

HOWARD UNIVERSITY POLICY

Policy Number:	Series: 100-010 Academics and Research
Policy Title:	EXPORT CONTROL POLICY
Responsible Officers:	Provost and Chief Academic Officer Associate Vice President and Institutional Official, Regulatory Research Compliance
Responsible Offices:	Office of the Provost and Chief Academic Officer Office of Regulatory Research Compliance
Effective Date:	Original Policy: 600-010 Sponsored Programs Export Control, April 3, 2007, (Updated 2015) August 11, 2023 (Revised Policy)

I. POLICY STATEMENT

It is the policy of Howard University (“the University”) to comply with U.S. export control laws and regulations. Hence, this policy intends to provide awareness of the U.S. export control laws and regulations and help the University faculty, staff, and students understand the rules and regulations governing export control. The implementation and enforcement of export control laws cover both the transfer of materials and knowledge (technology, technical data, information, products, and defense articles), including but not limited to consulting, training, and speaking conferences.

This policy complies with federal regulations promulgated by the U.S. Department of Commerce Export Administration Regulations (EAR) 15CFR §§730-774; U.S. Department of State, International Traffic in Arms Regulations (ITAR) 22CFR §§120-130; and U.S. Department of Treasury, Office of Foreign Assets Control (OFAC).

II. RATIONALE

Export control laws are a series of federal regulations that control the conditions under which the export of certain items, critical technologies, related technical data, and certain services are managed to protect national security and the domestic economy. These laws have existed for many years, but the events of 9/11 and, recently, the Export Control Act of 2018, the National Security Presidential Memorandum - 33 (NSPM-33), and the revised Financial Conflict of Interest Disclosure (FCOI) requirements have motivated heightened concerns about national security and stricter interpretation and enforcement of export control laws and regulations by the federal government. Therefore, all faculty, staff, and students at the University must understand and comply with their responsibilities under these laws before undertaking one or more activities described in **Section V.A.**

III. ENTITIES AFFECTED BY THIS POLICY

This policy applies to the entire University research enterprise and any affiliated entities, including but not limited to Howard University Hospital and its staff, when contemplating research that includes an international component(s), consulting or working with/for foreign companies or governments.

IV. DEFINITIONS

The following meanings apply if referenced in this policy or encountered during an Export Control consideration. Please refer to the Addendum for more information.

- A. **Access Information** – Information that allows access to encrypted technology or encrypted software in an unencrypted form. Examples include decryption keys, network access codes, and passwords (15 CFR 772).
- B. **Bureau of Industry and Security (BIS)** - An agency of the Department of Commerce that administers and enforces the Export Administration Regulations (EAR).
- C. **Commerce Control List (CCL)** - List of items under the Bureau of Industry and Security (BIS) 's export control jurisdiction of the Department of Commerce. The CCL is divided into ten categories and subdivided into five groups. (See Addendum A.)
- D. **Controlled Unclassified Information (CUI)** - Information the government creates or possesses, or that an entity creates or possesses for or on behalf of the government, that a law, regulation, or government-wide policy requires or permits an agency to handle using safeguarding or dissemination controls. CUI does not include classified information or information a non-executive branch entity possesses or maintains in its own systems that did not come from, or was not created or possessed by, or for, an executive branch agency or an entity acting for an agency. (See Addendum A.)
- E. **Deemed Export** - Release or transmission of information or technology subject to export control to any foreign national in the U.S., including graduate students and training fellows. Such a release of information is considered an export to the person's home country.
- F. **Defense Article** - Any item designated in the U.S. Munitions List. These items consist of articles specifically designed, developed, configured, adapted, or modified for military applications and related technical data. Examples include specified chemical agents, cameras designated for military purposes, specified lasers, some GPS equipment, and any directly related technical data (ITAR 120.6).
- G. **Defense Service** - Furnishing of assistance, including training, anywhere (inside the United States or abroad) to foreign persons in connection with the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of a defense article, and the furnishing of any related technical data (22 CFR §120.9). The Bona Fide Employee Exemption [ITAR 125.4(b)(10)] does not apply to where the employee will be provided a Defense Service.

