is accepted, the author is allowed to deposit the article in a repository (e.g., PMC)

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[1] Butler, L. A., Hare, M., Schönfelder, N., Schares, E., Alperin, J. P., & Haustein, S. (2024). An open dataset of article processing charges from six large scholarly publishers (2019-2023). arXiv preprint arXiv:2406.08356.

[2] White House Office of Science and Technology Policy. (2024). Updated Report to the U.S. Congress on Financing Mechanisms for Open Access Publishing of Federally Funded Research: A report by the White House Office of Science and Technology Policy.
https://www.whitehouse.gov/wp-content/uploads/2024/06/2024-Report-to-Appropriations-Committee-on-Scholarly-Publishing-and-Public-Access-Implementation.pdf

without an embargo or they can pay an APC that is discounted by the amount paid for the ADC. The Policy is clear that fees for submission or services such as peer review are not allowable costs. However, more clarification would be useful. For example, with the ACS model, if the article is accepted and the author opts to pay the remaining APC for hybrid OA, would they be able to expense the full amount paid (i.e., treating the ADC as part of the eventual APC paid)?

"Transformative" agreements and institutional support for open access

OSTP's June 2024 Updated Report to the U.S. Congress on Financing Mechanisms for Open Access Publishing of Federally Funded Research[3] provides discussion of transformative agreements and the growth in their numbers. "Transformative" agreements were meant to transform hybrid journals to full OA; they allow corresponding authors from the participating institution to publish OA in hybrid journals without paying an APC, sometimes fully OA journals are also included under the agreement.

We have concerns about providing support or encouragement for these types of agreements and the expectations that publishers might place on institutions to enter into these agreements to enable researchers to meet funders' public access requirements. We are already hearing from publishers that APCs will not be a problem for authors because they expect the author's institution will enter into an agreement to cover APCs for their institution's authors or the author will be able to receive a waiver. However, waiver policies are usually limited to authors from low or middle income countries; publishers typically expect authors from high income countries to pay APCs, especially if they have received grant funding, regardless of the amount.

These agreements are inherently inequitable. They benefit only authors at participating institutions, but they are costly and are unaffordable for many institutions. They are also specific to individual publishers. Large research institutions like the University of Minnesota would not be able to enter into agreements for every journal in which our NIH-funded researchers would publish.

Some publishers have suggested that libraries should "access" grant funding (through direct or indirect costs) to pay for the additional costs. This does not align with the University of Minnesota Libraries' principles on open access, but we are aware of some institutions who do request authors provide grant funding to support agreements. If transformative agreements become a dominant model for OA publishing, we suggest NIH might provide clarification on if and how grant funding can be used to support them. Would contributions from NIH-funded researchers to agreements that combine access to subscription materials ("reading" access) and publication charges be an allowable expense? Authors generally do not know exactly how many articles they publish and where they will publish at the start of the fiscal year and would be taking the chance of using grant funding to support agreements that they will not take advantage of.

Some agreements are "capped": the institution receives credits for a predetermined number of articles. In some cases the cap is lower than the expected output and authors with grant funding may be encouraged to use their funding to pay an APC outside of the agreement. If the cap is exceeded, authors typically have the option to pay an APC to make their article open access. Would the APC be an allowable expense in

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[3] White House Office of Science and Technology Policy. (2024). Updated Report to the U.S. Congress on Financing Mechanisms for Open Access Publishing of Federally Funded Research: A report by the White House Office of Science and Technology Policy.
https://www.whitehouse.gov/wp-content/uploads/2024/06/2024-Report-to-Appropriations-Committee-on-Scholarly-Publishing-and-Public-Access-Implementation.pdf

these cases? It would not be feasible or equitable for institutions to manage a capped agreement to maintain a reserved pool of credits for NIH-funded authors.

We have also seen a university system develop a model in which authors have the option to use their grant funding to contribute to an APC, however, the library would pay the entirety if the author was unable or unwilling to contribute. Would contributing to an APC be an allowable expense, if it might otherwise be paid through another source from within the institution?

Support for diamond and other non-APC-based OA models

We appreciated the discussion of non-APC-based business models for open access publishing in OSTP's June 2024 Report. Countries in Latin America, Central America, South America, and the Caribbean have used diamond OA publishing models, where the journal is free for all readers and free for all authors to publish, for decades (e.g., ScieELO and Redalyc). Support for Diamond OA has been increasing in Europe over the last few years: Science Europe, cOAlition S, OPERAS, and the French National Research Agency published an Action Plan for Diamond Open Access.[4] We have also seen statements of support for OA models that do not rely on author payments from library deans from some of the most prestigious universities in the US[5] and researchers in the United Kingdom.[6]

The University of Minnesota strongly supports fee-free OA publishing models. Through our Libraries Publishing Services, we publish journals, scholarly monographs and other research products using the diamond OA model. We provide financial support for diamond OA from other journals and are strong supporters of the subscribe-to-open model.[7] These models work best for publishers that are working in partnership with libraries and researchers, typically non-profit, society publishers. We encourage NIH to consider supporting these types of OA publishing models, potentially through direct grants to diamond OA publishers, support for meetings among publishers to develop models, and educating NIH-funded researchers about diamond OA and other APC-free journal options.

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[4] Ancion, Z., Borrell-Damián, L., Mounier, P., Rooryck, J., & Saenen, B. (2022). Action Plan for Diamond Open Access. Zenodo. https://doi.org/10.5281/zenodo.6282403

[5] Meisel, J.S., Reimer, T., Thornton, A., Westbrooks, Kroch, C.A., E.L., Mehrer, S., Salem, J., Whitehead, M., Long, E.M., Bourg, C., Constantinou, C., Jarvis, A., Rockenbach, B., & Keller, M.A. (2023). Ivy Plus Libraries weigh in on OSTP guidance on access to federally funded research. MIT Libraries News & Events. https://libraries.mit.edu/news/libraries-support-3/34036/

[6] Eglen, S., et al., An open letter from UK researchers to UK library directors regarding the UK's reliance on read-and-publish deals with journal publishers. https://docs.google.com/document/d/1ZAlPDvECb5Zm1pqAf0I1f0sjcBqPbkPGMvGIhaCz6lM/edit#heading=h.5k64npqo1jn0

[7] University of Minnesota Libraries. (n.d.). Libraries Partnerships for Open Access. Libraries partnerships for open access https://www.lib.umn.edu/services/open-access/oa-partnerships#sustainable