



# To Infinity & Beyond: Managing Export Controls Compliance

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# Discussion Points

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## I. Export Controlled Research Work

- Policy Considerations
- The Case for Flexibility

## II. Export Controls and Fundamental Research: Staying within the Lines

- Export Controls in one slide
- The Fundamental Research Definition
- Crossing the Fundamental Research Line

## III. Solicitation Review

- Identifying Potential Risks
- DFARS 252.204-701 Sample Certification Language
- Evolving Research -- Monitoring to Ensure Compliance/Best practices
- Sample Certification Language
- Using Licenses, Exceptions, TAAs and TCPs

## III. Your Takeaways



# Export Controlled Research Work: Policy Considerations

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- Publication restrictions
  - Dissertation and Thesis projects
  - Restrictions on follow on research
- Foreign national restrictions
- Higher risk of violations
- Educational inequality
- State laws & prohibitions
- Enforcement scrutiny
- Cost implications
  - Compliance
  - Information security
  - Physical security



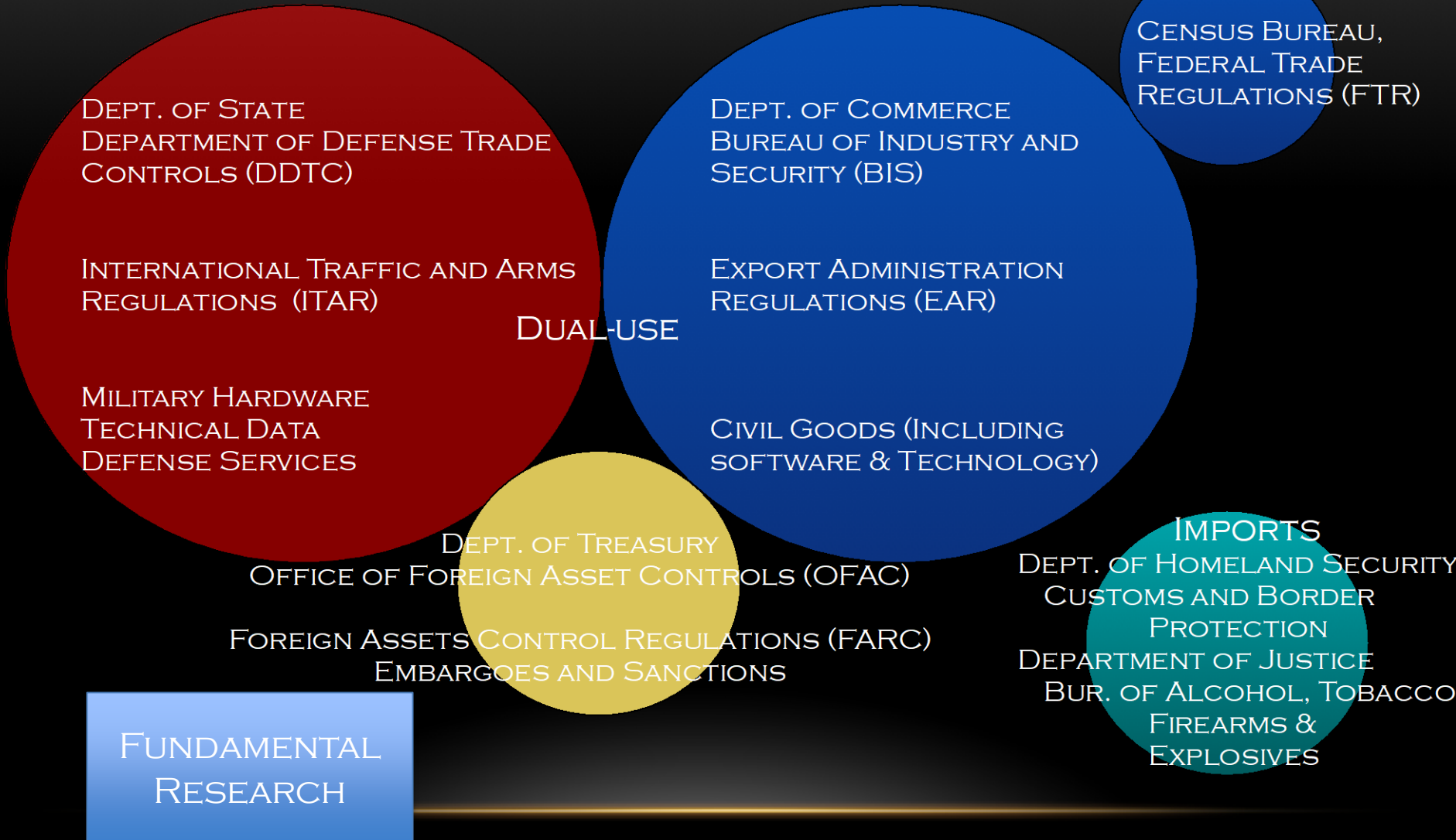
# The Case for Flexibility

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- Intellectual merit
- Untapped source of funding
- Proximity to DoD installations or federal labs



# PRIMARY EXPORT CONTROLS



## Fundamental Research under ITAR and EAR: the New (ish) Definition

### EAR §734

The following are not subject to the EAR. Information and software that:

**734.7 are published or** made available to the public without restrictions through subscriptions, libraries or other public collections, conferences, trade shows, public dissemination (i.e., unlimited distribution) including posting on the Internet, publication or presentations.

**§734.8 arise during, or result from, fundamental research:** Research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers:

1) have not accepted restrictions for proprietary or 2) national security reasons

### ITAR §120

The ITAR defines information in the public domain as information which is published and which is generally accessible to the public...

Through fundamental research in science and engineering *at accredited institutions of higher learning in the U.S.* where the resulting information is ordinarily published and shared broadly in the scientific community.

**University research will not be considered fundamental research if:**

- **Restrictions on publication**
- **The research is funded by the U.S. Government and there are specific access and dissemination controls protecting information**

