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What Higher Education Needs to Know About US Export Controls & Economic Sanctions

Overview. The US maintains and vigorously enforces a wide range of export controls and economic sanctions that impact US persons, and regulate the export and reexport of US products and services, and all transactions with certain sanctioned parties and countries. These laws and regulations apply broadly to US institutions and universities, though the fundamental research exclusion and other special authorizations allow greater latitude in certain circumstances.

Export Controls. The US Government maintains various regulations that govern exports of commodities, software, technology and, in certain cases, services.

- **Commercial Items.** The Export Administration Regulations (“EAR”) establish controls applicable to exports and reexports of commercial and “dual use” items (having both a commercial and military use). Nearly all items in the US, including everything from pencils to toxins to sophisticated computer software, are subject to the EAR.
- **Encryption Items.** The EAR also control the export of items containing encryption or that are designed to call-on or leverage encryption in other products. These controls apply even if the encryption used in the product is of a standard commercial type, or involves open source encryption that has been integrated into a commercial product.
- **Military Items.** The International Traffic in Arms Regulations (“ITAR”) govern the manufacture, export, import, and brokering activity involving military articles, as well as associated technology (i.e., technical data) and services.

Economic Sanctions. The US maintains trade sanctions against specified countries and individuals. These sanctions are administered by the Office of Foreign Assets Control (“OFAC”). Currently, the US maintains broad economic sanctions prohibiting virtually all transactions with the Crimea region of Ukraine, Cuba, Iran, North Korea, Sudan, and Syria. OFAC also maintains lists of prohibited persons and entities located in and outside the above countries. These sanctions

generally restrict all transactions involving these countries, including educational and employment opportunities, though important special authorizations may apply.

Basic Concepts and Terminology. US export control laws and trade sanction programs regulations use concepts and terminology that is not always intuitive.

- What is an export? Under US law, an export (or reexport) can occur in many ways, including the following:
 1. actually shipping physical goods, software, or technical data to a third country;
 2. electronic transmission of software or technical data to a person located outside the United States, to include by email or internet access;
 3. sharing technical information with a non-US national in the United States (a “deemed export”) or outside the United States, such as by technical discussions during meetings, telephone conversations, emails, or internet access; or
 4. performing a service where the benefit is received in a foreign country.
- **What is a Reexport?** The US takes the position that export control restrictions travel with US origin products/technology and that a foreign person receives US origin products/technology subject to US legal restrictions. The term reexport refers to the shipment of a US-origin item from one foreign country to another foreign country, or the release of US-origin software or technology to a foreign national outside the United States.
- **What is a Deemed Export?** A deemed export is the release of technology to a foreign national in the United States.
- **What is a US Person?** A US person is a citizen of the US, a permanent resident alien of the US (a green card holder), or a protected individual.

- **What Technology is Subject to Export Controls?**

Generally speaking, controlled technology refers to proprietary, non-public information related to the development, production, or use of controlled items.

- **What is Fundamental Research?** Information that results from fundamental research is not subject to export control. Fundamental research is defined as any basic and applied research in science and engineering, the results of which are ordinarily published and shared broadly within the scientific community. However, DoD now takes the position that fundamental research must be scoped and negotiated in writing prior to relying on the exclusion. Acceptance of restrictions on the right to publish, even after the fact, may invalidate the exclusion.
- **What is a Restricted Party List?** The US Government publishes various lists of individuals and entities that are restricted from receiving certain US-origin goods and services. These lists are very lengthy, and new persons and entities are regularly. Also, many restricted parties are located in countries friendly to the United States, so you cannot presume that a party located in a “friendly” country will not be found on a restricted list.

Compliance Essentials. The US government encourages universities and institutions to establish an effective risk-based export compliance program, including appropriate policies and procedures, sufficient compliance resources, a training program, and a system for reporting and reviewing suspected violations. To qualify for credit in case of an enforcement action, such policies must be in writing and cover the following areas:

- **Licensing Jurisdiction and Classification.** Institutions and universities are expected to identify the export controls applicable to their research as well as any equipment or materials by classifying the item for export purposes.
- **Screening.** Certain research may be subject to restrictions and/or licensing requirements depending on the nature of the item exported or the identity/nationality of the parties. Institutions and universities are expected to screen the research and the parties against restricted party lists, and ensure that appropriate compliance measures are taken.
- **Deemed Exports.** In addition to physical exports, US law also restricts the release of controlled technology to a foreign national in the US (“deemed exports”). Even if institutions and universities do not physically export products, software, or technology, a compliance program may still be necessary in order to address access to controlled technical data by non-US faculty, researchers, and students.
- **International travel.** Traveling with certain items, including personal laptop computers containing encryption software or export-controlled technical data, to a third country may require a license or other authorization depending upon the travel destination. Travel to comprehensively sanctioned destinations, such as the Crimea, Cuba, Iran, N. Korea, Sudan, and Syria, to teach a class, conduct research, or

offer a lecture is likely to require a license or other authorization.

- **Investigations and Disclosures.** The US government encourages institutions and universities to conduct internal investigations and provide voluntary self-disclosures of apparent or potential violations. Voluntary self-disclosures are a mitigating factor and are typically considered in deciding whether violations should be addressed by a warning rather than a penalty.

Penalties and Enforcement. Violation of US export control and sanctions regulations can result in civil penalties and criminal prosecution for individuals, institutions, and universities as well as federal debarment, loss of export privileges, and significant reputational damage. Since 9/11, the US government has significantly increased enforcement actions relating to all aspects of export and sanctions compliance.

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