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Restrictions Remain on Certain Academic and Research Activities for Cuba and Iran

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Much has been written recently about the lifting of the US embargoes targeting Iran and Cuba. Despite recent liberalization in discrete areas (e.g., travel, family remittances, and internet based communications), comprehensive restrictions remain in place on the types of academic activities that US persons can undertake, as well as what US persons can export or transfer to these countries and their nationals.

For both Iran and Cuba, President Obama has adopted general policies of encouraging academic exchanges. These policies have resulted in the implementation of license exceptions and general authorizations for specified activities, including educational exchanges, academic research, and overseas study. However, the sanctions programs against Iran and Cuba are different and must be considered separately. Reliance on the new exceptions and general licenses for academic activities requires consideration of the specific circumstances of the proposed educational or research program.

Below is a summary of each embargo from an academic perspective.

Cuban Assets Control Regulations (CACR)

The United States continues to maintain a comprehensive economic embargo of Cuba. Notwithstanding the broad restrictions on travel and most commercial dealings, many educational activities are permitted under the CACR, the regulations that implement the US embargo. (See 31 CFR Part 515). It is critical, however, that institutions seeking to rely on authorizations for educational activities carefully review the applicable regulations to ensure that the proposed activities fit within the limits of the general license.

- **On-line courses:** US persons are permitted to provide internet-based courses, including distance learning and Massive Open Online Courses, to Cuban nationals, wherever located, provided that the course content is at the undergraduate level or below.
- **Study by US scholars and students in Cuba:** Subject to certain restrictions and conditions, students are now able to study and conduct research in Cuba, and faculty members from US academic institutions are also able to conduct research and teach undergraduate courses in Cuba including the following:
    - Formal course of study: US persons are now allowed to participate in a formal course of study at a Cuban academic institution, provided that the course will be accepted for credit toward the student's graduate or undergraduate degree.
    - Structured educational programs: US persons are also permitted to participate in a structured educational program in Cuba as a part of a course offered for credit by a US graduate or undergraduate academic institution that is sponsoring the program.
    - Academic research: It is now permissible for US persons (including both students and institutions) to conduct joint non-commercial academic research projects with academic institutions in Cuba. The term "non-commercial academic research" is not defined in the CACR, but sponsored or otherwise restricted research efforts would likely be ineligible for this authorization.
    - Teaching: Faculty members who are regularly employed by a US or other non-Cuban academic institution are permitted to teach at a Cuban academic institution.
- **Study by Cuban scholars and students in the United States:** Cuba students and faculty are also normally permitted to participate in educational activities in the United States. Transfers of technical data to Cuban nationals located in the United States (known as "deemed exports") are permitted, so long as the technical data is classified as EAR99 (subject to US export control regulations, but not identified on the Commerce Control List) under the Export Administration Regulations (EAR).
- **Continuing restrictions on travel to Cuba:** In addition to ensuring that proposed activities are within the limits of a general license, all academic travelers must remember that recreational and tourist travel to Cuba remains restricted. In addition, self-

directed educational activities for personal enrichment are also not authorized. Academic travelers should therefore be prepared to show a full-time schedule of authorized activities.

Iranian Transactions and Sanctions Regulations (ITSR)

As in the case of Cuba, the United States continues to maintain a comprehensive economic embargo of Iran, which is administered through the ITSR. (See 31 CFR Part 560). The ITSR prohibit US persons and companies from engaging in most transactions involving Iran, including the provision of goods, technology, and services to Iran or Iranian nationals. However, there are important exceptions for academic institutions. As explained below, these exceptions differ significantly in structure and scope from those relating to Cuba:

