SENIOR INTERNATIONAL OFFICERS (SIOs) IN THE HEADWINDS:

DUTY OF CARE (DOC), GLOBAL OPERATIONS, AND INTERNATIONAL REGULATORY COMPLIANCE IN THE TIME OF COVID-19

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In early 2020, the outbreak of COVID-19 immediately caused institutions of higher learning (IHL’s) to cease operations of their mobility efforts and required many to help bring their travelers home. The resulting global pandemic has introduced new complexities for institutions seeking to resume the mobility of students, faculty, and staff, especially related to duty of care responsibilities, all against a backdrop of an increased regulatory landscape.

In this time of a global pandemic, Senior International Officers (SIOs) are being called upon not only to assume the traditional roles and responsibilities regarding comprehensive internationalization but also to be the core principle in an institution’s enterprise to assess international risk, compliance, and ramifications of health and safety for faculty, staff, and student mobility. This daunting additional layer of international responsibility requires SIOs to have a roadmap of internal and external stakeholders who can assist the SIO in assessing information and data to make informed decisions that meet compliance standards while navigating a university’s global engagement, thereby helping an institution see through its duty of care responsibilities.

The following white paper is written to explore the timely topics of duty of care and international regulatory compliance from a scholar-practitioner viewpoint. No legal advice is being offered; instead, we highlight the duty of care and international regulatory issues that intersect with global operations with a specific focus of the impact of the pandemic.
Duty of Care

Due Diligence

Risk Management for International Mobility of Students, Faculty, and Staff

Internal Infrastructure and Legal Compliance for the International Office

International Triggers of Regulatory Compliance

Conclusion
Duty of Care as a legal concept is quite a loaded term and can mean different things within different contexts so it is important, to begin with, a working understanding of the term. From a legal sense, Duty of Care (DOC) is a requirement that a person act toward others and the public with the watchfulness, attention, caution, and prudence that a reasonable person would use in the circumstances. If a person's actions do not meet this standard of care, then the acts are considered negligent, and any damages resulting may be claimed in a lawsuit for negligence.

Within the context of higher education, it has been interesting to watch the pendulum swing in either direction over the last several decades, oscillating between viewing students as autonomous adults towards institutions having a high degree of responsibility of duty of care.

Prior to the 1960s, the concept of in loco parentis was largely the norm for most colleges and universities. This meant that it was generally understood and appreciated that colleges and universities were occupying the traditional supervisory and caretaking roles of their students that parents otherwise would have. This may have stemmed from higher education's historic roots as being a finishing school of sorts for young adults entering society. The advent of the residential college campus also had a considerable role to play in this expectation.

However, this outlook shifted over the next few decades as college students became more viewed as autonomous adults. This is reflected in some key higher education legislation that was introduced in the subsequent years, such as the Family Educational Rights and Privacy Act, or FERPA, which was introduced in 1974 and gives students aged 18 years or older the authority to dictate who has access to their educational records.

In recent years, the pendulum has swung back towards the expectation that institutions have a higher degree of Duty of Care responsibilities, thanks to several landmark cases. Recent cases include the Regents University of California v. Superior Court of Los Angeles (4 Cal. 5th 607, 413 P. 3d 656,2018). In this case, Katherine Rosen, a UCLA pre-med student, had been slashed across the throat and brutally stabbed multiple times by a mentally ill student while working in a chemistry lab on campus. Concerns about the mentally ill student had been brought to university personnel before the stabbing incident. However, no action was taken. The California Supreme Court reversed a decision made by the Second District Court of Appeal, which had sided with UCLA. In their decision, the California Supreme Court determined that public universities and colleges in California owe a duty of care to their students to protect them from foreseeable acts of violence by fellow students.

The concept of DOC is further complicated because the interpretation of “reasonable and foreseeable” varies from state to state, so it becomes vital to consider the expectations of an institution in each jurisdiction. How have the courts within your jurisdiction interpreted “reasonable” and “foreseeable,” for instance? In DOE v. RHODE ISLAND SCHOOL OF DESIGN 432 F.Supp.3d 35 (2019), negligence resulting from the fact that the bedrooms did not have locks on the doors in mixed-gender housing in Ireland resulted in the sexual assault of a RISD student.
In organizing the Ireland Program, the Court held that RISD undertook to provide accommodation to Ms. Doe in a foreign country, and Ms. Doe reasonably relied on RISD to act with due care. This undertaking and reliance altered the relationship between RISD and Ms. Doe to go beyond the university and adult student relationship, leading courts to abandon the doctrine of in loco parentis. It was thus reasonable for her to expect RISD, in agreeing to provide the housing for the Ireland Program, would exercise due care. See Gushlaw, 42 A.3d at 1259; see also Furek, 594 A.2d at 519-20; Mullins v. Pine Manor Coll., 389 Mass. 47, 51-54, 449 N.E.2d 331 (1983).

When adding in the myriad risk management concerns associated with international mobility activities, an institution’s Duty of Care responsibilities can increase considerably. Especially if an institution is organizing or sponsoring its own international programs, such as a faculty-directed study abroad program, there can be intense expectations related to the responsibilities an institution has for its travelers from a variety of stakeholders, and all of this has only been exacerbated with the advent of COVID-19.

**DUE DILIGENCE**

The first aspect of working to meet one’s duty of care responsibilities is to ensure that due diligence has been exercised. Due diligence speaks to the administrative processes involved with gathering information to help make an informed decision. In the context of the law, due diligence refers to “care or attention to a matter that is sufficient to avoid liability, though not necessarily exhaustive”. It also involves sharing this information with key stakeholders, which in the case of international institutional mobility means sharing with students, faculty, and staff.

Even prior to the COVID-19 pandemic, legal cases involving concepts of due diligence and educational institutions’ mobility programs were increasing in prevalence. As already stressed, the university-student legal relationship is complex as the US courts over the past 40 years have moved from the steady application of the in loco parentis legal doctrine – resulting in courts deferring to the institutions to determine how to protect the morals and personal safety of their students (Melear, 2002; Swartz, 2010) – to the final recognition that under certain circumstances, academic institutions have a legal duty to protect students engaging in off-campus activities (including international travels). The failure to fulfill that duty may lead to liability for damages (Fisher & Sloan, 2013, p. 8). Such circumstances, as clarified in the 2015 Boisson v. Ariz. Bd. of Regents case, are: (1) the purpose of the activity; (2) whether the activity was part of the course curriculum; (3) whether the school had supervisory authority over the activity; (4) whether the risk existed independent of the school involvement; (5) whether the activity was voluntary; (6) whether a school employee was present during the activity, or should have been; and (7) whether the activity involved a dangerous project initiated on-campus but built off-campus (Claus, 2015, p. 5).
In the 2017 case, Munn v. Hotchkiss School (CT), high school student Cara Munn traveled with a school group to China. During a group hike of Mount Panshan, Cara and a few students deviated from the rest of the group while descending. Cara contracted tick-borne encephalitis suffering long-term disabilities. A jury awarded Munn $41.5 million in damages. The Connecticut Supreme Court found that the school had a duty to warn about or protect against the risk of a serious insect-borne disease in organizing a trip abroad, giving precedent to the notion that institutions have a duty to their travelers to warn about known risks and to take reasonable action to mitigate these risks.

The risks posed by the global pandemic in the face of resuming international travel are numerous and make the SIO’s task of helping ensure the institution is meeting its due diligence responsibility even more daunting, especially as the virus and our understanding of it are constantly evolving. There are a host of new factors that must be taken into consideration before sending students, faculty, and staff abroad in this new environment, some of which will be discussed later. Additionally, the increased regulatory environment is making other campus internationalization activities such as research, grants and governmental engagement complex.

As an SIO, some of the high-level questions to ask as one assesses the extent to which their institution is meeting its due diligence includes:

- **What are the known risks for traveling to a certain destination?**
- **To what extent can risk be mitigated to a degree that is satisfactory for the institution’s risk tolerance threshold?**
- **How is the institution making these risks and any mitigation strategies known to internal stakeholders?**
- **What resources and procedures are in place to help stakeholders should they encounter these risks while engaging in the global enterprise of the institution?**

Although it is unlikely that every possible risk can be identified and appropriately mitigated, what is important is that reasonable efforts have been made to do so and that they have been shared with stakeholders so that they can make an informed decision regarding risk involved. Given the widespread attention of COVID-19 internal and external stakeholders will undoubtedly be paying fervent attention to mobility activities that take place during this time as the world finds its footing in this new pandemic world. SIOs must be prepared to guide their institutions in this new era. The next sections offer some specific guidance for what risk management factors, questions, and compliance regulations SIOs must respond to as they seek to resume the important work of international mobility at their institutions.
Risk management of international mobility activities is an essential component for institution's carrying out their due diligence. Expectations and stakes are heightened in this area when it is the institution's own programs and activities they are developing, coordinating, and overseeing (example: faculty-directed study abroad programs).

With regards to student mobility programs specifically, prior to the pandemic, only about 10% of U.S. undergraduates studied abroad (IIE Open Doors Report). Short-term faculty-directed programs administered by institutions have become an important program model to increase access and participation in study abroad by U.S. students. Their shorter duration and the fact that they are often led by trusted institutional faculty and staff can be a good fit for students who do not have much time in their academic schedules or previous international travel experience.

However, with the advent of COVID-19, there are new risk management complexities in developing and offering these programs. In order for an institution to accomplish its due diligence in risk management, there are a number of important factors that must be taken into consideration now to determine if a program can run.
Top Study Abroad Go/No-Go Decision Factors in the Era of COVID-19

COVID-19 Case Rate

Given the highly contagious nature of COVID-19, it is important for institutions to closely monitor the case rate and transmission trajectory of COVID-19 in the countries where they intend to send travelers. In addition to monitoring this for any host countries where travelers will be, one also needs to consider the points of transit and potential travel destinations within a host country for its travelers. There are several online resources which offer real time statistics and projections of COVID-19 transmission, deaths, and vaccine uptake for countries around the world. A couple include:

Johns Hopkins University & Medicine – Coronavirus Resource Center

Institute for Health Metrics and Evaluation (University of Washington) – COVID-19 Projections

Medical Care Access

One of the crippling aspects of COVID-19 is the stress it places on hospitals and medical care facilities in regions that experience a surge in serious cases. Therefore, it is important for institutions to understand what the hospital and intensive care unit capacity is for host countries and cities. Additionally, is the quality of medical care comparable to what parents, students, and other stakeholders expect? These stakeholders will want assurances that travelers will have access to quality medical care should a traveler contract a serious case of COVID-19.

Testing

An essential component to containing COVID-19 outbreaks is a community’s ability to provide access to testing for the virus. Therefore, institutions need to ensure that their travelers will have easy and affordable access to testing while in their host country/city. There is a financial element to this point as well since travelers will need to know upfront if they will be expected to cover the costs of testing or if this will be covered by the institution or otherwise provided at no expense to them.

Quarantining

For individuals who test positive for COVID-19, access to suitable quarantining facilities is necessary. Institutions need to make sure that such access is available at a scale proportionate to the number of travelers and determine how these costs will be covered (be them by the participant, institution, onsite partner etc.). Additionally, individuals who need to quarantine will need support to receive food and other essential items so care should be taken to identify how this support will be provided and by whom.
Entry Requirements/Procedures

Many countries have instituted specific procedures and requirements for visitors to gain entry, and these often differ between unvaccinated and vaccinated travelers. Institutions should ensure travelers are aware of these entry requirements, including short quarantine periods upon entry, proof of negative test, verification of vaccination status, required testing at specific intervals upon entry, etc. Furthermore, it is essential to know if there is a recent history of border closures for visitors.

