GOVERNMENT AND REGULATORY AFFAIRS
BLAST

Export Controls and the "Deemed Export Rule"
Why the Laws Are Applicable to Higher Education

March 2014

STATUTE/REGULATION SOURCE

Government regulations that control the "export" or "re-export" of goods, software, and technologies include the following

- *The International Traffic in Arms Regulations (ITAR)* – US Department of State: ITAR regulates the sale, export, and re-transfer of defense articles and defense services intended as an integral part of the US government's efforts at safeguarding US national security.
- *Export Administration Regulations (EAR)* – Bureau of Industry and Security, US Department of Commerce: EAR regulates items designed for commercial purposes which could have military applications, such as computers or software. The regulations cover both goods and technology.
- *Office of Foreign Assets Control (OFAC)* – Embargoed Country Transaction Controls, US Treasury Department: The US Treasury Department is responsible for economic and trade sanctions against targeted foreign countries and their agents, terrorists and terrorism-sponsoring organizations, and international narcotics traffickers. OFAC administers and enforces economic sanctions programs against s

BRIEF DESCRIPTION

These regulations control what hardware, software, technology, and data can be:

- Exposed to certain foreign nationals working/residing in the United States
- Shipped/transported/transmitted by any means to certain non-US destinations for certain end uses by certain persons/entities

The federal government enacted laws that regulate the distribution of certain technology, information, and services to foreign nationals and foreign countries for reasons of national security and foreign policy. The laws are relevant to colleges and universities, particularly in respect to travel and research by persons employed by or representing the institution.

POTENTIAL/ACTUAL IMPACT

Failure to develop compliance policies and procedures could result in significant fines up to $1 million and 20 years imprisonment where critical offenses have occurred. Persons not complying with the institution's policies and procedures can be held personally liable.

DISCUSSION

The export of certain hardware, software, technology, and data is regulated for reasons of national security, foreign policy, and competitive trade reasons. "Deemed exports" are releases of controlled technology and software source code to foreign nationals located in the United States. A license from one or more US government agencies may be required to carry out certain sponsored research or other educational activities involving specified products and services or to work in certain countries

A "deemed export" can occur:

- By providing drawings to a foreign national
- Through technical conversations and collaborations with a foreign national whether in person, by surface mail, and electronically
- By providing technical training
- By working with foreign national interns and students
- Through collaborations within certain foreign destinations
- From access to databases that contain controlled technology

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An institution's export controls compliance policies and procedures require consideration of:

+ What is being exported?
+ Where it is being exported?
+ Who will receive the item?
+ How will the item be used?

Exemptions for fundamental research and information considered to be in the public domain exist. To be certain any such research or information qualifies, it is important to consult with the institution's legal counsel, the compliance officer, or the export control officer.

EXAMPLE

In May 2013, the US federal government brought criminal charges against three researchers at an East Coast university alleging that they conspired to take bribes from Chinese medical and research outfits for details about university research into magnetic resonance imaging (MRI) technology.

ACTION

Managing compliance with export regulations typically falls to human resource personnel, department deans and chairs, the Office of Sponsored Programs, and the research foundation where one exists. Compliance steps include:

+ Identify foreign national employees, at home and abroad
+ Review export license needs on an ongoing basis
+ Review and monitor research activities
+ Provide training
+ Create an export compliance website that includes all necessary forms

Risk managers should become familiar with their institution's export policies and procedures. If one doesn't exist, bring it to the attention of your compliance officer. Many institutional export compliance policies and procedures are available online. Examples include:

+ The George Washington University: http://my.gwu.edu/files/policies/ExportControlFINAL.pdf
+ University of Pennsylvania: http://www.upenn.edu/researchservices/exportcontrols.html
+ Brown University: http://www.brown.edu/research/about-brown-research/policies/export-control-policy

SOURCES AND REFERENCES

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2. Association of American Universities, Export Controls: http://www.aau.edu/policy/export_controls.aspx?id=7314