Visiting Scholars
J-1 Visa Holders from Sanction Countries

Impact of Export Controls on Higher Education and Scientific Institutions
May 23-24, 2016
Introduction

• Today’s presenters
  • Frank Calabrese
  • Loretta Ann Sabo
  • Margaret Gatti
J-1 Exchange Visitor Program Objective

• The Mutual Educational and Cultural Exchange Act (Fulbright-Hayes Act) of 1961;

• Administered by the US Department of State;

• “...to increase mutual understanding between people of the United States and the people of other countries by means of educational and cultural exchanges”;

• Intended for the temporary exchange of foreign nationals to the US.
Common J-1 Scholar Research Categories

• Professor / Research Scholar:
  • “...The exchange of professors and research scholars promotes interchange, mutual enrichment, and linkages between research and educational institutions in the U.S. and foreign countries... to engage in research, teaching, observing, consulting (in connection with a research project), and lecturing...”
  • Post-Doc, Visiting Scholar, Visiting Professor
Common J-1 Scholar Research Categories

• **Short-term Scholar:**
  • To lecture, observe, consult and participate in seminars, workshops, conferences, or other similar types of educational or professional activities;
  • For visits that are no longer than 6 months, no minimum.
  • Doesn’t trigger the bars.
Common J-1 Scholar Research Categories

• Student Intern:
  • Coming to the US to participate in an approved student internship program, NOT just to engage in employment;
  • Currently enrolled and pursuing a degree at an accredited academic institution outside the US, to which they will return.
  • Internship is carried out pursuant to an official Student Intern Placement Agreement (SIPA)
  • Great for Undergraduates
Other J-1 Scholar Research Categories

• Other categories:
  • J-1 Student
  • J-1 Specialist

  “An individual who is an expert in a field of specialized knowledge or skill coming to the United States for observing, consulting, or demonstrating special skills”
J-1 Sponsorship Considerations

J-1 may NOT be used for...

• Staff positions (academic or non-academic)
• Tenure-track or tenured faculty appointments
• Interns/Trainees (separate from Student Interns)
• No clinical activities/training
J-1 Sponsorship Considerations

Consider the following before hosting a J-1 scholar:

• Possible bars – 12 month, 24 month, 212(e)
• Cannot change program objectives
• Spouses are eligible for work authorization
• Reporting and attestations
• Adequate Funding
Overview of J-1 Process
(No Controlled Research)

1) Department submits J-1 Scholar application and including supporting materials to ISSS;

2) ISSS reviews application and, if complete, produces DS-2019 immigration document which it releases to the requesting department

3) Scholar applies for J-1 visa abroad, using DS-2019;

4) Scholar enters the US up to 30 days prior to the DS-2019 start date.
Overview of J-1 Process Requirements

1) Adequate funding;

2) English proficiency;

3) Department of State Mandated Health Insurance;

4) Most research categories require a Bachelor’s Degree (except Student Interns)
Overview of J-1 Process
Fundamental Research

• Information resulting from basic and applied research in science and engineering conducted at an accredited institution of higher education in the US that is ordinarily published and broadly shared within the scientific community;

• Majority of the research carried out by our scholars falls under this exception and is not subject to most export controls;

• Streamlined review process.
Screening of Embargoed Country Nationals

• ISSS application asks if the scholar is from: North Korea, Sudan, Syria, Iran, and Cuba;

• Applications for scholars from embargo countries are flagged for Visual Compliance screening.

• Export Compliance, ISSS, and certain departments have access to Visual Compliance.

• ISSS will alert Export Compliance;

• Export Compliance will contact the host department if follow-up is necessary or else give the go-ahead for ISSS to move forward.
Embargoed Countries (cont’d)

• The host department is in the best position to help with a compliance check;

• We caution that the process may take a little longer and vigilance and prompt responses to any requests;

• Warn that consulates have the ultimate decision over whether or not to issue the visa.
Foreign Scholars
Basic Groups

- H-1B Temporary Worker
- J-1 Exchange Visitor
- TN NAFTA Professionals
- O-1 Person of Extraordinary Ability

Visiting Scholars: J-1 Visa Holders from Sanctions Countries
J-1 Visa Non-immigrant Scope

A non-immigrant visa issued by the United States to research scholars, professors and exchange visitors participating in programs that promote educational and cultural exchange (medical or business within the U.S.)

