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# Is the government's claim to university patent royalties a better deal for taxpayers and innovation?

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A recent proposal by Commerce Secretary Howard Lutnick that the federal government claim up to 50% of royalties from university-owned patents arising from federally funded research has drawn swift criticism from academic stakeholders and some outside observers.[1]

Yet there are several potential benefits to consider. Could a carefully structured federal royalty share strengthen innovation and patent enforcement? Could it align public investment with public returns without undermining technology transfer?

This article explains the existing legal framework for university-owned patent royalties and sets out considerations and implementation pathways for a revised royalty-sharing model.

## The proposal and its policy context

In a September 2025 interview with *Axios*, the Commerce Secretary asserted that the federal government should share royalties when taxpayer dollars fund the underlying university research. He stated that "the U.S. government is getting no return on the money it invests in federal research."[2]

The Commerce Secretary seeks to recoup part of the value made possible by public investment by targeting patent values and licensing revenue. However, the focus is on sharing cash flows, not title. There has been no suggestion that the government would claim to share in patent ownership, which is typically retained by universities and inventors.

Universities and commentators quickly raised alarms.

Many warned that diverting royalty revenues would reduce funds available to reinvest in research, chill technology transfer, and diminish incentives to pursue high-risk, high-reward commercialization efforts.[3] Others argued that the proposal would conflict with the settled expectations that have governed university-federal partnerships since the Bayh-Dole Act of 1980.[4]

However, despite these legitimate concerns, there is underappreciated potential upside for universities of a shared-royalty framework, including stronger enforcement, enhanced market credibility, and more robust licensing and commercialization partnerships.

## How university research is funded-and why it matters

Federal dollars have remained the primary source of U.S. academic R&D funding since the 1950s.[5] For FY 2024, that amounted to 55% ($64.7B) in federal funding of all academic R&D expenditures ($117.7B).[6]

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The U.S. leads in life sciences funding compared to other countries, with this field receiving the largest share of federal funding — $66.88B in 2024.

The tilt toward life sciences reflects the capital intensity required for longer development timelines involving clinical trials and regulatory pathways.

This research generates many of the most lucrative university patents, including inventions in the fields of therapeutics, medical devices, prescription drugs, and biotech platforms. As such, a fundamental shift in royalty sharing would have disproportionate effects in life sciences and could impact universities' biggest licensing markets and industry partnerships.

With high risk-high reward inventions come the high stakes of patent validity and enforceability. This presents an opportunity for aligned objectives with the U.S. government, which also benefits from university-led research contributions to U.S. technology markets and export strength.

## Bayh-Dole's allocation of rights

The Bayh-Dole Act of 1980 established the modern legal framework for patents arising from federally funded research

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at universities and other nonprofit institutions. Prior to Bayh-Dole, the federal government held title to roughly 28,000 of these patents but had only licensed fewer than 5% of them.

To encourage universities to participate in technology transfer activities, Congress passed bipartisan legislation that returned ownership of inventions to the universities that created those inventions and gave them the freedom to negotiate licensing terms.

*Universities could opt in for benefits such as litigation co-funding or enforcement support in exchange for shared royalties.*

The passing of Bayh-Dole proved transformative for U.S. innovation. Between 1996 and 2020, academic technology transfer from U.S. universities resulted in 554,000 inventions disclosed and supported an estimated 6.5 million jobs.[7]

The statute and implementing regulations include requirements for universities regarding ownership, licensing, and reporting. The government receives a nonexclusive, nontransferable, paid-up license for U.S. use, but is not entitled to royalty revenue.[8]

When it enacted Bayh-Dole, Congress considered and ultimately rejected the inclusion of a "payback" provision, instead prioritizing decentralized tech transfer and indirect public benefits.

As a result, new authority would be required for revenue sharing. Congress could legislate, or agencies could condition future grant awards on royalty-sharing terms.

Bayh-Dole does not authorize the government to control or intervene in patent litigation by universities, even where the inventions are federally funded.

However, federal agencies retain "march-in" rights to grant compulsory patent licenses to third parties if the inventor does not take steps to commercialize the invention and make it available to the public, or if otherwise deemed necessary for public health or national security reasons.[9]

The statute does not prohibit the U.S. Government from sublicensing a patent after it exercises march in rights, which could be used as a statutory basis for the government to take over enforcement.

