

**UNIVERSITY OF CALIFORNIA, SAN FRANCISCO
AUDIT AND ADVISORY SERVICES**

**Export Controls Review
Project #20-033**

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University of California
San Francisco

Audit & Advisory Services

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SUBJECT: Export Control Review

As a planned internal audit for Fiscal Year 2020, Audit and Advisory Services (“A&AS”) conducted a review of Export Control Compliance. The purpose of this review was to assess the adequacy of the internal controls and processes in place to sufficiently address key risks and controls for export control compliance.

Our services were performed in accordance with the applicable International Standards for the Professional Practice of Internal Auditing as prescribed by the Institute of Internal Auditors (the “IIA Standards”).

Our review was completed and the preliminary draft report was provided to department management in June 2020. Management provided final comments and responses to our observations in July 2020. The observations and corrective actions have been discussed and agreed upon with department management and it is management’s responsibility to implement the corrective actions stated in the report. A&AS will periodically follow up to confirm that the agreed upon management corrective actions are completed within the dates specified in the final report.

This report is intended solely for the information and internal use of UCSF management and the Ethics, Compliance and Audit Board, and is not intended to be and should not be used by any other person or entity.

Sincerely,

Irene McGlynn
Chief Audit Officer
UCSF Audit and Advisory Services



EXECUTIVE SUMMARY

I. BACKGROUND

As a planned audit for the Fiscal Year 2020, Audit & Advisory Services (A&AS) conducted a review of Export Controls compliance at UCSF. The objective of the review was to assess the adequacy of the internal controls and processes in place to address selected key risks for export control compliance. At UCSF the Office of Ethics and Compliance is charged with overseeing UCSF's export control compliance.

The University of California ("University") Policy on Export Control dated June 21, 2018 provides a general structure for Export Control Compliance Programs to facilitate compliance with the U.S. government's export control laws and regulations by all members of the University community. Each UC campus is responsible for developing and managing its own Export Control Compliance Program.

An "export" is referred to as an actual shipment or transmission of items out of the United States (U.S.). In order to protect the U.S. economy, promote trade goals, and restrict the export of technology and goods that could aid U.S. military adversaries the federal government has enacted export control laws. Export control laws and regulations govern the transfer or shipment overseas (or to foreign nationals within the U.S. or on campus.) of certain information, technologies including technical data and software, and commodities.

Export controls exist under three primary federal laws:

- The Department of Commerce's Export Administration Regulations (EAR) (also known as the Commerce Control List). The EAR is concerned with dual-use items, such as computers or pathogens that are designed for commercial use, but have the potential for military application.
- The Department of State's International Traffic in Arms Regulations (ITAR) (also known as the U.S. Munitions List) which covers defense-related items and services.
- The Treasury Department's Office of Foreign Assets Control (OFAC) administers and enforces economic and trade sanctions that have been imposed against specific countries based on reasons of foreign policy, national security, or international agreements. A list of all countries currently subject to boycott programs is available at the OFAC website.

In general, the export control regulations cover four main types of university activities:

1. transfers of controlled information, including technical data, to persons and entities outside the United States;
2. shipment of controlled physical items, such as scientific equipment, that require export licenses from the United States to a foreign country;
3. verbal, written, electronic, or visual disclosures of controlled scientific and technical information related to export controlled items to foreign nationals ("deemed exports"), even when it occurs within the United States; and
4. travel to certain sanctioned or embargoed countries for purposes of teaching or performing research.

The Fundamental Research Exclusion (FRE) exempts most on-campus university research from export control licensing requirements.¹ It allows foreign nationals (e.g., students, faculty, academic appointees, and non-employee participants in University programs) to participate in fundamental research projects without securing a license. They also permit U.S. universities to share with foreign nationals in the U.S. or abroad 'technology' or 'software' that arises during, or results from, fundamental research and is intended to be published.

Failure to comply with export control laws may result in penalties to the University, criminal sanctions to individual faculty, staff and students, and could result in the loss of research contracts, governmental funding, and export privileges.

II. **AUDIT PURPOSE AND SCOPE**

The purpose of this review was to assess the adequacy of the internal controls and processes in place to sufficiently address certain key risks and controls for export control compliance. The scope of the review is limited to transactions and activities for calendar years 2018 and 2019.

The review focused on the following key areas:

- Export control compliance program governance and organizational structure;
- International shipments of controlled items to and from international locations, and
- International travel to embargoed and/or sanctioned countries.

The scope of this was limited due to unavailability of data for international shipments that identified the destination country and therefore we were unable to perform any substantive testing to validate export control compliance around international shipping.

Procedures performed as part of this review included walkthroughs and interviews with relevant personnel on export control processes and procedures; identified travel undertaken by UCSF faculty and staff to embargoed and sanctioned countries; ascertained training and awareness about export control compliance and evaluated the governance and oversight of the export control compliance program. For more detailed steps, please refer to Appendix A.