- H. **Debarred Parties List** - List of individuals denied export privileges under ITAR and maintained by the State Department. (See Addendum A.)
- I. **Denied Persons' List** - A list of persons who have been issued a denial order from the Commerce Department's Bureau of Export Administration (BXA). U.S. exporters and third parties in general, are prohibited from dealing with these persons in transactions involving U.S. items. (See Addendum A.)
- J. **Dual-Use** - Items that have both civilian and military or proliferation applications. While this term is used informally to describe items that are subject to the EAR, purely commercial items are also "subject to the EAR." (See Addendum A.)
- K. **Educational Information** - Information that is normally released by instruction in catalog-listed courses and associated teaching laboratories of academic institutions is considered "Educational Information" and is not subject to Export Controls.
- L. **Entity List** – Exports to foreign end-users engaged in proliferation activities are usually prohibited without a license. These are administered on a case-by-case basis.
- M. **Export** - Any item (i.e., commodity, software, technology, equipment, or information) sent from the U.S. to a foreign destination is considered an export. Examples of exports include the actual shipment of goods and the transfer of written documents or information via email, phone, fax, Internet, and verbal conversations.
- N. **Export Administration Regulations (EAR)** - Regulations promulgated and implemented by the Department of Commerce that regulate the export of goods, software, and related technology identified on the Commodity Control List (CCL). (See Addendum A.)
- O. **Export Controls Act of 2018:** This bill establishes the authority and responsibilities of the U.S. President related to export control. (See Addendum A.)
- P. **Anti-Boycott Act of 2018:** This bill establishes the authority and responsibilities of the U.S. President in prohibiting specified actions concerning foreign boycotts against a country that is friendly to the United States and may impose civil penalties for violations of boycott prohibitions. (See Addendum A.)
- Q. **Export Control Classification Number (ECCN)** - Identifies the Commerce Control List classification and related export requirements of commodities, software, and technology subject to the export licensing authority of the Department of Commerce, BIS. All commodities, software, and technology not specifically identified on the CCL are classified as "EAR99."
- R. **Export License** - A written authorization provided by the appropriate governing regulatory authority detailing the specific terms and conditions under which the export or re-export of Export Controlled items is allowed.
- S. **Export License Exception** - An Export License Exception is an authorization that allows a person to export or re-export, under very specific conditions, items that would normally require a license. (See Addendum A.)

- T. **Foreign National** - A Foreign National is defined as anyone who is not a U.S. citizen, not a lawful permanent resident of the U.S., or does not have refugee or asylum status in the U.S. Any foreign corporation, business association, partnership, trust, society or any other foreign entity or group, as well as international organizations and foreign governments are considered “Foreign National(s).” Even when a foreign person is in the U.S., the individual may still be subject to export control restrictions, regardless of their employment or visa status.
- U. **U.S. Nationals or Permanent Residents Working for a Foreign Company in a Foreign Country:** Individuals working for a foreign company in a foreign country would adopt the nationality of the foreign entity regardless of citizenship or residence. Transfer of technical data, excluding “fundamental research” data to a foreign person/company/country is deemed an export.
- V. **Fundamental Research** - As defined by National Security Decision Directive 189 (NSDD 189), Fundamental Research is any “basic and applied research in science and engineering, the results of which are ordinarily published and shared broadly within the scientific community...” Information that results from Fundamental Research is not subject to Export Control.
- W. **Public Domain** – Under the ITAR, information that is published and generally accessible or available to the public is not export controlled. Examples include (a) sales at newsstands and bookstores; (b) subscriptions that are available without restriction to any individual who desires to obtain or purchase the published information; (c) second-class mailing privileges granted by the U.S. government; (d) libraries open to the public or from which the public can obtain documents; (e) published patent applications and issued patents; (f) unlimited distribution at a conference, meeting, seminar, trade show, or exhibition, generally accessible to the public, in the United States; (g) any public release after approval by the cognizant U.S. government agency; and (h) fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community. (See Addendum A.)
- X. **Publicly Available** -The EAR uses the term “publicly available” rather than “public domain.” Under the EAR, information is publicly available when it becomes generally accessible to the public. Additionally, the EAR specifically provides that software that is available for general distribution is publicly available (except for encryption software with a symmetric key length exceeding 64 bits). (See Addendum A.)
- Y. **Re-Export** – When any item, i.e., commodity, software, technology, equipment, or information, is sent from one foreign country to another foreign country. It is an actual shipment or transmission of items from the United States.
- Z. **Release** – A visual or other inspection or “releasing” the technology that reveals EAR-controlled technology or source to a foreign person regardless of location.

