

2008 MTRA Annual Conference Jackson Hole, Wyoming

OFAC – A Four Letter Word You Should Know and Use



OFAC
Office of Foreign Assets Control

September 04, 2008

Who is OFAC?

Office of Foreign Assets Control (OFAC)

U.S. Department of the Treasury



OFAC administers and enforces economic and trade sanctions against targeted:

- **Foreign governments**
- **Individuals**
- **Entities**
- **Practices**



Statutory Authority

Trading with the Enemy Act (TWEA) (50 U.S.C. app. § § 1-44)



Primary legal authority for the Cuba program



Statutory Authority

International Emergency Economic Powers Act (IEEPA)

(50 U.S.C. §§ 1701-06)



Primary legal authority for all non-TWEA programs



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Jurisdiction: Individuals



Individuals

- American citizens and permanent resident aliens located anywhere in the world
- Any individual, regardless of citizenship, who is physically located in the United States



Jurisdiction: Businesses



Commercial Entities

- Corporations organized under U.S. law, including foreign branches of U.S. companies
- Any corporation or company physically located in the United States, including U.S. branches, agencies and representative offices of foreign corporations



Blocking



“Freezing” assets under U.S. jurisdiction

Imposes an across-the-board prohibition against transfers or transactions of any kind with regard to the property



Property; property interest



§ 500.311

“...contracts of any nature whatsoever, services, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.”

§ 500.312 Likewise, “property interest” is defined as any interest whatsoever, direct or indirect.



Licenses

General License

Regulatory provision authorizing certain transactions without written authorization from OFAC

Specific License

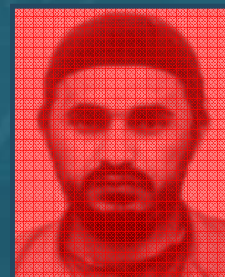
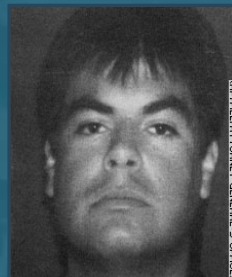
A written authorization from OFAC issued on a case-by-case basis to a specific individual or company allowing an activity that would otherwise be prohibited by the embargo or sanctions program



Specially Designated Nationals and Blocked Persons

SDNs

- Over 3500 unique entities identified by OFAC
- Individuals or entities all over the globe
- Owned, controlled by or acting on behalf of targeted governments or groups
- May be front companies, parastatals, high-ranking officials or specifically identified persons
- Designated narcotics traffickers, terrorists, terrorist groups, WMD proliferators and support networks



<http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml>



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Sanctions Programs

Comprehensive Programs

Cuba

Iran

Sudan

Anti-Terrorism

Counter Narcotics Trafficking

Non-Proliferation (WMD)

Limited Programs

Burma (Myanmar)

North Korea

Syria

Diamond Trading

Regime-Based Programs

Balkans

Belarus

Cote D'Ivoire

Dem. Republic of the

Congo

Former Liberian Regime of

Charles Taylor

Zimbabwe

<http://www.treas.gov/offices/enforcement/ofac/programs/index.shtml>



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Sanctions Programs

In general, the following are prohibited under *comprehensive* sanctions programs:

- Facilitation
- Any attempt to evade or avoid the sanctions



A Reasonable Approach to OFAC Issues

A Reasonable program to address OFAC Issues:

- Risk Assessment
- Internal Controls
- Independent Testing
- Designated Individual
- Training



Risk Assessment



- Foreign or Local Customer or Consumer, or Destined for a Foreign Location
- Money Transmission
- Check Cashing
- Issuers of traveler's checks, money orders and stored value cards
- Sellers or redeemers of traveler's checks, money orders or stored value cards, mobile transactions
- Currency dealers or exchangers



Internal Controls

Flagging and review of suspect transactions and accounts

- Manual or Automated?
- What is the financial institution's process for determining if it has a valid OFAC "hit" or "match"?

Updating compliance programs

Reporting

Management of blocked accounts



Independent Testing

Is an independent test conducted by internal audit?
Outside auditors? Consultants? Another qualified
independent party?

What were the results of the test?

What steps were taken to remedy the program's
weaknesses?



Responsible Individual



Is there a designated MSB individual responsible for the day-to-day OFAC compliance?

What is the reporting structure to that individual who is responsible?

Is there a back-up individual for emergency situations or vacation leave?



Training



What kind and quality of training is provided to staff? Is it consistent with the risk-profile for that particular area of operations?

When was training last conducted? By who?

What is the scope and frequency of training provided?



Enforcement

Economic Sanctions Enforcement Procedures for Banking Institutions published January 12, 2006. Guess What! May Be Used by MSB for Non-Bank Financial Institutions

http://www.treas.gov/offices/enforcement/ofac/legal/regs/fr71_1971-1976.pdf

Memorandum of Understanding (MOU)

- 23 States and 1 U.S. Territory

<http://www.treas.gov/offices/enforcement/ofac/civpen/index.shtml>



Enforcement

Proposed civil penalties generally will be the statutory maximum or the dollar value of the transaction involved, whichever is less.

\$65,000	Trading With the Enemy Act
\$250,000	International Emergency Economic Powers Act now include fines not to exceed the greater of \$250,000.00 or twice the value of the transaction forming the basis for the fine.
\$1,075,000	Foreign Narcotics Kingpin Designation Act
\$55,000	Anti-Terrorism and Effective Death Penalty Act

Mitigating factors may also be considered:

- Voluntary-disclosure
- First time or inadvertent offense
- Policy, Procedure, Process in place



Resources

OFAC Homepage

www.treas.gov/ofac

Current Sanctions Programs

www.treas.gov/offices/enforcement/ofac/programs/index.shtml

Frequently Asked Questions

www.treas.gov/offices/enforcement/ofac/faq/index.shtml

OFAC Brochure for the Financial Community and MSBs

<http://www.treas.gov/offices/enforcement/ofac/regulations/facbk.pdf>

Subscribe to OFAC Alerts

http://www.treas.gov/offices/enforcement/ofac/abarrs/e_notice.shtml



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