OFAC’s Cuban and Iranian Sanctions

Impact of Export Controls on Higher Education and Scientific Institutions

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Panel Speakers

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Selection of Sanctions Programs

• OFAC administers multiple sanctions regimes.
  – Major sanctions programs: Cuba, Iran, Sudan, Syria & Crimea region of the Ukraine
  – Lesser sanctions programs: e.g., North Korea, Burma (Myanmar), Cote D’Ivoire, Darfur, Belarus, Lebanon, Somalia, Yemen, Central African Republic, et al.

• Given higher frequency of typical institutional compliance issues, this panel will focus on Cuba, Iran only.
OFAC Operating Principles

• Starting default when dealing with sanctioned locations—
  • Except as authorized by OFAC exemptions, general or specific licenses, exports, imports, and transactions involving the following are prohibited
    • commodities,
    • technologies,
    • money,
    • and services.
• However, moving past these default positions is often the fun part of compliance counseling!
OFAC Operating Principles, cont.

- Be prepared to dig for answers, solutions in:
  - Sanctions statutes
  - Presidential Executive Orders
  - Regulations (exemptions, general licenses, types of “favored” specific licenses)
  - External general licenses
  - Published OFAC letter rulings
  - OFAC FAQ guidance
- Ask the listserv
- Don’t forget BIS
  - 15 C.F.R. pt. 746—Embargoes and Other Special Controls
OFAC Operating Principles, cont.

- Both Cuban Assets Control Regulations (CACR), 31 CFR part 515, and Iranian Transactions & Sanctions Regulations (ITSR), 31 CFR part 560, contain express exemptions.

- CACR § 515.206(a) for “information and informational materials.”

- ITSR § 560.210(c) for “information and informational materials” and (d) for “travel.”
OFAC Operating Principles, cont.

• OFAC’s regulations share certain common concepts and structures, but each program is unique. For instance—

  • Default ban on travel to Cuba? **Yes**, per CACR § 515.201.

  (b) All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations, rulings, instructions, licenses, or otherwise, if such transactions involve property in which any foreign country designated under this part, or any national thereof, has at any time on or since the effective date of this section had any interest of any nature whatsoever, direct or indirect:

  (1) All dealings in, including, without limitation, transfers, withdrawals, or exports of, any property or evidences of indebtedness or evidences of ownership of property by any person subject to the jurisdiction of the United States; and


  (d) **Travel.** The prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including importation or exportation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.
OFAC Operating Principles, cont.

- Where are the general licenses for Cuba?

\[
\text{§515.565 Educational activities.}
\]

(a) General license for educational activities. Persons subject to U.S. jurisdiction, including U.S. academic institutions and their faculty, staff, and students, are authorized to engage in transactions, including the travel-related transactions set forth in §515.560(c), that are related to the following activities:

- Where are the general licenses for Iran?

\[
\text{GENERAL LICENSE G}
\]

Certain Academic Exchanges and the Exportation or Importation of Certain Educational Services Authorized

(a) Academic Exchanges. Except as provided in paragraph (c) of this general license, accredited graduate and undergraduate degree-granting academic institutions located in the United States (collectively, “U.S. academic institutions”), including their contractors, are authorized to enter into student academic exchange agreements with universities located in Iran (collectively, “Iranian universities”) related to undergraduate or graduate educational courses, and to engage in all activities related to such agreements, including, but not limited to, the provision of scholarships to students enrolled in Iranian universities to allow such students to attend U.S. academic institutions.
Compliance Strategies

• Processes
  • Travel reviews
    • International travel registration
  • Compliance review of agreements with non-U.S. parties
    • Material transfer agreements
    • External sales, license, cooperative research or cooperative teaching agreements
    • Sponsored projects
Compliance Strategies, cont.

• Outreach
  • Identify your audience—sanctions risks can arise in *any* academic discipline or school.
  • Classes—the human touch
    • Consider mandatory attendance if possible/advisable.
  • Email updates
    • News articles of interests
    • Summaries of key regulatory/policy changes
  • Online materials
    • Policies, FAQs, articles, videos
Compliance Strategies, cont.

• Centralized licensing process
  • Expertise & experience $\rightarrow$ efficiency. *OFAC applications are an art!*
  • More uniform guidance and implementation.
  • More optimal understanding of institution-wide activities, risks
  • Know, use cumulative successes!
  • “United front” makes it easier both for OFAC and institution.
Compliance strategies, cont.

