



International Research  
Collaborations & Complying  
With OFAC Regulations:  
What You Need To Know

Fischer & Associates  
February 16, 2011

FISCHER & ASSOCIATES

## >Training Agenda

1. What Are the OFAC Regulations: What Are They Intended to Accomplish?
2. How Are OFAC Regulations Enforced?
3. How Specific UC Academic/Research Activities Trigger Requirements: Common Scenarios
4. Fundamental Research Conducted at UC: Related Export Controls Pertaining to OFAC Foreign Nationals
5. What Are the Significant Differences Between Country-Specific Regulations?
6. Where Do I Go For Help? License Applications and Other Questions
7. Questions & Answers

## 1. What Are the OFAC Regulations: What Are They Intended to Accomplish?

- Office of Foreign Assets Control (OFAC) falls under the Department of the Treasury
  
- Regulations are found in Title 31 CFR, Parts 500-599
  - Broadly regulate and restrict transactions with embargoed countries plus certain nongovernmental organizations to implement strategic foreign policy
  - Restrict transfer and exchange of items and services
  - Restrict commercial, industrial, and financial relationships benefitting countries
  - Restrict travel (Cuba) subject to certain exceptions
  - Prohibit transactions with certain end users – OFAC's Specially Designated Nationals List (present in the U.S. or abroad)
  
- Twenty-five embargoed countries plus certain non-governmental organizations: most comprehensive controls apply to the following:
  - Cuba, Iran, Syria, N. Korea and Sudan
  - Regulations are country-specific
  - OFAC regulations operate independently of other export control regulations (dual-use/EAR, military defense/ITAR)
    - An activity that might not be controlled under EAR or ITAR may be controlled under OFAC

- OFAC Sanctions Programs: Terrorism
  - Regulations as follows:
    - Executive Order 13224 blocking Terrorist Property
    - Global Terrorism Sanctions Regulations (31 CFR 594)
    - Terrorism Sanctions Regulations (31 CFR 595)
    - Terrorism List Government Sanctions Regulations (31 CFR 596)
    - Foreign Terrorist Organizations Sanctions Regulations (31 CFR 597)
  - Sanctions apply to certain listed entities

## 2. How Are OFAC Regulations Enforced?

- All regulated activity requires prior authorization in the form of an OFAC license issued by the Department of Treasury
- While OFAC publishes some country-specific guidance on regulatory interpretation, such guidance is not comprehensive; in general, questions in doubt are handled through requests for Advisory Opinions or License Applications
  - Data provided in advisory opinions is treated as proprietary and confidential upon request
- Treasury deploys its own investigative enforcement team, and operates jointly with the FBI and the Commerce Department's Office of Export Enforcement (OEE)
- Sanctions include civil and criminal monetary penalties which can be assessed against the individual violator and/or the institution. Cases can be referred to the Department of Justice for criminal investigation
  - Monetary penalties can range up to the greater of \$250,000 or twice the value of the transaction, per violation
- The most common violations in the academic and research community involve the following:
  - Cuba-based research and independent travel
  - Outbound and collaborative Iranian transactions (see below for further detail)
  - Access to restricted research tools in the U.S. by OFAC-restricted foreign nationals
  - Failure to screen OFAC-restricted end-users
- UCOP recently filed a Voluntary Disclosure; hence, heightened awareness of restrictions is essential



### 3. How Specific UC Academic/Research Activities Trigger Requirements: Common Scenarios

- Travel to an OFAC-restricted country
  - Note: Only Cuba requires licenses for personal and certain professional travel; for all other countries, no license is required for personal travel
- Providing a restricted "service"

This concept is common to the regulations across the five most heavily sanctioned nations, as excerpted below from the Iran sanctions:

"§560.204 Except as otherwise authorized pursuant to this part, including §560.511, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, technology, or **services** to Iran or the Government of Iran is prohibited, including the exportation, reexportation, sale, or supply of any goods, technology, or services to a person in a third country undertaken with knowledge or reason to know that:

(a) Such goods, technology, or **services** are intended specifically for supply, transshipment, or reexportation, directly or indirectly, to Iran or the Government of Iran; or

(b) Such goods, technology, or **services** are intended specifically for use in the production of, for commingling with, or for incorporation into goods, technology, or services to be directly or indirectly supplied, transshipped, or reexported exclusively or predominantly to Iran or the Government of Iran."