Vaccination Requirements

Some countries may have policies and laws limiting what unvaccinated travelers can and cannot do or the documentation and testing they need to provide regularly. Countries may have different perspectives about which COVID-19 vaccinations are accepted in their country. Additionally, program partners and hosts may require proof of vaccination to participate in a program. Vaccination status may be tied to a period of time since the last dose of a vaccine that a traveler received, so it is essential to know if a booster shot will be needed for travelers to remain “fully vaccinated.” Institutions should ensure travelers’ know-how evolving requirements are made known in the host community.

Access to Public Spaces

Related to entry and vaccination requirements, there are likely to be policies governing access to public spaces and transportation in a host country/city, such as restaurants, grocery stores, museums, trains, buses, etc. Travelers may have to provide a specific type of proof of vaccination status, which may require applying for and obtaining the local equivalent of the U.S. COVID-19 CDC vaccination card. Unvaccinated travelers may be barred from entering specific public spaces. Academic programs should ensure that their experiential learning activities can be carried out in light of such policies.

International Health and Evacuation Insurance

All travelers should have a comprehensive international health insurance plan and emergency evacuation insurance coverage. Policies are many and varied, so institutions providing such policies for their travelers should understand what COVID-19 related inclusions are part of their policies. For example, some policies may include coverage to assist with necessary quarantine expenses. Some evacuation insurance plans may have strict triggers for when they help with evacuation due to pandemics such as COVID-19. Evacuation coverage should also assist in political/civil unrest and natural disasters. Trip Cancellation for Any Reason (CFAR) and Trip Interruption for Any Reason (IFAR) policies may help institutions and travelers to protect their financial investment in case of interruption or cancellation due to COVID-19.
On-site Support

Institutions need to assess their travelers’ onsite support, especially for faculty-directed or other group programs. Who can travelers seek help from in-country should they test positive for COVID-19 or have an emergency? Institutions need to vet program partners and hosts ahead of time to ensure they have tested emergency response plans and vetting procedures for any accommodations, transportation, and other services they provide to a program. Furthermore, personnel should be trained in COVID-19 protocol and know the local resources to monitor to stay abreast of changing conditions of the pandemic and resultant policies, laws, and best practices.

Academic Continuity

When COVID-19 broke out, academic programs were interrupted as students and faculty had to change their travel plans or return home. Most institutions had to shift to online education or find alternative ways to allow students to progress in their coursework. Knowing that an increase in COVID-19 cases in a country or city could manifest with little notice causing similar interruptions, institutions should have backup plans for their academic programs to ensure academic continuity.

Financial Implications

Institutions need to know the key payment deadlines and terms and conditions for canceling a program or having a participant withdraw as well as when any non-refundable payments are due. The timing of these conditions will dictate when a decision about whether travel can proceed should be made so as to protect the institution or traveler from financial losses. It should be transparent to all parties who bears potential losses in the event conditions worsen and travel is not approved after financial liability has begun or, in the case travelers are already abroad, there is a need to return home early. For faculty-directed programs, this includes taking into consideration faculty members’ salaries, travel expenses, and so forth.

Documented Policies and Procedures

Underscoring all of these points is the need to document policies and procedures related to the decision-making process, program cancellation, participant withdrawal, health and safety protocols, and financial details. Critical institutional units and staff familiar with these policies and protocols and relevant actors for different emergency scenarios must be identified, trained, and provided with regular updates as conditions evolve.
Crisis Management in the COVID-19 Era

Prior to COVID-19, there was no shortage of crises for which institutions engaged in international mobility activities had to be prepared. From natural disasters to political unrest, over the past decades the international education sector has seen an increased responsibility for having tested crisis management response plans in place for a wide variety of emergencies.

Nevertheless, the outbreak of COVID-19 in early 2020 has sent the international education sector into a perennial state of crisis management. This crisis management state is exacerbated by higher education administration’s short-term response to the revenue impact of COVID-19 by reducing international education staff and budget to bare bones infrastructure. Higher education mobility has been strongly impacted and yet limited mobility continues creating a new sense of hypervigilance, especially in risk and crisis management. The added layer of knowledge of public health implications demands international education administrators to reassess this new normal against the backdrop of prior risk and crisis management processes and protocols.

Of course, the sector has not been immune to similar disruptions which required pivoting. The 9/11 attacks resulted in an initial dip in mobility. Nevertheless, participation rates quickly rebounded, surpassing pre-9/11 numbers, but bringing with this increase new risk and crisis protocols. International educators remained adept in responding to political instability (e.g., military coups, Arab spring etc.); geographic anomalies (e.g., earthquakes, tsunamis (Japan 2011 etc.); the range of criminal activity that impacts travelers in new linguistic and cultural settings, and social upheavals and unrest. International educators also wrestled with public health crises including severe acute respiratory syndrome (SARS) in 2003; Ebola virus disease (EVD) in 2014-2016 in West Africa; as well as perennial tropical diseases such as malaria, but these are all marked by either a limited geographic focus or a pharmaceutical solution. While long predicted by global public health scholars that a global pandemic was inevitable, the scope, duration, and the boomerang effects of new variants of COVID-19 require a reassessment of crisis protocols that are resilient to the pandemic.

This new landscape means that institutional crisis response plans must be wholly reevaluated to account for both the lessons learned from the field’s early response to COVID-19 and the ever-changing reality that marks the global pandemic. No more can these plans be tucked away until needed or waiting for their annual testing and review. Crisis response plans during the COVID-19 era must be responsive to the changing conditions and policies within each region, the new variants routinely springing up, and the most current knowledge about the virus from the scientific community. And although the pandemic has certainly taken central focus, institutional plans must still account for the variety of crises that can affect international travelers.

The result is the creation of a new profile for the modern international educator, one that is as much devoted to being skilled in principles of intercultural work as it is in having the knowledge and skillset to evaluate and mitigate risk and respond to international emergencies. Although the scale and unpredictability of the pandemic make it difficult to know for certain how an institutional crisis plan needs to be adapted, as international mobility begins to resume, here are five aspects of crisis response that will be central to supporting this effort.
Access to Reliable Information Data

The pace with which COVID-19 has been able to spread across the globe and the introduction of new variants underscore the importance for institutions to have access to reliable and up-to-date information and data. SIOs and their staff should know what the official governmental sources for information related to the pandemic and other emergencies impacting a host country are in order to ensure their crisis response plans are in line with governmental regulations. Other intelligence sources should also be identified to provide a more holistic understanding of emerging situations in countries experiencing a crisis. Knowing these sources ahead of time can help ensure a nimbler response while providing insight into localized resources and protocols.

When the pandemic first broke out, institutions were tasked with deciding whether or not to bring home travelers. At the time, it seemed like the U.S. was a safer place to be, but as case rates now fluctuate from country-to-country, this cannot be the assumption. Data underpin both crisis planning and response. It’s essential that a crisis plan outlines how information will flow and that everyone has confidence in its veracity. Strong data also reinforce a central element of crisis planning — exploring different scenarios and how they could affect global engagement in the short, medium and long term.

Identification and Training of Key Stakeholders

While not a new element of a crisis response plan, for some institutions the pandemic has brought in new key players or placed a greater responsibility on stakeholders who previously may not have had much interaction with an institution’s international mobility efforts. Campus health officials are playing a central role in connecting international educators to reliable information concerning the advancement and response to COVID-19 and how to carry out educational activities in light of the risks it poses. Instructional designers are being called upon to help faculty and administrators develop curricula that can quickly be adapted to an online environment should the need arise. Finance and budget administrators are being relied upon to advise on the financial implications of an institution’s response to a crisis. While some of these groups may have been included in crisis response before, assumptions cannot be made about their awareness of the kinds of mobility activities taking place nor their familiarity with existing campus response plans. Now is the time for SIOs and international education administrators to identify and build relationships with these and other stakeholders and include them in the review and revision of crisis response plans.
Refinement of a Comprehensive Communication Plan

Once the external and internal stakeholders who are likely to be involved in responding to an international crisis have been identified, a communication plan governing how communication will flow to these stakeholders needs to be developed. Given the wide variety of the types of incidents or crises that might occur, it can be helpful to have scenario-specific communication plans mapping out who needs to be brought into a response and at what point.

In the event of a participant testing positive for COVID-19 while abroad, communication plans should account for who needs to be notified onsite and back home on campus, how those who may have been in close contact with the affected individual will be notified, and who will be the point person to help ensure the traveler receives proper medical care and that the insurance provider has been notified, if applicable.

Communication plans should also include the perspective of an institution’s central media/public relations team. International crises affecting travelers, especially students, can quickly be picked up by the media thanks to social media so it will be important for SIOs and international educators to know whom they can receive guidance from when communicating to external audiences during an international crisis.

Review International Health and Evacuation Insurance Coverage

Ensuring that institutional travelers have access to comprehensive international health insurance and an emergency evacuation plan has been an important hallmark of crisis response. However, COVID-19 is requiring institutions to reevaluate their existing coverage to ensure that it provides pandemic-related support such as testing, quarantining, evacuation, and potentially trip cancellation or interruption. The Forum on Education Abroad has a fact sheet on “Know Your Insurance Policy” that is a helpful resource guide.

When COVID-19 first began impacting travelers, some institutions learned that their insurance coverage did not include evacuation due to a pandemic. Now that it is a known risk, travelers will likely expect to have access to insurance that will cover medical care should they test positive but that will also provide coverage should condition in a country rise to the level that would make it unsafe for travelers to remain (ex: in the case of a shortage of available ICU beds). Furthermore, given the financial risks associated with travel during this time, travelers will want to know if they will be covered should they have to routinely test or need to quarantine. Whatever the inclusions and exclusions of an institution’s policy might be, its crisis response plans should take these into consideration.
World Travel Protection is proud to sponsor this white-paper and encourage safe travel through Duty of Care and travel risk management best practices.

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The Importance of Trusted Partners

Relationships are at the heart of international education activity, and the pandemic is putting those relationships to the test. As we are all finding our footing in this new normal, institutions need to take stock of their partnerships and evaluate how they have responded to the challenges posed by the pandemic and the extent to which they can offer support to travelers they host. Care needs to be taken to avoid undue hardship on a partner and host city by sending travelers to an area experiencing an outbreak or lack of resources for its constituents.

Not every partner has been able to revise its emergency protocols or develop the novel resources demanded by the pandemic. To assist institutions with understanding which partners might have the capacity to support hosting international travelers currently, the Overseas Security Advisory Council (OSAC) Academia Sector Committee (ASC) has created a resource: Questions for Hosting Institutions and Third-Party Providers and Crisis Preparedness Parts 1 and 2. Inevitably, though, this brings long-term questions about existing inequities between countries that serve as popular host destinations and those that have been underrepresented. Significant effort has been made in the last decade to encourage mobility activity with countries and regions that traditionally have been underrepresented in U.S. international education activity, so the field must strive to balance the considerations without undoing this work and disadvantaging partners in these communities. OSAC’s ASC provides a wealth of information regarding the management of risk.