- **On-line courses:** US persons are authorized to offer undergraduate level online courses in the humanities, social sciences, law, or business to individuals who are ordinarily resident in Iran. Introductory undergraduate courses in science, technology, engineering, and math which are ordinarily required for the completion of undergraduate degrees in the above areas are also allowed.
- **Study and research by US students in Iran:** Students who are actively enrolled in US academic institutions are permitted to participate in courses or engage in academic research at Iranian universities at the undergraduate level. Students are also permitted to participate in courses at the graduate level or engage in academic research at Iranian universities in the humanities, social sciences, law, or business above the undergraduate level.
- **Study by Iranian scholars and students in the United States:** Pursuant to the ITSR, persons otherwise eligible for non-immigrant visa category classification as students (F), exchange visitors (J), non-academic students (M), and aliens with extraordinary ability (O) are authorized to carry out in the United States those activities for which such a visa has been granted by the US State Department. This exception is more restrictive than the exception applicable to Cuban students who are not limited to activities within the scope of their visas.

  While Iranian scholars and students are permitted to carry out those activities for which a visa has been granted, they are not permitted access to export-controlled materials. All items released to Iranian scholars and students must be classified as EAR99 or fall under the publicly available, educational information, or fundamental research exclusions. Furthermore, to be eligible to receive educational services, the Iranian scholar or student must not be an agent, employee, or contractor of the Government of Iran or a business entity or other organization in Iran. Accordingly, US educational institutions are expected to screen visiting faculty and students from Iran to ensure that they qualify for this authorization.

- **Travel to Iran:** Unlike the CACR, the ITSR do not contain broad travel restrictions on personal, recreational, and/or tourist travel. A US scholar or student studying in Iran may engage in personal and/or recreational travel within Iran. However, commercial or professional activities remain prohibited. Therefore, a specific license is still required to teach a class or speak at a conference in Iran unless it falls within an explicitly authorized category of activities.

General prohibitions on technology transfer to embargoed countries and their nationals

The United States regulates the export of proprietary, non-public technology and technical data from the United States, as well as the release of such technology and technical data to foreign persons wherever located (including releases in the United States). Publicly available information, educational information, and information and technology developed during or resulting from fundamental research are not subject to these controls.

Under the US embargoes of Cuba and Iran, US persons are authorized to release technology and information designated EAR99 to Cuban and Iranian students and scholars in the United States, and to Cuban and Iranian students and scholars in those countries, provided that such releases otherwise comply with the authorizations described above. US persons are generally not permitted to hand carry export-controlled items, including software or technology to embargoed countries, or to conduct export-controlled research in these countries. This means that export-controlled technical data cannot be saved on a laptop that is taken to Cuba or Iran. It also means that research cannot be conducted in Cuba or Iran if it would require the release of controlled technology.

On the other hand, "informational materials," such as published articles, films, posters, recorded music, photographs, artworks, news wire feeds, and other similar information, may be exported to these countries. There is also a license exception for Consumer Communications Devices under the EAR that permits the export of certain communications devices to Cuba, including laptops and mobile phones, which would otherwise be restricted. General License D-1 to the ITSR permits similar exports to Iran. The exception and general license do not necessarily extend to the software or information resident on the devices. Accordingly, it is important to review carefully the language of the license exception or general license to confirm that any proposed export is fully authorized.

Conclusion

Recent changes to the US economic embargoes targeting Cuba and Iran offer many new opportunities for higher education in those countries. If your institution is considering academic activities involving those countries, their educational institutions, or their nationals, you will need to ensure that the proposed activities are authorized. To the extent the proposed activities fall outside the scope of the exceptions and general licenses currently available, or the status of such activities is unclear, it is possible to request a specific license to engage in the activities. OFAC will consider specific license requests on a case-by-case basis. Since review may require six months or longer and licenses are not always granted, we recommend that institutions look carefully at the exceptions and generally licensed activities and consult experienced counsel in this area.

We will continue to monitor changes to these embargoes and their potential impact on our higher education clients. If you have questions about these issues, please contact Shannon MacMichael at +1 202 728 7069 or smacmichael@cooley.com or Kevin King at +1 202 842 7823 or kking@cooley.com. For more information regarding export compliance for higher education, please see our publication, "What Higher Education Needs to Know About US Export Controls & Economic Sanctions."

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