



# AUDIT AND ADVISORY SERVICES

International Agreements

Audit

Project No. 17-689

September 13, 2017

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September 13, 2017

Tsu-Jae King Liu  
Vice Provost for Academic and Space Planning

Vice Provost Tsu-Jae King Liu:

We have completed our audit of international agreements as per our annual service plan in accordance with the Institute of Internal Auditors' *Standards for the Professional Practice of Internal Auditing* and the University of California Internal Audit Charter.

Our observations with management action plans are presented in the accompanying report. Please destroy all copies of draft reports and related documents. Thank you to the staff of the Global Engagement Office and the various executives, faculty, and staff interviewed for their cooperative efforts throughout the audit process. Please do not hesitate to call on Audit and Advisory Services if we can be of further assistance in this or other matters.

Respectfully reported,

Wanda Lynn Riley  
Chief Audit and Risk Executive

cc: Executive Vice Chancellor and Provost Paul Alivisatos  
Interim Vice Chancellor G. Steven Martin  
Vice Chancellor Rosemarie Rae  
Assistant Vice Chancellor Patrick Schlesinger  
Associate Campus Counsel David Robinson  
Associate Chancellor Khira Griscavage  
Assistant Vice Chancellor and Controller Delphine Regalia  
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**University of California, Berkeley  
Audit and Advisory Services  
International Agreements**

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# OVERVIEW

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## Executive Summary

The purpose of the audit was to assess governance, risk management, and controls related to international collaborations in teaching, research, and public service, particularly the campus' readiness to identify and assess opportunities, vet and approve agreements, administer and monitor related activities, and leverage lessons learned in future endeavors.

The extent of activity and change on campus is conducive to re-assessing current practices related to international agreements and implementing modifications. Key areas of change include

- a new incoming executive leadership team and reassessment of the campus' strategic direction;
- continued reorganization of organizational units, management and business processes; and
- a new systemwide policy on international agreements effective as of June 23, 2017 that establishes review, approval, and monitoring criteria for international agreements and assigns certain administrative responsibilities to the campus' Global Engagement Office (GEO).

We identified the following risks and associated opportunities to improve the current campus approach to governance, risk management, and operational processes associated with international agreements.

- *Vision, Strategy, Goals.* Campus leadership has not defined a vision, strategy, or specific goals for the campus related to the pursuit of international collaborations. Without a vision, strategy, and goals, there is risk that individual efforts toward collaborations and international agreements may not align with campus values and priorities, may commit resources in unsustainable ways, and may not provide the appropriate infrastructure to support such endeavors.
- *Operating Processes.* The inherent risk of unknowingly crossing the line between non-binding and legally binding agreements is greater when administrative units are not involved to support ongoing discussions with collaborators. There is an opportunity to develop and implement an operational process with specific internal control points to ensure that non-binding and binding international agreements are given appropriate levels of review and vetting before approval by individuals with appropriate delegated authority to accept potential residual risk.
- *Tracking and Monitoring.* Once executed, individual agreements are managed in a decentralized manner by campus units. The GEO is open to tracking, at a high-level, the existence of all international collaboration agreements but they are not currently tasked with providing ongoing monitoring and coordination of all agreements. Those agreements that are deemed to be of higher potential reputational, operational, legal, compliance, or financial risk could be tracked and monitored as a subset, and the Office

of the Vice Provost for Academic and Space Planning could develop standardized metrics or reporting criteria for periodic updates from the departments with primary responsibility.

By addressing these risk areas, the campus can significantly improve the control environment associated with international agreements.

## **Purpose of the Audit**

The purpose of the audit was to assess governance, risk management, and controls related to international collaborations in teaching, research, and public service, particularly the campus' readiness to identify and assess opportunities, vet and approve agreements, administer and monitor related activities, and leverage lessons learned in future endeavors.

