Online International Graduate Degree Programs

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Overview

- How do these issues arise on a university campus?

- Where to focus export compliance efforts?

  - OFAC embargoed countries

  - Other countries: Belarus, China, Russia, Venezuela

- Compliance strategies for universities

    (Depending on risk tolerance)

- Case studies - a few university examples to consider

First: What we are <u>not</u> covering today

· Undergraduate online degree programs

· Massive Open Online Courses (MOOC's)

· Fee-for-service training arrangements or certificate-based online programs

· Hybrid programs - in U.S. and outside of U.S.

· Issues related to work outside of the U.S.

· Export-adjacent issues: Institutional accreditation requirements for online learning,

   State Authorization and Reciprocity Agreements required for distance education,

   or international authorization and credentialing requirements

First: What we are <u>not</u> covering today

- J-1, F-1, M-1 visa restrictions re: online learning

- Family Educational Rights and Privacy Act (FERPA) implications for student educational records

- General Data Protection Regulation (GDPR) rules for EU data

- Student identity verification efforts for online learning and exams

- Title IV Distance Education Rules for quality and student effort

- Foreign taxes, establishment, registration

- Foreign rules on technology, content, encryption

What we are covering today

- Export compliance issues that arise with fully online graduate degree programs offered outside of the U.S.

- The provision of educational services into an Office of Foreign Assets Control (OFAC) comprehensively embargoed country or region is an export of a regulated service that in most cases will require a specific license from OFAC

- The export of data and other items, even software required to host the course, will require review

How do these issues arise on campus?

- Is online learning on your campus decentralized?

- Do you have an Office of Academic Innovation (for online learning)?

- Are departments able to start online degree programs without understanding they need a compliance review?

- Partner with units on front end whenever possible to loop in EC review

- Issues will pop up that need immediate response - typically around the start of a new semester

One example: Late arrivals to campus

- In-person graduate student intends to come to the U.S. to study

- Visa issues or COVID-related delay in coming to the U.S.

- Student asks to begin online learning from international location until they arrive on campus in the U.S.

- Develop a process whereby EC Program is able to get ahead of these issues

- Registrar's Office and International Center may be able to identify which students are registered for in-person classes (Registrar) but have not yet arrived on campus (SEVIS database and a check-in with a permanent address in the U.S.)

Possible compliance solution

- Design a process that makes sense based on your university's risk tolerance
- Are check-ins needed prior to the start of each semester?
- Develop a process by which you 1) gather data on non-arrivals from the embargoed countries/regions, and 2) then reach out to the schools and colleges with these graduate students to provide education and training that these students may not begin their graduate degree programs until they arrive in the U.S.
- Goal: Get ahead of a situation where you find out after the fact that a graduate student in an embargoed country has started their classes remotely

Compliance strategies for universities engaged in online graduate degree programs offered outside of the U.S.

- Does your campus have an Office of Academic Innovation (online learning resource) that provides assistance for online programs?

- What is the vetting process at your university for online programs?

- Identify which schools and colleges at your university offer online programs

- Provide training to raise awareness of the export compliance issues with online learning

- Determine what learning platforms are utilized for online learning at your university (Coursera, Canvas, Zoom, Duo all may block embargoed countries)

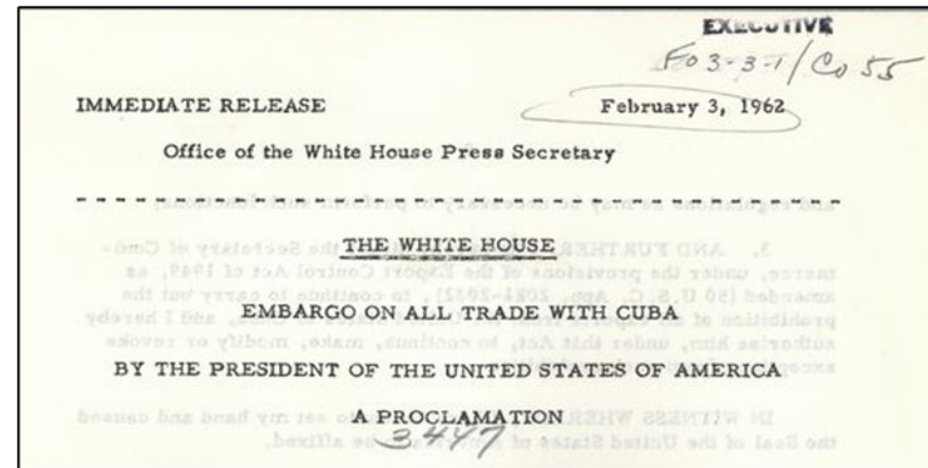- Implement a simple export compliance review process

Export compliance review process

1. Confirm that there is no export controlled content

1. Conduct Restricted Party Screening

1. Universities cannot offer online degree programs within (or to students ordinarily resident in) Cuba, Iran, Syria, or North Korea; or the Crimea, DNR, or LNR regions of Ukraine without OFAC general or specific authorization

