Final Report and Recommendations
from the
EXPORT CONTROLS POLICY REVIEW COMMITTEE
Indiana University
2010-2011

Members of the Task Force:

CO-CHAIRS
Razi Nalim, Professor, Mechanical Engineering, IUPUI
Steve Martin, Associate Vice President, Office of Research Administration

MEMBERS
Stephen Burns, chair, BFC Research Affairs Committee
Charles Goodlett, chair, IFC Research Affairs Committee
Paul Sokol, Associate Vice Provost for Research, IUB (on behalf of Sarita Soni, Vice Provost for Research, IUB)
Kody Varahramyan, Vice Chancellor for Research, IUPUI

CONSULTANTS
Beth Cate, Office of General Counsel
Erik Swank, executive director of research compliance, Office of Research Administration
Joe Abella, director of industry relations, Engineering and Technology

BACKGROUND

Charge

Indiana University administration, represented by Vice President John Applegate, and the University Faculty Council appointed a joint Export-Controls Policy Review Committee to review the university’s policy with regard to publication restrictions required by external sponsors (see Appendix 1. for current policy). Of particular interest in the review was the impact of this policy on externally sponsored projects that involve research results that fall under federal export-control regulations. The committee also reviewed the overall policy and process for evaluating such projects for acceptance. In recommending whether IU should revise its current policy on the pursuit of export-controlled and other research that may involve restrictions on publication, the Export-Controls Policy Review Committee carefully considered the principles of open academic discourse, opportunities for research funding, cost of compliance, risks of non-compliance, and other factors. The terms of reference (charge) are given in Appendix 2.
Existing Policy & History
Indiana University faculty governance and the Board of Trustees approved a policy in 1969 that prohibited the acceptance of sponsored projects that require prior approval of the sponsor to publish or present research results. Indiana University’s policies do not permit significant restrictions on publication of research results, effectively prohibiting research in areas subject to federal export-control and related regulations.

The current policy does provide for exceptions approved by both the Vice President for Research and the Educational Policy Committee of the University Faculty Council. Publication restrictions that are the subject of the current policy may be important for funding opportunities that fall under certain proprietary commercial research, research that involves results restricted by U.S. Export Control laws, and classified research (A table listing the restrictions is provided in Appendix 3. The categories that the committee reviewed are designated in the third column of the table in Appendix 3 as ‘Not Allowable, UNDER REVIEW’).

The policy has been reviewed twice previously. At IU Bloomington, a 1984 faculty committee affirmed “longstanding opposition to secret research,” but IUPUI or other campuses were apparently not involved in that discussion. In 2006, again at IUB, a committee on classified and restricted research recommended little change to existing policy at IU Bloomington.

Export-Controlled Research

In a variety of disciplines, especially in engineering and the sciences, the frontiers of knowledge may be expanding in areas legally restricted by the US government from foreign persons. The joint committee reviewed the impact of the publication restriction policy and whether changes may be appropriate. Of particular interest is the impact of federal export control laws that were enacted in the 1990’s. One effect of the current policy is to prohibit research activities whenever publication is restricted due to federal laws regulating the export of objects, software, or technology to foreign countries or persons (referred to as export controls). In contrast, the University does accept non-disclosure agreements between a sponsor and the University that restricts communication of proprietary materials or information used in the research, as long as it does not restrict publication of results.

US export laws prohibit disclosure to foreign nationals, including those that may be a student or employee of the university, certain physical items, data and information designated by the Departments of Commerce, State, and Treasury, each having specific restrictions. ‘Export-controlled’ information and articles are legally accessible by any US persons who are not specifically prohibited from access, and is thus distinct from ‘classified’ or ‘secret’ information that requires individuals to have specific ‘clearance’ to access. Export-controlled research that is currently not allowed at IU
includes certain research or technology that can have dual use (commercial or defense) [regulated by the Export Administration Regulations (EAR)], or certain research involving defense or military applications [regulated by the International Traffic in Arms Regulations (ITAR)], and certain activities involving nationals of specific countries [regulated by the Office of Foreign Assets Control (OFAC)]. The current IU policy also prohibits the acceptance of classified or secret research.

Export control regulations were implemented by the U.S. Government with the intent of preventing the proliferation of technologies that are "dual use" i.e., those that may be used for both civilian and military/terrorism purposes. The equipment and technologies that may be covered by the regulations are extensive, from software, computers, cameras, centrifuges, autoclaves, accelerators, radiation detectors, etc. to a wide range of chemicals, biological agents and toxins. The list of items that may be subject to some form of regulation is 47 pages long. Each item has detailed specifications (i.e., not all cameras are subject to export controls) and, importantly, only technologies that are not publicly available are subject to the controls, although special rules apply to even publicly available encryption software. Each type of item is classified in the export control regulations according to those countries to which it cannot be exported. For example, some items cannot be exported at all without a license; some others may be shipped only to Canada without a license. Other items and technologies can be exported to all but a few other countries. In addition, these items may or may not qualify for a general exemption from the licensing requirement. These regulations are very complex and not easily reduced to dos and don’ts.

Export control regulations include actual exports as well as “deemed” exports. A "deemed" export is the disclosure of covered technology or software to a foreign national, including the disclosure of a covered item to a foreign national that takes place inside the United States. This is the area that currently poses the most concern and difficulty for university researchers. To understand this last prong of the regulations one needs to understand how "deemed" exports intersect with the "fundamental research" exception under the regulations.

(a) Deemed exports are verbal, written, electronic, and/or visual disclosures of information to foreign nationals inside or outside the United States. Deemed exports include assisting or training foreign nationals, in the US or abroad, in connection with design, development, manufacture, testing, modification, processing, and use of covered items.

Thus, if a particular item cannot be exported because the technology is controlled, (i.e., not publicly available) to a given country, revealing that technology or allowing the use of that controlled equipment by a individual that is a national of that country while in the United States is a "deemed export." Use” is defined as operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing.
(b) Very important for universities is an exemption from the regulations for ‘fundamental research’, where the results are ordinarily published and shared broadly. It is distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons. **Thus, acceptance of publication restrictions throws out the fundamental research exemption**, requiring researchers to assure that certain foreign nationals will either be licensed or will not have access to the research.

**Motivation for review**

The research enterprise and US national interest may be advanced by allowing faculty to participate in research that is export-controlled, including research that is not exempt as fundamental research or educational information. Some universities have found it within their mission to permit faculty research on projects that may be subject to export controls, and have found it feasible to put in place appropriate technology controls to comply with relevant US laws.

In recent years, faculty members engaged in research in the sciences and engineering have been particularly interested in accepting research contracts from the US government agencies and contractors who have requested assurance of compliance with export-control laws in performing these contracts. Such contracts may include restrictions on publication of some research results.

Research in export-controlled areas may give IU faculty access to knowledge that is available to colleagues at other universities, but from which they are currently excluded. Performance of such research may also better connect these faculty members with some agencies, corporations, and networks, and enable the university to obtain additional unrestricted research contracts.

