

## Export Control Guidance for Visa Applications

Employers wishing to hire non-U.S. workers in a subset of temporary visa categories (i.e., H-1B, H-1B1 (Singapore/Chile), L-1, and O-1A status) at the time of application for such visa must certify to their compliance with applicable export control regulations on the immigration petition filed with the US Citizenship and Immigration Services.

- The employer needs to review whether the foreign national will have access to controlled information or technology that are subject to licensing requirements under the export control regulations.
- The employer must certify whether: (i) an export license is not required for the release of controlled information or technology to the foreign national; or (ii) if an export license is required, that the foreign national will not have access to such controlled information or technology until the employer obtains the required license.

**This Guidance provides additional information and a questionnaire to assist you in complying with this certification requirement. Please note that although a certification is not required, the activities of foreign nationals who are in the United States pursuant to other types of temporary visas (e.g., J-1, F-1) also must be conducted in accordance with applicable export control regulations. If you have questions about this guidance or the underlying regulation, please contact the Office of Research Compliance and Training.**

### Deemed Export Compliance Guidance

A variety of Columbia's international research, educational, and other programs entail bringing foreign nationals<sup>1</sup> to the U.S., as well as working with non-U.S. institutions. Many of the University's activities are exempt from U.S. export control regulations and therefore do not require export licenses. However, certain activities will trigger export licensing requirements. Failure to comply with export control laws can expose employees, students, and the University to severe criminal and civil penalties (including fines and prison sentences) as well as administrative sanctions (including loss of research funding and export privileges).

Certain schools and disciplines are more likely than others to involve controlled technologies in their research. The likelihood will increase if activities are taking place in a **sanctioned** country or if nationals of a **sanctioned** country are involved in performing research. Given the seriousness of these issues, however, and the fact that the certification requirement applies to many temporary visa applications, we recommend this reference guide to all principal investigators and hiring supervisors seeking a visa for a member of their team.

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<sup>1</sup> "Foreign national" refers to individuals who are not U.S. citizens, permanent residents, or individuals recognized as asylees or refugees.

This Guidance briefly summarizes one export control issue known as “deemed export.” **At the end of this Guidance is a questionnaire that will help you establish whether this issue affects you.**

### [What is a “Deemed Export”?](#)

We often think of an “export” as referring to the physical transfer of tangible items, software, or information to persons located outside the United States. For example, a shipment of equipment or an electronic transfer of software by e-mail to an overseas destination might readily be seen as an export.

But an export is also deemed to occur when controlled information or technology<sup>2</sup> (including software) is released to a foreign national within the United States. This is referred to as a “deemed export.” Technology is “released” when it is available for visual inspection (such as reading technical specifications), exchanged orally, or otherwise made available to the foreign national. A “deemed export” can occur when we release information or technology in the United States to a foreign national (including a faculty member or student) or when information or technology is released overseas to a foreign national from a different country (e.g., while at a conference in Canada, sharing specifications with a citizen of Iran also attending the conference).

A “deemed export” is treated as an export of information to the foreign national’s country of citizenship and, in some instances, to his or her country of birth (e.g., a release of technology to a Cuban national in the U.S. would be treated as an export of technology to Cuba).

For this reason, export licenses may be required for activities conducted here at Columbia if they involve a transfer of controlled information or technology to a foreign national and the activities do not fall into an exception to the export control regulations.

### [Certain Exclusions](#)

Not all exports require a license. In fact, many if not most University activities are exempt from export control laws, including under the concept of “fundamental research.” Stated in very general terms, the fundamental research exclusion refers to:

information resulting from basic and applied research in science or engineering at an accredited US institution of higher learning, where the resulting information is ordinarily shared broadly in the scientific community.

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<sup>2</sup> “Controlled information or technology” means specific information, generally related to design, development or production of an item which is subject to restrictions under one or more export control regimes, such as National Security, Nuclear Proliferation, Missile Technology, or Chemical and Biological Warfare or otherwise has particular Defense or Military applications.

Information that meets the criteria of “fundamental research” may be shared in many instances with foreign nationals in the United States, and in a few instances even when those activities take place outside the United States.

