

Export Controls

Audit Report # 17-05

June 29, 2017

The University of Texas at El Paso
Institutional Audit Office

"Committed to Service, Independence and Quality"



June 29, 2017

Dr. Diana Natalicio
President, The University of Texas at El Paso
Administration Building, Suite 500
El Paso, Texas 79968

Dear Dr. Natalicio:

The Office of Auditing and Consulting Services has completed a limited-scope audit of Export Controls. During the audit, we identified opportunities for improvement and offered the corresponding recommendations in the audit report. The recommendations are intended to assist the department in strengthening controls and help ensure that the University's mission, goals and objectives are achieved.

We appreciate the cooperation and assistance provided by the Office of Research and Sponsored Projects staff during our audit.

Sincerely,

A handwritten signature in blue ink that reads "Lori Wertz".

Lori Wertz
Chief Audit Executive

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EXECUTIVE SUMMARY

The Office of Auditing and Consulting Services has completed a limited scope audit of export controls. The objective of the audit was to determine if University export control policies and procedures are in place to monitor transactions subject to the federal export control regulations.

Audit criteria includes The University of Texas System Policy UTS 173 *Export Controls* and The University of Texas at El Paso Handbook of Operating Procedures Section IV Chapter 9, *Compliance with U.S. Export Control Regulations*.

During the audit we noted the following:

- The University has not appointed an Export Controls Officer (ECO). The prior ECO departed in August 2014; however, the position has not been reassigned.
- Export controlled projects cannot be identified in PeopleSoft, even though the project may have employment and travel restrictions. The only way to determine if a project is subject to export controls is to review the actual contract or the Notice of Award.
- Two of the seven projects tested required a Technology Control Plan (TCP). The TCPs were not in place before the accounts were created in PeopleSoft. One project did not have an Export Control Review Form signed by the Principal Investigator.
- Two individuals took encrypted devices out of the country; however, they did not contact the Information Security Office or complete the required documentation.
- Six individuals traveled out of the country, but were not assigned the export controls compliance training module.

The results of our audit indicated the University has established export control policies; however, procedures for communication and execution of export control policies can be strengthened by implementing the audit recommendations.

BACKGROUND

University research may be subject to U.S. Export Control laws that protect national security and trade. University policies and procedures ensure processes effectively address federal regulations regarding export controls, including those implemented by the Department of Commerce through its Export Administration Regulations, the Department of State through its International Traffic in Arms Regulations, the Treasury Department through its Office of Foreign Assets Control, and the Federal Acquisition Regulation Final Rule on Employment Eligibility Verification.

Traditionally, higher education research has not been subject to scrutiny by the Federal Government because of the Fundamental Research Exclusion. Fundamental Research, as defined in the Export Control Regulations, includes basic or applied research in science and/or engineering at an accredited institution of higher learning in the U.S., where the resulting information either is ordinarily published and shared broadly in the scientific community or where the resulting information has or is about to be published. University research will not qualify as fundamental research if (1) the institution accepts any restrictions on the publication of the information resulting from the research other than limited prepublication reviews by research sponsors, to prevent inadvertent divulging of proprietary information or to insure that publication will not compromise patent rights of the sponsor; or (2) the research is federally funded and specific access or dissemination controls regarding the resulting information has been accepted by the university or the researcher.

Consequences for violations of Export Control Regulations can result in civil and criminal charges against the individual researcher and the institution.

The Office of Research and Sponsored Projects (ORSP) has identified the following as high risk areas of non-compliance:

- collaborating/discussing with foreign nations, including students,
- traveling outside the U.S. with laptops or other encrypted devices,
- doing business with people or entities without required screening, and
- shipping/transporting The University of Texas at El Paso (UTEP) owned equipment without required screening for controlled technology or customs regulations.

AUDIT OBJECTIVES

The objective of this audit was to determine if UTEP export control policies and procedures are in place to monitor transactions subject to the federal export control regulations, if the policies are consistent with The University of Texas System (UTS) policies and:

- research subject to export control guidelines (in sponsored contracts or grants) are identified and monitored for compliance, and
- researchers are aware of export control regulations and policies regarding shipments to foreign countries, travel abroad and collaboration with foreign nationals.

SCOPE AND METHODOLOGY

The audit scope was determined by performing a risk analysis to identify high risk areas for review and testing. Audit methodology included interviewing key personnel, reviewing processes, and limited testing of supporting documentation for the fiscal year ended August 31, 2016.

The audit was conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing* and the authoritative guidelines of the *International Professional Practice Framework* (IPPF) issued by the Institute of Internal Auditors.

RANKING CRITERIA

All findings in this report are ranked based on an assessment of applicable qualitative, operational control and quantitative risk factors, as well as the probability of a negative outcome occurring if the risk is not adequately mitigated. The criteria for the rankings are as follows:

Priority - an issue identified by an internal audit that, if not addressed timely, could directly impact achievement of a strategic or important operational objective of a UT institution or the UT System as a whole.