The extent of activity and change on campus is conducive to re-assessing international agreements and to implementing modifications. Key areas of change include

- a new incoming executive leadership team and reassessment of the campus' strategic direction;
- continued reorganization of organizational units, management and business processes; and
- a new systemwide policy on international agreements effective as of June 23, 2017, that establishes review, approval, and monitoring criteria for international agreements and assigns administrative responsibility to the campus GEO.

The level of activity and change on campus, combined with the increasing volume of collaborations and a new systemwide policy, present a timely opportunity to address international agreements.

## **Scope of the Audit**

The audit scope included current campus business processes and controls related to developing, reviewing, vetting, approving, and monitoring legally binding and non-binding agreements with foreign entities to further the teaching, research and public service mission of the university. The audit did not address international procurement agreements, which were the topic of a separate audit of procurement in an international environment (project number 16-668). The audit also did not address agreements with individuals that would be covered under employment or independent contractor policies. This audit also follows on our prior Globalization and International Engagement Audit (project number 12-587) which included international agreements in the scope. We interviewed a cross section of key administrative personnel and faculty involved with international agreements.

## **Background Information**

The campus operates within a global community of institutions of higher learning and other entities that share a common mission of teaching, research and public service. The campus has a long tradition of collaborations, both formal and informal, with international peers. Its various undertakings around the world make international agreements a necessary element of doing business in order to advance the university's purpose. The exact nature of individual collaborations and their corresponding agreements often necessitates documenting shared goals and expectations in a bilateral or multilateral manner.

Agreements for less formal collaborations are often described as non-binding memoranda of understanding (MOUs), friendly agreements, or handshake agreements. They are generally

perceived to be broad statements of shared principles, goodwill, and a desire to collaborate in various endeavors toward a common goal. They are not considered to be legally binding or to create enforceable performance or deliverable obligations between signing parties. However, a small, seemingly innocuous change or addition of language to a non-binding MOU can change it to be a legally binding contract, regardless of what the parties may call it. The campus engages in these international collaborations as opportunities present themselves, either at a grass-roots level or as part of more coordinated and centralized effort.

International agreements can cover a variety of collaborations and activities, some of which include research collaborations, non-research alliances, private industry ventures, real estate projects, training and education of executives and students, etc.

The campus has five contracting offices with delegated authority to sign particular types of contracts and agreements, including those that are international in nature. While there may be some overlap, these contracting offices generally focus on contracts within the following broad categories:

- Sponsored Projects Office (SPO): sponsored research agreements;
- Industry Alliance Office: private industry alliance agreements;
- Business Contracts and Brand Protection (BCBP): revenue generating actions, non-research alliances, contracts involving more than one contracting office, and unusual contracts;
- Real Estate: construction, real estate, and facilities management contracts; and
- Supply Chain Management: procurement contracts.

For non-binding agreements related to teaching and research but not specifically falling into one or more of the above categories, university policy is less clear in terms of formal review and approval. In recent experience, the chancellor, deans, and individual faculty members have signed MOUs that were thought to be non-binding, but upon closer examination of language, created potential legal obligations that should have been reviewed and approved by other campus functions including, but not limited to, those above.

The Division of Academic and Space Planning, headed by a vice provost, has a stated goal of integrating broad and long-term academic considerations into the overall campus global planning, in accordance with the Chancellor's Long-Range Global Vision and 2020 Long-Range Development Plan.<sup>1</sup> As part of the division, the GEO exists to share information on the broad range of activities that tie the campus to the world. "From study abroad opportunities to multi-lateral research collaborations, global engagement is a driving force for faculty and study life. This office aims to assist Berkeley's faculty, staff, and students find the tools and resources they need to bring Berkeley to the world and the world to Berkeley."<sup>2</sup>

The campus has made progress to address the management of non-binding international MOUs, primarily through the efforts of the GEO. However, this unit has had a complete turnover in leadership and management in the past year and allocates only a portion of its time and resources to managing MOUs. In addition, it has facilitated the creation of an International Activities

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<sup>1</sup> See <http://vpasp.berkeley.edu/global-engagement/>

<sup>2</sup> Ibid.

