University of California, Santa Barbara

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January 13, 2020

To: Barry Rowan, Director of Research Integrity
        Office of Research

Re: **Export Control**
        Audit Report No. 08-20-0002

We have completed a limited review of export control as part of the 2019-20 annual audit services plan. The audit was conducted in conformance with the *International Standards for the Professional Practice of Internal Auditing*. Enclosed is the report detailing the results of our work.

We sincerely appreciate the cooperation and assistance provided by Export Control, Sponsored Projects, Office of Technology & Industry Alliances, and Travel and Entertainment personnel during the review. If you have any questions, please contact me.

Respectfully submitted,

Ashley Andersen
Director
Audit and Advisory Services

Enclosure

cc: Chancellor Henry Yang
        Chuck Haines, Assistant Chancellor for Finance and Resource Management
        Joe Incandela, Vice Chancellor for Research
        UCSB Audit Committee
        Alexander Bustamante, Senior Vice President and Chief Compliance and Audit Officer

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UC SANTA BARBARA

UCSB Audit and Advisory Services

Internal Audit Report
Export Control

January 13, 2020

Performed by:
Antonio Mañas-Melendez, Associate Director
Irene Camargo, Senior Auditor
Karen Quintana, Staff Auditor

Approved by:
Ashley Andersen, Audit Director

Report No. 08-20-0002

EXECUTIVE SUMMARY

OBJECTIVE

The purpose of the audit was to evaluate the University's current export control program and the coordination of campus stakeholders to ensure export risks are identified, properly managed, and comply with University policies and regulations. The objective of our review was to determine the adequacy of internal controls in the following areas:

- Governance and organizational structure
- International shipments of controlled items to and from international locations
- International travel to embargoed/sanctioned countries
- Restricted party screening
- Sponsored projects

CONCLUSION

Based on the results of the work performed within the scope of the audit, we found the Office of Research Integrity has developed working relationships with campus stakeholders to identify and manage export control requirements and risks. However, an export control compliance program has not been developed and implemented to provide formal processes and adequate guidance to the campus community. Our work further identified opportunities to improve oversight and monitoring of international shipments, international travel, and sponsored projects flagged as foreign involvement.

OBSERVATIONS, RECOMMENDATIONS, AND RESPONSES

1. GOVERNANCE AND ORGANIZATIONAL STRUCTURES

OBSERVATION

The Office of Research Integrity is charged with overseeing campus export control compliance. As subject matter expert, the Export Control Officer (ECO) assists, monitors, and provides oversight for the entire campus to ensure compliance with the University of California Policy on Export Control and all U.S. export control laws and regulations. However, we identified:

- There is not 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. We were informed University of California Santa Barbara (UCSB) is in the process of documenting and instituting an export control compliance program.

- An Export Control Committee of stakeholders to oversee policy and procedures has not been established to provide communication and input to the Office of Research Integrity to assist with campus-wide export compliance.

- 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 with the Office of Sponsored Projects, Office of Technology & Industry Alliances, Travel and Entertainment, and Principal Investigator's (PIs). After sponsored projects are awarded, PI's assume most of the responsibility to guarantee compliance with export control regulation.

- Training is not mandatory for all stakeholders. The ECO provides training to PIs as part of an onboarding process. Training is available through STAR[1] classes and online through the UCSB Learning Center. The Office of Research website also provides links to the Bureau of Industry and Security (BIS)[2] training videos. A training and education program should include periodic reviews and revisions to reinstitute awareness and discuss changes to policy and procedures.

- Limited resources are available to provide oversight and monitoring for the entire campus. Currently the designated ECO is a .25 full time employee (FTE). During our review, the Office of Research posted a full-time employee appointment for an Export Control Officer.

RECOMMENDATION

We recommend the Office of Research Integrity, in collaboration with campus stakeholders, develop a plan to:

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[1] STAR training program was developed to improve campus understanding of regulations, policies, and procedures to meet UCSB's research administration needs.

[2] Bureau of Industry and Security: Advances U.S. national security, foreign policy, and economic objectives by ensuring an effective export control and treaty compliance system.

- Define roles and responsibilities for stakeholders, with a focus on PIs responsibilities after sponsored projects are awarded
- Document an export control compliance program
- Establish an export control committee and formalize a charter
- Develop a periodic campus training program for stakeholders and PIs
- Evaluate resources to guarantee adequate support to the export control program

MANAGEMENT RESPONSE

The Office of Research Integrity, in collaboration with campus stakeholders, will develop a plan to:

- Define roles and responsibilities for stakeholders, with a focus on PIs responsibilities after sponsored projects are awarded
- Document an export control compliance program
- Establish an export control committee and formalize a charter
- Develop a periodic campus training program for stakeholders and PIs
- Evaluate resources to guarantee adequate support to the export control program

Expected completion date: March 31, 2020.