Although the extent of the impact of the pandemic on international education is not yet fully understood, these five areas of crisis response should help institutions begin assessing their crisis response plans over the coming months and years. Resources such as NAFSA’s Before, During, and After a Crisis: Questions to Ask to provide a good framework for approaching the challenge of revising crisis response protocols in the COVID-19 era. In addition, another helpful resource is The Forum on Education Abroad’s publication Guidelines for Conducting Education Abroad during COVID-19 provides guiding principles, administrative framework, and student learning and development objectives.
Senior International Officers are highly diverse in terms of their structural positions within the university or college they serve. In smaller institutions the international office can be very small; in some there are no international offices at all. In others, relevant responsibilities are distributed across academic and business operations units. In large research institutions, international engagement can constitute a large division, headed by a Senior International Officer (SIO), or be woven into academic or hybrid structures with dozens of employees with specialized functions. These can range from the management of student and faculty mobility to the broad oversight of international research, risk, travel, international money management, and more.

While administrative structures vary quite dramatically across institutional types, even the proverbial ‘one-person office’ is faced with decisions and oversight in a changing regulatory and risk environment. For the purposes of this discussion, the SIO position and international office are used as glosses for an idealized, centrally managed system that may or may not reflect diverse institutional arrangements.

The COVID Era has introduced new complexities and an apparent hiatus in the phenomenal growth of international activities. The past few decades have seen unprecedented growth and the evolution of functional linkages between the international office and other internal administrative and operational units. In this new environment, questions have arisen about which particular unit ‘owns’ policy domains, or needs to weigh in on procedural decisions. In this context, clear understanding of responsibilities for oversight and regulatory compliance are of critical importance.

Collaborative Relationships

The SIO is called upon to mesh policies and procedures with other units, and often to sit with university officers and senior administrators to discuss, assess, and help formulate institutional policies and procedures relating to international engagement. Many SIOs have been called upon to help develop long-term international strategies and goals for the institution as a whole.

We have seen a general growth in the range and depth of engagement between the international office, on the one hand, and senior representatives from other university divisions, on the other. We have also seen growing attention to legal and other forms of risk and crisis response attendant to international work, both within international units and beyond.
Larger international offices have developed specialized staff positions responsible for compliance and duty of care issues, often rolled up in an internal ‘risk management’ role. Operational units as diverse as Financial Operations, Contracts and Grants, the Registrar’s Office, Housing, and Government Affairs now routinely engage with international offices.

Engagement with outside vendors has also been a feature of this growth, and many institutions have embraced this strategy as a way to maximize high quality programming options and access to specialized expertise. Some critics have viewed the articulation of academic mission with business operations within and beyond the university as part of a larger process of bureaucratization and ‘academic corporatization,’ carrying negative implications for an idealized purity inherent in the academic realm. These voices may be heard on every campus, and they have affected growth in diverse ways. Regardless of where institutions fall out, the larger trend is clear: contemporary international education features an operational articulation of individuals with training and expertise in professional fields with those whose roots lie firmly in academic pedagogy. The COVID-era has exacerbated these challenging trends and regardless of the size or nature of an enterprise’s global engagement there is now a blurred line between traditional offices of international education’s silos.

The following is a representative list of institutional units international administrators might engage with. Structures will vary by institution.
This diverse range of interests, responsibilities and perspectives found in operational units such as these is important for the SIO to navigate carefully. Questions of authority and conflicts of interests can derail otherwise valuable international projects. Many of the units listed above are headed by senior Vice-Presidential staff or Academic Officers whose training and perspectives on international education issues can vary dramatically from the interests of the SIO and whose authority and institutional power relative to the international office can be overwhelming. Despite these pressures, the SIO typically has experience and credentials relating to the field that no other university officer possesses and access to professional networks that offer training in relevant aspects of professional subfields.

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Turf and Collaborative Solutions

Turf battles are unfortunately common in such environments, and institutional dysfunctions can be exaggerated in difficult situations. The newer SIO needs to be attentive to institutional culture, and to develop ways to mitigate potential tensions over policy and procedural domains. In an ideal situation, collaboration with both the business side and the academic side of the institution -- is best managed by the formation of working groups of senior officials who meet on a regular, periodic basis to discuss international policies or projects across divisional or business lines. Special topics or crises merit invitational appearances by representatives of other key units, often to report on or offer perspectives on tricky situations. Many universities have two or more such committees, one primarily for the academic side and another focusing more on the business side of the institution.

Variance regarding the degree of institutional centralization makes it difficult to offer a general guide to the navigation of university environments for the SIO. And things change over time. The organization of international affairs tends to swing from centralized to decentralized management structures, often following changes in institutional leadership. In a decentralized environment confusion over roles and responsibilities tends to be a bigger challenge than in centralized environments. But each polarity has its pitfalls. In general, SIOs are well-advised to adopt proactive policies and relationships with leaders across the university regardless of structures, and to evince a willingness to both learn and help train other administrators. Awareness of potential pockets of expertise and interests across the university is highly valuable.

Policy and Procedural Perspectives

The establishment of clear understandings of the role of the international office is important at all institutional levels, from senior officers to faculty, staff and students. Communications strategies will vary, but it is essential that the International Office be diligent in managing information and document flows in ways that meet compliance requirements and provide a record of participant training regimes. Synchronization and review of policies and procedures across institutional units should take place on a periodic basis to avoid confusion over roles and responsibilities.

In the unfortunate event of a legal proceeding originating abroad or outside of the institution, clear understandings of the legal and financial responsibilities of organizational units should be known in advance, or established at the outset of internal discussions. General Counsel and Presidential or Chancellor’s offices are typically the final arbiter of legal strategies and liability exposures. Examples of areas where the International Office might be the tripwire for legal actions might include foreign and domestic labor relations, data protection regimes (e.g. GDPR), real estate, financial procedures, crisis response, health and safety, or a range of other issues. Criminal complaints involving students or faculty involved in international programs might involve university police departments, Title IX offices, or other external units.
Systematic reviews and clarification of policy and procedural statements involving or affecting international engagement are essential, particularly where policies fail to achieve intended results or generate confusion. Synchronization of policy language across units is also critical. Failure to pay close attention to communications challenges can generate unintended pushback, dissatisfaction, and legal action. The first two can usually be massaged; the last reaction can be messy.

Particular attention needs to be paid to effective training regimes and strategies for program participants, programs here defined broadly to include faculty research or sponsored travel abroad. In-person or online training sessions and briefings are typically used. Archival documentation of topics and support materials can provide clarification and backup. Materials such as handbooks, power-point presentations, on-line postings of participation requirements, selection criteria, health and safety compliance precautions, emergency preparedness, off-site legal issues, policies and procedures related to criminal and behavioral issues abroad, cancellation policies, dismissal or removal policies, expectations of assistance abroad, etc. In any contested situation, the ability to document instructions, warnings, guidance statements, and the like are important.

For web-based information, management of digital media can be difficult and is typically an area where proper attention to archival processes is established. In institutions where the International Office’s website is controlled by another unit, e.g. Communications, the importance of archiving files should be stressed. Similar issues relate to any waivers, offers of assistance, or communication with students or faculty abroad.

Oversight and crisis response regimes should be transparent to users. Where problems are identified in a project initiated or brought to the attention of units outside of the International Office (e.g. academic units, the Research office, Title IX office, etc.), protocols should guide outreach and responsibilities. Where health, behavioral or other problems arise, the involvement of University Health specialists can be both tricky and effective in responding to a crisis abroad. Crisis Response is discussed elsewhere in this paper; the focus here is on inter-institutional communications and the establishment of roles among crisis managers. The bottom line is that collaboration and extensive planning among units is both necessary and inevitable.
Regulatory Interest and the Pandemic

Regulatory oversight has permeated many areas of international education, and this process has accelerated over the past few decades. Where personal relationships and goodwill understandings once sufficed to sanction many activities – and still do in many domains – extensive growth and innovation in the field have been accompanied by legislative interest and action on a global scale.

The ongoing regulatory response to the COVID-19 surge demonstrates the potential breadth – and even the limits – of regulatory engagement as it affects international education. Regulatory regimes affecting international travel, immigration, public health, research and basic international relationships are markers of sensitivity to the threat, and to the severe repercussions that have hit the international education community very hard. While educators have adapted to these realities, the development of virtual and digital forms of global engagement have brought their own set of regulatory and compliance concerns, both at home and abroad.

Our regulatory environment has changed, and new challenges have emerged in ways that are not yet fully resolved and institutionalized. National and local responses to the pandemic have varied, prompting a patchwork of regulations that change with conditions. The often-fluid nature of epidemiological advice, coupled with the equally fluid response to demands for compliance, makes it difficult to see down the road very far at this juncture. If a return to pre-pandemic levels of international mobility is over the horizon, surely an optimistic perspective at this point, it is unlikely that international education will return to any sort of regulatory status quo.

Overseas Legal Presence and Permissions to Conduct Activity

What appears to be unchanged, or even growing in importance in the wake of the pandemic, is the need for institutions and individuals to understand and comply with requirements relating to their basic legal presence abroad. Institutional footprints abroad are diverse, from stand-alone ‘campuses abroad’ and partner programs, to training and internship programs, exchanges, collaborative and individual research. Student and faculty mobility takes many forms and will continue to diversify over time. Amidst this churn, legal recognition and permissions to conduct educational activities will remain a sine qua non of international engagement, and sanctions for failing to comply can be severe.

The need for compliance may be obvious for large-scale and ongoing operations abroad, and in areas of research and technology transfer where national security and other national concerns compel attention to regulations. It may not be as obvious to other forms of international engagement and mobility, particularly in legacy programs that were initiated long ago in a more informal era.
The days of sending Professor X to Rome, Kiev, or Teotihuacán to lead a casual on-site lecture program are likely not over. But without proper documentation Professor X may well experience the discomfort of being apprehended by police or other officials in search of a permit to deliver lectures in public. Faculty researchers operating abroad will continue to navigate export control regulations. Institutions will face scrutiny and legal challenges over compliance to labor laws, health and safety regulations, and local financial reporting. All in an unfamiliar cultural and legal environment. Adequate documentation of a legal presence abroad provides a foundation for compliance in all these areas.

**Distinguishing between legal presence, permissions for activity, and compliance regimes**

The establishment of legal presence abroad requires attention to a patchwork of procedures and statutes that may overlap and vary by location and type of operation. Legal presence, defined here as a sanction involving formal recognition and/or registration of certain administrative or corporate structures, can often be distinguished from official permissions from regulating agencies. The latter might be needed to conduct specific types of activities or to include specific individuals in operations. And securing permissions may entail a separate process from that required for the recognition of basic legal presence. Legal establishment procedures and permissions for activities can also be distinguished from compliance regimes that might require periodic renewal, reporting or inspections, some of which might require registration with yet another governmental entity.

All three are subject to tiered regulatory action and oversight including domains such as:

- **National and federal governmental structures**
  - Legislative, Judicial, or Executive structures
  - Sectoral structures, e.g., national government ministries, divisions, secretariats, offices, e.g., a Ministry of Labor or Office of Education, Ministry of Defense, etc.

- **Local structures**
  - City, state, county, or regional governmental bodies

- **Multinational structures**
  - Multinational governmental organizations, e.g., the European Union
  - Trade and Defense alliances (e.g., NATO, ASEAN, CARICOM)
Regulatory relationships and enforcement responsibilities between domains can be complicated and subject to rapid change, and local legal advice is always helpful in navigating the environment. In the United States, the federal Departments of Commerce and State can provide resources and training for individuals and institutions seeking guidance on international requirements. (See ‘Resources’ on p.70) Individual states with sizeable international education footprints (e.g., California, New York, and others) can also provide helpful information. A cottage industry of consultants who can help steer the process has arisen in many countries, and institutions are well-advised to take advantage of their professional networks to identify credible vendors.