Expectation? Return to the home country at the end of the program
The J-1 Exchange Visitor

Program participants enter the U.S. with a J-1 Visa (exchange visitors) with primary activities such as

- Conduct Collaborative Research
- Give speeches/lectures
- Teach
- Consult
- Observe

Non-tenured temporary positions (few days for as long as 5 years)
SPONSORSHIP

- Exchange visitor program sponsors may include U.S. government, academic, research and some private sector organizations.

- State Department designated sponsors screen and select prospective exchange visitors in accordance to regulatory requirements (22 CFR Part 62) and can issue the Certificate of Eligibility for Exchange Visitor (J-1) Status (Form DS-2019).

Visiting Scholars: J-1 Visa Holders from Sanctions Countries
University Processes for J-1 Visa

Host Department must complete and submit the following to the Office of International Students and Scholars (OISS)

- Completed J-1 (DS-2019) Application Form/Checklist
- Copy of Invitation Letter, if funded by outside source
- Letter of Offer, if any
- Copies of previous DS-2019 (formally IAP-66’s) if any
- Copy of CV, passport and I-94, etc.
Sponsor Obligations

State Department Designated Sponsors are obligated to comply with all aspects of the exchange program

- Selection and screening of foreign persons against government “watch lists”

- Monitor activities of selected foreign nationals who will be participating in the visitor exchange program in the United States

*NOTE – OISS handles immigration processing, but sponsorship is based upon the information provided by the host department*
EXPORT CONTROL DUE DILIGENCE

- Screen the Visiting Scholar and their home country
- Evaluate if the visit makes sense
  - Who, What, Where, and Why?
- Review Visiting Scholar’s CV
- Sponsor completes an export control checklist for potential visitor
- The Export Control Office must conduct a “deemed export” licensing review

Visiting Scholars: J-1 Visa Holders from Sanctions Countries
# Determining Whether Proposed Activities May be Subject to Export Control Regulations?

**Completed by:**
**Date:**

## EXPORT CONTROL CHECKLIST

<table>
<thead>
<tr>
<th>Does your planned activity/project or contract/agreement:</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Allow the sponsor the right to approve, restrict or prohibit publications resulting from the research or review them for over 90 days?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Limit/prohibit participation (faculty/staff/student) based on country of origin or citizenship?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Involve shared technical information that is NOT in the public domain? (e.g., published, patented, etc.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Involve sharing technical data or research information with a foreign national outside of a University catalog course or associated lab? (Check websites below for regulated technology, information and commodities)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><a href="http://www.fas.org/spp/starwars/offdocs/itar/p121.htm">http://www.fas.org/spp/starwars/offdocs/itar/p121.htm</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Involve research or teaching activities to be conducted outside the United States?</td>
<td></td>
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<tr>
<td>6. Involve traveling to a sanctioned country? (Check website below for sanctioned/embargoed countries)</td>
<td></td>
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</tr>
<tr>
<td>7. Involve you to provide training to nationals or entities in a sanctioned country or to foreign nationals/entities from a sanctioned country? (Check website below for sanctioned/embargoed countries)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Involve shipping equipment, materials, or data to a foreign country, foreign national or entity? (Check the website below for programs involving sanctions/embargoes)</td>
<td></td>
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</tr>
</tbody>
</table>

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*Visiting Scholars: J-1 Visa Holders from Sanctions Countries*
### How Can You Determine Whether Your Proposed Activities May be Subject to the Export Control Regulations?

<p>| | | |</p>
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>9.</td>
<td>Involve payments or anything of value to sanctioned countries or foreign nationals/entities from any sanctioned country? (e.g. training, humanitarian aid, fees). (Check the listed website for sanctioned/embargoed countries) <a href="http://www.treas.gov/offices/enforcement/ofac/programs/">http://www.treas.gov/offices/enforcement/ofac/programs/</a></td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>Involve any agreements or collaborations with embargoed countries or nationals from those countries (including peer review of journal articles)? (Check the website below for sanctioned/embargoed countries) <a href="http://www.treas.gov/offices/enforcement/ofac/programs/">http://www.treas.gov/offices/enforcement/ofac/programs/</a></td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Involves the sharing, shipping, transmitting or transferring encryption software* in source code or object code (including travel outside the country with such software)? <a href="http://www.fas.org/spp/starwars/offdocs/itar/p121.htm">http://www.fas.org/spp/starwars/offdocs/itar/p121.htm</a> <a href="http://www.access.gpo.gov/bis/ear/pdf/indexccl.pdf">http://www.access.gpo.gov/bis/ear/pdf/indexccl.pdf</a></td>
<td></td>
</tr>
</tbody>
</table>
| 12. | Involves the external sponsor, vendor, collaborator or other third party, under a Non-disclosure or Confidentiality agreement, provide an item, information or software from the list below to be shared, shipped, transmitted or transferred?  
   
