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PROVIDING HUMANITARIAN ASSISTANCE TO IRAN UNDER CURRENT OFAC REGULATIONS

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This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice.

I. Background to OFAC Regulations: United States-Iran trade is subject to certain trade embargos as a result of several Executive Orders.¹ These restrictions even make it difficult for goods and services relating to humanitarian assistance to be exported to Iran. The penalties for violating the embargo, even for humanitarian activities, are steep. Corporate criminal penalties for violations of the Iranian Transactions Regulations (the “OFAC Regulations”) can range up to \$500,000, with individual penalties of up to \$250,000 and 20 years in jail. Civil penalties of up to \$50,000 may also be imposed administratively.

This guide will provide a general overview on how current regulations by the Office of Foreign Assets Control (OFAC), the agency of the United States Department of the Treasury which administers and enforces economic and trade sanctions instituted by the President or Congress, impact the provision of humanitarian assistance to and in Iran for U.S. citizens or other persons exporting from the U.S. or third countries.

Please note that this guide is not intended to provide an exhaustive understanding of OFAC regulations, nor is it meant to be a substitute for legal counsel. The OFAC licensing process is complicated and constantly evolving and the penalties for unlicensed activities can be severe. As such, IABA recommends that anyone wishing to provide humanitarian assistance in Iran consult with knowledgeable legal counsel in order to obtain proper authorization for all such activities relating to Iran.

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¹ See generally Executive Orders 12957, 12959, 13059



We have organized this guide into three relevant sections; to help you best understand how to provide humanitarian services to entities in Iran. Part 1 provides a general overview about when the OFAC Regulations are applicable and the exceptions to those general rules. Part 2 provides an overview of the types of licenses available. Lastly, Part 3 provides a very basic summary on how to apply to OFAC for a license.

Part 1 - General Applicability of OFAC Regulations:

As a general matter, the Iran sanctions regime prevents two types of persons from exporting any good, technology, or services (be they from the U.S. or a third country) to Iran, either directly or through a third party.

The regulations specifically target 1) *any* person who exports from within the U.S., including non-residents and non-nationals, and 2) *all* U.S. persons (citizens, permanent residents, or those physically in the U.S.) regardless of which country they export reside or work in, if the person knows or has reason to know that the goods, technologies, or services are ultimately destined for Iran.² Therefore, a U.S. person cannot export U.S. or third country goods to Iran from a third country (for example, the United Arab Emirates) *unless* they have a license from OFAC to do so. Subject to certain exceptions, a U.S. person cannot export goods to a third country if he or she has reason to know those goods will be ultimately exported to Iran.

² To that extent, the Iranian sanctions regime encompasses the principles of nationality and territoriality to prohibit exporting of any products, technologies, or services to Iran absent licensing from OFAC or other exception.

This general rule applies irrespective of whether the person's intention is commercial or humanitarian and should serve as an effective starting point for any person interested in providing humanitarian relief in Iran.

Exceptions to the General Rule: The OFAC Regulations do provide several exceptions to the general rule on prohibition which are relevant to providing humanitarian assistance in Iran.

Specifically, the rules allow individuals to export the following goods or services to Iran without needing to obtain an OFAC license:

1. Donations of articles intended to relieve human suffering (such as food, clothing or medicine);
2. *Licensed* exports of agricultural commodities, medicine, and/or medical devices; and
3. Trade in informational materials, including publications, films, posters, records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artwork, and news wire feeds.

Even though a license is not required to export the goods listed in item 1 above to Iran, it is recommended that to the extent possible, you obtain a license for exporting of these goods anyway to avoid any problems.

Please note that the donation of money to programs in Iran is not an exception to the general rule as outlined by OFAC and does require a license.

Part 2 – Licensing: Unless one of the exceptions, as outlined above, apply, exportation of any goods, services, or technologies to Iran



requires a license. OFAC issues two types of licenses: 1) General Licenses and 2) Specific Licenses.

A. General Licenses: On occasion, OFAC will issue a general license which permits all persons to export certain specific goods, services, or technologies without obtaining a specific license. However, general licenses are usually applicable for only a limited time frame. For example, on December 31, 2003, OFAC issued General License No. 1, which allowed all U.S. persons to make financial donations to nongovernmental organizations to be used in direct support of humanitarian relief and reconstruction in response to the Bam earthquake in Iran for a period of 90 days. Following the 90 day period, however, any further aid would require application for a specific license. Again, to clarify, the General License is not a paper document – activities falling under General License do not require prior written approval from OFAC.

To date, OFAC has only a few general licenses with respect to Iran. As of July 2008, the only General License in force is General License 2, which authorizes U.S. persons who are employees or contractors of six international organizations³ to perform transactions in Iran for the conduct of official business of those organizations. General License 2, as interpreted by OFAC, only applies to those transactions that are *necessary* for U.S. persons working for these six international organizations to conduct official business inside of Iran, including, for example, purchasing Iranian goods for carrying out official acts, leasing office space, and

³ The six international organizations are the United Nations, the World Bank, the International Monetary Fund, the International Atomic Energy Agency, the International Labor Organization, and the World Health Organization.

transferring funds from the accounts of the international organizations to or from Iran.

