



OFFICE OF RESEARCH ADMINISTRATION

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“Yale has a clear obligation to comply with all regulations pertaining to the administration of federal grants, and we will spare no effort to remedy any deficiencies in our practices.” *President Rick Levin*

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ERS Update

In August, 2008, Yale will release the January through June 2008 Semi-Annual Effort Report forms using its new web-based Effort Reporting System (ERS). All Effort Report forms for faculty and staff will be issued using ERS on this date. Graduate student Effort Report forms were issued on July 11, 2008 for the 2008 Spring Term.

The effort reporting certification process begins with the responsible departmental business offices notification of the availability of effort reports for certification. After a business office has completed the review and corrected any errors (in collaboration with the PI), an email message notifies the certifier that reports are ready for review. The certifier, from that email, can launch ERS review and certify their form. In reviewing the form, the certifier has the ability to drill-down to capabilities which provide detailed information regarding award information, such as title of the project and payroll records underlying the effort report. If a certifier has questions about the effort report, s/he may click a “Notify” button to alert the business office. If a certifier is satisfied the effort report accurately reflects the effort of the covered individual, s/he may complete the certification with a couple of “clicks.”

ERS was piloted to four departments in the fall of 2007. Over the spring a total of 60 departments used the new system for effort report certification. Reactions from both faculty and staff have been positive. They have found the system easy to use and appreciate the elimination of paperwork.

The Semi-Annual Effort Reports for staff will have a new feature. When a staff member reports to and is supported by more than one PI, ERS provides the functionality to enable a department to designate that a staff member’s effort report is eligible for multiple PI line item certification, allowing each PI to certify the individual award(s) for which s/he is responsible.

Departmental staff have been trained and are familiar with the new system. Instructions for Certifiers can be found at the following url: <http://www.yale.edu/gcfa/effort/ers.html>. A Yale NetID and password must be entered to view the instructions. The ERS project staff will be available to assist faculty and staff in the use of the user system.

Did you know that...

...the cost of an H-1B visa is an allowable expense on an NIH award? In fact, both the processing cost of the visa (\$320) and the government fraud protection and detection fee (\$500) can be directly charged to an NIH award if the award is supporting the prospective employee. However, these costs are only permissible if the individual actually works on the

award for a full 12 months. If not, both the processing fee and the government fraud protection and detection fee must be removed from the award. In addition, the expedited or premium processing fee of \$1,000 is not allowable as a direct charge to an NIH award.

While export control laws and regulations have been in existence for many years, the federal government has more recently been scrutinizing with increased vigor the compliance efforts of universities in this area, particularly since 9/11. Given the complex nature of export controls, it is not always clear which faculty research activities are subject to them.

This article is intended to provide some basic guidance to faculty in understanding how export controls may impact their research activities and provide notice that resources are now available in GCA to help faculty

determine whether their research activities are subject to the export control laws and regulations.

While all activities at Yale need to be in compliance with export controls, it should be noted that the majority of research activities at Yale qualify for certain exclusions from the export controls. However, for the few research activities that may not qualify for one of the exclusions, it may be necessary to apply for a license from the U.S. Government in order for the research activity to proceed.

FAQs

WHAT ARE EXPORT CONTROLS?

Export controls are U.S. laws and regulations governing the “export” of certain controlled technologies, services and information to foreign nationals, foreign entities or foreign countries for reasons of national security and foreign policy.

WHAT IS MEANT BY THE TERM “EXPORT”?

An export is defined as:

- An actual shipment outside of the U.S. of controlled equipment or materials (actual items).
- Any disclosure of information or technical data related to controlled equipment or materials by any means (verbal, email, fax, visual inspection, internet or training) outside the U.S or inside the U.S. to a foreign national).

Disclosure of information or technical data to a foreign national in the U.S. (at Yale) is defined as a “deemed export”. For deemed exports, foreign nationals would be any person who is not a lawful permanent resident of the U.S., a group not organized to conduct business in the U.S. or a foreign government (or any branch of a foreign government).

WHAT ARE “CONTROLLED TECHNOLOGIES”?