**FINDINGS**

**Summary of Discussions**

Significant interest appeared to exist among some faculty and schools to revise University policy to permit export-control research subject to ITAR or EAR regulations, i.e., to accept restrictions on publication of research results and restrictions on the involvement of certain foreign nationals in research when required. Faculty who want to change the policy consider the limitations in the current policy to limit their research opportunities and academic freedom, putting the University at a disadvantage in conducting funded research and contributing at the frontiers of knowledge, relative to other universities that do permit such
restricted research. In this view, the current policy unduly restricts the research opportunities of faculty otherwise willing and able to comply with the regulations for export-control research. If implemented, such a policy change could generate not only export-control research opportunities, but new relationships for faculty and increased research capacity that could benefit research in general.

On the other hand, there appear to be a number of faculty members opposing any change, who consider external restrictions on research publications counter to the goals and practice of science, ideals of academic freedom, and the training mission for students involved in research.

If either a change in policy is implemented, or the exception provision in the currently policy is more frequently exercised, it is clear that it would need to be fully planned for, since breach of the restrictions could bring potentially serious legal consequences for individuals and the University.

A change or interpretation of IU’s publication policy to allow sponsors to restrict the dissemination of research results could permit export-controlled research to be conducted. Such export-control research requires mechanisms to manage the specific export control issues for each project. Some other universities have successfully implemented this type of policy change and thus it appears possible to do likewise at IU. The PI, the PI’s department and school, and the Office of Research Administration would need to develop appropriate mechanisms that may include:

- A customized Technology Control Plan (TCP) for protecting controlled technology and technical data with physical/information security and end-of-project security measures;
- Export Control training for all personnel involved in the project;
- Personnel screening against Denied Persons Lists;
- Obtaining an export license from the appropriate federal agency, if required.
- Access/Participation restrictions for individuals from prohibited countries (or seek permission for a license from the applicable federal agency)

Faculty and Administration Survey

The committee invited input from stakeholders in IU faculty and administration regarding the desirability and scope of changes needed, and the feasibility of implementing such changes. The committee invited thoughtful input from IU faculty and administration through the formal faculty governance structure, as well as from individual faculty and staff.

Faculty councils or senates in individual schools were encouraged to conduct a discussion on the subject and may provide a summary of the minutes of such discussions to the committee. Seventy one (71) faculty members responded to the survey, 24 from IUB and
42 from IUPUI. Fifty of the respondents came from the fields of science, medicine, and engineering (about equally from each).

The results of the survey are summarized in the tables below. Details, including distribution of the respondents’ affiliation and comments received are provided in Appendix 4.

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>NA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Do you believe that significant new research funding opportunities would be available to your unit as a result of changing the current IU policy to permit the acceptance of grants and contracts with publication restrictions?</td>
<td>34 = 48%</td>
<td>31 = 44%</td>
<td>6 = 8%</td>
</tr>
<tr>
<td>2. Would your unit agree to the participation of graduate students from your unit in research where the dissemination of the research results may be restricted by the sponsor?</td>
<td>28 = 39%</td>
<td>34 = 48%</td>
<td>9 = 13%</td>
</tr>
<tr>
<td>3. Would your unit support the participation of pre-tenure review faculty in research where the dissemination of the research results may be restricted by the sponsor?</td>
<td>31 = 44%</td>
<td>35 = 49%</td>
<td>5 = 7%</td>
</tr>
<tr>
<td>4. Would your unit support the participation of tenured faculty in research where the dissemination of the research results may be restricted by the sponsor?</td>
<td>42 = 59%</td>
<td>23 = 32%</td>
<td>6 = 9%</td>
</tr>
<tr>
<td>5. Accepting publication restrictions with respect to export control regulations could entail restricting access and/or participation for some individuals based on citizenship. With respect to your organization, would such restrictions be an acceptable condition?</td>
<td>36 = 51%</td>
<td>35 = 49%</td>
<td></td>
</tr>
</tbody>
</table>

6. Which of the following policy options would you support:

(Sums to more than 100%, as more than one option could be selected)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
</table>
a. Leave the current policy as is, no change. | 30 = 42% |
b. Amend the current policy to permit acceptance of grants and contracts with publication restrictions that relate to export controlled results. This may also include restrictions on the participation of certain individuals based on citizenship. | 11 = 16% |
c. Amend the current policy to allow broader publication restrictions, for reasons of export control or commercial interests, but do not allow classified government research. | 4 = 6% |
d. Amend the current policy to allow broader publication restrictions, for reasons of export control, commercial interests, and classified government research (provided the university has the appropriate infrastructure in place). 30 = 42%

7. Do you have any other concerns or suggestions you would like to be made known to this committee? See Appendix 4

The survey was distributed to 6,505 faculty on all campuses. As such, the response rate was only 1.1% (71/6505). The limited number of respondents may be due to faculty members busy schedules or because this particular policy only impacts a small number of the IU faculty. However, the comments received indicate that those who responded did have strong opinions, and are probably those most likely to express a position on the issues if a policy change was presented in faculty governance bodies.

The majority (58%) of the respondents would support amendment of the current policy to allow some restrictions. Most of those supporting amendment (42% of the total respondents) would even support allowing classified (secret) government research. Those with a more nuanced view included 6% who would support export-controlled research and commercial restrictions, but not classified research. The remaining 10% would presumably support only export-controlled research restrictions, but not commercially supported or classified research with restrictions (presumably, because the 16% favoring export-controlled research may also have favored broader restrictions). It is noted that those who were not in support of any changes to the current policy (30 or 42%) are a minority. However, from the comments received, it seems evident that many of those opposed to changing the current policy had strong convictions on the matter.

Restrictions on dissemination of research was clearly much more acceptable if tenured faculty were the participants (59% supporting), less acceptable if tenure-track faculty were the participants (44% supporting), and even less acceptable if graduate students were the participants (39% supporting). About half of the respondents (48%) found participation of graduate students in publication-restricted research unacceptable.

Nearly half (48%) of the respondents believed that their unit would gain new research opportunities as a result of a policy amendment, and 44% expected no such gain. The respondents were evenly divided about their unit’s acceptance of restrictions based on citizenship.
RECOMMENDATIONS

Preamble

The survey of faculty indicated that a majority of the respondents (58%) would be willing to consider some changes to policy. However, the minority opposed to any change (reflected by 42% of survey respondents) appears to be sufficiently large and deeply opposed that a proposal for policy changes is likely to be highly polarizing.

The exception clause in the current policy has not been frequently exercised, due to the practice of faculty committee approval for exceptions.

Recommended Policy

It is recommended that significant changes be made in the implementation of the current policy with respect to the exercise of exceptions, while retaining the policy unchanged.

The recommended Publication Policy Exception Process is attached as Appendix 5.

It is expected that the Indianapolis and Bloomington campus faculty councils will conduct a discussion of the final recommendations of the review committee and forward any changes to the procedures or policy to the University Faculty Council for review and approval.
Appendix 1. Current University Policy

Classified Research

The IU Board of Trustees has determined that IU will not conduct classified research. The University will neither solicit nor sponsor any activity that restricts the free and open communication of its intent and results.