- AA. **Sanctioned Country** – Even when exclusions to EAR or ITAR apply, the U.S. Treasury Department, Office of Foreign Assets Control may prohibit payment, travel, and the transfer of items, assets, and services of value to sanctioned nations. (See Addendum A.)
- BB. **Specially Designated Nationals (SDN)** - Any person who is determined by the U.S. Secretary of the Treasury to be a specially designated national for any reason under regulations issued by the Office of Foreign Assets Control. U.S. persons are prohibited from having transactions with the persons listed in the SDN.
- CC. **Subject to the Export Control Regulation (EAR)** – Describes those items and activities over which the Bureau of Industry and Security (BIS) exercises regulatory jurisdiction. The CCL categorizes items with an alpha-numeric sequence called an Export Control Classification Number (ECCN). The sequence has three primary parts: the category (first digit), the product group (second digit), and the level of restriction or type control (last three digits). The ECCN may also include subparts that identify detailed characteristics of an item.
- DD. **Technical Assistance** - Technical assistance may take the form of instruction, skills training, working knowledge, and consulting services and may also involve the transfer of technical data.
- EE. **Technical Data** - Information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of controlled articles. This includes information in the form of blueprints, drawings, plans, instructions, diagrams, photographs, models, formulae, tables, engineering designs and specifications, manuals, and instructions written or recorded on other media or devices such as disk, tape, or read-only memories. The ITAR definition does not include information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, or information in the public domain, general system descriptions, or basic marketing information on function or purpose (ITAR Ch. 120.10).
- FF. **Technology** - Any specific information and know-how (whether in tangible forms, such as models, prototypes, drawings, sketches, diagrams, blueprints, manuals, software, or in intangible form, such as training or technical services) that is required for the development, production, or use of a good, but not the good itself. The information takes the form of technical data or technical assistance.
- GG. **Transfer:** Transfer includes but not limited to shipping, mailing, emailing, and traveling with export-controlled items

V. POLICY PROCEDURES

A. How the Policy Will be Implemented

The Associate Vice President and Institutional Official, Office of Regulatory Research Compliance, is the Responsible Officer for making decisions on research-related Export Controls at the University.

Each principal investigator (PI) is responsible for identifying when a potential export controls or embargoes law governs their sponsored program (e.g., research that includes international activities, consulting, or working with foreign organizations/companies or governments, working with classified or controlled unclassified materials (CU), encryption technology, nuclear energy, biohazardous agents, debarred country(s) or person(s), etc. (see link: <https://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>; <https://www.bis.doc.gov/index.php/policy-guidance/deemed-exports/deemed-exports-faqs>). When it is recognized that an export controls license may be required, the PI notifies the Responsible Officer in writing. After notification, the Responsible Officer determines whether a fundamental research exclusion is applicable or an application for a license is required.

PIs are responsible for determining whether an export controls law will impact their research. However, PIs make seek guidance from the ORRC, HU Responsible Officer, or other appropriate HU offices (Office of General Counsel (OGC), Research Administrative Services, or Procurement), Center for Disease Control and Prevention (CDC), or the Department of Commerce. Activities that are subject to export controls include:

1. **Traveling overseas with high technology equipment, confidential, unpublished, or proprietary information or data** – Traveling with certain types of high technology equipment includes but is not limited to advanced global positioning system (GPS) units, scientific equipment, or with controlled, proprietary, or unpublished data in any format may require an export license depending on your travel destination.
2. **Traveling with laptop computers, web-enabled cell phones, and other personal equipment** – Laptop computers, web-enabled cell phones, and other electronics containing encryption hardware or software and/or proprietary software can require an export license to certain destinations. Generally, an export license will be required to take any items to or through any sanctioned country. In addition, individuals/teams working with CUI-deemed research or materials on laptops are not to travel outside the United States with such laptops.
3. **Use of 3rd Party Export Controlled Technology or Information** – University activities involving export-controlled information, items, or technology received from outside the university are not protected under the Fundamental Research Exclusion, and all research involving the use of export-restricted technology is subject to all export controls.

