

Rights in and Responsibilities for Technical Data and Computer Software under Federal Awards

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Introduction

Many university administrators and technology transfer officers are familiar with the federal rules relating to managing inventions and patents that have been developed in the performance of federally funded research. The Bayh-Dole Act (35 USC Section 200-212) provides a uniform federal regime for rights to inventions under federally funded awards. Unlike rights to inventions, there is no controlling statutory authority for rights to technical data and computer software. In fact, the federal data rules and regulations are inconsistent with the government's approach to invention rights under Bayh-Dole and do not reflect current copyright law or legal developments regarding the patentability of computer software.¹

In addition to their complexity, the rules often require an institution to take specific steps to retain the maximum rights to data and software developed under federally sponsored projects. Different federal agencies have different regulations and the same agency may have different regulations depending on what type of funding document it issues. A grant or a contract from the same agency will differ in the rules and regulations for the appropriate management, retention of rights, and use of data and software developed under the award.

It is important that research administrators and technology transfer practitioners be familiar with the application of a federal agency's rights in data, technical data, computer software, and copyrights. These rights should be discussed with principal investigators before a response to a federal procurement solicitation or an unsolicited proposal is sent to a federal agency because it is important to identify and protect the rights of the institution and the faculty at the proposal stage. Copyright and license rights to copyrighted material developed under a federally sponsored project are important to the government, the public's right to use federally funded research, authors, and universities.