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Subject: University compliance with federal public access regulations

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Attached, and pasted in as text below, is a memo from Kelvin Droegemeier (Vice President for Research, University of Oklahoma), Richard Marchase (Vice President for Research & Economic Development, The University of Alabama at Birmingham), and Richard McCullough (Vice Provost for Research, Harvard University) that highlights implications of the federal research funding agency public access plans now emerging in response to the 2013 OSTP public access policy directive. It offers suggestions on university policies and procedures that can assure compliance with federal public access requirements.

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RE: University Compliance with Federal Public Access Policies

As you are undoubtedly aware, in February 2013 Director Holdren of the Office of Science and Technology Policy (OSTP) issued a [Memorandum](#) directing federal agencies with over \$100M in annual R&D expenditures to develop plans to provide increased public access to the results of federally funded research. The OSTP policy requires that grant recipients whose research results are published in peer-reviewed journals submit the final, accepted manuscript of such articles to the federal granting agency or a designated repository upon acceptance of the article for publication or the final published version if approved by the publisher. The article is to be made freely, publicly available following an agency-determined embargo period, with agencies to date calling for a 12-month embargo period. While it has taken some time for those plans to be developed, many agencies now are implementing approved plans (see ARL list of agency plans below). This memorandum offers suggestions for immediate actions by universities to be fully prepared to meet the new requirements contained in the agency grant-funding policies that will result from implementation of these plans. Unless a university takes steps now to assure future public access, it may later find itself out of compliance with the terms of federal agency grants.

Complying with agency public access plans is initially the responsibility of the faculty grant-recipient. In 2005, NIH began a voluntary program under which researchers funded wholly or in part by NIH would submit to PubMed Central, the final, accepted manuscripts of peer-reviewed journal articles reporting on that research. NIH later made submission mandatory, and more recently enacted a policy of withholding a researcher's grant renewal if a prior manuscript had not been submitted to PubMed Central. Similar policies might be expected to emerge from the federal research funding agencies that are now enacting their public access plans in response to the OSTP directive.

Because federal research grants are made to the university and not directly to the faculty researcher, the university incurs a contractual obligation when it accepts a pertinent federal research grant. Unfortunately, faculty members working on such grants may not be aware that they have compliance obligations to submit, or have submitted on their behalf, the final accepted manuscript to all federal agencies funding their research. Moreover, in the plans being implemented in response to the OSTP public access policy directive, agencies are specifying faculty *and institutional* compliance responsibilities. It will be in the interests of both faculty researchers and their institutions, as the formal recipients of federal research grants, to take steps to assure faculty and institutional compliance with emerging federal agency public access plans and policies.

Universities historically have **not** asked faculty for licenses or rights to research publications as a condition of employment, nor have they asserted that faculty publications are a work-for-hire. Henceforth, universities will have to alert faculty that, at a minimum, they must meet the university's obligation to make any federally funded publications publicly accessible after any federally required embargo period. The obligation of the university to the federal agency, created when it accepts a grant, implies a new obligation for the faculty researcher.

There are a number of university protocols and policies to forge the essential new link that universities could consider. From minimal to more affirming of free public access, the following are four options:

1. Require faculty sign an agreement giving the university a non-exclusive copyright license adequate to assure public access to the accepted manuscript of any peer-reviewed publication before a covered federal grant is submitted or, alternatively, accepted. This both alerts the faculty member and creates an unambiguous contract that will allow the university to comply with the federal public access mandate.
2. Require faculty to agree to a university copyright license that includes deposit of the final, accepted manuscript with a university-run repository implementing public access. With a copy of the manuscript under university control, the university has the ability, and the obligation, to meet federal public access compliance requirements without reliance on a publisher's access services.
3. Change university policy to assert a license for public access to final accepted manuscripts applicable for any grants requiring it. Changing policy may entail an educational campaign to raise awareness and proper notification of faculty, even negotiation in some instances, but changing policy can make the process for individual grants simpler and less susceptible to error.
4. Change university policy to affirm public access to research manuscripts for all faculty. This extends the spirit of public access to research and scholarship in all fields and makes a university statement on scholarly communication. Note that selective opt-out cannot be permitted for covered federal grant publications unless public access is assured in another way.

Most research libraries are actively working on these issues and your librarians may be able to assist your institution in meeting agency compliance requirements.

The accompanying appendix includes links to current federal agency plans, and to a number of university policies that accommodate the compliance requirements of OSTP public access provisions. In our view, providing a sure path for free public access to research results is entirely

consonant with faculty interests. Generally, faculty members seek dissemination of their ideas, recognition and maximum impact for their work, and a minimum of extra compliance effort for themselves. Post-embargo public access allows research results to be found electronically and increases exposure. To avoid later problems from ambiguities in rights and failure to comply, universities can take actions now to establish a firm basis to meet public access requirements.

We have been working with AAU, APLU, and ARL on public access issues. If you have any questions or would like to talk about this correspondence, please contact John Vaughn (John.Vaughn@aau.edu), Michael Tanner (mtanner@aplu.org), or Prue Adler (prue@arl.org).

APPENDIX

Federal Agency Public Access Plan Documents

[NIH Public Access Policy](#)

Association of Research Libraries [Public Access Policies](#)

University Open-Access Resources

<http://libraries.mit.edu/scholarly/mit-open-access/open-access-at-mit/mit-open-access-policy/mit-faculty-open-access-policy-faq/>

<http://osc.universityofcalifornia.edu/open-access-policy/policy-faq/>

http://cyber.law.harvard.edu/hoap/Good_practices_for_university_open-access_policies

http://www.sparc.arl.org/sites/default/files/Choice%20Points_FINAL.pdf

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