Indiana University, however, recognizes that in some research fields -- the development of new chemicals and drugs, for example -- collaboration with outside groups may require that some aspects of research programs be considered confidential for a limited time. Where the advancement of science and the protection of individual rights make limited confidentiality of research unavoidable, it may be permitted, provided that information is available to the public about the purposes of the research, the identity of the investigators, the amount and sources of funds expended, and the University facilities used in the research. Such exceptions must be within guidelines approved by the Office of the Vice President for Research and the Educational Policies Committee of the University Faculty Council.

This policy statement should not be construed to permit invasions of privacy; to restrict the research activities of University personnel who, in their private consulting capacities, do not use University facilities; or to abrogate the responsible right of research investigators to protect their inventions or discoveries up to the point of patented or copyrighted publication.

Graduate School regulations require that all final examinations for advanced degrees be held in public. Therefore, graduate student theses and dissertations may not incorporate research that cannot be made public at the time the final examination is held (except for data that would violate the privacy of human subjects).
Appendix 2. Terms of Reference (Charge)

**CHARGE TO THE EXPORT CONTROLS POLICY REVIEW COMMITTEE**

Indiana University’s policies do not permit research sponsors to impose significant restrictions on publication of the results of research or sponsored program work performed at IU, the effect of which is to prohibit research activities whose publication is restricted due to federal laws regulating the export of objects, software, or technology to foreign countries.

The committee is asked to consider whether IU should revise its current policy on research publication restrictions to permit export controlled research. In reaching its conclusions, the committee should consider the principles of open academic discourse, lost opportunities for academically valuable research and external funding, the full cost of compliance, the risks (financial, reputational, personal, and otherwise) of non-compliance, and any other factors that it believes to be relevant.

If the committee recommends a change in policy, it should also: (1) propose appropriate policy language that defines the terms and conditions under which such research would be permitted; (2) recommend the appropriate allocation of the costs of compliance and risks of non-compliance; and (3) consider whether the reasons for permitting export controlled research extend to permitting classified research and whether further analysis of classified research is warranted.

The committee is asked to make its report to the president, the co-secretaries of the University Faculty Council, and the vice president for university regional affairs, planning, and policy by the end of the fall semester of 2010-2011, or as shortly thereafter as possible.
Appendix 3. Types and permissibility of publication restrictions under the current IU publication policy.

<table>
<thead>
<tr>
<th>Type of Sponsored Activity</th>
<th>Typical Restrictions on Publications</th>
<th>Permissibility per Current IU Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Typical Sponsored Agreement</strong> for research or service activity</td>
<td>Allow up to 45 days for sponsor to review publications or proposed presentations for <em>sponsor proprietary information (see last page for definition)</em> or patentable inventions that have not been protected. IU will agree to remove identified sponsor proprietary information. IU will also agree to delaying the publication for an additional 90 days (in rare cases up to 120 days) so a provisional filing may be made on patentable inventions.</td>
<td>Allowable</td>
</tr>
<tr>
<td><strong>Testing Agreements</strong> – the purpose of these agreements is for the university to provide evaluative testing on a product that is typically in development and for which the sponsor has invested substantial resources to create.</td>
<td>If the purpose of IU's research is to conduct scholarly activity on testing methods or to develop an instrument to conduct such testing, IU will conduct such testing agreements and agree to treat all research results pertaining to the product being tested as confidential. IU reserves the right to freely publish research that relates to our testing methods or instruments developed in the process of testing.</td>
<td>Allowable</td>
</tr>
<tr>
<td><strong>Evaluation Agreements</strong> – the purpose of these agreements is for the university to provide an evaluation of programs being conducted at the sponsor.</td>
<td>If the purpose of IU’s research is to conduct scholarly activity on evaluation methods, IU will accept such evaluation agreements and agree to treat all research results that might reveal evaluative information about the sponsor as proprietary. IU reserves the right to freely publish research that relates to our evaluation methods or survey instruments developed in the process of evaluation.</td>
<td>Allowable</td>
</tr>
<tr>
<td>Clinical Trials – the purpose of these agreements is to test the efficacy of new drugs, treatments, or devices, typically for humans. These agreements are most commonly seen in Medicine, Dentistry, Optometry, and occasionally Nursing.</td>
<td>IU may retain a copy of the study data and retains the right to use such data or results for its own publication, presentation, instructional or non-commercial research objectives provided that the publication, presentation or use does not disclose any <strong>sponsor proprietary information</strong>. IU agrees to submit proposed publications or presentations relating to the study to the sponsor for review at least thirty (30) days prior to submission for publication or presentation to remove sponsor proprietary information. As such, the scope of sponsor proprietary information in this publication context does not include the results arising out of the performance of this Agreement. In the event that the proposed publication or presentation contains patentable subject matter which needs protection, IU will, upon written request from sponsor within the initial thirty (30) day review period, delay the publication or presentation for a maximum of an additional ninety (90) days to allow sponsor or IU to file a patent application.</td>
<td>Allowable</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Multi-site Clinical Trials - the same as clinical trials described above with the exception that the same protocol is being carried out at multiple locations and the results are usually more meaningful when fully combined</td>
<td>Under multi-site clinical trials, it is typically intended that the results of the study will be initially published and/or presented in an integrated manner reflecting the results observed across all sites and will be published under group authorship. IU requires that subsequent to the group publication of the results of the Study, or if the multi-site publication has not been submitted for publication within twelve (12) months of completion of the data analyses of the study, IU will have the right to publish in accordance with the aforementioned terms of this paragraph</td>
<td>Allowable</td>
</tr>
<tr>
<td>Proprietary Research / Secret Commercial Research / Work for Hire – The purpose of this research is to create works or new knowledge that the company will own</td>
<td>IU has no rights to publish/present results or can only publish/present with the written consent of the commercial sponsor.</td>
<td>Not Allowable, UNDER REVIEW</td>
</tr>
<tr>
<td>Research Type</td>
<td>Description</td>
<td>Allowance</td>
</tr>
<tr>
<td>---------------</td>
<td>-------------</td>
<td>-----------</td>
</tr>
</tbody>
</table>
| **Export Controlled Research** - research that falls under the EAR or ITAR regulations. | If research were controlled and not performed for publication, participation in the research would need to be limited to US citizens or U.S. permanent residents unless the university is approved for an export license to allow the involvement of foreign nationals. 

