Not Just a Research Issue: Building a University-Wide Export Control Program

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Agenda

1. The What and the Why?: Regulatory Background
2. The Impact: University-Wide Considerations
3. The Tools and Approach: Building an Export Control Program

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The What and the Why?

Export Control Overview

Export Controls consist of three sets of regulations that restrict unlicensed exports of technology or information, including sharing information with foreign nationals.

	Export Administration Regulations (EAR)	International Traffic in Arms Regulations (ITAR)	Office of Foreign Assets Control (OFAC)
Governing agency	Department of Commerce	Department of State	Department of Treasury
Established through	Commerce Control List (CCL)	U.S. Munitions List	Economic and trade sanctions list
Covers	• Dual use items • Deemed exports (releasing technology to a foreign national)	• Military items • Defense articles	• Sanctioned countries and their nationals • Specified entities and individuals
Representative Examples	• Materials and chemicals • Electronics design • Computers • Telecom • Sensors and lasers	• Toxic agents • Spacecraft systems • Explosives and energetic materials • Classified articles	• Balkans • Ukraine / Russia • Venezuela • Foreign interference in U.S. elections

Export Control Overview

Universities and academic medical centers are often exempt from certain export control requirements because of the 'fundamental research exception' (FRE).

Fundamental Research Exception

- Fundamental research is "basic and applied research in science and engineering, ***the results of which ordinarily are published and shared broadly within the scientific community***"
- "No restrictions may be placed upon the conduct or reporting of federally-funded fundamental research that has not received national security classification, except as provided in applicable U.S. Statutes…"

FRE Does Not Apply When…

- Research methods or outcomes are restricted from publication
- Research occurs outside the U.S.
- Research involves transferring material or data outside the U.S. (except for publications)
- Certain types of materials are involved in, created by, or modified during the research

More on this later…

Recent Focus on Export Control

Various federal agencies continue to emphasize the importance of export controls for universities and academic medical centers.

National Security Presidential Memorandum – 33 (NSPM-33) RFI

- Requires institutions to train relevant personnel "on requirements and processes for reviewing foreign sponsors, collaborators and partnerships…"
- Training must emphasize that "the 'fundamental research' exception has explicit limitations"

BIS Academic Outreach Initiative

- BIS identified 20 schools that had an "elevated risk profile," and all 20 joined the program
- Program participants are assigned a dedicated Outreach Agent to meet quarterly and receive training on application of export controls in academic settings and conducting open-source research to vet potential foreign partners
- BIS is recruiting new schools with elevated risk profiles to expand the program

DOJ & BIS Disruptive Technology Strike Force

- Focusing on protecting critical assets from being acquired or used by U.S. adversaries
- Intent to "enhance administrative enforcement of U.S. export controls," among others

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The Impact

Direct and Deemed Exports

Export control risks at universities present in two major ways:

- Discrete research projects and certain equipment and materials are subject to export controls and cannot be shipped or taken out of the U.S. without a license or a license exception

Direct Exports

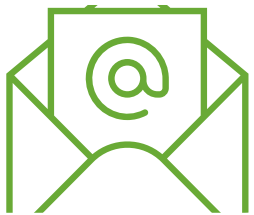
- Non-U.S. persons are restricted from accessing certain data, equipment, and materials

Deemed Exports

Direct and Deemed Exports

A **deemed export** refers to the "release" or transmission of controlled information or technology to any foreign national in the U.S., including students, post-docs, faculty, visiting scientists, or training fellows. A deemed export is treated as an export to that person's home country.

Illustrative examples of deemed exports include:



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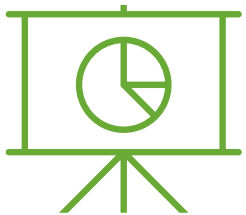
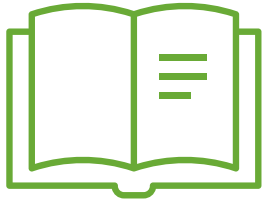


Schematic



Manuals

Oral Exchange

Direct and Deemed Exports

A **direct export** generally refers to materials, information, or technology that will leave the country. In contrast, something can be a deemed export without leaving the country.

