

WASHINGTON AND LEE UNIVERSITY EXPORT CONTROL GUIDELINES

Background

Federal laws restrict the export of certain goods, information, and technology in ways that affect Washington and Lee University. These laws primarily focus on technology that could have military, nuclear, or aerospace applications, but in some instances, can apply to such seeming innocuous items as laptop computers and cell phones. U.S. export control laws have existed for decades; their applicability to higher education has been of particular interest for at least the past twenty five years. Although the events of September 11, 2001 resulted in a significant increase in enforcement of export control laws, a trend toward greater enforcement had already been underway. As part of this enforcement trend, the various government agencies with responsibility for enforcing export control regulations have increasingly turned their attention to compliance in the higher education setting. Although the emphasis has largely been directed toward academic research institutions, all higher education institutions, including small liberal arts schools such as Washington and Lee University, are affected by and must comply with these export control laws.

Federal Penalties

Export control laws are serious matters that carry serious penalties for both the individual violator and the University, including:

1. Civil fines of up to five-hundred thousand dollars (\$500,000) per violation; seizure/forfeiture of the goods, technology or research product; and/or loss of export privileges.
2. Criminal fines of up to one million dollars (\$1,000,000) per violation; and/or up to ten (10) years in prison.
3. Risk of losing federal funding.

Guidelines

Washington and Lee University intends to fully comply with export control laws as they apply to the University's activities. Under no circumstances shall faculty members, employees, or other persons acting on behalf of the university engage in activities in contravention of U.S. export control regulations. Primary responsibility for compliance with export control laws lies with each individual faculty or staff member. Questions regarding the applicability of export control laws should be directed to the Office of General Counsel.

The vast majority of teaching, research, and travel conducted by W&L faculty and employees will come within one or more of the various exceptions to the export control laws. However, the regulations have the potential to limit certain research opportunities, affect publication rights, and prevent international collaboration in certain research areas. Export controls are most likely to affect W&L faculty and staff in the following potentially overlapping situations:

1. Traveling abroad;
2. "Sharing" (broadly defined and includes emails) science or technology-based research with a non-US citizen, whether on U.S. or foreign soil; or
3. Entering into a contract (including a grant) related to science or technology.

Compliance with export controls must be considered and achieved before traveling, engaging in science or technology-based research, or engaging in any other activity that may be export controlled.

In most cases, this will simply involve confirming that the travel/research falls within an exception to the export control laws. In the few cases where the activity does not fall within an exception, an export license will need to be obtained from the relevant governmental agency. This process can take up to six (6) months – therefore it is wise to plan ahead.

Travel to Certain Countries

If you are traveling abroad, the first thing to know is whether you are visiting a country that has been sanctioned by the U.S. Office of Foreign Asset Control (see list here: <http://www.treas.gov/offices/enforcement/ofac/programs/index.shtml>). Travel to these countries is heavily regulated, and in some instances prohibited. Anyone seeking to travel to one of these countries on University-related business or research should consult with the Office of General Counsel.

Travel With Laptops, GPS, Cell Phones, and Other Common Items

Generally speaking, and provided that you are not traveling to an OFAC-sanctioned country, you may likely take laptops, GPS devices, cell phones, and other common, personal use technological items as long as:

- The device, including any software installed on it, does not contain encryption technology (be aware that encryption is becoming more and more common on certain devices and software programs);
- You own the device or are using a W&L-owned device;
- You will return to the U.S. with the device within one year;
- The device is for personal use or is a type of device that is usual and reasonably used within your profession;
- You will maintain control over the item at all times (e.g. by keeping in your possession or locking in a hotel safe)
- The device, its software, and underlying technology will not be put to military use, used in outer space, or used to develop weapons of mass destruction.

If any of the above conditions do not apply to you, or if you have any questions, contact the Office of General Counsel for an individual assessment of your travel situation.

Research

Most research conducted at W&L will fall within an exception to the export control laws. Generally speaking, if the resulting research is published and generally accessible to the public (or shared broadly within the scientific community), the research is likely exempt from export control laws. However, be aware that these exceptions are lost if you accept certain contractual terms concerning:

- Foreign nationals;
- Publication restrictions or pre-publication review; or
- Access or dissemination controls.

Thus, it is imperative that you carefully review any contract – including a grant – you might sign in connection with your research. If you see terms addressing any of the above issues, you are advised to contact the Office of General Counsel.

In the context of research, the roles of each individual/office listed below are as follows:

1. *Faculty Member*

- a. Identify potential applicability of export control laws to the research/project; if it is determined that export control laws might be applicable:
 - i. Contact the Office of General Counsel;
 - ii. Understand that acquiring any necessary license from the government may take up to six (6) months;
 - iii. Identify the names, country of origin, and country of citizenship of anyone who will be involved in the research/project;
 - iv. See that access to and distribution of technologies and information related to the project are restricted to those persons and destinations that are not export controlled; and
 - v. Report any suspected violations of export control laws to the department chair, the Provost, and the Office of General Counsel.
2. *Department Chair and Dean*
 - a. Read any contract – including a grant – carefully with an eye for references to:
 - i. Export control laws;
 - ii. Foreign nationals;
 - iii. Publication restrictions or pre-publication review; or
 - iv. Access or dissemination controls.
 - b. Inform the PI that s/he must contact the Office of General Counsel; and
 - c. Do not sign any contract until any applicable export control issues have been addressed by the Office of General Counsel, and, if necessary, approved by the Provost.
3. *“Empowered Official” – Provost*
 - a. See that University faculty and staff are aware of and comply with export control laws;
 - b. Make the ultimate determination as to whether to abandon a contract/grant that, despite attempts at negotiation, includes provisions that create problems for the University under export control laws;
 - c. Make the ultimate determination as to whether to apply for a license or abandon the project due to the burden of export controls;
 - d. Investigate reported violations of export control laws; and
 - e. Report violations of export control laws to appropriate federal agencies.
4. *Corporate and Foundation Relations*
 - a. Remind faculty – specifically those whose research involves science or technology – of the potential applicability of export control laws and encourage them to submit any grant applications, etc. with enough lead time for any necessary contract negotiations and/or license acquisition;
 - b. Review each contract/grant for potential applicability of export control laws; and
 - c. Contact the Office of General Counsel if it appears that export control laws might apply.
5. *Office of General Counsel*
 - a. Provide legal interpretation of export control laws as they affect University activities;
 - b. Negotiate with research sponsors or other third parties when contracts/grants include provisions that are problematic under export control laws;
 - c. Apply for appropriate licenses as requested by the Provost; and
 - d. Engage outside counsel with expertise in export control laws as needed.