

August 24, 2026

Brian W. Stone
Chief of Staff, U.S. National Science Foundation
2415 Eisenhower Ave
Alexandria, VA 22314

Re: National Science Foundation Proposal/Award Information-NSF Guidance on Financial Assistance [[NSF-2026-OTR-0001](#)]

Dear Mr. Stone:

On behalf of the Bayh-Dole Coalition, thank you for providing an opportunity to comment on the pending revisions to the National Science Foundation's Proposal and Award Policies and Procedures Guide.

The [Bayh-Dole Coalition](#) is a broad-based organization including academic, industry, venture capital, and other members committed to the preservation and strict enforcement of the landmark Bayh-Dole Act—which established a uniform patent policy across all federal agencies allowing academic institutions and small businesses to own and manage inventions made with federal support. The NSF has always been a strong supporter of the law, as it has been instrumental in helping its sponsored research become useful products improving lives here and around the world.

The Coalition is concerned, however, that several provisions in the pending proposal reflect misinterpretations of the Bayh-Dole Act and how it is intended to function, which could lead the NSF to potentially be in violation of the law.

For example, under "Policies," the proposal states: "NSF generally applies its standard Patent Rights terms and conditions in awards for research, consistent with the Bayh-Dole Act." The previous directive [stated](#): "NSF applies the policies of the Bayh-Dole Act to all its recipients." Such a change could be interpreted as implying that NSF only complies with the law most of the time. We recommend the revised language be repealed and replaced with the previous statement that NSF implements the Bayh-Dole Act without exception.

The proposal further states under the “Special Patent Provisions” section that “the cognizant NSF Grants Officer” may negotiate deviations from the Bayh-Dole Act “when it has been determined that exceptional circumstances require restriction or elimination of the right of a prospective recipient to retain title to any subject invention in order to better promote the policies and objectives of the Bayh-Dole Act.” This language imprecisely reflects the Bayh-Dole Act’s exceptional circumstances provision and, if not amended, could put the NSF outside the strict parameters established by the law.

Specifically, any agency seeking to invoke the exceptional circumstances provision must first determine that such circumstances justify restricting or eliminating the right to retain title. The agency must provide that determination and supporting materials to the Secretary of Commerce, who may recommend corrective action if the determination is inconsistent with the Bayh-Dole Act. Further, when such a determination applies to a funding agreement with a small business, a copy must also be sent to the Chief Counsel for Advocacy of the U.S. Small Business Administration. The key factor is whether such [actions](#) “better promote the policy and objectives” of the Bayh-Dole Act.

The proposal as written could be read as implying that an NSF grants officer alone is the decision maker. It should be rewritten to clearly state how such determinations are made under the law to prevent any misunderstanding or even violation of the law.

Additionally, the “Special Patent Provisions” section closes with: “every special patent provision will allow the recipient, after an invention has been made, to request that inventor be allowed to retain principal rights to that invention.” Including this language related to the exceptional circumstances provision creates unnecessary confusion and should be removed. Bayh-Dole clearly states that the contractor, not the individual researcher, may elect to retain title to a subject invention. It also has specific provisions whereby, if the contractor does not elect to retain title, the federal agency may, after consultation with the contractor, grant an inventor’s request to retain rights.

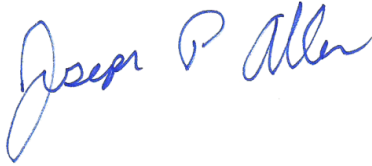
The proposal later addresses how rights may be waived to the inventors under “Retention of Rights by the Inventor.” That section should be amended to add that, before granting such rights, NSF will consult with the grantee, as is required by the law.

Finally, because no part of the Bayh-Dole Act has attracted more attention than the march-in provisions, the summary given in “Terms and Conditions” should be replaced

with a direct recitation of the statutory language regarding march-in rights to prevent any misunderstanding of how this important provision of the law operates.

Thank you again for providing us with an opportunity to comment. I hope that our observations can help strengthen and clarify the document.

Sincerely,

A handwritten signature in blue ink that reads "Joseph P. Allen". The signature is fluid and cursive, with the first name "Joseph" and last name "Allen" being more prominent than the middle initial "P".

Joseph P. Allen
Executive Director
Bayh-Dole Coalition