1. Overseas students to be enrolled sign the Export Control Certification (handout)

1. Be aware of recommending that 2FA, VPN, etc. be used around the world, as these services may be prohibited by, or controlled as encryption software to, some countries

U.S. sanctions programs

- Foreign Assets Control Regulations (31 C.F.R. pts. 501-598), related Executive Orders, and the Export Administration Regulations (EAR, 15 C.F.R. pt. 746) restrict exports and imports to and from embargoed countries/regions
    - o Commodities
    - o Software
    - o Technology
    - o Money
    - o Services–including **educational services**

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THE WHITE HOUSE

EMBARGO ON ALL TRADE WITH CUBA

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION
3447

AUECO
ASSOCIATION OF UNIVERSITY EXPORT CONTROL OFFICERS

OFAC embargoed countries/regions

· Comprehensively sanctioned countries/regions

   o [Belarus, nearly]

   o Crimea, DNR, and LNR regions of Ukraine

   o Cuba

   o Iran

   o North Korea

   o [Russia, nearly]

   o Syria
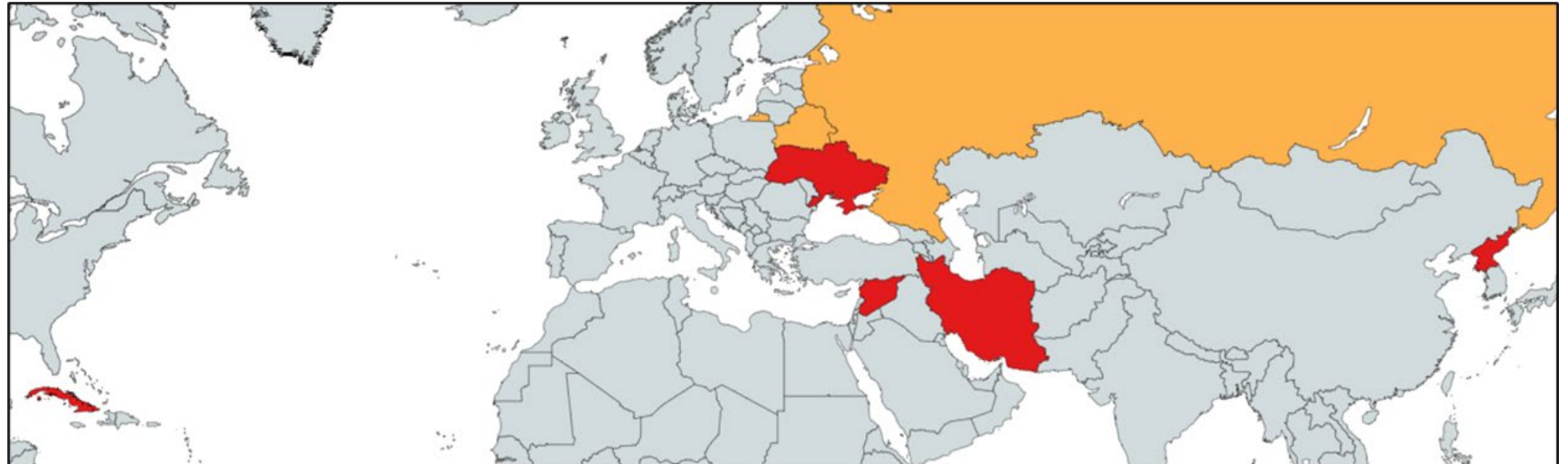
OFAC embargoed regions - Crimea, so-called Donetsk People's Republic (DNR), and so-called Luhansk People's Republic (LNR) in Ukraine

· Specific license from OFAC required for all educational services

  o E.O. 13685 (12/19/2014) - Prohibits all exports to and imports from Crimea region unless authorized by OFAC

  o E.O. 14065 (2/21/2022) - Similar prohibitions for the so-called DNR and LNR regions

· EAR section 746.6 licensing requirement for all items subject to the EAR other than EAR99 food/medicine, and software necessary to enable the exchange of personal communications over the internet

OFAC embargoed countries - Cuba

- Specific license from OFAC required for graduate-level classes
  - General License for educational activities (31 CFR 515.565) authorizes certain internet-based courses, but only at the undergraduate level or below
- If graduate-level courses are licensed by OFAC, tuition payments from Cuba should also be authorized, as long as they are consistent with the license and 31 CFR 515.421
- Online Course Software requires a license determination under the EAR/ITAR
  - Allowable for some ECCNs such as EAR99 and 5D992.c
  - Does the software export fall within the scope of 15 CFR 740.19 (CCD) and/or 740.21 (SCP)?
  - If no downloads of EAR software from U.S., does access to the software/service fall within 31 CFR 515.578?