# Crossing the FR Line

SEND/CARRY ITEMS & INFORMATION



PROVIDE DEFENSE SERVICES



RE EXPORT ITEMS & INFORMATION

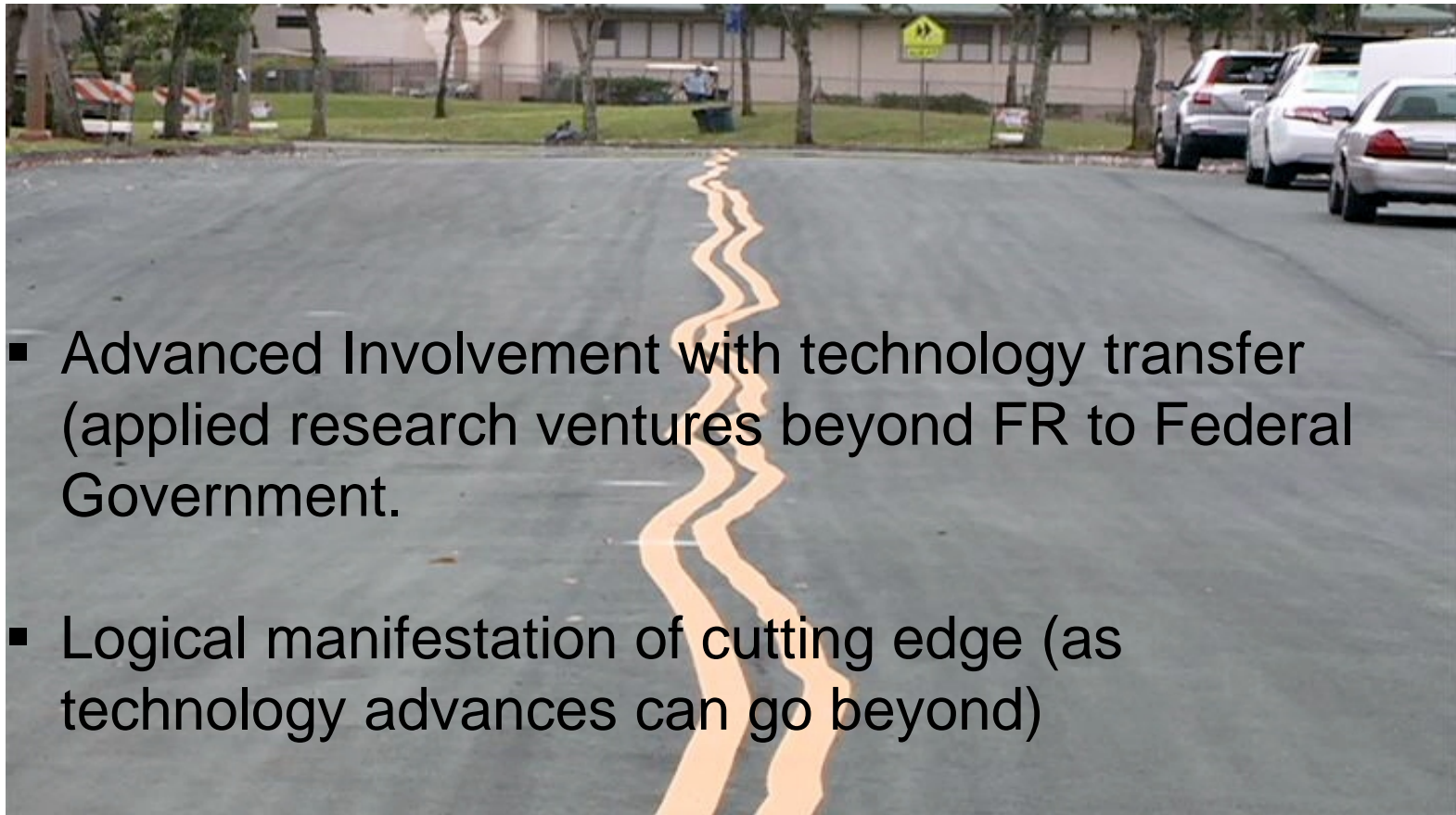


DEEMED EXPORT/TRANSFER OR SHARE INFORMATION



SRA International  
**2017 Annual Meeting**  
Vancouver, Canada | October 14-18

# Projects that Can Cross the FR Line



- Advanced Involvement with technology transfer (applied research ventures beyond FR to Federal Government).
- Logical manifestation of cutting edge (as technology advances can go beyond)





# Identify Risks at Proposal

- Don't wait until award stage to do due diligence
- Review the solicitation before you get the award particularly for NASA, DOD, Industry , SBIR/STTR or if involves foreign country
- Set expectations with PI in advance
- Document everything!