**NOTE:** The EAR and the ITAR are law and as such, the applicability of such restrictions are not dependent on the inclusion of references to EAR or ITAR terms in the contract. | Not Allowable, UNDER REVIEW |
| **Government Research that is Sensitive but Unclassified** | Publications must be approved by the government entity sponsoring the work (typically DOD) and foreign nationals are not permitted to participate in the research unless approved by the sponsor for each individual. Work must be conducted in restricted areas and on isolated computer networks. | Not Allowable, UNDER REVIEW |
| **Classified Research (I) - security clearances required to access classified facilities** | Publications must be approved by the government entity sponsoring the work (typically DOD) to review for classified material. No classified material is to be kept at university and only those with an approved security clearance may access Government work sites. University is responsible for such clearances which includes maintaining a security program and security officer. Chain of command between security officer and trustees (some not all) must be reviewed and approved for security clearance by DOD. University work should be conducted in restricted areas and on isolated computer networks. | Not Allowable |
| **Classified Research (II) - security clearances required as well as protocols for safeguarding classified materials at the university** | Same as above except that additional measures/restrictions must be put in place to create secure areas | Not Allowable |
Appendix 4. Publications Policy Stakeholder Input – Comments

NOTE: Eliminated responses of “see above”, “Ditto”, “see prior comments” for the purposes of this summary. All other comments included.

6. Do you believe that significant new research funding opportunities would be available to your unit as a result of changing the current IU policy to permit the acceptance of grants and contracts with publication restrictions?

I am currently embattled with Contracts regarding an award that would permit me to consult on the development of a framework, the publication of which is restricted. Just this sort of problem is hindering negotiation of the contract and it seems, may ultimately result in the loss of this award and subsequent awards from a major inter-governmental research organization.

1/18/11 10:37PM View Responses

I’m not sure that ‘significant’ new funding opportunities would be available, but I do feel that the ability to conduct research and withhold sensitive results is a deciding factor for many private industry clients when they consider approaching an academic institution for research assistance.

1/18/11 10:40PM View Responses

It is important to protect the intellectual property of the faculty, students and University. However, with reasonable review and consideration, there is are solid opportunities to expand the volume of funded research with mutually acceptable limitations.

1/18/11 10:50PM View Responses

IU’s current policy makes our engineering school in disadvantage in getting research grants and contracts from defend related projects.

1/18/11 10:52PM View Responses

I believe that there may be some funding opportunities in chemistry and biology, but I doubt they would be significant compared to current funding sources (NIH, NSF, etc.).

1/18/11 11:00PM View Responses

Possibly, but it is wrong to accept publication restrictions.

1/18/11 11:40PM View Responses

Possibly and worth pursuing.

1/18/11 11:44PM View Responses

There would be many opportunities to do pharmaceutical research of no scientific value because the company has access to a “heads we win, tails you lose” outcome.

1/19/11 1:24AM View Responses

There are some federal contracts that are service contracts that do not generate research results. A professor in the IU School of Medicine got such a contract for more than $1 million from the Agency for Healthcare Research and Quality. No original research was being funded. Yet because the Agency included a standard publication clause, and would not remove it, IU would not allow her to accept the contract. She appealed to both IU and AHRQ and generated a dialogue between the two, without resolution. So, my position is that if original research is being funded, then there should be no prohibition to freely publish the
results, nor should there be prescreening and editing of the results. Any deviation from this rule should require some input from the VP for Research. However, IF NO ORIGINAL RESEARCH IS BEING FUNDED, then there should be no problem with signing a contract with a clause limiting publication of results, if there are no results to publish. Sound like a no-brainer, but it didn’t happen this way between this IU professor and AHRQ.

1/19/11 1:24AM View Responses

Despite these potential opportunities, I feel strongly that the current policy should not be changed. It protects students and the University.

1/19/11 1:43AM View Responses

This has not been an issue, in that external funding agencies have not attached publication restrictions.

1/19/11 6:23AM View Responses

Potential DoD contracts; not too much beyond that.

1/19/11 8:39AM View Responses

Universities should attempt to generate knowledge for the public and opening this format of agreement could allow more sponsors to try to place their research projects under this agreement, even if it is not in the best interest of the public. This agreement would also put junior faculty members at a disadvantage in the tenure review process.

1/19/11 9:26AM View Responses

For clinical faculty to contribute in any meaningful way to clinical research, there has to be outside financial support to offset the time taken away from on-service duties. Since funding for these initiatives is limited, this might open a new funding stream.

1/19/11 5:05PM View Responses

It seems unlikely that new opportunities in the humanities would emerge from application of export control rules, but I’m really not sure.

1/19/11 7:42PM View Responses

I previously worked at Texas Instruments in the Defense Systems and Electronics Group and then at Raytheon in a similar group. Most of my industrial contacts are now in Defense related work at Raytheon. I have had informal discussion about problems and possible solution with my old colleagues but could not pursue research opportunities due to the restriction on classified research.

1/19/11 7:57PM View Responses

Any research grant with the military will request control of the release of findings. The military rarely restricts publications but will still have the control clause in any contract. My areas of research interest are military social work and military families.

1/19/11 8:28PM View Responses

Within the last year, the university forced us to refuse an industry funded study due to this policy that potentially would have brought over 400,000 dollars to the university and our department. The company was unwilling to give us publication rights on their data and unwilling to share the data from this multicenter study. The university (without discussion with me), sent them an email that IU will not participate in “secret” studies and we would not be able to participate. I should point out the study was with KCI, a well known and respected company, that wanted to research the effects of negative pressure on different tissues and simply was asking for waste tissue discarded during surgery (i.e., there was no separate procedure for patients other than that already planned and only tissue that was being discarded anyway would have been used).
More funding may be available; but at what intangible costs?

I do not anticipate any immediate impact because of research infrastructure and large teaching loads. However, there could be a long-term benefit to the regional campuses. Increased funding opportunities could lead to more resources for research and a means to improve the research infrastructure. It could also spur more collaborative work with other institutions that do not have such restrictions.

Don’t know

My unit (The Polis Center) has had to seek exemptions on at least two such occasions for large external awards involving federal agencies and a third-party contractor. The policy was inappropriate for the project, and the process was unduly cumbersome.

This issue has not come up for us, but I can imagine circumstances when it might, especially in projects involving collaborations from institutions in different countries.

Since publication is the major measure of research success, faculty would not be considered successful. Grant fund is not and should not be the major criteria for success. Restriction of students then potentially restricts our ability to teach new scholars.

Many Industry and Defense Agency funding are contingent upon delayed or somewhat restricted dissemination of research findings. In most cases, these restrictions are acceptable to the PIs. IU policy change in this regard will help with securing these types of grants.

7. Would you support the participation of graduate students from your unit in research where the dissemination of the research results may be restricted by the sponsor?

I can’t speak for my program, but for myself, the answer is, with qualifications, yes.

each case should have reasonable evaluation and discussion but not be automatically dismissed due to a request for limitation.

We now operate under some minor restrictions, mainly related to nondisclosure clauses or restricted public release of detailed location information of protected cultural resources. The latter restriction is forever but the former (e.g., highway, pipeline, and other public services construction, etc) is usually only short term (several months of a year)

Others in chemistry may disagree, but I believe this could be disastrous for graduate students.
Not sure as I cannot speak for my unit. I would guess yes.

1/18/11 11:25PM View Responses

More than likely not since a student’s thesis needs publishing.

1/18/11 11:40PM View Responses

Not if this was the only project that the student was working on.

1/18/11 11:44PM View Responses

We conduct research in the pursuit of truth and the public good.