Illustrative examples of direct exports include:

Computers

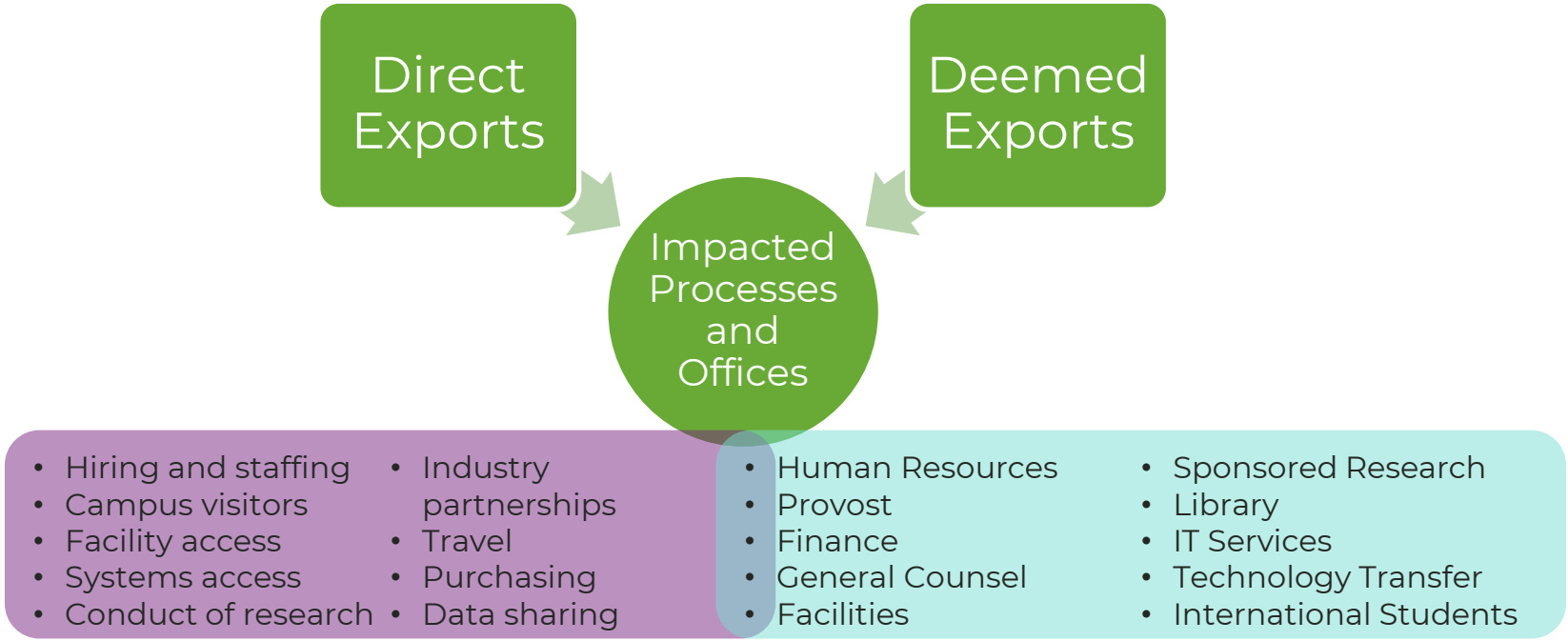
Toxic Agents

Sensors & Lasers

Classified Articles

University-Wide Impact

Processes supporting export control compliance are naturally distributed and must be considered against direct and deemed export risk.

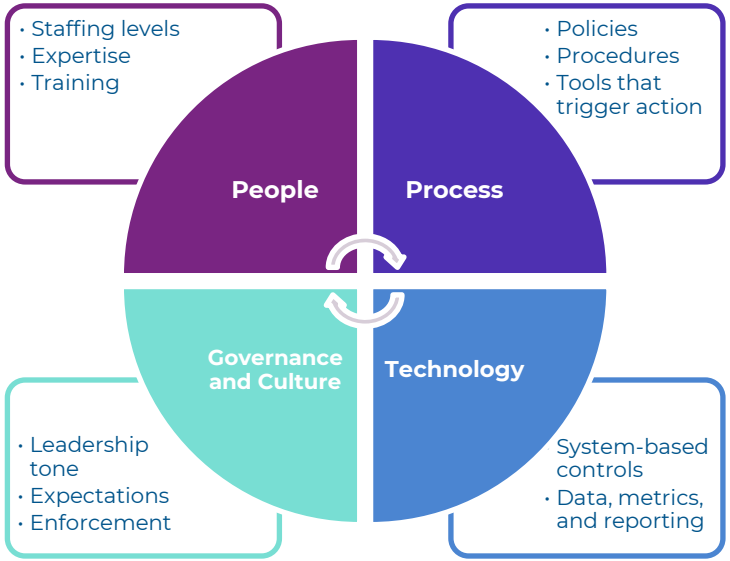


University-Wide Impact

At a well optimized institution, export control transactions are escalated up through originating business units to the export control officer. Each business unit is equipped with tools to help them manage some transactions on their own and escalate, as necessary.