There are two major export control regimes based on the technical nature of the items / information being exported. One is the International Traffic in Arms Regulations (ITAR). The technologies covered by ITAR are essentially military in nature (armaments, missiles). The Export Administration Regulations (EAR) covers a broader range of technologies. The EAR technologies are designated as “dual use” technologies, having applications in both commercial and military endeavors and potential military applications. As a general proposition, it is the deemed export of EAR technologies that is the most common type of transaction that could lead to an export control violation at Yale.

SO HOW DOES THIS RELATE TO MY RESEARCH PROGRAM?

As mentioned above, most research activities at Yale will not be affected by export controls. The primary reason is the so called Fundamental Research Exclusion. As is the case with most Yale research, this exclusion covers basic and applied research that results in publications and open dissemination of research results, as is typically found in academic research. **Research activities which have limitations on the right to publish or restrictions on the participation of foreign students or researchers or use of certain controlled equipment would most likely be subject to export controls.** Other important exclusions involve information that is in the public domain (essentially any information in the public domain is not subject to export controls) or information disclosed in routine education activities.

AS A RESEARCH FACULTY MEMBER, WHAT SHOULD I BE AWARE OF IN A RESEARCH PROPOSAL IN REGARDS TO EXPORT CONTROL ISSUES?

Since research is directed by the Yale Faculty and the Faculty have the best technical knowledge of their research, Yale faculty key to identifying export control concerns and managing them in partnership with Yale Administration. When preparing a research proposal, a faculty member should determine if the research involves technologies and / or activities which raise concerns with export controls. Technologies covered by ITAR (essentially military) are largely self evident and are not a significant portion of the Yale research enterprise. On the other hand, the EAR technologies are broad in their listing and involve most areas of “high tech” research at Yale, such as research in nuclear technologies, chemicals, micro-organisms, electronic, computers, telecommunications, information security, sensors, lasers, marine technology and space technology.

WHAT TERMS AND CONDITIONS IN AN AWARD DOCUMENT MAY LEAD TO EXPORT CONTROL CONCERNS?

Terms in award documents (contracts and grants) may lead to export control concerns, including the removal of the Fundamental Research Exclusion. Generally terms which prevent free and open access to the participation in the research endeavor or the dissemination of research results are suspect. In particular, the following terms would be problematic:

- Restrictions on the participation access or hiring of faculty, students or staff in the conduct of the research program, based on their nationality or citizenship, including limiting participation to U.S. citizens.
- Restrictions on the disclosure of information or research results or access to equipment on faculty, students or staff based on their nationality or citizenship, including limiting participation to U.S. citizens.
- Terms requiring the approval of a sponsor prior to disclosure or publication of information or research results generated in the conduct of the sponsored research or granting the sponsor the right to require that such information or research results be treated as confidential information.

ARE THESE THE ONLY EXPORT CONTROLS I SHOULD WORRY ABOUT?

One other important regulatory regime involves export controls which are based not on the nature of the technology but the individuals and countries involved in the transaction. These regulations are administered by the Office of Foreign Assets Controls (OFAC). The general rule is that transactions of value (payments, providing services, collaborations) with certain countries and individuals are prohibited without a license from the U.S. government. Countries included are Cuba, Iran, Sudan, Libya, Myanmar, Syria and N. Korea and many others. Individuals subject to prohibitions are those identified in government lists as supporting terrorism, proliferation of weapons, illegal exporting activities and other such activities. The application to the government and approval of a license can be a lengthy process so the need for a license should be identified as early as possible.

Faculty should note that travel, research collaborations, expenditures or transfer of research results/equipment/materials outside of the United States may create export control concerns. GCA is utilizing an export compliance software system helps in identifying technologies, countries and individuals which are of concern to assist in ensuring compliance with the export control regulations.

WHAT WOULD HAPPEN IF I WERE TO VIOLATE THE EXPORT CONTROL LAWS?

Violations of the export control laws carry both individual (faculty person themselves could be found liable in the conduct of their research) as well as organizational liabilities (Yale could be found liable). There are severe administrative, civil and criminal penalties for violations, including imprisonment for willful violations.

