

Written by Susan Gasparo, Assistant Director for Export Control Compliance, Stony Brook University on April 30, 2015

Things to Consider when Hosting a J-1 Visiting Research Scholar

Disclaimer: This article is not legal advice but is intended for educational purposes only.

A faculty member receives a request from an international scholar (“potential visitor”) wanting to visit your organization and partake in your J-1 Exchange Visitor Program. What a wonderful opportunity this could be for both the faculty member and the organization, as this visiting scholar would be self-funded, wants to collaborate on research projects, and may bring prestige to the organization. Nevertheless, there could be potential export compliance issues with hosting the potential visitor.

So what is the dilemma?

On one hand, the U.S. government promotes the exchange of ideas, research, mutual enrichment and linkages between research and academic institutions in the United States and foreign countries.

The U.S. government promotes these exchanges through the J-1 Visa Exchange Visitor Program administered by U.S. Department of State, Bureau of Educational and Cultural Affairs under the Mutual Educational and Cultural Exchange Act.

On the other hand, the U.S. government also recognizes that sharing certain technical data and technology or sharing any information with certain parties may be a risk to national security.

The U.S. government manages the risks to national security through U.S. export control regulations, such as the International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR) and the Atomic Energy Act (AEA) and restricted/denied parties lists administered by the Department of Commerce, Department of State and Department of Treasury.

Before the organization supports the DS2019 application for the potential visitor, the organization might consider the following:

Evaluate if the potential visit make sense. In any export transaction, yes – hosting a visiting scholar is an export transaction, the organization should review the following elements of the transaction who, what, where, and why.

WHO is the potential visitor and their home organization?

Screen both the potential visitor and their home organization against the various U.S. government denied/restricted parties lists. Even if your screening produces no matches for your potential visitor, you may still have an issue. If your potential visitor is an employee of a denied organization, then the same restrictions apply to the denied organization and their agents (your potential visitor).

WHAT will they be doing, what items/information will they access, and (**WHERE**) are there any country specific restrictions?

- Determine if the potential visitor will have access to proprietary information. Proprietary information is not in the public domain (ITAR, 22 CFR 120.11)/publicly available (EAR, 15 CFR 734.7-11) (collectively “public information”) and is subject to the export control regulations. If a potential visitor will require or have access to proprietary information that is export controlled, an export license may be required.
- Determine if the potential visitor will partake in any activities other than conducting fundamental research, participating in open research/educational conferences and meetings, and/or conducting/participating in educational activities within the scope of public information. For example, if the proposed visitor will be involved in other activities, confidential meetings or proprietary research, an export license may be required.
- Regardless of the potential visitor’s activities, even if they will only partake in fundamental research and educational activities, a review for any export licenses should be completed:
 - Determine if the potential visitor will “use” any defense articles (items and technical data) controlled under the ITAR. “Use” under the ITAR is design, development, production, manufacture, assembly, operation, repair, testing, maintenance *or* modification of defense articles. If so, these activities would require a license.
 - Determine if the potential visitor will “use” any controlled items under the EAR. Use for controlled items, other than 500 or 600 series, includes operation, installation (including on-site installation), maintenance, repair, overhaul **and** refurbishing of controlled items.
 - Determine if the potential visitor will “use” any 500 or 600 series controlled items under the EAR. “Use” under the EAR for 500 or 600 series items is listed in the specific applicable ECCN heading.
 - Determine if you are providing a defense service (22 CFR 120.9). If the potential visit includes a defense application, defense information, defense items, foreign visitor whose area of research is defense, or the foreign visitor is from a defense organization, a review should be completed to ensure that you are not providing a defense service.
 - If the potential visitor is from an OFAC sanctioned country consider if there are additional considerations, for example if an import license is required for the potential visitor to bring items with them to U.S. lab or are services being delivered that require a license or documentation of a general license being on file.
 - If the potential visit includes nuclear technology and a foreign national from a country listed in 10 CFR 810.8 a specific authorization from the Department of Energy may be required. Activities that require specific authorization are specified in 10 CFR 810.8.

WHY does the potential visitor want to partake in research at your organization?

- Determine whether or not the end-use is a prohibited activity. The EAR states that exporters may not export an item without a license if they “know or have reason to know” that the item

will be used for certain nuclear activities, missile technology, chemical and biological weapons, or maritime nuclear propulsion end-uses. Similarly, the AEA states that an exporter is not authorized to use a general license if the exporter knows, or has reason to believe, that the material will be used in any illegal activity or any activity related to isotope separation, chemical reprocessing, heavy water production, or the fabrication of nuclear fuel containing plutonium. The ITAR provides few exemptions for the export of defense items or defense services without a license.

As we can now see from this brief discussion, there is a fine, sometimes blurry, line in the transfer (export) of information even in an educational, research endeavor. It is important to understand both the research background of the potential visitor as well as what kind of research is being conducted in the lab that will host the visitor. A good review process includes restricted party screening and keeping records, check with your organization to make sure that you understand your organization's review and approval process!