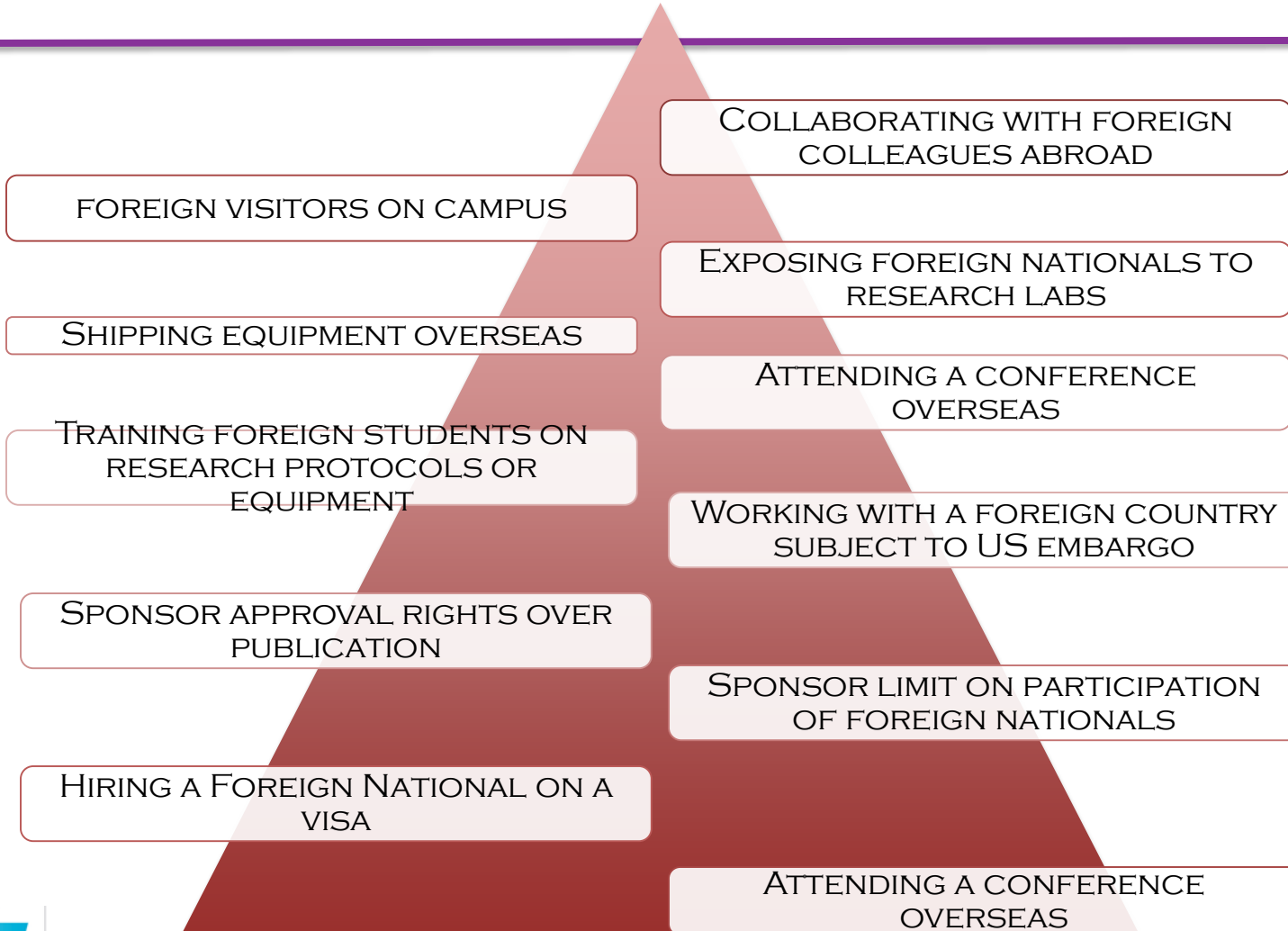
# Review Contractual Terms

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- Terms and conditions
  - Restrictions on publication or use of foreign persons
- FAR clauses
  - DFARS 252.204-7000
  - DFARS 252.204-7012
- Data restrictions
- Grants
- Be Prepared for delays
  - CCATS
  - License and Provisos

