

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

**Office of Ethics and Compliance
Export Control Compliance
Project #15-020**

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Audit and Advisory Services

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SUBJECT: Export Controls Compliance Review

As a planned internal audit for Fiscal Year 2015, UCSF Audit and Advisory Services (“AAS”) conducted a review of Export Controls 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 preliminary draft report was provided to management in December 2014. Management provided us with their final comments and responses to our findings and recommendations in January 2015. 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. In accordance with the University of California audit policy, AAS 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,

A handwritten signature in black ink, appearing to read 'Irene McGlynn', with a horizontal line extending to the right.

Irene McGlynn
Director
UCSF Audit and Advisory Services

**Office of Ethics and Compliance
Export Control Compliance
Project #15-020**

MANAGEMENT SUMMARY

As a planned audit for fiscal year 2014-15, Audit and Advisory Services (AAS) completed a review of Export Controls to assess UCSF's internal controls and practices to validate compliance with Federal regulatory and University requirements. Federal export control regulations govern the transfer of certain physical objects (e.g. equipment, compounds, materials, prototypes, specimens, or components) outside of the United States, the conduct of financial transactions in certain international locations, and the transfer of certain types of information to foreign persons inside or outside of the U.S. Additionally, we reviewed the recommendations identified in the Fischer and Associates Export Control Assessment Report (F&A Report) and determined if the associated risks have been sufficiently mitigated.

Based on work performed, we noted that the various administrative units were sufficiently aware of their responsibilities for export control compliance. The department of Environmental Health and Safety (EH&S) has developed and implemented processes to review shipments of biological materials for compliance with export control regulations. Government and Business Contracts and the Office of Innovation, Technology, and Alliance had established reasonable procedures to review research agreements and material transfer agreements to ensure the University maintains its fundamental research exemption. Additionally, our review of selected trips to embargoed countries revealed that licenses were obtained where appropriate.

We did note that there are opportunities to enhance compliance with export control regulations. An export-dedicated oversight function has not been established (as was recommended by the F&A report). Additionally, UCSF Administrative Policies do not address all aspects of export control compliance requirements (e.g. international travel and shipping and restricted party screening). Finally, controlled international shipments are not reviewed for compliance with export control regulations with the exception of biological materials.

More detailed information on the observations and management corrective actions can be found in the body of the report.

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I. BACKGROUND

As a planned audit for fiscal year 2014-15, Audit and Advisory Services (AAS) completed a review of Export Controls. Federal export control regulations govern the transfer of certain physical objects (e.g. equipment, compounds, materials, prototypes, specimens, or components) outside of the United States, the conduct of financial transactions in certain international locations, and the transfer of certain types of information to foreign persons inside or outside of the U.S. All persons must comply with these regulations and the consequences of violating them are severe and can result in personal and institutional civil and criminal penalties. The specific export control requirements are covered under Export Administration Regulations (EAR), the Office of Foreign Assets Control (OFAC) Sanctions Programs, International Traffic in Arms Regulations (ITAR), and the UC Export Compliance Plan. The Office of Ethics and Compliance (OEC) coordinates and guides research compliance efforts across the campus (including compliance with export control regulations). Other administrative units within UCSF are responsible for ensuring compliance with these regulations: Environmental Health & Safety (EH&S), Global Health Services (GHS), International Students and Scholars Office (ISSO), Government and Business Contracts (GBC) and the Office of Innovation, Technology & Alliances (ITA).

The University's compliance with export controls is based upon maintaining an open, fundamental research environment, such that scientific data and results qualify as being in the public domain under ITAR and are not subject to the EAR under the provisions related to publicly available technology, published information and software, information resulting from fundamental research, and educational information. By qualifying under these sections of EAR and ITAR, the University can avoid compliance requirements related to deemed exports of technical data. To ensure that the University maintains this open research environment, extramural funding agreements are reviewed by GBC for restrictions on the University's right to publish or to use or share data in any manner. Additionally, ITA reviews material transfer agreements (MTA) to identify and remove restrictive clauses. However, the University is still obligated to secure any required export licenses for actual shipment of controlled items out of the United States.

In August 2011, Fischer and Associates (F&A) was retained by UCSF to complete a review of export controls, identify areas of potential compliance exposure, and recommend a framework for enhancing compliance efforts. The F&A Export Control Assessment Report (F&A Report) issued in February 2012 noted that the absence of a more visible, export-dedicated oversight function was the single most significant risk impacting UCSF's compliance efforts.

II. PURPOSE AND SCOPE

The purpose of the review was to evaluate the internal controls and practices that have been established to help ensure compliance with Federal export control regulations and University requirements at UCSF. Additionally, we reviewed the recommendations identified in the F&A Report and determined if the associated risks have been sufficiently mitigated.

