

January 2, 2014

The Honorable Lamar Smith
House Committee on Science, Space,
and Technology
2321 Rayburn Office Building
Washington, DC 20515

The Honorable Eddie Bernice Johnson
House Committee on Science, Space,
and Technology
2321 Rayburn Office Building
Washington, DC 20515

Dear Chairman Smith and Ranking Member Johnson:

We write on behalf of the member universities of the Association of American Universities and the Association of Public and Land-grant Universities specifically concerning Section 302, Public Access to Research Articles and Data, of the “Frontiers in Innovation, Research, Science and Technologies (FIRST) Act” discussion draft. These comments on the discussion draft are in addition to comments our two associations also endorse which were submitted by the Coalition on National Science Funding in its December 19, 2013 letter.

We strongly support the goals of Section 302 to provide free public access to and preservation of the results of research funded by federal agencies. The federal government invests substantially in university research – nearly \$38 billion in FY 2012 – and that investment has produced tremendous benefits for the nation’s economic competitiveness, national security, and the quality of life of its citizens. Enhancing the public’s access to the results of this research will not only allow the taxpayers who fund this work to benefit more directly from the new knowledge it produces, but will also accelerate further research of the nation’s scientists and scholars as they continue to expand the frontiers of knowledge.

As directed in the America COMPETES Act Reauthorization of 2010, the White House Office of Science and Technology Policy (OSTP) is carrying out a thoughtful, balanced process to increase public access to the results of federally funded research. OSTP’s process, launched with Director John Holdren’s February 22, 2013 memorandum, “Increasing Access to the Results of Federally Funded Scientific Research,” was preceded by an extensive process of broad stakeholder consultation and comment. The OSTP memorandum lays out a comprehensive process for all federal agencies with more than \$100 million in research and development expenditures to develop plans for providing free public access to the results of federally funded research, including both publications and data. Federal agencies submitted their plans to OSTP in August. OSTP, in coordination with the Office of Management and Budget, is reviewing those plans and providing guidance to the agencies in the development of their final plans.

Given the promising OSTP program well underway and the extensive consultation that informed its carefully balanced provisions, the principal objective of Section 302 should be to reinforce in statute the key elements of that program. Yet in several ways, Section 302 undermines rather than supports the OSTP program.

Embargo periods: The FIRST Act calls for an embargo period of up to 24 months between the publication of a peer-reviewed article reporting on the results of federally funded research and the subsequent availability of that article or the final accepted manuscript in an agency-sanctioned public access repository. The discussion draft includes a provision by which agencies could extend the embargo period for an additional six or 12 months under certain circumstances. The initial 24-month period itself is double the 12-month embargo period used by NIH's highly successful PubMed Central. The OSTP program calls for agencies to develop embargo periods consistent with the objectives stated in the Holdren memo, agency missions, and discipline-specific challenges, using a 12-month embargo period as a guideline.

We believe that the discussion draft's embargo language should be redrafted to direct agencies to adopt embargo periods that are as short as possible, balancing the public interest in providing early public access with the needs of publishers to recover their costs of publishing. Consistent with the OSTP program, Section 302 language should stipulate using a 12-month embargo period as a guideline, but permit only modest adjustments from that period to provide flexibility for agencies to align their embargo policies with their missions and discipline-specific considerations.

Research data: The discussion draft's treatment of research data presents three problems that call for revision of the current language:

1. Section 302 calls for the data used to support the findings and conclusions of a peer-reviewed article to be made publicly available no later than 60 days following the article's publication. We see no justification for such a requirement and believe it could lead to misinterpretation and misuse of such data by those lacking access to the article itself until that article is available in the agency repository. Such data should be made available at the same time that free public access to the article is provided.
2. The definition of data is imprecise and incomplete, lacking some of the specifications of the OSTP memorandum's definition, which is carefully aligned with relevant provisions of OMB Circular A-110.
3. The language covering data also lacks provisions directing agencies to accommodate proprietary interests, business confidential information, and intellectual property rights in their data policies.

Public access capabilities: The Section 302 language should specify that agency repositories provide not only access to but full reuse of research results, including text-mining and data-mining.

We appreciate the FIRST Act discussion draft's recognition of the importance of providing free public access to the results of federally funded research, but we believe that the Section 302 provisions as written fall far short of achieving the benefits of such access. Given the thoughtful process carried out by OSTP to develop and implement a federal public access policy, we strongly urge that Section 302 be substantially revised to align its provisions with the OSTP policy in order to provide statutory support for that policy.

Thank you for your consideration of our views.

Sincerely,



Hunter R. Rawlings III
President
Association of American Universities



Peter McPherson
President
Association of Public and Land-grant Universities

cc: Members of the House Committee on Science, Space, and Technology