

Participation in IEEE Activities by Entities on the BIS Entity List Frequently asked Questions and Answers (“FAQs”)

These FAQs should not be considered legal advice; readers may wish to consult with their legal advisors. These FAQs may be updated at any time at the discretion of IEEE.

GENERAL

1. What is the Entity List maintained by the U.S. Commerce Department’s Bureau of Industry and Security (“BIS”)?

The Entity List (supplement no. 4 to part 744) identifies persons reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States. The entities are added to the Entity List pursuant to sections of part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the Export Administration Regulations (EAR) (15 CFR, subchapter C, parts 730–774).

2. Where can I find the BIS Entity List?

The BIS Entity List is available [here](#).

3. Is being on the BIS Entity List different from being sanctioned under the economic sanctions and trade embargoes administered by the U.S. Treasury Department’s Office of Foreign Asset Control (“OFAC”)?

Yes. The BIS Entity List is maintained by the U.S. Commerce Department and prohibits exports, reexports, and in-country transfers to Listed Persons of items subject to the EAR.

OFAC is a separate agency from BIS, and has its own list of sanctioned countries, groups, and designated persons. OFAC determines when to impose economic sanctions and trade embargoes that prohibit certain activities with sanctioned parties by persons subject to OFAC’s jurisdiction. Listed Persons may also be subject to the OFAC economic sanctions. If a Listed Person is also subject to the OFAC economic sanctions, then there may be additional or different guidance from that provided in the IEEE Statement on Participation of Members/Volunteers on BIS Entity List or IEEE Standards Association’s (IEEE-SA) Statement.

4. Where can I find IEEE’s Statement on Participation of Members/Volunteers on BIS Entity List and IEEE Standards Association’s (“IEEE-SA”) Statement?

IEEE’s Statement is available [here](#). IEEE-SA’s Statement is available [here](#).

IEEE VOLUNTEER ACTIVITIES

5. Am I permitted to participate in IEEE technical groups if my employer is an entity listed on the BIS Entity List or if I am funded by an entity listed on the BIS Entity List?

Yes, you can participate in IEEE technical groups (including standards) if the meetings are open to any interested parties, even if there are membership criteria for participation. These technical meetings are within the EAR exemptions permitting a) “unlimited distribution” of information at a “conference, meeting, [or] seminar...generally accessible to the interested public” and b) distribution of a wide range of written materials or “representations of knowledge” to “organizers of open conferences or other open gatherings.”

See also [IEEE’s Statement](#) and [IEEE-SA’s Statement](#).

6. What is meant by an “open” or “public” meeting/activity?

A meeting or activity may be considered “open” or “public” in circumstances where any charges for attendance are limited to fees reasonably related to the cost of the meetings, and there is an intent that all interested and technically qualified persons are able to attend. Attendees must be permitted to take notes or otherwise make a personal record (not necessarily a recording) of the proceedings and presentations. A conference is not “open” if attendees are prohibited from note taking.

7. If my employer is an entity listed on the BIS Entity List or if I am funded by an entity listed on the BIS Entity List, when might I not be permitted to participate in an IEEE activity?

You will not be permitted to participate in any non-public or closed meetings that involve technical discussions. Where technical and nontechnical topics are intermingled in a given meeting, the chair or other organizer has the discretion to exclude you from the entire meeting after considering the administrative burden of opening and closing the meeting sessions.

See also [IEEE’s Statement](#) and [IEEE-SA’s Statement](#).

8. I am employed by Company A, which is a subsidiary of Parent. Parent is on the Entity List, but Company A is not. Does IEEE still consider me an employee of a Listed Person when I am participating in individual-based activities and therefore subject to the same restrictions as employees of Parent?

No. In an individual-based activity, IEEE does not consider you to be an employee of a Listed Person if your company is not on the Entity List (either as a specifically named entity or as an entity within a general description, such as “all affiliates”). The IEEE and IEEE-SA Statements on Participation do not restrict your participation in individual-based activities (including governance and leadership meetings). U.S. law may restrict your ability to communicate with your Parent company and/or its affiliates on the Entity List. You are responsible for ensuring your own compliance with your legal obligations.

9. I am employed by Company A, which is a subsidiary of Parent. Parent is on the Entity List, but Company A is not. Does IEEE still consider me an employee of a Listed Person when I am participating in entity-based activities and therefore subject to the same restrictions as employees of Parent?

Yes. The Parent company can assume the membership from Company A and direct the position and voting of Company A. Consequently, restrictions on participation apply to Company A in entity-based activities.

10. My employer is on the BIS Entity List and I serve as an officer of an IEEE group. In that role I receive communications from group members regarding procedural questions and agenda requests. Can I continue to receive these communications?

Yes. These specific communications are not technical in nature.

a) But what if the communication includes some technical information (for example, a question about a technical paper or technology proposal).

Communications can continue, even if they include technical submissions, only if the submissions are directed to an open IEEE technical group. Otherwise, you will need to transfer acceptance of this type of communication to another volunteer who is not a Listed Person.

b) What if the request is posted on the technical group's reflector? Does that make it a public communication?

Yes, the request is considered a public communication if the technical group reflector is open to all materially interested parties, or a public archive of the reflector is available.

