Economic Sanctions Considerations for Money Transmitter Regulators

The information in this presentation is provided for training purposes and does not have the force of law. It is current as of September 24, 2017.
Agenda

• Overview of OFAC and Economic Sanctions
• Current Sanctions Programs and Recent Updates
• OFAC Compliance Programs
• OFAC Enforcement Process
• OFAC Enforcement Case Study
• Q&A
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

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OFAC Overview

Who and What Must Comply with OFAC Regulations?

• **Individuals**
  - U.S. citizens and permanent residents located anywhere in the world
  - All individuals – regardless of citizenship – located in the United States

• **Entities**
  - U.S.-incorporated entities (including foreign branches) located anywhere in the world *(plus foreign subsidiaries for Cuba/Iran)*
  - All entities located in the United States

• **Transactions**
  - All transactions that involve – directly or indirectly – the United States or a U.S. person

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Comprehensive Sanctions Programs

- Typically entail broad export/import prohibitions targeting a country or geographic region
- Programs often “block” a sanctioned country’s government and certain parties on OFAC’s SDN List
- U.S. persons and transactions involving the United States must comply with prohibitions
- Current comprehensive sanctions programs: Crimea, Cuba, Iran, North Korea, Syria
Targeted / List-Based Sanctions Programs

- Typically entail **asset blocking measures** targeting individuals and entities identified on **OFAC’s SDN List**

- U.S. persons are prohibited from dealing with blocked persons: **provision or receipt of funds/goods/services prohibited**

- *Do not typically involve* export/import prohibitions on a country or region

- *Do not typically involve* many exemptions or general licenses

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OFAC Overview

OFAC’s Sanctions Search List

- The List includes the List of Specially Designated Nationals and Blocked Persons which is OFAC’s prohibited parties list.
- Includes several additional list administered by OFAC like the 13599 List, Sectoral Sanctions List, and 561 List.
- Includes individuals, entities, vessels, and banks.
- Transactions by U.S. persons and in the United States with blocked persons or SDNs are prohibited.
- Updated FREQUENTLY.

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Exemptions and Licenses

• Exemption
  – A category of transaction or activity exempt from prohibition

• General License
  – A broad authorization related to a category of transactions or type of conduct – no specific authorization required
  – Example: personal remittances authorized under most comprehensive sanctions programs

• Specific License
  – A specific authorization issued on a case by case basis

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OFAC Overview

Current Comprehensive Sanctions Programs

- Crimea
- Cuba
- Iran
- North Korea
- Syria

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OFAC Overview

Current Targeted/List-Based Sanctions Programs

- Balkans-Related
- Belarus
- Burundi
- Central African Republic
- Counter Narcotics
- Counter Terrorism
- Cyber-Related
- Democratic Republic of the Congo-Related
- Iraq-Related
- Lebanon-Related
- Libya
- Magnitsky
- Non-Proliferation
- Rough Diamond Trade Controls
- Somalia
- Sudan and Darfur Sanctions
- South Sudan-Related
- Transnational Criminal Organizations
- Ukraine-/Russia-Related
- Venezuela-Related
- Yemen-Related
- Zimbabwe

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Sanctions Program Updates

CUBA Updates:
• 2015 – 2016 regulatory changes
• Increased authorizations for U.S. businesses and persons
• Highlight for MTRA: remittance dollar limits removed

IRAN Updates:
• 2015 Joint Comprehensive Plan of Action (JCPOA)
• 2016 Implementation Day for JCPOA
• Highlight for MTRA: comprehensive sanctions remain in place, but personal remittances remain authorized

NORTH KOREA Updates:
• 2016 shift into a comprehensive sanctions program
• Highlight for MTRA: personal remittances authorized

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OFAC Compliance Programs

- Independent function
- Evaluate controls adequacy
- Identify and remediate program deficiencies

Risk Assessment

- Customer Risk
- Product Risk
- Geographic Risk

Independent Testing/Audit

- Frequency and scope
- Clear goals and objectives
- Adequate staffing levels

Training & Personnel

- Policies and procedures
- Screening (trns & accts)
- CDD/KYC/DD/EDD

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OFAC Risk Assessment

• Size and location
  – The company and its business operations

• Customer base
  – How well does the company know its customers?