International educators outside the United States may find support through similar agencies in their countries of residence or home countries. In countries with national and international education policies and infrastructures, advice on compliance and registration abroad might be more easily acquired.

**Regulatory Motivations**

It is tempting to decry regulatory creep, particularly where statutes and enforcement regimes become punitive, contradictory, or contrary to ideals and goals. As a primary index of globalization, and from a broad perspective, regulation can be viewed in both a negative and positive light. It is essential to recognize that regulatory impulses reflect genuine concerns, actual or imagined. The process of contesting regulatory regimes as a foreign entity can be costly, futile, or both.

An attempt to understand the motivations and concerns of regulators helps contextualize compliance issues, and it is always helpful to recall that regulation involving international activities is mirrored to a large extent by interests in both sending and receiving nations. Useful sources of information from U.S. government agencies include these samples; many other options and resources are available.
International education has been recognized as a critical component of international trade, with attendant resources available to educators to promote U.S. interests and navigate regulatory and compliance regimes. Much of this relates to the international student market, and many SIOs oversee incoming and existing international students on their campuses. Other resources are available through the DOC.

A recent search on the ITO website on “international” brought up 1225 hits from web pages describing market opportunities, country profiles, scholarship opportunities, and regulatory issues. An example of a relevant umbrella page from this search is:

- [https://www.trade.gov/education-industry](https://www.trade.gov/education-industry) In which services are described and links provided to training and assistance opportunities.

- [https://www.trade.gov/us-commercial-service-office-map](https://www.trade.gov/us-commercial-service-office-map) Provides location and contact information for federal Commercial Services offices in the United States and foreign countries, with a list and a map. Many are giving virtual services during the pandemic.

- [https://www.trade.gov/comply-us-and-foreign-regulations](https://www.trade.gov/comply-us-and-foreign-regulations) Provides information and links to issues of compliance and due diligence investigations, with database search capabilities for individuals and entities abroad appearing on the federal "Consolidated Screening List." A test search of "Foreign Sanctions Evaders" using the term ‘university’ with fuzzy logic drew three individuals marked by the Treasury Department as Foreign Sanctions Evaders. Many other searches were available.

- [https://www.trade.gov/us-share-education-markets-2021](https://www.trade.gov/us-share-education-markets-2021) Includes international indices relating to global education, including data on the U.S. share of various education markets in 100+ countries.
The U.S. Department of State (DOS) offers similar online resources, including federal regulatory regimes relating to immigration and required documentation, travel restrictions, and national Covid-19 compliance issues. These resources have become better known of late and used by educational institutions, and related vendors as institutions have increasingly based go/no-go decisions, operational and policy decisions, and crisis response on DOS assessments of risk and conditions abroad.

Two Covid-Era innovations relating to regulatory and compliance issues now appear on the DOS website, including:


https://travel.state.gov/content/travel/en/traveladvisories/vaccine-info-for-us-citizens-abroad.html

Examples of other DOS pages that provide resources related to regulation and compliance include but are not limited to:

https://travel.state.gov/content/travel/en/traveladvisories/travel-advisories.html/

The official list of advisories issued by the DOS is updated frequently and used by IE administrators to help assess local situations. Many other resources are available online and should be actively sought out by administrators and practitioners. These include governmental sources, such as the Consular Reports available online through the Bureau of Consular Affairs.

Non-governmental sources available through proprietary vendor relationships with insurance, safety, and security companies are used widely in the international education community and are discussed briefly elsewhere in this paper.
Last but certainly not least, online information from foreign entities relating to regulatory regimes, from both governmental and non-governmental sources, is rich and easily accessible. Examples may be found by drilling down in the Consilium Page of the European Union.

Anti-Bribery laws- U.S. Foreign Corrupt Practices Act (FCPA)

International administrators need to be aware of statutes that could trigger investigations or legal strictures relating to bribery, fraud, and corrupt practices as defined not only by federal regulations, such as the Foreign Corrupt Practices Act (FCPA) but by legislation and enforcement regimes that may overlap or complement the U.S. version.

International educators have long recognized behavior patterns abroad in formal and more informal situations that differ significantly from those at home. In many cultures, extensive hospitality and gifts are notable and enjoyable features of business relationships. They are occasionally offered in ways that exceed norms or attract the attention of regulatory authorities. When are such practices ‘out of bounds’ and laden with risk?

Relationships between university personnel and foreign representatives are correctly embedded in customary cultural practices. But there is often a fine line between gift exchange, including in-kind gifts such as transportation, accommodations, and meals, and the possibility that such practices might be construed as a ‘bribe,’ or a type of influence peddling that could form the basis of an investigation by regulatory agencies.

Interactions that might trigger investigation are not limited to institutional faculty or administrators. Contractors, vendors, and other representatives acting on behalf of one’s institution, at home or abroad, are also recognized by U.S. law as agents.

The latter are included in a broad definition of agents who may draw scrutiny. There are no geographical boundaries for the reach of the FCPA: favors and gifts offered back on campus may also be considered transgressions under this legislation.
The U.S. Foreign Corrupt Practices Act of 1977 (as amended in 1989) focuses on activities involving attempts to influence ‘government officials.’ An overview of the statute is provided by the Department of Justice.

“The Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, et seq. ("FCPA"), was enacted for the purpose of making it unlawful for certain classes of persons and entities to make payments to foreign government officials to assist in obtaining or retaining business. Specifically, the anti-bribery provisions of the FCPA prohibit the willful use of the mails or any means of instrumentality of interstate commerce corruptly in furtherance of any offer, payment, promise to pay, or authorization of the payment of money or anything of value to any person, while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to a foreign official to influence the foreign official in his or her official capacity, induce the foreign official to do or omit to do an act in violation of his or her lawful duty, or to secure any improper advantage in order to assist in obtaining or retaining business for or with, or directing business to, any person.

Since 1977, the anti-bribery provisions of the FCPA have applied to all U.S. persons and certain foreign issuers of securities. With the enactment of certain amendments in 1998, the anti-bribery provisions of the FCPA now also apply to foreign firms and persons who cause, directly or through agents, an act in furtherance of such a corrupt payment to take place within the territory of the United States.

The FCPA also requires companies whose securities are listed in the United States to meet its accounting provisions. See 15 U.S.C. § 78m. These accounting provisions, which were designed to operate in tandem with the anti-bribery provisions of the FCPA, require corporations covered by the provisions to (a) make and keep books and records that accurately and fairly reflect the transactions of the corporation and (b) devise and maintain an adequate system of internal accounting controls.”

The focus here is on government officials. Informal gift-giving among acquaintances, or acceptance of meals or entertainment, from colleagues or peers abroad, and would appear to be benign if in keeping with precedents in the academy. The benign character of these and other ‘favors’ could be illusory, however, as accounting rules and tax codes also bear on such relationships. They might be indicative of a larger pattern, to regulators. Scale, intent, frequency, and types of ‘gifts’ are all factors and potential triggers for suspicion of bribery or fraud. Interactions with non-government officials could also draw scrutiny and penalties if certain conditions are met. In many countries university and other business operatives are in fact government officials, so caution is warranted.
Anti-bribery regulations are only part of the larger concern of the FCPA and other types of legislation enacted to abet 'corrupt practices' and illegal activity. Local variants of anti-corruption legislation may be very broad, or extend into other areas of regulatory control. Corporate structures, business processes, financial operations and labor law are among areas in which vigilance is common and sanctions severe. At a minimum, universities need to ensure adherence to official registration requirements, tax regimes, permits, and other fees that might be associated with regulatory demands. Shell entities, unusual multilateral corporate structures, and tax-avoidance schemes could well draw scrutiny.

Branch campuses, study abroad centers, research outposts, and the like need to be carefully vetted at the outset for adherence to local and international statutes and monitored for changing regulatory environments. Regular audits of regulatory status are a good precaution, as are reviews of financial and accounting procedures at all levels. International accounting provisions are designed to ‘operate in tandem’ with anti-bribery and money laundering statutes.

SIOs would be well-served to have discussion about these issues with university leaders. Transparency and open discussion among knowledgeable officials about potential exposure to corrupt practice allegations are high priorities, especially for institutions with extensive foreign footprints.

For better or worse, international education has expanded into a significant economic sector in the world economy. This has brought with it increased attention from governmental agencies worldwide, many of which are more accustomed to regulating international trade and commerce than educational outcomes. Student mobility theorists might argue that the process has encouraged a broad commodification and politicization of the sector, to the detriment of core values. Others might argue that expansion has allowed the international education sector a seat at the table, and that regulatory oversight is both inevitable and welcome.

Federal oversight of anti-corruption statutes is lodged in both the Department of Commerce through the International Trade Administration (ITA), and the Fraud Section of the Criminal Division of the Department of Justice. Searches for additional information relating to the FCPA in the web pages of both Departments yield important details.

Helpful materials from the DOJ include a “Resource Guide to the FCPA,” which can be downloaded.

Another highly recommended online resource is the FCPA Blog, found here: Fcpablog.com
International Regulatory Impact on Online Global Learning

The global pandemic has helped speed up higher education’s adoption of online learning, and this is especially true in the area of online global learning programs. Institutions may now be engaged in a variety of international online activities, including offering full online degree programs abroad, Collaborative Online International Learning (COIL) offerings, virtual exchange, or virtual project-based learning opportunities, such as virtual international internships. As these activities become more pervasive, so too will regulatory issues in this arena.

As is the case with international regulatory compliance for traditional mobility activities, the regulatory landscape of online learning is complex due to the amount of variance between countries. Institutions need to understand what their online global learning footprint is in order to develop a compliance program that can take into account the regulations for each country where they may be offering online global learning opportunities. The following are a few aspects of regulatory compliance that institutions need to consider for online learning, but as this part of the field expands and matures, there will likely be new issues of which to stay abreast.

Authorization to Offer Academic Programs in a Territory

One of the first questions institutions offering online learning abroad need to consider is whether they have the authority to offer such programs in a given territory. At present, authorization is more a concern for institutions with a physical presence or intending to offer face-to-face instruction, but this is quickly changing. For many countries, online education is regulated at the national level, but this is not always the case, such as with Canada, where each province has its own Ministry of Education. As online learning becomes more prevalent, SIOs should expect to see greater oversight in this area with stricter guidelines about eligibility to offer online learning.

U.S. Embargoes and Restricted Persons

Embargoes from the U.S. government on certain countries may carry over to online global learning activity. For example, although temporarily loosened for certain Iranian students during the pandemic, the U.S. maintains strict prohibitions regarding selling courses or educational software to the Iranian government or any Iranian. Additionally, care must still be taken to screen for restricted individuals and entities.