If you have any concerns or need additional information regarding your research activities, such as identifying technologies, equipment or activities of concern (subject to export controls), please contact Don Deyo in GCA at 785-3817 and/or visit the following url: http://ogc.yale.edu/legal_reference/export_controls.html

Did you know that...

...the requirement for disclosing a potential conflict of interest applies to anyone who is responsible for the conduct, design or reporting of a research

project. This requirement should not be applied only to those individuals identified as key personnel but could extend beyond those key individuals.

RESEARCH ADMINISTRATION TRAINING OPPORTUNITIES

MANDATORY FACULTY TRAINING

On November 29, 2006, the Provost sent a memo to faculty involved in sponsored projects regarding training. Please visit <http://www.yale.edu/researchadministration/documents/here.pdf> to review the memo. Training is required for all faculty involved with a sponsored research project. For access to the on-line training module, please visit the following url: <https://secure.its.yale.edu/cas/servlet/login?renew=true&service=http://learn.yale.edu/ra/auth121.asp>

UPCOMING TRAINING EVENTS

- Brown Bag Luncheon Series: Cost Sharing
Wednesday, August 20th
12 – 1:30 p.m.
Sterling Chemistry Laboratory, SCL 110
- New! Fundamentals of Sponsored Projects Administration
Roll-out of new 2-day training program
September 3rd & 4th
9:00 a.m. – 4:30 p.m.
Whitney Grove Square, 802

- What Research (Laboratory) Staff Need to Know About Spending Sponsored Project Funds
Tuesday, September 9th
2 – 4:00 p.m.
Tac Auditorium N107

For details and to register for these events, visit <http://www.yale.edu/training/>, navigate to Grant and Contract Financial Administration and click GCFA Training.

ADDITIONAL TRAINING FOR FACULTY AND ADMINISTRATORS

To learn more and/or to register for these sessions, visit <http://www.yale.edu/training/>, navigate to Grant and Contract Financial Administration, then click on the Yale office (as noted below) providing the training.

Grant and Contract Financial Administration (GCFA)

- Allowability of Costs and Cost Transfers Principles
- Brown Bag Luncheon Series
- Effort Reporting Principles
- Effort Reporting System Training
- What Research Staff Need to Know about Spending Sponsored Project Funds Grant and Contract Administration (GCA)
- Hands-on Clinic – Grants.gov

OFFICE OF RESEARCH ADMINISTRATION MISSION STATEMENT

To coordinate the activities of the various University offices providing support to faculty, staff and students on sponsored projects, to assure that service provided by those offices is of the highest caliber and professionalism, and to serve as an effective representative for the research enterprise at Yale University and nationally.

Did you know that...

...the NIH Public Access Frequently Asked Questions (FAQs) site has been updated. A recent question was added regarding actions the NIH will take if the grantee institution fails to comply with the NIH Policy. It states, “A grantee’s failure to comply with the terms and conditions of award may cause NIH to take one or more enforcement actions, depending on the severity and duration of the non-compliance. NIH will undertake any such action in accordance with applicable statutes, regulations, and policies. NIH generally will afford the grantee an opportunity to correct the deficiencies before taking enforcement action unless public health or welfare concerns

require immediate action. However, even if a grantee is taking corrective action, NIH may take proactive action to protect the Federal government’s interests, including placing special conditions on awards or precluding the grantee from obtaining future awards for a specified period, or may take action designed to prevent future non-compliance, such as closer monitoring.”

To review all of the FAQs relating to the NIH Public Access Policy click on the following url: <http://publicaccess.nih.gov/FAQ.htm#content>

ORA Welcomes Julia Janowick

The Office of Research Administration welcomes Ms. Julia Janowick as Yale’s new Deputy University Research Compliance Officer. Julia joins us from Northwestern University where she held the position of Senior Compliance Analyst for the Office of Research Integrity. Having many years of experience in regulatory compliance as it relates to sponsored projects, Julia is taking the lead in developing and monitoring a research risk assessment program.

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