   **Check all that apply:**  
   - Nuclear materials, facilities  
   - Marine  
   - Propulsions Systems, Space Vehicles or related items  
   - Material, Chemicals, Micro-organisms or Toxins  
   - Equipment, Assemblies and Components  
   - Materials Processing  
   - Test, Inspection or Production Equipment  
   - Telecommunications and Information Security  
   - Software  
   - Lasers and Sensors  
   - Technology  
   - Navigation and Avionics  
   [http://www.fas.org/spp/starwars/offdocs/itar/p121.htm](http://www.fas.org/spp/starwars/offdocs/itar/p121.htm)  

**Visiting Scholars: J-1 Visa Holders from Sanctions Countries**
Deemed Exports

The “deemed export” rule is “an export of technology or source code (except encryption source code) is ‘deemed’ to take place when it is released to a foreign national within the United States.”

• When controlled information (i.e. goods, technology or source code) is disclosed to a Foreign Entity or Foreign National even within the United States.

• Includes oral, visual or written disclosures (i.e. laboratory tours, websites, emails, research collaboration and oral exchanges of information).

• Applies to disclosures to research assistants, students, visiting foreign researchers, and U.S. citizens visiting a foreign country.

Visiting Scholars: J-1 Visa Holders from Sanctions Countries
VISITING SCHOLAR AGREEMENTS

Many institutions have Visiting Scholars Agreements as part of their Export Control Manual and Program

PURPOSE –

- Outlines Export Control obligations
- Requires signature of Visiting Scholar/Scientist
- Requires signature of Sponsor

Retain a copy for your records! 😊

Visiting Scholars: J-1 Visa Holders from Sanctions Countries
VISITING SCHOLARS & SANCTIONS RISK MANAGEMENT

“American Universities Infected by Foreign Spies Detected by FBI”
Bloomberg, April 8, 2012

“Scholars and Spies: A Disastrous Combination”
Al Jazeera, December 5, 2012

“Dissident Warns China Sending Spies to US in Scholarly Guise”
Reuters, February 27, 2014

Visiting Scholars: J-1 Visa Holders from Sanctions Countries
Sanctions Risk Management = necessary evil:

- **Yin:** US Government promotes exchange of ideas between research and academic institutions in the US and their counterparts in foreign countries.

- **Yang:** US Government imposes sanctions and export license requirements to prohibit or otherwise restrict exchange of ideas based on its fear that sharing certain technology with certain foreign parties and certain foreign countries poses a risk to US national security.

- Responsibility for managing sanctions and export license compliance rests with the US research and academic institutions that sponsor visiting scholars.

Visiting Scholars: J-1 Visa Holders from Sanctions Countries
SPONSOR OBLIGATIONS IN VISITING SCHOLARS PROGRAMS

State Department-designated sponsors are responsible for all aspects of the exchange program, including:

1. screening and selecting foreign national participants to insure eligibility for program participation; and
2. monitoring the participants throughout their exchange visitor program in the United States.
Visiting Scholars: J-1 Visa Holders from Sanctions Countries
SANCTIONS RISK MANAGEMENT FOR VISITING SCHOLAR PROGRAMS

1. **PROJECTS EXCLUDED FROM PRODUCT-SPECIFIC US EXPORT CONTROLS** – consider OFAC sanctions only
   - Public Domain / Publicly Available (patented items)
   - Educational Information
   - Fundamental Research (no publication restrictions)

2. **PROJECTS SUBJECT TO PRODUCT-SPECIFIC US EXPORT CONTROLS** – consider OFAC sanctions plus sanctions issued by other USG agencies in connection with:
   - ITAR
   - NRC
   - DOE
   - EAR
SANCTIONS RISK MANAGEMENT FOR VISITING SCHOLAR PROGRAMS

1. PROJECTS EXCLUDED FROM PRODUCT-SPECIFIC US EXPORT CONTROLS
   • Public Domain / Publicly Available (patented items)
   • Educational Information
   • Fundamental Research (no publication restrictions)