Foreign Tax Implications, Accessibility, and Recognition of Credentials

If online learning is the product of a financial transaction, then there could be tax implications, even if instruction is provided outside of the foreign country. Additionally, with some countries such as China restricting access to certain websites, there could be issues of accessibility for students trying to access university websites and platforms. Furthermore, using China as an example, some countries will not recognize credentials earned online.
Data Protection and Foreign Privacy Laws

International data privacy laws such as the GDPR require careful attention to the kind of data institutions likely collect when offering online learning. Care must be taken to ensure informed consent is in place and that the collection and storage of data adheres to data privacy laws that might have applicability for constituents of a territory from which they may be enrolling students. This relates to the actual technology being used to offer online learning. Are the platforms institutionally managed or open source? Can guest students access host institutional platforms for short-term activities such as COIL? Can the aforementioned privacy regulations be upheld if using an open-access platform? Institutions need to carefully consider these questions when selecting which platforms to use for their online learning activities.

In sum, as online global learning becomes another aspect of institutions’ internationalization efforts, this will be another important area for which SIOs will need to monitor regulatory compliance. Given the oversight and potential for legal claims to be raised, institutions should have agreements outlining each party’s responsibilities and highlighting any regulatory or compliance issues for online learning activities just as they do for other international collaborations.
U.S. Export Controls on Transferring Technology, Commodities, and Software

International education administrators frequently work in collaboration with their respective Office of Research and Sponsored Programs to provide regulation oversight and ensure compliance to U.S. Export Controls laws and regulations governing the sale, transfer, shipment, or release of goods, services, and information to foreign persons or to foreign countries. Export control laws apply to many international activities such as teaching, research, and education abroad. These activities include research with proprietary industry technology, international shipments of advanced scientific equipment and biological materials, participating in international research collaborations, international travel, and use of computer software with encryption features. These export controls are administered by the International Traffic in Arms Regulation ("ITAR") and the Export Administration Regulation ("EAR"). ITAR primarily regulates items and technology that are specifically designed for a military purpose and the EAR primarily regulates most other items and technology.

For purposes of Export Controls, an export is any item (e.g., commodities, information, technology, and software) sent from the United States to foreign persons or to foreign countries, or the release of technology to foreign persons within the U.S., also called a deemed export. Because the U.S. Government includes electronic data transmission in its definition of “export” faculty and researchers must be cognizant of any restrictions placed on the dissemination of research when collaborating with non-U.S. researchers or individuals even in research labs on the home campus.

Additional export items could include:

- Data or information received under an obligation of confidentiality.
- Data generated during research outside the United States.
- Data or analyses that result from a project for which there are contractual constraints on the dissemination of the research results.
- Personally identifiable information about research subjects.
- Computer software received with restrictions on export to or on access by foreign nationals.
- Devices, systems, or software that was specifically designed or modified for military or space applications.
- Devices or equipment received with restrictions on export to or on access by foreign nationals.
There are several possible exemptions to Export Control Regulations including:

- Educational Exclusion - Per EAR, publicly available “educational information” is not subject to Export Controls if it is released through instruction in cataloged courses and associated teaching labs at academic institutions. Under ITAR, information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities are not subject to the ITAR.

**EAR: Export Administration Regulations; U.S. Department of Commerce – Bureau of Industry and Security**

- Covers dual use items - found on Commerce Control List (CCL)
- Regulates items designed for commercial purposes but also have military applications (computers, pathogens, civilian aircraft, etc.)
- Covers goods, test equipment, materials and the software and technology
- Each item has an export controls classification number (ECCN)

**ITAR: International Traffic in Arms Regulations; U.S. Department of State – Directorate of Defense Trade Controls**

- Covers military items found on the United States Munitions List (USML) - munitions and defense articles
- Includes most space related technologies because of application to missile technology
- Includes technical data related to defense articles and services - furnishing assistance including design and use of defense articles
- Policy of denial for exports to certain countries - 22 CFR 126.1 for up-to-date list
The Fundamental Research Exemption (FRE) – The EAR states that basic and applied research in science and engineering, the results of which are published and shared broadly and generally within the scientific community fall under the FRE and are exempt from Export Controls.

Public Domain – Information that is published and generally accessible or available to the public is not controlled under the EAR or ITAR. Under the EAR, “publicly available” means information and materials that arise from fundamental research, are educational or are included in certain patent applications. The ITAR defines “publicly available” as information that is published and generally accessible to the public.

In addition, for temporary exports a Tools of the Trade (TMP) Exemption exists for international travel with laptops, PDAs, and other storage devices (and related technology and software) when used in someone's professional capacity with the intent to return in 12 months. Baggage License Exemption (BAG) allows anyone traveling internationally to export personal items that are intended for personal use only. Both exemptions do not apply to people traveling to the Crimea Region of Ukraine, Cuba, Iran, North Korea, Sudan, or Syria.

If an exemption does not apply, an export license may be required prior to export. An export control license is the U.S. government mechanism to allow and trace transfers of export-controlled technologies. License requests must be submitted to the specific federal agency responsible for that export item.

Export Control protocol should include clear and transparent processes including review and decision-making steps to determine if the item being shipped, transferred, or released requires an export license.

In addition, the Department of Treasury’s Office of Foreign Assets Control (OFAC) needs to be consulted with any export since it enforces embargoes and maintains lists of individuals and entities with which certain transactions are prohibited.

**OFAC: Office of Foreign Assets Control; U.S. Department of Treasury**

Economic sanctions focus on end-user or country and may limit transfer of technologies and assistance to OFAC’s list of sanctioned countries

OFAC has a “Specially Designated Nationals and Blocked Persons List”

Prohibits payments or providing “value” to nationals of sanctioned countries and certain entities or could require a license
As part of its enforcement efforts, OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country specific. Collectively, such individuals and companies are called “Specially Designated Nationals” or “SDNs”. Their assets are blocked, and U.S. persons are generally prohibited from dealing with them. View more information Treasury’s Sanctions Programs and Federal Regulatory Agency.

International Employment, Foreign Agents Registration, and Independent Contractors

The global engagement’s interface with international employment laws can occur in multiple layers in a university enterprise. Branch campuses, education abroad centers, and faculty research are just some of the areas that require international educators’ diligence in providing oversight to processes and policies around international employment. While national employment laws differ and require legal counsel review of specific host country laws, international educators must be mindful that a university’s employment practices could trigger legal presence classification in a host country opening the enterprise to tax and legal liabilities. During the pandemic, more universities are reverting to a business practice of utilizing host country university representatives providing a range of international initiatives requiring heightened diligence of their international employment by university administrators.

Host country laws vary and require legal counsel review since some require different employment requirements based upon one’s citizenship. Some countries allow an exemption for non-nationals under certain specific conditions.
U.S. antidiscrimination laws such as Title VII may also be applicable to U.S. university international employees. A popular practice in international education is utilizing Independent Contractors (ICs) to minimize this risk and fulfill the research grant goals for the university. ICs can form a cost-effective and flexible workforce but carry a risk if not designated correctly, exposing the institution to liabilities. The IRS Designation description and Checklist allows an enterprise to identify whether required work is appropriate for an independent contractor, reviews key considerations for engaging workers as independent contractors, and maintaining the employment relationship in a correct status, thus limiting institutional liability. There is also a need to specify a process of vetting and review from the initial inception of the employment relationship through the yearly renewal of that individual as an employee or independent contractor. Yearly university audits of present IC contracts to determine compliance with standard metrics and policies should be a requirement in university international employment policies.

Payroll including taxes and human resources are other issues for consideration in international employment practices. U.S. universities are required to withhold taxes for U.S. citizens and permanent residents unless the host country’s tax laws state otherwise. If the enterprise has legal presence in a country, legal counsel, accounting and human resources should be part of the employment infrastructure in the country. Sometimes these services can be outsourced to a Professional Employer Organizations (PEO) or a Global Employer of Record (EOR). In Belgium, France, Italy, China, and Brazil the human resource and tax consequences are complex and PEOs/EORs are popular choices in those countries. This type of outsourcing provides a win-win situation since the employee has legal employment, and the employer has a mechanism for employing someone legally without having to set up a legal presence although like any outsourcing these arrangements could be costly. Recently the German government launched an investigation into independent contractors especially if the IC has one client (or more than 5/6 of their compensation only from one client).

PEO/EOR is a modality to hire employees in existing or potential strategic locations while minimizing the business operations including payroll, taxes, etc., and the risk of establishing a legal presence in that country. PEOs/EORs are numerous and include Velocity Global, Globalization Partners, and Safeguard Global to name a few. In addition, there are vendors such as SannamS4 who work with an array of educational institutions from the initial stages of exploring new countries for international operations, monitor compliance in-country, manage operations as a local partner, and advise educational institutions regarding expansion for new global opportunities.

If legal presence in a designated country is a goal, there are country specific associations that can assist a university with identifying the legal and financial obligations related to doing business in that country. In the education abroad field, the Association of American College and University Programs in Italy (AACUPI) and Asociación de Programas Universitarios Norteamericanos en España (APUNE) are two examples of non-profit associations with these stated goals.
Once legal presence is established there are business benefits of banking access, ability to lease office space, hire transportation, hire in-country employees, etc. as well as carry out full legal operations in that country. Certainly, a university would make a strategic global operations decision to identify key countries in which its global engagement requires a strong legal presence in that country.

Visas and work permits must be also taken into consideration guaranteeing lawful entry and permission to work in the host country. Periodic review of host country entry and work permits is required since countries can change these requirements to reciprocate against U.S. immigration policies for their nationals or due to a change of political administration.

**Regulatory issues relating to international money transfers and operations**

Regulatory oversight in the international banking and finance domain is pervasive and complicated. The global financial system is dynamic, and it adapts to innovations and challenges with new structures and forms of oversight. The Covid pandemic has not changed fundamentals in this area, but its impact on the global workforce has put a premium on collaboration and training. For most SIOs, interaction with institutional finance officers on campus is limited, and reporting obligations in this area are typically lodged outside of the international office. Nonetheless, many aspects of banking and finance abroad bear directly on the operational concerns of international offices.

It is important at the outset to distinguish between banking regulations, on the one hand, and international finance regulations, on the other. The two systems overlap, and a single bank or banking network may be subject to enhanced requirements if engaged in broad-spectrum financial operations. The U.S. Smith-Crawley Act of 1933 initiated a long history of regulatory separation of these functions. In recent decades Congress has relaxed these strictures, and new financial innovations have clouded this divide – and elevated risk.

Many international banks do not have comparable legislation separating banking from finance operations. It is beyond the scope of this paper to detail the broad reach of regulatory oversight in both areas, except to provide a snapshot of some of the institutions and structures that could play a role in the operational portfolio of the typical international office. The emphasis here will be on international banking and money transfer operations rather than finance, taxation, foreign trade, or revenue-generating operations that would trigger more complicated compliance issues.
International money transfers

International offices are frequently called upon to engage in cross-national money transfers both on the sending and receiving side. These can be of several types, including:

- Establishment and replenishment of a foreign bank account
- Payment of invoices
- Transnational payroll operations
- Benefits administration for employees and former employees living abroad

Transfers of all types are subject to risks including fraud, theft, embezzlement, money-laundering, tax evasion, graft, and the like. They are regulated in the United States by both state and federal law. Institutions that establish bank accounts abroad to facilitate operations are subject to local or regional legislation, as well as conditions set by international treaties, trade agreements, and trade sanctions.

