On December 7, 2023, the Biden administration proposed a new “framework” for exercising march-in rights under the Bayh-Dole Act. If enacted, the proposal will encourage the use of march-in rights on the basis of price, decimating confidence in the reliability of universities and federal laboratories as R&D partners, undermining private sector investment incentives, and severely handicapping American innovation.

In response, many universities, university tech transfer offices, and former university officials submitted comments to the National Institute of Standards and Technology (NIST) warning against this dangerous misuse of march-in rights. Below are some excerpts from their submissions:

**Yale University**

“The discretion allowed under the Bayh-Dole Act and related regulations has enabled Yale to encourage startups based on Yale inventions to locate in New Haven, thereby contributing to the economic renaissance of our host city...The shift of final control of licensing away from universities would have significant adverse effects on universities' efforts in knowledge transfer.”

**University of Pennsylvania**

“The mere issuance of the guidelines is already casting a cloud over public/private sector partnerships. Here at the University of Pennsylvania we are receiving a greater level of pushback from potential licensees and companies that sponsor research at the university who are worried that the proposed expansion of march-in rights will be enacted.”

**Cornell University**

“The risk of price-based march-in rights will discourage potential licensees, disincentivize the commercialization of federally funded inventions, and decrease the likelihood of university technology adoption...This would have a negative impact on Cornell’s technology transfer enterprise, making it much harder to find willing commercial partners.”

**Stanford University**

“Our technology transfer activities have enabled over 2,500 Stanford inventions to become commercially sold products and services...Concerns about the potential loss of critical patent rights... could stifle the thriving economy that has developed out of the close interactions between universities like Stanford and industry partners.”

**University of California System**

“UC is a leader in technology transfer and was granted more U.S. utility patents last year than any other university in the world...Any perceived possibility for misuse or added uncertainty on the interpretation of this [march-in] provision will have significant harmful effects on the universities’ ability to collaborate with or license federally funded inventions to industry partners.”
Johns Hopkins University

“Thanks to our country’s intellectual property system and the Bayh-Dole Act of 1980, Johns Hopkins has hundreds of impactful technologies at various stages of commercialization...The proposed framework – and specifically its endorsement of price as a basis for the exercise of march-in rights – would repel the private investment community on which we rely to bring to market these types of inventions.”

Duke University

“Our partners depend on the revenues of the few successful discoveries to subsidize countless misfires...Enabling a lower barrier for invoking march-in rights results in investors losing the opportunity to recoup their investments, and the next generation of researchers and investors learning that remuneration is far from guaranteed.”

California Institute of Technology

“Three-quarters of the startup companies based on Caltech technology have an exclusive license to at least one federally funded patent. The threat of march-in would jeopardize the survival of these companies and greatly reduce the number of companies formed in future.”

Emory University

“Emory is committed to collaborating with researchers and industry to build and nurture partnerships that will move ideas from the lab to the marketplace in a fair and equitable manner. NIST's proposed framework would have a negative impact on our future ability to find partners for promising new innovations arising from our research community.”

University of Notre Dame

“Considering the potential impacts on university research and innovation, there is concern that the proposed framework would stifle Notre Dame's ability to deliver cutting-edge, globally significant research that is a force for good in the world.”

New York University

“Bayh-Dole is a rare instance of a law where we can measure its success, and the US economy has benefitted greatly from its implementation. Adding additional risk into the already complex ecosystem of technology commercialization will only hinder the creation of new solutions to benefit society.”

Purdue University

“Having been involved from its infancy and understanding its legislative history, Purdue knows that Bayh-Dole was not designed to provide the federal government a mechanism to set prices on successfully commercialized products.”

University of Maryland

“The draft guidelines, if enacted according to the Framework, would compromise our ability to continue to deliver such outstanding performance and achieve our objective of transforming UMD research discoveries into products, services, and new small businesses that deliver economic and societal benefit to the citizens of Maryland, the United States, and the world.”
Wisconsin Alumni Research Foundation (WARF)
“We wish to state, in no uncertain terms, that the draft guidance, if implemented as written, will be detrimental to WARF’s philanthropic mission and have disastrous results for our colleagues and partners across the technology transfer industry.”

