**USING “REASONABLE PRICING” TO TAKE PATENTS FROM INVENTORS AND LICENSEES IS A BAD IDEA THAT WILL LEAD TO EVEN WORSE OUTCOMES**

The National Institute of Standards and Technology (NIST) issued a request for comments in December 2023 regarding a proposal to expand the government’s “march-in” authority under the Bayh-Dole Act of 1980.

The act allows universities and other nonprofits to own intellectual property (IP) invented using federally funded research. That IP is then licensed to companies that turn it into products and services for the public’s benefit. That legislation has provided a boon to the American economy, creating nearly $2 trillion in economic impact since its passage.

In that legislation, Congress provided an opportunity for the government to reclaim a patent or copyright if the licensee did not bring the invention to the public. But that “march-in” provision was never intended to be used to control the price of products subsequently developed based on that IP. Indeed, Senators Birch Bayh (D-IN) and Bob Dole (R-KS) specifically stated that reasonable pricing was **not** a reason to march in.

The newly proposed “framework” does allow for the use of reasonable pricing as a reason to take away a patent. **THIS CHANGE IN POLICY WOULD HAVE A DEVASTATING IMPACT ON AMERICAN INNOVATION.**

In its comments to NIST, [**AUTM, the association of technology transfer professionals**](https://autm.net/AUTM/media/About-Tech-Transfer/Documents/AUTM-Comments_NIST-1-23-24_revised.pdf), cited three reasons for NIST to rescind this framework:

1. Such a reinterpretation of the Bayh-Dole Act goes well beyond the legislation’s intent. Only Congress can expand the march-in provisions to this extent.
2. This change is being discussed as a way to impact high drug prices, but it won’t have that effect. A recent study by Vital Transformations shows that of 350 new drugs, only a handful contain solely federal research funding. There are other, more direct ways for government to control what it perceives to be unreasonable drug pricing without taking away patents or copyrights.
3. This new policy would affect every tech sector where new discoveries are made. Clean energy, IT technology, agriculture and others could all be targeted by claims that prices for end-user products are unreasonable. Uncertainty about this possibility already has investors expressing concerns about investing in federally funded inventions. Moreover, competitors or others (even foreign companies) could exploit this process to steal technologies or disrupt the innovation pipeline. Who will be making these determinations? How long will such requests take to adjudicate? This is a disaster waiting to happen.

NIST and the White House need to rescind this proposed framework. The damage it can do to American leadership in innovation could be severe, while not having any discernible impact on drug pricing.