## &gt; 3. HOW SPECIFIC UC ACADEMIC/RESEARCH ACTIVITIES TRIGGER REGULATIONS: COMMON SCENARIOS

- Common scenarios involving restricted services include the following:
  - Exporting research data which is not publicly available
    - "Export" is defined as a transfer: electronic, conversational or hard copy media
    - "Publicly available" means published on a website or through scholarly publication, etc.
    - An Iranian download of a Website publication containing research results is allowable; however, providing technical assistance upon request from an Iranian individual or institution based in Iran triggers a license requirement
  - Importing samples or materials for analysis/provision of data results
    - Even where the samples or materials are strictly for research purposes and results are intended for publication, importation without a license is prohibited
      - Note: Importing any item from Iran requires license authorization; other countries have item-specific requirements
  - Data exchange with OFAC foreign national researchers and scholars based in OFAC countries
    - Note export prohibition above: issuing data or research results that is unrelated to publication may constitute a restricted export
    - Serving on collaborative research committees or boards: No issue, unless "service" is being provided: common sense standard – discussions should be limited to what has been published or general discussions pertaining to collaboration

## &gt; 3. HOW SPECIFIC UC ACADEMIC/RESEARCH ACTIVITIES TRIGGER REGULATIONS: COMMON SCENARIOS

- Common scenarios involving restricted services (continued):
  - Data exchange with OFAC foreign national researchers and scholars who are based outside of OFAC countries
    - Where OFAC foreign national is at U.C. under a valid US visa, case by case basis. Some activity such as access to source code containing export-controlled cryptography requires a license even in the context of fundamental research
    - Where OFAC foreign national is present in a third country (e.g. France), case by case. There is no requirement to screen individual's nationality. However, one cannot self-blind, where it is evident that the data will be used to benefit an institution in the foreign national's home country.
      - See BIS screening requirement: Specially Designated Nationals List (SDNL) – individuals and entities identified as facilitators of illegal transactions with OFAC countries
      - See ITAR defense service definition: providing "dual use" or uncontrolled data with a known military or defense end use.
  - Joint publication-related activities: collaborating on research journals; peer review
    - Per published OFAC Guidance, peer review is allowable with respect to all sanctioned countries. However, peer review must meet certain specific parameters.
      - Identification of problems within an article being considered for scholarly publication is allowable, but must be for the benefit of the publication and not constitute a substantive content-based rewrite that falls outside of what would normally be required for publication
    - Guidance on professional credentials: providing recommendations and advice to an institution on an OFAC foreign national's professional credentials-is not an issue, as long as the *institution* is not in an OFAC country



## &gt; 3. HOW SPECIFIC UC ACADEMIC/RESEARCH ACTIVITIES TRIGGER REGULATIONS: COMMON SCENARIOS

- Common scenarios involving restricted services (continued):
  - Conducting surveys in an OFAC country as part of fundamental research (sponsored research or student-thesis work):
    - Where institution is funding a survey directly or through federally sponsored research dollars – license is required for the institution
    - Where U.S. person (for example, a graduate student) is conducting a survey without institutional funding, license is required for U.S. person to do work
    - Where an OFAC foreign national attends U.C under a J visa, and returns to an OFAC country on holiday to conduct survey, and UC provides no funding beyond incidental expenses, no license is required for either UC or the student
  - Teaching/Lecturing as a guest of an institution located in an OFAC-restricted country
    - Cuba: General License is required
    - Others: Specific License is required
  - Attending international conferences
    - Presenting papers and research results:
      - Conference being held outside of OFAC country: No issue as to OFAC foreign national audience members
      - Conference being held within an OFAC country other than Cuba: Guidance not clear; license approval recommended
      - Conference being held in Cuba: General license is required
    - Participating in one-on-one "off podium" discussions: **Use caution.** License requirements may apply to information not already in the public domain. Discussing research results or projects with AT country citizens would require a license.

