

COGR

an organization of research universities

COUNCIL ON GOVERNMENTAL RELATIONS

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November 13, 1981

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Mr. Robert Hall
Legislative Assistant
Representative Allen E. Ertel
1211 Longworth House Office Building
Washington, D.C. 20515

Reference: "Uniform Federal Research and Development Utilization
Act of 1981" - HR-4564

Dear Mr. Hall:

On behalf of the Council on Governmental Relations, (COGR), the American Council on Education, (ACE), and the Association of American Universities, (AAU), representing all the colleges and universities that develop patentable processes under Government funding, we are pleased to forward our comments on HR-4564.

P.L. 96-517 was signed into law on December 12, 1980, culminating several years of effort on the part of universities to obtain a reasonable law that would provide uniform treatment of inventions arising at universities under federally sponsored research. Since last December, the university community has been deeply involved with the development of regulations to assure that the law was implemented in accordance with the intent of Congress. Regulations satisfactory to the university community are presently being circulated by the Office of Federal Procurement Policy.

The content of a proposed statute that will repeal P.L. 96-517 and the implementing regulations is, quite naturally, of interest to the university community. We are concerned with the potential impact of a number of the provisions of HR-4564.

In general the higher education community:

1. Opposes the repeal of P.L. 96-517 and the consequent repeal of the regulations now under final consideration by OFPP;
2. While having grave concern about any alternative patent legislation, believes that the Administration bill now being drafted as a substitute for HR-4564 and its companion bill, S-1657, will contain language generally satisfactory to the university community; and
3. Does not take a formal position on extending to all private organizations, regardless of size, the rights to patents resulting from federally funded research, as are presently conferred in small businesses and nonprofit organizations.

We support uniformity in government regulation, but only when such uniformity is feasible. Universities will not be able to comply with the incompatible rules laid down for private industry. The nature of our institutions differs markedly from large businesses. Generating inventions is almost never the main objective of research conducted by universities; rather, an invention is generally an incidental by-product of the research conducted at universities, largely attributable to serendipity, to the personal creativity of the investigator backed by his years of professional training and experience, and to the scholarly environment and research resources provided by the university. In this respect, the resources of an institution are devoted to major objectives substantially different from those of private industry, whose purpose is to manufacture and market goods and processes for a profit.

In conformity with the unique characteristics of higher education and the thrust of the Regulatory Flexibility Act, segregated regulations along the lines presently being developed by OFPP will be necessary. Any legislation repealing P.L. 96-517 should, to the fullest extent possible, provide assurance that the regulations under consideration by OFPP will be maintained for the university community. Separate regulations might be appropriate for other contractors.

We urge your continued support on P.L. 96-517 in order to ensure that the results of Federally funded basic research conducted at colleges and universities in accordance with federal objectives are fully utilized in reaching the goals of expanded technological development and productivity improvement.

With respect to HR-4564, we propose that the essence of P.L. 96-517 be preserved for universities, other nonprofits and small businesses by:

1. Modifying Section 521(b) to read as follows: "(16) Sections 207-209 of Title 35, United States Code, are repealed."
2. Modifying Section 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. Modifying Section 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. Modifying Section 511 by adding two new subsections as follows: (10) "nonprofit organization" shall have the same meaning as contained in 35 U.S.C. Subsection 201(i); and (11) "small business firm" shall have the same meaning as contained in 35 U.S.C. Subsection 201(h);

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5. Modifying Section 201(b) by adding the following at the end:
"; provided, however, that no recommendation concerning 35
U.S.C. Subsections 200-206 or Subsections 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."

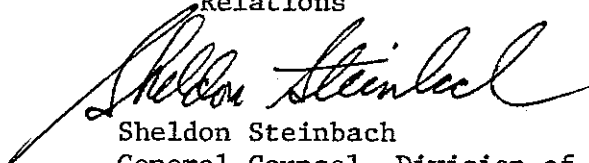
There are many substantial differences between P.L. 96-517
and HR-4564. Examples of such differences that would affect
adversely the university community are shown in Table I attached.

We hope the Congress will understand our concern about the
proposed repeal of P.L. 96-517. The university community stands
ready to work with the Congress and the business community in
enacting a revised federal law that would leave title to inven-
tions arising under federal funding to all contractors. However,
the university community is not prepared to sacrifice the provisions
of existing law as reflected in P.L. 96-517 in order to secure
such beneficial legislation for major business contractors.

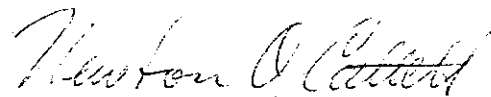
Sincerely,



Milton Goldberg
Executive Director
Council on Governmental
Relations



Sheldon Steinbach
General Counsel, Division of
Governmental Relations
American Council on Education



Newton O. Cattell
Executive Director for
Federal Relations
Association of American Universities

Attachment