1/19/11 1:24AM View Responses

Within the confines of the discussion above.

1/19/11 1:24AM View Responses

As I pointed out in an e-mail, this question is not phrased well as it implies that you want the response from the Department (e.g., if it is an established policy). Personally, no, I would not agree. It may be okay with others.

1/19/11 8:39AM View Responses

Working on these projects could be detrimental to the development of the student since they will have less opportunities to present their work.

1/19/11 9:26AM View Responses

Since it is very hard for young investigators to get funding, this might be a good response to the judiciary concerns. It may not carry as much prestige but at least allows a beginning into research which may lead to other funding.

1/19/11 5:05PM View Responses

I firmly believe that our mission is to create knowledge for the greater good, not to advance the interests of for-profit corporations or military concerns. Furthermore, it is not clear to me how broadly application of the Denied Persons Lists would operate, for instance. If staffing restrictions only apply to specific EAR-controlled projects, that *seems* a simple matter; however, it seems quite possible that there might be slippage. If, for instance, we can’t admit graduate student of certain nationalities because they would be *partially* funded by publication-restricted projects, then we have a major problem. Or if, for instance, we think that a post-doc or faculty member *might* work on an EAR-controlled project but s/he doesn’t meet up with EAR or ITAR requirements, then again we find ourselves where compliance with federal rules may fade into outright discrimination. That’s a disturbing prospect.

1/19/11 7:42PM View Responses

While widely spread publications are beneficial to the student’s future career, having the research experience that otherwise would not have been available is more beneficial.

1/19/11 7:57PM View Responses

Biology at IUN currently does not have a graduate program. I do, however, have more than 20 years research experience outside IUN. I do not believe that it would be in the best interest of a graduate student to work on such projects. It would inhibit graduate students’ ability to publish and thus limit the ability of potential future employers evaluate their published work. I would favor accepting such funding with ”strings attached” so that some funding could be used for related but unrestricted
provisionally restricted as currently allowed in the policy) projects that would be appropriate for graduate students and would help support the faculty members other ongoing research projects.

1/20/11 8:17PM View Responses

Usually not, but the details would matter.

1/20/11 10:40PM View Responses

We do not offer credit or degrees, even though we do use graduate students in our projects. By virtue of the graduate programs at IUPUI, these students are in masters programs. On such occasions when publication rights are restricted, we alert the student to any restrictions. In most cases, we have other parallel, non-restrictive projects that will provide them publication opportunities.

1/21/11 9:57PM View Responses

But only with guarantees that the grad student’s own publications would not be unduly restricted.

1/23/11 9:14PM View Responses

Science should be open. Research should be shared. Most case where they are not are applied solving problems for commercial or government issues.

1/25/11 8:04PM View Responses

I will not support complete restriction on the dissemination of research findings by the sponsors, however. A limited restriction may be acceptable for graduate student participation.

8. Would you support the participation of pre-tenure review faculty in research where the dissemination of the research results may be restricted by the sponsor?

Yes for myself. I cannot speak for my program.

1/18/11 10:37PM View Responses

This has many of the same problems as allowing graduate students to participate in restricted research. Pre-tenure faculty need to establish a national reputation, and to do so openly.

1/18/11 11:00PM View Responses

Pre-tenured faculty need peer reviewed publications to achieve tenure.

1/18/11 11:40PM View Responses

It should be left to the faculty. I would not recommend this be the only source of support for a pre-tenure faculty, but if a project can add to the program, it should be up to the faculty to pursue.

1/18/11 11:44PM View Responses

If there is no dissemination in a public, reviewable form, there is no research.

1/19/11 1:24AM View Responses
As I pointed out in an e-mail, this question is not phrased well as it implies that you want the response from the Department (e.g., if it is an established policy). _Personally_, no, I definitely think this is a bad idea.

1/19/11 8:39AM View Responses

Although, currently I am not a tenured faculty member, if I were a tenured faculty member I would definitely support this.

1/19/11 6:19PM View Responses

While publications are very important for pre-tenure faculty, so is a track record of obtaining external funding. But restricting even the possibility for competing for possible external funds you are making it more difficult for any faculty to get grants.

1/19/11 7:57PM View Responses

A case for research excellence could be made for pre-tenure faculty based on continuous support by a restricted funding source. Research funding not only supports faculty research, but indirect costs support the university as a whole. The ability to generate funding from external sources should be highly regarded and awarded. A stipulation for acceptance of funding that restricts publication could be that the source project manager would be required to submit an evaluation of the quality of the work being performed by the faculty member.

1/20/11 8:17PM View Responses

Usually not, but the details would matter.

1/20/11 10:40PM View Responses

We have sufficient projects of like nature to allow the faculty member the choice of whether or not to participate. The locus of control should be with the well-informed faculty member.

1/21/11 9:57PM View Responses

Yes, but I would recommend against it.

1/23/11 9:14PM View Responses

Too risky, as they could not show the most important product

1/25/11 8:04PM View Responses

Inhibits progress in scholarship towards achieving tenure for pre-tenure faculty.

1/31/11 6:41PM View Responses

Again, a limited restriction may be acceptable. The grant will still count toward external funding expectations for the pre-tenure review faculty.

2/1/11 8:01AM View Responses

9. Would you support the participation of tenured faculty in research where the dissemination of the research results may be restricted by the sponsor?

Yes for myself. I cannot speak for my program.

1/18/11 10:37PM View Responses
I would be more inclined to feel comfortable with tenured faculty pursuing restricted research, but would still not view it favorably, mainly for the negative impact it would have on graduate education.

1/18/11 11:00PM View Responses

I do not think that working on publication-restricted projects would be supported by my main unit. At any rate, such work would not contribute to a faculty member's research, teaching, and service duties which form the sole basis for determining merit salary raises.

1/18/11 11:40PM View Responses

not aware of any of those restrictions. Have worked with external institutions. An agreement reviewed by the University lawyer was used: ") if the project team or one of its members proposes a publication or presentation as the result of the work performed, the proposed publication or presentation will be provided to Institution or Enterprise at least 20 days prior to submission for publication or presentation to remove Information. The scope of Information in this publication/presentation context does not include the results arising out of the performance of this work."

1/19/11 1:12AM View Responses

But only under the conditions spelled out in the comments under question 12 below: restricted research will be considered as a bread-winning opportunity only, without academic value and without engaging the University.

1/19/11 1:47AM View Responses

As I pointed out in an e-mail, this question is not phrased well as it implies that you want the response from the Department (e.g., if it is an established policy). _Personally_, no, I would not agree, but again, it may be okay with others.

1/19/11 8:39AM View Responses

for clinical research most especially due to difficulty in funding availability

1/19/11 5:05PM View Responses

If faculty wish to engage in proprietary or classified research, they are free to quit their jobs and take up positions in industry or with the government. Yes, we need money, but not at the expense of our freedom of speech and academic independence.

1/19/11 7:42PM View Responses

Usually not, but the details would matter.

1/20/11 10:40PM View Responses

Yes, this seems a reasonable restriction for tenured faculty, if absolutely necessary.