High – A finding identified by internal audit that is considered to have a medium to high probability of adverse effects to the UT institution either as a whole or to a significant college/school/unit level.

Medium – A finding identified by internal audit that is considered to have a low to medium probability of adverse effects to the UT institution either as a whole or to a college/ school/unit level.

Low – A finding identified by internal audit that is considered to have minimal probability of adverse effects to the UT institution either as a whole or to a college/ school/unit level.

AUDIT RESULTS

A. Grants Management

ORSP is responsible for determining if new projects are subject to export control regulations and educating the researchers on the importance of compliance with the regulations. ORSP is in charge of implementing the University's export controls policy and developing the related procedures for sponsored projects.

A1. Export Controls Officer

According to the Handbook of Operating Procedures (HOP) Section IV Chapter 9.4, *"The President of the University shall appoint or approve the appointment of an Export Controls Officer (ECO) for purposes of compliance with U.S. export control regulations."*

The ECO should have the authority to coordinate efforts with the appropriate Vice Presidents, College Deans, and Department Heads to implement procedures that comply with export control regulations.

The University does not have an ECO. The prior ECO departed in August 2014; however, the position has not been reassigned. The potential for export control violations is greater without the guidance of an ECO.

The ECO is necessary to help coordinate compliance with export control restrictions for the following areas:

- collaborations/discussions with foreign nations regarding restricted research,
- international travel training and awareness to avoid potential issues with encrypted devices and Office of Foreign Assets Control restrictions,
- purchasing: screening of individuals or entities UTEP does business with,
- shipping: every international shipment is an export and is subject to U.S. export control regulations which prohibit the shipment of some materials to certain individuals and countries. Currently, the University does not have policies in place to track international shipments or identify if a shipment has export control restrictions, and
- human resources: hiring restrictions for individuals from restricted countries.

Recommendation:

The University should appoint an ECO. The ECO should have the authority to coordinate efforts across the various departments to help ensure compliance with export control regulations.

Level: This finding is considered **Medium** since the University does not have a mechanism to coordinate and monitor compliance with export control regulations among the various affected departments.

Management Response:

The University needs to appoint an ECO and provide the authority to the individual to organize a comprehensive compliance program with the various departments that have a key role with export control compliance.

But, without specific appointment or authority, the Assistant Vice President for Research(AVPR) and Compliance Services at ORSP has endeavored to maintain very basic (not comprehensive and excluding key parties) monitoring and compliance activities specifically for ORSP, but also working with the Information Security Office (ISO), the Office of International Programs, Human Resource Services, Purchasing, and Institutional Compliance to provide an annual compliance training module and basic reviews of potential non-compliance concerns.

Responsible Party:

Manuela Dokie, Assistant Vice President, Research.

Implementation Date:

December 31, 2017

A2. Identification of Export Controlled Projects

The HOP Section IV Chapter 9.5.6 states,

“The University will adopt an export controls compliance program that documents and disseminates information of roles, responsibilities and procedures for identification, approval, licensing and tracking of items or activities subject to the export control laws.”

ORSP does not maintain a list of export controlled projects. Currently, the only way to determine if a project is subject to export control regulations is to review the actual contract or the Notice of Award (NOA). In addition, there is no indicator in PeopleSoft to identify export controlled projects. Export controlled projects are subject to various hiring, purchasing ,shipping, international travel and research requirements which, if not followed, could result in fines, penalties, or loss of funding.

Recommendation:

ORSP should maintain a listing of all export controlled projects by developing a method to identify and track them in PeopleSoft. This will assist departments in identifying projects subject to export control regulations.

Level: This finding is considered **Medium** since export controlled projects are subject to various compliance requirements.

Management Response:

ORSP has identified new means of identifying Export Control (EC) projects to all parties concerned by having all project ID in PeopleSoft numbers for EC projects end in the letter "R", i.e. 226xxxxxxR. This identification system will alert all offices and key parties that have a role in EC to recognize a restricted project. Key personnel as listed above will be notified of this labeling convention, they will be provided contact information to inquire about the restrictions, and their respective offices will receive the annual institutional compliance training module for Export Controls.

The Research Administrator (RA) requesting the project ID from Contracts and Grants Accounting completes the first stage of EC review at project award time and indicates any restrictions in the appropriate space in the NOA. If this initial review yields further review, the RA will complete the EC checklist with the Principal Investigator (PI) to make an appropriate recommendation. If project has restrictions subject to Export Administration or International Traffic In Arms regulations, the RA will require the PI to complete a Technology Control Plan (TCP). Depending on agency requirement, the TCP may get forwarded to the agency for approval. Both the EC checklist and the TCP (if applicable) will be maintained at ORSP. If EC licensing is required, the RA will forward the TCP to the AVPR to begin EC licensing procedures.

Given the proposed labeling conventions on the project ID, there is no further need for a separate "list" of projects subject to EC, because a query in PeopleSoft identifying project ID's ending in R will provide the required list.