Establishment of bank accounts

The decision to establish a bank account abroad to serve an international program, or a range of institutional operations, hinges on several key factors that need to be carefully considered. Institutional profiles, project types, and local banking conditions will generate a number of considerations; those listed below are generic:

- Will the scope and longevity of such operations merit what might be onerous reporting and other compliance issues?
- Are local and U.S. federal or state tax implications well-understood by the institutional finance office?
- Which on-campus unit will be responsible for costs associated with account establishment and maintenance?
- How will financial risks be assessed and monitored? By whom?
- Will institutional insurance plans cover aspects of foreign financial operations?
- What types of local regulatory or compliance measures will be involved, and how will these be monitored by the home institution?
- If the institution establishes more than one account abroad, what regulatory issues might be faced by interbank transfers abroad?
How will currency exchange rates be managed, and by whom?

Will the institution have or develop appropriate accounting procedures to document cash flow and ancillary reporting requirements?

What role will the international office play in account management? How and when will cash transfers be made, and upon whose authority? How autonomous will local operatives be in cash management? Will credit or debit cards be issued and associated with the account, and who will be eligible?

Local requirements for the establishment of a bank account will vary by country and region. Many if not most foreign banks require accounts to be established by and associated with a specific name. Many U.S. institutions will identify their Chief Financial Officer as the ultimate signatory. But the logistics of identity verification could make this difficult – many banks require the personal presence and signature of the person opening the account, as well as copies of passports and other documents establishing identity. The situation could be different if the bank in question is linked to the home institution’s international banking network. But there may be drawbacks to such an arrangement such as expense, the location and type of affiliate branches, available services, and others.

Other signatories or principals to the account might include a local administrator or visiting resident director from the home institution. Many institutions with legacy study abroad programs sustain bank accounts that were established many years ago; some of these accounts still bear their names. Identity establishment is critical here also, and where institutions rotate visiting directors or other functionaries abroad it is important to establish procedures to terminate bank access at the end of the assignment to limit risk.

Disclosure and reporting requirements

Federal reporting requirements for employees with access to foreign bank accounts are stringent, but only take effect if certain conditions are met. The basic threshold for reporting is set at a combined value of $10,000 USD at any point in the year for the combined maximum balances of any foreign accounts on which the individual’s name is listed as a signatory. The mandate has instilled concerns in the academic world that such reporting has heightened the chances of an investigation or tax audit. There is little evidence to support this; the scale and scope of involvement in international accounts is a better indication of the potential for federal scrutiny.

Other regulatory triggers to be aware of include money movements to offshore accounts in counties and regions with a known history of involvement in money laundering and tax evasion. Enhanced scrutiny by federal agencies in these areas can be expected.
Direct money transfers

Direct transnational payments of legitimate invoices may also carry regulatory or compliance burdens, again depending on the scope and type of transactions involved. Transfers of this type are quite common and involve a low-risk, bank-to-bank wire transfer with an electronic or paper trail. Currency exchange quandaries must be ironed out in advance (should the transaction be in USD or some other currency, and what might the costs be for conversion?). But the international banking system has established safe and secure means of the actual transfers (see below). The international office may or may not be involved in or even aware of compliance measures taken by the institutional finance office.

Repeating and non-invoiced transfers abroad

Outside of invoice payments which typically form a 'clean' bank-to-bank international transfer process, transnational payroll operations and benefits administration for employees and former employees living abroad can be more complicated. They may be much more complicated, in fact, due to local, regional, and trade agreement stipulations that might mandate withholdings and internal transfers routed into local tax or benefits accounts.

Compliance may appear to be more daunting in these domains than it is in most regions of the world. Adapting to mandates may take some research and footwork on both ends, and there is always a degree of flux in international financial systems. Nonetheless, clear understanding of the structures involved and consultation with bank associations and regulators produces successful outcomes.

U.S.-based branches of foreign banks

Many foreign banks operate in the United States and international partners may have established accounts in one of these institutions to ease logistical and regulatory burdens. These institutions operate under regulatory scrutiny themselves, but offer alternatives to independent cross-border transactions.

Regulations, education, and institutions involved in international banking oversight

Several banking associations have established guidelines and procedures to register and comply with the extensive reporting requirements involved in overseas money transfers. These associations have also been instrumental in working with governments and bankers to develop secure transfer procedures, and to research emerging challenges to the global financial system that could, in theory, ensnare institutional institutions of higher education in a regional or international crisis. Key organizations are outlined below.
The Society for Worldwide International Financial Communication (SWIFT)

The Society for Worldwide International Financial Communication (SWIFT) was initiated in 1973 by bankers from 39 countries seeking a safe and secure system of international financial communication. Based in Belgium with an operational center in Switzerland, the organization has evolved into a highly reputable organization representing 11,000 international banks from more than 200 countries (https://www.swift.com/).

The system has provided a means of secure international bank transfers for decades, and it is used widely by educational institutions and private business. Member banks are given unique identifying numbers known colloquially as 'SWIFT codes,' and communicate financial information through a system that transcends language barriers.

SWIFT is monitored by a wide range of international regulatory agencies, including those in the United States. It is important to remember that SWIFT is a communications system rather than a bank. Its primary purpose is to provide safe and secure transfers of money abroad and from foreign entities. It has a research arm, and the organization is actively in dialogue with regulators. Still, primary responsibility for regulatory compliance and reporting lies with member banks and their clients, rather than with SWIFT itself.

The system is stable and adaptive, if not truly global. Member banks must comply with rigorous safeguards and standards that can be difficult to meet in remote and impoverished areas. Political factors can also affect membership status: the recent invasion of Ukraine by Russia has prompted SWIFT to suspend seven large Russian banks from the network, an unprecedented move in the organization's history. Additional measures may follow as the international system adapts to new realities.
National and Regional Banking Associations

The banking and finance world is rife with regulatory agencies, function-specific and regional associations that can provide insights and guidance. Representative examples are listed below; these constitute but a fraction of agencies and associations that include regulatory monitoring, research, and education in their objectives.

American Banking Association

The American Banking Association provides information and services to members and non-members alike, including information on regulatory statutes, compliance, and advocacy. The ABA website hosts an accessible and robust database on compliance topics, many of which bear on international operations.

European Banking Authority

European Bankers Federation

Federación Latinoamericana de Bancos

The Institute of International Bankers

Regulations, regional variations, and local customs

The management of international financial operations in any given institution will hinge on operational scale, scope, and location. International educators can offer significant assistance and expertise to institutional managers, even if not experts in regulatory and compliance issues. First-hand knowledge of conditions abroad can help ground internal policies and procedures in foreign realities, and help interpret regulatory measures in ways that reflect norms and practices abroad.

Operations in Africa will not look like those in Europe, Latin America, or Asia. This is due both to differing regulatory profiles, but also to diverse economic, demographic, political, and cultural factors. Likewise, operations conducted in remote, unbanked, or difficult to access will condition the way university financial officers approach financial operations.
Digital divides

International educators have at times struggled to keep up with changing regulatory environments, modes of banking, money transfers, and procedures. Electronic banking and informatics has transformed the financial world in recent decades, and educational institutions have adapted to the change. Where in recent memory international money transfers abroad were conducted by means of cheques sent through the mail, interbank wire transfers are now standard. Where cash payments abroad were common, regulation and risk factors have made them very rare. Where post-war financial stability encouraged innovation in the international banking and finance system, this innovation itself has contributed to instability and unprecedented risk.

Digital commerce and money management appears to be here to stay, and international offices need to adapt to it if they have not already. At a personal level various forms of e-banking have proven practical on a large scale, and in many countries digital commerce has eclipsed common cash transactions, even in rural areas. The use of credit and debit cards abroad, either personal or institutional, drawn from home or foreign bank accounts, are standard and preferred by academic institutions in recent years. Regulatory agencies and most university finance offices prefer the digital records that accompany e-commerce and interbank transfers, as they limit risk and facilitate compliance requirements.

Despite widespread perceptions of some university finance officers, many of whom may lack experience abroad outside of metropolitan corridors, digital modernization is not a truly global phenomenon. And this has deep implications for many international offices whose footprint extends beyond the grid.

In many countries e-banking is limited to urban areas, or among elites conducting transactions in elite venues with access to the grid. Operations involving transactions in areas off the grid, or where cash is the preferred and trusted mode of payment, are not unusual.

Cash and carry operations involve obvious risk, both from regulatory perspectives and those relating to common crime, counterfeit operations, and the like. But in many regions of the world cash transactions are preferred, customary and expected. Or the only practical solution to money movement.

From the regulatory perspective such operations require documentation in the form of paper receipts, or digital records of transactions that can be uploaded into accounting systems. These can prove burdensome to both sides of a transaction where language and cultural barriers exist, but they are generally feasible.
Regulatory zeal, particularly in federal agencies that sponsor international research or other forms of international work, can contribute to difficulties where regulations are impossible to comply with given local realities. Mandatory bank-to-bank account transfers for all associated payments on a grant, for example, may run into a brick wall where payees live in remote and unbanked areas where virtually no one has access or need for a bank account. Accommodations must be made in such circumstances, and workarounds that comply with regulations can be facilitated by the SIO or consulting specialists.

**Other Realities: Cash and Non-Banking Transactions**

**Cash**

Money transfers that lie outside of the formal banking system are not uncommon. The most obvious is cash transfer into another country, which is technically not illegal but tightly regulated under customs regulations in most countries. Up to $10,000 may be carried into most countries without declaring it. Anything over that, including cash and other financial instruments, must be reported to customs agents at the border (see [https://customsandinternationaltradelaw.com/](https://customsandinternationaltradelaw.com/)). These stipulations carry a host of other restrictions and regulatory measures, and the risks associated with such practices are both obvious and untenable. For more detailed information on regulations see the Currency and Foreign Transactions Act of 1970 (as amended) and the Bank Secrecy/Anti-Money Laundering reform act [https://www.aba.com/banking-topics/compliance/acts/](https://www.aba.com/banking-topics/compliance/acts/).

**Shadow banking**

The International Monetary Fund and other international agencies have warned of the dangers of ‘shadow banks,’ where financial institutions have blended cash and other forms of economic value – such as mortgages and securities – into instruments that can have transactional value. Shadow banking is an international phenomenon, and academic institutions are prudent to avoid interactions with financial institutions that include blended securities with cash operations. See, for example, [www.imf.org/external/pubs/ft/fandd/basics/52-shadow-banking.htm](http://www.imf.org/external/pubs/ft/fandd/basics/52-shadow-banking.htm), and [www.americanprogress.org/article/strengthening-regulation-oversight-shadow-banks/](http://www.americanprogress.org/article/strengthening-regulation-oversight-shadow-banks/).

**Non-banking alternatives**

Financial transactions that lie outside of the international banking system do exist, of course. Most notable in the Islamic world are hawala arrangements. These require no actual transfer of funds across political boundaries, and no centralized monitoring of transactions.
The system hinges on brokers who facilitate anonymous payments through an informal network, in which credits and debits are settled on the honor system. It is used extensively in impoverished regions, and in areas where formal banking transactions are too expensive or not available. Hawala is also a common form of wealth transfer from the metropolitan world to underbanked populations and others in places where it is in common use.

Sharing elements of other non-banking systems, sometimes characterized as ‘underground banking,’ hawala can also be used to hide or ‘wash’ money in ways that make it attractive for those wishing to use it for bribery, or for payments for illegal goods or services. Originating in 9th century South Asia (and now illegal in India and Pakistan), it continues to be used internationally to move money. It is fair to say that use of hawala networks, or similar informal arrangements, are red flags to regulators, and to be avoided by most educational institutions. See https://www.investopedia.com/terms/h/hawala.asp, and an extended academic study in Philip Molyneux and Munawar Iqbal, Banking and Financial Systems in the Arab World (Palgrave Macmillan, 2005).