- License implementation (general or specific)
  - At a minimum, provide a written summary of the key do’s and don’t’s to affected institutional faculty, staff, students.
    - Cuba travel letter a good place for this.
  - Offer an in-person discussion, explanation of license terms.
  - Required recordkeeping—centralized or by the traveler?
Peer Review & Editing of Papers

• May researchers conduct peer review of or editing of works from authors in Cuba or Iran?
  • Generally yes, in accordance with CACR § 515.577(a) and ITSR § 560.538(a)—
    • (2) Collaborating on the creation and enhancement of written publications;
    • (3)(i) Augmenting written publications; and
    • (4) Substantive editing of written publications.
  • But not if author is acting on behalf of a sanctioned government agency (as distinguished from a sanctioned government academic or research institution).
    • October 2015 OFAC ruling in response to Elsevier guidance request.
MOOCs for Cuba and Iran

• May my institution offer MOOCs to participants in Cuba or Iran?
  • Cuba—**Yes**, “provided the course content is at the undergraduate level or below.” CACR § 515.565(a)(10)
  • Iran—**Yes**, “provided that the courses are the equivalent of courses ordinarily required for the completion of undergraduate degree programs in the humanities, social sciences, law, or business, or are introductory undergraduate level science, technology, engineering, or math courses ordinarily required for the completion of undergraduate degree programs in the humanities, social sciences, law, or business.” General License G(b)(1)(iii) under ITSR
Visiting Scholars and Students

• May my institution host students and scholars from Cuba or Iran?
  • Cuba—Generally, yes
    • CACR § 515.565(a)(5) and (11) permit transactions relating to visiting Cuban scholars and students.
    • CACR § 515.571(a)(4) and (e) authorize transactions in connection with activities for which certain visas have been issued.
  • Iran—Generally, yes
    • ITSR General License G(a) and (b)(1) authorize certain student exchanges (including scholarships), application and tuition services, and faculty recruiting.
    • ITSR § 560.505 authorizes activities for which certain visas have been issued (F, H, J, among others).
Iran & Academic Activities

• ITSR §560.544 useful for accredited undergraduate higher education institutions with programs in humanities, social science, law and business
  – Recruit, hire and employ faculty/staff who are ordinarily resident in Iran [in spite of ITSR §560.419 general bar on hiring]
  – Recruit, enroll and educate students who are ordinarily resident in Iran; award scholarships to such students
  – Enter into & perform exchange agreements with Iranian universities
  – Recruit persons ordinarily resident in Iran (e.g., scholars, speakers, alumni, etc.) for conferences, lectures, research workshops, exhibitions, performances, etc.
  – Enroll Iranian students in basic STEM courses needed to earn humanities, social science, law or business degree
Academic & Professional Conferences

• May my institution’s researchers participate in conferences in Cuba or Iran?
  • Cuba—Generally, yes
    • CACR § 515.564(a)(2) permits travel and related transactions in connection with participation in or organization of “professional meetings” in Cuba.
      • Event must relate to traveler’s professional field.
      • No tourist activities or excessive free time.
    • CACR § 515.565(a)(7) authorizes sponsorship or organization of and participation in certain Cuba-related conferences
  • Iran—Probably no, except with an OFAC specific license.
    • ITSR § 560.204 prohibits exportation of “services” to Iran.
    • No direct analog to §§ 515.564(a)(2) and 515.565(a)(7).
    • Regular recognized category of OFAC licenses on its website.
    • High probability of successful applications if filed timely with enough details.
Conferences Outside Iran

- ITSR §560.554 allows considerable latitude for public conferences, performances, exhibitions or other similar events held in U.S. or 3rd countries:
  - (a) Import Iranian-origin services into U.S. or export, reexport, sale or supply of U.S.-origin services to 3rd country “by or for benefit of person who is ordinarily resident in Iran” (except GOI or blocked persons)
  - (b) If not otherwise exempt, export, reexport, sale or supply of services directly related to sponsorship by U.S. person of conference or other event in 3rd country attended by persons ordinarily resident in Iran (except GOI or blocked persons) if (a) open to public and (b) not tailored, in whole or in part, for Iran or persons ordinarily resident in Iran
Conferences **Outside** Iran, cont.