Responsible Party:

Manuela Dokie, Assistant Vice President, Research

Implementation Date:

December 31, 2017

A3. TCP and Export Control Review Form

The HOP Section IV 9.5 states,

“No work can begin or an account set up under an export controlled award or proposed award until a Technology Control Plan is in place and/or required export control license has been issued.”

A judgmental sample of seven projects was chosen to determine if they were subject to export control restrictions. The NOA for each of the projects was reviewed, and two of the projects contained restrictions. Both of the projects had a TCP in place; however, they were created after the account was set up in PeopleSoft. Additionally, one of the projects did not have an Export Control Review form signed by the Principal Investigator.

Recommendation:

HOP policies for TCPs and Export Review forms should be followed to ensure compliance with federal regulations on export controls.

Level: This finding is considered **Medium** due to the risk of non-compliance with export control regulations.

Management Response:

The RA managing the project and handling the development of the TCP is responsible to follow up with the PI in a timely fashion to ensure a TCP is completed, signed, and filed. In the quarterly checks by the AVPR of project IDs ending in “R”, missing TCP’s will be identified and corrective actions will be taken. HOP policy reference to the TCP and Export Control Review form will be revised to allow project IDs to be issued prior to having a TCP in place. If a project requires an export control license, the PI will not be allowed to start work prior to the license being received.

Responsible Party:

Manuela Dokie, Assistant Vice President, Research

Implementation Date:

December 31, 2017

B. International Travel

UTS 165 *Information Resources Use and Security Policy* requires that all University owned/leased laptops and portable devices be encrypted. When individuals plan to travel abroad with a portable device, they should contact the Information Security Office (ISO) because only countries with signed export agreements will allow encrypted devices into and out of their country. Per the ISO website, all individuals who are planning to travel abroad with a university-owned device should complete the following forms before travel:

- Approval to Decrypt Device for Travel
- Authorization to Remove Equipment from Campus
- Export Control Acknowledgement and Certification Form

B1. Encrypted Devices

During Fiscal Year 2016 six individuals travelled to countries without signed export agreements, thus encrypted devices were not permitted. Two of the six individuals took encrypted devices; however, they did not contact the ISO or complete the required documentation. Taking an encrypted device into certain countries without proper authorization could violate U.S. export laws or the import laws of the country. This could result in equipment confiscation, fines or penalties.

Recommendation:

For projects that allow foreign travel, additional procedures should be developed to ensure PIs and their support staff are aware of federal export control regulations.

Level: This finding is considered **Medium** since failure to comply could result in civil and criminal penalties.

Management Response:

The ISO has information on its website, which is part of the annual institutional compliance training cluster (where every employee at UTEP receives notice to complete the training), and is working with department employees to maximize basic compliance. ORSP will include ISO's "Encrypted Devices and foreign travel" training in its annual institutional training module for Export Control for sponsored projects. ORSP will also advise all PI's with foreign travel in their awarded budgets of the "Encrypted Devices and foreign travel" requirements.

Responsible Party:

Manuela Dokie, Assistant Vice President, Research

Implementation Date:

August 31, 2017

B2. Compliance Training Module

Awareness of policies and procedures is the foundation of the University's export control management system. ORSP has developed an annual compliance training module related to export controls. During Fiscal Year 2016, 196 individuals completed the training module. Currently, the training is assigned only to individuals in the College of Engineering and the College of Science.

One of the high risk areas addressed in the training is travel outside of the U.S. with laptops or other encrypted devices. Although international travel is mentioned as a high risk area of non-compliance, there is no guidance provided as to the procedures to be followed.

Four of the six individuals who traveled to countries without an export agreement were not assigned the export controls compliance training module. Some countries do not have a signed export agreement with the U.S., which requires the device to be decrypted before traveling. Potential consequences such as confiscation of computer equipment and civil liability for violations are not clearly addressed in the compliance module.

Recommendation:

The compliance training module related to export controls should provide detailed information regarding the risks associated with traveling abroad with an encrypted device. Additionally, the training module should be assigned to all researchers and their staff.

Level: This finding is considered **Medium** due to the fines and penalties associated with non-compliance.

Management Response:

The institutional compliance training module related to export controls will be updated to include "foreign travel and encrypted devices" as stated in prior section. ORSP will

recommend administrative staff/office that have key roles in compliance with EC, specifically foreign travel, receive the annual updated training module.

Responsible Party:

Manuela Dokie, Assistant Vice President, Research

Implementation Date:

August 31, 2017

C. Purchases

Visual Compliance (VC) is a background check system that ensures compliance with federal export control regulations and national/international areas of concern. The Purchasing Department is responsible for screening vendors in VC to determine if they appear on restricted or designated party lists. OACS reviewed the VC usage reports for Fiscal Year 2016 and there is evidence of vendor review. Additionally, ProCard purchases to international vendors were analyzed and all international purchases were approved by the Purchasing Department prior to the purchase.

CONCLUSION

Based on the results of audit procedures performed, we conclude the University has established export control policies; however, procedures for communication and execution of export control policies can be strengthened by implementing audit recommendations.

We wish to thank the management and staff of ORSP and the ISO for their assistance and cooperation provided throughout the audit.