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## The Federal Research Public Access Act of 2006

### CAMPUS FAQ

#### FREQUENTLY ASKED QUESTIONS FOR UNIVERSITY ADMINISTRATORS & FACULTY

#### What does the legislation entail?

The bipartisan Federal Research Public Access Act of 2006 (introduced on May 2, 2006 by Senators John Cornyn (R-TX) and Joe Lieberman (D-CT), would require that US Government agencies with annual extramural research expenditures of over \$100 million make manuscripts of journal articles stemming from research funded by that agency publicly available via the Internet. The manuscripts will be preserved in a digital archive maintained by that agency or in another suitable repository that permits free public access, interoperability, and long-term preservation. Each manuscript will be available to users without charge within six months after it has been published in a peer-reviewed journal.

#### Who will be affected?

It is expected that non-classified research from investigators funded by the following agencies (whose annual extramural research budgets exceed \$100 million) will be affected:

- Department of Agriculture
- Department of Commerce
- Department of Defense
- Department of Education
- Department of Energy
- Department of Health and Human Services
- Department of Homeland Security
- Department of Transportation
- Environmental Protection Agency
- National Aeronautics and Space Administration
- National Science Foundation

Agencies have one year from enactment of the legislation to develop implementation policies, which would be promulgated to affected researchers at the appropriate time.

#### What does the legislation mean for investigators?

If Congress passes the bill into law, the most significant day-to-day effect on investigators will be *improved access* to research and *increased impact* for their own work. A growing number of studies demonstrate that research is cited more often when it is openly accessible on the Web.<sup>1</sup>

<sup>1</sup> See "The effect of open access and downloads ('hits') on citation impact: a bibliography of studies," available at <http://opcit.eprints.org/oacitation-biblio.html>.

Agency implementation policies would likely call for each principal investigator whose work is funded totally or partially by the agency to submit an electronic copy of the final manuscript (including changes resulting from peer review) of any article that stems from the agency's funding and has been accepted for publication in a peer-reviewed journal. With the consent of the article's publisher, the final *manuscript* could be replaced with the final *published* version. Some agencies may work out arrangements with publishers allowing publishers to deposit articles on behalf of investigators.

The process by which investigators deposit their work is expected to be relatively simple. It may be similar to the procedure worked out by the National Institutes of Health to implement its Public Access Policy (<http://publicaccess.nih.gov/>) – although to date the NIH policy has been voluntary for investigators, unlike the provisions of this bill. NIH estimates that submitting a manuscript to their archive usually takes an investigator just 3–10 minutes.

Like NIH, other agencies might choose to use the article deposit process as an alternate means by which investigators can fulfill any existing requirement to provide publications as part of progress reports and other application and closeout procedures. This could reduce the burden for investigators.

### **What does it mean for higher education institutions?**

This legislation will mean enhanced access to federally funded research articles for researchers and students at your institution. Availability of funded research in open archives also expands the worldwide visibility of the research conducted at your institution, increases the impact of your investment in this research, and aids you in examining related work at other institutions that compete for Government grants and contracts.

Because it will improve access to science, the legislation is supported by various national organizations of academic libraries – including the Association of Academic Health Sciences Libraries, Association of College and Research Libraries, Association of Research Libraries, and SPARC (Scholarly Publishing and Academic Resources Coalition).

### **Why is this legislation needed?**

In scholarship, discovery is a cumulative process – new knowledge builds on earlier findings. Because broad, timely sharing of research fuels this ongoing process, the Internet offers an unprecedented and cost-effective means to accelerate scientific advancement. The bill recognizes this potential and helps facilitate its realization. Its key beneficiaries include:

- *Scientists and scholars*, whose research will be more broadly read and who will have fewer barriers to obtaining the research they need.
- *Funders*, who will gain from accelerated discovery, facilitation of interdisciplinary research methodologies, preservation of vital research findings, and an improved capacity to manage their research portfolios.
- *Taxpayers*, who will obtain economic and social benefits from the leveraging of their investment in scientific research through effects such as enhanced technology transfer, broader application of research to health care provision, and more informed policy development.

