

Blanket IP Waiver when Sponsor requires Open Access/Open Source

As of January, 2024, Investigators submitting proposals to, or accepting awards from, sponsors which require that intellectual property developed under sponsored awards be made available via an open access license or open source licenses, may apply the Blanket IP Waiver.

Effective February 27, 2025, the following clarifications have been made to the Blanket Intellectual Property Waiver.

Sponsor Requirements: Public Access, Open Access, and Open Source

The federal government's Public Access requirement is a result of the White House Office of Science and Technology Policy (OSTP) 2013 Memorandum Increasing Access to the Results of Federally Funded Research, which was updated on August 25, 2022.

The 2013 Memorandum directed federal agencies with over \$100 million in annual conduct of research and development expenditures to develop a plan to support increased public access to the results of research funded by the federal government, with specific focus on access to scholarly publications and digital data resulting from such research. The guidance from the 2013 Memorandum included limitations on public access, such as an optional 12-month embargo.

The 2022 Memorandum applies to all federal agencies and expands upon the 2013 Memorandum by focusing on: 1) increasing the equity of public access to peer reviewed scholarly publications in agency-designated repositories by eliminating any embargo or delay period; 2) requiring that scientific data, whether it is underlying data to peer reviewed scholarly publications or data not associated with peer-reviewed scholarly publications, are available to the public; and 3) strengthening public trust by ensuring scientific and research integrity through transparency (e.g., releasing information such as authorship, funding, and affiliations).

These policies must also address any use and re-use rights, and which restrictions, including attribution, may apply and considerations related to privacy, intellectual property, or security limitations. In implementing these policies, federal agency plans must not undermine any rights under the provisions of Title 17 (Copyright), Title 18 (Criminal Code), or Title 35 (Patent and Trademarks) of the United States Code. Federal agencies are expected to submit new or updated public access plans to OSTP and the Office of Management and Budget (OMB) by December 31, 2024, with an effective date no later than one year after the publication of the agency plan. You can learn more about each federal agencies' public access plan and guidance at [science.gov](https://www.science.gov).

Additionally, there are domestic non-federal sponsors, such as nonprofit organizations and foundations, that have established similar written policies (e.g., Open Science) or have Open Access or Open Source licensing requirements as part of their written policies; or a federal sponsor may also have a requirement, in addition to the federal government's Public Access policy, to release intellectual property via an Open Access or Open Source license.

FAQs about Public Access requirements, Open Access Licenses or Open Source Licenses

Q. What is the difference between the federal government's Public Access requirement and an Open Access License or an Open Source License?

The federal government's **Public Access** requirement ensures that the public has access to peer-reviewed scholarly publications and digital data sets arising from federally funded research. The public can freely access this information through various federal agencies' digital repositories unless specifically precluded by privacy, confidentiality, or other security concerns. Public access does not mean restrictions for reuse or redistribution do not apply. Public Access also does not mean the same as public domain. Public domain means that no intellectual property rights apply, so anyone is free to use such public domain works without obtaining permission and no one owns the work. **Open Access** refers to works such as journal articles or books which are made available online, free of charge, and free of some copyright and licensing restrictions under a Creative Commons or similar license-type agreement. Open Access may mean content may be reused or even republished without permission. **Open Source** refers to software made available by the copyright owner that anyone can inspect, modify, enhance, and distribute. The copyright owner of software released under an Open Source License makes source code available to others with few restrictions. BSD-3-Clause and MIT licenses are examples of Open Source software licenses.

Q. Does the requirement to include a Data Management Plan (DMP) in the proposal automatically mean that scholarly publications and data must be released openly?

No, a DMP does not automatically indicate the data produced or resulting publications must be released under an Open Access license or Open Source license. You should refer to the specific guidance from the sponsoring agency. The Blanket IP waiver should not be used solely because of the existence of a DMP or a requirement to include one.

Q. Are there any federal agencies that require, as part of their Public Access policies, that certain intellectual property resulting from federally funded research be released under an Open Access or Open Source license or repository?

Yes, there are federal agencies that may require the release of intellectual property resulting from federally funded research or projects be released under an Open Access or Open Source license or repository. This requirement may be stated in the solicitation, on an agency's website, or in the terms and conditions of the award. The Blanket IP waiver would apply to IP developed with federal funding that must be released under an Open Access or Open Source license.

IP Waiver Requirements

The Blanket IP Waiver applies to the following:

- Awards from domestic non-federal sponsors (nonprofits and foundations) with open access, open source, or open science written policies. This includes, but is not limited to, Bill & Melinda Gates Foundation, Gordon and Betty Moore Foundation, Robert Wood Johnson Foundation, Simons Foundation, and American Heart Association.
- Awards from federal sponsors that incorporate an open access or open source licensing requirement, in addition to the Public Access Policy, as part of award terms and conditions.
- Releasing software and code under open source licenses under NASA awards.

Until federal agencies finalize and publish their revised Public Access policies, and those policies are reviewed and assessed for compliance with UMB policies, the Blanket IP Waiver is not required when only the federal Public Access Policy requirement applies. An individual IP waiver is also not required at this time to comply with the federal Public Access Policy requirement.

A researcher's decision to release IP through either an Open Access license or Open Source license when it is not a sponsor's written policy is not covered under the Blanket IP Waiver and will require an individual IP waiver request.

Release of IP under an Open Access or Open Source license when it is a foreign and/or corporate/industry sponsor will require an individual IP waiver regardless of whether or not the sponsor has a written policy.