## Paths to implementation without breaking Bayh-Dole

A government royalty share could be implemented in several ways under the current legal framework.

One pathway could be leveraging contracting authority in new grant awards. Government agencies could standardize royalty-sharing terms and define enforcement roles while preserving university ownership of patented inventions and participation in generated royalties.

This path seems relatively straightforward to implement because its conditions would apply only to new research cycles and would leave legacy arrangements intact. But this path could take several years, perhaps even decades, to become effective because of the significant incubation period between awarding a research grant and licensing or otherwise enforcing an issued patent.

A second path is a narrow statutory update. Congress could separately authorize agency royalty interests while preserving Bayh-Dole's core structure. It could also authorize co-enforcement, data sharing, and international coordination, and could limit scope by field or revenue threshold. While this path would provide a more uniform solution, convincing Congress to take action would be challenging, to say the least.

A third pathway would be a "march-in" framework under the statutory provisions of nonuse or critical public need. If the government exercises march-in rights, it could in turn permit sublicensing and coordinated enforcement with the university.

Proceeds could be shared under a statutory formula that includes both the government and the inventive university. The viability of this path is unprecedented as no federal agency has ever exercised march-in rights.

A fourth path would allow optional participation by universities. Universities could opt in for benefits such as litigation co-funding or enforcement support in exchange for shared royalties. This is perhaps the most viable path because it can be immediately implemented and adapted on a case-by-case basis.

## Potential benefits to universities

A well-designed framework of royalty sharing could increase the expected value of university patents by improving enforcement and enhancing credibility with market participants.

Patent litigation is expensive and risky, which could be mitigated by federal co-enforcement. Cost-sharing, selective Department of Justice (DOJ) participation, and interagency support abroad could deter infringement and improve litigation outcomes. The added leverage could also encourage settlements and raise settlement values.

Joint university-government participation could also signal policy stability and public backing which would boost market confidence. This could be particularly valuable in the life sciences where long development timelines require durable IP foundations. For industry licensees and investors, that signal could reduce perceived enforcement and political risk, increasing willingness to pay for licenses and to commit capital.


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Structured royalty sharing could also spur proactive licensing. The federal government could align deals with procurement and industrial policy priorities. Agencies can connect technologies to public missions such as defense, biodefense, and advanced manufacturing.

Licensees of federally backed patents may view the assets as more strategic. That can support additional economic benefits for universities even after sharing royalties. The net effect could be larger deals, with stronger compliance and performance governance.

A shared interest in inventions can also amplify U.S. policy advocacy. That alignment can reinforce the comparative advantage that U.S. universities already enjoy in technology transfer performance relative to many international peers.

## Objections to royalty sharing

The strongest objection raised by universities is that cutting university net royalty receipts starves research of reinvestment. That risk is real if royalty sharing is a pure top-line skim. One potential solution would be to require that a material portion of the government's share be reinvested into the same university research enterprise or into competitive funds for the same field to mitigate the budget shock to university technology transfer offices.

Another objection is that sharing would chill high-risk innovation and discourage patenting. Here, the answer is to link federal participation to benefits that increase net value: enforcement support, international protection assistance, and prioritized access to federal programs that accelerate commercialization of the inventions.

If the government's presence raises expected licensing values or reduces enforcement costs, many technology transfer offices could be financially better off on an expected-value basis even after sharing. In other words, government participation could increase the overall size of the pie as well as the university's share.

## Learning from adjacent federal royalty and enforcement models

Although Bayh-Dole does not provide for government royalty interests, analogous frameworks show how public entities can share proceeds while promoting efficient private effort.

In natural resources, the federal government routinely leases and licenses rights to private operators and collects royalties from production, aligning extraction with public return. This model of utilizing private expertise for shared gains maps imperfectly but usefully to patent monetization following federally funded research.

Similarly, qui tam mechanisms under the False Claims Act pair private initiative with public enforcement authority, aligning incentives through a share of recoveries. While patent enforcement differs, the success of qui tam in mobilizing resources for public-interest litigation in a model of shared proceeds suggests that carefully structured sharing can expand enforcement capacity.

