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VETERANS ADMINISTRATION
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS
WASHINGTON, D. C. 20420

SEPTEMBER 9 - 1976

The Honorable
James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

This is in response to your request of August 24, 1976, for the views of the Veterans Administration on a draft Bill entitled, "Federal Intellectual Property Policy Act of 1976."

The Bill, which is designed to establish a uniform Federal policy on patentable technology and other intellectual property resulting from Federally-sponsored research and development, will establish uniform Federal practice in the area of determining rights to contractor inventors. It will also establish clear authority to grant exclusive licenses under Federally owned inventions, codify the basic policy concepts of Executive Order 10096, and remedy legal questions raised by a number of lawsuits.

In a recent memorandum to the Chairman of the Federal Council for Science and Technology, this agency commented on the provisions of this Bill. No substantive changes in the Bill have been made since we offered our views to the Chairman and, therefore, the comments I present in this letter will be substantially the same.

Generally, we find the proposed Bill to be a positive step towards establishing a uniform Federal policy in matters of intellectual property. As you may know, the Veterans Administration Research Program provides extensive funding and support to the research efforts of our employees and contractors throughout the

United States. Oftentimes, these research efforts result in the discovery of new art, methods, processes, machines, manufactures, designs, compositions of matter, and new and useful improvements thereof. The great majority of these discoveries are in the medical arts, an area of invention that, by its nature, requires prompt action in determining ownership rights, securing patent or other protection, and bringing the product to the public.

In the past, and presently, this agency has experienced difficulty in assuring that inventions, in which a Government interest has been asserted in accordance with Executive Order 10096, as amended, are effectively made available to the public. The Bill, which would establish a legislative basis to promote the licensing of inventions covered by Federally-owned patent applications, patents or other forms of protection, has the objective of maximizing utilization by the public of such inventions. More extensive licensing will, in our opinion, aid in realizing that objective.

Section 102 of the Bill includes, as a purpose of the Bill, the following:

> "(c) To allocate rights to Federal employee inventions in an equitable manner;"

Under Executive Order 10096, as amended, and under the provisions of the proposed Bill, we find little problem in equitably allocating rights to an invention as between an employee and this agency. However, it is not unusual to encounter a situation where there has been a co-sponsored effort in the research from which the invention derived. In most instances the co-sponsor is an institution such as a university which would, by virtue of its support in the research, have an interest in the invention that is not recognizable by either Executive Order 10096 or the provisions of the Bill.

The Veterans Administration has, in such cases, followed the Executive Order and determined ownership rights exclusive of any equitable interest that may exist in a third party co-sponsor. This has had the effect of creating a certain amount of antagonism towards the agency from the co-sponsors. It may also affect the extent of research our employees may be able to enter into, in light of the co-sponsors' reluctance to provide support to a research effort where their equitable interest goes unrecognized.

I would like to suggest that the Bill be amended to provide a solution to the problem created when Federal agencies are faced with determining ownership rights in inventions of Federal employees, and where there has also been funding of the research effort by an outside party. Equity would suggest that an evaluation be made of the respective contributions of the parties involved in supporting the research, in addition to the present evaluation of the employment status of the inventor. The Federal agency involved could make the necessary evaluations and thereafter determine which party, either the agency or other co-sponsor, would be in a better position to administer the patent. If such a provision is not included in the "National Intellectual Property Policy Act of 1976," a possibility exists that employees of the Veterans Administration may become increasingly isolated from the mainstream of research. This agency has, over the last several years, established close working relationships through sharing agreements with many universities and university medical schools across the country. Amendment of the Bill as suggested will help to maintain these ties.

Your consideration of these comments is appreciated.

Sincerely,

RICHARD L. ROUDEBUSH
Administrator