Other exemptions that apply to University activities include the:

- *Education Exclusion* (information concerning general scientific, mathematical or engineering principles commonly taught in colleges or universities that is released during catalog-listed courses and instruction in laboratories); and
- *Public Domain Exclusion* (information generally accessible to the public in any form, including information readily available at libraries open to the public or at university libraries, in patents, at open conferences, or in published books and periodicals).

### [Receipt of Confidential Information](#)

However, in the area of research, confidential technical data or information that we receive from a sponsor or other third party to perform a project (“input data”) may be considered controlled information under the law. In that case, an export license may be required even where the research results are exempt. In addition, an export license from U.S. government agencies may be required to carry out certain research or other educational activities involving certain sanctioned countries or highly controlled technologies.

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### **Visa Questionnaire**

The University is most likely to encounter a deemed export issue in the context of research activities. Accordingly, you should consider the following factors relevant to export compliance in planning a research project that may involve a foreign national.

**If the answer to any of the items (1) through (3) is “yes,” please contact your SPA Project Officer<sup>3</sup> before proceeding with the activity or any related visa certification.**

1. Are there any restrictions on the publication or presentation of the results in any way (e.g., pre-publication review, right to withhold permission for publication), other than prepublication reviews for a short period solely for purposes of patent review and to confirm there is no release of confidential information that had been received from the sponsor or other third party?

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<sup>3</sup> For information about whether and how this applies to activities and projects not handled by SPA, please contact the Office of Research Compliance and Training.

2. Does the activity involve the receipt of classified information from an external source or is performance of the research itself treated as classified? (Typically a sponsor or other third party will specify that the work involves classified information.)<sup>4</sup>
3. Are there any restrictions on foreign nationals performing work or accessing certain information or results, or any other limitations on participation based on country of origin or citizenship?

**If you answered “no” to items (1) through (3), please consider whether the project involves one or more of following factors (4) through (6). As indicated below, “Yes” answers to any of these additional questions require you to confirm that the information or technology is not controlled and subject to export licensing requirements under lists maintained by the U.S. Government. These items require familiarity with certain lists maintained by the U.S. Government, and if you need assistance with these or any other items, please contact your SPA Project Officer.**

4. Does the activity involve receipt or other access to technical or scientific information that is NOT publicly available and, if so, will NOT be published or shared broadly within the scientific community in the future? “Publicly available information” means information that is published, patented, or otherwise generally accessible to the public without the payment of a fee.
5. Does the activity involve the receipt of confidential information that is subject to export controls from any external source (even if you have not been required to execute a confidentiality agreement) that is subject to export controls? (Please see below regarding how to determine whether particular information is subject to export controls.)
6. Does the activity entail the use of technology or equipment that is subject to export controls?

Typically, if you are receiving information or technology from a sponsor, collaborator, or other external source, those external sources may be able to assist in determining whether the information or technology being provided is subject to export controls. If you are uncertain as to whether any technology, equipment, data or other technology you will use for a project is subject to export controls, as an initial step, you may wish to consult the sponsor, collaborator, vendor, or other external source providing the material.

To confirm whether technology at issue in items (4) through (6) is subject to export control regulations, you will also need to review the Export Administration Regulations (EAR) and the International Trafficking in Arms (ITAR) Regulations, the two primary export control frameworks. (Note that for research related to nuclear reactors and nuclear energy, regulations issued by the

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<sup>4</sup> Note that under University statutes, the University may not enter any agreement for sponsored research as a party to classified research; may not handle or transmit classified information, documents, material, or equipment; may not seek security clearances for any individual or facility; and may not control access to information in accordance with any security regulation.

Department of Energy and/or the Nuclear Regulatory Commission may apply.) Each of these sets of regulations includes a list of controlled technology. You will need to check the lists to verify whether the technology at issue is included. The EAR's Commerce Control List is available at [EAR CCL](#). The CCL is organized into 10 categories (Categories 0 through 9). Within each category, a number of controlled items are described. If the item is not described on the CCL, it falls into the basket category – EAR99 – and generally is not restricted in the United States. The ITAR's U.S. Munitions List is available at [ITAR USML](#). The USML is divided into seven categories, each of which similarly lists a number of controlled items.

**If none of factors (1) through (6) apply to your project, you may certify that no export license is required.**

Additional information regarding export control regulations is available on the [Research Compliance and Training website](#).