2. INTERNAL CONTROLS OVER EXPORT CONTROLS

OBSERVATION

We performed a limited review of internal controls associated with international shipments, international travel, restricted party screening, and sponsored projects. Our work identified opportunities to improve oversight and monitoring of international shipments, international travel, and sponsored projects.

International Shipments

International shipment requirements are based upon type of item[3] and destination. Departments are responsible for consulting Export Controls before processing international shipments for compliance with export control requirements. Our evaluation of a sample of international shipments found Export Control was overall informed of shipments with export control restrictions. However, there is not a centralized approval process for international shipments and departments do not always inform Export Control. Carrier information also is not provided to Export Control for tracking purposes. This information also does not include type of commodity to determine if the shipment requires a license.

We reviewed the carrier detailed shipment list of international shipments during fiscal year 2018-19 and selected a sample of 20 shipments made to international destinations. We also selected five purchases from international destinations. We found:

- Nine of the 20 shipments delivered to international destinations were approved by Export Control. Eight of them were processed through the Gateway procurement system and

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[3] Item: Commodity, software, or technology shipped from the United States to a foreign destination may be subject to the jurisdiction of the U.S. Department of Commerce.

electronically approved.

- Ten of the 20 shipments delivered to international destinations did not require approval from Export Control based on departments' comments on the type of commodity (books and/or forms). However, no department support documentation was provided to identify the type of item.

- One department could not validate the type of item shipped of one of the 20 shipments delivered to international destinations. The country destination is not included in the Office of Foreign Assets Control (OFAC), Department of Commerce's Export Administration Regulations (EAR), or Department of State's International Traffic in Arms Regulations (ITAR) list.

- All five purchases from international destinations were flagged and approved through the Gateway procurement system by the ECO.

For reporting purposes, the carrier's international shipment list could assist Export Control in monitoring and tracking all international shipment destinations and purchases to provide assurance that commodities sent or received do not fall under the purview of the Export Control Office.

International Travel

Export Control was not consulted to determine if a license was required in four trips to an embargoed[4] country for which travel expenses were reimbursed by the University.

Campus does not have a centralized preapproval process for international travels. Individuals are not required to book international travels using a University system such as Connexxus[5], making it very difficult for Export Control to identify all international travels in advance if travelers do not report their travel plans. We identified all travels to embargoed countries during fiscal year 2018-19 and performed a limited review to determine whether Export Control was contacted prior to travel. We found:

- Two personnel traveled to Iran and did not contact Export Control to determine if a license was required prior to travel.

- Both travel expenses to Iran were reimbursed by the University without confirming if a license was required. This could be a violation of U.S. law if a license from the Department of the Treasury was required ahead of travel dates. Travel and Entertainment is not verifying whether a license was obtained prior to processing reimbursements to embargoed/sanctioned countries.

The UCSB Office of Research International Travel website has not been updated, nor has it been communicated to the campus community that Sudan is no longer an embargoed country effective on October 2017.

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[4] Embargoed/sanctioned countries: Iran, North Korea, Sudan, Cuba or Crimean region of Ukraine.
[5] Connexxus: A secure Web portal for booking University business travel.

Restricted Party Screening

Export Control Officer(s) perform restricted party screening for the Office of International Students & Scholars (OISS) on international scholars.

We reviewed a sample of 30 international scholars working at UCSB on a visa and found all International Scholars were screened for export control compliance and no individuals were included on the restricted party list.

Foreign Involvement Sponsored Projects

There is not a consistent and documented process to ensure all sponsored projects flagged as foreign involvement have been reviewed and approved by Export Control. The sponsored project tracking system (ORBiT) could include a workflow process to enforce Export Control's participation and management of support documentation.

We selected five sponsored projects awarded during fiscal years 2017-18 and 2018-19 flagged as foreign involvement in ORBiT. We evaluated whether these projects were classified as fundamental research[6] without restrictions to disseminate research results and information, restricted party screenings were performed, conflict of interests were filed, and whether Export Controls reviewed and approved these agreements. We found:

- Office of Research ensures that all research projects on campus are classified as fundamental research. All five sponsored project contracts reviewed did not prohibit the University from publishing, sharing, and disseminating research information or include restrictions on personnel. One of them did not explicitly describe the project as fundamental research. However, Research Integrity does not consider this necessary for sponsored research agreements to explicitly state that they are fundamental research projects because UCSB only performs fundamental research and is against UC Policy to accept publication restrictions in research agreements.