Coordination group, composed of administrators who oversee or coordinate international activities within their units, as well as the Berkeley International Group, which serves as a venue for sharing information across units regarding international programs and activities and is normally attended by assistant deans and departmental staff. These groups operate within the community of interest in supporting roles rather than as official administrative committees with delegated formal charges and authorities. The GEO and the groups provide valuable services to the campus by sharing knowledge and providing advice to the community of interest, disseminating information and documents, and coordinating among parties. However, they do not make decisions, approve agreements, or control a workflow process. While the GEO primarily addresses non-binding MOUs, they may also support those situations where an MOU transitions into a binding agreement. Once an agreement is signed, it is normally administered by the originating department.

Since many MOUs are generated from grass-roots efforts, the GEO and groups have chosen to also “grow” the support for international agreements. Because of the nature of this effort, progress has evolved according to needs, primarily in an ad hoc manner.

### **Summary Conclusion**

We identified the following risks and associated opportunities to improve the current campus approach to governance, risk management, and the operational processes related to the identification, development, review, vetting, approval, and ongoing monitoring of international collaboration agreements for teaching, research and public service:

- *Vision, Strategy, Goals.* Campus leadership has not defined a vision, strategy, or specific goals for the campus related to the pursuit of international collaborations. Without a clear vision, strategy, and goals, individual efforts toward collaborations and international agreements may continue unconstrained in order to take advantage of perceived opportunities that may arise. These opportunities may draw on campus resources in both sustainable and unsustainable ways. Originators may engage in opportunities without the means to assess whether the collaboration or agreement is beneficial for the campus in the long term and whether the campus should even enter into the agreement. In addition, recommendations from the executive vice chancellor and provost’s (EVCP) 2012 task force related to pursuing international collaboration were not implemented. Given that a new chancellor and EVCP are in place and a new systemwide policy has been issued, we believe it to be worthwhile to reference the prior taskforce’s findings and recommendations when establishing the priorities of the new administration.
- *Operating Processes.* Campus members may believe they are pursuing collaborations that are non-binding in nature, but as discussions and negotiations continue with our prospective partners, the specific terms and conditions may evolve to a point where a legally binding agreement with contractual obligations is created. The inherent risk of unknowingly crossing the line between non-binding and legally binding agreements is greater when administrative units are not involved to support ongoing discussions with collaborators. There is an improvement opportunity to develop and implement an operational process with specific internal control points to ensure that non-binding and binding international agreements are given appropriate levels of review and vetting



before approval by individuals with appropriate delegated authority to accept any levels of residual risk for the campus.

- *Tracking and Monitoring.* Individual agreements are managed in a decentralized manner by campus units. The GEO is open to tracking, at a high-level, the existence of all international collaboration agreements, but they are not currently tasked with providing ongoing monitoring and coordination of all agreements. Those agreements that are deemed to be of higher potential reputational, operational, legal, compliance, or financial risk at the time of approval could be tracked and monitored as a subset, and the Office of the Vice Provost for Academic and Space Planning could develop standardized metrics or reporting criteria for periodic updates by the departments with primary responsibility.

By addressing these risk areas, the campus can significantly improve the control environment associated with international agreements.

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## SUMMARY OF OBSERVATIONS & MANAGEMENT RESPONSE AND ACTION PLAN

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### Campus Strategy to Pursue International Collaborations

#### Observation

Campus leadership has not defined a vision, strategy, or specific goals for the campus related to the pursuit of international collaborations. In the absence of leadership establishing and pursuing priorities, collaboration activities are primarily generated from uncoordinated efforts of individual schools, colleges, departments, or individual faculty members. The campus is very entrepreneurial and new collaborations are generated from the activities of people who are genuinely excited about the opportunities and corresponding possibilities that collaborations may hold. Often collaborations resulting in international agreements are generated from grass roots efforts, at other times they are more deliberate. Without a clear vision and strategy, originators may engage in opportunities as they arise without the means to assess whether the collaboration or agreement is beneficial for the campus in the long term and whether the campus actually should enter into the agreement.