OFAC embargoed countries - Iran

- General License M-1 allows online graduate degree courses in the humanities, social sciences, law, or business (or introductory science, technology, engineering, or mathematics courses ordinarily required for the completion of graduate degree programs in the humanities, social sciences, law, or business) if the graduate student **has a visa but cannot get into the U.S. due to COVID pandemic**
  - Does not cover STEM graduate degree programs
  - GL M-1 is valid until September 1, 2022
  - OFAC website, Iran Sanctions FAQ #853, is helpful here

OFAC embargoed countries - Syria

- Specific license from OFAC required for graduate-level classes

- 31 CFR 542.207 - Online Graduate (and undergraduate) degree programs are unallowable unless authorized by OFAC via a specific license

- Tuition payments?
    - Permissible if within the scope of a specific license and 31 CFR 542.404
- Also must contend with export restrictions for online course software

    - Licensing requirements under EAR section 746.9 for all items subject to the EAR (other than EAR99 food and medicine), including U.S. software downloads

Other countries - Russia, Belarus, China, Venezuela

- Russia and Belarus

  - No comprehensive embargo but broad restrictions

  - Payment challenges, particularly with Russian financial institutions

- China

  - Prohibitions on VPN & PP10043 (potential impacts to online learning if previously denied visa?)

- Venezuela

  - No comprehensive embargo

  - Sanctions on Government of Venezuela, including related agents and entities

  - Tuition payments - make sure no sanctioned banks are involved, unless

Case study: Russian national student

A student in Russia plans to enroll in your university's online aerospace engineering graduate program. The student is going to pay tuition from their personal bank account with Sberbank. What issues should the university consider?
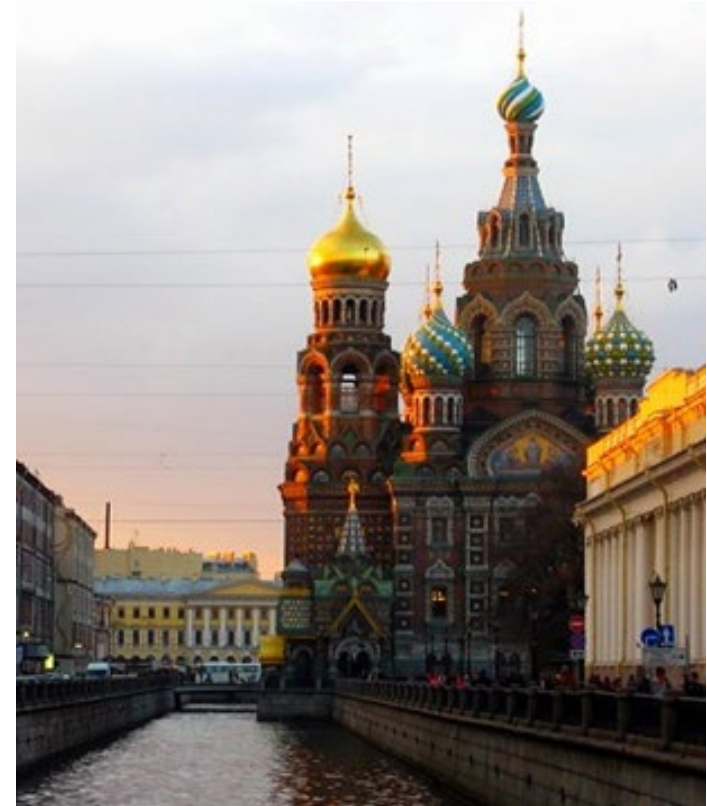
Case study: RPS match

What if my institution cashes an initial admissions check from a citizen of an embargoed country and begins to enroll this graduate student and then we run RPS and determine that they are on a sanctioned list? What do we do?

Case study: tuition payments

Can my newly enrolled, fully online, graduate student located in Iran pay fees and tuition to my university under the U.S. embargoes/sanctions currently in place? What about payments from Russia?

Case study: Iranian graduate student employment

Our Department of Near Eastern Languages and History wishes to enroll an Iranian graduate student who is stuck in Shiraz because of a new, surging COVID-19 variant. A professor of Old Persian also wishes to hire this graduate student as a research assistant. What sanctions and export controls implications arise here?

Case study: software platforms

I understand that many online learning platforms will block the embargoed countries (e.g., Coursera) and many video conferencing platforms and 2 Factor Authentication services (e.g., Zoom and Coursera) are also now blocking the embargoed countries, so how do I allow graduate students in the embargoed countries/regions to participate?

Case study: graduate student in China

Your university has enrolled a graduate student interested in quantum computing who is remaining in China because she has been denied a visa, possibly because her undergraduate degree is from Beihang University, an Entity List university and one of the Seven Sons of National Defense. One of the classes requires that your university send her VR equipment for use with certain design software. What are the potential export/sanctions issues?

Case study: "ordinarily resident"

An Iranian national wants to enroll in our online graduate degree program. He has lived in Switzerland for the last five years. Are we allowed to enroll him in our program? What do we need to consider?

Questions?