11. Are technical group reflectors considered "public" communications?

A technical group reflector is considered public communication either if the reflector is open to all materially interested parties and/or if a public archive of the reflector is available.

12. Can an employee of (or an individual funded by) a Listed Person be an Editor-in-Chief (EiC) on an IEEE Editorial Board, a peer reviewer prior to acceptance of a submission by IEEE, or the Chair of an IEEE technical group? EiCs and peer reviewers are involved in initial peer-review prior to acceptance of papers by IEEE, and Chairs may obtain technical proposals from participants in the technical group.

The employee of or individual funded by a Listed Person can serve in these roles but should transfer the role of accepting technical submissions to another volunteer who is not an employee of or individual funded by a Listed Person. The employee or individual funded by the Listed Person can provide input once the submission has been accepted by IEEE or provided to the open IEEE technical group; however, the employee of or individual funded by the Listed Person may not participate in peer review prior to acceptance.

13. I am an independent consultant, and a Listed Person is one of my clients. Am I subject to restrictions in a closed technical discussion if the Listed Person is not funding my participation and I do not communicate any of the information to the Listed Person?

IEEE will not consider you to be restricted from the closed technical discussion as long as the Listed Person is not funding your participation in the closed technical discussion, you are not contractually bound to disclose such information to the Listed Person, and you do not communicate any of the information to the Listed Person. You are responsible for ensuring your own compliance with your legal obligations.

14. Are there restrictions on participation by a Listed Person in IEEE Communities?

If the IEEE Community is open, then the Listed Person can participate in technical discussions. However, if the Community is closed, the restrictions apply to the Listed Person's participation in any technical discussions.

15. Are Conference Organizer or Standards Committee (previously "Sponsor") meetings considered "leadership and governance meetings"?

Yes, Conference Organizer and Standards Committee meetings are leadership meetings. Some portions of the meetings (such as planning future meetings) are not technical. Other portions of the meetings (such as approving the submission of technical papers or a Project Authorization Request for IEEE-SA Standards Board approval) can include technical considerations.

16. Why can't a Listed Person participate in governance/leadership meetings involving technical discussion? How are such leadership and governance meetings different from technical group meetings in terms of openness?

Governance and leadership meetings can include closed portions of the meetings (e.g., permitting only the committee members and IEEE staff to attend), and there are restrictions on participation by Listed Persons during closed technical discussions.

17. Governance/Leadership meetings held in Executive Session are highly unlikely to include technical information subject to the EAR, so why should employees of a Listed Person be excluded?

IEEE (as a corporation organized in New York State and subject to U.S. laws) must comply with its legal obligations under the laws of the United States and other jurisdictions. IEEE's guidance was designed to permit participation by Listed Persons' employees unless there is a significant risk that permitting the participation would expose IEEE to claims of non-compliance with the EAR. Although an executive session meeting may be unlikely to include discussion of technical information that is subject to the EAR, IEEE cannot categorically say that such discussions do not happen.

18. I am not a U.S. citizen and I reside outside the U.S. Why is my IEEE activity impacted by the actions of the U.S. Department of Commerce?

IEEE (as a corporation organized in New York State and subject to U.S. laws) must comply with its legal obligations under the laws of the United States and other jurisdictions. Participants in all IEEE activities are therefore required to comply with applicable laws.

19. What if BIS has granted a temporary general license for a specific technical activity ? Is a Listed Person then permitted to participate in all activities related to the technical area permitted by the BIS license?

IEEE must comply with the terms of the BIS license. Depending on the terms of the license, it is possible that the Listed Person may be able to participate in activities related to that specific technical activity. For example, if BIS issued a temporary general license for development of a specific technology, then the license would apply to all technical groups developing that specific technology, in the specific context defined, and for the duration of the temporary general license.

An example of a temporary BIS general license can be found [here](#). This license permits engagement with specifically identified Listed Persons (in this case, Huawei and its named affiliates) “as necessary for the development of 5G standards as part of a duly recognized international standards body,” including specifically activities within IEEE.

OTHER IEEE ACTIVITIES

20. Can IEEE reimburse employees, consultants, and other individuals employed by or affiliated with Listed Persons for travel to, or accommodations at, IEEE meetings or provide a travel grant?

Yes. The restrictions against a Listed Person do not regulate the transfer of funds, and so IEEE can reimburse employees, consultants, and other individuals employed by or affiliated with Listed Persons for travel to, or accommodations at, IEEE meetings or provide a travel grant.

21. Can IEEE accept sponsorship funding from Listed Persons?

Yes.

22. Can a Listed Person be provided a nominal gift from IEEE (including membership gifts)? Does it matter if the gift is purchased in the U.S. or outside the U.S.?

IEEE may not provide any nominal gifts that are manufactured in or sent from the U.S. to any employee of or person funded by a Listed Person.

23. Can IEEE provide tangible products as gifts, as opposed to electronic books, white papers, roadmaps, or online courses or webinars?

Because electronic books, white papers, roadmaps, and online courses would be considered public information, they can be provided to a Listed Person. However, IEEE may not provide any other tangible products as gifts to a Listed Person if the gifts are manufactured in or sent from the U.S. to any employee of or person funded by a Listed Person.

Issued: 24 May 2019