



Highlights of [GAO-09-742](#), a report to congressional committees

Why GAO Did This Study

The Bayh-Dole Act, passed in 1980, allows recipients of federal research funds the option to retain patents on any inventions they create using those funds. At the same time, the act provides the government with rights intended to ensure that the public benefits from these federal research investments. One of these rights is known as the “march-in” authority, which allows federal agencies to take control of a patent when they have credible information that certain conditions described in the act have been met.

Until March 2009, the Bayh-Dole Act required GAO to report periodically on its implementation. To meet that requirement, for select federal agencies, GAO reviewed (1) the policies and procedures used to determine whether march-in authority should be exercised; (2) how the march-in authority has been used; and (3) what barriers and disincentives have been encountered in exercising the march-in authority.

GAO selected four agencies for this review that accounted for 89 percent of the federal research funding for fiscal year 2006. These were the Departments of Defense and Energy (DOD and DOE), the National Aeronautics and Space Administration (NASA), and the National Institutes of Health (NIH).

GAO is not making any recommendations in this report. DOE, NASA, and NIH provided technical comments on this report that GAO incorporated, as appropriate.

View [GAO-09-742](#) or [key components](#). For more information, contact Ms. Anu K. Mittal at (202) 512-3841 or mittala@gao.gov.

FEDERAL RESEARCH

Information on the Government’s Right to Assert Ownership Control over Federally Funded Inventions

What GAO Found

Officials at DOD, DOE, NASA, and NIH rely on Commerce regulations for the Bayh-Dole Act and on their agencies’ interpretations of the act to determine whether to exercise their march-in authority. Agency officials said that the administrative processes developed by Commerce are detailed and time-consuming, and may make it difficult to initiate and exercise a march-in proceeding. However, some officials said the detailed regulations ensure that appropriate and fair processes are followed during march-in proceedings. The agencies have chosen not to develop agency-specific guidance for a variety of reasons. For example, none of the officials believe that the regulations are onerous enough to warrant the development of agency-specific guidance and agency-specific guidance would reduce the flexibility agencies have to examine the specific circumstances of each case. In addition, an array of agency-specific regulations could hinder the transfer of research results to the market by increasing the regulatory burden on recipients of federal research funds.

None of the four agencies has chosen to exercise march-in authority. DOD, DOE, and NASA have neither discovered nor received information that would lead them to initiate a march-in proceeding or exercise their march-in authority during the last 20 years. In contrast, NIH has been petitioned formally three times, but in each case determined that the statutory requirements for march-in proceedings had not been met. Nevertheless, officials at DOD, NASA, and NIH said they value the authority because it provides leverage to promote commercialization of federally funded inventions. DOE officials disagree, in part, because no agency has ever exercised the authority. Agency officials said they do not have ongoing efforts to identify potential candidates for a march-in proceeding and primarily rely on the public, including potential competitors, to provide information that could lead to a march-in proceeding. According to these officials, their agencies would have to expend significant additional resources to track federally funded inventions because of the large number of inventions and because commercialization can take many years. Officials at DOD, NASA, and NIH said they value the march-in authority because it helps ensure that federally sponsored research results are commercialized. Also march-in authority is not the only tool to achieve the goals of the Bayh-Dole Act. For example, the government can take a patent without a license subject to reasonable compensation being paid to the patent owner or licensee that may allow for more timely interventions than would occur under the Bayh-Dole march-in process.

Federal and technology transfer officials identified four disincentives to the use of march-in authority. One of these is that the use of the march-in authority could have a “chilling effect” on federal research. These officials said that if a march-in occurred, investors would be less likely to provide the funds to commercialize federal inventions for fear of losing their investments. Also, because the march-in process can be long, these officials believe that it would have limited utility in an emergency situation. For example, the time to complete the fact-finding process in the three cases NIH reviewed ranged from 5 to 8 months.