To conduct our review, the following procedures were performed:

- Reviewed and documented Federal regulations and University policies applicable to export controls;
- Reviewed the F&A Report to identify known areas of potential export compliance exposure for inclusion into the current review;
- Interviewed personnel from EH&S, GHS, ISSO, Mail Services, GBC, and ITA to assess their understanding of their responsibilities for export control and to identify any export control training provided to campus personnel;
- Interviewed personnel from GBC and ITA to assess their processes for identifying restrictive clauses in research awards and material transfer agreements (MTA);
- Reviewed selected trips taken by UCSF personnel to embargoed countries and determined if appropriate licenses were secured; and
- Reviewed UCSF websites and identified existing body of information, guidance, and training available for export control compliance.

The scope of the audit was limited to the specific procedures described above and related to transactions between July 1, 2013 and June 30, 2014. As such, work completed is not intended, nor can it be relied upon to identify all instances of potential irregularities, errors, and control weaknesses that may occur in areas not covered in this review. Fieldwork was completed in December 2014.

III. CONCLUSION

Based on work performed, we noted that the various administrative units were sufficiently aware of their responsibilities for export control compliance. EH&S has developed and implemented appropriate processes to review shipments of biological materials for compliance with export control regulations. Additionally, EH&S reviews the Export Controls email account for general questions related to export control regulations and assists University personnel in complying with export regulations. GBC and ITA had established reasonable procedures to review research awards and MTAs to ensure the University maintains its fundamental research exemption. Additionally, our review of three trips to embargoed countries revealed that licenses were obtained where appropriate.

We did note that there are opportunities to enhance compliance with export control regulations. An export-dedicated oversight function has not been established (as was recommended by the F&A report). Additionally, UCSF

Administrative Policies do not address all aspects of the export control compliance (e.g. international travel and shipping and restricted party screening). Finally, controlled international shipments are not reviewed for compliance with export control regulations with the exception of biological materials.

IV. OBSERVATIONS AND MANAGEMENT CORRECTIVE ACTIONS

A. Oversight and coordination of export control activities have not been established.

While individual administrative units were sufficiently aware of their responsibilities, our interviews with these departments identified that there is limited oversight and coordination among the departments. This was echoed in the F&A Report, which recommended an export administrator to provide oversight of UCSF's export control processes and coordinate the activities of the various administrative functions with export control responsibilities.

It was noted that an oversight function has not been established nor have export control administrative functions been formally networked for compliance purposes. While UCSF had created an Export Controls Workgroup that met to discuss issues, develop processes, and help raise awareness regarding export controls, this workgroup has been inactive since February 2011.

Known weaknesses in UCSF's export control compliance strategy that have not been sufficiently mitigated may result in an ineffective and inefficient export control compliance program. This may lead to violations of export control regulations and may result in civil and criminal penalties.

Management Corrective Actions

To improve oversight of UCSF's export control compliance activities and facilitate coordination of these activities among departments across the University, the OEC will:

1. Reconstitute the Export Control Workgroup (ECW) by May 31, 2015, and
2. Determine the feasibility of establishing a dedicated export control role by June 30, 2015.

B. Campus policy does not address all aspects of a comprehensive export control management program.

UCSF Campus Administrative Policy 400-10, Academic, Legal and Financial Policies of Contract and Grants, addresses unacceptable limitations of freedom to disseminate results (Section B.4). However, other elements of

export control compliance such as international travel and shipments, Material Transfer Agreements, Non-Disclosure Agreements, export licensing, and restricted party screening are not addressed in the policy.

If responsibilities of the administrative functions for export control compliance are not sufficiently defined and communicated, the export control compliance program may be inefficient or ineffective. Additionally, a comprehensive policy would benefit the campus by providing information on available export control compliance resources in a central location.

Management Corrective Actions

By September 30, 2015, the ECW will evaluate the current campus policy and draft a revised policy, clearly defining responsibilities related to all aspects of export control compliance among the various administrative units, principal investigators, researchers, and staff, and submit it for review, approval, and publication to the Executive Vice Chancellor and Provost.

C. Controlled International shipments subject to license requirements are not reviewed for compliance with export control regulations, with the exception of biological materials.

There does not appear to be a process to help ensure that controlled shipments other than biological materials are reviewed for export control requirements. Additionally, there are no reports available to identify shipments sent to embargoed countries.

Inadequate processes or procedures to monitor outgoing international shipments for export controlled material may result in a violation of export control regulations.

Management Corrective Actions

1. By September 30, 2015, the ECW will disseminate information on export control requirements, especially on international travel and shipments and export licensing, to departments as to raise awareness and enhance compliance with these requirements.
2. By October 31, 2015, the ECW will evaluate the process for identifying, tracking, and monitoring international shipments (in particular, those shipments to embargoed countries) and determine the feasibility of centralizing the shipping process.

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