



International Compliance Programs for Colleges and Universities

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New York University Global Network University



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NYU Facts

Founded in 1831, New York University is the largest private university in the United States:

- *14 schools, colleges, and divisions, occupies five major centers in Manhattan, including academic medical center*
- *51,000 students*
- *17,000 employees*
- *12 overseas campuses in Africa, Asia, Europe, the Middle East and South America. Currently building 400,000 sq. ft. campus in Abu Dhabi.*
- *NYU leads all universities in students studying abroad*




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NYU - The Global Network University


- ***Portal Campuses:***
 - NYU in Abu Dhabi
- ***Specialized Program Campuses:***
 - Tisch Singapore
- ***Study Abroad Sites/Campuses***
 - Accra, Ghana; Berlin, Germany; Buenos Aires, Argentina; Florence, Italy; London, England; Madrid, Spain; Paris, France; Prague, Czechoslovakia ; Tel Aviv, Israel and Shanghai China
- ***Study Abroad /Joint Degree Programs***
 - Singapore LLM
 - International Executive MBA
- ***Study Abroad /International Exchange Programs***



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Session Overview



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Primary Areas of International Compliance

Compliance Issues at International Sites

- Establishing international sites and campuses
- Operating international sites and programs

Compliance Issues in Study Abroad Programs



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Compliance Issues at International Sites



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Establishing International Sites and Campuses

- *Involve Responsible University Offices*
- *Secure Necessary Local Country Professionals*
- *First Steps: Organizational Compliance Issues*
 - Create the organizational structure/identity
 - Identify initial tax issues
 - Establish banking and monetary transactions authority
 - Consider initial real estate compliance issues
- *Ensure Environmental Health and Safety Compliance*




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Challenge – Establish a System to Get the Right People Involved

- *Responsible University Officials and Departments*
 - Board Of Trustees
 - Legal Counsel
 - Insurance and Risk Management
 - Public Safety
 - Finance/Internal Audit
 - Student Health
 - Compliance




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Identifying Local Resources

- *Local Country Professionals*
 - Local Counsel
 - Local Accountants
 - Payroll Administrators
 - Compensations and Benefits Analysis



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Establishing Local Identity and Presence

Determine the appropriate organizational structure and physical presence for operating in the foreign jurisdiction:

- **Registration:** register your University or otherwise obtain government approval to offer an educational program in the foreign jurisdiction (e.g., education ministries, etc)
- **Structure:** is a separate legal/corporate entity required as a matter of local law?
- **Restrictions:** Are there any restrictions on the activities in the foreign jurisdiction? (e.g. Spain and athletics)




Establishing Local Identity and Presence

(continued)


- **Sponsorship:** Is a local sponsor required to operate (i.e., affiliation agreement with another educational institution, the support of a person or entity resident in the foreign jurisdiction)?
- **Physical presence requirements:** Is a branch office of the University required?
- **Delegations of authority:** Are one or more delegations of authority or powers of attorney required or needed to facilitate the conduct of business? (e.g. outside counsel, other outside professionals and/or site director or other staff?)






Tax Issues

- **Are there tax benefits for charitable donations in the foreign jurisdiction (what type of corporate organization will you have)? (e.g. Tisch in London)**
 - For locally incorporated organizations?
 - For organizations incorporated in the U.S.?
- **Are there foreign jurisdiction tax obligations based on incorporation or registration?**
- **Are there registration or other filings required with respect to tax obligations, exemptions?**
- **Are there foreign jurisdiction tax obligations based on revenues or expenditures (e.g., VAT)?**




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Banking and Monetary Transactions

- ***Determine the appropriate signatories:***
 - **Laws:** Are there local laws that will impact on the designation of banking signatories and transactions (e.g., must a person have residence in the country)?
 - **Customs:** Are there customs or practices that will impact on the designation of banking signatories and transactions (e.g., will the bank require documents to be executed in-person)?
- **Have appropriate corporate authorizations been obtained for bank account and transactions?**
 - If there is a separate entity operating in the foreign jurisdiction, ensure that an account specific or general corporate authorization is in place.
(What is your contract authority policy and how does it apply overseas?)




