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FEB 20 1996

GO-GO AND GO-CO TECH TRANSFER POLICIES

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SUMMARY

It was not originally intended that their be ***any*** differences in how GOGO and GOCO laboratories manage their technologies. The differences arose, quite simply, when DOE kept raising roadblocks to implementing legislation that Congress passed decentralizing technology management from Washington to the federal laboratories. As the system failed to work in the way Congress intended, subsequent legislation was passed removing power bit by bit from headquarters. Unfortunately, with the passage of each new law differences crept into the statutes affecting GOCO laboratories.

Congress considered the university GOCO's to have full authority to enter into CRADA's with passage of the 1984 Dole amendments to the Bayh-Dole Act. Of course, no one called cooperative agreements "CRADA's" at that time. With the passage of the Federal Technology Transfer Act of 1986, Government-owned and operated laboratories were given authorities modeled upon the Bayh-Dole Act to perform cooperative R&D with industry-- indeed, the bill was first introduced as an amendment to Bayh-Dole in 1984 by Senator Dole. With the enactment of the 1989 National Competitiveness Technology Transfer Act authority to enter into CRADA's was extended to for profit contractors operating federal laboratories, and it appeared that everyone was operating under more or less the same rules. However, it became apparent that some of the provisions adopted during consideration of these laws allowing for agency discretion and oversight could be used to create frustrating delays in approving CRADA's.

The problem was not so much in the laws as in the lack of strong oversight of their implementation. Congress recognized that some leeway must be left to the agencies in day to day operations. This leeway was used by some to undermine decentralized technology management. This struggle is very similar to the larger political fight which has been on-going for 20 years over the appropriate role of Washington in running various federal programs.

Finally, in frustration over these slowdowns, Congress is now considering enacting the Morella/Rockefeller bill, guaranteeing CRADA partners exclusive field of use licenses to speed up the system and provide uniformity across agency lines.

Evolution of GOCO and GOGO Statutes

1. Bayh-Dole was enacted in 1980 when we found 24 different patent policies in effect in the various agencies. The Act allowed universities and small businesses to manage their patent portfolio's and promise rights to future inventions. The bill had 5 year limits on exclusive licenses to big businesses.

University operated GOCO's were excepted from the law, but the Senate Judiciary Committee report filed by Senator Bayh and Dole said "... contracts for the operation of Government-owned facilities may contain other provisions, although agencies are not precluded from also allowing such contractors to retain rights to inventions."

2. 1981 DOE fights implementing regulations to Bayh-Dole prompting Senator Dole to write in protest to OMB Director David Stockman (the law originally gave oversight to OMB's Office of Federal Procurement Policy). Regulations acceptable to university community finally issue.

The bill also authorizes standard agreements to expedite the CRADA process. Bingaman/Domenici requires that agency reviews of proposed GOCO CRADA's be completed in 30 days, and if not met, to report to Congress within 10 days why not. This procedure was built in by Congress to attempt to limit DOE abuses of the statute.

10. 1994 to present. Continued delays in DOE CRADA's prompts Sen. Rockefeller to introduce legislation amending the FTTA to require assignment of intellectual property rights to CRADA partners automatically. Rep. Morella and Sen. Rockefeller introduce revised legislation now pending expediting CRADA approval process by guaranteeing industry partners exclusive field of use licenses.