COMPLIANCE WITH US TRADE CONTROLS LAWS

Statement of Policy

Villanova University is committed to maintaining an open academic environment, protecting the academic freedom of its faculty and students, and encouraging the dissemination of information resulting from research and other activities. At the same time, some of our activities may be subject to U.S. laws and policies that govern the export of certain commodities, software, and technology items.

It is the policy of Villanova University to comply with all applicable statutes, executive orders, regulations, and contractual requirements covering the exports to foreign entities and persons, including foreign persons employed by and/or taking classes or conducting research at Villanova.

U.S. export controls laws and regulations apply to the physical export of controlled equipment, data, and materials to foreign countries, the disclosure of controlled information to foreign persons, wherever located, and access to controlled equipment and technology by foreign persons visiting the university. Under applicable law, any person who is not a U.S. citizen and not a lawful permanent resident (i.e., any person who is not a green card holder) is considered to be a foreign person, regardless of location. Thus, a non-U.S. graduate student or researcher, even if in the United States under a valid student or work visa, is considered a foreign person for purposes of U.S. export laws.

These are very complicated laws and regulations and they are not restricted to research or sponsored programs. They address all activity involving exports and the sharing of technology with foreign persons.

Fortunately, many of the University’s export activities are permissible under exceptions to and exclusions from the regulations, but one must not assume that one’s activities are exempt.

It is important that faculty and other researchers understand and comply with their obligations under the law. The consequences of violating the regulations can be severe, and include loss of research funding, fines, and/or prison time. The Office of Research and Sponsored Projects and the Office of the Vice President and General Counsel will assist investigators in complying with the export control laws, but the primary responsibility rests with the principal investigator of the research. You should contact these offices with any questions about compliance with U.S. trade controls laws.

Summary of Export Controls Laws

The U.S. government prohibits the unlicensed export of certain materials or information for reasons of national security or to protect U.S. economic interests. Most exports do not require government licenses. Only exports that the U.S. government considers “license controlled” under the EAR and/or ITAR require licenses.
Export controls usually arise for one or more of the following reasons:

- The nature of the export has actual or potential military applications or economic protection issues,
- The government has concerns about the destination country of the export, and/or
- The government has concerns about the declared or suspected end use or end user of the export.

Generally, an export includes any:

1. actual shipment of any covered goods or items,
2. the electronic or digital transmission of any covered goods, items or related goods or items,
3. any release or disclosure, including verbal disclosures or visual inspections, of any technology, software or technical data to any foreign entity or person, or
4. actual use or application of covered technology on behalf of or for the benefit of a foreign entity or person anywhere.

The term “export” can mean not only technology leaving the shores of the United States (including transfer to a U.S. citizen abroad whether or not it is pursuant to a research agreement with the U.S. government), but also transmitting technology to a foreign person, i.e., any individual who is not a U.S. citizen or permanent resident, within the United States. This is sometimes known as a “deemed export”. Even a discussion with a foreign researcher or student in a campus laboratory may be considered a “deemed export.” Export controls preclude the participation of all foreign persons in research that involves covered technology unless a license exception applies, or a license or other specific authorization has been obtained from the appropriate government agency.

What exports are governed by the U.S. Commerce Department?

Exports of U.S.-origin goods, software, and technology not specifically designed for military use, i.e., most everyday items, are considered by the U.S. Commerce Department under the Export Administration Regulations (the “EAR”). Under the EAR, licensing requirements and other export controls are based on the item to be exported, and the destination, end user, and end use of that item. Most everyday items can be exported to most destinations without a license under the EAR. Items controlled for export by the Commerce Department are listed in the Commerce Control List (the “CCL”), which forms a portion of the EAR.

What exports are controlled by the U.S. State Department?

In addition to the EAR, the U.S. government maintains controls on exports of defense articles, services, and technical data. Such defense exports are controlled under the International Traffic in Arms Regulations (the “ITAR”), which are administered by the U.S. State Department. With limited exceptions, any item controlled under the ITAR requires a license or other specific authorization before that item can be exported to a foreign entity or person. Items controlled for
export under the ITAR are listed on the U.S. Munitions List (the “USML”), which forms a portion of the ITAR.

**When do I need an export license or other authorization?**

When an item is controlled, a license or other authorization may be required before that item can be exported. This requirement relates not only to tangible items (prototypes or software) but also to research and research results themselves. If a license or other authorization is required in order to export an item outside the United States or to a foreign person in the United States, the relevant Villanova personnel must work with the Office of Research and Sponsored Projects and/or the Office of the Vice President and General Counsel to ensure the necessary authorization is applied for and, if obtained, followed closely.

**Certain countries, individuals, and entities are prohibited parties under U.S. law, and Villanova will take appropriate steps to prevent unauthorized exports to such recipients, and to prevent the export of any item in contravention of U.S. law.**

**Fundamental Research**

**What is the fundamental research exclusion for universities?**

Even if an item appears on one of the lists of controlled technologies, generally there is an exclusion for fundamental research (as long as there are no restrictions on publication of the research or other restrictions on dissemination of the information) or, in some cases, as long as the research or information is made public or is intended to be made public.