University of Wisconsin-Milwaukee Research Foundation
“We want to emphasize that during licensing negotiations, patent holders – including UWMRF and our university inventors – have no control over the consumer price of our licensed products. We will therefore face the threat of our licenses being invalidated for reasons that are fully out of our hands.”

University of Colorado Boulder
“[F]rom 2018-2022, [CU Boulder’s] commercialization of federally funded research discoveries contributed $8 billion to the U.S. economy...We are concerned that the pricing elements of the Draft Framework would erode or eliminate similar future impact from CU Boulder and research institutions across our nation.”

Colorado State University STRATA
“[T]he Draft Guidelines will significantly reduce the chances federally funded inventions will be licensed...As technology transfer offices are keenly aware, fewer licenses translates to fewer new products and a less competitive marketplace and, as a result, higher, not lower, prices – if there are new products to price in the first place.”

Colorado School of Mines Office of Research and Technology Transfer
“Bayh-Dole revitalized the American R&D ecosystem by creating a cornucopia of new technologies, new products, and widely distributed wealth...Colleagues across academia, research organizations, the venture capital and corporate investment communities, and regional economic development organization concur that this innovation boon will come to an abrupt halt if march-in rights expand as contemplated in the Framework.”

Tech Launch Arizona
“[T]he proposed guidelines put a cloud of uncertainty over all government-funded IP, which will turn away venture investors. What investor would want to risk millions or billions of dollars with the knowledge that someday down the road, the government might decide the market price for that technology is ‘unreasonable?’”

Washington University in St. Louis
“A change to March-In rights provisions under Bayh Dole would not only handicap companies...from bringing economic value and jobs to regions like St. Louis but would also inhibit companies...from spinning out of a university and edifying academic founders around startups and startup success. Rather, changes to March-In Rights would hamstring company formation.”
Michigan’s University Research Corridor (URC)
“The URC’s industry, entrepreneur and economic development partners depend on reliable, predictable pathways to partner with our universities for commercializing technologies. Proposed changes to the federal government’s ability to exercise march-in rights on innovations based on an indefinable view of market value would erode their faith in these pathways and hamstring the ability of the URC to realize the greatest good from translational research.”

Ohio State Innovation Foundation
“Following decades of ineffective transformation by the federal government of university research into goods and services, the [Bayh-Dole] Act empowered universities to take ownership of federally-funded inventions...Now, the Framework threatens to upend that unquestioned success – to the detriment of American taxpayers and the US economy, while also benefiting ill-intentioned parties, including our foreign adversaries.”

Association of American Universities (AAU)
“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.”

Association of Public & Land-Grant Universities
“The consideration of price within march-in petitions will decrease industry’s willingness to partner with universities, especially small businesses...This comes at a time when universities are looking to increase collaboration with industry and to build the research and development talent pipeline of the future.”

Association of University Research Parks (AURP)
“We believe the framework violates the letter and spirit of the Bayh-Dole Act...Having federal funding agencies micromanage patent licensing from federally supported research will create substantial harm to the nation’s technology competitiveness.”

AUTM
“The Draft Guidelines will place U.S. academic and research institutions in the impossible position of requiring that their licensees agree to be in a continual state of uncertainty about whether the government will march-in based on alleged unreasonable pricing...Thus, the Draft Guidelines will significantly reduce the chances federally funded inventions will be licensed. This runs counter to the mission of university technology transfer.”

Council on Governmental Relations (COGR)
“We believe that the proposed Framework will cause irrevocable damage to the 40+ year success story of the Bayh-Dole Act, and our nation’s successfully tried and true technology transfer practices will be undermined. The Framework will harm the ability of research institutions to license patents vital to new products, processes, and technologies that start-up companies and others rely on to commercialize products and services that benefit our nation’s health, security, and economy.”
Association of American Medical Colleges

“The AAMC’s member institutions conduct a substantial amount of research that is directly subject to the Bayh-Dole Act, including more than 60 percent of the extramural research funded by the National Institutes of Health (NIH)...Implementation of the framework would make it less likely that private investors or industry would seek to license inventions by [these] U.S. academic medical centers and universities.”