1/23/11 9:14PM View Responses

I think it would be foolish, but I would allow tenured faculty to decide These faculty risk lower salaries.

1/25/11 8:04PM View Responses

10. Accepting publication restrictions could entail restricting access and/or participation for some individuals based on citizenship, due to the application of export control laws. With respect to your organization, would you support accepting such restrictions? Again, I cannot speak for my department or program.

1/18/11 10:37PM View Responses
federal and state law must be obided, and there may be funding source request that are reasonable as well

There are so many foreign nationals working in our labs that it would be nearly impossible to apply export control to research in chemistry (and for that matter the sciences in general).

I believe some people would object to such restrictions

I don't really understand this issue.

This would not affect any research I have been associated with in our field.

As an experimental particle physicist, we continually work in enormous international collaborations. The hassles of export control and physicists from sensitive countries working on the project are not appropriate.

To answer this question, it would depend on the nature of the research. I answer yes, because the options are not realistically reflected in the choices. My answer would not be a "no" in any case -- I'd have to know more about the type of research being conducted.

The open exchange of ideas in the academy should not be limited by race, gender, sexual orientation, creed, OR citizenship. Period.

I am not involved in any export control issues, just the military so my answers are based on that limited view.

(But not happily.)

I understand when restrictions might be due, but I think the cost of doing that and the risks to IU if restricted access failed far outweigh any gain.

**11. Which of the following policy options would you support:**

I've never had a problem with the policy as it is, even with the restriction mentioned above. Any other research is contrary to the university mission and as near as I can tell would only be undertaken to make money for unit or university. I'm not sure that should be our mission and if it were to become our mission, such research should be undertaken through an off campus partnership, the through the University.
In fairness, because I do not conduct research that would ever be subject to such restrictions, I might be willing to accept the option in the second checkbox under some circumstances for senior investigators who would not be harmed by a lack of publication. However, I am concerned about the precedent and about the requirement that some members of a research team might be excluded because of their country of origin. I strongly oppose accepting any publication restrictions for commercial reasons. In my opinion, such restrictions could never be justified.

Actually, I would prefer to see publication restrictions for commercial interests only and not allow for export control restrictions.

I believe the policy should be reviewed and amendment may be a possible outcome. Based on what I've seen so far, I find it a bit too vague to identify which of the above is the most reasonable approach. I selected the above answer because I was forced to select an answer-- it's not what I believe.

Too many undefined terms above for me to answer. I would favor the current policy with an exception for contracts that don't generate publishable results.

Again, for me, it is a personal choice. I do not object that the current policy be broadened as university policy. Can’t say off hand the position of either the Department or the College.

This is a tough one to get right as it is so difficult to fully understand at this point just which restrictions we might be asked to face. However, I believe having access to grants and projects where publications results may be restricted will broaden our opportunities to new types of research for our full-time faculty and graduate students even though it will likely restrict some of those opportunities to our international students somewhat. However, even with the adoption of such a new policy, we would not be facing the elimination of those research projects in which we are currently engaged that foster opportunities for international graduate students.

Universities should be open to all ethical sources that support the research mission and, through indirect costs, support the university as a whole. University laboratories are a great resource that can provide a greater service to private industry and government entities than is currently allowed. Service to the community is a mission that can be enhanced by changing the current policy.

Probably with case by case review if that is practical to do.

The world of funded research is much more varied than envisioned by current policies--and the nature of university centers and programs is also much different than in the late 1960s. IU policies must provide the greatest possible flexibility without sacrificing academic freedom, and the burden of proof and the process for exemptions should not be so onerous that it delays or denies legitimate and worthwhile opportunities.
I do not think any investment into the appropriate infrastructure is worth it. What is the justification of scholarship if it not to be shared? The research becomes applied. I understand the growing problem with Export-control scholarship. I strongly feel we should not broaden restriction for commercial or classified government research.

1/25/11 8:04PM View Responses

12. Do you have any other concerns or suggestions you would like to be made known to this committee?

NOTE: Eliminated responses of “No” for the purposes of this summary

Agreeing to these restrictions represents a reprehensible encroachment of state power on academic freedom and First Amendment rights. It is a frightening enlargement of the state’s power to shape what and how we can think, research, and write. I am terrified of an already-expanded executive branch in a time of war and applaud the need to resist its charms and coercion.

1/18/11 10:33PM View Responses

The policy adopted in 1969 was wise. There is no good reason to change it. Those people who want to conduct secret research ought to go work for private companies or for the Pentagon. It should not take place at IU.

1/18/11 10:37PM View Responses

Such restricted grants can be managed to success even with students/untenured tenure-track faculty

1/18/11 10:38PM View Responses

Adviser faculty of the status of similar policy changes at other universities—at least those which are similar to whatever path IU selects.

1/18/11 10:44PM View Responses

Enabling export controlled research seems like a very costly operation - entire facilities separate from where open research in conducted would need to be created. This may be possible, but it would need to be clearly beneficial from both a financial and academic perspective.

1/18/11 11:00PM View Responses

I believe a good bit more information is needed prior to my being able to intelligently make a decision on the retention or amendment of this policy.

1/18/11 11:23PM View Responses

I put my real name in this but I believe this survey should have been anonymous. Some respondants may fear their answers may be open.

1/18/11 11:25PM View Responses

There are very rare circumstances when working on problems with publication restriction might be a worthwhile endeavor, such as the work on the atomic bomb during World War II, which was done mainly outside traditional academic institutions. Otherwise, restricting publication is generally a very bad idea designed to serve to cover up unpleasant results, such as when medical researchers cannot publish negative consequences of clinical trials of a drug later approved for market. I know that there is an appeal to obtaining new funding sources, but accepting publication restrictions is not the way for an academic institution dedicated to truth, ethics, humanity, morality, and common sense to go. Furthermore, accepting publication
restriction would be at odds with the historical stance of this university, as best summarized by President Herman B. Wells: “The University cannot discharge any of its obligations to society unless it is first and foremost an institution dedicated to scholarship and scholarly objectives: a place where students learn the slow and arduous processes of mental discipline by which knowledge is acquired and wisdom won; a place where the frontiers of new truth are pushed back by the research explorer and old truth is subjected to critical analysis until it assumes new significance; a place where reason is exalted over emotion and force.” Work cannot be subjected to critical analysis unless it is published.

1/18/11 11:40PM View Responses

I think this is an issue that really should be decided by an informed faculty member, and not with a broad policy that might interfere with some productive interactions.

1/18/11 11:44PM View Responses

With change in funding sources, we need to have policies in place that support those revenues.

1/19/11 1:12AM View Responses

1. The current policy takes away ACADEMIC FREEDOM for faculty members to pursue external funding. Surely some majors may not be affected, such as medicine or some science/social science research. But this export control limitation has been posing a big problem for High-tech researchers. 2. This survey is a good gesture. However, many research at IU are not related to High-Tech, and these researchers would not understand how difficult for other faculties in these areas would be affected. They may just vote to keep current policy in the thoughts of “preserving free publication freedom for all”. It would be like for everyone to vote on policies for minority issues. The results may not be fair. I believe this survey can be designed in a better form to discuss the significance of the changes and the reasons behind the changes. 3. IU will lose the competition edge in high-tech area if the export policy is not going to be changed. Purdue has allowed export control for long time. Actually, all top notch engineering and science universities allowed. If IU wants to go up in engineering and science ranking, changing is necessary.

