Export Control Issues that may apply to Research Projects

Most research at Universities is exempt from the application of the export controls laws as fundamental research. This is known as the Fundamental Research Exclusion. The **Fundamental Research Exclusion ("FRE")** is a regulatory provision that excludes from the jurisdiction of the export control regulations technology and technical data resulting from qualifying research that might otherwise be restricted. Fundamental Research includes basic and applied research in science and engineering at academic institutions where the resulting information is ordinarily published and shared broadly in the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. Such research and the resulting information generally are **not** treated as Export-Controlled Information under the FRE. Under the ITAR, however, the definition of this term is somewhat narrower and covers only such research when conducted at accredited institutions of higher learning in the United States. However, the FRE can be voided by some publication and foreign national restrictions.

Questions to Consider at Proposal Stage to help you identify potential issues that may need to be addressed before award/contract can be negotiated:

Please email your completed checklist to vec@vanderbilt.edu and ocra@vanderbilt.edu if you would like your project issues reviewed. This list of potential issues is not exhaustive. By way of reminder, every individual remains responsible for their exports.

Yes  No

_____  ____  1. Will the sponsor or the government need to approve the publication or public presentation of your research results?

_____  ____  2. Does the sponsor or the government need to approve foreign nationals (for example foreign grad students on student visas and research associates on H1B visa?) working on the research project?

_____  ____  3. Do you anticipate, based on what you know about the Sponsor’s Research program and your scope of work, that export controlled information (ITAR or dual military–civilian use) will be provided to you in this research project?

_____  ____  4. Is there a form DD2345 (Militarily Critical Technical Data Agreement) or form DD254 (Contract Security Classification Specification) involved in the project?

_____  ____  5. Is there a NDA involving the exchange of technical, proprietary or export controlled information?

_____  ____  6. Does the grant or contract indicate the deliverable is a prototype and not just a report of “information”?

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7. Has the Sponsor and/or the government stated that the research you are going to perform is “fundamental research”?

8. Does the grant/contract require the shipment of materials, data, or technology to a foreign location?

9. Does the grant/contract involve the development of encryption?

10. Does the project place special requirements for information technology security controls for the exchange of technical information (e.g. DFAR 252.204-7012, sensitive but unclassified information, NISPOM, FISMA, NIST)?

11. Does the project allow the government to change the security classification during the contract performance period?

12. Does the research involve a “biological select agent”?

13. Does the project have national security restrictions?

14. Does the project call for collaboration or cooperation with entities or persons who are from sanctioned countries (as of 11/2015 includes Balkans, Belarus, Burma, Central African Republic, Cote D’Ivoire, Crimea, Cuba, DRC, Iran, Iraq, Lebanon, Liberia-former regime, Libya, North Korea, Syria, Somalia, Sudan, South Sudan, Ukraine, Venezuela, Yemen, Zimbabwe)?

15. Does the project involve research to be conducted out of the U.S.?

16. Does the project involve the collaboration or cooperation with a country that supports Anti-Boycott measures? (Arab League countries)

17. Is the Sponsor a foreign government or national entity of a foreign government?

18. Does the project involve work intended for use by a foreign military directly or indirectly?
Relevant Definitions

- **Foreign Nationals** are any individuals (including students, professors, staff, contractors or other persons), wherever located, who are not U.S. citizens, legal permanent residents (“green card” holders) or persons granted U.S. asylee or refugee status. As an example, students living in the United States and attending Vanderbilt pursuant to valid non-immigrant U.S. student visas are considered Foreign Nationals.

- The **International Traffic in Arms Regulations ("ITAR")** control the export of defense articles, defense services and related **Technical Data**. Projects related to military or defense related research, designs or other activities may be controlled under the ITAR.
  
  - Information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles is controlled Technical Data that is Export-Controlled Information under the ITAR. Classified information is always considered Export-Controlled Information.
  
  - Controlled ITAR Technical Data does not include basic marketing information on function or purpose; general system descriptions; or information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges and universities or information in the public domain.
  
  - With limited exceptions, defense articles, defense services and technical data subject to the controls of the ITAR require U.S. government approval before export or release to Foreign Nationals.

- The **Export Administration Regulations ("EAR")** control the export of commercial and “dual use” products, equipment, software and technology.

  - **Technology**.

    - Technology includes specific information required for the production, development or use of controlled products, equipment or software.

    - Some EAR controlled goods and software are not subject to export control restrictions and can be freely exported to all non-sanctioned countries/nationals.
- Some Technology subject to EAR controls is Export-Controlled Information and requires U.S. government approval before export or release to Foreign Nationals.

- Economic Sanctions administered by the U.S. government work together with the export controls of the ITAR and EAR to restrict transactions with the following sanctioned countries and nationals thereof: Cuba, Crimea, Iran, North Korea, Sudan and Syria.

- The **Fundamental Research Exclusion ("FRE")** is a regulatory provision that excludes from the jurisdiction of the export control regulations technology and technical data resulting from qualifying research that might otherwise be restricted. Fundamental Research includes basic and applied research in science and engineering at academic institutions where the resulting information is ordinarily published and shared broadly in the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. Such research and the resulting information generally are not treated as Export-Controlled Information under the FRE. Under the ITAR, however, the definition of this term is somewhat narrower and covers only such research when conducted at accredited institutions of higher learning in the United States.