



## NATIONAL CONSUMERS LEAGUE

1701 K Street, NW, Suite 1200, Washington, DC 20006  
PHONE (202) 835-3323 FAX (202) 835-0747 [www.nclnet.org](http://www.nclnet.org)

December 1, 2006

Re: S.2695 Federal Research Public Access Act of 2006

The Honorable Joseph I. Lieberman  
706 Hart Senate Office Building  
Washington, DC 20510-0703

Dear Senator Lieberman:

The National Consumers League is a private nonprofit organization, our nation's oldest consumer advocacy group, providing government, businesses, and other organizations with the consumer perspective on concerns including child labor, privacy, consumer fraud, food safety, and medical information. One of our priorities is addressing issues affecting the health of American families, from providing better information on prescription drugs to clarifying questions about osteoporosis, cardiovascular disease, and other specific conditions to improving health information technology. This work has brought us to appreciate the vital importance of sound, top quality medical research in addressing the needs of American consumers. As a result, we feel obliged respectfully to express our concerns regarding S.2695, the Federal Research Public Access Act of 2006, which you have introduced along with other members of the United States Senate.

NCL applauds your goals in proposing this legislation. We support your intention to improve public access to federally financed research in medicine and science, and we agree that the Internet is today the best avenue to keep the public informed of new developments in these fields. But our experience in consumer protection has also taught us that, particularly when it comes to health, accuracy, quality, and clarity are essentials both in providing information to the public and in building a foundation of knowledge for doctors and researchers. We believe that S.2695, as currently drafted, is significantly likely to backfire, damaging medical research by undermining the quality control systems that give it credibility. And when it comes to developing cures for cancer, heart disease, or diabetes, or addressing other fundamental challenges to the health of our families and children, we cannot afford this risk.

As you noted in introducing this legislation, federal agencies today invest more than \$55 billion annually in basic and applied research, much of it in medicine. This investment has yielded approximately 65,000 published articles each year deriving partly or entirely from federal funds. This large number however still only represents about 10 percent of the scholarly articles published by the 21,000 journals covering medicine and science worldwide. Already, the large bulk of this material is available online in various

forms. Most not-for-profit academic journals post their articles on Internet sites within twelve months of publication. Many of these journals use a platform called High Wire Press, a division of Stanford University, which contains 1,469,890 full text articles free of charge from over 130 scholarly publishers. These systems, developed privately in response to consumer demand, have worked well, and we anticipate that they will continue to expand and improve in the future.

S.2695 however takes a different tack. Rather than relying on such private initiatives, it seeks to impose a mandatory, government-operated system that, in turn, threatens to squelch innovation and undermine quality controls. It is the wrong way to achieve the right goal.

The scholarly journals that publish the articles representing the fruits of medical and scientific research today – including periodicals covering pathology, molecular diagnostics, immunology, dentistry, neuropsychiatry and clinical neurosciences, pharmacology, and dozens of other specialized topics – do more than simply print or post articles. These journals conduct a process *free of charge to the taxpayers* of quality control. As researchers submit their manuscripts for publication, these journals actively sift them through a scholarly marketplace of ideas and technical refinement.

The most visible part of this process is peer review, a venerable system under which each proposed article must stand up to rigorous scrutiny by leading experts before being accepted for publication. Often the process is interactive, requiring researchers to address questions, fix weaknesses, and sharpen their analysis in response to critical feedback. In addition, once a manuscript is accepted, the journals apply editorial controls to catch mistakes, assure consistency, and improve readability. All this effort is designed to assure readers that the final articles they see in print (or online) are sound, reliable, and authoritative. Only the best research and the most solid findings are published.

Unfortunately, though, none of this is free. It is estimated that medical and scientific journals spend between \$3,000 and \$12,000 on each published article for peer review, editorial revision, and production. Multiplied by the tens of thousands of articles published each year, the total burden reaches into the hundreds of millions of dollars. Often, these journals operate under the auspices of nonprofit organizations. They must cover their costs with the income they receive for subscriptions, advertising, and reproduction fees.

S.2695 would unravel this economic model. For each journal article based on research funded in whole or part from Washington, it would require the journal to submit it to the federal government, and the government to post the article on its own Internet platform within six months, in direct competition with the journal itself. In essence, after having made the investment in quality control, the journal would be forced to have its publication rights for the article eclipsed by the federal government long before

recouping its cost – a loss of up to 70 percent of its income on each article, according to one industry survey.

In effect, S.2695 would transform the peer review, quality control system at the heart of today's American medical research program into an unfunded mandate. If the journal could not absorb the cost, the process would be short-circuited or could disappear. Fewer journals exercising firm quality controls would mean lower standards and fewer outlets for researchers to publish their work. Some proponents suggest dealing with this entire problem by forcing authors to pay sizeable fees to journals for publishing scientific papers, but this approach could produce a worse set of perverse incentives, discouraging scientists from publishing their findings, or forcing them to divert federal grant dollars away from research, or encouraging journals to grant publication to the highest bidder.

The chief loser should these concerns materialize would be the public at large, the consumers who benefit from scientific and medical research – the patient in a hospital hoping to be cured by a safe new drug, the consumer putting food on the family dinner table who benefits from the latest innovations in nutrition, or the doctor who relies on the latest medical journals to find ways to relieve pain in his patients. This is why dozens of medical associations, scholarly journals, and senior academics have banded together to oppose S.2695, and we share their concern.

The goal of better public access to federally funded research is a vital one, and many ideas have been put forward to accomplish it. One alternative, for instance, is the proposal by a coalition called DC Principles for NIH to provide a centralized platform of links to the many existing private web postings of journal articles – a much larger universe than simply those financed by federal agencies. Another is the proposal made by the National Science Foundation's Office of Inspector General in its September 25, 2006, report titled "*Audit of Interest in NSF Providing More Research Results*." This report recommended several ways for NSF to expand public access to research results on line, such as the posting of abstracts and short summaries, and citations, all without violating copyrights or posting full manuscripts.

We hope you will consider these and other options before placing at risk our current system of research quality control. It is important to do the right thing in the right way; we appreciate the significant step you have taken by placing this issue squarely before us. Nothing is more vital to American consumers than health, and nothing has been more important in improving the health of Americans than the advance of medical science. Our system for medical research has worked well, and it is important to preserve it. Thank you for considering our views on this vital issue of consumer protection.

Sincerely,



LINDA F. GOLODNER  
President

Copies sent to: The Honorable John Cornyn and The Honorable Jeff Sessions