

University of California  
Office of the President

Senior Vice President—Office of Research  
and Graduate Studies  
Research Administration Office

# Memo Operating Guidance

No. 08-05  
March 6, 2008

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**TO: CONTRACT AND GRANT OFFICERS**

**Subject: NIH Policy on Enhancing Public Access to Archived Publications  
Resulting from NIH-Funded Research (PubMed)**

## Background

On January 11, 2008, the Department of Health and Human Services revised their voluntary Public Access Policy, Enhancing Public Access to Archived Publications Resulting from NIH-Funded Research, to make it mandatory. This new policy takes effect on April 7, 2008. This change implements a provision in public law (Consolidated Appropriations Act, 2008) that directs the NIH to require all investigators funded by the NIH to submit or have submitted for them to the National Library of Medicine's PubMed Central an electronic version of their final, peer-reviewed manuscripts upon acceptance for publication, to be made publicly available no later than 12 months after the official date of publication. The NIH must implement this requirement in a manner consistent with copyright law.


NIH provided the following summary of this new law in their Notice Number NOT-OD-08-033:

"In accordance with Division G, Title II, Section 218 of PL 110-161 (Consolidated Appropriations Act, 2008), the NIH voluntary Public Access Policy ([NOT-OD-05-022](#)) is now mandatory. The law states:

*"The Director of the National Institutes of Health shall require that all investigators funded by the NIH submit or have submitted for them to the National Library of Medicine's PubMed Central an electronic version of their final, peer-reviewed manuscripts upon acceptance for publication, to be made publicly available no later than 12 months after the official date of publication: Provided, That the NIH shall implement the public access policy in a manner consistent with copyright law."*

## Guidance

\*Note: The addressees above represent the standard distribution of Contract and Grant Memos. Additional addressees, if any, may be added based on the subject of the Memo. See cc's.

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1. The NIH Public Access Policy applies to all peer-reviewed articles that arise, in whole or in part, from direct costs funded by NIH, or from NIH staff, that are accepted for publication on or after April 7, 2008.
  2. Institutions and investigators are responsible for ensuring that any publishing or copyright agreements concerning submitted articles fully comply with this Policy.
  3. PubMed Central (PMC) is the NIH digital archive of full-text, peer-reviewed journal articles. Its content is publicly accessible and integrated with other databases (see: <http://www.pubmedcentral.nih.gov/>).
  4. The final, peer-reviewed manuscript includes all graphics and supplemental materials that are associated with the article.
  5. Beginning May 25, 2008, anyone submitting an application, proposal or progress report to the NIH must include the PMC or NIH Manuscript Submission reference number when citing applicable articles that arise from their NIH funded research. This policy includes applications submitted to the NIH for the May 25, 2008 due date and subsequent due dates.
  6. Failure to comply with this policy may jeopardize an investigator's future NIH funding.




### **Compliance**


Compliance with this Policy is a statutory requirement and a term and condition of the grant award and cooperative agreement, in accordance with the *NIH Grants Policy Statement*. For contracts, NIH includes this requirement in all R&D solicitations and awards under Section H, Special Contract Requirements, in accordance with the Uniform Contract Format.

In order to comply with this requirement, UC investigators should enclose the attached letter signed by William Tucker, Executive Director, Office of Technology Transfer and Research Administration, University of California, Office of the President, with any articles submitted to publishers for possible publication. This letter gives notice to the publishers that if accepted for publication the article will be required by law to be posted on PubMed. If this letter is not submitted to the publisher at the time the article is sent in for review, it must be submitted along with any publication agreement signed by a UC investigator.

Campuses should notify their investigators of this new requirement.

Certain publishers have agreed to automatically submit articles to PubMed Central on behalf of the authors. The list of these publishers can be accessed at: [http://publicaccess.nih.gov/submit\\_process\\_journals.htm](http://publicaccess.nih.gov/submit_process_journals.htm). However, the investigator should always verify that their published article is submitted to PubMed Central in compliance with this law.






If an investigator's publisher is not on NIH's list of publishers that automatically submit articles to PubMed Central, then it is the investigator's responsibility to submit their article to PubMed and verify that their article was received.

Additional information on the NIH Public Access Policy can be obtained by contacting the NIH Office of Extramural Research via e-mail at: [PublicAccess@nih.gov](mailto:PublicAccess@nih.gov) , or accessing their website at: <http://publicaccess.nih.gov> .

The Policy Guide Notice can be found at: [NOT-OD-08-033](http://publicaccess.nih.gov/NOT-OD-08-033)., and FAQs can be viewed at: <http://publicaccess.nih.gov/FAQ.htm>. The submission tutorial is at: <http://www.nihms.nih.gov/web-help/index.html>.

Another excellent source of information on this requirement is your University Librarian or your library's Scholarly Communications Officer.


Please be advised that this is only addressing the minimum requirements of the law. Broader issues of what additional rights should be secured for NIH and UC are being debated within the university community. UC will consider these issues and may publish additional guidance.



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Attachment: Letter to Publishers from William Tucker

cc: Gary Lawrence, UCOP  
Mary MacDonald, OGC  
University Librarians





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March 6, 2008

Dear Publisher:

The research reported in this manuscript has been funded through the National Institutes of Health and therefore its publication must comply with Public Law 110-161 of the Consolidated Appropriations Act of 2008, which can be found in Division G, Title II, Section 218 of PL 110-161.

Specifically, the law states:

*“The Director of the National Institutes of Health shall require that all investigators funded by the NIH submit or have submitted for them to the National Library of Medicine’s PubMed Central an electronic version of their final, peer-reviewed manuscripts upon acceptance for publication, to be made publicly available no later than 12 months after the official date of publication: Provided, That the NIH shall implement the public access policy in a manner consistent with copyright law.”*

The NIH Public Access Policy, which implements this law, can be viewed at (<http://grants.nih.gov/grants/guide/notice-files/NOT-OD-08-033.html>).

In order to ensure compliance with the NIH policy, the University of California, in cooperation with the author, must provide a copy of the author’s final manuscript, including all modifications from the publishing and peer review process, to the NLM’s PubMed Central (PMC) database at the time the manuscript is accepted for publication, and also authorize NIH to make such copy of the manuscript available in digital form for public access in PMC no later than 12 months after publication.

By accepting this manuscript, you agree to accept these terms and agree they are paramount and supersede any provisions in any publication agreement for this article, already signed or to be signed at a later date, that may conflict.

Sincerely,

William T. Tucker  
Executive Director  
Research Administration and  
Technology Transfer