1/19/11 1:22AM View Responses

A public university is not an R&D department for anyone with the money to pay for it. A public university is a community of scholars. The resources of a public university should not be used for secret research under the control of outside entities. If they want control over the research, let them hire their own people, not people who are supposed to be advancing the goals of the university.

1/19/11 1:24AM View Responses

As above. I am the President and CEO of the Regenstrief Institute, and we do not allow our faculty to sign contracts for original research that include clauses that restrict publication.

1/19/11 1:24AM View Responses

Publication restrictions by sponsors do not mean we cannot publish our research results. In most cases, it requires reviews by sponsors 30 or 60 days prior to publication/presentation. Most top research universities accept grants and contracts with somewhat publication restrictions in this nature. I strongly urge the joint committee and the UFC approve the change.

1/19/11 1:28AM View Responses

Restricted research (as defined in the context of this discussion) is of no use to the tenure-track faculty because it cannot be examined by peers for P&T purposes (i.e., a restricted grant cannot become a blank check for P&T). It also goes against the principle of academic freedom, socially construed as it should be: the academic freedom of an individual faculty is meaningful only if he or she can share results unrestrictedly, without being leashed to an external entity. Restricted research is contrary to that freedom, which is not merely the individual freedom of researching whatever one pleases (an unsophisticated view unbecoming of a University), but the ability to conduct disinterested research for the common good freed from corporate or
government restrictions or from the weight of an agenda not focused on the advancement of knowledge for its own sake, as far as research methods and result dissemination are concerned. It is not that faculty should always refuse those restricted opportunities, but that when they feel compelled not to pass them up for some non-dishonorable motive, they take an administrative or academic leave in order to become a research employee of the sponsoring institution, so as not to compromise the University and its ideals. Or the University, for temporary fiscal reasons adopted under pragmatic necessity, may decide to allow these researchers to conduct the restricted research, but will dictate that all results and ensuing publications done under restrictions will not be considered a product of the University, will not be taken under consideration as far as promotion or tenure or advancement or honors are concerned, and will not receive academic validation. In other words, the University could allow it only for exigent economic reasons (e.g., it could help maintain a valuable program that has temporarily lost academically legitimate funding), but will dissociate itself from the research and charge the sponsors heavily for renting and restricting University lab and office space, while the researchers involved will get no university salary for the portion of their work under restricted grant contract. Put yet another way, restrictive sponsors might be allowed to hire the faculty because of their individual expertise, but will not be allowed to attach the name of the University to their restricted reports, because the University will not be able to endorse or validate those reports since they cannot be verified by other independent academic entities. It is capital for the University's identity and reputation that it not be confused with entities that are not open. If meddling must occur, clear barriers need to be erected that will prevent the University from being tainted by undesirable fallouts. For the greatest danger for a University is to lose public trust. The argument that the University could be put at a disadvantage vis-a-vis other less scrupulous universities has been answered many times in recent history: a pure reputation demands unflinching transparency. There is no academic freedom without the latter.

1/19/11 1:47AM View Responses

I opt for open communication of research results and against secrecy and discrimination of any kind.

1/19/11 6:01AM View Responses

This is a terribly designed survey.

1/19/11 8:39AM View Responses

The individuals who performs the publication-controlled research should consider industry or the government as the more appropriate place for their employment.

1/19/11 9:26AM View Responses

I think there needs to be more oversight if changes are made to help physicians in particular who are doing smaller sponsored research projects to know what restrictions are acceptable. This needs to come in a timely fashion—last project I had that was company sponsored took months on our end to get the contracts signed which delayed the work. That will need to be improved.

1/19/11 5:05PM View Responses

Restrictions on research publication are also experienced when working with Tribal Nations within the U.S. While these nations do not often fund research, their internal research review structures limit opportunities for publication without prior review by a tribal nation’s research review panel. How might this form of research and subsequent publication limitations be addressed in these discussions?

1/19/11 6:19PM View Responses

If emended, the publications policy would have the potential to further balkanize the university, creating a climate of secrecy and divided loyalties. In addition, an emended policy would complicate oversight and administration, as well as amplifying legal risks.

1/19/11 7:42PM View Responses
An analysis of the cost of creating the proper infrastructure to deal with restricted research needs to be weighed against the additional opportunities these restrictions are preventing. If the cost is not prohibitive then preventing an entire type of research which traditionally has continued and stable funding is counter productive.

I am philosophically against any amendment to the current policy that would allow grants or contracts that can control whether or not I publish my research or that enables grant-giving agencies to dictate the results I publish or present at meetings. I think this has to the potential to lead to unethical research practices. In addition, our graduates need publications to demonstrate their achievements and viability on the job market.

As an academic institution, I do not believe that we should promote research that has publication restrictions.

Because of cases such as that of J. Reese Roth (http://www.washingtonpost.com/wp-dyn/content/article/2008/09/03/AR2008090303228.html), it seems like it could be dangerous for the University and its faculty to get involved in these types of research.

In addition to my comments above, we can partner with industry in a responsible manner and still respect their need for confidentiality or continue to "battle" with them. I would propose our patients might actually benefit more from a responsible partnership, and certainly the university would benefit from missed opportunities as I outlined above. These industry studies still require full IRB review, so the risk that a single faculty member will abuse the system seems quite limited with the required IRB oversight.

Somehow, the academic community needs to get away from this idea that anything that brings money to the university is good. It is a Faustian bargain, in my opinion. It will exact its price in time. I think it may already be too late. Money already plays a big role in the university’s decisions from merit pay to promotion decisions. We don’t need any more of its influence about whether and where we can publish our work. You might say, we don’t have to take such grants. But the way things work in human society, this would put anyone who eliminates a whole source of funding sources on principles would be at a disadvantage.

I don’t like publication restrictions. At the same time I don’t like giving up on research that can be done only with acceptance of some controls. Thus, I see a big dilemma on these issues.

This policy change would have little impact on education research. However, it goes against principals of academic freedom that the university must continue to uphold, otherwise it becomes nothing more than an annex to the federal government or a research unit of large corporations.

External restrictions on research publications are counter to the goals and practice of science, ideals of academic freedom, and the training mission for students involved in research. These are principles most basic to the core of the missions of institutes of higher education and should not be compromised for any reason, especially not for economic purposes.
I would suggest that you evaluate the following "costs". Costs to faculty who do not publish. Costs to IU to implement these policies. Costs to IU's reputation for scholarship if there are restricted policies. Lose students (or future students) because of potential restrictions in labs. One method would be to look at the exceptions that have been made for accepting non-disclosure agreements between a sponsor and the University that restricts communication of proprietary materials or information used in the research, as long as it does not restrict publication of results. What types of effects are found and are they positive or negative? Last, the policy is clear. It is not restricting academic freedom if the faculty member chose to come to IU. If they do not like the policy, they can leave.