University-Wide Impact

There are too many processes and operational units impacting export controls to rely solely on individuals to “take care of” the risk. Effective risk mitigation requires hardwiring control systems into process and technology supported by well-trained and resourced teams and an organizational culture of compliance.



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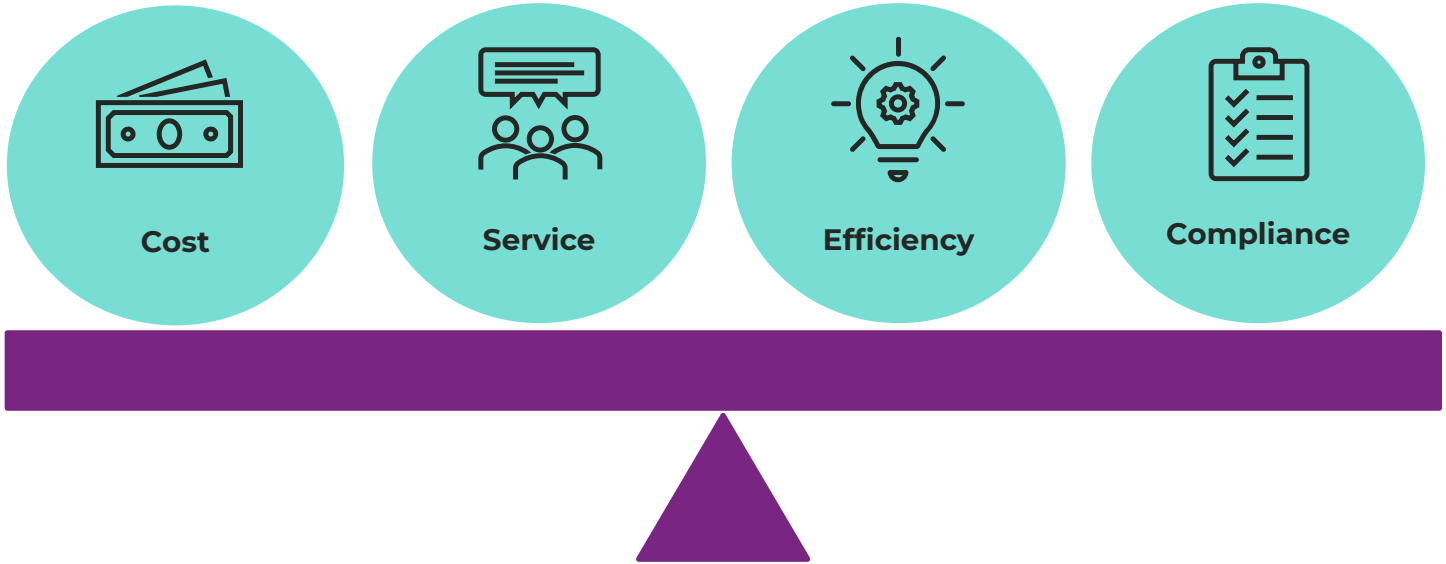
The Tools and Approach

Balancing Needs to Drive Decision Making

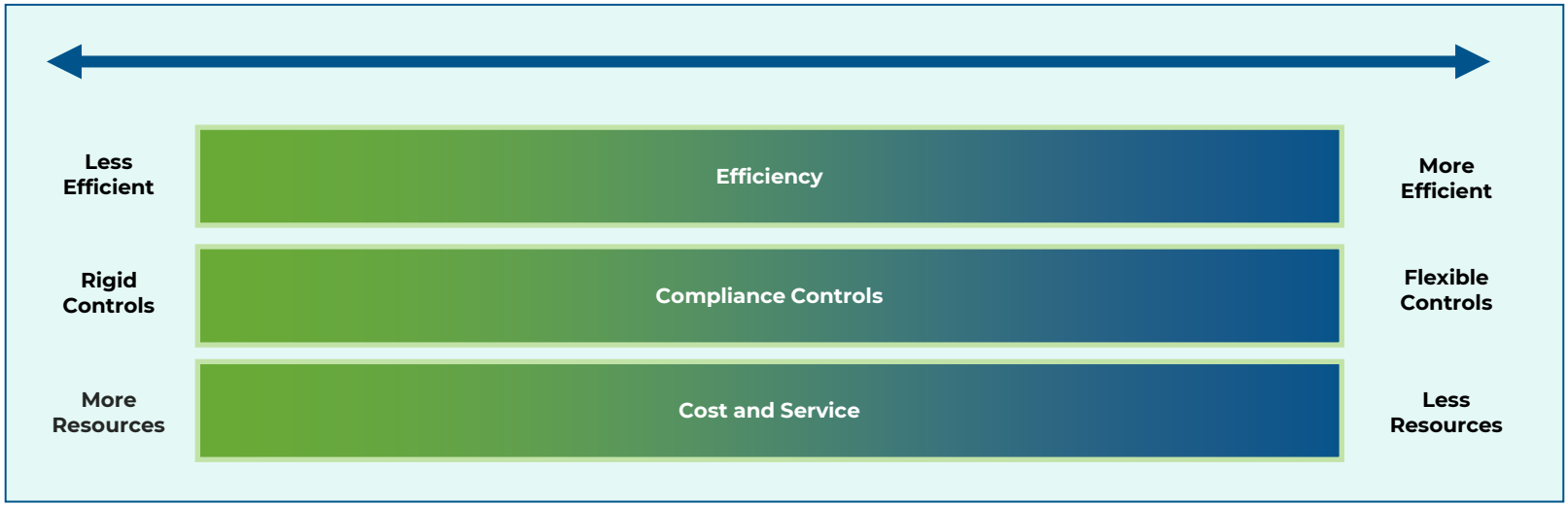
An organization's **culture**, **strategic priorities**, **institutional mission and values**, and **risk tolerance** serve as guides for export control program development.