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Real Estate Issues

- **Will the University lease or own space for its activities, including classrooms, offices, and student and/or faculty residential space?**
- **Determine legal requirements for:**
 - rent payments,
 - tax payments (if any),
 - exercise of any options, and
 - performance of any other requirements under local law, the lease or contract of sale;
 - ensure there are responsible administrative officers identified who will ensure compliance.




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Environmental Health and Safety

- **Research and insure compliance with local laws including zoning, building, fire and safety code requirements.**
 - Ensure that the University conducts an environmental and life safety review of the space to be used.
 - Compare local laws to requirements in U.S. (If U.S. standards are higher will you want to follow them)? (e.g. fire safety and handicap access).



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Compliance Risks When Operating International Sites and Programs



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Compliance Risks Summary

- *Application of University Policies, Code of Conduct*

- *Application of U.S. and Local Laws*
 - U.S. employment laws
 - U.S. laws applicable to students
 - Significant U.S. Laws Regarding International Transactions
 - *Trade Sanctions, Export Controls, Antiboycott Laws and*
 - *Foreign Corrupt Practices Act*
 - U.S. Government Filings




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Compliance Risks Summary (Continued)

- ***Human Resources***
 - Employees and Independent Contractors
 - Compensation and Benefits
 - Termination Rights
- ***Finance and Taxation***
- ***Environmental Health and Safety***
- ***Research/Federal Funding/Intellectual Property***



Application of University Policies and Codes of Conduct





Application of University Policies and Codes of Conduct

- **U.S. Law:** Most University Policies are based on U.S. federal, state and local laws; federal and state grant and contract obligations; institutional academic principles and philosophy.
 - **More Vigorous Policies:** Existing policies may impose operating obligations that are more rigorous than those required by local laws and/or customary practices. (e.g. gifts and conflicts of interest) Do you apply University Policies even if not required to do so?
 - **Less Vigorous Policies:** U.S. laws and/or University policies may be less rigorous than host country laws. (e.g. hotlines and anonymous reporting in EU countries). (Compare also U.S. drug and alcohol abuse prevention policies and foreign laws).
 - **New Obligations:** Local laws may impose obligations not covered by existing University policies.





Look for Significant Differences

- Local laws in foreign jurisdictions that differ fundamentally from U.S. laws or practices (e.g. EU Data Privacy Laws)
- Significant local laws that effect operations (e.g. drugs and alcohol, healthcare)
- Significant local customs, cultural beliefs and practices that impact operations (religious and cultural beliefs and practices)
 - **NOTE WELL:** One role of compliance should be to help your University identify and mitigate risks that might result in reputational damage, even in the absence of local laws.





International Application of U.S. Laws



Do U.S. Laws “Follow” U.S. Persons Overseas?

- **General Rule:** Under U.S. Supreme Court case law, it is presumed that U.S. laws do NOT have international application unless the U.S. Congress intended extraterritorial application. *EEOC v. Arabian American Oil Company*, 449 U.S. 244, 248 (1991)
- **Defense:** Some U.S. laws contain a “foreign laws defense” such that it is a defense to liability under U.S. laws if following the U.S. law would cause a violation of the local foreign law.
- **Remember State and Local Laws too!**






International Application of U.S. Employment Laws and U.S. Laws Involving to Students





Civil Rights Laws Regarding Employment

Statute	Prohibited Conduct	Applies Internationally?	Foreign Law Defense?
Title VI	Race, Color, Religion, Sex, National Origin, Pregnancy	Yes – to U.S. citizens working abroad for U.S. employer	Yes
ADA, Title I	Disability	Yes – to U.S. citizens working abroad for U.S. employer	Yes
Age Discrimination	Age	Yes – to U.S. citizens working abroad for U.S. employer	Yes
Equal Pay Act	Sex (wages)	Unlikely	No
42 USC 1981	Race, Ethnic Origin	No	N/A




Civil Rights Laws – Employment and Federal Contractors

Statute	Prohibited Conduct	Applies Internationally?	Foreign Law Defense?
Ex Order 11246	Race, Color, Religion, Sex, National Origin	Yes – When individual is recruited in the U.S.	No
Section 503 of the Rehabilitation Act	Disability	Yes – cannot make discriminatory hiring decisions in U.S. pertaining to individual in U.S. for overseas employment	No
Vietnam Readjustment Assistance Act	Veterans Status	Yes – cannot make discriminatory hiring decisions in U.S. pertaining to individual in U.S. for overseas employment	No




