

# Restrictions on Publications

## ACA-76



### About This Policy

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Responsible University Office:

Office of Research Administration

Responsible University Administrator:

University Faculty Council Board of Trustees, Indiana University

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### Policy Statement

#### 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 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? <sup>1</sup> 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 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.

<sup>1</sup> 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.

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## History

The Publication Policy Exception Process was adopted in October 2012, approved by the University Faculty Council on March 26, 2013, and went into effect April 11, 2013 following approval by the Board of Trustees.