4. **Sponsored research containing contractual restrictions on publication or dissemination** – The vast majority of research done at the University is shielded from export controls under the Fundamental Research Exclusion. However, this protection is lost whenever the University, or the researcher, agrees to allow any restrictions on the publication, dissemination, or access to the research by foreign nationals.
5. **Shipping or Taking Items Overseas** – University activities that involve the transfer of project information, equipment, materials, or technology out of the U.S. by whatever means will be subject to export controls and may require an export license(s) depending on the item, destination, recipient, and end-use.
6. **Providing Financial Support/International Financial Transactions** – University activities involving international payment of funds to non-U.S. persons abroad need to be verified to ensure that the University is not inadvertently providing financial assistance to a blocked or sanctioned entity. Examples include providing support via subcontracting to a non-U.S. university or providing payments to research subjects in other countries. In addition, university activities that involve foreign national faculty, students, staff, visiting foreign scientists or collaborator(s), or other foreign entities (e.g., non-U.S. companies, university, or other organizations) or research that will include travel to international conferences to present unpublished results may be subject to export controls especially if any of the foreign nationals are from embargoed or sanctioned countries.
7. **International Field Work** – Research projects where any part of the research will occur outside the U.S. (e.g., fieldwork outside the U.S.), especially in Biological Sciences and Engineering, may not qualify under the Fundamental Research Exclusion and may be subject to export controls.
8. **International Consulting** – Providing professional consulting services overseas, especially to embargoed or sanctioned countries (e.g., China, Iran, Syria, Cuba, Sudan, and North Korea), is, in most cases, strictly prohibited.
9. **Appropriate Disclosures** – Anyone working with a foreign government, agencies, companies/corporations, or institutions of higher learning in a foreign country or in the United States on behalf of a foreign entity (independently or collaboratively), must fully disclose the nature of the relationship and the benefits involved. See Addendum.

B. Roles and Responsibilities

1. **Principal Investigator/Project Director (PI/PD)** - The PI/PD is responsible for compliance with export control laws and this policy. Supplement, 1 of Section 732, includes a decision tree that may be referred to in completing the export control determination.
2. **Associate Vice President and Designated Institutional Official** - Oversees the University's research-related export control compliance program and signs research-related export license applications.

3. Office of Regulatory Research Compliance (ORRC):

- i. Work with the other University Offices to guide research-related export license application process;
- ii. monitors and oversees the research-related export control program;
- iii. maintains copies of all research-related export control documentation

4. Research Administrative Services (RAS) - If the RAS identifies an export controls law or regulation that may govern the proposed sponsored program, and the PI/PD has not already contacted the Responsible Officer, RAS will notify the Responsible Officer directly in writing and copy the PI/PD.

5. Office of the General Counsel (OGC) - As needed, advises the University researchers and administrators regarding export control laws and regulations and the university policy. Assists in preparing export control license applications. Access and retains records. As necessary, the OGC will provide assign two Counsels (internal and external) to either advise or participate as members of the Export Control Ad Hoc Committee when discussing challenging cases or there is a violation of the Export Control Policy.

6. Faculty, Staff, Students, and University Affiliates- All faculty, staff, students, and University affiliates must be aware of export control laws as applicable to their activities.

C. Communications Plan

The ORRC will continue reviewing and revising the policy to reflect significant changes in export control law and regulations. Additionally, the revised policy will be communicated to the University community by posting it on the University's policy and ORRC websites.

D. Required Training

The University requires researchers, including consultants, collaborators, and subcontractors, to complete Export Compliance Training from the Collaborative Institutional Training Initiative (CITI) website. (See Addendum B.)

Supplemental training materials are available through the BIS website. Additionally, the U.S. Department of Commerce, BIS provides a free online training room featuring a series of easy-to-use training modules. This training is related to activities covered by EAR. (See Addendum B.)

E. University Groups/Entities Exempted from Policy

Some of the several standard exclusions and exemptions that may remove University research from the application of export control laws and regulations under Fundamental Research Exemption (FRE) and other export control exemptions are discussed in this section.

1. Fundamental Research Exclusion

Fundamental research means basic or applied research in science and/or engineering at an accredited institution of higher learning, generating information that is ordinarily published and shared broadly within the scientific community and is excluded from export control regulations. This means that when University research meets this definition, information, but not materials or technology, resulting from that research may be disclosed to foreign nationals, and that such disclosures are not subject to export control restrictions.

However, certain types of research at HU **will not qualify** for this exclusion if: (i) the University or investigator accepts any restrictions on the publication of the information resulting from the research, other than limited prepublication review by research sponsors to ensure that proprietary information is not inadvertently disclosed in the publication or to ensure that publication will not compromise the patent rights of the sponsor; or (ii) the research is federally funded and specific access and dissemination controls regarding the resulting information have been accepted by the University or investigator.

