Export Control
FAQ

This document provides an overview of export control; the restrictions associated with it; the criminal and civil penalties that the U.S. government imposes on individuals and institutions who violate export control laws; and sources of additional information.

1. What is export control (EC)?
EC refers to the set of laws, regulations, and policies that restrict the export of sensitive items/information and the provision of certain services. EC is designed to (i) restrict exports of goods and technology that could contribute to the military potential of U.S. international adversaries; (ii) prevent proliferation of weapons of mass destruction; (iii) advance U.S. foreign policy goals; and (iv) protect the U.S. economy and promote trade goals.

2. In Question 1, what is meant by sensitive?
The term sensitive refers to scientific or engineering information and items that may have military or dual use (i.e., both military and civilian use).

3. Does EC apply exclusively to activities funded by government grants and contracts?
No! An activity does not have to be associated with a funded project to be export controlled.

4. Which export-related laws are most likely to pertain to Loyola activities?
The most relevant agencies, laws, and regulations are as follows:

- Department of State: Arms Export Control Act
  – International Traffic in Arms Regulations (ITAR)
  – Cover military and space-related technologies
  – To determine which technologies are covered, see the U.S. Munitions List, 22 CFR Part 121:

- Department of Commerce: Export Administration Act
  – Export Administration Regulations (EAR)
  – Cover commercial and dual use technologies
  – To determine which technologies are covered, see the Commerce Control List, 15 CFR Part 774
    http://www.bis.doc.gov/policiesandregulations/ear/index.htm

- Department of the Treasury: Office of Foreign Assets Control (OFAC)
  – Enforces economic and trade sanctions against certain foreign countries.
  – Restricts travel to certain foreign countries; may require a license specifying restrictions on the information/items brought into the country, the types of services which can be performed, and the individuals with whom interactions are permitted
  – Regulates certain imports/exports, including research samples, artwork, or any research material.
5. For which types of actions do EC laws apply?

- Tangible items (equipment, components, materials, etc.), including laptops and smart phones, being sent or hand-carried outside U.S. borders.
- Regulated (“controlled”) technical information or software code that is being (i) shared with foreign persons or entities in the U.S. or (ii) transferred physically, visually, or orally to foreign persons abroad. Action (i) is an example of a “deemed export.”
- Items, information, or software intended for a person or organization identified on a U.S. restricted party list or intended for the design, development, production, stockpiling, or use of a nuclear explosive device, chemical or biological weapons, or missiles.

6. How are Deemed Export, Technology, and Technical Data defined?

- “Deemed Export” means the transfer or any type of disclosure of controlled “technologies” (EAR) or “technical data” (ITAR) to a foreign entity or individual anywhere including in the U.S. (15 CFR 734.2; 22 CFR 120.17).
- “Technology” is defined as specific information necessary for the “development,” “production,” or “use” of a product (EAR 772.1); “technical data” is defined as information required for design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of controlled articles (ITAR 120.10).

7. Are there exemptions to EC regulations? ITAR and EAR provide exemptions, which are not identically defined, but can be roughly described as follows:

- Public domain
  - Applies whenever information is publicly available and generally accessible through unrestricted means. Does not apply to physical items.
- Fundamental research
  - Applies to basic and/or applied scientific and engineering research that is conducted on campus and is ordinarily published or shared broadly with the scientific community. Does not apply to off-campus research; research conducted for corporations and other third parties that license university technology; or research for which publication restrictions exist.
- Education
  - Applies to educational information associated with courses published in the university bulletin and with teaching laboratories (ITAR) and to information commonly taught at Loyola (EAR); however this exemption does not apply to information that is proprietary or deemed as sensitive by the federal government.
7. Should Loyola faculty and staff have to be aware of EC? Yes.
   • Penalties for noncompliance are severe for universities and individuals.
     – EAR violations can result in civil penalties of $10,000-$120,000 per violation and criminal penalties of $50,000 to $1,000,000 per violation plus up to ten years in prison.
     – ITAR violations can result in civil penalties of $500,000 per violation and criminal penalties of up to $1MM per violation plus up to 20 years in prison.
     – OFAR violations can result in civil penalties of $250,000 per violation and criminal penalties of up to 20 years in prison.
   • Most Loyola activities will be outside the scope of EC or will qualify for one of the exemptions listed under Question 7. However, there are subtle differences in the ITAR and EAR exemption requirements, and certain actions or conditions will vitiate the exemption status.
   • You should consult with an expert before traveling outside of the U.S. with any potentially sensitive items or information and before sharing such information with, or performing technological services for, foreign visitors, consultants, collaborators, or students—whether in the U.S. or abroad. (Such services include the conduction of surveys or interviews in, or transmitting on-line courses to, a boycotted country.) Also seek advice before embarking on Loyola-related travel to any sanctioned country (see the last link provided in response to Question 4).

What is the role of the Office of Grants and Sponsored Programs?
   • Post information to its website to make faculty and staff applying for grants, contracts, or cooperative agreements aware of EC.
   • Screen for export controlled activities as part of the application review process by asking via the internal clearance form whether the project involves
     o Munitions or dual use items, or software code or technical information related to such items;
     o Any restrictions on the access to, or dissemination of, information that either results from the proposed project or is provided by the sponsor; or
     o Training personnel for a special purpose that could be considered a defense service.
   • Confirm that any information/items/service associated with a sponsored project and identified as export controlled is appropriately licensed.

10. What are additional sources of information?
   a. The Council on Government Relations (COGR) 2004 publication "Export Controls and Universities: Information and Case Studies":
      http://www.marquette.edu/orsp/documents/ExportControlsCOGR.pdf
   b. The COGR publication of the 2004 presentation “Deemed Export Controls”, prepared by Robert Hardy:
      http://www.cogr.edu/COGR/files/ccLibraryFiles/Filename/000000000050/Presentation_on_Deemed_Export_Controls_-_Slides.pdf
   c. The Department of Commerce (DOC) Bureau of Industry and Security:
      http://www.bis.doc.gov/
d. The Office of Grants and Sponsored Programs, which can provide general advice and decision trees.
e. The Office of Government and Legal Affairs for more specific advice.

Please note the information contained in this document is introductory in nature and does not constitute legal advice; Loyola does not warrant the legal sufficiency of the answers provided above.

Prepared by Heidi Davis, Director, Grants and Sponsored Programs, Heidi@loyno.edu, x3086.

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