

Sponsored Research and Compliance Seminar – Export Controls

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What are export controls?

U.S. law restricts the release of certain items, information, and software to foreign nationals in the U.S. and abroad

Collectively referred to as “export controls”

In some cases, specific written authorization from the government is required (a.k.a. export license)

Penalties for violations are severe and include fines, jail time and/or denial of export privileges.

Can be levied against the individual as well as the institution.

Export controls are administered primarily by three U.S. government agencies, each with its own licensing jurisdiction

Department of Commerce, Department of State, Department of Treasury



OU's Export Control Policy

“It is the policy of the University of Oklahoma to fully comply with all applicable federal statutes, executive orders, regulations, and contractual requirements for the safeguarding of export controlled information in its possession. This includes full and total compliance with export controls and the export, transfer, or release of controlled technology. Under no circumstances shall employees or other persons acting on behalf of OU engage in activities in contravention of U.S. export control laws.”



What is an export?

Export

Actual shipment or transmission of items out of the United States, or

Release of export controlled technology or software to a foreign national in the United States (“deemed export”).

In some cases, even access to controlled hardware may be an export. [This is possible with ITAR controlled hardware and 600 series ECCNs.]

Export license

Express written approval from the regulatory agency to engage in a regulated (export-controlled) transaction

General licenses, export license exceptions, and exemptions may be available.



The beginning of the Sponsored Research and Export Controls Story...

Export Regulation Compliance

Most sponsored research at the University of Oklahoma is not subject to U.S. export control regulations. However, some research projects may trigger export control regulations, particularly those involving:

- Restrictive contractual clauses (publication restrictions, citizenship requirements, etc.).
- Physical exports (sending or hand-carrying OU equipment to another country).
- Traveling to, or interacting with organizations or individuals located in Cuba, Iran, North Korea, Sudan, Syria or other OFAC-sanctioned countries.
- Defense articles and controlled technical data identified on the United States Munitions List (USML)
- In the event that a proposed research agreement involves export control issues, you will be required to work with the Office of Research Services, as well as the Office of Export Controls, to resolve these issues. The University reserves the right to decline a proposed agreement/award if the export control issues are overly restrictive, ambiguous or otherwise not manageable under the circumstances.

* **By checking this box, I acknowledge the information above and agree to work with the Office of Research Services and Office of Export Controls for any proposed agreement involving export control issues.**



The Dialogue Begins...

Will non-publicly available information be required for this research (for example, will you need access to third-party proprietary technical data in order to perform the research)?

A “Yes” answer will trigger an export review. Confidential or proprietary information that cannot be publicly disclosed may cause your research to be subject to export control regulations.

Do you intend to publish, teach, or otherwise share information arising during or resulting from your research with the interested public?

A “No” answer will trigger an export review. In this case, not publishing or publicly sharing your resulting research may subject your research to export control regulations as well.



The Dialogue continues...

Why is the Office of Export Controls concerned about proprietary information and publishing?

Fundamental research

'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.

(According to NSDD 189)



Exempt from Regulation

Fundamental Research

No restrictions on dissemination (this applies to technological data, not developed hardware)

Educational Information

Released by instruction in catalog courses of academic institutions

Published or Publicly Available Information

Generally accessible to the interested public in any form (including open conferences and workshops)

Certain activities may remain regulated regardless of these exemptions.

For example, weapons proliferation and defense services.



What is subject to regulation?

Research with foreign national restrictions, publication restrictions or other specific access or dissemination controls

Physical exports

Deemed exports

Confidential/proprietary technology, information restricted for national security reasons

Transactions with restricted parties

Defense services

Weapons proliferation

Exportation of services to sanctioned countries

Cuba, Iran, North Korea, Sudan, Syria

Antiboycott activities

Non-U.S. sanctioned boycotts

Arab League boycott of Israel



Lets revisit the rest of the infosheet questions...

Does the current proposal involve sending or hand-carrying OU items, equipment, or materials to another country?

-Exports are subject to regulations

Does the current proposal involve the fabrication of hardware, equipment, or materials (including biologicals)?

-Fabrication of hardware is not exempt, even if performed on a fundamental research award.

Does the current proposal involve designing, developing, modifying, or otherwise working with or furnishing assistance related to defense articles or controlled technical data identified on the United States Munitions List (USML)?

-All proposals and awards that involve defense articles enumerated on the USML will trigger a review from OEC.



Lets revisit the rest of the infosheet questions...

Does the current proposal involve any foreign military forces or units?

Does the current proposal involve developing encryption products?

Does the current proposal involve the furnishing of assistance (including training) in the integration of a satellite or spacecraft to a launch vehicle, including both planning and onsite support OR the furnishing of assistance (including training) in the launch failure analysis of a satellite, spacecraft, or launch vehicle?

A “yes” answer to any of these will trigger a review as it may be subject to export control regulations



What is a Foreign Government Talent Recruitment Program?

