



GENERAL COUNSEL ADVISORY¹

September 26, 2005

TOPIC: Bayh-Dole Act

As a major research university that receives substantial royalties from inventions supported by federally-funded research, Emory has in the past and will continue to receive royalties that need to be applied in accordance with 35 U.S.C. §§ 200 et seq., commonly known as the Bayh-Dole Act. This Advisory, which has been reviewed and approved by former Senator Robert Dole and Emory's Vice President for Research Administration Frank Stout, discusses the background of the Bayh-Dole Act and outlines appropriate uses of Bayh-Dole funds.

The Bayh-Dole Act, passed by Congress in 1980 to stimulate investment in and commercialization of scientific inventions, allows universities to elect ownership of inventions made at their institutions using federal funding. If a university such as Emory chooses to take ownership of the invention, the university assumes the responsibility and expense to diligently pursue commercialization of the invention. In return, the university and the individual inventors retain any profits that may result, on the condition that the university funds be plowed back into scientific research and education and that a portion of the funds be shared with the inventors.

Specifically, the Bayh-Dole Act provides that after payment of expenses (including payments to inventors), nonprofit organizations may use "the balance of any royalties or income earned by the contractor with respect to subject inventions ... *for the support of scientific research or education.*" (Emphasis added.) A technical reading of the operative language lends itself to different interpretations, but based on the legal guidance available and a recent review of the practices of comparable institutions Emory will use such royalties to support scientific research and scientific education.

Neither the Act nor its implementing regulations articulate how directly related an expense must be to scientific research and education in order to be deemed "for the support" of such activity. Nevertheless, by reviewing the practices of other institutions, as well as related federal guidance such as OMB Circular A-21, which controls the calculation of indirect costs applicable to all federal grants and contracts, Emory will apply the following guiding principles:

¹ General Counsel Advisories are general statements intended to alert the Emory Community or specific portions thereof about significant legal issues and to provide helpful guidelines for complying with legal standards in effect as of the issuance date of each advisory.

- Expenditures that directly support scientific research and scientific education are permissible (for example, construction of laboratory space, purchasing of laboratory supplies, salaries of researchers and instructors).
- Expenditures that indirectly and exclusively support scientific research and scientific education are permissible (for example, salaries of administrative staff exclusively supporting those engaged in scientific research and scientific education).
- Expenditures that support scientific research and scientific education as well as other aspects of the Emory mission, but predominantly support scientific research and scientific education, are permissible (for example, construction of buildings which principally contain lab space and science classrooms and which also contain space for non-scientific education).
- Expenditures that support the Emory mission, but only incidentally, if at all, support scientific research and scientific education are not permissible (for example, other valuable nonscientific scholarship; athletics facilities).

If you have any questions about this advisory, please contact Kent Alexander, Senior Vice President and General Counsel (404-727-6060, kent@emory.edu), or Steve Sencer, Deputy General Counsel (404-727-2016, steve.sencer@emory.edu).