- The practice of restricted party screening[7] is only performed on identified PIs of foreign subrecipients, foreign subrecipient entities, and foreign sponsors at the proposal stage. For projects identified to have export control compliance risks, PIs must acknowledge and sign an informed consent to certify that they must adhere to and comply with Export Control regulations. This certification includes consent to avoid foreign nationals from having access to information or equipment affected by export control regulations. As mentioned above, there is an expectation that all research projects on campus are classified as fundamental research. We could not find clear guidance on how to restrict foreign nationals' access in the case of a project classified under export regulations. Technology control plans are used to restrict access to controlled technology. However, Research Integrity informed us that since every situation is unique, a one-size-fits-all approach is not possible. The current UC system Nondiscrimination and Affirmative Action Policy prohibits restricting participation in a research project based on nationality.

- Negotiations and decisions are not consistently documented. It would be beneficial to

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[6] Fundamental Research is intended to be published and therefore is excluded from the export control regulations.

[7] SPO does the initial restricted party screening. ECO does the restricted party screening for international scholars.

include the support documentation in ORBiT and not have them maintained within several sources.

- PIs are the only control point to report any change in foreign involvement for a particular sponsored project, once that project has been awarded. More guidance could be beneficial to guarantee PI's have clear instructions to identify and report changes for reevaluation. During our review, Research Integrity developed a website to disseminate foreign influence guidance and reporting obligations for UCSB faculty.

In addition, we reviewed three sponsored projects that were flagged in ORBiT as "without foreign involvement" to verify the Sponsored Project Officer (SPO) appropriately classified them. We concluded that they were properly classified.

RECOMMENDATION

We recommend Research Integrity implement and document a process to guarantee Export Control monitors and evaluates for license determination for all:

- International shipments to embargoed/sanctioned countries and/or international shipments of controlled commodities. Discuss with the shipment provider opportunities to obtain shipment data for monitoring purposes.

- International travel to embargoed/sanctioned countries. Discuss with Travel and Entertainment a protocol to guarantee reimbursements are not processed for international travel to embargoed/sanctioned countries without evidence of an Export Control evaluation prior to travel.

MANAGEMENT RESPONSE

Research Integrity will expand upon existing processes and document standard operating procedures for the review of:

- International shipments to embargoed/sanctioned countries and/ or international shipments of controlled commodities for license determinations. Work with Procurement to evaluate opportunities to centralize this process. Discuss with the shipment provider opportunities to obtain shipment data for monitoring purposes.

- International travel to embargoed/sanctioned countries for license determinations. Discuss with Travel and Entertainment a protocol to guarantee reimbursements are not processed for international travel to embargoed/sanctioned countries without prior review in accordance with the campus memo from the Vice Chancellor for Research.

Expected completion date: June 30, 2020.

RECOMMENDATION

We recommend Research Integrity evaluate the possibility of implementing a workflow process to guarantee Export Control's evaluation and determination is required before a sponsored project flagged as foreign involvement is awarded. Evaluate alternatives to improve the support documentation generated during the evaluation of sponsored projects by Export Controls.

MANAGEMENT RESPONSE

Research Integrity will evaluate the possibility of implementing a workflow process to guarantee Export Control evaluation and approval is required before a sponsored project flagged as foreign involvement is awarded. Evaluate alternatives to improve the support documentation generated during the evaluation of sponsored projects by Export Controls.

Expected completion date: March 31, 2020.

GENERAL INFORMATION

BACKGROUND[8]

The Office of Research provides broad oversight, resources, and education for compliance issues relating to the conduct of research at UCSB. Research activities are governed by a number of regulatory and compliance committees imposed by federal and state laws. Non-compliance can result in penalties to the institution and the individual. It is the responsibility of any member of the UCSB community conducting research to be familiar with university policies as they relate to these research compliance areas.

Export control regulations are federal laws that restrict the export of specific items, information, and software for reasons related to U.S. national security, economic, and foreign policy goals. Export controls usually arise for one or more of the following reasons:

- The nature of the export has actual or potential military applications or economic protection issues.

- Government concerns about the destination country, organization, or individuals.

- Government concerns about the declared or suspected end use or the end user of the export.

- Export control regulations cover shipments of controlled physical items, such as scientific equipment that require export licenses from the United States to a foreign country, and transfers of controlled information, including technical data.

The University must also comply with federal regulations when faculty and students travel to certain sanctioned or embargoed countries for purposes of teaching or performing research. While most exports do not require government licenses, licenses are required for exports that the U.S. government considers "controlled" under:

- 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.

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[8] Office of Research website.

- 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.

Fundamental research is defined as "basic and applied research in science and engineering conducted at an institution of higher learning in the United States where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls." Information, which is publicly available, also is excluded from the purview of the export control regulations. To guarantee the application of these exclusions, researchers should publish their findings to the fullest extent possible and should not agree to confidentiality clauses or other terms that restrict the dissemination of research materials and results.

The fundamental research and public domain exclusions do not apply to tangible items that are being taken or shipped outside of the U.S. In such cases, those items must be analyzed to determine whether they are subject to export controls.

