1 November 2004

Elias Zerhouni, M.D.
Director
National Institutes of Health
1 Center Drive, MSC 0143 (Room 103)
Bethesda, MD 20892-0143

Dear Dr. Zerhouni,

The Ornithological Council is a consortium of eleven scientific ornithological societies in the Western Hemisphere. While little of the research published in the journals of these societies is funded by the National Institutes of Health, we are concerned about the potential impact of the NIH proposal as a precedent or model for other federal research funding agencies. Therefore, we thank you for affording us the opportunity to comment on the NIH proposal.

We do not doubt that NIH's motives are sincere and well-intentioned. We agree with your observation that the status quo is not an option. We are not arguing for the status quo. We ask that NIH withdraw this specific proposal, which is not justified, will not serve the stated purpose, and will have costs that far exceed any benefits that might be realized. The NIH proposal is not a reasonable option. We join with our colleagues in the DC Principles in calling upon NIH and other government agencies to allow scientific societies the freedom and flexibility to increase access to scientific literature in the manner that best suits the circumstances of each society.

We thank you for acknowledging that the NIH proposal is not about open access, but rather about enhanced public access. As you learned in the several stakeholder meetings, access to federally-funded scientific literature is already open in a multitude of ways. Access to scientific literature is open to anyone who can go to a research library. It is open to anyone able and willing to pay, for either a subscription or for the increasingly-common pay-per-view access. Publishers point out that virtually everyone has free, online access to abstracts, and that most publishers have a policy of providing copies of articles to individuals upon request. We are aware of some publishers who will, upon request, provide free subscriptions to researchers who cannot afford subscriptions. And, of course, authors may provide reprints. Open access archives are proliferating, with delay times ranging from two months (Proceedings of the National Academy of Sciences) to four years.

We acknowledge that the NIH proposal will result in free and easy access to NIH-funded research. We are concerned, however, that the NIH proposal is not justified and that it will result in a redirection of funding from research to publication costs, to the detriment of scientists and nonprofit scientific societies.

Two justifications were offered for the NIH proposal. The first was the need for NIH to track the outcome of sponsored research. To this notion we respond as follows:

1. While tracking the outcome of NIH-sponsored research is a legitimate need, this proposal will not satisfy that need. By changing the proposal from *requiring* deposit of papers reporting NIH-sponsored research to *requesting* deposit of papers in PubMedCentral, NIH cannot achieve this stated purpose. It can only track the outcome to the extent that a researchers choose to deposit research articles. This voluntary system will not generate a complete record of NIH-sponsored research.
2. NIH can require copies of publications reporting NIH-sponsored research without making those articles available to the public on PubMedCentral. Publication of full-text articles does not enhance NIH's ability to track the outcome of NIH-sponsored research. The proposal says, "Submission of the final manuscript will provide NIH supported investigators with an alternate means by which they will meet and fulfill the requirement of the provision." True, but that requirement is met without publication of the full-text article in PubMedCentral.

The other justification offered by NIH for this proposal is the need to "provide scientific information arising from NIH-funded research is available in a timely fashion to other scientists, health care providers, students, teachers, and the many millions of Americans searching the web to obtain credible health-related information." Again, we agree that it is important that this information be made available, but we respond as follows:

1. As you know, the information is already available in a multitude of ways, including the rapid growth of internet-based, free, open access to full-content articles made available by scientific societies on a purely voluntary basis and with their own funding. Despite the fact that NIH has been made aware that the information is available, it persists in asserting that this proposal is necessary to make information available. The NIH has offered no evidence that those who seek access to scientific research reporting NIH-funded research are not able to gain access. If there is indeed a need to increase access, there are alternate means that will not carry the serious costs and burdens of the NIH proposal.
2. Providing access to technical scientific literature will serve at best only a small segment of the public. Most without advanced medical or scientific training will not benefit from having access to research publications. To the contrary, if NIH is genuinely concerned about enhancing access, it will investigate the formation of a service to translate technical papers into ordinary language and on providing a roadmap through the fragmented and often contradictory research findings.