Limit sanctions risk management to OFAC sanctions screenings for projects that are excluded from product-specific US export controls.
PROJECTS EXCLUDED FROM PRODUCT-SPECIFIC US EXPORT CONTROLS

- Screen Visiting Scholars and their institutions against OFAC’s sanctions targets:
  - Specific individuals or entities in any country which may be involved in or is deemed to be contributing to activities which are considered to constitute a threat to US national security, US foreign policy, or the US economy; and/or
  - Countries whose actions are deemed to constitute a threat to US national security, US foreign policy, or the US economy
OFAC Sanctions Against Specific Individuals & Entities

Specific Individuals / Entities

• SDN’s (all variations and all designations, list based as well as non-list based)
  Deemed SDN is not applicable to visiting scholars but is applicable to their institutions

• Foreign Sanctions Evaders
OFAC Country Sanctions

OFAC’s country sanctions target countries on a:

- Comprehensive basis
- Selective / Targeted basis
- List-specific basis
<table>
<thead>
<tr>
<th>Cuba</th>
<th>Iran</th>
<th>North Korea</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Comprehensive)</td>
<td>(Comprehensive)</td>
<td>(Comprehensive)</td>
</tr>
<tr>
<td>Sudan</td>
<td>Syria</td>
<td>Crimea</td>
</tr>
<tr>
<td>(Comprehensive)</td>
<td>(Comprehensive)</td>
<td>(Comprehensive)</td>
</tr>
<tr>
<td>Burma / Myanmar</td>
<td>Russia</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>(Limited sanctions remain but most have been completely eliminated, either directly or through the issuance of General Licenses.)</td>
<td>(Industry Specific, e.g., oil, natural gas, banking/financial services)</td>
<td></td>
</tr>
</tbody>
</table>
# OFAC List-Based Sanction Programs

## List Specific Country Sanctions

<table>
<thead>
<tr>
<th>Balkans Related Sanctions</th>
<th>Belarus Related Sanctions</th>
<th>Burundi Related Sanctions</th>
<th>Central African Republic Related Sanctions</th>
<th>Cote d’Ivoire-Related Sanctions</th>
</tr>
</thead>
<tbody>
<tr>
<td>D. R. Congo Related Sanctions</td>
<td>Iraq Related Sanctions</td>
<td>Lebanon Related Sanctions</td>
<td>Libya Related Sanctions</td>
<td>Russia Related Sanctions (Magnitsky Sanctions)</td>
</tr>
<tr>
<td>Somalia Related Sanctions</td>
<td>South Sudan Related Sanctions</td>
<td>Venezuela Related Sanctions</td>
<td>Yemen Related Sanctions</td>
<td>Zimbabwe Related Sanctions</td>
</tr>
</tbody>
</table>
PROJECTS EXCLUDED FROM PRODUCT-SPECIFIC US EXPORT CONTROLS

SANCTIONS RISK MANAGEMENT

• In screening Visiting Scholars against OFAC’s sanctions targets, keep in mind that:

  • Comprehensive OFAC sanctions programs prohibit dealings with / imports of services from / exports of services to OFAC sanctioned parties and OFAC sanctioned countries.

  • Each OFAC sanction program is unique with its own regulations and its own definitions, prohibitions, exemptions and general licenses.
PROJECTS EXCLUDED FROM PRODUCT-SPECIFIC US EXPORT CONTROLS

SANCTIONS RISK MANAGEMENT

• In screening Visiting Scholars against OFAC’s sanctions targets, also keep in mind that:
  • Sanctions programs change via Federal Register Notice and changes are effective on date when Federal Register Notice is published.
  • One time screening is not enough – should screen regularly throughout visiting scholar’s engagement.
SANCTIONS RISK MANAGEMENT

• If screening Visiting Scholars against **OFAC’s** sanctions targets results in a “positive finding”:

  • Verify that the “positive finding” does in fact trigger an export license requirement.

    Positive hit to Comprehensive sanction?
    Positive hit to Selective sanction?
    Positive hit to List-Based sanction?