• However, ITSR §560.554(c) has two essential limitations:
  – May not release technology or software to a person ordinarily resident in Iran
  – May not export, reexport, sell or supply services (or import Iranian-origin services) related to petroleum or petrochemical industries, energy development, crude oil or natural gas, pipelines, or the oil services industry
**BUT Other Views* on Conferences in Iran**

- International Economic Emergency Powers Act ("IEEPA") changed by Berman Amendment in 1988, which was expanded by Congress in 1994 through further “Free Trade in Ideas” legislation

- OFAC added ITSR § 560.210(c)(1) for “information and informational materials” to implement Berman Amendment within ITSR:
  - “The prohibitions in this part [560] do not apply to the importation to any country and exportation to any country of information or informational materials, as defined in §560.315, whether commercial or otherwise, **regardless of the format or medium of transmission.**” (emphasis supplied)
  - Paragraph (c)(2) also requires such exempt material be “…fully created and in existence at the date of transmission …”

*HELD BY PRIVATE PARTIES, NOT BY OFAC ITSELF*
Other Views* on Conferences in Iran, cont.

• OFAC issued 031103-FACRL-IA-15 (11/03/03), to U.S. nonprofit professional group on conferences outside Iran:

“The provision of benefits by U.S. persons to Iran that relate to information and informational materials, such as attendance by Iranian nationals at public education programs sponsored by the U.S. Entity, is authorized, provided that no prohibited services of the type described above are provided.” (emphasis supplied)

• Through IA-15, OFAC has essentially said U.S. person presenting academic paper at conference outside Iran is not an ITSR “service” even if Iranians can attend conference, hear talk, receive presented information, engage in Q&A, etc.
Other Views* on Conferences in Iran, cont.

• OFAC also issued “Guidance on Conferences” (08/18/00) to U.S. oil, gas companies who were seeking guidance on organizing, co-sponsoring conferences within Iran

“... while representatives of U.S. oil companies who participate in these conferences may be under instructions to observe the constraints of the ITR [Iranian Transaction Regulations] (including the limitation of the exemption in ITR § 560.210(c) to information and informational materials fully created and in existence at the date of the transactions), participants who are not U.S. persons are under no such constraints; and to the extent that such non-U.S. participants provide consulting or other business services to Iran, the U.S. oil companies would be facilitating such transactions by their financial sponsorship of the conferences in question. ... “

(emphasis supplied)
How would IIM Exemption in ITSR § 560.210(c) affect legal outcome these cases?

• **Case 1:** U.S. person mails printed copy of previously presented scholarly paper to Iranian colleague, then exchanges emails and phone calls with Iranian colleague in Q&A follow-up.

• **Case 2:** U.S. person presents same scholarly paper to Iranian colleague at conference outside Iran, engages in live Q&A with Iranian colleague, among others. [§560.554]

• **Case 3:** U.S. person sends to Iranian colleague a DVD recording of U.S. person’s scholarly paper presentation outside Iran with Q&A session (including exchange with Iranian colleague, among others) also recorded.
Other Views* on Conferences in Iran, cont.

- **Case 4:** U.S. person makes webinar broadcast to worldwide audience with real-time presentation of same scholarly paper, engages in live Q&A by usual webinar means, including Iranian colleague, among others.

- **Case 5:** U.S. person makes same webinar broadcast of scholarly paper presentation and engages in same Q&A, but due to time zone difference, Iranian colleague, among others, chooses to digitally record entire webinar and then views broadcast the next day, Iran local time, along with her entire faculty department in Iran.

- **Case 6:** U.S. person presents same scholarly paper at international conference held within Iran, engages in same live Q&A session with audience, including Iranian colleague.
Other Views* on Conferences in Iran, cont.

• 2003 OFAC IA-15 ruling says Iranians can attend, listen to live presentations of papers at conferences held outside Iran – covered by IIM Exemption and is not a “service” by U.S. person. Codified, reinforced now by ITSR §560.554(a), (b).

• 2000 OFAC conference guidance implies U.S. person could, in theory, present at conference held inside Iran within limits of IIM Exemption and not be a “service” by such U.S. person.

• Six hypothetical cases show range of means by which same U.S. person, same paper content and same person in Iran can be engaged in typical international scholarly exchange.
  – Several of hypothetical cases seem to fall within IIM Exemption and not be a “service” to persons in Iran, but Case 6 is apparently still viewed otherwise by OFAC.
  – Should the “regardless of format or medium of transmission” clause within ITSR § 560.210(c) affect outcomes in such cases?
Questions?