Digital currencies

The entry of digital currencies into the international financial system has complicated regulation and compliance regimes worldwide, and has ushered in an era of innovation that has yet to fully hit the international education sector. Transactions and value assessments relative to international currencies are difficult for bankers and regulators at all levels to keep track of, yet the penetration of cryptocurrencies on a global scale in recent years has been rapid, with uncertain implications for the world economy and for the international education community.

In 2021 global use of cryptocurrencies was estimated at 300 million users, in every region of the world including North America. Some 18,000 business worldwide are known to accept cryptocurrencies, and this figure is an underestimate. The notable adoption of crypto as legal tender by the national bank of El Salvador in September, 2021, shocked the financial world (see www.bbc.com/news/world-latin-america-60135552. The January, 2022 call by the International Monetary Fund for that country to reverse its policy shows the potential of cryptocurrency use to disrupt and reorder the global economy.

To say that international transactions in cryptocurrencies is risky is to state the obvious at this juncture. Nonetheless, we see steady growth in digital or crypto currency use and its use is likely to impact global operations in international education in future years.

Regulations, compliance requirements and risk are elements to consider on both sides of every financial transaction abroad involving the international office. SIOs are encouraged to engage financial officers on their campus to discuss perspectives on these issues, and to refine procedural responses as conditions change.
Obligations to Report Information: Foreign Gifts, Foreign Bank Accounts, and Contracts

There are several challenging and detailed Federal requirements for reporting and registration of an enterprise’s international engagement based upon the type and depth of a university’s programming, research, and external business operations. Some including the Foreign Bank Account Reports are rudimentary in the business operations of an education abroad program while others including the Foreign Agents Registration Act of 1938 (FARA) is more nuanced. Although there are exemptions, FARA imposes registration and reporting requirements on an enterprise. Since 2011 the most frequent and bi-annual interface of reporting with SIOs is required under Section 117 of the Higher Education Act of 1965 reporting foreign gifts and contracts. Presently there is a $250,000 or more threshold for reporting, but that could change with recently passed legislation. In 2020 the Department of Education launched investigations into noncompliance with Section 117 claiming approximately $6.5 billion in unreported funds nationwide.

The previous Administration stepped up scrutiny of colleges especially foreign ties focusing on China. Department of State and Department of Defense no longer funded grants if universities had ties with Chinese funded Confucius Institutes, Department of Justice launched a “China Initiative” that has brought charges against a number of Chinese scholars accused of hiding Chinese military affiliations, not disclosing Chinese funding through Talent programs, or reporting affiliations on federal grant applications or non-disclosure of income on tax returns. While only one prosecution of a scholar charged under the China Initiative resulted in a guilty verdict to date the reporting requirements associated with research and mobility have come under renewed scrutiny due to this renewed focus on higher education’s global engagement.

Congress has also been active in trying to restrict Chinese competitiveness. In early February 2022 the U.S. House of Representatives passed the America COMPETES Act which is the counterpart to the U.S. Senate’s passed legislation U.S. Innovation and Competition Act. While in the House bill there are several positive immigration revisions, a U.S. government-sponsored Chinese language program, and an infusion of research funding both pieces of legislation contain numerous additional reporting hurdles and compliance issues for universities. In the House legislation, it lowers the present $250,000 threshold to report foreign gifts and contracts to $50,000 under Section 117 of the Higher Education Act and requires a searchable database of all foreign funding regardless of amount. In addition, this legislation has two contradictory provisions regarding the Committee on Foreign Investment in the US (CFIUS), an interagency national security review panel; one provision requires oversight from CFIUS for certain foreign gifts and contracts while the other provision forbids it. The Senate bill gives CFIUS a broader range of review that would include Section 117 reporting of foreign gifts and contracts under its purview which to date has been reviewed only by the Department of Education (DOE). The bills are heading to the conference committee to be reconciled.
Foreign Agents Registration Act of 1938 (FARA)

FARA requires that all persons acting as agents of foreign principals must file a registration statement with the Attorney General. 22 U.S.C. § 612(a). The key section of the Act,... is the definition of the term "agent of a foreign principal. Id. at § 611(c). That term includes: any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal, and who directly or through any other person —

(i) engages within the United States in political activities for or in the interests of such foreign principal;

(ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;

(iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal.

FARA is codified at 22 U.S.C. § 611 et seq. and its implementing rules are located at 28 C.F.R. § 5.1 et seq. The Department of Justice, which enforces and administers FARA, has also issued advisory opinions and other guidance interpreting the law. There are several exemptions including "persons engaged only in activities that further the Fine Arts or Bona Fide Religious, Scholastic, Academic or Scientific pursuits." To date there has been a broad interpretation of the academic exemption provided that the research, academic or scientific activity bears a "attenuated relationship to foreign policy and national security (Attorney General of the United States v. The Irish People, Inc 684 F. 2d 928,938 (D.C. cir. 1982). It is important for SIOs to keep in mind that the burden is initially on the agent to demonstrate that an exemption applies to their agency.

Committee on Foreign Investments in the US

The Committee on Foreign Investment in the US (CFIUS) is empowered to conduct national security reviews of covered transactions, which regulations define as a proposed or pending transaction with any foreign person which could result in control of a US Business by a foreign person.
Although notifying CFIUS of a proposed transaction is voluntary, failing to file and receive the Committee’s approval subjects a transaction to significant risk if national security issues are involved. Once CFIUS approves a transaction, it will not be subject to further government review except if incorrect information was provided during the Committee’s review process. For the purposes of CFIUS national security is broadly defined and can involve critical technologies research or contracts with US government national security agencies.

**Section 117 of the Higher Education Act of 1965**

Section 117 of the Higher Education Act of 1965 (HEA), as amended, requires certain institutions that participate in the Title IV student assistance programs to submit to the Secretary of Education disclosure reports containing information about gifts received from any foreign source, contracts with a foreign entity, and any ownership interests in or control over the institution by a foreign entity. Specifically, all Title IV domestic institutions that offer a bachelor’s degree or higher, or that offer a transfer program of not less than two years that is acceptable for credit toward a bachelor’s degree, are required to report contracts or gifts having a value of $250,000 or more for a calendar year.

As of June 22, 2020, institutions are required to report foreign gifts and/or contracts information using a new online portal. Foreign gifts and/or contracts data reported through the new online portal beginning June 22, 2020, can be viewed online. Prior Foreign Gift and Contract Report dating back to 2014 is available here.
IRS: Foreign Bank and Financial Accounts Reports (FBAR) and FORM 990, Schedule F

Per the IRS, every year under the law known as the Bank Secrecy Act, a U.S. person must report certain foreign financial accounts, such as bank accounts, brokerage accounts and mutual funds, to the Treasury Department and keep certain records of those accounts. A United States person is broadly defined and includes a citizen, resident, corporation, partnership, limited liability company, trust, and estate. The reporting of overseas bank accounts is done by filing a Report of Foreign Bank and Financial Accounts (FBAR). The annual reporting occurs every year on the 15th of April by filing electronically via the Financial Crimes Enforcement Network’s BSA E-Filing System. The FBAR fact sheet contains additional information about the filing requirements.

SIOs also should also be aware that Schedule F in Form 990, requires organizations to report on activities outside of the U.S. if the aggregate revenue or expenses is more than 10,000. Notably Part III of Schedule F requires reporting of payments of 5,000 or more to U.S. citizens abroad but the filer is not required to list the individual’s name. There is additional Form 990 Filing Tips for Reporting Foreign Activities on the IRS site.

International Data Privacy Laws: FERPA, HIPAA and EU General Data Protection Regulation (GDPR)

International Data Privacy Laws

As technology advances and the ability to transmit sensitive data increases in prevalence, so too have the regulatory frameworks which govern the transmission of such data. In recent years, the applicability of international data privacy laws to the international work and activities in which many institutions are engaged has become another important aspect of the international education enterprise. SIOs must partner with their campus legal teams to assess existing and future international activity to ensure they are compliant with newer data and privacy laws that some countries are adopting. Below is a summary of some of the most important and current laws of which international educators should be aware.

FERPA and HIPAA

Most U.S.-based international educators will be familiar with the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA), but their mention bears reference in the context of other countries developing new privacy laws whose scope may be similar or larger to what U.S.-based professionals are used to.
The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education (U.S. Department of Education). FERPA provides students, and in some cases their parents, with the right to review a student’s educational records maintained by a school. It also governs which kinds of information can be disclosed without consent of the student.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a federal law that requires the creation of national standards to protect sensitive patient health information from being disclosed without the patient’s consent or knowledge (Centers for Disease Control and Prevention). Under HIPAA, institutions are prevented from sharing protected health information for an individual with other parties.

Given the nature of the work and activities institutions may be engaged in internationally, it is vitally important that international educators understand both federal regulations. In the case of an institution sending students to a partner abroad, for example, releases may need to be developed to allow the sharing of important student academic and/or health information with the partner.

The European Union General Data Protection Regulation (GDPR)

Described as the “toughest privacy and security law in the world, the General Data Protection Regulation (GDPR) imposes obligations onto organizations anywhere, so long as they target or collect data related to people in the EU. Introduced in 2018, GDPR has had far-reaching implications for U.S. institutions of higher learning engaged in international activity with member countries of the EU, no matter if it has a legal presence in the region. And the stakes are high. Institutions and organizations can face fines as high as €20 million or 4% of global revenue (whichever is higher). This is in addition to individuals whose data has been shared having the right to seek compensation for damages. Although outside the field of higher education, both Oracle and Salesforce have found themselves party to class action lawsuits related to concerns about GDPR applicability. International education administrators should work closely with their institution’s legal counsel to ensure international agreements with EU partners and their mobility activities are compliant with GDPR.

China’s Personal Information Protection Law

More recently, China has developed its Personal Information Protection Law, which is a comprehensive privacy law based on the EU’s GDPR. Going into effect in November of 2021, PIPL contains 74 articles and eight chapters governing the sharing and transmission of personal information of natural persons within and outside the territory of the People’s Republic of China.
The scope of potential implicated activities which institutions may be engaged in ranges from international admissions, research, and study abroad, to online learning, alumni relations, and marketing and recruiting, just to name a few. Institutions that have endeavored to remain compliant with GDPR will have a head start in compliance efforts for PIPL, however, there are differences in key areas, including not recognizing “legitimate interests pursued by the controller” as a legal basis for personal information processing and setting restrictions on the right to data portability (JDSUPRA, 2021).

The implications of PIPL on international education activity are yet to be fully understood or realized, nevertheless, PIPL and GDPR foreshadow an increased compliance landscape in the realm of data and privacy protection laws that seems likely to grow in both geographical footprint and complexity. For an unofficial translation of PIPL, consult this resource.
SENIOR INTERNATIONAL OFFICERS (SIOs) IN THE HEADWINDS

The COVID-19 pandemic has accentuated the responsibilities of SIOs in many ways, as outlined in this paper. The pandemic first appeared in a difficult era for international educators. Just as policy changes in Washington and elsewhere were beginning to shake the foundations of our field, the pandemic added a layer of crisis and complexity to the mix. As the virus spread and mutated, educators faced a trifecta of mounting institutional concern over Duty of Care, regulatory compliance, and risk associated with all international operations. This occurred in an environment in which layoffs and radical cutbacks shook the field in unprecedented ways. While some of the challenging political headwinds of the early pandemic have now shifted, inflationary economic pressures now rock the global economy. And a major war has erupted in eastern Europe that threatens to revive major power tensions. As the virus continues to mutate, we know not where or when the pandemic will recede. Amidst all this churn and its impact on international education, we can safely predict that future SIOs and their campus colleagues will need to work together to create experiences that meet DOC standards, avoid undue risk, and continue to offer transformative educational options abroad. Internal and external stakeholders can provide the critical analysis of factors to make risk assessment decisions. Still, SIOs uniquely understand the need to balance transformative global learning with risk aversion.