  • If an export license is truly required, review exemptions and general licenses available under relevant OFAC sanctions program and determine if scope of such exemptions and / or general licenses obviates need to apply for an OFAC specific license. If so, use. Otherwise, prepare license application for submission to OFAC.
In applying for an OFAC specific license for a Visiting Scholar:

- Determine the nature of each specific transaction that is likely to occur (i.e., import of services, export of services, payments to be received, and payments to be made, etc).
- Explain why such transactions are not eligible under any available OFAC exemptions and/or OFAC general licenses. (Otherwise, run the risk of a RWA from OFAC)
- Draft letter application to OFAC explaining the above and the nature of the transactions for which you are requesting specific OFAC approval.
- Submit license application submission via OFAC Portal.
PROJECTS EXCLUDED FROM PRODUCT-SPECIFIC US EXPORT CONTROLS

SANCTIONS RISK MANAGEMENT

• After application for an OFAC specific license is submitted, keep in mind that:
  • OFAC typically has a long gestation period for reviewing specific license applications.
  • Specific license applications that OFAC elects to approve may contain limiting conditions on use ("Provisos").
  • OFAC approval of specific license applications is never a rubber stamp – i.e. approval is not a certainty.
PROJECTS EXCLUDED FROM
PRODUCT-SPECIFIC US EXPORT CONTROLS

SANCTIONS RISK MANAGEMENT

• After application for an OFAC specific license is submitted, remember:

  • Cannot proceed with an OFAC licensable transaction until / unless an OFAC license is granted.
  • Proceeding without OFAC license approval in a transaction that requires OFAC license approval = an OFAC strict liability violation.
Sanctions risk management for Projects subject to product-specific export controls, need to assess OFAC sanctions plus other relevant sanctions programs. To do this, need to determine export control jurisdiction for project.

**Determine Export Control Jurisdiction Applicable to Project**

- **OFAC / OFACR:** All Projects
- **DDTC / ITAR:** Projects covered by US Munitions List
- **NRC:** Projects covered by Part 110 List
- **DOE:** Projects covered by Part 810 List
- **BIS / EAR:** Projects covered by Commerce Control List
PROJECTS SUBJECT TO PRODUCT-SPECIFIC US EXPORT CONTROLS

SANCTIONS RISK MANAGEMENT

Determine if Deemed Export is likely to occur by ascertaining if Visiting Scholar will:

• Participate in research that is subject to export control by DDTC, NRC, DOE or BIS (“export controlled information”); or

• Attend meetings or conferences at which export controlled information will be discussed; or

• Have access (physical, electronic or otherwise) to export controlled information; or

• Have right to “Use” export controlled articles or information.
PROJECTS SUBJECT TO PRODUCT-SPECIFIC US EXPORT CONTROLS

SANCTIONS RISK MANAGEMENT

• If Deemed Export is likely to occur, need to determine if Deemed Export:
  • Is prohibited under either relevant individual / entity sanctions or under relevant country sanctions; or
  • Can occur but only pursuant to an export license; or
  • Is neither prohibited nor licensable.
PROJECTS SUBJECT TO
PRODUCT-SPECIFIC US EXPORT CONTROLS

SANCTIONS RISK MANAGEMENT

Within relevant product-specific export control jurisdiction, screen Visiting Scholars and institutions against:

Individual / entity sanctions targets

OFAC, DDTC and BIS maintain separate individuals / entities sanctions lists, each of which should be reviewed in the case of a deemed export.

Best practice = use a Consolidated Screening Program.
### OFAC, DDTC, BIS and NRC / DOE Individual / Entity Sanction Lists

<table>
<thead>
<tr>
<th>Lists to Screen</th>
<th>OFAC</th>
<th>DDTC</th>
<th>BIS</th>
<th>NRC / DOE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Prohibited Party</strong></td>
<td>Specially Designated Nationals (SDNs)</td>
<td>Debarred Parties</td>
<td>Denied Parties</td>
<td>None</td>
</tr>
<tr>
<td><strong>List</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Deemed SDNs</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Prohibited Party</strong></td>
<td>Foreign Sanctions Evaders (FSEs)</td>
<td>Non-Proliferation Sanctions List</td>
<td></td>
<td></td>
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<tr>
<td><strong>List</strong></td>
<td></td>
<td></td>
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</tr>
<tr>
<td><strong>Restricted Party</strong></td>
<td>Special Sectoral List (SSI)</td>
<td></td>
<td>Entity List</td>
<td>None</td>
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<tr>
<td><strong>List</strong></td>
<td></td>
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<tr>
<td><strong>Deemed SSIs</strong></td>
<td></td>
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</tr>
<tr>
<td><strong>Restricted Party</strong></td>
<td></td>
<td></td>
<td>Unverified End Users</td>
<td></td>
</tr>
<tr>
<td><strong>List</strong></td>
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</tbody>
</table>
In screening Visiting Scholars against individual / entity sanction targets, keep in mind that:

