



Export Controls – Dealing with Restricted Parties

RA Forum January 30th, 2020

The Office of Compliance and Risk Management (OCRM)



Key U.S. Export Control Regulations

- *International Traffic in Arms Regulations (“ITAR”)* administered by the U.S. State Department’s Directorate of Defense Trade Controls (“DDTC”): control export of "defense articles" and "defense services."
- *Export Administration Regulations (“EAR”)* administered by the U.S. Commerce Department’s Bureau of Industry and Security (“BIS”): control export of “dual-use” items, software, and technologies.
- *Economic and Trade Sanctions* administered by the U.S. Department of Treasury’s Office of Financial Assets Controls (“OFAC”): partial or comprehensive economic and trade sanctions against certain countries, groups, or individuals.

U.S. Government Restricted Party Lists

- OFAC maintains list of Specially Designated Nationals (“SDNs”) and so-called “blocked persons” with whom it is illegal for U.S. persons to trade or do business.
- DDTC maintains lists of statutorily or administratively debarred parties with whom ITAR transactions are prohibited.
- BIS maintains three specific lists of foreign individuals and entities that would be problematic for a U.S. exporter to deal with:
 - *Denied Persons List*: people and companies whose export privileges have been denied by BIS; an American party may not participate in an export transaction such parties;
 - **Entity List**: a BIS license required to export, re-export, or transfer (in-country) any item subject to the EAR to the parties on this list; and
 - *Unverified List*: parties ineligible to receive items subject to the EAR by means of a license exception; other requirements and restrictions apply.

Restricted Party Screening at NYU

- OCRM conducts routine restricted party screening against a multitude of the U.S. and foreign governments' restricted party lists via Export On-Demand software.
- Routinely screened parties: foreign employees, students and donors; visiting and assistant professors on J-1 visas; and all vendors.
- Additionally, OCRM conducts ad hoc screenings of foreign sponsors; meeting, workshop and conference participants; and other research collaborators from more “sensitive” countries (e.g. Iran, Russia, PRC), which can be identified during AFAR review or screened upon request from the performing departments.
- Please contact OCRM if you have any questions regarding screening of your foreign collaborators.

Huawei: Entity List (a U.S. Government “Blacklist”)

- *Huawei*: In May 2019 BIS amended the EAR by adding Huawei Technologies Co., Ltd. (“Huawei”) and a number of its foreign affiliates to the Entity List. The decision is based on the U.S. Government’s belief that Huawei has been involved in activities contrary to the national security or foreign policy interests of the United States.
- *Futurewei*: Although Futurewei Technologies, Inc. (“Futurewei”) is not currently a restricted entity on the Entity List, because it is a wholly-owned subsidiary of Huawei, NYU is implementing internal controls to meet all of the requirements of the EAR and the Entity List. The regulatory landscape described above is changing frequently, and compliance is critical.

Subject to EAR: Commerce Control List

The EAR controls all U.S. origin items, software and technologies (with certain exemptions).

- “Dual-use” items, software and technologies (i.e. have the potential to be used for military as well as non-military purposes) if such export could adversely affect the national interests of the United States. Dual-use items, software technology are listed in the Commerce Control List (“CCL”).



EAR: Key Terms

- “*Deemed export*” means releasing or otherwise transferring technology or source code (but not object code) to a foreign person in the U.S. is deemed to be an export to the foreign person’s most recent country of citizenship or permanent residency. Releasing or transferring may happen through a discussion with or disclosure to a foreign person or visual inspection of controlled equipment by the foreign person.
- “*Foreign person*” means any natural person who is not a citizen of the United States, a lawful permanent resident of the United States, or a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any corporation, business association, partnership, trust, society or any other entity or group that is not incorporated in the United States or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of a foreign government (e.g., diplomatic mission).

Not subject to EAR: Fundamental Research Exclusion

- Fundamental Research is defined as research in science, engineering, or mathematics the results of which ordinarily are published and shared broadly within the research community and for which the researchers have not accepted restrictions for proprietary or national security reasons.
- Fundamental Research activities conducted by members of the University community are generally excluded from the EAR. Exports of data and information resulting from research qualifying for the Fundamental Research Exclusion (“FRE”) do not require BIS licenses or other authorization.

NYU Interactions with Huawei & Futurewei: Maintaining the FRE

- Contact OCRM if a researcher is considering engaging with Huawei or Futurewei in any kind of activity.
- While every research activity is different, engagement terms should be framed strictly as “no-strings-attached gift” agreements and not as a sponsored research agreements with anticipated deliverables.
- Do not sign any agreements (gift, Non-Disclosure, Material Transfer, consultancy etc.) with Futurewei or Huawei without first notifying OCRM and receiving prior written approval from an appropriate NYU organization.
- Do not accept any proprietary or confidential information from Huawei or Futurewei even if the disclosure is not subject to a specific confidentiality agreement (publication restrictions destroy the FRE).

NYU Interactions with Huawei & Futurewei: Maintaining the FRE (cont'd)

- Do not share any specific technical information (research findings, engineering and design concepts, prototype features, software code, algorithms etc.) with Huawei or Futurewei until the information is made publicly available and OCRM clearance has been received.
- Do not interact with Huawei or Futurewei representatives without prior OCRM approval (including but not limited to meetings, visiting each other's facilities, phone calls, facilitating student and post doc placement etc.).
- Where needed, OCRM will develop and implement a Technology Control Plan jointly with the research team.

OCRM contacts

Tatiana Shapiro: Export Compliance Officer

Phone: 212-998-2319

Email: tatiana.shapiro@nyu.edu

Robert F. Roach: VP, Chief Global Compliance Officer

Phone: 212-998-2075

Email: robert.roach@nyu.edu

Questions?

Thank You!