The scientific and higher education communities are concerned about proposed changes to export control regulations. In spring 2004, the Inspectors General (IG’s) of several federal agencies (i.e. DOC, DOD, DHS, DOE and the Dept. of State), recommended increased application of “deemed” export regulations to foreign students and scholars involved in university based, fundamental research. Due to exemptions in export law for fundamental research and education, universities have not traditionally had to apply for large numbers of export licenses to allow foreign students and scholars to conduct research on their campuses. Increasing the requirements for such licenses would further discourage top international scientists and engineers from making the United States their destination, prompting them to seek research opportunities overseas.

Specific changes recommended by the Department of Commerce (DOC) Inspector General concerning the “use” of export controlled equipment are of the most immediate concern. The DOC IG specifically recommended existing regulations should be interpreted to require that licenses be obtained before certain foreign nationals are permitted to “use” specific pieces of specialized scientific equipment required for unclassified, fundamental research. The DOC IG also recommended that a foreign student or scholar’s country of birth, as opposed to most recent citizenship, be used to determine when an export license is required. The IG recommendations are currently being reviewed by the Department of Commerce’s Bureau of Industry and Security which has responsibility for administration and enforcement of the Export Administration Regulations (EAR).

The IG recommendations threaten university-based research and are likely to stifle research critical to national and economic security. If implemented, the recommendations would require that universities restrict the participation of international students in research once they arrive in the United States. Some may have to wait for additional export control licenses to be issued before they can conduct and use equipment essential for the conduct of basic research. Moreover, universities will have to control access to their research laboratories to ensure that individuals without proper licenses are not permitted to enter. This would require costly new systems of access control (e.g. security guards and badges for students) at university research laboratories. Such actions are antithetical to the long-standing principles of openness and free information exchange that are a hallmark of U.S. research universities and critical to their success and to the nation’s international competitiveness and national security.

Once cleared to enter through the visa mantis process, foreign visitors should be free to use equipment required for the conduct of fundamental, unclassified research without additional barriers, background checks and/or licenses. All international students are subject to an extensive screening process before they are granted a visa to study in the U.S. By requiring additional background checks and export licenses before foreign students and scholars can use equipment required for the conduct of basic, fundamental research -- after they have already been granted a visa to come to study and conduct research in the U.S. -- the government will add an additional layer of bureaucracy and inefficiency to the process. Moreover, the IG recommendations have the potential to create two “classes” of students on campuses.
Classification is the appropriate means to regulate research. National Security Decision Directive 189 (NSDD 189), promulgated by the Reagan Administration in 1985 and reaffirmed in November 2001 by then-National Security Advisor Condoleezza Rice, established classification as the appropriate means of protecting national security while encouraging necessary research.

The Department of Commerce is currently accepting comments on the Commerce IG recommendations. On March 28, the Department of Commerce Bureau of Industry and Security (BIS) issued a request for comments on the Commerce IG recommendations and their potential implications for scientific research. AAU, COGR, AAAS, along with several other higher education and scientific organizations and individual institutions, are currently developing comments in response to the request. The higher education and research communities are hopeful that the BIS will seriously consider the potential harm to unclassified, fundamental research that can be done by expanding additional “deemed” export licensing requirements as it clarifies existing rules and crafts proposed rule changes in response to the DOC IG.