American University Associations

“American innovation, economic competitiveness, and national economic security are best served by protecting and enhancing the robustness of the American academic research and technology transfer ecosystem in the U.S. Unnecessary, vague, and unwarranted changes to the Bayh-Dole Act and its implementation cannot be allowed to harm one of the greatest public policy achievements in U.S. history.”
Intellectual Property Academics

“Senators Bayh and Dole [made] clear that the inclusion of “reasonable price” as a
criterion authorizing the march-in power is unconnected to the text or purpose of their
statute. The proposed Guidance Framework...is an unprecedented assertion of agency
power to control prices in private market transactions without a legal basis in the Bayh-
Dole Act.”

Alden F. Abbott
Senior Research Fellow, Mercatus Center,
George Mason University

Jonathan M. Barnett
Torrey H. Webb Professor of Law, Gould
School of Law, University of Southern
California

The Honorable Susan G. Braden
Chief Judge, U.S. Court of Federal Claims
(2017-2018); Jurist in Residence, Center for
Intellectual Property x Innovation Policy,
Antonin Scalia Law School, George Mason
University

Daniel R. Cahoy
Robert G. and Caroline Schwartz Professor
of Business Law, Smeal College of Business,
Pennsylvania State University

The Honorable Ronald A. Cass
Vice-Chairman and Commissioner,
United States International Trade
Commission (1988-1990); Dean Emeritus,
Boston University School of Law

Richard A. Epstein
Laurence A. Tisch Professor of Law, New
York University School of Law; Peter and
Kirsten Bedford Senior Fellow, Hoover
Institution, Stanford University; James
Parker Hall Distinguished Service Professor
of Law Emeritus, University of Chicago Law
School

Chris Holman
Professor of Law, UMKC School of Law

Justin “Gus” Hurtwitz
Senior Fellow and Academic Director,
Center for Technology, Innovation &
Competition, University of Pennsylvania
Carey Law School

Keith N. Hylton
William Fairfield Warren Distinguished
Professor, Boston University School of Law

The Honorable Andrei Iancu
Under Secretary of Commerce for
Intellectual Property and Director of the
USPTO (2018-2021)

Layne Keele
Associate Professor of Law, Cumberland
School of Law, Samford University

Geoffrey A. Manne
President and Founder, International
Center for Law & Economics

Damon C. Matteo
Chairperson, Patent Public Advisory
Committee, United States Patent &
Trademark Office (2008-2013)

The Honorable Paul R. Michel
Chief Judge, United States Court of Appeals

Emily Michiko Morris
David L. Brennan Endowed Chair and
Associate Professor of Law, University of
Akron School of Law

Adam Mossoff
Professor of Law, Antonin Scalia Law School,
George Mason University

The Honorable Kathleen M. O’Malley
Circuit Judge, United States Court of
Appeals for the Federal Circuit (2010-2022)

Kristen Osenga
Austin E. Owen Research Scholar and
Professor of Law, University of Richmond
School of Law

Peter Pitts
President and Co-Founder, Center for
Medicine in the Public Interest; Visiting
Professor, University of Paris School of
Medicine

Aurelien Portuese
Research Professor and Founding Director
of the GW Competition & Innovation Lab,
The George Washington University

The Honorable Randall R. Rader
Chief Judge, United States Court of Appeals
for the Federal Circuit (2010-2014)

Ted Sichelman
Judith Keep Professor of Law and Herzog
Endowed Scholar, University of San Diego
School of Law
“[T]here is little evidence or reason to believe that exercising march-in rights on patents to government-funded inventions alone would yield any influence over biopharmaceutical prices...the one result that does seem fairly predictable is that the using march-in rights to control drug prices would deter private industry from using publicly funded patents as foundations for new and socially beneficial biopharmaceuticals.”