## &gt; 3. HOW SPECIFIC UC ACADEMIC/RESEARCH ACTIVITIES TRIGGER REGULATIONS: COMMON SCENARIOS

- Common scenarios involving restricted services (continued):
  - Student Stipends payable to OFAC foreign nationals attending UC under a J visa; compensation paid to an H1 visa employee:
    - Payments must be made in the U.S. to a U.S. banking institution: payments to a foreign bank on behalf of the student or employee would likely trigger a license requirement, since there is the possibility that the money is being redirected to the OFAC country
  - Distance Learning/On-line Curriculum courses
    - Cannot register students based in OFAC countries and provide educational services without a license: registration requirement should request whether applicant is a foreign national of an OFAC-country and based in that country
  - Humanitarian Endeavors
    - Exports of medicine/medical equipment typically do not require a license. However, activity in support of humanitarian aid may require authorization, depending on specific country at issue.
      - Humanitarian activity may be defined as a restricted service depending on how broad the activity is and who is receiving it

#### 4. Fundamental Research Conducted at UC: Related Export Controls Pertaining to OFAC Foreign Nationals

- It is UC's policy that all research conducted at UC falls under the Fundamental Research Exclusion (FRE): as such, no publication or citizenship restrictions are accepted in sponsored research as a prime or sub, whether federally or industry sponsored.
  - Hence, all research results are intended to be shared with all foreign nationals on the research team
  - Includes use of research equipment by OFAC foreign nationals, that might be otherwise subject to deemed export requirements
- However, some research tools and proprietary background information are exceptions as follows:
  - Access to ITAR defense articles and technical data – received from a sponsor or procured for purposes of conducting fundamental research: foreign national access is restricted (including OFAC foreign nationals) unless license is obtained prior to access
  - Access to EAR "dual-use" cryptography (classified under ECCNs 5A002, 5D002, and 5E002 per "EI" restrictions) contained in source code or other software: access by OFAC foreign nationals is restricted unless license is obtained.
  - Proprietary data (including software) received through an NDA for "background" purposes: likely EAR-based restriction applies to all foreign nationals, including OFAC foreign nationals
- Self-invention by OFAC foreign nationals is covered under the FRE
- Note Special Cuba policy: Technically, any controlled equipment used by or data provided to a Cuban foreign national who has not obtained political asylum status requires an OFAC license. However, it is very unlikely that such a person would be registered without having obtained political asylum.

## 5. What Are the Significant Differences Between Country-Specific Regulations?

Any transaction with an embargoed country requires either a general or specific license, or a license exemption.

Whereas Cuba sanctions carve out academic and research activities as distinct from provision of "services," they still require licensing. Cuba licensing regulations are well-defined to allow research activities.

- Cuba-based travel restrictions: Individual or institutional license may be required plus BIS export control requirements on hand-carried or shipped equipment
- Cuba-based research and academic licenses: Regulations provide a detailed framework for "general" and "specific" licenses, depending on the type of activity involved - for example, lecturing, conducting research, attending a meeting or conference, or other educational activities that meet the new General License requirements. Contact Padona Yeung: [Padona.Yeung@ucop.edu](mailto:Padona.Yeung@ucop.edu)

Examples of other country-specific restrictions/exemptions include but are not limited to the following:

- Iran: broadest "service" restrictions apply: license required
- Syria/Sudan: Export restrictions apply; provision of services is prohibited with regard to certain entities/end-users
- Iran: Importation restrictions. Imports require licensing. Example: materials/samples for analysis and provision of research results.
- Iran: Research collaboration requires specific license; however, collaboration on publication is covered under a general license (no application necessary)
- Terrorism sanctions: Apply to specific individuals/entities, outside of a country-based context. Screening is essential.



## 6. Where Do I Go For Help? License Applications and Other Questions

License applications are granted on a case-by-case basis: best-case scenario, 30-60 day approval. Sufficient lead time to develop the application is required.

License applications to conduct activity that falls squarely within the regulations are generally approved.

- Example: Recently obtained UCSF license to conduct epidemiological research in Iran based on NIH grant

### General Contact:

Your Campus Export Control Lead

- Export Control Lead will coordinate on license application process with UCOP/Fischer & Associates as necessary.

**For matters related to educational activities requiring licenses for Cuba, contact:**

Padona Yeung

(510) 987-9478

[Padona.Yeung@ucop.edu](mailto:Padona.Yeung@ucop.edu)

**To report OFAC-related concerns or violations, contact:**

Luanna Putney

Director of Research Compliance, Office of Ethics, Compliance and Audit Services, UCOP

(510) 987-0028

[Luanna.Putney@ucop.edu](mailto:Luanna.Putney@ucop.edu)

Ellen Auriti

Senior Counsel, Office of the General Counsel, UCOP

(510) 987-9429

[Ellen.Auriti@ucop.edu](mailto:Ellen.Auriti@ucop.edu)