

EXPLANATION OF H-1B DEEMED EXPORT ATTESTATION

UMMC is required to submit an H-1B petition (Form I-129) with other required documentation to U.S. Citizenship and Immigration Services (USCIS) in order to (a) obtain an H-1B temporary worker classification for a foreign national coming from outside the U.S., (b) obtain a change of status within the U.S. for an individual under another nonimmigrant category, or (c) extend the H-1B authorization of a current H-1B employee. Form I-129 includes an attestation that introduces "export controls" into the visa petition process. The attestation requires that the employer determines: (1) if an H-1B employee's job involves access to technology or technical data, (2) If this information is subject to specific export regulations, and (3) if the information will be "released" to the employee and therefore require the employer to obtain an **export license** from the appropriate federal agency.

The U.S. export control system seeks to protect national security and maintain economic competitiveness in the U.S. through two sets of regulations. The Export Administration Regulations (EAR) are administered by the U.S. Department of Commerce and deal with the export of "dual use" (commercial and military) articles, software and technology. The International Traffic in Arms Regulations (ITAR) are administered by the U.S. Department of State and regulate the export of defense articles and technology. Based on the way "export" is defined by these regulations, the **release** (visual inspection, oral exchange of information, etc.) of technology or technical data to a foreign national can constitute a "deemed export," just as if a physical shipment had been made to the foreign national's home country.

Employers filing H-1B petitions on behalf of foreign nationals must certify under penalty of perjury that they have reviewed both the EAR and the ITAR, and based on that review have determined that:

- A license is not required from either the U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the foreign person; **or**
- A license is required from the U.S. Department of Commerce and/or the U.S. Department of State to release such technology or technical data to the beneficiary and the petitioner will prevent access to the controlled technology or technical data by the beneficiary until and unless the petitioner has received the required license or other authorization to release it to the beneficiary.

It is important to note that the employer is required to acknowledge the authority of USCIS to verify through audits, on-site reviews, etc. the information obtained by the employer to make its determination regarding the deemed export attestation.

The Office of Integrity and Compliance (OIC) has drafted a questionnaire in conjunction with this new deemed export attestation, which is included as a part of the H-1B documentation package. The purpose of the questionnaire is to facilitate and document the export control review and certification procedure. [The H-1B employee's faculty sponsor must complete the questionnaire and e-mail it to DeemedExports@umc.edu.](#) The OIC will contact the faculty sponsor if the responses to the questionnaire indicate further investigation is necessary. Please keep in mind that your failure to complete the questionnaire and submit it to the OIC timely will delay processing of the H-1B petition.

It is important to understand that there are broad exemptions from the ERA and the ITAR, many of which are applicable to higher education. For example, publicly available technology, educational information, and fundamental research (defined as "basic and applied research in science and engineering.") are not subject to the regulations. We feel that the majority, if not all of the research conducted at UMMC will fall under the fundamental research category and be exempted from the regulations.