We have carefully reviewed S. 4564 as it originally introduced, and we are taking this opportunity to provide you with the views of our membership on the bill. Our basic position is that while we are in general agreement wtih the underlying philosophy of the bill to provide contractors title to inventions in order to promote commercialization. We would like to be able to support it. However, we cannot in its present form. In particular, we do not consider its substantive provisions as an adequate substitute for the Bayh-Dole law which this bill would repeal. Extensive revision of Title III and other parts of the bill would be necessary to provide such comprability. In addition, the responsibility for regulation drafting would have to be placed in OFPP/OMB and not in GSA/DOD.

These concerns stem, of course, from significant differences in statutory language. We are also concerned with the fact that this bill would seem to give the agencies substantial control over regulation drafting. Recent events in connection with the implementation of Bayh-Dole have made it clear that these agencies are governed more by an interest in maintaining bureaucratic controls and justifying large patent staffs than they are in promoting the objectives of HR 4564. Passage of HR 4564 in its present form would wipe out many of the gains we have made, both on the statutory and administrative fronts. We hope that we will not be forced once again to devote our time and energy to battling with the bureaucracy rather than to the more rewarding and important task of bringing the results of Government sponsored research to the market place.

Accordingly, we propose five simple amendments which would alleviate our concerns while not interfering with the basic thrust of HR 4564. These changes are intended to remove universities and small businesses from the bill's coverage. While, obviously, the removal of small business from the bill is not critical to our membership, we commend it to you as an action that will prevent you from being faced by the active opposition of small business. We would find it surprising if small business did not also find HR 4564 in its present form inferior to Bayh-Dole. We also confess to a second motivation in making this suggestion. It saves us from the need of having to prepare amendments to 35 U.S.C. 200-206 that would be needed if small businesses were to be covered by HR 4564 even though nonprofits were excluded.

Our proposed amendments are as follows:

1. Amend sec. 521(16) to read as follows:

"(16) Sections 207-209 of title 35, United States Code, are repealed.

2. Amend sec. 511(2) to read as follows:

"(2) 'contractor' means any person (as defined in section 1 of title 1, United States Code) that is a party to a contract other than a small business firm or nonprofit organization;"

3. Amend sec. 511(7) to read as follows:

"(7) 'person' means any individual, partnership, corporation association, institution, or entity, but does not include small business firms or nonprofit organizations.

4. Amend section 511 by adding two new subsections as follows:

(10) "nonprofit organization" has the same meaning as found at 35 U.S.C. §201(i); and

(11) "small business firm" has the same meaning as found at 35 U.S.C. §201(h).

5. Amend sec. 201(b) by adding the following at the end:

"; provided, however, that no recommendation concerning 35 U.S.C. §§200-206 or §§210-211 or their implementation or interpretation may be adopted by the Director or transmitted to Federal agencies without the concurrence of the Office of Federal Procurement Policy."

The first amendment is intended to leave in tact those portions of Bayh-Dole which deal with nonprofit and small business inventions. As revised only the licensing provisions would be repealed.

Amendments 2-4 are to definitions in order to make clear that nonprofit organizations and small businesses are not covered by the substantive provisions of the Act. These will eliminate an ambiquity which would otherwise exist.

Amendment 5 is also intended to remove any ambiquity over the roles of OSTP and FCCSET versus that of OSTP in implementing 35 USC §§200-206. Language in sections 201(a)(2) and (3) could be read as also giving FCCSET and OSTP control over policies under 35 USC §§200-206 in the absence of our proposed amendment. While we have no particular problem with FCCSET and OSTP considering the implementation of Bayh-Dole as within the scope of their activities under HR 4564, it must be made clear that OFPP will retain actual control over its implementation.

As stated above, with these amendments, we could support HR 4564. We would also like to put forward for your additional consideration that we might also be interested in discussing with you the possibility of including in section 521 of the bill some minor amendments to 35 U.S.C. 200-206 to put to rest some of the issues that arouse during the implementation of this law and to also revise some restrictions in Bayh-Dole that are not found in your bill. We believe that with the addition of certain amendments much more positive and active university support could be obtained for H.R. 4564. Please let us know if you are interested in pursuing this further.