- Licenses generally will not be granted for Prohibited individuals / entities.
- Restricted individuals / entities may not in all cases require any export license.
- When a license is required for a restricted individual / entity, prohibit a “deemed export” from occurring until / unless an export license is in hand!
SANCTIONS RISK MANAGEMENT

• In screening Visiting Scholars against individual / entity sanctions targets, also keep in mind that:

  • Individual / entity sanctions programs change via Federal Register Notice and changes are effective on date when Federal Register Notice is published, unless a wind-down period is specified.

  • One time screening is not enough – should screen regularly throughout visiting scholar’s engagement.

  • Screening results should be retained in deemed export file.
PROJECTS SUBJECT TO PRODUCT-SPECIFIC US EXPORT CONTROLS

SANCTIONS RISK MANAGEMENT

Within relevant product-specific export control jurisdiction, screen Visiting Scholars and institutions against:

Country sanction targets

N.B. Country sanction targets for DDTC, BIS and NRC / DOE overlap with but do not replicate OFAC sanction targets!
# Prohibited Country Sanctions for OFAC, DDTC, BIS and NRC / DOE

<table>
<thead>
<tr>
<th>Country</th>
<th>OFAC</th>
<th>DDTC</th>
<th>BIS</th>
<th>NRC / DOE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
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<tr>
<td>Balkans</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
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<td>Belarus</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
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<td>Burma</td>
<td>Yes</td>
<td>Yes</td>
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<td>Burundi</td>
<td>Yes</td>
<td>No</td>
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<td>No</td>
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<td>Central African Republic</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
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<tr>
<td>China (PRC)</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
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<tr>
<td>Country</td>
<td>OFAC</td>
<td>DDTC</td>
<td>BIS</td>
<td>NRC / DOE</td>
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<tr>
<td>Côte d'Ivoire</td>
<td>Yes (List-Based)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Crimea Region of Ukraine</td>
<td>Yes (Comprehensive)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Cuba</td>
<td>Yes (Comprehensive)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>Cyprus</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
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<tr>
<td>Democratic Republic Congo</td>
<td>Yes (List-Based)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
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<tr>
<td>Eritrea</td>
<td>No</td>
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<td>No</td>
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<tr>
<td>Haiti</td>
<td>No</td>
<td>Yes</td>
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# Prohibited Country Sanctions OFAC, DDTC, BIS and NRC / DOE

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<thead>
<tr>
<th>Country</th>
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<th>DDTC</th>
<th>BIS</th>
<th>NRC / DOE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iran</td>
<td>Yes (Comprehensive)</td>
<td>Yes</td>
<td>Yes</td>
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</tr>
<tr>
<td>Iraq</td>
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<td>Lebanon</td>
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<td>Libya</td>
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<td>North Korea</td>
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<td>DDTC</td>
<td>BIS</td>
<td>NRC / DOE</td>
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<td>Russia</td>
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<td>Somalia</td>
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<td>Sudan</td>
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<td>South Sudan</td>
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<td>Syria</td>
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# Prohibited Country Sanctions for OFAC, DDTC, BIS, and NRC/DOE

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<tr>
<th>Country</th>
<th>OFAC</th>
<th>DDTC</th>
<th>BIS</th>
<th>NRC/DOE</th>
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<tr>
<td>Ukraine</td>
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<td>Yemen</td>
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<td>Zimbabwe</td>
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</table>
PROJECTS SUBJECT TO PRODUCT-SPECIFIC US EXPORT CONTROLS

SANCTIONS RISK MANAGEMENT

• In screening Visiting Scholars against prohibited country sanctions, keep in mind that:

  • Comprehensive OFAC country sanction programs:
    1. Prohibit dealings with / imports of goods & services from / exports of goods & services to OFAC sanctioned countries; and
    2. Are specified in separate regulations that prescribe unique definitions, prohibitions, exemptions and general licenses.
PROJECTS SUBJECT TO PRODUCT-SPECIFIC US EXPORT CONTROLS

SANCTIONS RISK MANAGEMENT

• In screening Visiting Scholars against country sanction targets, keep in mind that:

• DDTC country sanction programs generally prohibit imports as well as exports and re-exports of defense articles, defense services and ITAR-controlled technical data to / from ITAR sanctioned countries.
SANCTIONS RISK MANAGEMENT

