



February 6, 2024

Dr. Laurie E. Locascio
Under Secretary of Commerce for Standards and Technology
Director, National Institute for Standards and Technology
100 Bureau Drive
Gaithersburg, MD 20899

AAU Comments in response to NIST's *Request for Information Regarding the Draft Interagency Guidance Framework for Considering the Exercise of March-In Rights* (Federal Register/Vol. 88, No. 235/Dec. 8, 2023)

Dear Director Locascio,

On behalf of the Association of American Universities, thank you for the opportunity to comment on the recently published Draft Interagency Guidance Framework for Considering the Exercise of March-In Rights under the Bayh-Dole Act ("framework"). As described below, and in [our joint association letter](#), AAU is deeply concerned with the framework and the adverse consequences it will have on university technology transfer. For the reasons discussed below, AAU urges the administration to immediately reconsider and rescind the framework.

The Association of American Universities (AAU) represents 69 of America's leading research universities. Our members are public and private research universities on the cutting edge of innovation, scholarship, and solutions that contribute to scientific progress, economic development, national security, and public health.

The Bayh-Dole Act is one of the most successful and far-reaching legislative initiatives in contemporary history, one that is in part responsible for the development of the robust U.S. innovation economy that continues to lead the world. Under the Bayh-Dole Act, collaborations between our member universities and the private sector have thrived, leveraging the complementary roles of basic and applied research with development and technological advancements to facilitate the commercialization of discoveries based on federally sponsored research. These collaborations stretch across every area of scientific research, including agriculture, applied chemistry, advanced computing, biomedical therapies, and semiconductor production—with a wide array of products arising from research and development by the private sector building on university discoveries and advancements.

The Bayh-Dole Act has facilitated public-private collaborations by providing clear expectations regarding patent rights and intellectual property protections, and exclusive licensing potential. However, the draft framework undermines both the spirit and intent of the Bayh-Dole Act and erodes confidence in the commercial potential of such collaborations. The framework introduces new, subjective, and vague terms for the prospective use of march-in rights by an agency, which are inconsistent with the statutory framework, which run counter to the intent of the drafters of the statute, and which undercut the goals of the Act. Without the intellectual property rights and protections created by the Bayh-Dole Act, private sector partners will be less likely to devote scarce resources to the risky work needed to advance research from federally funded university laboratories to market. The use, or even the threat of using, march-in rights as an approach to regulate pricing of inventions emerging from university collaborations would

create substantial uncertainty for private sector technology development partners and have a dramatically negative impact on the U.S. innovation ecosystem.

In fact, the framework would jeopardize existing federal research initiatives. For example, the CHIPS and Science Act created the National Science Foundation Directorate for Technology, Innovation and Partnerships (TIP) to focus on developing emerging technologies relating to semiconductors and advanced computing, artificial intelligence, communications, clean energy production and storage, quantum information, and biotechnology. In order to accomplish this, TIP Directorate programs have aimed at catalyzing economic development by bringing research universities and private sector businesses together to form regional partnerships to facilitate technology transfer, innovation, and workforce development. Without the certainty afforded by the legal protections of the Bayh-Dole Act for collaborations with federally funded research, the TIP Directorate may face a lack of participation and fall short of full implementation, which will frustrate congressional plans for promoting U.S. technological growth and enhancing U.S. competitiveness. The proposed framework will undermine the TIP Directorate programs and other similar federal undertakings.

At a time when the U.S. academic research enterprise has never been more important to the future of U.S. national and economic security, public policies should support and enable – not undermine – public-private collaborations.

For the foregoing reasons, I urge you to reject this framework and to expressly rescind it immediately. Without rescission, the existence of this framework as potential agency policy will continue to create uncertainty and confusion for our member institutions and their private sector partners and weaken the powerful engine of innovation and research that is public-private collaboration in the United States.

Sincerely,

A handwritten signature in blue ink that reads "Barbara R. Snyder". The signature is fluid and cursive, with the first name being the most prominent.

Barbara R. Snyder
President, AAU