Welcome and Introduction

- Session Approach – Perspectives of Two FR-Only Universities
- Session Objectives – Hope that by sharing practices useful approaches can be applied across all higher ed models
What is a “Fundamental Research-Only” University

- Openness and Full Participation in Research
  - Columbia Statute
    - Columbia Faculty Handbook
  - Stanford Openness Policy
  - SU Non-Discrimination in Research Policy
- Challenge: Staying w/in FRE given regulatory complexity and funding environment
The Fundamental Research Exclusion

- Definition – NSDD 189
- Basic and Applied Research
  - ITAR vs. EAR Interpretations
- Fundamental Research and “Defense Services”
- “Proprietary” vs. “Export Controlled”
Circumstances That Negate FRE

• Publication Restrictions On Research Results
  • Examples
  • Prepublication Review Ok
    • Harmonized Definitions – Sea change?

• Foreign National Access to Research Results

• Strong Encryption
  • Note: Deemed Exports Not Included in Definition of Encryption Export at 734.2(b)(9)
FR Troublesome Clauses

- DFARS 7000
  - Impact on FRE
  - DFARS 7012
  - Waiver (a)(3)
- DTRA 252.204-9004
- ARL Export License Clause H.8.
- CDRL Distribution Statements
  - DOD Instruction 5230.24
  - Code “A” – Public Release
  - Codes “B-F”, “TBD”
FR Troublesome Clauses (2)

- DFARS 7048 – Troublesome?
- Non-DOD Clauses
  - DHS, NASA, DOT, FRA
- Participation Restrictions
  - 152.204-725 “Foreign Nationals Performing Unclassified Work”
- Confidentiality Provisions
  - Non-Disclosure Agreements/ Disclosure-Restricted Technical Information
  - Controlled Informational Inputs/ Background IP
  - “De Facto” Restriction
Practical Steps To Stay Within FRE – Proposals

- Review of BAA/Solicitation for Terms
- Review of National Security Sponsor Proposals/SoWs During Preaward Review
  - DoD, NASA, Defense Contractors, Foreign Military Agencies
- Selected Use of Added Section to SoW: Why Research is Fundamental
Practical Steps – Proposals (2)

- Cover Letter: explicit language that CU/SU are FR only
  - CU has version addressing non-FR issues
- SU Use of High Risk Cover Letter in Limited Situations
  - ECO Determines potential of ITAR risk
  - No ITAR Tech Data
  - No ITAR Articles
  - EAR99 Technology Only
Practical Steps – Award Negotiations

• Use of DoD FR Memos (‘08 &’10)
• Clarifying Nature of Scope of Work
  • How effort meets (DoD) Definition of FR
• Modifying SoW
  • SU Example
  • Potential Consequences
• No Receipt of ECI or ECO Review of Received ECI Required
Practical Steps – Award Negotiations (2)

- Application and Acceptance of Appropriate Distribution Statements
  - When are Export Controls Implicated?
  - Successful Strategies
- Assessment of Available License Exceptions
  - TMP, STA, TSU (Operation Tech, BF Employee), AVS (Spacecraft),
- SU Approach to Space Science and Fundamental Research
  - NASA Technology Readiness Levels (TRL)
Practical Steps – Award Negotiations (3)

• Working with Faculty During Troublesome Award Negotiations When DE License Not an Option
• Unsuccessful attempts – turning down funding opportunity
  • Last resort but may be required
Identifying Controlled Inputs on Campus

- “Deemed” Export Risks
- ITAR vs. EAR
- Procurement Process
  - Inclusion of EC Terms in Purchase Orders
    - Prior Notification of Receipt of ITAR/EAR items/information, software
    - Stanford Vendor Survey
      - Email to 1200 Science Equipment Vendors
      - Vendor ITAR Portfolio Questionnaire
      - Yes Response – follow up
Identifying Controlled Inputs on Campus (2)

- Equipment Loans/ Donations
- Non-Disclosure/ Confidentiality Agreements
- Material Transfer Agreements
- High Risk Projects/ Departments
  - “Red Flags” Training
  - Purchase Order/ Invoice Review Process
- Campus Located “Service Centers”
  - Prophylactic EC language in User Agreements
Outside the Scope of the FRE

• Strong Encryption
• Best Practices
  • Place in Public Domain
  • License Exception TSU – BIS Notification of URL to Which Strong Crypto has been uploaded
• “Service” Projects
Other Challenging Areas For FR Universities

- Fundamental Research and Technology Transfer
  - Licensing Software/Information
    - Source vs. Object Code
  - Intent to publish
  - EAR “Published Information and Software”
- To “TCP” or Not to “TCP”?
- Interactions with Restricted Parties in Fundamental Research
  - International Collaborations
  - Visiting Scholars
- Dynamic Nature of Universities and EC Regs
OFAC Regulations and Fundamental Research

- What are OFAC Regulations?
- No FRE in OFAC Regs – Fundamental Research vs. “Information and informational materials” exemption
  - Regulations are country-specific
- Research-related “Specific Licenses”
  - Iran – Conferences
  - Sudan – Graduate Student Field Research
  - Cuba – Accompanying Spouse for Professional Research Conference; Research Samples
OFAC Regulations and Fundamental Research (2)

- Research-Related “General Licenses”
  - Iran: General License G - Paragraph (b)(2)
  - Cuba: Part 515.545 – Informational Materials
  - Cuba: Part 515.565 – Educational Activities
  - Written Publication General Licenses
    - Iran (560.538)
    - Cuba (515.577)
    - Sudan (538.529)
    - Examples of Authorized vs. Not-Authorized Activity
OFAC Regulations and Fundamental Research (3)

• Activities “Incident to Travel”
  • Goods and services for personal use
  • Travel with:
    • Technology
    • Research Equipment
    • Personal Communication Devices
  • Online Learning
• Honoraria
  • Iran: Part 560.554 – Public Conferences
  • Iran: General License G
  • Cuba: Part 515.545 – Informational Materials
Thank You!!