Civil Rights Laws – Employment and Federal Financial Assistance


Statute	Prohibited Conduct	Applies Internationally?	Foreign Law Defense?
Title VI	Race, Color, National Origin	No – unless purpose of assistance is employment	N/A
Age Discrimination Act	Age	No – unless purpose of assistance is employment	N/A
Title IX	Gender	Yes - Courts have applied to students in study abroad programs, and could be applied to employees	No
Rehabilitation Act	Disability	Yes. Courts have applied to students and employees, but U.S. Department of Education has given conflicting guidance.	No



U.S. Civil Rights Laws Concerning Students


Statute	Prohibited Conduct	Applies Internationally?	Foreign Law Defense?
ADA Title III	Disability	Unlikely, but some accommodation may be necessary	
Title IV	Race, Color National Origin	Probably. Courts have applied similar statutes to U.S. students in study abroad programs, but one court declined to apply to individuals from U.S. who are allegedly discriminated against while attending foreign institutions.	No



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U.S. Civil Rights Laws Concerning Students


Statute	Prohibited Conduct	Applies Internationally?	Foreign Law Defense?
Title IX	Gender	Probably. Courts have applied similar statutes to U.S. students in study abroad programs, but one court declined to apply to individuals from U.S. who are allegedly discriminated against while attending foreign institutions.	No
Rehabilitation Act	Disability	Yes. Courts have applied to students and employees, but U.S. Department of Education has given conflicting guidance.	No



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U.S. Civil Rights Laws Concerning Students


Statute	Prohibited Conduct	Applies Internationally?	Foreign Law Defense?
Age Discrimination Act	Age	Probably. Courts have applied similar statutes to U.S. students in study abroad programs, but one court declined to apply to individuals from U.S. who are allegedly discriminated against while attending foreign institutions.	No
42 USC 1981	Race, Ethnic Origin	No	


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U.S. Laws Related to Facilities

Statute	Prohibited Conduct	Applies Internationally?	Foreign Law Defense?
Title III of ADA	Disability	Unlikely, but Title I and Section 504 impose some obligations to accommodate individuals	No
Title I of ADA	Disability	Yes. Has been applied to U.S. Citizens working abroad for U.S. Employer. Does not apply to non-U.S. citizens unless employment found to in U.S. under “primary workstation” or “center of gravity tests”	Yes
Section 505 of Rehabilitation Act	Disability	Yes. Courts have applied to U.S. students in study abroad programs, but one court declined to apply to individuals from U.S. who are allegedly discriminated against while attending foreign institutions.	No



Other U.S. Laws

Statute	Description	Applies Internationally?	Foreign Law Defense?
Cleary	Campus Security Disclosures	Yes	No guidance in statute or case law
FERPA	Privacy of Student Records	Maybe. No clear Congressional guidance but U.S. Department of Education trains foreign schools that participate in federal financial aide programs to comply.	No guidance in statute or case law
Title IV of HEA	Federal Financial Aid Programs	Maybe. No clear Congressional guidance. Consider U.S. Department of Education approved international programs and branch campuses	No guidance in statute or case law



Significant U.S. Laws Regarding International Transactions

Trade Sanctions, Export Controls, Antiboycott Laws, and Foreign Corrupt Practices Act

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The U.S. Department of Treasury, Office of Foreign Assets Control (“OFAC”)

Country Sanctions: broadly prohibit most transactions between U.S. persons and persons or entities in an embargoed country, at present Burma (Myanmar), Cuba, Iran, North Korea, and Sudan. This prohibition includes importation and exportation of goods and services, whether direct or indirect, as well as "facilitation" by a U.S. person of transactions between foreign parties and an embargoed country.

Specially Designation Nationals (SDNs) OFAC also maintains lists of Specially Designated Terrorists and Specially Designated Nationals and Blocked Persons, with whom U.S. persons are prohibited from engaging in any transactions due to U.S. foreign policy and national security concerns. Transfers of items and information to individuals or entities on these lists are prohibited without the prior approval of OFAC.