Emily Michiko Morris
David L. Brennan Endowed Chair, The University of Akron School of Law; Senior Fellow in Life Sciences, Center for Intellectual Property x Innovation Policy (C-IP2), George Mason University Antonin Scalia Law School; Co-Director, Global Innovation Policy Institute

Kristen Jakobsen Osenga
Associate Dean for Academic Affairs and Austin E. Owen Research Scholar & Professor of Law, University of Richmond School of Law

Mark F. Schultz
Goodyear Tire & Rubber Company Endowed Chair in Intellectual Property Law and Director of the Intellectual Property & Technology Law Center, The University of Akron School of Law; Senior Scholar, Center for Intellectual Property x Innovation Policy (C-IP2), George Mason University Antonin Scalia Law School; Co-Director, Global Innovation Policy Institute, UAIP

Carol Mimura
Assistant Vice Chancellor for Intellectual Property & Industry Research Alliances (IPIRA), University of California, Berkeley

“As written, the new framework threatens the very essence of Bayh-Dole and the vital public-private partnerships it has nurtured -- which are foundational to America’s success.”

David Winwood
Interim Associate Vice President, Wake Forest Innovations

“[Bayh-Dole] empowers our office, and tech transfer offices across the nation, to patent university scientists’ federally funded inventions and license them to private companies for commercialization...The new march-in framework has injected grave uncertainty into this system.”

Fred Reinhart
Senior Advisor for Technology Transfer, UMass Amherst (2014-2024); President, AUTM (2015)

“[T]his misguided framework...would gravely endanger our world-class system of public-private partnerships -- and the revolutionary inventions, products and public benefits arising from such collaboration.”
John Fraser
President, Burnside Development and Associates; Assistant Vice President, Florida State University Office of Commercialization (1996-2014); President, AUTM (2006)

“The Bayh-Dole Act made the United States a leader in technology innovation, contributing billions of dollars to our economy and supporting millions of jobs... Adopting the proposal would amount to shooting ourselves in the foot while China’s leaders watch and laugh.”

Jon Soderstrom
Managing Director, Yale University Office of Cooperative Research (1996-2021); President, AUTM (2008)

“The Bayh-Dole Act enables universities to earn substantial revenue for reinvestment into future research. Unfortunately, the framework proposed in December threatens this critical cashflow and will have a profound effect on the academia-to-private-sector pipeline that has benefited Americans over the past four decades.”

Katharine Ku
Executive Director, Stanford University Office of Technology Licensing (1991-2018); Chief Licensing Advisor, Wilson Sonsini Goodrich & Rosati

“While I was at Stanford, we licensed hundreds of new technologies that eventually brought life-changing technologies to the marketplace...It is extremely troubling to consider the chilling effect that the newly proposed framework would have on technology licensing nationwide.”

Lou Berneman
Founding Partner Emeritus, Osage University Partners (OUP); Managing Director, University of Pennsylvania Center for Technology Transfer (1995-2005); President, AUTM (1999)

“The impact [of the framework] would reverberate through clinics, labs, lecture halls, and production lines nationwide. Venture financing that keeps promising startups alive would dry up. Public research spending would necessarily shift overseas.”

Almesha Campbell
Assistant Vice President for Research and Economic Development, Jackson State University; Chair, AUTM

“I am deeply concerned about how this proposal could disrupt the carefully cultivated innovation ecosystem built over many years -- and ultimately undermine our endeavors to empower innovators from diverse backgrounds...[T]here is a real risk of impeding the progress of entrepreneurs, especially those from historically marginalized communities or with ties to HBCUs.”

Lori Pressman
Consultant and Advisor, MIT Deshpande Center

“Using price as a pretext to empower federal agencies to effectively terminate contracts negotiated in good faith by and between university licensors and their industry licensees will destabilize the public-private partnerships which drive our U.S. innovation ecosystem and strengthen U.S. global competitiveness.”
Wesley D. Blakeslee  
Principal and Founder, Blakeslee LLC; Executive Director, Johns Hopkins Technology Transfer (2006-2014)  

“Overall only about 25% of university inventions are ever licensed, and most universities spend more on their effort to license technologies than they receive in income from licenses...The Draft Guidelines would further reduce the number of inventions licensed from universities, and could well destroy the university technology transfer industry that has been a significant economic benefit to our country.”

Kim Rosenfield  
Director of Technology Transfer, Dartmouth College  

“I have led technology transfer offices, started spin-off companies, and worked in industry and law firms. Based on my experience, I am certain the processes in the draft framework will suppress translational research and harm non-profits and small businesses.”