

To: UFC
From: Alex Tanford, Chair of Policy Review Committee
Date: November 18, 2021
Re: ACA-76, Restrictions on publications

A. The UFC Policy Review Committee has reviewed ACA-76, Restrictions on publications, and finds:

1. The policy was formally enacted in 2013 but existed informally for many years before that.
2. It has been administered by the Office of Research Administration.
3. ORA has requested that the policy be amended and updated to clarify the process and emphasize that units have the central administrative role.
4. The units are in a better position than ORA to evaluate the effect of publication restrictions on the faculty, students and post-docs affected by it.

B. The policy update proposal has been circulated for comment.

The amendment has been developed in consultation with the university chief policy officer, campus academic affairs officers, and the school of medicine.

C. The Committee moves that the UFC amend ACA-76 to read as follows:

ACA 76. Research funding imposing restrictions on publication

Scope

All funded research.

Policy Statement

In the absence of an exception granted in accordance with this policy, Indiana University does not accept research funding that conditions publication on approval by the research funder.

Publication Policy Exception Process

A. An exception is not needed if:

1. 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.
2. 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.

3. 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).

4. 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).

B. Considerations for making an 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, the university 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 the university is the goal of dissemination of new knowledge from its academic appointees' intellectual activities. If it is determined that the negotiations are not successful, but the academic appointee 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 following considerations determine whether an exception should apply to permit the research with the restrictions, under 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 post-docs would the project comprise?

d. How much will the knowledge gained by the project enhance the skill set and expertise of the academic appointees, students, and/or post-docs, 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. How many other academic appointees, students, and post-docs 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 eligible individuals? Is the project valuable and a good fit with the research interests of those academic appointees, students and postdocs, and are there other intellectually comparable projects for ineligible individuals to perform?

i. If research data may not be published, may they be used freely by the participating researchers within the university?

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 the university evaluate the work for reappointment, tenure, promotion, and academic advancement purposes consistent with any restrictions in the contract?

Considerations include:

- a. Does the proposed contract merely require approval prior to publication of research results or does it restrict disclosure to IU faculty or other parties not directly participating in the research, such as a faculty committee or peer reviewer, Could such restrictions be resolved with a non-disclosure agreement?
 - b. Does the contract involve national security or export control, and if so, could the faculty evaluation committee and peer reviewers be limited to eligible individuals?
 - c. If the contract or disclosure restriction limits the evaluation, could the department or school forego evaluation of the restricted work because it comprises a small percentage of the academic appointee's, student's, or post-doc's work?
- C. When evaluating an exception request, 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.

D. Restricted publication management plan. Any exceptions granted under this policy require the written approval of the unit dean, and must include a written plan that describes 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 academic appointees, students, and post-docs are not adversely affected in their career pursuits, why the exception is warranted, and how granting it will advance the overall mission of the university. The dean shall notify the Office of Research Administration that they have developed a management plan and approved the publication restriction. The unit has primary responsibility for ensuring compliance with the plan.

Definition.

“Dean” includes the dean’s designee.