Background: The University has seen an increase in contractual terms and conditions that restrict the participation of research team members who are not U.S. citizens. For example, Department of Energy- National Nuclear Security Administration (NSAA) has added a new section to their Notice of Award stating: “Participating in Grant Activities and Compliance – Any individual person receiving funding support under this grant must be a U.S. Person, defined as an individual that is a citizen of the United States or an alien lawfully admitted for permanent residence, or the Principal Investigator must request and receive written permission for such funding from the SSAA PM... The DOE/NNSA SSAA PM can exclude any individual from receiving funding from the grant, from using the resources of the grant, and from participating in grant activities.” Typically, as this example demonstrates, these restrictions require that team members who are not U.S. citizens provide information such as visa or social security number, date of birth, etc., so that he or she may be screened by the funder in order to participate in the work.

Restrictions based on citizenship and nationality are inconsistent with the University's Openness in Research Policy, which states: “Foreign faculty, students, and scholars will not be singled out for restriction in access to Harvard University’s educational and research facilities and activities... As a general proposition, Harvard University adheres to all applicable non-discrimination legal requirements (federal, state, and local) and does not limit participation in research activities on the basis of citizenship.” Further, such conditions are contradictory to the requirements of the fundamental research exemption under National Security Decision Directive 189 (NSDD-189) as well as Harvard’s policies on non-discrimination. Lastly, the Family Educational Rights and Privacy Act (FERPA) protects student records, requiring that student researchers provide written consent in order to release any information from a student’s education record (which can include datapoints requested by funders pursuant to the restrictions described herein – date of birth, citizenship, etc.).

Process: At a high level, the Openness in Research Policy outlines the process for exceptions: “In certain circumstances, the conduct of research may require that a member of a research group must meet certain citizenship requirements to obtain or to have access to certain proprietary or US Government-restricted information, where that information is subject to Export Control (e.g. International Traffic in Arms Regulation-ITAR; Export Administration Regulations-EAR), or other regulatory restrictions. All such exceptions must be reviewed and approved, first by the relevant School leadership (Dean, or Dean’s designee), and then by the Office of the Vice Provost for Research, at both the research proposal submission and award negotiation stage.”

More specifically, University leadership has determined that the following conditions must be met prior to disclosing the requested personal information to the funder (or executing the award):

1) DOE-NSAA, Air Force, national labs, or whichever funder has applied the restriction, accepts the following conditions:
a) Confirms that the research performed at Harvard is fundamental research as defined in U.S. export and import laws and regulations.

b) If the funder denies any person from working on the project, the University reserves the right to terminate the contract. Note: This should be stated explicitly in the agreement (including relevant UG or FAR clauses).

c) If the information requested under the agreement/amendment is subject to FERPA, the school must obtain the approval of the individual prior to releasing the information to the funder. Note: Procedurally, the individual (e.g., student or postdoc) whose information may be subject to FERPA will be required to approve by email and the documentation will be filed with the award documents. Again, the student’s personal information should not be disclosed until each of these steps has been confirmed.

2) Additionally, the language must not be excessively broad and unclear as to what falls under the scope of the restriction (e.g., “or to collaborate with a non-U.S. person”). A broad application could impact indirect or unrelated collaborations, or restrict the overarching project (irrespective of the employer of the foreign national or specific contribution/role), regardless of the relevant scope of work or funding source. A narrower interpretation may be applicable only to that specific proposal. If there is any question as to the scope of the restriction, the research administrator should seek written clarification from the funder. Once an interpretation – as well as 1(a)-(c) above – is confirmed, OVPR must be consulted on next steps.

3) As described in the Openness in research Policy, the school (cognizant Dean and the PI) and OVPR must be consulted prior to executing or declining the award in order to determine whether the language runs afoul of University policies, and if so, whether an exception is warranted. Please note:
   i) If the restriction is broadly applied, Harvard University may decline the award.
   ii) If the restriction is narrowly applied, the University may accept the award. Note: The reasoning for the acceptability of a narrower interpretation is that this may be considered as analogues to the NIH Foreign Component requiring prior approval a subject to the PI acceptability may be approved.

See also:
International Collaborations and Activities (specifically Question 6: Foreign Nationals (Required only for NASA, DoE, and DoD proposals))

Export Control Policies & Procedures

Openness in Research Policy

Publications Policy