U.S. Department of State Directorate of Defense Trade Controls (“DDTC”)

• **Defense Articles, Technical Data and Defense Services:**

International Traffic in Arms Regulations (“ITAR”) governs the export and re-export of defense articles, such as arms, munitions and related technical data, and defense services from the U. S. to any foreign destination, or to any foreign person, whether located in the United States or abroad.


- A **defense article** is an item developed for military application that does not have a predominant civilian application. Defense articles also include certain non-military items, such as commercial satellites, chemical precursors, toxins, and biological agents.
- **Technical data** include drawings or assembly instructions, operations and maintenance manuals, as well as e-mail or telephone exchanges of technical data.




**U.S. Department of State
Directorate of Defense Trade Controls (“DDTC”) (Continued)**

- A ***defense service*** means assistance to a foreign person in the U. S. or abroad in the design, manufacture, repair, or operation of a defense article, as well as providing military training or advice to foreign military forces. Defense services include informal collaboration, conversations, or interchanges concerning technical data.

ITAR is strictly enforced. A license must be obtained before any defense article or defense technical data is exported to or a defense service provide to a foreign country or foreign national.


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**U.S. Department of Commerce,
Bureau of Industry and Security (“BIS”)**

BIS Export Controls- implements and enforces U.S. laws related to the export and re-export of any U.S. item, including equipment, material, software, and technology, from the U. S. to any foreign destination, or the release of certain technology or technical data to foreign persons, whether located in the United States or abroad (“deemed exports”).


Commerce Control List (CCL) - BIS administers the Export Administration Regulations (“EAR”) which are primarily concerned with the export and re-export of “dual-use” goods and technologies, which appear on the CCL. Whether a license is required to export or re-export an item on the CCL is determined by examining the precise classification of the item, the destination of the item, and the end-user.


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**U.S. Department of Commerce,
Bureau of Industry and Security (“BIS”)**


Embargoes - The EAR also governs embargoes placed on export of U.S. items to certain countries, such as Syria. In addition, BIS maintains the Denied Persons List and the Entities List, which identify specific persons and entities to which exports are not permitted without the prior approval of BIS.


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**U.S. Department of Commerce,
Bureau of Industry and Security (“BIS”)**

Antiboycott Laws - BIS also administers U.S. statutes, regulations, and executive orders that govern illegal “secondary” boycotts. These anti-boycott laws seek to prevent U.S. persons from doing business under terms that would restrict that person’s ability to do business with countries under a boycott not recognized by the U.S., such as the boycott of Israel.


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Foreign Corrupt Practices Act




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Foreign Corrupt Practices Act

- The Foreign Corrupt Practices Act (FCPA) regulates the activities of U.S. corporations doing business in foreign countries.
- FCPA prohibits U.S. companies from making “**corrupt payments**” to foreign officials.
- The U.S. Department of Justice is the chief agency enforcing FCPA.




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Key FCPA Elements

- **“Foreign official”** refers to *any* government employee or employee of a state-owned enterprise, political party, political candidate, **or any person acting in an official capacity**. Rank or position is not relevant.
- **“Corrupt payment”** is any payment intended to influence any act or decision of a foreign official in his or her official capacity, to induce the official to do or omit to do any act in violation of his or her lawful duty, to obtain any improper advantage, or to induce a foreign official to use his or her influence improperly to affect any decision. The item of value may be cash, gifts, or entertainment expenses. The payment need not be a direct benefit to the official. Actual knowledge that the item of value will go to a government official need not be proved.



Key FCPA Elements (Continued)

- **“Corrupt payments”** can be made in order to:
 - Obtain improper advantage to get business
 - Avoid duties or tariffs
 - Reduce taxes
 - Get paid on contracts
 - Obtain regulatory approval
- There is no *de minimus* exception.
- FCPA is applicable to all business, not just contracts with the foreign government.



Common Sources of FCPA Violation Risk

Hospitality:

- **Acceptable:** Meals, travel, lodging and small gifts to build good will but not to influence official action (reasonable and bona fide expenditures)
- **Questionable:** First class tickets, payments for spouse/family expenses, pocket money.

