

Statement in support of using the Federal purpose license to implement the 2022 OSTP public access memo

With the forthcoming release of new federal agency public access plans as a result of the [White House Office of Science and Technology Planning \(OSTP\) public access guidance](#) (“the Nelson memo”), federally-funded authors will face new requirements to deposit their scholarly publications, without an embargo, in agency-designated public access repositories. These requirements will impact authors, their institutions, and especially the offices that deal with research funding and grant compliance. Libraries will continue to play a key role in advancing open access through multiple pathways and engaging authors in scholarly publishing and research data management.

For many authors this will be an entirely new requirement; for others, who were already required to deposit their articles within 12 months, this will mean a shorter timeline for compliance. Some authors may not realize they need to deposit their articles even if they publish open access. Other authors may understand the deposit requirement, but not how to balance obligations to their funder and their publisher when publishing in a subscription-based journal. In a worst-case scenario, authors who do not understand their grant requirements and the legal landscape may face negative enforcement actions from funders, disputes about copyrights or contracts, or roadblocks to publishing.

Individual and institutional interventions are insufficient

When authors understand their rights and obligations they are more likely to deposit their work, which represents success for the policy and increases publicly shared knowledge. Therefore authors need clear and uniform guidance to navigate this new landscape, and institutions, agencies, and publishers should support these policies to reduce barriers to deposit. Currently, substantial challenges and inequities remain:

- Even when authors understand the publishing and public access landscape, their ability to negotiate the terms of their publishing contracts is limited because as individuals they have little bargaining power.
- Some institutions have open access policies that provide clear legal rights to deposit, but those policies do not reach all authors, and publishers can require authors to opt out of the policy as a precondition for publishing.

- A few institutions have successfully negotiated with publishers to secure the right for authors to deposit their work with no embargo, but such efforts generally face tremendous resistance from publishers.
- Because interventions by institutions on behalf of authors often require intensive resources, they tend to provide more benefit to authors at wealthier institutions versus authors at less-resourced institutions.
- Some authors may have funding from multiple federal sources and could be overburdened if there are discrepancies and inconsistencies in guidance language and implementation across agencies.

The federal purpose license provides clarity

We believe that federal agencies could level the playing field for authors by adopting the Federal purpose license found in [existing federal regulations](#) as a foundation for guidance language and implementation of the Nelson memo. Specifically, the Federal purpose license states that, “*The Federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.*” The Department of Energy, for example, has been relying on the Federal purpose license in the implementation of its [public access policy](#) for years. Statements like “DOE-funded authors will not be in violation of any copyright by submitting such accepted manuscripts and metadata to OSTI”¹ tremendously reduce author confusion about process and risk. The Federal purpose license provides clear language that supports deposit and re-use of research outputs, offers a pre-existing mechanism to achieve uniformity across federal agencies, reduces the risk of any non-compliance issues for grant recipients, and maximizes the return-on-investment for taxpayers and the public-at-large.

Statement of support

Thus, we, as signatories to this statement, support reliance on the Federal purpose license by federal agencies for implementation of the Nelson memo. We encourage federal agencies to explain the license in their public access plans, FAQs and other supporting documentation, and grant instruments. Doing so will provide grant recipients with a clear understanding of their obligations as authors, facilitate better compliance with funder requirements, and help realize “the benefits of federally funded research that the American public deserves” envisioned by the Nelson memo.

¹ U.S. Department of Energy Public Access Plan: 'Ensuring Free, Immediate and Equitable Access' to the Results of Department of Energy Scientific Research, June 2023, <https://doi.org/10.11578/2023DOEPublicAccessPlan>