

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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October 18, 2022

The Honorable Arati Prabhakar
Director
Office of Science and Technology Policy
1650 Pennsylvania Avenue NW
Washington, DC 20502

Dear Dr. Prabhakar,

We congratulate you on your recent confirmation as the Director of the Office of Science and Technology Policy (OSTP). Your extensive experience and leadership positions in both government and the private sector will undoubtedly be an asset to OSTP and to the larger Federal scientific enterprise. We look forward to working with you closely in your new role. Today, we write to you about OSTP's recent Memorandum on the topic of public access to Federally funded research results.

On August 25, 2022, OSTP Acting Director Dr. Alondra Nelson issued policy guidance to Executive Departments and Agencies in a Memorandum titled *Ensuring Free, Immediate, and Equitable Access to Federally Funded Research*.¹ The guidance provides an update to the 2013 OSTP *Memorandum on Increasing Access to the Results of Federally Funded Research*,² issued by the Obama Administration. The 2013 Memorandum was the first government-wide directive regarding public access to publications resulting from federal funded research and directed agencies with more than \$100 million in annual federal R&D expenditures to establish policies with a maximum twelve-month embargo on publications as the goal. The 2013 Memorandum also provided guidance with respect to access to digital data created with Federal funds.

¹ <https://www.whitehouse.gov/wp-content/uploads/2022/08/08-2022-OSTP-Public-Access-Memo.pdf>

² https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/ostp_public_access_memo_2013.pdf

The 2013 Memorandum was informed by work of the House Committee on Science, Space, and Technology, including the 2009 Scholarly Publishing Roundtable hosted by then Chairman Gordon, that for the first time brought stakeholders with conflicting positions together to produce a consensus white paper.³ The Committee followed up on the work of the roundtable with a requirement in Section 123 of the America COMPETES Reauthorization Act of 2010 requiring the establishment of an interagency public access committee to coordinate Federal public access policies.⁴

In the years following the 2013 Memorandum, Federal research agencies developed, implemented, and updated new policies consistent with the guidance in the Memo. They collaborated effectively with publishers and other stakeholders to ensure a smooth transition. The twelve-month embargo effectively became a ceiling with many publishers opting for shorter embargoes or developing new or hybrid business models to support immediate public access. Under this policy, the subscription business model for scholarly journals continues to flourish, supporting the very important activities of non-profit scholarly societies, including conferences, workshops, professional development opportunities for students and early career researchers, and other activities in support of a thriving scientific enterprise. The subscription model also ensures that anyone can submit their research for publication free of charge and supports a peer-review process to help ensure the quality of research publications.

The August 2022 Memorandum eliminates the 12-month embargo, requiring immediate public access to publications resulting from federally funded research, and creates new requirements for access to digital data. It also, for the first time, applies public access requirements to all Federal agencies with research programs of any size, not just those with expenditures greater than \$100 million. We support the goals of the Memorandum of improving access to taxpayer-funded research and greater transparency of research data, but are concerned about the details of how policies will be developed and implemented to maximize their intended value and avoid unintended consequences.

On the one hand, the new guidance represents a natural progression for scholarly publishing in this information age, not an entirely new paradigm. If implemented successfully, it will further the goal of enabling transformative scientific discovery across disciplines. We also share the Administration's goal of ensuring greater access to research results, especially for small businesses and for students and researchers at small, under-resourced institutions, including community colleges, minority serving institutions, and rural institutions.

On the other hand, the Memorandum is short on details of how the new requirements will be implemented, including how agencies will update their own policies and collaborate with stakeholders to ensure smooth implementation and address new challenges with who can afford

³<https://www.aau.edu/sites/default/files/AAU%20Files/Key%20Issues/Intellectual%20Property/Scholarly%20Publishing%20Roundtable%20Report%20and%20Recommendations%20-%2012-10.pdf>.

⁴<https://www.congress.gov/111/bills/hr5325/BILLS-111hr5325ih.pdf>

to submit their research for publication, or how to ensure the quality of research publications. We are further concerned about the lack of detail with respect to the requirements for digital data. Making data accessible in a way that is truly useful to advance science has always been a more difficult technical, cultural, and economic challenge than making publications available. It is the responsibility of the Federal government not just to ensure that taxpayer funded research is made publicly available (with appropriate protections for privacy and confidentiality), but that it is done in a way that avoids unintended consequences and maximizes the scientific benefits.

In our oversight of OSTP and the civilian Federal R&D enterprise, the Committee on Science, Space, and Technology seeks more information from OSTP on both the implementation details of the Memorandum and how OSTP plans to work with stakeholders to resolve outstanding questions. We seek your answers to the following questions no later than October 31, 2022:

1. How will OSTP work with agencies, publishers, universities of all sizes, scientific societies, and other relevant stakeholders to:
 - a. Ensure coordination and consistency in policies, and well as to maximize opportunities for interoperability across agencies and disciplines?
 - b. Develop and support new mechanisms for supporting page charges, peer-review, data repositories, and other infrastructure necessary to support a smooth transition to immediate public access?
 - c. Ensure that the costs of publishing are not shifted entirely to research grants, cutting into funding intended for cutting-edge research and development?
 - d. Ensure continued equity in access for researchers seeking to submit their research results for publication, particularly in journals that may shift from subscription access to page charges?
 - e. Prevent the proliferation of multiple versions of peer-reviewed manuscripts, and support the public archiving of a single version of record, independent of home institution of the author(s)?

2. The data challenge has always been much harder than the publications challenge. It requires new funds, not just new ways of providing funds. The significant differences in culture and needs across disciplines, institutions, and agencies adds another layer of complexity to implementation.
 - a. What steps are OSTP taking to enable implementation of the data requirements in the Memorandum in a way that minimizes burden on researchers and maximizes the cross-disciplinary scientific value of data repositories?
 - b. Does OSTP anticipate that new appropriations will be needed to support the enhancement of existing data repositories or to establish new ones?
 - c. Agencies are directed to plan for ensuring scientific data is freely available to the public “at the time of publication.” Will agencies be required to ensure public access to that data in perpetuity, or for a set period of time?

- d. Will OSTP promulgate a rulemaking to formalize a government-wide definition for “scientific data?” Or will agencies be asked to issue discipline-specific definitions so that federally funded researchers can understand what specific scientific data must be made available for public access?
- e. Will guidance be developed for Federally funded research data not associated with peer-reviewed scholarly publications?

In addition, we urge OSTP to initiate a second round of stakeholder engagement and conduct public workshops with the range of affected stakeholders in order to address these critical implementation issues in the next few months. The Memorandum directs federal science agencies with over \$100 million in spending to send their implementation plans back to OSTP in less than five months. A robust dialogue in advance of that deadline would be advantageous to all parties.

We appreciate your dedication to addressing these important issues and look forward to working with you. If you would like to discuss further, please have your staff contact Dahlia Sokolov of the Majority staff at 202-225-6375 and Cate Johnson of the Minority staff at 202-225-6371.

Sincerely,



EDDIE BERNICE JOHNSON
Chairwoman



FRANK LUCAS
Ranking Member