**Fundamental research**, as used in the export control regulations, includes basic or applied research in science and/or engineering at an accredited institution of higher learning in the U.S. where the resulting information either is ordinarily published and shared broadly in the scientific community or where the resulting information has been or is about to be published. Fundamental research is distinguished from research that results in information that is restricted for proprietary reasons or pursuant to specific U.S. government access and dissemination controls. University research will not qualify as fundamental research if: (1) the institution accepts any restrictions on the publication of the information resulting from the research, other than limited prepublication reviews by research sponsors to prevent inadvertent divulging of proprietary information or to insure that publication will not compromise patent rights of the sponsor; or (2) the research is federally funded and specific access or dissemination controls regarding the resulting information have been accepted by the university or the researcher.

**What is considered published information as used in the definition of fundamental research?**
The EAR and the ITAR approach the issue of publication differently. For the EAR, the requirement is that the information has been, is about to be, or is ordinarily published. The ITAR requirement is that the information has been published.

Information becomes “published” or considered as “ordinarily published” when it is generally accessible to the interested public through a variety of ways, including through publication in periodicals, books, print, electronic or any other media available for general distribution to any member of the public or to those that would be interested in the material in a scientific or engineering discipline. Published or ordinarily published material also includes the following: readily available at libraries open to the public; issued patents; and releases at an open conference, meeting, seminar, trade show, or other open gathering. A conference is considered “open” if all technically qualified members of the public are eligible to attend and attendees are permitted to take notes or otherwise make a personal record (but not necessarily a recording) of the proceedings and presentations. In all cases, access to the information must be free or for a fee that does not exceed the cost to produce and distribute the material or hold the conference (including a reasonable profit).

**What is public domain?**

Public domain is the term used for “information that is published and generally accessible or available to the public” through a variety of mechanisms. Publicly available software or technology is that which already is, or will be, published.

**Other U.S. Trade Controls**

*U.S. economic sanctions.* The United States Treasury Department, Office of Foreign Assets Control (“OFAC”) currently maintains over 20 different programs that restrict trade with particular countries, organizations, individuals, and/or vessels. These sanctions programs are frequently modified and vary widely depending on the target of the sanctions. Sanctions targets include countries (e.g., Cuba, Iran, and Sudan), specific individuals (e.g., global terrorists, narcotics traffickers), and national governments (e.g., Zimbabwe). A list of these sanctions programs can be found at [http://www.treas.gov/offices/enforcement/ofac/programs/](http://www.treas.gov/offices/enforcement/ofac/programs/).

OFAC also maintains a list of Specially Designated Nationals comprised of individuals, organizations, and vessels with which U.S. persons are prohibited from conducting virtually any transaction.

If any research project appears to or could involve a sanctioned party or country, including an individual from a sanctioned country, the Office of Research and Sponsored Projects or the Office of the Vice President and General Counsel should be contacted immediately. If for any reason a research project involving a sanctioned party or country has already been accepted or undertaken, work on the project must be frozen immediately and the Office of Research and Sponsored Projects and/or the Office of the Vice President and General Counsel notified. Any further communication with potentially sanctioned parties should be coordinated with the Office of Research and Sponsored Projects and/or the Office of the Vice President and General Counsel.
U.S. anti-boycott laws. The United States prohibits U.S. persons, as broadly defined, from complying with the Arab League’s boycott of Israel. Villanova University is committed to complying with U.S. anti-boycott laws. If you receive any contract or other official document in which you are asked to certify that you will not use Israeli-origin goods or suppliers on a particular contract, or where you otherwise think you are being asked to support the Arab League boycott of Israel, do not take any further action with respect to that transaction and contact the Office of Research and Sponsored Projects and/or the Office of the Vice President and General Counsel immediately.

Resources

- **Export Administration Regulations (EAR)**, Title 15, sections 730-774 of the Code of Federal Regulations (CFR) are promulgated and implemented by the Department of Commerce. The EAR regulate the export of goods and services identified on the Commodity Control List (CCL), Title 15 CFR section 774, Supp. 1. The EAR and CCL are available online at [http://www.access.gpo.gov/bis/](http://www.access.gpo.gov/bis/).
- **International Traffic in Arms Regulations (ITAR)**, 22 CFR sections 120-130, are promulgated and implemented by the Department of State and regulate defense articles and services and related technical data that are identified on the U.S. Munitions List (the "USML"), 22 CFR § 121.1. The ITAR and USML are available online at [http://www.pmddtc.state.gov/regulations_laws/itar_consolidated.html](http://www.pmddtc.state.gov/regulations_laws/itar_consolidated.html).
- **“Deemed Exports” Questions and Answers**, available online at [http://www.bis.doc.gov/deemedexports/deemedexportsfaqs.html](http://www.bis.doc.gov/deemedexports/deemedexportsfaqs.html)

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