Finally, the federal government itself holds and licenses patents in some sectors, such as in military and aerospace technologies, with established technology transfer practices that can inform design choices for co-enforcement and licensing support in a shared-royalty regime.

## Practical design features that could make sharing accretive

The government may consider additional factors when developing a mutually beneficial royalty-sharing model:

- Keeping inventor royalties consistent with Bayh-Dole would maintain incentives for scientists to innovate.
- Offering clear enforcement partnership assurances that include cost-sharing, amicus or intervention support, and international coordination.
- Providing for the reinvestment of a portion of the government's share into the same fields or institutions.
- Linking licensing to procurement and administration needs to raise expected patent value and support long-term commercialization.
- Using federal trade, standards, and diplomatic tools to protect university IP abroad. That support can address a frequent pain point for licensors.

While these features go beyond a simple revenue allocation model as contemplated by the U.S. Commerce Department, there could be meaningful benefits to reshape incentives around patent enforcement and licensing. If executed, they can make many university patent portfolios more valuable and economically resilient.

## Why life sciences patents will be a decisive model

Because life sciences patents dominate university licensing value, any shared royalty model must translate well across this field.

Life sciences patents are frequent targets for infringement challenges and require sophisticated, often expensive litigation. Federal partnership in select cases could materially change expected outcomes and settlement positions, especially where public health narratives are relevant.

Universities may also benefit from regulatory assistance. Agencies can connect patent-protected academic inventions with programs such as clinical-trials infrastructure for FDA approval or procurement initiatives that accelerate adoption and commercialization.

The U.S. government places a high value on the funding of life sciences and is motivated to maintain technological leadership in this field and generate more licensing royalties, as this increases international respect for U.S. technology.


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## Outlook

Universities should engage constructively with the federal government to shape any royalty-sharing framework. This can be reframed not as a tax on innovation but as a value-creating partnership.

Universities have valid reasons to be wary. Royalty income often barely covers patenting costs and technology transfer overhead, and sudden reductions could impair operations. But that is an argument for careful design, not for rejecting the possibility that public-private alignment can improve total outcomes.

In the near term, there is a viable path for royalty sharing that is prospective, incentive-based, and opt-in based on new funding contracts.

## Conclusion

The intuition behind federal sharing of royalties from federally enabled university patents is straightforward: when the public funds the risk, the public should participate in the reward.

The challenge is to do so without dampening the innovation engine that Bayh-Dole helped unlock.

Under a new framework, universities could see higher expected values for their patents, more robust commercialization, and stronger international protection, even while sharing proceeds with the government.

The U.S. university technology transfer ecosystem has been perhaps the world's most effective driver of economic growth, but other countries are catching up. Calibrated reform of university patent royalties can build on that strength by further leveraging the unique resources and capabilities of the federal government.

## Notes:

[1] *Bayh-Dole Coalition Shares Member Survey Responses on Secretary Lutnick's Royalty-Sharing Proposal*, Bayh-Dole Coalition (Oct. 8, 2025), https://bit.ly/3NlpHqh.

[2] *Howard Lutnick Interview*, The Axios Show (Sept. 12, 2025), https://bit.ly/4qDOIBl.

[3] Stephen Ezell, *Taxing University Royalties Would Deliver Few Benefits, but Great Harms*, Information Technology and Innovation Foundation (Oct. 7, 2025), https://bit.ly/49AJl01.

[4] Joseph Allen, *Government Taking a Cut of University Royalties Would Threaten Bayh-Dole's ROI*, IPWatchdog (Sept. 11, 2025), https://bit.ly/3LwBjMB.

[5] *Since the 1950s, Over Half of R&D Expenditures at U.S. Colleges and Universities Have Been Funded by the Federal Government*, National Center for Science and Engineering Statistics (July 10, 2025), https://bit.ly/4pOFL7h

[6] *2024 Higher Education Research and Development (HERD) Survey* (Dec. 2025), https://bit.ly/3LNymHm.

[7] *Driving the Innovation Economy: Academic Technology Transfer in Numbers*, AUTM (2023), https://bit.ly/3LwKlJw.

[8] 35 U.S.C. §§ 200-212.

[9] 35 U.S.C. § 203.

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