Department of Energy (DoE) defines a “talent program” as: “any foreign-state-sponsored attempt to acquire US scientific-funded research or technology through foreign government-run or funded recruitment programs that target scientists, engineers, academics, researchers, and entrepreneurs of all nationalities working or educated in the United States.”

The definition for a Foreign Government Talent Recruitment Program (FGTRP) can be found here:

<https://www.directives.doe.gov/directives-documents/400-series/0486.1-BOrder/@@images/file>





Distinguishing Features of a FGTRP include:

Compensation provided by the foreign state to the targeted individual in exchange for the individual transferring their knowledge and expertise to the foreign country. The compensation can take several forms, such as cash, research funding, honorific titles, career advancement opportunities, promised future compensation, or other types of remuneration or consideration.

Recruitment refers to the foreign-state-sponsor's active engagement in attracting the targeted individual to join the foreign sponsored program and transfer their knowledge and expertise to the foreign state. The targeted individual may be employed and located in the U.S., or in the foreign state. Recruitment would not necessarily include an invitation to attend or present work at an international conference



Additional Features Include:

- Focus on individual researcher instead of project/subject matter
- Remuneration (salary, stipend, research funding, etc.) significantly above “market” for expected activities
- Foreign entity title for researcher implies greater connection than underlying facts
- Foreign residency application encouraged or facilitated
- Requires changing of researcher’s primary institute affiliation for purposes of journal citations
- Fundamental research purpose unclear or undefined



More about FGTRP's:

- Many countries sponsor talent recruitment programs for legitimate purposes of attracting researchers in targeted fields
- Many programs utilize legitimate means of attracting talent, including offering research fellowships and grants to incentivize researchers to physically relocate
- However, some programs encourage or direct unethical and criminal behaviors
- Contracts for participation in some programs, including some sponsored by the Chinese government, include language that creates **conflicts of commitment** and/or **conflicts of interest** for researchers
 - Requirements to attribute awards, patents, and projects to the foreign institution, even if conducted under U.S. funding
 - Requirements to recruit or train other talent recruitment plan members, circumventing merit-based processes
 - Requirements to replicate or transfer U.S.-funded work in another country



Transparency and full disclosure are needed to properly assess risks.

A **conflict of interest** is a situation in which an individual, or the individual's spouse or dependent children, has a financial interest or financial relationship that could directly and significantly affect the design, conduct, reporting, or funding of research.

A **conflict of commitment** is a situation in which an individual accepts or incurs conflicting obligations between or among multiple employers or other entities. Many institutional policies define conflicts of commitment as conflicting commitments of time and effort, including obligations to dedicate time in excess of institutional or funding agency policies or commitments. Other types of conflicting obligations, including obligations to improperly share information with, or withhold information from, an employer or funding agency, can also threaten research security and integrity, and are an element of a broader concept of conflicts of commitment.





Disclosure and Conflict of Interest:

Researchers and academics must familiarize themselves with disclosure and conflict-of-interest requirements imposed by the University and the U.S. Government and carefully review any foreign contracts or agreements into which they may wish to enter.

International activities fall under the Board of Regents Conflict of Interest Policy.

Transparency and full disclosure of the terms of participation in these talent plans are essential for the University to appropriately assess risk.

Establishing and implementing transparency regarding all sources of research support is necessary to avoid abuse of the open access offered by the U.S. research environment and to create a grant-funding program that is fair and equitable.



University of Oklahoma Conflict of Interest:

What should be reported with respect to research?

- Work for any other university, institution or government (compensated or uncompensated)
- Support from any other university, institution or government for your research, for example by providing laboratory space, assistants, or materials
- Titles at any other university, for example professor, lecturer, or visiting professor
- Personal compensation, gifts, or personal reimbursement (for example, travel or lodging) from an entity that sponsors your research
- Work for, own equity in, or serve as an officer for a company related to your research
- Confidentiality agreements for your research results or an agreement to delay their disclosure
- SBIR/STTR funding through a company that you or your family own, have equity in, or work for



In closing:

- Many countries sponsor foreign talent recruitment programs for legitimate purposes of attracting researchers in targeted fields. However, some programs encourage or direct unethical and criminal behaviors
- Know the features of a talent program:
 - Focus on individual researcher instead of project/subject matter
 - Remuneration (salary, stipend, research funding, etc.) significantly above “market” for expected activities
 - Foreign entity title for researcher implies greater connection than underlying facts
 - Foreign residency application encouraged or facilitated
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If something looks too good to be true...chances are there's a catch



- Disclose any conflict of interest or conflict of commitment to the Conflict of Interest office.
- Disclose any conflict of interest or conflict of commitment required for Sponsored research.
- Understand that transparency is key, an employee's failure to properly disclose foreign financial support, including foreign talent plan participation, may result in lasting damage to the University given that it may restrict our ability to obtain federal research funding.



Contact Information:

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