

Export Controls

Mary E. Schmiedel, JD, CPCM
Senior Research Compliance Officer



GEORGETOWN UNIVERSITY

Agenda

- Brief overview of export controls
- Embargoed and sanctioned countries
- How GU projects may intersect with export controls

What is an Export?

- Transfer of **controlled** technology, information, equipment, material, software or services to a foreign person, either in the U.S. or abroad;
 - Technology is defined as the information necessary for the development, production or use of a product.
- Examples of exports
 - Physical shipment outside the U.S.;
 - Visual inspection inside or outside the U.S.;
 - Written or verbal disclosure.

Deemed Exports

- Any release of technology or source code (subject to the export regulations) to a foreign national while **inside** the U.S. (e.g., **on campus**) is *deemed* to be an *export* to the home country of the foreign national.
- Exceptions
 - Permanent residence (“Green Card”)
 - U.S. citizenship
 - Status as a “protected person”

What is the Issue?

Unless the fundamental research exclusion applies, the transfer of controlled information, etc., to certain foreign nationals may require a license from the Department of Commerce or the Department of State.

Exclusions include:

- Public domain
- Educational
- Fundamental Research

Does the access rise to the level of “use?”

- Use is defined as "operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing."
- Many foreign nationals do not have access to information that will enable them to do all of these activities.
- However, if they do, it may require a license.

Embargoed and Sanctioned Countries

(Red = comprehensive sanctions)

- Balkans
- Belarus
- Burundi
- Central African Republic
- Cuba
- Democratic Republic of the Congo
- Iran
- Iraq
- Lebanon
- Libya
- North Korea
- Somalia
- Sudan
- Syria
- Ukraine
- Venezuela
- Yemen
- Zimbabwe

How Might Export Controls Impact My PI's Project?

- Interactions with embargoed countries
 - Attendance at/planning of international conferences;
 - Payments (compensation, honoraria, ICAs, supplier agreements, subawards) to individuals and organizations in embargoed countries;
- Foreign travel with devices containing proprietary data or controlled information;
- Completion of Export Control Addendum during visa renewal;
- Pertains to activities funded by external sponsors as well as those paid for by University funds.

Export Analyses at Georgetown

- PI wishes to study clinical samples from a country with a comprehensive embargo, i.e., Iran;
- PI wishes to collaborate with a colleague in an embargoed country – the collaboration may be perceived as an unpermitted service;
- PI wishes to present at a conference in Iran and has restrictions on what he/she can present;
- PI wishes to attend a conference in Cuba and there are restrictions on the non-conference activities;
- PI is writing software that will be tested on U.S. Government software and the computer need extensive protection;
- PI wishes to travel with GU laptop that contains proprietary or controlled info.

Foreign Corrupt Practices Act (“FCPA”)

- Prohibits giving, offering or promising to give, or authorizing others to give, offer or promise to give, any money or other thing of value to any Covered Person to induce or reward favorable action or the exercise of influence by such Covered Person.
- “Covered Person” is defined to include an individual holding an official governmental position; a political party official; a candidate for public office; an official of a public international organization; a director, officer, or employee of a state-owned enterprise; or someone closely related (for example, through family, business, personal or other connections) to a Covered Person.

Red Flags in a Program Announcement

- U.S. export control regulations;
- Controlled unclassified information (CUI);
- Controlled defense information (CDI)
- Foreign national restrictions;
 - Restricted participation based on country of origin;
 - Restricted access to project info by non-U.S. persons;
 - Prohibits hiring non U.S. persons;
- Publication or “disclosure of information” restriction.

Red Flags – Proposal Review

- Foreign organizations/collaborators;
- Research to be performed outside the U.S.;
- Export of material or equipment;
- Potential military applications.

Red Flags – Award Agreement Review

- Publication **approval** requirement
 - “There shall be no dissemination or publication of information developed under this contract or contained in the reports to be furnished pursuant to this contract without *prior written approval* of the Contracting Officer.”
- Foreign national **approval** requirement
 - “By signing the contract, the Contractor certifies that *no foreign nationals are working* under the contract.”
- “Classified,” “sensitive but controlled,” or “export controlled” information

Export Control Regulations

- **Georgetown University's Export Control Handbook for Researchers**
<http://maincampusresearch.georgetown.edu/osp/regulations/export-controls>
- **Department of Commerce Export Administration Regulations (EAR):**
<http://www.bis.doc.gov/policiesandregulations/ear/>
- **Intro to Commerce Department Export Controls**
<http://www.bis.doc.gov/licensing/exportingbasics.htm>
- **Department of Commerce, Commerce Control List**
<http://www.gpo.gov/fdsys/pkg/CFR-2012-title15-vol2/xml/CFR-2012-title15-vol2-part774-appNo-.xml>
- **Department of State, U.S. Munitions List (USML)**
<http://www.gpo.gov/fdsys/pkg/CFR-2011-title22-vol1/xml/CFR-2011-title22-vol1-part121.xml>
- **Department of State International Traffic in Arms Regulations (ITAR)**
http://pmdtc.state.gov/regulations_laws/itar_official.html
- **Department of Treasury Office of Foreign Assets Control**
http://pmdtc.state.gov/regulations_laws/itar_official.html

Contact Information

Mary Schmiedel

mary.schmiedel@georgetown.edu

7-3911