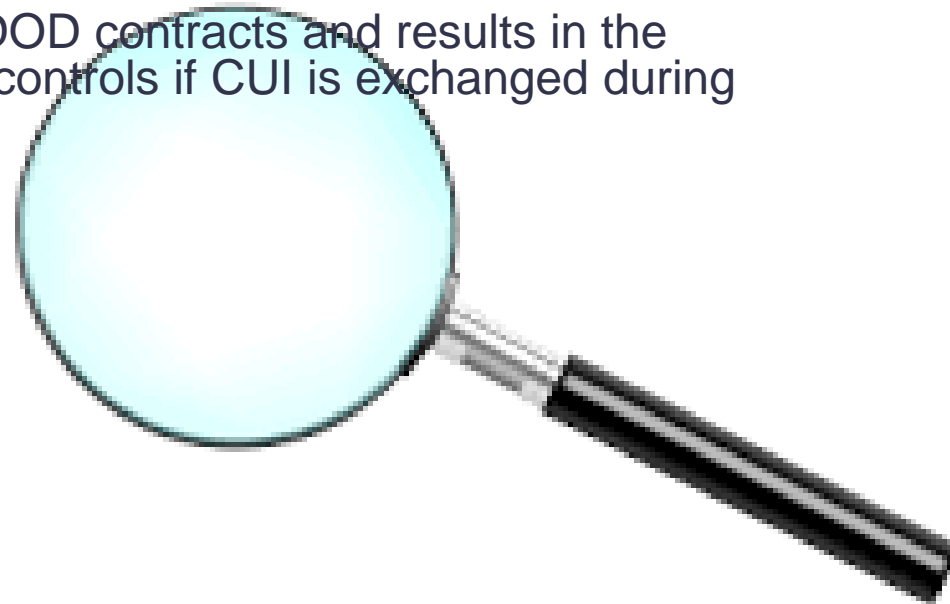


# Identify Risks at Award



# What is DFARS 252.204-7012?

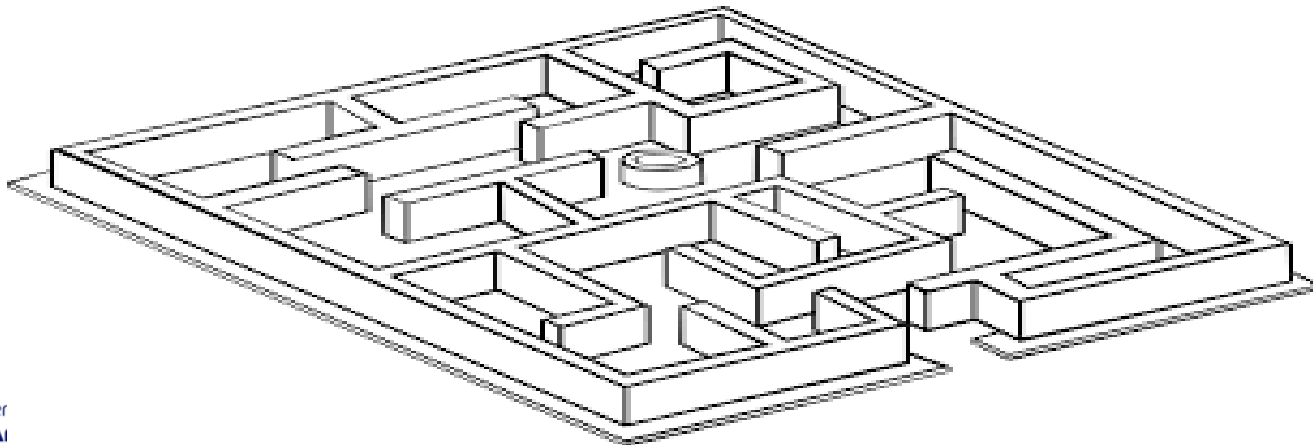
- On December 30, 2015, the U.S. Department of Defense (DOD) published a three-page interim rule to the Defense Acquisition Federal Regulation Supplement (DFARS) that gives government contractors a deadline of December 31, 2017 to implement the requirements of the [National Institute of Standards and Technology's \(NIST\) Special Publication \(SP\) 800-171](#).
- These requirements protect the confidentiality of Controlled Unclassified Information (CUI) in non-federal systems and organizations.
- This clause is mandatory in all new DOD contracts and results in the requirement of additional IT security controls if CUI is exchanged during contract term.



# What Does This Mean For You?

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- 1) If you are not already tracking, review and assess all contracts for DFARS 252.204-7012.
- 2) Strong indication that the work will be export controlled.
- 3) Even with just one contract, you must be in compliance by December 31, 2017.
- 4) It won't be cheap.
- 5) Start by talking to other institutions. Consider internal solutions and outsourcing.