Work performed was limited to the specific activities and procedures described above. As such, this report is not intended to, nor can it be relied upon to provide an assessment of compliance beyond those areas specifically reviewed. Fieldwork was completed in June 2020.

III. **SUMMARY**

Based on procedures performed, there are opportunities for UCSF to strengthen its governance processes for the export control compliance program. An export control compliance program has not been fully developed and implemented to provide formal processes and adequate guidance to the campus community. Our work further identified

¹ As defined by the National Security Decision Directive 189, Fundamental Research is any "basic and applied research in science and engineering, the results of which are ordinarily published and shared broadly within the scientific community".

opportunities to improve oversight and monitoring of international shipments and international travel. Finally, communications and resources available to facilitate compliance with export control requirements should be enhanced.

The specific observations from this review are listed below as well as in Section IV. Observations and Management Corrective Actions.

1. Key governance processes and essential elements of the export compliance program have not been fully established.
2. There is not a process in place to effectively identify employees travelling to embargoed countries prior to their travel to enable an evaluation and determination that export control requirements are met.
3. Current shipping practices are not sufficient to provide assurance that UCSF complies with export control laws for international shipments.
4. Information and resources on Export Control could be enhanced.

IV. OBSERVATIONS AND MANAGEMENT CORRECTIVE ACTIONS (“MCA”)

No.	<u>Observation</u>	<u>Risk/Effect</u>	<u>Recommendation</u>	<u>MCA</u>
1.	<p><i>Key governance processes and essential elements of the export compliance program have not been fully established.</i></p> <p>The Office of Ethics and Compliance (OEC) is charged with overseeing the campus export control compliance program. In 2018, the OEC appointed an Export Control Officer (ECO) to oversee the export control compliance program and provide information and assistance to the campus community. Due to lack of dedicated resources limited progress has been made to implement key components of the export controls compliance program. During our review, we noted the following:</p> <ul style="list-style-type: none"> a) A letter demonstrating management’s commitment to comply with export control regulations has been posted on the Office of Ethics and Compliance website. However, there has not been any campus wide communication of this commitment. b) A written description of the local export control compliance program that integrates education, training, and procedures for all responsible parties to raise awareness and to identify export control risks has not been developed. c) The Export Control Committee/Workgroup of stakeholders to oversee policy and procedures; provide input on and to provide input to assist with campus-wide export compliance that was convened some years ago has not been reinstated. 	<p>In the absence of a strong governance and oversight structure and development of an effective compliance program, there is increased risk of non-compliance with UC Policy on Export Control and U.S export control laws and regulations.</p>	<p>With the new export control officer now in position the Office of Ethics and Compliance, in collaboration with campus stakeholders, should develop a plan to:</p> <ul style="list-style-type: none"> • A campus wide communication should be sent reinforcing management commitment’s to export control compliance • Document an export control compliance program • Re-establish an export control committee /workgroup and formalize a charter including defining roles and responsibilities for stakeholders. • Develop a periodic campus training program to create awareness of export controls. • Evaluate resources required to adequately support the export 	<p>Action:</p> <p>(a) A statement of management support is currently posted on the Export Control website (https://compliance.ucsf.edu/foreign-influence-and-export-control), therefore a campus wide email reinforcing management’s commitment to comply with export control regulations will be included with the next campus communication about foreign government influence</p> <p>Target Date: 09/30/2020</p> <p>(b) The ECO is participating in a Systemwide work group to develop standard operating procedures (SOP) for participating campuses. Subject</p>

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	<p>d) Roles and responsibilities are not formally documented and clearly defined for all campus stakeholders. As a result, the ECO may not be aware of all export control activities due to shared responsibilities.</p> <p>e) Training and education program has not been fully established. While the Office of Ethics and Compliance website provides links to a series of training videos on important topics related to export control developed by UC, a training and education program should include periodic reviews and revisions to reinforce awareness and discuss changes to policy and procedures.</p> <p>The issues noted above were also identified as part of the UC system wide assessment of Export Control Compliance Program performed in 2018 and limited progress has been made.</p> <p>The UC Policy on Export Control requires export control compliance programs to be documented and minimally include the essential elements of an effective compliance program, which have been noted above in (a) through (e).</p>		<p>control compliance program.</p>	<p>areas have been prioritized according to compliance risks, and SOPs will continue to be created over the next year on a rolling basis.</p> <p>Target Date: 07/01/2021</p> <p>(c) The ECO is working on identifying new membership within key stakeholder groups for the Export Control Workgroup. Once the individuals have been finalized, the ECO will reconvene the Export Control Workgroup and develop a charter.</p> <p>Target Date: 11/30/2020</p> <p>(d) The ECO with the help of the UCSF Export Control Workgroup will formally document roles and responsibilities for stakeholders per the</p>