Third Parties

- Liability for acts of local subsidiaries, joint ventures, consultants, agents, distributors and brokers
- No actual knowledge required; conscious disregard can establish liability



Operating International Sites and Programs Required U.S. Government Filings

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Foreign Filing Requirement	General description	Additional details/notes	Timing
Section 17 Higher Education Act of 1965	Contracts with or gifts from foreign sources that have a total value of \$250,000 or more for a calendar year	Contract: any agreement for the acquisition of property or services by the foreign source. Foreign Source: foreign gov't, legal entity created solely under the laws of a foreign state, non-US citizen, national, or agent	Jan. 31st or July 31st, which ever is sooner, immediately following the activity that triggers the reporting requirement.
Form 990, Schedule F	Activities (grant making, fundraising, investments, program services, maintaining offices and employees) outside the US with aggregate expenses or revenues of more than \$10,000 during the tax year	Reporting includes: Identification of "region" (based on IRS instructions); # of offices; # of employees; types of activities (includes investments)/description of program services; total expenditures	Part of 990 filing
BE-125	Sales in excess of \$6 mil or purchases in excess of \$4 mil with foreign persons in specific services or intangible assets listed identified by the DOC	Services include, among others, rights to books, cds, audio tapes; trademarks; film and broadcasting; other intangible assets; accounting/auditing/book keeping services; advertising services; construction services/educational and training services; legal; engineering/architectural/surveying services/financial services; PR; research/development/testing; etc.	45 days after the close of each fiscal quarter (or within 90 days after the close of the final quarter of the fiscal year)

Foreign Filing Requirement	General description	Additional details/notes	Timing
FBAR (TD F 90-22.1)	Financial interest or signatory authority over any foreign financial accounts in a foreign country if the aggregate value exceeds \$10,000 at any time during the reporting year (applies to University and individuals – added to 1040)	Financial Account: bank securities, securities derivatives or other financial instruments accounts; savings, demand, checking, and other accounts maintained by a financial institution. Financial Interest: as owner/holder of legal title; interest in ownership through agent, trust, partnership, corporate control.	On or before June 30 (Individual must also report on personal 1040)
IRS Form 5713	Operations in or related to a boycotting country, or with the gov't, a company, or a national of a boycotting country	Boycotting country: (as of 12/08) Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, UAE, Yemen.	with tax return
BIS-621P	Report a request for a restrictive trade practice or boycott (single transaction)		To be filed if University receives a "request" to comply with a boycott not recognized by the US (i.e., boycott of Israel)



Operating International Sites and Programs Additional Foreign Compliance Issues



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Operating International Sites and Programs

- *Human Resources*
 - Employees and Independent Contractors
 - Compensation and Benefits
 - Termination Rights
 - Taxation
 - Other Issues
- *Environmental Health and Safety*
- *Finance*
- *Research/Federal Funding/Intellectual Property*



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Human Resources – Nature of Employment

- ***“At-will” employment under U.S. common law is unique***
 - Must distinguish between U.S. employees “seconded” for a fix and limited period of time; longer term employment of U.S and “Third Country Nationals” or (TCNs) and “Local Hires.”
 - U.S. law and most labor laws in foreign jurisdictions differ significantly in treatment of “employees” vs. “independent contractors.”
 - Many Countries (e.g. Spain) require employees, including “part-time” employees to have written employment contracts;
 - Employee rights in termination process in most foreign countries vary significantly from U.S. law (which tends to favor employers).




Human Resources – Compensation and Benefits

- ***The terms and conditions of employment may vary significantly from country to country:***
 - minimum employee salaries and overtime pay; (minimum time of in Czech Republic)
 - sick and vacation leave; (e.g. mandatory maternity and child care benefits in Singapore)
 - health care and other benefits (e.g. health benefits in Abu Dhabi and Singapore; pension benefits in Spain, life insurance benefits in Argentina)





Human Resources -Taxation

- ***Taxation issues regarding employees in foreign jurisdictions are generally complicated and require assistance of experts***

- U.S. income tax laws exempt a large portion of U.S. expats' earned income from taxation. Many expat benefits (e.g. housing allowance, tuition assistance for minor children) are “grossed up” for employees.
- U.S. has treaties and MOU's with foreign governments regarding taxation of U.S. persons working abroad.
- Universities must understand and implement necessary controls regarding for tax withholding for U.S. persons, TCNs, and Local Hires.