## Couldn't agencies do this without legislative action?

Yes, but – with the exception of the National Institutes of Health, which introduced a voluntary policy in 2005 – none have chosen to do so. Posting of manuscripts stemming from agency grants or contracts falls squarely within their rights and does not impinge upon the author's copyright. Nevertheless, some publishers have challenged the right of federal agencies to implement public access policies, which may discourage or inhibit agency initiatives.

In introducing this legislation, Senators Cornyn and Lieberman have sought to break the logjam, recognize the taxpayers' interest in wider use and application of publicly funded scientific research, and promote a more open government.

## Is the legislation a threat to journals and the peer review they perform?

No. The Federal Research Public Access Act contains two key provisions that protect journals and the peer review process:

- A delay of up to six months in providing access to articles via the public archive (versus immediate access for journal readers).
- Inclusion in the public archive of the author's final manuscript rather than the publisher's formatted, paginated version preferred for citation purposes.

In some disciplines, freely accessible online archives have proven to be a supplement to journal readership, not a replacement for it. In physics, for example, where nearly 100% of new articles are freely available from birth in the arXiv.org open-access archive created more than a decade ago with US Department of Energy funding, subscription-based journals have continued to thrive. The American Physical Society and the Institute of Physics Publishing are unable to identify any subscriptions lost as a result of arXiv in the 14 years of its existence.<sup>2</sup> Likewise, in a report to Congress on the results of its Public Access Policy, NIH reported that it “has no evidence to indicate that the Policy has had any impact on peer review.”<sup>3</sup>

Just as newspaper articles today are read in *print* form, on their publishers' *Web sites*, and in *aggregations* such as LexisNexis®, potential readers of publicly funded journal articles are well-served by having them accessible in many forms and contexts for differing uses. Even before the Internet, publishers flourished at the same time public libraries provided citizens with free access to their publications.

## Will the availability of multiple versions of an article create problems?

This issue has been effectively addressed in such digital archives as arXiv.org and NIH's PubMed Central. Libraries, funders, standards organizations, and technology companies are already working

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<sup>2</sup> Key Perspectives. *Open access self-archiving: An author study* (May 2005), p. 3. Available at [http://www.keyperspectives.co.uk/openaccessarchive/reports/Open%20Access%20II%20\(author%20survey%20on%20self%20archiving\)%202005.pdf](http://www.keyperspectives.co.uk/openaccessarchive/reports/Open%20Access%20II%20(author%20survey%20on%20self%20archiving)%202005.pdf).

<sup>3</sup> National Institutes of Health. *Report on the NIH Public Access Policy* (Jan. 2006), p.4.

together to ensure that research discovery, citation, and impact measurement are preserved and that the full potential of greater access and impact is achieved.

### **Will this legislation take funding away from research?**

Not to any material extent. The National Institutes of Health, for example, estimates that the cost of its public access program would be \$3.5 million if 100% of the 65,000 eligible manuscripts were deposited annually. That is a tiny fraction (about 0.01%) of the agency's \$28 billion budget. It is also a small fraction of the \$30 million per year the agency spends on page charges and other subsidies to subscription-based journals. The reality is that sharing of research results is part of the research process. Faster and wider sharing of research fuels further advances.

### **Does this legislation affect materials other than peer-reviewed articles?**

No. It does *not*, for example, apply to:

- Laboratory notes, preliminary data analyses, author notes, phone logs, or other information used to produce the final manuscript.
- Classified research, research that results in works that generate revenue or royalties for the author (such as books), or patentable discoveries to the extent necessary to protect copyright or a patent.
- Works that are not accepted for journal publication.

### **Does this legislation affect copyright or patent laws?**

No, the legislation explicitly recognizes and upholds the principles of copyright and patent law. As part of the granting or contracting process, the funding agency will secure a non-exclusive license to disseminate the manuscript, but this has no impact on the disposition of copyright or patent rights. However, in the near term, investigators may need to adjust the copyright transfer agreements they sign with many publishers to avoid transferring exclusive rights to them. Longer term, it seems likely that publishers will adjust their agreements. In any event, the Government's license precedes any such copyright transfer and so would override it.

### **How can I support the bill and where can I get more information about it?**

For more information, go to [www.taxpayeraccess.org](http://www.taxpayeraccess.org).