• In screening Visiting Scholars against country sanction targets, keep in mind that:

• BIS country sanction programs generally prohibit exports and re-exports of dual use items and EAR-controlled technology to / from EAR sanctioned countries. BIS has no jurisdiction over exports of services (save technical assistance) or imports of dual use items or EAR controlled technology
SANCTIONS RISK MANAGEMENT

• In screening Visiting Scholars against country sanction targets, keep in mind that:

• NRC / DOE country sanction programs generally prohibit imports as well as exports and re-exports of NRC controlled items and DOE controlled technology to / from NRC / DOE sanctioned countries.
PROJECTS SUBJECT TO
PRODUCT-SPECIFIC US EXPORT CONTROLS

SANCTIONS RISK MANAGEMENT

• In screening Visiting Scholars against country sanctions targets, also keep in mind that:

  • Country sanctions programs change via Federal Register Notice and changes are effective on date when Federal Register Notice is published, unless a wind-down period is specified.

  • One time screening is not enough – should screen regularly throughout visiting scholar’s engagement.
SANCTIONS RISK MANAGEMENT

• If screening of Visiting Scholars against country sanction targets results in a “positive finding”:
  • Verify that the “positive finding” does in fact trigger an export license requirement.

  Positive hit to Comprehensive sanction?
  Positive hit to Selective sanction?
  Positive hit to List-Based sanction?

• If an export license is truly required, check license review policy for relevant USG agency.

  If policy of denial, should not apply for an export license.
  If licensing policy is a case by case review, determine whether or not a license application should be submitted.
PROJECTS SUBJECT TO PRODUCT-SPECIFIC US EXPORT CONTROLS

SANCTIONS RISK MANAGEMENT

• If screening of Visiting Scholars against country sanction targets results in a “positive finding”:
  
  • If a decision is made to apply for an export license, check exemptions and general licenses available under relevant country sanctions program and determine if scope of such exemptions and/or general licenses obviates need to apply for a specific export license. If so, use.

  • If an exemption or a general license does not obviate the need for a specific license, need to obtain a specific OFAC license.
SANCTIONS RISK MANAGEMENT

• In applying for a specific export license to authorize a deemed export to a Visiting Scholar associated with a “positive finding” in a sanctioned country screening:

  • Determine the nature of the specific transactions that are required (i.e., import of services, export of services, payments to be received, and payments to be made).
  • Explain why such transactions are not eligible under any available exemptions and / or general licenses.
  • Draft export license application to relevant agency explaining the above and the nature of the transactions for which you are requesting specific export license approval.
  • Submit license application submission as required by relevant agency.
PROJECTS EXCLUDED FROM PRODUCT-SPECIFIC US EXPORT CONTROLS

SANCTIONS RISK MANAGEMENT

• After application for an OFAC specific license is submitted, keep in mind that:
  • License approval typically has a long gestation period.
  • Specific license applications that are approved may contain limiting conditions on use (“Provisos”).
  • Approval of specific license applications is not a rubber stamp – i.e. approval is not a certainty.
After application for a specific license is submitted, keep in mind that:

- Cannot proceed with a licensable transaction until / unless a license is granted.
- Proceeding without license approval in a transaction that requires license approval = a strict liability violation.
SANCTIONS RISK MANAGEMENT

• Must restrict Visiting Scholars Access to Any Projects Subject to Product-Specific Export Controls:

• Restrict access to any projects subject to product-specific export controls – physical access as well as electronic access.

• Prohibit downloading of data related to projects subject to product-specific export controls.

• Prohibit E-Mail forwarding of data related to projects subject to product-specific export controls.
PROJECTS EXCLUDED FROM PRODUCT-SPECIFIC US EXPORT CONTROLS

SANCTIONS RISK MANAGEMENT

• Should consider adopting Technology Control Plan that requires Visiting Scholars to sign a non-disclosure agreement and to acknowledge their obligations with respect export controlled information to which they are provided access in their role as Visiting Scholar.
This presentation deals only with sanction issues and associated export licensing issues that apply to Visiting Scholars.

In addition to sanction issues that trigger export license requirements, there are also product-specific licensing issues that also need to be fully vetted.

Consideration of these additional export licensing issues is beyond the scope of this presentation but must be analyzed in the context of deemed export licensing issues associated with Visiting Scholars.
Questions?