There is a misconception that faculty having exposure to classified government materials (off-site) via a security clearance will limit or restrict the publication of their DoD sponsored research conducted at IU. This is an important issue that this survey does not capture. It deals with IU holding a 'non-processing' facility clearance and holding the clearances of faculty members, which will facilitate DoD research tasks awarded to IU with the need for access (off-site) to classified information, without limiting the publication of research conducted under the task. The Research Office needs to clearly understand this issue before recommending revisions to policies.

Translational research requires us to work with industry. We will always want to publish our work, but why preclude us from even getting a grant if some of it is classified? There will be other parts of the work that might be published, and we can still promote technology and collect research money.
Appendix 5

Publication Policy Exception Process:

Necessity for an Exception

1. Determine whether an exception is needed. It is not needed if:
   a. It is not research. Research is defined as a systematic study intended to create new knowledge. Non-research (for instance "service" activities) do not require an exception, since they are exempt from the Publication policy.
   b. If there is a reasonable expectation that the activity is research designed to contribute to the public good rather than the private (including commercial) benefit of a single sponsor. This can include government sponsored research where the data are expected to come out in a public database or as tables in public policy documents or similar.
   c. If there is a reasonable expectation that data provided back to a sponsor will go into the public domain (e.g., through publication of multi-center clinical trial results either in the peer reviewed literature or publicly accessible databases)
   d. If negotiations with the external agency lead to limitations of publication restrictions such that the intellectual contributions of IU faculty are publishable, and the limitations are restricted to the sponsors intellectual and material contributions (other than disclosure of the funding source).

2. If the activity is exempt as a service activity, an exception request and restricted publication management plan are not needed. However, the unit and the Office of Research Administration should ensure that there is full cost recovery for the activity since IU is investing some resources, yet is losing the public benefit of publishing. I.e., IU should not subsidize someone's service activities the way we can reasonably be expected to for some research.

Considerations for Making an Exception Request

1. If the activity is research, and does not fall under the automatic exemptions above, then the publication policy is applicable. At this point a determination of eligibility for an exception may be needed after attempts to negotiate full ability to publish research results including efforts to modify the research plan, as appropriate, to avoid restrictions. In evaluating whether there are publication restrictions, we should consider broadly the outlets available typically to publish or disseminate research results and whether all, some, or none of those are subject to restrictions. In general the guiding principle for IU is the goal of dissemination of new knowledge from its faculty intellectual activities. If
it is determined that the negotiations are not successful, but the faculty member feels the research is still important, then the procedure described in item 2 below should be followed.

2. If the activity is research and there are research publication restrictions, then the unit of the PI—the chair, associate dean for research, and dean—should evaluate the following to determine whether an exception should apply to permit the research with the restrictions, and develop a plan to ensure compliance with the terms under which an exception is granted:

   a. will probationary faculty be involved? If so, then a plan that is not likely to risk tenurability should be documented. This would typically be documentation of publishable activity that is not covered by the restriction.

   b. will students or post-docs be involved? Similar considerations of risk and benefit for future and current employment should be documented.

   c. what percentage of time and scholarly activity for the probationary faculty, students, and postdocs would the project comprise?

   d. how much will the knowledge gained by the project enhance the skill set and expertise of the faculty members, students, and/or postdocs, and will the restrictions interfere with their ability to use the knowledge gained in other, publishable projects and activities?

   e. is the purpose of the restriction to enhance the commercial competitive advantage of a business (less favored) vs. for national security or public weal (more favored)?

   f. will the project expand the infrastructure available for other public projects or activities (e.g. Through the acquisition of equipment or facilities) or will the project establish a desired collaborative relationship with a sponsor that is likely to lead to additional unrestricted research?

   g. how broad are the publication restrictions and how much publishing and scholarly activity do they comprise? For example, are they time-limited, or limited to a narrow sub-field, or do they continue indefinitely or cover a broad field of inquiry, and how many other students, faculty and postdocs would be affected, and how much? Will those involved be able to interact in a scholarly manner with their colleagues, or will they be restricted in all communications.

   h. if the restrictions are national security or otherwise export-control based instead of commercial, can the project be performed with only US persons? Is the project valuable and a good "fit" with the research interests of those faculty, students and postdocs, and are there other intellectually comparable projects for non-US persons to perform?
i. if research data may not be published, may they be used freely by the participating researchers within IU?

j. will the project develop new concepts or applications of knowledge that do not exist, and is there a reasonable expectation that those will be made available to the public within a reasonable timeframe and in a valuable way?

k. what would be the cost involved in complying with the restrictions, in terms of blocking access to data internally and externally? If the contract involves significant additional cost (for instance in documentation of export control efforts) then the unit should provide evidence of accepting responsibility for those additional costs. Are compliance measures feasible given the physical and technological facilities with which the research would be conducted?

l. how would we evaluate the work for reappointment, tenure, promotion, and academic advancement purposes consistent with any restrictions in the contract? does the contract or disclosure restrictions themselves limit the evaluation? could the department or school forego evaluation of the restricted work if it comprises a small enough percentage of the faculty member, student, or postdoc's work?

Essential Considerations for Exception

When evaluating an exception plan, there is a rebuttable presumption that an exception will not be granted if any of the following pertain:

1. the restrictions are intended to benefit one company commercially and are not publicly valuable
2. they affect a significant percentage of the work of probationary faculty or graduate students or
3. the restrictions effectively "close off" a substantial area of intellectual inquiry as a result of the decision by IU to accept restrictions.

Restricted Publication Management Plan

Any proposed exceptions granted under this policy require the written approval of the Vice President for Research. In proposing an exception, the unit (dean, associate dean for research, and department chair) would need to endorse a written plan, that describes clearly the restrictions on publication, what steps will be taken to comply with them, who will bear the costs involved, what measures will be taken to ensure that tenured and probationary faculty, students, and

---

1 Examples: 1. Proposed contract merely require approval prior to publication of research results; this would not limit evaluation by a faculty committee. 2. Contract restricts disclosure to IU faculty or other parties not directly participating in the research; this might require an NDA with those faculty members who would serve on an evaluation committee. 3. Contract involves export control; the faculty evaluation committee would be limited to US persons.
postdocs are not adversely affected in their career pursuits, and why/how the unit has concluded that the exception is warranted and how granting it will advance the overall mission of IU. The plan would be drafted in consultation with the Office of Research Administration and forwarded to the Vice President for Research for approval. If approved, the unit would have primary responsibility for ensuring compliance with the plan.

**Plan Review**

The IFC or BFC Research Affairs Committee or designee groups, every year for the first three years after the first exception request is granted under this policy, and every other year thereafter, would review all exceptions granted and determine whether to recommend changes to this policy. It would report the outcome of its review to the IFC or BFC as a whole, and these bodies may in turn refer the matter to the UFC.