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				<p>gatekeeper chart in the UC Export Control Policy, Appendix A.</p> <p>Target Date: 02/20/2021</p> <p>(e) The ECO in partnership with the Systemwide Export Control Officers group (ECOs) is developing a periodic campus training program to create awareness of export controls across functional areas. The training will be in phases as follows:</p> <p>Phase I: Deliver Procurement Training. The training program has been developed and is currently scheduled.</p> <p>Target Date: 09/30/2020</p> <p>Phase II: UCSF leads the ECO Video Training ECO Subgroup. In</p>

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				<p>process is the launch of the first two training modules for LMS deployment, "Introduction to Export Controls" and "Restricted Party Screening (RPS) with the new Research Enterprise Module of Visual Compliance". Project currently underway.</p> <p>Target Date: 12/31/2020</p> <p>Phase III: Continue updating the existing Video Training Series. More will be planned following the initial series. Target Date: 05/31/2021</p> <p>Phase IV: Deploy EC Liaison Training course to department representatives. Live or webinar. Content is nearly complete for first 3 days of training.</p> <p>Target Date 7/01/2021</p>

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				<p>Responsible Party: Chief Ethics Compliance Officer & Senior Associate Vice Chancellor, Research</p>
<p>2.</p>	<p><i>There is not a process in place to effectively identify employees travelling to embargoed countries prior to their travel to enable an evaluation and determination that export control requirements are met.</i></p> <p>The ECO receives alerts for trips booked to embargoed countries through WorldAware². However, as employees are not required to book international travel using University booking systems, the ECO may not be able to identify all international travels to embargoed/sanctioned countries in advance to ensure that any appropriate license is obtained and/or appropriate precautions are taken.</p> <p>Review of international travel expenses reimbursed by the University during fiscal years 2018 and 2019 identified four out of eight trips to Cuba and two trips to Sudan, both embargoed countries visited by researchers without consultation with the ECO for determination of export control requirements.</p> <p>Additionally, our review also noted 54 trips made to sanctioned countries such as the following:</p> <ul style="list-style-type: none"> • Zimbabwe • Democratic Republic of Congo • Croatia 	<p>Employees may travel to and/or engage in export control activities with embargoed/sanctioned countries without obtaining proper licences in violation of UC Policy on Export Control and potentially US export control regulations.</p>	<p>a) The ECO should reach out to the six employees identified in the review to make an after-the-fact determination if any violations had occurred and whether any reporting to federal agency is required.</p> <p>b) EOC should work with Campus Supply Chain Management to explore the possibility of having a periodic report of travel reimbursements to embargoed and sanctioned countries. Although, this data will be after the fact, it does help identify non-compliance and opportunities to train the traveler and department for future trips.</p>	<p>Action:</p> <p>(a) The ECO will reach out to the employees who travelled to embargoed countries to obtain an understanding of the purpose of the trips and determine if any reporting violations had occurred</p> <p>Target Date: 08/31/2020</p> <p>(b) The ECO will work with Campus Supply Chain Management and Audit & Advisory Services in developing a periodic report from the University's travel reimbursement system to identify</p>

² WorldAware provides practical destination intelligence and real-time travel alerts for hundreds of destinations worldwide.

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	<p>Traveling to sanctioned countries prohibit certain exports of items such as data and/or software. University owned technology (laptops, tablets, etc) may require a license if taken to a sanctioned country by University personnel even if traveling on personal business.</p> <p>Inquiries with the travelers to embargoed and/or sanctioned countries identified during this review indicated lack of an awareness about export control compliance requirements and the need to consult with the ECO when planning to travel to such countries.</p> <p>Per Section IV: "Compliance/Responsibilities" of the UC Policy on Export Control; faculty and other academic appointees, staff, students, and non-employee participants in University programs are required to contact the local ECO prior to engaging in situations including, but not limited to traveling to, exporting to, or otherwise conducting University transactions with countries subject to Office of Foreign Assets Control (OFAC) sanctions.</p>		<p>c) The ECO should consider targeting export control trainings for departments with high international travel activity.</p> <p>d) The ECO should consider conducting a campus-wide survey to determine the export control awareness level.</p>	<p>travel to embargoed and sanctioned countries.</p> <p>Target Date: 10/30/2020</p> <p>Responsible Party: Chief Ethics Compliance Officer & Senior Associate Vice Chancellor, Research.</p>
<p>3.</p>	<p><i>Current shipping practices are not sufficient to provide assurance that UCSF complies with export control laws for international shipments.</i></p> <p>The shipping function at UCSF is decentralized. Departments have their own individual accounts with various mail carriers and do their own shipping. There is no visibility on what is being shipped and to which country other than for biological materials, the current shipping processes are not optimized to include controls to support compliance with export control laws and regulations.</p>	<p>Inadequate processes or procedures to monitor outgoing international shipments for export controlled materials may not identify controlled materials being shipped to embargoed/sanctioned countries without obtaining proper licences resulting in potential violation of UC Policy on Export Control and potentially US export control regulations.</p>	<p>(a) The ECO in conjunction with the Export Control Committee/Workgroup should consider options for systems and/or tools that facilitate the capture and tracking of international shipments to enable better compliance with export controls regulations.</p>	<p>Action:</p> <p>(a) The ECO consulted with the shipping manager at UC Davis (UCD) about the AggieShip system that UCD implemented to centralize shipping and facilitate export compliance reviews. Based on the significant costs</p>

