SPONSORED PROGRAMS ADMINISTRATION
AND
EXPORT CONTROL REGULATIONS

Eileen Nielsen
Director of Research Administration Education
Harvard School of Public Health
HSPH Export Control Website
U.S. Exports Controls

U.S. Export Controls
- Cover any item in U.S. trade (goods, technology, information)
- Extend to U.S. origin items wherever located, including U.S. (Jurisdiction follows the item or technology world wide)
- Controls have broad coverage and limited exclusions
- License may be required to export

Reasons for Export Controls
- Missile technology
- Nuclear nonproliferation
- Chemical and biological weapons
- Anti-terrorism, crime control, regional stability, short supply, UN sanctions
- Embargoes and trade sanctions

Exports include
- Any oral, written, electronic or visual disclosure, shipment, transfer or transmission of commodities, technology, information, technical data, assistance or software codes to
- Anyone outside the US (including US citizen)
- A non-US individual (wherever they are)
- A foreign embassy or affiliate

Deemed Exports
- U.S. export controls cover transfers of technology to a foreign national within the U.S. (the transfer outside the U.S. is deemed to apply when a foreign national receives the information in the U.S.)
- It is available to foreign nationals for visual inspection (such as reading technical specifications, plans, blueprints, etc.)
- When technology is exchanged orally
- When technology is made available by practice or application under the guidance of persons with knowledge of the technology
# Principle U.S. Export Control Authorities

<table>
<thead>
<tr>
<th>Treasury Department</th>
<th>Commerce Department</th>
<th>State Department</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office of Foreign Assets Control (OFAC)</td>
<td>Bureau of Industry and Security (BIS)</td>
<td>Directorate of Defense Trade Controls (DDTC)</td>
</tr>
<tr>
<td>Foreign Assets Control Regulations</td>
<td>Export Administration Regulations (EAR)</td>
<td>International Traffic in Arms Regulations (ITAR)</td>
</tr>
<tr>
<td>Sanction Programs</td>
<td>Commerce Control List (CCL)</td>
<td>United States Munitions List (USML)</td>
</tr>
<tr>
<td>Transactions with sanctioned countries, entities and persons</td>
<td>Exports and re-exports of dual-use commodities, software, equipment and technology</td>
<td>Transfers of defense articles and provision of defense services</td>
</tr>
</tbody>
</table>
Providing services under OFAC

In general, OFAC programs prohibit the provision of services to countries subject to US sanctions without a license.

Services may include:

- Conducting surveys and interviews in sanctioned countries
- Providing marketing & business services to persons in sanctioned countries
- Creating new information materials at the behest of persons in a sanctioned country
- Financial transactions
- Engaging the services of persons in a sanctioned country to develop new information materials

NOTE: Restrictions vary by sanction program and country
"Fundamental Research’ means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.”

Fundamental Research Exclusion (FRE): Fundamental research as defined above is not subject to export control laws and regulations. This exclusion permits Harvard to allow our international community (i.e., faculty, students and visitors) to participate in export-controlled information on campus in the U.S. without the need for a license. The FRE applies only to the dissemination of research data and information, not to the transmission of material goods.

The Fundamental Research Exclusion is destroyed if the university accepts any contract clause that:

- Forbids the participation of foreign persons
- Gives the sponsor a right to approve publications resulting from the research; or
- Otherwise operates to restrict participation in research and/or access to and disclosure of research results
Protecting the Fundamental Research Exclusion

While reviewing the statement of work and proposal submission consider whether there is any of language or terms that:

Terms that can destroy the Fundamental Research Exclusion

- References U.S. export regulations
- Restricts non-U.S. entity participation based on country of origin
- Prohibits access by non-U.S. citizens to project information
- Prohibits the hiring of non-U.S. persons
- References the need to train specific personnel for a special purpose; i.e., a defense service
- Publications restrictions
- Restrictions that single out foreign faculty, students or staff preventing their access to research and educational requirements
- Sponsor wants the right to approve any foreign personnel that would work on the program.
- Sponsor requires certification that no foreign nationals are working on the agreement
- Sponsor may limit access of its facilities to only U.S. citizens or only allow U.S. citizens to perform under the agreement

Things to think about

- Will any portion of the project be performed at a site other than Institution’s campus or facilities or another US academic/hospital research facility?
- Will any portion of the project be conducted outside the United States?
- Under this project, will the results and/or deliverable be sent to a foreign country or foreign citizen prior to publication?
- Has any collaborator or the sponsor indicated that export-controlled items are necessary for the work to be performed or that they cannot be shared with non-US citizens?