UNIVERSITY OF WASHINGTON

Office of Research
Office of Sponsored Programs

Regulatory Policy Division
Bureau of Industry and Security (BIS)
Room 2705
U.S. Department of Commerce
Washington, D.C. 20230

August 6, 2012

Re: 0694-AF65

Thank you for the opportunity to comment on the proposed changes that create the"600" series and changes to the exceptions found in Part 740 of the Export Administration Regulations.

In particular, we would like to address the definition of "bona fide and full-time regular foreign national employee" as that term is proposed for use under the TSU exception:

"TSU authorization for the release of software and technology in the United States by U.S. universities to *their bona fide and full-time regular foreign national employees* and other foreign nationals to correspond with a similar authorization in § 125.4(b)(10) of the ITAR and an authorization at § 125.4(b)(4) of the ITAR for copies of technology previously authorized for export to same recipient."

In order to release software or technology to an individual with this defined status would ensure that the software and technology not otherwise falling under the fundamental research exclusion could possibly still be provided to employees under this TSU exception. However, for this new language to be effective and carry out the intent of the exception, which is to mimic the broader "exemption" under ITAR, a definition or additional guidance of "bona fide and full-time regular foreign national employee" is needed.

At most Universities, an employee will include faculty, professional staff or classified staff, and can include students. On sponsored research projects, the individuals named and listed can be a variety of these individuals that may or may not need access to the software or technology otherwise restricted but allowed access under the TSU exception.

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Categories of employees at the University of Washington include:

- Faculty (as that is defined per the University faculty code)
- Medical residents
- Graduate Student appointments
- Postdocs
- Classified staff
- Professional staff
- Hourly employees
- Predoc trainees

Employee status is differentiated from effort level. Some individuals on research projects may very well be anywhere from .5 FTE (full-time equivalent) up to 1 full FTE. However, FTE is not necessarily an indication of whether the TSU exception should apply. It may very well be that the lead Principal Investigator on a sponsored project including export controlled technology is at less than 1 FTE.

The University of Washington would like to see emphasis placed on the discretion of the employer's employment policies to determine the status of a "bona fide full-time regular employee"; that full-time can mean less than the equivalent 40 hours per week; recognition that such employee may include graduate students; and recognition that in some cases a research project in which software/technology sharing for purposes of discovery may involve individuals on a J-1 VISA who are serving in a research capacity (and named on a research proposal) and that this TSU language could be applicable in those cases.

We appreciate the opportunity to comment and the efforts put forth with the Export Control Reform Initiative.

Sincerely,

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