

# ACI's 5<sup>th</sup> Annual Economic Sanctions Boot Camp

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## The OFAC Licensing Process

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Tweeting about this conference?

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# Agenda

- OFAC Licensing Overview
- Applying for a license: do's, don'ts and best practices
- Recent Licensing Changes
- What to do after receiving a license
- Case Studies

# Licensing Overview

- A license is an authorization from OFAC to engage in an otherwise prohibited transaction
- OFAC programs include specific statements of licensing policy re: particular types of transactions (Subpart E)
  - E.g., payments and transfers, exclusions, general and specific licenses
- Two types of licenses: general and specific
- To engage in a transaction under a general or specific license, the license conditions must be closely followed
  - Licensees must maintain records related to transactions conducted under the license (31 CFR § 501.601)
  - These records could be requested by OFAC and must be furnished on demand (31 CFR § 501.602)



# Licensing Overview

## General vs. Specific Licenses

- *General License*
  - Published by OFAC to authorize categories of transactions by any person who meets the specific terms of the general license
    - Usually included in OFAC's regulations, but sometimes only on OFAC's website (especially new developments)
    - General license may require reporting to OFAC, among other things
- *Specific License*
  - Issued by OFAC to a particular person or entity, authorizing a particular transaction or series of transactions in response to a written license application
    - May be requested in connection with a voluntary self-disclosure
    - 31 C.F.R. 501.801 contains guidance for requesting a specific license

# Licensing Overview

## How to Apply Online for a Specific License

- OFAC strongly encourages applicants to use its Online Licensing Application Page: <http://www.treasury.gov/resource-center/sanctions/Pages/licensing.aspx>
  - Applicants select the type of application that will be submitted:
    - Trade Sanctions Reform and Export Enhancement Act of 2000
    - Cuba travel / Cuba service provider
    - Release of blocked funds
    - Transactional (i.e., all other circumstances)
- OFAC provides detailed instructions for each of the different application types
- Supporting materials may be uploaded; application is signed electronically



# Licensing Overview

## How to Apply Online (cont'd)

- Online applicants create their own Reference Number, which OFAC cites in first acknowledgment email
  - After initial processing/data entry, OFAC replaces Reference Number with a Case Number in second acknowledgment email (see below)
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From: OFACLicensing@treasury.gov [mailto:OFACLicensing@treasury.gov]

Sent: Wednesday, November 12, 2014 3:40 PM

To: Your Name

Subject: OFAC License Application Received

Your license application, Reference Number 123 ABC, regarding Company X has been received on 11/12/2014, and assigned Case Number I-2014-123456-1. Please have this Case Number available when contacting OFAC regarding this application.



# Licensing Overview

## Pending License Applications

- Application is assigned to OFAC licensing officer
- Applications can take more than six months to be reviewed
- Processing timeline varies depending on a number of factors, including
  - Complexity of legal issues
  - What type of license requested (e.g., the program, the specific activity, whether the authorization is pursuant to statute or policy, etc.)
  - Whether you are asking for an amendment/renewal or a new license
  - Involvement by other agencies and foreign policy considerations
- Applicants can call the Licensing Division at (202) 622-2480 to check on status of license or obtain licensing officer's name
- **Note: if you disclose a potential violation and ask for a license simultaneously, you may receive a license but still be subject to enforcement action**
  - License application does not serve as a VSD



# Applying for a License:

## Do's, Don'ts and Best Practices

- Follow any specific instruction for application submissions
- Provide a well-organized, coherent writing with all pertinent information including
  - Names of all involved parties
  - Detailed narrative explaining
    - Who the parties are and other background information
    - Specific description of what you are seeking to do
    - Description of the goods, services, or technology involved
    - Reference to relevant statutes, regulations, prior licenses, etc.
    - Persuasive explanation of why license is necessary and activity should be authorized
    - Tax id number
  - Exhibits
- Failure to provide key details will delay your application





# Applying for a License:

## Do's, Don'ts and Best Practices (con'td)

- Make it clear if application is time sensitive and explain why (can request expedited review)
- Follow up to confirm the application was received
- Provide all requested information in a timely manner
- Check on the status periodically within reason— recognize that officers fielding inquiries from dozens of applicants causes additional delays



# Recent Licensing Changes

- Joint Plan of Action with Iran – extended to June 30, 2015
  - OFAC issued Statement of Licensing Policy on Activities Related to the Safety of Iran's Civil Aviation Industry
- Humanitarian assistance by not-for-profits and NGOs
- Expansion of general licenses for academic exchange activities (Iran, Sudan)

# What to do after receiving a license or when using a general license

- Ensure you understand the license terms and conditions
  - ask OFAC for clarification if necessary
  - Have appropriate compliance policies / procedures in place to comply with the license and meet its requirements
  - Conduct due diligence as necessary to ensure compliance
- Confine your activity to what is covered under the scope of the license
  - Include only authorized parties, goods, services, and technology
  - Ensure ancillary transactions are covered or licensed separately
  - Follow any required processes for shipping, payments, etc.
  - Seek amendment to scope if needed

# What to do after receiving a license or when using a general license (con'td)

- Be mindful of effective dates: allow plenty of time for processing an extension or amendment (at least six months)
- Identify partners you need to conduct the licensed business
  - Payment banks, including non-US intermediary banks, insurance provider, shipper, consultants, etc.
  - Do they require a separate license under a different sanctions regime (e.g., EU)?
  - Do they have particular compliance requirements?
- SEC reporting obligations for issuers under Iran Threat Reduction and Syria Human Rights Act, Section 219



# Case Studies

## Complying with License Conditions

- Richland Trace Homeowners Association Inc. (Feb. 21, 2012)
  - \$9,000 Penalty under the Charles Taylor Sanctions
  - Richland Trace used proceeds from the sale of property in which an SDN had an interest to reimburse itself for past assessments and late fees that had accrued against the property
  - OFAC found RTHA showed reckless disregard for sanctions by failing to comply with the conditions of its license, which stated that “taxes, costs, or legal, administrative, or other fees incurred or accruing prior to the court authorized foreclosure of the Blocked Premises” were excluded from the license’s authorization



# Case Studies

## Complying with General Licenses

- Sale of Agricultural Commodity to Sudan
  - Non-US exporter selling agricultural commodities to Sudan
  - US financial institution is US Dollar clearer
  - No other US persons involved in the transaction
  - Even if a GL applies, authorization from other regulators may be required
  - Challenges of due diligence

# Case Studies

## Seeking a License Beyond Established Policy

- Request for GL or revised SL terms for dealing with Cuban Nationals in Third Countries (licensed under § 515.505)
  - Provided a detailed explanation of why the general license was needed, i.e., why it was not possible in many circumstances to satisfy the (former) specific license conditions
  - Included a policy discussion of the harm to US businesses and Cuban nationals residing outside of Cuba as a result of the inability to satisfy those conditions, and argued that there would be little to no harm by granting this authorization
  - Suggested specific terms and conditions for the proposed, revised license requested

# Case Studies

## Reporting Requirements

**SECTION 4- RECORDKEEPING AND REPORTING REQUIREMENTS:** (a) The Licensees are subject to the recordkeeping and reporting requirements of, *inter alia*, 31 C.F.R. §§ 501.601 and 501.602, including the requirement to maintain records concerning the transactions undertaken pursuant to this. License for a period of five years.

(b) The Licensees are required to submit, no later than [DATE], a detailed report of the transactions undertaken pursuant to this License to the Assistant Director for Licensing, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue; N.W., Washington, D.C. 20220.

**What qualifies as a “detailed report”?**



# Questions?

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