• Partners
  – Brokers, intermediaries, suppliers

• Products and Transactions
  – Complexity, cross-border, potential diversion, transparency
## OFAC Internal Controls

### Policies

*What the company should be doing (or not doing)*

- Can be broad or narrow
- Clearly communicate goals
- Support from senior management – creation and implementation
- Evolve as needed

### Procedures

*Steps to ensure compliance with policies and mitigate risk*

- Easy to follow, step-by-step instructions for each process
- Work in tandem with policies
- Staff input helps develop effective procedures
- Evolve with policies & systems
OFAC Internal Controls

**OFAC Procedures**

1. Identify suspect transactions/parties
2. Investigate potential sanctions nexus
3. Initiate contact with OFAC (as appropriate)
4. Document the incident

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OFAC Training and Personnel

**Designating a Compliance Officer**

- Should be knowledgeable about OFAC regulations
- Should maintain strong lines of communication within the company and across business units
- Should develop a written compliance program that includes policies and procedures
- Should have authority over the business lines, senior management support, and a designated back-up officer

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OFAC Training and Personnel

**OFAC Training Program**

- General training to all employees
- Comprehensive training to all employees in high risk areas
- Annual (or more frequent) refreshers
- Timely updates when OFAC issues a new sanctions program, changes an existing program, or publishes new guidance
- Incentivize employees so that they invest in their OFAC training

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OFAC Testing and Audit

Testing and Audit Goals

Evaluate effectiveness of program
- What is working and what needs improvement?

Identify deficiencies and test remedial measures
- Did the measures fix the problem?
- Will they prevent future problems?

Understand emerging risks and trends
- Informs necessary updates

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OFAC Testing and Audit

OFAC Compliance Program Components Subject to Testing

- Filtering program
- System performance
- Risk assessment and matrices
- Policies and procedures
- Escalation process
- Internal communication
- External communication
- Record-keeping
- OFAC licenses
- Training program
- Plans for improvement

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How Does OFAC Learn of an Apparent Violation?

- **Reports** of Blocked or Rejected Property
- Voluntary self-disclosures (VSDs)
- Ongoing or existing **cases**
- Informants and **tips**
- **Research** or other publicly available information
- **Referrals** from other agencies – including yours!
  - Federal and state regulators, foreign regulators, law enforcement
OFAC’s Investigative Process

OFAC Enforcement Process

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OFAC’s Subpoena Authority

If OFAC requires additional information regarding an apparent violation, it may compel information from the Subject Person or third parties by issuing an administrative subpoena pursuant to 31 CFR part 501.602.

OFAC subpoenas typically require a response within 30 calendar days of the date of issuance.

OFAC may issue an extension to the response deadline pursuant to a written request from the Subject Person.

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OFAC’s Economic Sanctions Enforcement Guidelines

• OFAC’s Enforcement Guidelines are a general framework for the enforcement of all sanctions programs administered by OFAC.

• The Enforcement Guidelines clarify critical components of OFAC’s enforcement process:
  – Definitions
  – Types of enforcement responses
  – Factors OFAC will evaluate
  – Civil penalties information

• The Enforcement Guidelines apply to both OFAC’s financial sector and non-financial sector enforcement processes.

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OFAC Enforcement Process

Sanctions Enforcement Options: By Severity

- No Action Letter
- Cautionary Letter
- Finding of Violation
- Civil Penalty
- Criminal Referral

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OFAC Enforcement Process

Sanctions Enforcement Options: By Volume

No Action Letter
Cautionary Letter
Civil Penalty: Settlement
Civil Penalty: Penalty
Finding of Violation
Criminal Referral

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OFAC Enforcement Process

OFAC’s Penalty Matrix

1. One-Half of Transaction Value
   Capped at $125,000 per violation

2. Applicable Schedule Amount
   Capped at $250,000 per violation

3. One-Half of Statutory Maximum

4. Statutory Maximum

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Statutory Maximum Penalties

• **TWEA (Trading With the Enemy Act)**
  – Statutory maximum penalty: **$85,236 per transaction**
  – Sanctions program affected: Cuban Assets Control Regulations

