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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
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March 4, 2024

VIA ELECTRONIC TRANSMISSION

The Honorable Gene L. Dodaro
Comptroller General
U.S. Government Accountability Office
441 G Street NW
Washington, D.C. 20548


Dear Comptroller General Dodaro:

On December 8, 2023, the National Institute of Standards and Technology (NIST) published in the Federal Register, on behalf of an interagency working group, a draft framework for the exercise of “march-in” rights to seize intellectual property related to federally funded research under the Bayh-Dole Act.¹ With certain limited exceptions, the Congressional Review Act (CRA) defines a “rule” as meaning “the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency...”²

Under this broad definition, it appears that NIST’s published framework could qualify as a “rule” under the CRA, insofar as it describes how agencies will interpret and implement the Bayh-Dole Act. I respectfully request a determination of whether this action is a “rule” under the CRA.

Thank you for timely attention to this matter.

Sincerely,



Bill Cassidy, M.D.
Ranking Member
U.S. Senate Committee on Health,
Education, Labor, and Pensions

¹ U.S. Department of Commerce, National Institute of Standards and Technology, *Request for Information Regarding the Draft Interagency Guidance Framework for Considering the Exercise of March-In Rights* (scheduled for publication in the Federal Register on Dec. 8, 2023), <https://www.federalregister.gov/public-inspection/2023-26930/draft-interagency-guidance-framework-for-considering-the-exercise-of-march-in-rights>.

² 5 U.S.C. 551(4).