Office of Research - Sponsored Projects[9]

The Sponsored Projects Office (SPO) assists faculty and professional research staff in their efforts to secure and ensure proper stewardship of external funding. This office is responsible for the effective and timely handling of faculty research proposals, specifically for preparing, interpreting, negotiating, and accepting agreements on behalf of the Regents for projects funded by federal and state agencies, foundations, and other public and private sources.

The University must ensure that the sponsored research agreements it enters into with companies allow the project to be performed as what it terms as fundamental research under the US Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR). This means that the legal terms of the agreement cannot have any restrictions on ability to publish the research, nor restrictions on UCSB researchers that are allowed to work on the project. When necessary, Sponsored Projects coordinates with the UCSB Research Integrity Office to ensure the terms address export control compliance appropriately for the University environment. UCSB researchers are responsible for ensuring compliance with any directions provided by the UCSB Research Integrity Office.

All sponsored research agreements at UCSB must allow the ability to publish, share and disseminate research results. Some sponsors will seek the opportunity to review publication prior to publication, and the University can agree to such a right on a time -limited basis, specifically for the purposes of ensuring no confidential information of the sponsor was included, and determining if the publication contains an invention that the sponsor wishes to obtain a license to.

Office of Technology & Industry Alliances[10]

Sponsored research agreements funded by companies, including industry flow-through

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[9] Office of Research – Sponsored Projects website.
[10] Office of Technology & Industry Alliances website.

contracts, are managed by the industry contracts team in the UCSB Office of Technology & Industry Alliances.

The University must ensure that the sponsored research agreements it enters into with companies allow the project to be performed as what it terms as fundamental research under the US Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR). This means that the legal terms of the agreement cannot have any restrictions on ability to publish the research, nor restrictions on UCSB researchers that are allowed to work on the project. When necessary, the Office of Technology & Industry Alliances coordinates with the UCSB Research Integrity Office to ensure the terms address export control compliance appropriately for the University environment. UCSB researchers are responsible for ensuring compliance with any directions provided by the UCSB Research Integrity Office.

All sponsored research agreements at UCSB must allow the ability to publish, share and disseminate research results. Many companies will seek the opportunity to review publication prior to publication, and the University can agree to such a right on a time-limited basis, specifically for the purposes of ensuring no confidential information of the company was inadvertently included, and determining if the publication contains an invention that the company wishes to obtain a license to.

Office of International Students and Scholars[11]

The Office of International Students & Scholars (OISS) supports the needs of all international scholars at UCSB. UCSB has been approved by the U.S. State Department to serve as the visa sponsor for exchange visitors. Research Scholars are here to primarily engage in research while professors are here to teach. Foreign nationals are those who enter the U.S. for teaching, lecturing, observing or consulting at accredited postsecondary academic institutions, museums, libraries, or similar institutions. Research scholar's primary purpose is conducting research, observing or consulting in connections with research projects at research institutions, corporate research facilities, museums, libraries, post-secondary accredited academic institutions, or similar types of institutions.

SCOPE

The scope of our work was limited to export control activity from fiscal years 2017-18 and 2018-19. Our audit included an evaluation of governance and organizational structures to support the export control compliance program and a compliance assessment of selected processes, including international shipments and travel, restricted party screening, and sponsored projects.

Specifically, we:

- Reviewed UC and UCSB policies, best practices, and other guidance concerning export controls.

- Conducted interviews with the Office of Research Integrity, Office of Technology of Industry Alliances, Sponsored Projects Office, and Travel and Entertainment to obtain a better understanding of the process and internal controls in place and to identify areas of concern.

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[11] Office of International Students and Scholars handbook.

- Selected a sample of sponsored projects and determined whether:

  o International shipments or purchases of export controlled items made to or from embargoed countries were overseen by Export Control and licenses were obtained when necessary.

  o International travel to embargoed countries were overseen by Export Control and licenses were obtained when necessary.

  o Restricted party screening is performed to comply with export controls.

  o Research agreements contained language to ensure the terms and conditions address export control compliance.

CRITERIA

Our audit was based upon standards as set forth in the UC and UCSB policies, best practices, and other guidance relevant to the scope of the audit. This audit was conducted in conformance with the *International Standards for the Professional Practice of Internal Auditing.*

This review emphasized, but was not limited to, compliance with:

- UC Policy, Export Control*, dated June 2018.
- UC Guidance, *International Compliance*.
- UC Guidance, *On-campus Research with Foreign Nationals.*
- UC Guidance, *International Collaborations.*
- UC Guidance, *International Screening Tools.*
- UC Guidance, *International Travel.*
- UC Guidance, *International Shipping.*
- UC Guidance, *UC's Export Compliance Plan.*

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