President Napolitano has defined certain systemwide initiatives as part of her administration<sup>3</sup>, however, individual campuses are free to pursue their own collaborations outside of these presidential initiatives. Until recently, campus senior leadership has focused on the development of the Berkeley Global Campus, which has been placed on hiatus due to budget and other issues. In 2012, the EVCP commissioned an international strategy task force<sup>4</sup> charged to study, among other things

- What are the best strategies for using our reputation to create collaboration and exchange relationships with universities and research institutions abroad? What are the criteria for choosing those universities and research institutions?
- What opportunities for collaborations with corporate and governmental entities abroad would enhance our research and teaching enterprises without compromising our academic freedom?
- If the campus received a \$100 million gift for an endowment for “international activities”, how would you prioritize uses of those funds?
- Are there unnecessary obstacles to international research collaborations in administrative policies or practices over which we have control? How can these be overcome?

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<sup>3</sup> See <http://www.ucop.edu/initiatives/>

<sup>4</sup> See <http://evcp.berkeley.edu/international-strategies-task-force>

In response to the task force report, the EVCP at the time, George Breslauer, agreed to the following as longer-term responses to specific recommendations:

- *Appoint a senior administrator with responsibility for better coordinating and implementing the campus global strategy.*
- *Establish “strategic committees” for China, India, and Latin America that would leverage current activities and help plan for research and teaching partnerships.*

While a senior administrator was appointed and the GEO established, the strategy shifted to bring international collaborators to the Berkeley Global Campus.

The new systemwide *International Activities* policy states that any international activity must be consistent with the university’s mission and that each campus should consider the quality, reputation, resources, business practices, and academic standing, if relevant, of a potential partner as well as the viability of the entire arrangement. Campus leadership should develop a plan to implement the new policy.

A vision and a long-term plan for the campus provides the standards and framework within which each collaboration and agreement can be assessed. There is risk that without a vision, strategy, and goals, individual efforts toward international collaborations and agreements may not align with campus values and priorities, may commit resources in unsustainable ways, and may not provide the appropriate infrastructure to support such endeavors.

### **Management Response and Action Plan**

The Vice Provost for Academic and Space Planning (who also oversees international partnerships) agrees with this observation. She directed the GEO to prepare an International Activity Report that includes an evaluative assessment of the status of each of the twelve recommendations from the 2012 International Strategy Task Force report that was submitted to Executive Vice Chancellor and Provost (EVCP) George Breslauer. The International Activity Report was submitted to Chancellor Carol Christ and EVCP Paul Alivisatos on August 1, 2017, and includes recommendations for developing an international strategy for the campus and for improving the coordination and support of global engagement initiatives. The Vice Provost and the GEO will work with leaders in administration and the Academic Senate to develop a set of guiding principles for the pursuit of international collaborations, aligned with the Chancellor’s goals for the campus. There likely will not be a singular international strategy for the campus, as the central administration will continue to support grass roots efforts by individual faculty members to pursue international collaboration in their respective fields. We expect the guiding principles to be developed and communicated by the end of the Fall 2017 semester.

## **Governance, Risk Management, and Operating Processes for International Agreements**

### **Observation**

Based upon our interviews, we understand that campus members pursue international collaborations that are not initially identified as belonging to categories of agreements for which

there is existing, delegated and defined campus review and approval processes (e.g., sponsored research agreements through SPO, procurement agreements through Supply Chain Management, revenue agreements through the BCBP unit, industry alliances through Intellectual Property and Industry Research Alliances [IPIRA], etc.). These collaborations may not involve required administrative units for proper review and approval. In particular, campus members may believe they are pursuing collaborations that are non-binding in nature, such as augmenting an existing non-binding MOU, but as discussions and negotiations continue with prospective partners, the specific terms may evolve to a point where a legally binding agreement with contractual obligations is created. The inherent risk of unknowingly crossing the line between non-binding and legally binding agreements is greater when administrative units are not involved to support ongoing discussions with collaborators. The end result is that an agreement is signed with a partner that contains levels of financial, operational, programmatic, or reputational risk that may have been deemed unacceptable if formally reviewed by relevant campus units.