# Use Proposal/Award Checklists

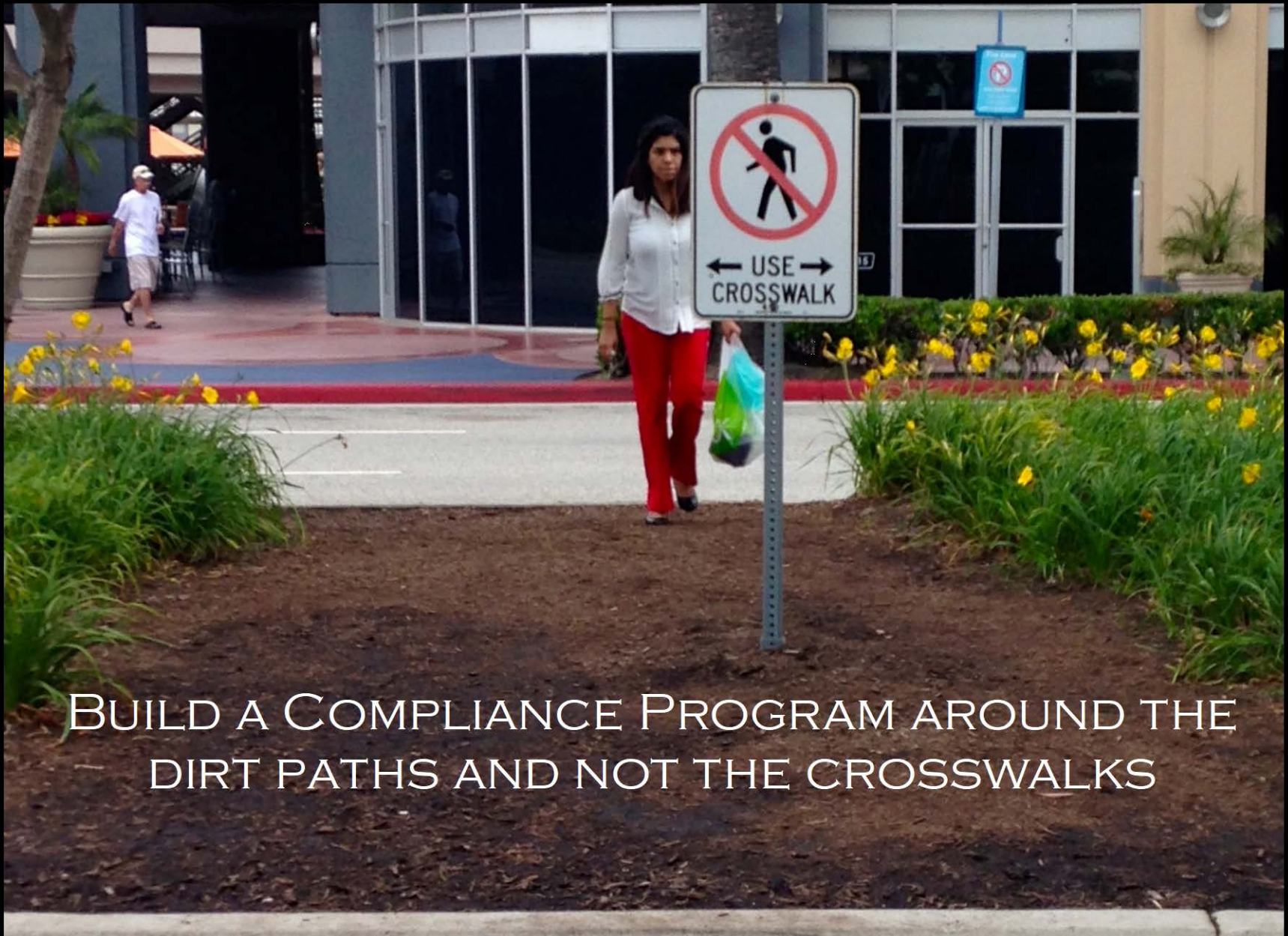
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- Screening of parties
- Sponsor/topic subject to controls
- Solicitation statements
- Restrictions on use of foreign nationals
- Sponsors or collaborators in a foreign country
- Foreign travel or fieldwork
- Watch for people who pop in export language at award stage

