



August 25, 2020

Mr. Matthew Borman, Deputy Assistant Secretary  
Bureau of Industry and Security  
U.S. Department of Commerce  
1401 Constitution Ave NW  
Washington, D.C. 20230  
Via email at [Matthew.Borman@bis.doc.gov](mailto:Matthew.Borman@bis.doc.gov)

Re: *GAO-20-394-Export Controls: State and Commerce Should Improve Guidance and Outreach to Address University-Specific Compliance Issues (May 2020)*

Dear Mr. Borman:

The Association of University Export Control Officers (AUECO) respectfully submits this letter in response to *GAO-20-394-Export Controls: State and Commerce Should Improve Guidance and Outreach to Address University-Specific Compliance Issues (May 2020)*.

AUECO, formed in 2008 with 17 individuals representing 17 institutions of higher education, has since grown to include membership of over 339 export control professionals with compliance responsibilities at 202 institutions of higher education within the United States. AUECO is committed to monitoring guidance and changes in the administration of export control laws and regulations that may affect the unique nature of higher education and academia.

The association and many of its members contributed to the GAO study. We welcomed the report and its recommendations. We were happy to see the guidance directed at universities and value the acknowledgement from GAO that export control compliance within the academic environment is uniquely complex. The study, however, did not address the breadth of regulatory compliance that universities often face. In addition to compliance with the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR), universities must also be aware of and ensure compliance with several other export control regulations (e.g., nuclear technology and material regulations overseen by the Department of Energy and the Nuclear Regulatory Commission and the sanction programs overseen by the Office of Foreign Assets Control and U.S. Customs and Border Protection). We would suggest that future studies consider more broadly the breadth of regulatory compliance facing universities.

AUECO has several recommendations from the GAO report for the Commerce Department's Bureau of Industry and Security (BIS), but first AUECO would like to acknowledge and express its appreciations to the BIS for its history of routine and robust participation in the AUECO Annual Conference, often sending several BIS personnel to present and fully interact with the conference attendees. BIS had planned again this year to attend the AUECO Annual Conference and present a full-day training for attendees, however this was postponed due to COVID-19. AUECO is hoping to collaborate with BIS in the future to recreate virtually a version of this training for our membership.

**AUECO would like to provide the following specific recommendations to the Department of Commerce:**

1. Consult with university representatives to provide additional/revised guidance and outreach specific to universities.

AUECO concurs with the GAO Recommendation 2 to the Secretary of Commerce, to ensure that the Under Secretary for Industry and Security, in consultation with university representatives, provides additional or revises existing guidance and outreach to address university-specific export control issues to further support universities' understanding and compliance with the Export Administration Regulations. BIS has a robust website with guidance and tools for exporters, but not much of the website is geared toward university-specific export compliance. While it is possible for universities to glean some needed information from outreach materials and training geared toward industry, it can be difficult at times to interpret industry-focused guidance to the university environment. This is due to the primary focus of industry being on development, marketing, and sale of proprietary technologies, while universities are generally focused more on expanding knowledge through collaboration and fundamental research in an environment with large populations of foreign persons. AUECO recommends that BIS consult with university representatives to enhance its guidance, training, and outreach on specific topics relevant to universities, such as university-specific best practices and a series of Frequently Asked Questions regarding issues of interest to universities, namely deemed exports, fundamental research and global delivery of online learning. Ultimately, this enhanced guidance would be utilized by AUECO members to better educate faculty members at their own institutions, as well as to advocate for compliance resources to management at their institutions.

2. Provide risk assessment tools to address the unique aspects of export compliance at universities.

Although not a recommendation from the GAO report, AUECO recommends revising and/or expanding the risk assessment guidance on the BIS website to address the unique aspects of export compliance at universities. The GAO report pointed to BIS guidance on risk assessments as determinative because the Department of State does not provide specific guidance to exporters on risk assessments. Ultimately, AUECO suggests that it would be most helpful if Commerce and State were to develop a combined risk assessment tool for universities. But given that BIS is currently the only federal agency with risk assessment guidance, AUECO recommends that the *BIS Export Compliance Guidelines, Elements of an Effective Compliance Program* document, which details risk assessments as one of the eight elements of an effective

compliance program, include information specific to universities. The current Guidance document under Element 2, Risk Assessments, details three main areas of risk: 1) exporting items, 2) organizational operations, and 3) customer(s). While shipment of items from time to time may occur in the university environment, universities are typically not in the business of exporting items and do not have customers, per se. AUECO would recommend that BIS expand its guidance under Element 2 on "Unauthorized release of sensitive or controlled technology" (p.10) that speaks to unauthorized release of sensitive or controlled technology to provide more university-specific guidance on deemed exports and risk assessments for universities. Similarly, the risk assessment Audit Module at the end of the Guidelines document should include risk assessment elements specific to universities so that universities may fully utilize the tool to inform risk assessments within their own programs.

AUECO appreciates the opportunity to provide the Department of Commerce with the above comments related to this report. Ultimately there are multiple constituencies within U.S. higher education, and while AUECO can assist with export control regulatory professionals, other academic associations (AAU, APL, COGR) have different focuses. BIS should consult with these other academic associations as well. AUECO acknowledges that it is uniquely positioned to provide input to this GAO report, and would be glad to provide further comments or assistance to BIS in implementing the report's recommendations.

Respectfully,

DocuSigned by:



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David Ivey

Chair

Association of University Export Control Officers

Website: <http://aueco.org>