

2. Definitions

The Act seeks to further identify its scope by defining terms that ultimately govern when the Act should apply. Of note, the BDA applies only for funding by federal agencies for "the performance of experimental, developmental, or research work funded in whole or in part⁴⁶ by the federal government."⁴⁷

A subject invention⁴⁸ is any invention of the contractor "conceived or first actually reduced to practice in the performance of work under a funding agreement...."⁴⁹ The use and placement of the term "contractor" ensures that the reduction to practice relates to the contractor's invention, and that work of a contractor reducing someone else's invention to practice would not qualify as a "subject invention."⁵⁰

B. Disposition of Rights

The disposition of rights contemplated under Bayh-Dole is codified in 35 U.S.C. § 202. This specifically allows for the contractor to retain title from the government.⁵¹ For the contractor to achieve this, it must undertake several procedural steps, including a disclosure and an election.⁵²

1. The Disclosure and Election

§ 202(a) of the Act requires the contractor to make an affirmative election that it wishes to gain the title to a subject invention. Furthermore, the BDA imposes four exceptions that give the government the option to override the contractor's option

46 Thus, the project need not be entirely funded by government money. *See* Nash and Rawicz, *supra* note 36, at 255.

47 35 U.S.C. § 201(a-b) (2009). A federal agency is any executive agency as defined in 5 U.S.C. § 105 or the military departments under 5 U.S.C. § 102. A funding agreement is "any contract, grant or cooperative agreement entered into between any Federal agency....".

48 *See* 35 U.S.C. § 201(e) (2009) (subject invention); *See* 35 U.S.C. § 201(d)(2009) (invention).

49 35 U.S.C. § 201(e) (2009).

50 *See* Nash and Rawicz, *supra* note 36, at 258.

51 *See* 35 U.S.C. § 202 (2009).

52 *See* Nash and Rawicz, *supra* note 36, at 266.