

4 KEY TAKEAWAYS

The Changing Framework of Intellectual Property Rights in Government Contracts and Grants

Kilpatrick's [Jennifer Andrews](#) and [Matt Crookston](#) recently presented on the topic of “**The Changing Framework of Intellectual Property Rights in Government Contracts and Grants**” at a [Washington State Patent Law Association CLE](#). Their session provided a refresher on IP rights on government contracts and federally funded vehicles and a discussion of changes and disruptions likely to come in the near future.

Jennifer and Matt's key takeaways from the presentation, include:

1

Responding to the high inflation and unemployment in the 1970's, the bipartisan 1980 Bayh-Dole Act sought to stimulate the economy by giving universities and businesses patent ownership on inventions derived from government funding. “The purpose of this act was to reform U.S. patent policy related to government-sponsored research. At the time, fewer than 5 percent of the 28,000 patents being held by federal agencies had been licensed, compared with 25 percent to 30 percent of the small number of federal patents for which the government had allowed companies to retain title to the invention.” For more: <https://www.gao.gov/assets/rced-98-126.pdf#page=5>. As a result, from 1996 to 2024, the impact of the Bayh-Dole Act and academic technology transfer has supported 6.5 million jobs, contributed \$1.9 trillion to the U.S. gross industrial output, and resulted in over 580,000 inventions being disclosed to research institutions. For more: <https://bayhdolecoalition.org/wp-content/uploads/2025/02/Impact-of-the-Bayh-Dole-Act-and-Academic-Technology-Transfer.pdf>.

2

The benefits of the Bayh-Dole Act require certain compliance actions at the risk of the government exercising “march-in rights”. Timely disclosure of the subject invention, election of title, and filing a patent application with appropriate government rights language are basic compliance elements. Additionally, contractors must take effective steps to achieve practical application of the subject invention in such field of use. Contractors must also comply with the preference for any products embodying the subject invention or produced through the use of the subject invention be manufactured substantially in the United States. Failure to comply with these and other compliance requirements can result in the government exercising its “march-in rights” to either require the contractor to grant a license to the subject invention to a third party or the government will grant the license itself.

3

In an August 2025 letter to Harvard, the federal government accused Harvard for not complying with various compliance requirements in the Bayh-Dole Act in its federally funded research programs and stated that it was initiating the march-in process. For more: <https://x.com/howardlutnick/status/1953967726135063023>. Since the enactment of the Bayh-Dole Act, the federal government has not exercised its march-in rights. Research institutions and others with subject inventions are watching closely as the process unfolds to see if this will in fact result in the government exercising its march-in rights for the first time.

4

Accordingly, organizations receiving government funding for research should review their policies and procedures for compliance with the Bayh-Dole Act. Organizations should verify that policies and procedures for compliance are in place, staff is aware of requirements, and that subject inventions are being utilized as intended under the Bayh-Dole Act to spur economic growth and U.S. production.