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	<p>Additionally, there are no reports available to identify shipments sent to embargoed countries. This data needs to be supplied by the mail carriers and a process has not been established to request such information from them.</p> <p>As per the UC Policy on Export Control, faculty and other academic appointees, staff, students, and non-employee participants in University programs should contact the local Export Control Officer prior to engaging in situations including, but not limited to traveling to, determining whether and how their activities (i.e. research, shipping, or exchange) involving export-restricted materials, items, information or software may be impacted by export control regulations.</p>		<p>(b) The ECO should work with Campus Supply Chain Management to seek regular reports on international shipments from the mail carriers. This data can then be used to identify departments for outreach and training on export controls.</p>	<p>quoted by UCD for implementing, maintaining, and staffing the AggieShip system, and the current UCSF budget reductions due to the COVID-19 pandemic, implementing the AggieShip tool is not feasible in FY21.</p> <p>b) The ECO will work with Campus Supply Chain Management to determine the feasibility of obtaining regular reports on international shipments from the mail carriers, and will conduct outreach activities with departments that regularly ship tangible goods internationally</p> <p>Target Date: 05/31/2021</p>

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				<p>Responsible Party: Chief Ethics Compliance Officer & Senior Associate Vice Chancellor, Research</p>
<p>4.</p>	<p><i>Information and resources on Export Control could be enhanced.</i></p> <p>Current online resources on the Ethics and Compliance website provide some information, but do not clearly identify risks and the responsibility to maintain compliance with export control laws. In some areas, there is a lack of clear and easy way to understand steps on how to achieve export control compliance for specific activities. Some of the information that is available is fragmented throughout UCSF and UCOP websites and cannot be easily located.</p> <p>Currently, information about Export Control is under Foreign Influence and Export Control webpage. Users have to scroll to the bottom to get to the Export Control section. In comparison to other UC Export Control webpages, UCSF's online resources appear to be more disjointed and difficult to navigate and do not always provide a clear, concise explanation on what to do when engaging in export activities. Following are some guidelines/information that can be included to enhance the export control website:</p> <ul style="list-style-type: none"> • Export Control Decision Tree • List of restricted biologicals and select agents • Information on controlled items, such a general list of controlled items • FAQ's • Section on Shipping Outside of US • Section on International Travel 	<p>Inability to find information on export control can potentially lead to non-compliance and/or unnecessary frustration locating informaton.</p>	<p>(a) Export Control Officer should consider having a separate webpage dedicated for export control.</p> <p>(b) More information and guidelines should be included on the export control website so that users are able to easily navigate the webpage for information.</p>	<p>Action:</p> <p>The ECO is working on getting the export control website updated. The website will be updated to include more information on export control, including updated export control compliance training materials.</p> <p>Target Date: 7/1/2021</p> <p>Responsible Party: Chief Ethics Compliance Officer & Senior Associate Vice Chancellor, Research</p>

APPENDIX A

To conduct the review, the following procedures were performed:

- (1) conducted walkthroughs and interviews with relevant personnel to understand the processes and controls for export control compliance, including the current organizational and governance structure;
- (2) reviewed UC and UCSF policies, best practices, and other guidance concerning export controls;
- (3) reviewed the following federal regulations:
 - ITAR
 - EAR
 - OFAC
- (4) reviewed export controls websites, policies and documents at other UC campuses and external higher education institutions,
- (5) obtained the current and comprehensive list of countries identified by the OFAC to which U.S. economic sanctions and embargoes apply;
- (6) queried the financial information system to obtain the population of foreign travel to embargoed and/or sanctioned countries during calendar years 2018 and 2019;
- (7) determined if international travel to embargoed and/or sanctioned countries were reviewed by the Export Control Officer (ECO) and appropriate licenses were obtained where necessary;
- (8) determined the export control compliance awareness level among employees who travelled to embargoed and/or sanctioned countries, including availability of training and accessibility of export control information and processes;
- (9) determined compliance with University Policies and federal requirements.