In short, the justifications offered by NIH for this proposal fail. The purported benefits will not be realized.

The costs of the proposal are of great concern. As we pointed out in our earlier comments, many nonprofit societies rely almost entirely on revenue generated by memberships and subscriptions; the primary benefit of membership is the journal subscription. Some scientific societies will not be able to sustain a loss of revenue and will cease to exist. The journals they publish will cease to

exist. Other journals may absorb some of those papers, but contraction of the universe of journals inevitably means that some papers will not be published. Ultimately, this means a net loss of scientific publications.

Loss of publishing opportunities could also jeopardize scientific careers. Tenure decisions are based, in part, on the number of peer-reviewed publications and funding decisions are also based, in part, on the researcher's record, including publications.

There is also potential harm to science as a whole. If opportunities to publish in peer-reviewed journals declines, more scientists will turn to self-publication, which in turn will erode the quality assurance afforded by the journal peer-review system. That, in turn, may lead to a lack of credibility of scientific literature as a whole.

The proposal is also likely to erode NIH funding for scientific research. As our colleagues at the American Physiological Society and others have pointed out, this proposal will shift funding from research to publication costs. We agree entirely with APS Executive Director Martin Frank that NIH's estimates of the costs of maintaining the PubMedCentral as a public archive for the many papers reporting NIH-funded research is seriously underestimated by NIH. Frank has estimated the cost to NIH at $50 million. This is funding that would not be available to fund research. In addition, publication costs will shift to authors, who will undoubtedly be forced to take some part of those costs from the grants. Universities are unlikely to be able or willing to cover publication costs for all papers published by their faculty members.

In addition to the cost to NIH, the proposal will have the effect of shifting publication costs from libraries to university research programs. As a study at Cornell University determined, the costs of publishing are simply redistributed. The Cornell study determined that open access will actually be more costly to the university than it would for journal subscriptions. In fact, the estimate of publication costs for papers generated by Cornell faculty was $1.5 million greater than the cost of journal subscriptions, and that estimate was based on an assumption that each article would cost $1,500 to publish – a figure considerably lower than most estimate to be the true cost of publication.

Meanwhile, the subscription fees that are the main source of revenue for many nonprofit scientific societies will diminish, perhaps to the point that some societies are no longer financially viable. Nonprofit societies will suffer the unintended consequences of the NIH proposal.

The change from required deposit to requested deposit does not allay our concerns. First, there is no assurance that NIH will not shift to required deposit at some point in the future. Second, we reasonably anticipate that researchers will feel a degree of coercion to deposit their articles, especially in light of the fact that, "Submission of the electronic versions of final manuscripts will be monitored as part of the annual grant progress review and close-out process." Furthermore, NIH ignores the fact that publication in PubMedCentral will, in essence, eliminate the copyright the author holds both by virtue of copyright law and by virtue of OMB Circular A-110, which states, "a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Federal awarding

agency(ies) reserve 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." Publication in a full-text, open-access database renders copyright interests meaningless.

We are also concerned that publication in PubMedCentral may trigger the provisions of the Information Quality Act and Data Quality guidelines (15 April 2004), which provide that government-disseminated information is subject both to internal peer review by the agency and to challenges by the general public. The OMB guidance defines dissemination as "agency initiated or sponsored dissemination of information to the public." While journal review is generally considered adequate under these guidelines, the provision for the public challenge and potentially, retraction of information, is extremely worrisome. Scientific societies fought vigorously to have grant-funded research exempted from these guidelines. Dissemination does not include archival records, but it is not clear that PubMedCentral constitutes an archival record. The OMB guidance does not define the term "archival record." It could mean simply an archive of government documents, as is the case with the National Archives and Records Administration. The NIH cannot state with certainty that PubMedCentral will be considered an archive for the purpose of the data quality guidelines.

We again thank you for considering our comments.

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