

August 19, 2024

Office of Science Policy
The National Institutes of Health
6705 Rockledge Drive, Suite 630
Bethesda, MD 20892

RE: National Institutes of Health Draft Public Access Policy

The American Society for Biochemistry and Molecular Biology (ASBMB) is an international nonprofit scientific and educational organization that represents about 12,000 students, researchers, educators and industry professionals. The ASBMB strongly advocates for strengthening the science, technology, engineering and mathematics (STEM) workforce, supporting sustainable funding for the American research enterprise, ensuring diversity, equity, accessibility and inclusion (DEAI) in STEM, and addressing emerging issues in the scientific enterprise.

The ASBMB appreciates the opportunity to submit feedback on the National Institute of Health's draft public access policy.

1. Provide any comments on the Draft Public Access Policy

The draft public access policy provides clearer and more concise guidance than the current public access policy by clarifying the rights of authors. However, the NIH should consider expanding and clarifying several definitions in the policy:

- The current definition of “article” does not specify that the paper must be peer reviewed. This sparks concern because documents like preprints may not undergo peer review. To prevent any confusion, the ASBMB recommends that the NIH clarify that publicly deposited preprint content is *not* peer-reviewed and should not fall under the “article” category.
- However, the public access policy's scope should explicitly state that articles *are* affirmatively peer re-reviewed.

Overall, the ASBMB recommends that NIH use language similar to NSF's Public Access Plan 2.0 when discussing manuscripts, articles and peer review.

Moreover, unless NIH does make clear that publicly available articles *are* peer reviewed, the requirement that content be machine-readable could open the door for incorrect information being used to train artificial intelligence algorithms or large language models. Specifically, manuscripts that have not benefited from independent peer review, i.e. become a finalized article if accepted, may be more likely to include incorrect information. Given the proliferation of AI tools that ingest and “learn” from publicly available scientific databases, ASBMB recommends that the NIH investigate, anticipate and remediate the potential harmful implications of those AI tools' ready access to content that has not undergone peer review. ASBMB also raises significant concerns associated with large-scale AI

acquisition of copyrighted works and the consequences for ASBMB members and scientists whose work is appropriated and used, without a clear understanding on how these royalties would be redistributed.

Under the compliance and enforcement section of the policy, the NIH should be more specific about who is considered a claimant. The NIH should also clarify what non-compliance means. The policy puts the responsibility of complying on institutions. The agency should state how the non-compliance of one author affects other authors at the same institution. The ASBMB recommends the addition of a section in the FAQs to elaborate on the consequences for individual investigators when and if another investigator at the same institution does not comply with the policy.

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

The ASBMB supports the draft guidance. The Society commends the NIH for clarifying that researchers maintain the rights.

3. Provide any comment on the Draft Guidance on Publication Costs

The draft guidance on publication costs raises concern regarding caps on publication-related costs. The capping of publication-related costs can subject the scientific community to the risk of predatory publishing, including article processing charges from disreputable journals. In addition, capping costs may hinder publishing societies from supporting programs and operations related to their mission.

The NIH Draft Public Access Policy indicates reasonable, allowable costs associated with publication may be requested in the budget for the project as direct or indirect costs. ASBMB commends this language and recommends that it be incorporated in the final public access policy as it makes allowable costs clearer to authors.