

# Export Controls

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# Agenda

- Definitions related to export controls
- License exclusions
- Fundamental research exclusion
- Embargoed and sanctioned countries
- How GU projects may intersect with export controls
- Foreign Corrupt Practices Act (FCPA)

# 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 are Export Control Laws?

Export control laws are U.S. laws and regulations that regulate the export of controlled information, software, materials, technologies and services to foreign persons.

# 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

# Fundamental Research

*Fundamental research* is “basic or applied research in science and engineering performed or conducted at an accredited institution of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community”.

- Much of GU research is considered to be fundamental research

# Fundamental Research Exclusion

- Research is considered *fundamental research* if GU **does not accept** sponsor restrictions on publication of research results, and **does not accept** sponsor restrictions on the use of foreign nationals performing the research (and the PI has not made any side deals with the sponsor agreeing to any of the above restrictions).
  - Research Services (formerly OSP) and the Office of Sponsored Research looks for these restrictions in program announcements and award instruments and tries to negotiate them out (but are not necessarily aware of side deals).
- The *fundamental research exemption* exempts the institution from requiring a *deemed export* license for research performed **on campus**.

# Public Domain Exclusions

No license is required to export or transfer information or research results that are generally available to the public without restrictions on further dissemination through:

- Libraries, bookstores, or newsstands;
- Trade shows, conference, meetings, or seminars in the U.S. open to the interested public;
- Published in patents or open patent applications available from a patent office;
- Subscriptions;
- Websites accessible to the public.

# Education Exclusion

No license is required to transfer information to students, including foreign national students, concerning general scientific, mathematical or engineering principles commonly taught in catalog courses or associated teaching laboratories of schools, colleges or universities.

# How Might Export Controls Impact My Project?

- Interactions with embargoed countries
  - Payments (compensation, honoraria, ICAs, supplier agreements, subawards) to individuals and organizations in embargoed countries;
  - Collaboration with nationals of embargoed countries;
  - Surveys/services for embargoed countries/entities;
- Participation of foreign national students, post-docs, and faculty in the lab where project is not eligible for fundamental research exclusion, e.g., service project;
- Transfer of information, etc., to foreign collaborators;
- Attendance at/planning of international conferences;
- Foreign travel;
- Completion of Export Control Addendum during visa renewal;
- Signing a non-disclosure agreement;
- Pertains to activities funded by external sponsors as well as those paid for by University funds.

# Fundamental Research Exclusion and the “Use Analysis”

- The *fundamental research exclusion* applies to the outputs, e.g., reports, but not the inputs, e.g., controlled equipment, encryption, etc.
- 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.

# 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 Project?

- Award notice contains publication restrictions or requires the sponsor's prior approval of the participation of foreign nationals;
- Participation of foreign national students, post-docs, and faculty in the lab where project is not eligible for fundamental research exclusion, e.g., service or industry sponsored project where proprietary information is being delivered to GU and there are publication restrictions;
- Foreign travel with devices containing proprietary data or controlled information;
- Interactions with embargoed countries
  - Attendance at/planning of international conferences;
  - Payments (compensation, honoraria, ICAs, supplier agreements, subawards) to embargoed countries/individuals/organizations;
  - Surveys/services for embargoed countries/entities;
  - Collaboration with scientists;
- 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.

# Activities Requiring Further Review

- Industry based projects where PI is providing a service to industry, receiving proprietary information, and foreign nationals may be working on the project.
- PI who works with controlled technology wishes to travel overseas with a laptop or other equipment that contains the controlled technology.
- PI extends an invitation to a foreign national to work in a GU lab for an extended period.

# 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](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](http://pmdtc.state.gov/regulations_laws/itar_official.html)

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