

TO: Vice-Chancellors

FROM: Marc A. LeForestier
General Counsel

RE: Legal Advisory 2019-01
Assembly Bill No. 2192: New Requirements for Research Grants

In 2018, the Legislature amended the California Taxpayer Access to Publicly Funded Research Act in Assembly Bill 2192 (“AB 2192”), extending to the Chancellor’s Office requirements to ensure public access to publications funded by research grants.

I. Public Access Requirements for Research Grants

The California Taxpayer Access to Publicly Funded Research Act establishes certain publication requirements when a grantee receives funding for research projects from the Department of Public Health. AB 2192 expands the open-access requirement for state-funded research to other specified state agencies, including the Chancellor’s Office. As of January 1, 2019, research grants issued by the Chancellor’s Office must contain specific statutory language directing grantees to comply with the public access requirement of the Act.

II. Analysis of New Grant Requirements for the Chancellor’s Office

AB 2192 amends various sections of the Government Code to require grantees who receive research grants from the Chancellor’s Office to provide free public access to any peer-reviewed manuscript resulting from the research within 12 months of publication. Most relevant to the Chancellor’s Office, AB 2192 requires that certain statutory language be included in these research grants. (Gov. Code, §§ 13989.2, 13989.6.) Specifically, research grants *should include clauses* that state:

- (1) Grantees are responsible for ensuring that any publishing or copyright agreements concerning peer-reviewed manuscripts fully comply with the open-access requirement.
- (2) Grantees are required to report to the Chancellor’s Office the final disposition of the peer-reviewed manuscript, including if, when, and where it was published, when the required 12-month time period expires and when the peer-reviewed manuscript will be available for public access.

- (3) The Chancellor's Office will retain the information regarding all issued research grants that resulted in publication.

(Gov. Code, § 13989.6 (a)(2).)

Although not specifically required by the statute, we should include in the grant language that the grantee must provide to the Chancellor's Office an electronic version of the peer-reviewed manuscript that complies with current accessibility standards. (Gov. Code, § 13989.6 (b).)

Notwithstanding the above, the public access requirement should not be construed in a manner that would constitute an infringement of copyright under federal law. Grant funds can be used to cover a grantee's publication costs. (Gov. Code, § 13989.6 (d), (e), (f).)

III. Recommendations

If your division issues research grants, please ensure that staff responsible for putting together research grants are aware of the open access requirement and directed to work with the General Counsel's Office to develop appropriate language.