The regulatory environment for global operations has always required monitoring and compliance. Current national policies have added new significance to this oversight responsibility. Key examples of this are the Department of Justice’s China Initiative, the Department of Education’s enforcement of Section 117 of the Higher Education Act, and the recent Presidential memo- National Security Presidential Memo-33 (NSPM-33) outlining new potential national security oversight to global research. In addition, there is proposed legislation requiring that all foreign gifts and contracts reported under Section 117 of the Higher Education Act will be overseen by CFIUS, a National Security interagency committee. These administrative policies occurred in an anti-immigration environment that adversely impacted international students’ enrollments and international scholars’ collaborative research with U.S. scholars. To navigate this array of risk, crisis, and regulatory compliance SIOs require new diplomatic and managerial skills to administer their institution’s international portfolio.

SIOs have weathered these headwinds before, but this pivot will require a depth of knowledge and an intersectional understanding of many of the complexities outlined in this paper. New chapters will need to be added to International Education handbooks, and workshops will need to address the managerial insights and expertise required to operate the range of global university operations in a pandemic and post-pandemic world. We anticipate that consortia associations, professional membership organizations, and strategic international partners will play even more significant roles in benchmarking, risk management, and global operations practices. These will provide SIOs with critical professional development ecosystems that will provide the resources and skills needed to manage a university’s international footprint.

CONCLUSION

The COVID-19 pandemic has accentuated the responsibilities of SIOs in many ways, as outlined in this paper. The pandemic first appeared in a difficult era for international educators. Just as policy changes in Washington and elsewhere were beginning to shake the foundations of our field, the pandemic added a layer of crisis and complexity to the mix. As the virus spread and mutated, educators faced a trifecta of mounting institutional concern over Duty of Care, regulatory compliance, and risk associated with all international operations. This occurred in an environment in which layoffs and radical cutbacks shook the field in unprecedented ways. While some of the challenging political headwinds of the early pandemic have now shifted, inflationary economic pressures now rock the global economy. And a major war has erupted in eastern Europe that threatens to revive major power tensions. As the virus continues to mutate, we know not where or when the pandemic will recede. Amidst all this churn and its impact on international education, we can safely predict that future SIOs and their campus colleagues will need to work together to create experiences that meet DOC standards, avoid undue risk, and continue to offer transformative educational options abroad. Internal and external stakeholders can provide the critical analysis of factors to make risk assessment decisions. Still, SIOs uniquely understand the need to balance transformative global learning with risk aversion.

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Consultants can tailor a review of institutional procedures and international programming and provide SIOs the much-needed leverage to jump-start a university’s global engagement. Hopefully, this white paper will augment expertise in global operations by providing the terminology and 360-degree perspective of standard legal and regulatory compliance, allowing global engagement to thrive in this new normal.
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He is an experienced consultant and reviewer, serving public and private institutions and government agencies including the U.S. Departments of Education and State. He has worked professionally on 5 continents and sustains research interests in Latin America, Eastern and Western Europe, Central Asia, Africa, and Australia. He is active in various professional organizations and has served as Chair of the Public Policy Advocacy Committee for the Association of International Education Administrators (AIEA) for the past 6 years. Special interests include public policy in international education, ethical management, cultural and intercultural theory, globalization, and experiential pedagogies.

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He was a criminal defense attorney in Brooklyn, N.Y.; a human rights attorney in Chile during the dictatorship; and director of an international public policy office in Washington, D.C. He was the Legal Advisor and ex officio Board of Director member for the Association of International Education Administrators (AIEA) for eight (8) years. He is the recipient of the Timothy J. Rutenber Award from AIEA in 2017 and the Dorothy von Briesen World Citizen Award from the International Institute of Wisconsin (IIW) in 2013. He co-authored with Rajika Bhandari “Harnessing Data to Lead Internationalization” a chapter in Leading Internationalization: A Handbook for International Education Leaders (Stylus Publications, 2018). He has presented at AIEA, Nafsa, FORUM, APAIE, and EAIE conferences on an array of issues impacting the field of international education including strategic partnerships, risk management, international regulatory compliance in global operations, intercultural competence, and comprehensive internationalization.

Dr. Kyle Rausch is an experienced education abroad professional whose work has focused on the oversight of faculty-directed education abroad programs, including the development of program leader training and institutional risk management policies and protocols. Currently serving as the Executive Director of the Study Abroad Office at the University of Illinois at Chicago, Kyle’s experience includes helping institutions build capacity for education abroad, specifically for institutions that serve high numbers of underrepresented students. During his tenure with Arizona State University, Kyle led the faculty-directed programs team to scale programming responsibly, helping move the institution into the top 10 sending institutions as reported by the Institute of International Education.

Kyle has also developed institutional risk management policies for international travel, managed the response to emergencies affecting institutional travelers abroad, and taught and led student groups on-site in Europe. Kyle earned a Doctor of Education from ASU with his research focusing on supporting first-generation college students in education abroad. He earned a Master of Science in Higher Education Administration and a Bachelor’s degree in French and International Affairs from Florida State University. Kyle currently serves on the Council for the Forum on Education Abroad and further volunteers by serving on advisory boards for various education abroad organizations.

REFERENCES


Boisson v. Ariz. Bd. of Regents [2015] (Court of Appeals of Arizona, Division 1.).


*Orson D. Munn III et al. v The Hotchkiss School* [2017] (Supreme Court of Connecticut).


*Regents of the Univ. of Cal. v. Superior Court of L.A. County* [2018] (Supreme Court of California).


Stuart, S., 2010. *In Loco Parentis in the Public Schools: Abused, Confused, and in Need of Change*. Valparaiso University Law Faculty Publications, pp.916-1005. Retrieved May 8, 2022, from [https://scholar.valpo.edu/cgi/viewcontent.cgi?article=1173&amp;context=law_fac_pubs](https://scholar.valpo.edu/cgi/viewcontent.cgi?article=1173&amp;context=law_fac_pubs)


Institutions with extensive international footprints, including those with campuses abroad, real estate holdings, large payrolls, or partnerships with foreign institutions involving significant cash flow, face enhanced regulatory scrutiny from both the U.S. government and its counterparts abroad. International operations on a smaller scale are conducted under the same regulatory umbrellas. International educators and their counterparts in the financial office need to stay abreast of compliance requirements, as well as changes in both the regulatory environment and the global economy that may have a deep impact on operations.

U.S. Department of the Treasury

Office of Foreign Assets Control (OFAC)
https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information

Office of International Affairs (https://home.treasury.gov/about/offices/international-affairs)

U.S. Department of Commerce

Bureau of International Trade Administration (ITA)
https://www.commerce.gov/bureaus-and-offices/ita

U.S. Department of State

Business Resources, https://www.state.gov/business/

U.S. Securities and Exchange Commission

Regulation index, https://www.sec.gov/page/regulation

Internal Revenue Service

International issues relating to tax status and reporting requirements may be found in various pages maintained by the IRS, and accessed through a search engine found at:

www.irs.gov/site-index-search?search=international

https://www.irs.gov/site-index-search?search=international&field_pup_historical_1=1&field_pup_historical=1

State regulations

Regulations affecting international programs are also common at the state level, particularly in populous states which sustain reporting requirements for financial transactions abroad for banks and other business entities. An example is the California Department of Financial Protections, which includes oversight of compliance for international financial transactions. See https://dfpi.ca.gov/foreign-other-nation-banks/#forms
Other Resources

Association of American College and University Programs in Italy
https://aacupi.org/

Association of North American University Programs in Spain
https://english.apune.org/

BNamericas - Develop your Latin America Business
https://www.bnamericas.com/en#financialServices

Canadian Bankers Association
https://cba.ca/

Conducting Education Abroad during COVID-19 - The Forum on Education Abroad
https://forumea.org/resources/guidelines/conducting-education-abroad-during-covid-19/

The Criminal Division of the U.S. Department of Justice, & The Enforcement Division of the U.S.

Directorate of Defense Trade Controls.
https://www.state.gov/bureau-of-political-military-affairs-directorate-of-defense-trade-controls-pm-ddtc/

European Banking Authority
https://www.eba.europa.eu/

European Banking Federation
https://www.ebf.eu/

European Council of the European Union

Ethics, Compliance and Audit Services - University of California Office of the President
https://www.ucop.edu/ethics-compliance-audit-services/compliance/export-control/export-laws.html

Export Administration Regulations (EAR) - Bureau of Industry and Security U.S. Department of Commerce
https://www.bis.doc.gov/index.php/regulations/exportadministration-regulations-ear

The FCPA Blog
http://fcpablog.com

Global Anti-Corruption - Department of Commerce Office of International Trade Administration (ITA)
https://www.justice.gov/criminal-opdat/global-anti-corruption

Institute for Health Metrics and Evaluation - COVID-19 Projections
International Monetary Fund

Institute of International Bankers
https://www.iib.org/

International Trade Regulations Database
https://www.trade.gov/trade-search?q=trade+regulations

IRS 20-Point Checklist for Independent Contractors
https://acrobat.adobe.com/link/review?uri=urn%3Aaid%3Apsc%3A8fb85be8-0b2e-427bb9fb-58e1a273ae3#pageNum=1

Johns Hopkins Coronavirus Resource Center - COVID-19 Map - Johns Hopkins Coronavirus Resource Center
https://coronavirus.jhu.edu/map.html

Know Your Insurance Policy - The Forum on Education Abroad
https://forumea.org/know-your-insurance-policy/

Office of Foreign Assets Control - Sanctions Programs and Information - U.S. Department of the Treasury.
https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information

Office of International Affairs U.S. Department of the Treasury
https://home.treasury.gov/about/offices/international-affairs

Office of Overseas Prosecutorial Development, Assistance, and Training (OPDAT)
https://www.justice.gov/criminal-opdat

Overseas Security Advisory Council
https://www.osac.gov/

Report of Foreign Bank and Financial Accounts (FBAR) - Internal Revenue Service

Sanctions Programs and Country Information - U.S. Department of the Treasury
https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information

Specially Designated Nationals And Blocked Persons List (SDN) Human Readable Lists - U.S. Department of the Treasury
Title 22 - Code of Federal Regulations

Trade Enforcement - U.S. Department of Commerce
https://www.commerce.gov/issues/trade-enforcement

Under Secretary for Management - United States Department of State
https://www.state.gov/bureaus-offices/under-secretary-for-management/

Understanding Employee vs. Contractor Designation - Internal Revenue Service

The United States Department of Justice
https://www.justice.gov/

United States Export Controls - International Trade Administration
https://www.trade.gov/us-export-controls

United States Export Regulations
https://www.trade.gov/us-export-regulations

The United Voice of America’s Banks - American Bankers Association
https://www.aba.com/

World Health Organization Coronavirus (COVID-19) Dashboard
https://covid19.who.int/