Compliance programs generally seek to balance cost, service, efficiency, and compliance.



Defining Risk Tolerance: Finding the Balance

Answers to key risk tolerance questions will fall along a spectrum that helps determine the balance of cost, service, efficiency, and compliance in an export control program.



Defining Risk Tolerance: Starting the Conversation

Questions that may help guide the conversation on risk tolerance include:

1. Should key control processes be targeted to certain populations or applied broadly?
2. Should training be required for all personnel or limited to high-risk groups?
3. Should relevant demographic information about students, faculty, visitors, be made available broadly or controlled within certain central offices?
4. What degree of support should be provided to departments to enable key control processes?
5. How should the institution budget for infrastructure needed to support export controlled research?

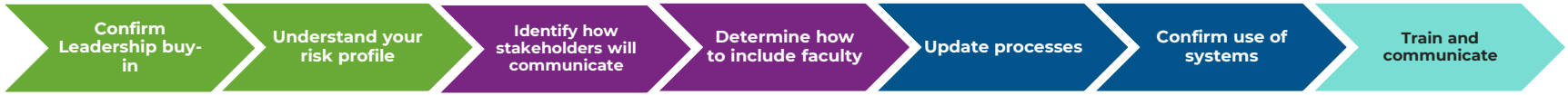
Case Study: Purchasing and Asset Management

Since almost all items purchased are on the Commerce Control List (CCL) or United States Munitions List (USML), how can your export control program best identify controlled items on campus?

Risk Tolerance Questions	Purchasing and Asset Management
1. Should key control processes be targeted to certain populations or applied broadly? 2. Should training be required for all personnel or limited to high-risk groups? 3. Should relevant demographic information about students, faculty, visitors, be made available broadly or controlled within certain central offices? 4. What degree of support should be provided to departments to enable key control processes? 5. How should the institution budget for infrastructure needed to support export-controlled research?	1. Who makes purchases at your institution? 2. What mechanisms are used for purchasing? 3. What other ways do items arrive on campus? 4. What ways do items leave campus? 5. What other mechanisms to identify controlled items? 6. What mechanisms exist to identify the people who might get access to the item? 7. What kind of access do people have to the item?

Building an Export Control Program

Now that we know the questions to ask and the people, processes, and operational units involved, how do we get the ball rolling and start building an export control program?



- Understand the strategic direction of your institution's research enterprise
- Understand risk tolerance
- Confirm whether one leader or multiple leaders will oversee the export control program

- Understand the type of research occurring now (e.g., research funded by DOD / DOE / NASA, research conducted on identified technologies, etc.)
- Based on strategic growth priorities, understand how export controls fits into the broader picture

- Determine how the export control officer will interact with impacted offices
- Determine whether an operations-level committee should support the export control program

- Include research deans in steering committee
- Involve PIs that conduct export-controlled research

- Inventory existing processes that can be augmented to strengthen export control compliance
- Revise existing procedures via targeted working groups
- When necessary, develop new processes to support export control compliance

- Determine what systems will be used as sources of truth for key pieces of information (e.g., citizenship, research projects subject to export controls, assets, etc.)
- When possible, use interfaces to share information between systems and automate processes like Restricted Party Screening

- Include internal communications and DEI teams when crafting messages
- Communicate strategically, aiming to educate and inform without creating fires.

Questions?