B. Specific Licenses: In the case that no exceptions to the general rule or general license apply, you must apply for a specific license in order to export any goods, services, or technologies to Iran.

OFAC has rules for granting specific licenses for a number of general humanitarian services. Under current OFAC Regulations, specific licenses may be issued on a case-by-case basis to allow the exportation of goods or services to Iran that are intended to directly benefit the Iranian people.

Pursuant to interpretative guidelines issued by OFAC, U.S. nongovernmental organizations (NGOs) and other corporate entities are eligible to obtain specific licenses to establish or support independent civic organizations in Iran, or to institute projects or activities, such as conferences and training, which support human rights, democratic freedoms, and democratic institutions which meet basic human needs.

Specific licenses may be issued to U.S. persons that seek to engage directly in activities that benefit the Iranian people, such as donating professional medical services, targeting educational, cultural, or sports exchange programs, instituting environmental projects, or improving the flow of public information through independent media available to the Iranian public. For any of these activities, OFAC may consider any license application for exportation of goods, services, or technologies.

Part 3 - Submitting a Specific License

Application to OFAC: Applying for an OFAC license is both time-consuming and complicated. In general, it often takes several months before



an OFAC license is approved. In addition, it is important to follow the OFAC guidance on NGO license applications⁴ as closely as possible and to provide all relevant data.⁵ Failure to comply with the OFAC's guidance on NGO license applications will likely result in delay if not outright denial.

As a preliminary note, there are no particular forms that are required in order to apply for an OFAC license. Generally, the more information that is provided and the more transparent the facts supporting the application, the more likely the license will be granted.

In recent discussions with OFAC officials, there are four important tips that one should consider when applying for a specific license.

First, it is critical that you provide as much information as possible in a clear and organized format.

Second, it is better to include information in the application not otherwise asked for which you believe the U.S. government would be interested in. Inclusiveness will generally help speed up the licensing process and reflect transparency and cooperation on your part.

Third, provide as much detail as possible about any exports that are involved, especially if they are subject to U.S. export controls.

Lastly, exporting high technology goods will likely slow down the licensing procedure or cause outright denial; therefore, if exportation of advanced equipment is not required, try to avoid doing so. If exportation of such equipment is required, be as specific as possible as to how it assists the Iranian people (*such as* in the case of medical equipment, and provide as much information about the item as possible.). Such goods may need licenses from the U.S. Department of Commerce's Bureau of Industry and Security (BIS).⁶

Further to the above, the following is a checklist of information to be provided in an OFAC license application:

1. Applications must be filed by mail or courier and will *not* be accepted by fax or electronically.

2. Applications may be submitted in letter form and should be addressed to:

Licensing Division
Office of Foreign Assets Control
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW.—Annex
Washington, DC 20220.

3. Information about your organization (address and contact information; organization's history and purpose; biographies of your board members, advisory members, and officers; and sources of funding and income)

4. Information on the entities in Iran you plan on helping or engaging with (persons involved; sources of funding/income; the organization's history and mission; evidence that it is not

⁴ OFAC, Guidance for the Licensing and Registration of Non-Governmental Organizations (NGOs), *available at* http://www.treas.gov/offices/enforcement/ofac/regulations/ngo_reg.pdf

⁵ Information about licensing can be found in Section 501.901 of the Reporting, Procedures and Penalties Regulations, 31 C.F.R. Part 501.

⁶ The BIS regulates "dual-use" item; i.e. items that have both commercial and military.

affiliated with the government; geographic focus, etc.)

5. Plans for monitoring, evaluating, and accountability for the project and funding.

6. Full information on any exports involved, be they goods or services (such as medical equipment). Be sure to include the name of the good or service, description, and its intended use.

7. A detailed description of the organization's humanitarian activities and projects in Iran.

8. Along with the application itself, it is also critical that you include all documents relating to your organization, including all tax records, organizational documents (bylaws and articles of incorporation), 501(c)(3) designation, and most

recent annual filings, annual reports, or other relevant documents. Again, the more information and documentation you provide, the more likely your application will be granted.

9. Two copies of the completed application should be provided to speedy review, and if you want expedited review, you should make clear that you are requesting it and should provide the reason(s) why.

For further information on the licensing process, you can view OFAC's website at www.treas.gov/offices/enforcement/ofac/programs/iran/iran.shtml or contact the Licensing Division for OFAC by telephone at (202) 622-2480. Please note, however, that OFAC personnel are at times difficult to reach by phone.



About the Iranian American Bar Association: The Iranian American Bar Association ("IABA") was formed in 2000 in the District of Columbia and is a tax-exempt, non-profit organization under section 501(c)(3) of the Internal Revenue Code. IABA is organized for charitable, educational, and professional purposes, including promoting the social, economic, professional and educational advancement of the Iranian American community, and the community at large. While headquartered in Washington D.C., IABA is a national organization seeking to expand professional and community relationships by establishing local chapters throughout the United States. Starting with four founding members, IABA's membership has grown to over 600 attorneys and law students nationally, with a particularly strong presence in Washington D.C., New York City, and California, but with members also from many other states. IABA recruits the most distinguished members of the Iranian American legal community as its Directors and Officers, and upholds the highest levels of professional integrity and excellence. For more information please visit <http://www.iaba.us>.

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