2. Educational Instruction Exclusion

The **exclusion** of educational instruction enables the disclosure of educational information provided through instructions in courses identified in the university catalog and associated teaching laboratories of academic institutions (EAR 15 CFR § 734.9) or information on general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities [ITAR 120.10(a)(5)]. This exclusion is based on the ITAR that "information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, or information in the public domain" should not be subject to export control restrictions.

3. Public Domain/Publicly Available Exclusion

A “**public domain**” **exclusion** applies if the information is in the public domain and is generally accessible to the public through unrestricted distribution. Public domain information (ITAR) and publicly available information and software (EAR) are published and generally accessible or available to the public through:

- I. Publication in periodicals, books, print, electronic, or any other media available for general distribution to any member of the public;
- II. Subscriptions that are available without restriction to anyone who may desire to obtain or purchase the published information;
- III. Public libraries, including university libraries from which the public can obtain documents;
- IV. Patents at the Patent Office and open patent applications;
- V. Through distribution at an “open” conference, meeting, seminar, trade show, or other open gatherings in the US (ITAR) or anywhere (EAR), which is

generally accessible by the public for a fee reasonably related to the cost and where attendees may take notes and leave with notes;

VI. Fundamental research (see previous page); or

VII. Educational information (see previous page).

F. Ad Hoc Committee on Export Control

When deciding on challenging or difficult cases or when there is a violation of the Policy on Export Control, the ORRC will assemble an Ad Hoc Committee consisting of representatives from OGC (one internal and one external), Research Administrative Services (RAS), Enterprise Technology Services (ETS), Biosafety, Office of the Chief Compliance, and Procurement. Representation from each of these offices will be situational depending on the subject, relevant expertise, and the need to know. On occasions, additional Ad Hoc members from Computer Science, Engineering, Physics, and or Microbiology may be needed. The AVP-ORRC will communicate conclusions from the meetings to the Investigator as guidance. When there is a significant violation of the Export Control Policy, meeting outcomes will be communicated to the Violator and copy the Provost, Vice President for Research, and General Counsel.

VI. INTERIM POLICIES

The Research Administrative Services Policy Number 600-010, with the effective date of April 3, 2007, remains the interim policy on Export Controls and Embargo.

VII. SANCTIONS

Disregarding this policy will result in appropriate sanctions, including the inability to continue with the research and draw-down on research funds and possible federal punishments. According to the federal government, export control law violators are subject to criminal and civil penalties. The Arms Export Controls Act and the ITAR state that willful violations of the defense controls can be fined up to \$1,000,000 per violation, or 20 years of imprisonment, or both for a criminal violation. In addition, the Secretary of State may assess civil penalties up to \$500,000 per violation. The civil penalties may be imposed either in addition to, or in lieu of, any other liability or penalty. The articles exported or imported in violation, and any vessel, vehicle, or aircraft involved in such attempt is subject to seizure, forfeiture, and disposition. Finally, the Assistant Secretary for Political-Military Affairs may order the debarment of the violator, *i.e.*, prohibit the violator from participating in the export of defense items. In addition, BIS (OFAC enforcer) may suspend the export privileges of a company/organization.

VIII. HYPERLINKED RESOURCES

Policy Addendum A: Export Controls Definitions List

Policy Addendum B: Export Controls Training

Related Howard University Policies

- [100-007 Financial Conflict of Interest in Research Policy](#)

Department of Defense's International Traffic in Arms Regulations (ITAR)

- https://www.pmddtc.state.gov/regulations_laws/itar.html

Department of Commerce's Export Administration Regulations (EAR)

- <http://www.access.gpo.gov/bis/index.html>
- <http://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>

Denied Person List

- <http://www.bis.doc.gov/complianceandenforcement/liststocheck.htm>

Office of Foreign Assets Control's (OFAC) sanctions related to specific countries

- <http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml>
- <http://www.export.gov/index.asp>

Office of Regulatory Research Compliance Website

- www.orrchoward.com
- http://www.bis.doc.gov/index.php/forms-documents/doc_view/412-part-734-scope-the-export-administration-regulations

Decision Tree

- <https://www.visualcompliance.com/EARTree/732-2.cfm>

Export Administration Regulation (EAR)

- <https://www.bis.doc.gov/index.php/documents/regulation-docs/411-part-732-steps-for-using-the-ear/file>
- <https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>