



**Alliance for Taxpayer Access**

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## Public Access Timeline on Capitol Hill

In July 2007, the U.S. House of Representatives voted to pass the FY08 Appropriations Bill, including language directing the National Institutes of Health to change its Public Access Policy so that NIH-funded researchers are required to deposit copies of eligible manuscripts into PubMed Central, the online archive of the National Library of Medicine. Articles stemming from NIH-funded research would be made publicly available as soon as possible and no later than 12 months after publication in a peer-reviewed journal. See <http://www.taxpayeraccess.org/media/release07-0720.html>. The House action is the culmination of efforts within Congress since 2003.

- **Rising journal subscriptions and their negative impact on access** – In 2003, Congressman Ernest Istook (R-OK) secured report language in the House version of the FY 2004 Labor, HHS, Education bill that expressed concerns about the lack of access to research data and the corresponding sharp increases in journal subscription prices. The National Library of Medicine (NLM) was encouraged to "to examine how the consolidation of for-profit biomedical research publishers, with their increased subscription charges, has restricted access to vital research information to not-for-profit libraries."
- **Support for public access grows in Congress** – The next year (2004), both the number of supporters of public access in Congress and the strength of their support continued to grow. As the NIH was moving forward with its draft public access policy, the House Labor, HHS, and Education bill called for a required public access policy in which researchers would be required to submit an electronic copy of their final, peer-reviewed manuscript to PubMed Central within six months after the article's publication. Conference report language in November 2004 further supported the six-month embargo period.
- **NIH accedes to special interest publishers** – Unfortunately, despite this continued strong support from Congress, the NIH bowed to pressure from well-funded special interest publishers in crafting and issuing its final policy. Unveiled in February 2005, the final policy is much weaker than the proposed policy in two major areas:
  - 1) It "requests and strongly encourages" rather than requires taxpayer-funded authors to post their articles, and
  - 2) It doubles the proposed embargo period from six months to 1 year.

Public Access champions in Congress were very concerned about these changes, and called NIH on Director Zerhouni and top deputies for explanations. Congress, however, decided to give NIH a chance to implement the policy and to test whether or not authors would participate voluntarily.

- **Congress wants accountability** – Both the House and Senate included strong report language demanding accountability from NIH in their respective versions of the FY06 Labor, HHS, and Education legislation. Reports from NIH to Congress evaluating participation levels and average embargo period are due this winter. Furthermore, the NIH is actively tracking participation rates, and has made that information public as well.
- **Flailing participation rates point to the need for mandatory policy** – One year after the implementation of the NIH Public Access Policy, the agency reported that less than 5% of eligible NIH-funded articles were being deposited into PubMed Central. The situation was examined carefully within the NIH – by the Public Access Working Group (PAWG), appointed by the Director to represent all stakeholders, and the National Library of Medicine’s Board of Regents. Both reported in no uncertain terms that the policy must be made mandatory to ensure its success.
- **Senators signal broad interest in public access to publicly funded research** – On the anniversary of the NIH policy, May 2, 2006, Senators Cornyn (R-TX) and Lieberman (D-CT) introduced the Federal Research Public Access Act (S. 2695 in the 109<sup>th</sup>). The bill would require that final, peer-reviewed manuscripts stemming from research funded by no less than eleven federal agencies (those with annual extramural research spending budgets of one hundred million or more) be made publicly available no less than six months after publication in a peer-reviewed journal.
- **Congressional support continues** – In June 2006, the U.S. House of Representatives signaled its strong support for the NIH public access to be made mandatory by including language in the body of the FY07 Labor HHS Appropriations bill directing the NIH to require its grantees to deposit manuscripts into PubMed Central, the NIH’s publicly accessible online repository. However, a Congressional Resolution took the place of the Appropriations bill in FY07.

Later in 2006, in September, House legislation to provide for a sweeping overhaul of the National Institutes of Health (NIH) – the first of its kind in 13 years – included key report language underscoring Congressional oversight to actively monitor participation rates and overall effectiveness of the NIH’s Public Access Policy.

- **Zerhouni backs mandatory** – During testimony before the Senate Labor/HHS Subcommittee on Appropriations, in March 2007, NIH Director Zerhouni responded to a series of questions on the need for public access to NIH-funded research results. The questions were made by Subcommittee Chair Senator Harkin (D-IA). Dr. Zerhouni reiterated the need for publicly funded research to be made available to advance the conduct of science, and strongly asserted that the NIH the voluntary policy was not working. He made clear that the policy should be made mandatory. A video of Dr. Zerhouni’s testimony is available through the Committee Web site.
- **Focus on Appropriations** – In addition to the full House voting in favor of a mandatory NIH policy, the Senate Appropriations Committee has passed similar language.