# Sample Fundamental Research Certification

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“The above referenced contract/subcontract is subject to DFARS 252.204-7000 DISCLOSURE OF INFORMATION. Under the subject contract, the [INSTITUTION] will perform the Statement of Work funded under this award under direction of the above named Principal Investigator (PI). [INSTITUTION] as the Research Performer and the PI have determined that the nature of this work is consistent with Fundamental Research as outlined in National Security Directive 189. The undersigned agree that the work performed under contract [insert number] is Fundamental Research, as outlined in National Security Directive 189. Therefore, pursuant to DFARS 252.204-7000 (a)(3), Disclosure of Information is authorized and no prior approvals are required pursuant to DFARS 252.204-7000 as applied to the [contract/ subcontract] with [INSTITUTION].”



BUILD A COMPLIANCE PROGRAM AROUND THE  
DIRT PATHS AND NOT THE CROSSWALKS



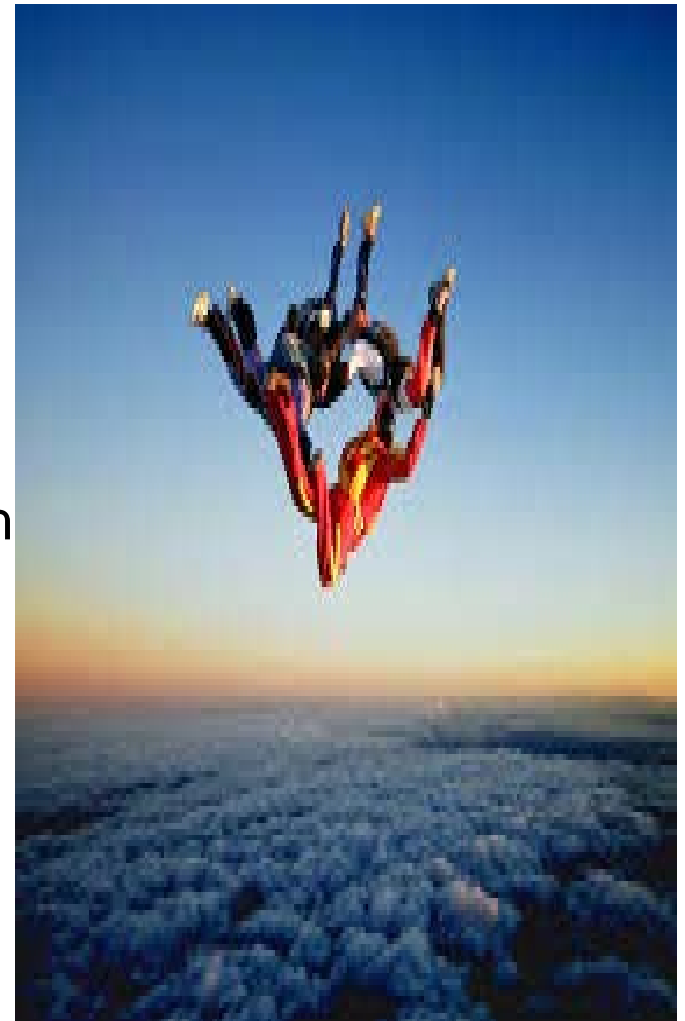
# Using Export Controls to your Advantage

- Licenses and Exceptions
- Technical Assistance Agreements
- Technology Control Plans



# Your Take Aways

- Consider a flexible approach to controlled research work
- Know the basics of export compliance
- Know the parameters for fundamental research. Check back regularly with the TCP/PI/export of hardware
- Assess the risk at multiple stages: proposal, award and ongoing
- Consider the cost implications. Is it worth it?
- This kind of work requires risk- assess your appetite
- Have an export control program- mitigates not eliminates risk
- Don't be afraid of export controls- use them to your advantage.



# Questions?

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