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Comment:
Federal funding of technology has led to important advances in human health, and the Bayh-Dole act has played a pivotal part in ensuring that those advances transferred from the laboratory to the American people. For some 40 years the Bayh-Dole Act has facilitated innovation in the United States, particularly in healthcare. Biopharmaceutical companies, device manufacturers, and diagnostics companies that have brought forward products based on government-funded technology have also contributed to economic success, including high profits that have handsomely rewarded their investors. That record alone strongly supports making no changes. Indeed, if we need change, it should be to ensure that the American taxpayers, limited partners in the Federal Government investment machine, benefit not only from the opportunity to buy new medicines and treatments, but also share in the economic benefits arising from those new medicines and treatments. Reducing the government's interest in inventions created with government funding or by the government undermines the fundamental basis of Bayh-Dole, to ensure that the American people benefit from the technology they have funded, and reduces rather than enhances the potential for the American people to share in the economic benefits that funding creates. Rather, a reduction in government interest in favor of private interest unjustly diverts taxpayers' money for the benefit of a few wealthy "entrepreneurs," a term I put in quotes because it is the government who takes the biggest risk in technology investing, as Mariana Mazzucao has shown (see, e.g., Mazzucato, "The Entrepreneurial State," 2015, PublicAffairs). Instead of further allocating public resources for private benefit without recourse, the government must maintain the ability to march in when a recipient of government funding or invention betrays the taxpayer investors, whether that is by burying a technology to avoid competition, or developing it at prices that undermine the stability of our systems. That threat of the government re-taking its technology pressures recipients of funding or licensees of government inventions to develop them. And imagine what prices for new medicines might be if there were no potential for the government to recover technology it funded. Time and again the mere threat of the Federal Government reclaiming its rights in a technology has corrected egregious behavior to avoid that extreme action. Eviscerate the threat and there is no longer pressure to act in the public interest. From a free-market, capitalist perspective, the government as investor is merely one other actor, a general partner with an obligation to its limited partner investors (a/k/a taxpayers) to use that funding wisely and for the partners' (taxpayers') economic as well as social benefit. The government must act as a fiduciary, not as a well of free capital. Of course some investment has huge impact without generating direct financial returns, like infrastructure, education, and basic science research. However, as we have seen so clearly in response to the COVID-19 public health emergency, other government investment supplants or replaces private investment in clinical and manufacturing development. These capital intensive investments are the most financially impactful risk factors in the development of medicines and vaccines, which (in part) justify high prices for products. When the government funds these activities, it shifts the financial risk

from the private sector to the public; from private investors to the taxpayers. When that happens, the taxpayers should benefit financially as well as from the availability of the new technology. It is inconceivable that a general partner would invest with no prospect for limited partner investors to benefit economically; why should the government, when acting as a risk investor, not reward taxpayers in some way as well? The provisions of Bayh-Dole help ensure that the government can in fact treat taxpayers as investors when the government has invested taxpayer money. Weakening the government interest in technology it has funded or developed undermines this interest, treating taxpayers not as investors but as dupes whose money de-risks the private sector and then pays top dollar for the de-risked products. This situation is a slap in the face of average Americans, while unjustly enriching private sector healthcare companies, executives, and investors. For the foregoing reasons, NIST must withdraw these proposals to weaken the government interest in federally funded inventions and government owned inventions. When investing, the Federal Government must act like a general partner and a fiduciary of the taxpayers, its limited partners. The fruits of government investment in technology can be more than new and improved products, they can also be economic -- nothing more than any reasonable investor would require.