Human Resources – Other Issues

Immigration and work visas: Each country has its own requirements related to the issues and terms and conditions for issuing immigration and work visas to U.S. persons and third country nationals who wish to be employed in that country.

Human resources manuals: Human Resources policies and manuals may need to be modified and/or developed for each site in order to reflect the requirements of host country laws.







Finance

- ***Internal Controls:***

Universities establish internal controls to prevent and/or detect fraud and ensure that financial records comply with U.S. “Generally Accepted Accounting Principles” (GAAP). At some international sites small staff size may make normal internal controls, such as segregation of duties, difficult to achieve in every accounting function.



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Finance (Continued)

- ***Internal Controls*** (continued)


Segregation of Duties: Ensure financial officers review organizational charts and descriptions of employees’ duties to allow for appropriate segregation of duties to the extent possible, particularly involving functions related to banking accounts, cash, and procurement.

Signatory authority for bank accounts and contracts should be reviewed. The handling of cash, inventory and disposition of assets procedures should be periodically monitored.

Receipts for cash reimbursement be translated into English whenever possible.




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Finance (Continued)

- ***Foreign Currency Transactions:*** A methodology for periodic review and recording of foreign currency transactions and exchange rate fluctuations should be established for overseas bank accounts. Local laws related to international currency transfers and transactions should be reviewed with General Counsel.
- ***International Accounting Rules:*** US Universities follow U.S. GAAP when creating and maintaining financial accounting records. International accounting principles differ from U.S. GAAP. Determine whether host country laws require the use of international accounting rules.




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Environmental Health and Safety

- ***U.S. Laws:*** Most University EHS programs are based regulations administered by a number of U.S. federal agencies (e.g. Labor (OSHA), Environmental Protection Agency (EPA), Health and Human Services (HHS), National Institute for Health (NIH), the Center for Disease Control (CDC), and Department of Transportation (DOT)) as well as state (Department of Environmental Conservation) and local laws and regulations. Local Foreign Laws may vary significantly and availability of critical information required by U.S. laws such as Material Data Safety Sheets for chemicals may not be available from foreign sources.
- ***International Laws and Conventions:*** Become familiar with applicable international standards that apply for shipping (International Air Transportation Association (IATA) Dangerous Goods Regulations) and use of biological agents (World Health Organization (WHO) Guidelines).



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Research/Federal Funding/Intellectual Property


International research restrictions: Many federal agencies that issue research and other grants restrict the ability to carry out federally funded research at overseas locations.

Human Subjects, Biological and Animal Research: U.S. standards may apply to a university's overseas activities. However, additional safeguards may be required (e.g. local representation on IRBs). Moreover, local foreign laws may apply greater or different restrictions on such research (e.g. Qatar human subjects research standards). Under all circumstances, international standards should be followed where they provide greater protections for research subjects than local laws.

Intellectual Property Laws: May differ significantly from U.S. federal IP laws. (e.g. publication grace period before patent filings) Also, remember some fundamental issues involving university IP rights in the U.S. (e.g. university v. researcher rights) are governed by State common law principles that may not be applicable in foreign jurisdictions.




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Student Affairs

Student conduct policies should be reviewed in light of host country laws. For example, host country due process rights should be examined and, when appropriate, applied in student disciplinary proceedings. (Consider also other significant substantive laws, such as drug and alcohol use).

Student policies and manuals should be modified and/or developed for overseas sites in order to reflect the requirements of host country laws.




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Study Abroad – Compliance Issues

Student and faculty visa requirements: Countries' entry requirements vary, depending upon the nationality (passport) of the faculty member or student entering the country. Faculty members may need business visas or other form of permission, rather than a simple tourist visa, when traveling to a country on official, paid NYU business.




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Study Abroad – Compliance Issues (Continued)


Global Studies Consultants and Placement Agencies The New York State Attorney General has scrutinized agreements through which colleges and universities have received payments such as commissions or benefits such as free travel for employees from consultants or agencies, to determine whether the costs were or may be passed on to students enrolled in the program. Contracts with global studies consultants or agencies related to student travel should be reviewed by General Council for provisions that may raise compliance risks, such as mandatory health insurance, travel “excursions”, etc.



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Questions ?



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