The systemwide policy on international activities identifies examples of topics where consultation with subject-matter experts is advised: data transfer, privacy and security, employment, establishing a legal presence, export control, fundraising, health and safety, health insurance, human subjects research, intellectual property, leasing space and equipment, payments, banking and fund transfers, professional licensure/clinical care research, purchasing goods and equipment, risk management, signature authority, sponsored research programs, student exchange, taxes, trademark and use of name, travel, and use of vehicles.

In addition, the policy states that campus international activity offices should be consulted in advance in order to assure quality, transparency, and adherence to all applicable policies, statutes, and regulations. The GEO is the named office for the Berkeley campus.

We believe there is a process improvement opportunity to develop and implement an operational process with specific internal control points, including the GEO, to ensure that non-binding and binding international agreements are given appropriate levels of review and vetting before approval by individuals with appropriate delegated authority, prior to the campus accepting any level of residual risk.

To improve overall campus governance of international collaborations, we identified several potential internal control points that could be incorporated in the creation of such an operational process:

- *Coordination point.* A centralized person or persons in charge of driving international activity and developing and implementing local policies and procedures. This person or persons could be the primary coordination point for international activity and could work with the campus community to
  - promote consistency with the overall campus vision and strategy as defined by senior leadership;
  - ensure that a structured framework and operating processes are designed, implemented, and operational;
  - define boundary areas of centralization or de-centralization. These areas could be related to the types of international agreements (research, academic/instructional, project, etc.) or possibly by subject knowledge domains (engineering/tech, bio-tech, social sciences, etc.) or other criteria such as global region;

- facilitate coordination of potentially overlapping or conflicting international agreements and formalize activities for vetting collaborations; and
  - provide advice or refer to subject-matter experts for advice on the complexities of specific collaborations and the conduct of teaching, research and public service in those countries.
- *Advisory board.* An advisory board to provide oversight to the overall campus portfolio of international agreements. The advisory board may provide approval or approval criteria for the governance models (below), defined activities, or types of agreements. Consider lower level advisory boards by subject knowledge domain, department, or agreement type. Signature levels for international agreements need to be clarified.
  - *Roles and responsibilities.* Defined roles and responsibilities for the coordinating person(s) , advisory board(s), others involved in the governance models or approval processes, and agreement originators. Appropriate approval levels should be defined.
  - *Operating processes and procedures.* Standardized operating processes and procedures for distinct governance models and related approval criteria associated with international agreements. Structured guidance in the form of roadmaps or checklists can be created and provided where appropriate. Originators should act based on learned and expected behaviors. Processes and approvals associated with forming external relationships with foreign nations and entities as well as operating in foreign countries could be considered. Additional items to be covered in procedures may include
    - Sharing lessons learned.
    - Interpreting and standardizing key terms.
    - Training those involved with international agreements on key processes and procedures.
    - Standardizing the handling of foreign currency in order to reduce foreign currency risk.
  - *Analyses of risks and costs.* Both direct and indirect costs associated with potential collaborations are appropriately identified, quantified, and evaluated. Each foreign country or entity normally has its own regulations (e.g. United Kingdom’s *Bribery Act*, the European Union’s *Data Protection Directive*, etc.), requirements, and formal methods of conducting business. Good business practices support that all relevant foreign requirements be identified and considered prior to finalizing each international agreement through completion of a formal risk assessment and cost analyses. In addition, the systemwide policy on international activities specifically states that the individual with administrative authority for a proposal should ensure that risk factors have been considered and that, if applicable, a risk analysis has been conducted.
  - *Risk-based workflow and approval criteria.* Allow for process variation based upon the inherent risk of the agreement (large, complex and binding versus non-binding MOU) and the final level of approval required (individual faculty member, department chair, dean, provost, chancellor, or regental).

## **Management Response and Action Plan**

The Vice Provost for Academic and Space Planning (who also oversees international partnerships) agrees with this observation. As is contemplated in the recently issued international activities policy, the GEO will serve as a coordinating office and a knowledge resource for campus pursuits of potential international collaborations. To mitigate potential risk, the Vice Provost and the GEO plan to establish a process for vetting international partnership agreements to ensure appropriate levels of review before approval by individuals with appropriate delegated authority, in conjunction with other campus units with directly related responsibilities, such as SPO, the Controller's Office, Legal Affairs, etc. (In its 2017 International Activity Report, the GEO recommended the restructuring of existing committees/groups into a single committee charged with the responsibility to develop and implement a risk-aware approach to international partnership agreement review and approval.) GEO has updated its website to make the non-binding MOU template more accessible and plans to develop additional agreement templates in collaboration with appropriate entities (SPO, Legal Affairs). We expect these steps to be completed by the end of AY2017-18.

## **Ongoing Tracking and Monitoring of International Agreements**

### **Observation**

The systemwide policy on international activities states that academic oversight, anticipated outcomes, and activity review and evaluation should be planned in advance of agreement finalization. We also identified opportunities to improve processes and internal controls related to ongoing tracking and monitoring of executed agreements.

Tracking of friendly non-binding international agreements and MOUs is currently performed by the GEO using Salesforce software. Many, but not all, of these agreements are identified and tracked. On the other hand, binding international agreements are maintained by the contracting offices and originating departments in various systems or databases (Phoebe system for SPO, BCMS for BCBP, two databases for IPIRA, etc.). International agreements are not necessarily identified and segregated by the fact that the agreement is international in nature. Decentralized maintenance makes it difficult to identify and track all campus international agreements, and to reference and use that information to coordinate new or existing international collaborations and activities. There have been instances where more than one agreement has been negotiated with a foreign entity without knowledge that other agreements were either in place or also being negotiated. This information is valuable to those involved.

Maintenance of a *centralized tracking database* for all international agreements by type, including binding and non-binding agreements and MOUs, should be considered for the future. On-line solutions may be viable. All or portions of the database could be accessible to the community of interest. While all international agreements should be centrally tracked, they should also be maintained on a decentralized basis, in the various contract databases, as appropriate.

The GEO is open to tracking, at a high-level, the existence of all international collaboration agreements, but they are not currently tasked with providing ongoing monitoring and

coordination of all agreements. Those agreements that are deemed to be of higher potential reputational, operational, legal, compliance, or financial risk at the time of approval could be tracked and monitored as a subset. For these agreements, the Office of the Vice Provost for Academic and Space Planning could develop standardized metrics or reporting criteria for periodic update by the department with primary responsibility.

### **Management Response and Action Plan**

The Vice Provost for Academic and Space Planning (who also oversees international partnerships) agrees with this observation. She and the GEO will look for opportunities to improve the tracking and monitoring of international agreements across the campus. The GEO will assess the capabilities of its current agreement repository system as well as other potential solutions. The GEO also will discuss with other units with custodial ownership of campus agreements (such as BCBP, IPIRA, Supply Chain Management, and SPO) how to better share information on the international agreements they retain. Management will need to weigh the benefits of tracking all international agreements centrally against the duplication of information across multiple systems as it is likely not feasible to consolidate all types of agreements (domestic or international) in one system at this time.

Management will also consider whether annual reporting should be required for agreements that may have inherently greater risk. Annual reporting may include the amount of financial resources committed, the involvement of foreign government or quasi-government entities, research involving human subjects or potentially subject to export control laws, etc.

Management expects to study and formulate recommendations in these areas by the end of the Fall 2017 semester and expects to implement a methodology for facilitating central knowledge of international agreements by the end of the Spring 2018 semester.