• **Foreign Narcotics Kingpin Act**
  – Statutory maximum penalty: **$1,437,153 per transaction**
  – Sanctions program affected: Foreign Narcotics Kingpin Sanctions Regulations

• **IEEPA (International Emergency Economic Powers Act)**
  – Statutory maximum penalty: **$289,238 per transaction OR twice the value of the transaction (whichever is greater)**
  – Sanctions programs affected: all others

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### Sample Penalty Calculation (IEEPA Violations)

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<th>Amount</th>
<th>Box #1</th>
<th>Box #2</th>
<th>Box #3</th>
<th>Box #4</th>
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<td>$125,000</td>
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<td>$20,000,000</td>
</tr>
</tbody>
</table>

**Total Trn Value:** $11,100,000

**Box 1 Penalty:** $305,500

**Box 2 Penalty:** $705,000

**Box 3 Penalty:** $11,375,000

**Box 4 Penalty:** $22,750,000

*Note: the same set of transactions could result in very different penalty amounts*

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The General Factors Affecting Administrative Action

• OFAC’s Enforcement Guidelines outline 10 General Factors Affecting Administrative Action that OFAC must analyze.

• OFAC’s egregiousness determination relies primarily on General Factors A, B, C, and D.

• The base penalty amount may be adjusted to reflect applicable General Factors.

• Each factor may be considered mitigating or aggravating, resulting in a lower or higher proposed penalty amount.

• Neither the Base Penalty nor the Proposed Penalty can exceed the applicable statutory maximum amount.

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General Factors Affecting Administrative Action

- A. Willful or Reckless Violation of Law
- B. Awareness of Conduct at Issue
- C. Harm to Sanctions Program Objectives
- D. Individual Characteristics
- E. Compliance Program
- F. Remedial Response
- G. Cooperation with OFAC
- H. Timing of Apparent Violation in Relation to Imposition of Sanctions
- I. Other Enforcement Action
- J. Future Compliance/Deterrence Effect
- K. Other Relevant Factors
# OFAC Enforcement Process

## Non-Public Enforcement Actions
- No Action Letter
- Cautionary Letter
- Pre-Penalty Notice

## Public Enforcement Actions
- Settlement
- Civil Monetary Penalty
- Finding of Violation

### Non-public actions are available only to the subject institution and OFAC

Pursuant to a Memoranda of Understanding (MOU) OFAC may share non-public (and public) actions with an institution’s regulator

### Public actions are posted on OFAC’s website with a summary of the transactions giving rise to the violations or apparent violations and related conduct.

OFAC may also publish settlement agreements.

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OFAC Enforcement Process

OFAC/Regulator MOUs

Examination authority for OFAC compliance programs is delegated to state and federal regulatory agencies.

MOUs are formal agreements that set out procedures for the exchange of certain information between regulatory authorities and OFAC.

Information can go either from OFAC to the regulator or from the regulator to OFAC.

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Enforcement Case Study

2015 Settlement Between OFAC and an MSB

• As part of a larger settlement with the MSB, OFAC highlighted a specific set of problematic transactions in its public web posting:

  • 136 transactions totaling approximately $7,000
  • Transactions occurred between October 2009 and April 2013
  • OFAC determined the transactions were voluntarily self-disclosed and constituted an egregious case
  • The base penalty amount was $17,000,000
  • OFAC published a statement of facts and its analysis of the MSB’s conduct

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Enforcement Case Study

Timeline of Events

- **Pre-January 12, 2009** – MSB opens account for Kursad Zafer Cire
- **January 12, 2009** – Cire is designated and added to SDN List
  - **July 30, 2009** – MSB’s filter flags accountholder as a potential SDN
  - **September 3, 2009** – MSB’s filter flags accountholder again
  - **October 21, 2009** – MSB’s filter flags accountholder again
  - **October 24, 2009** – MSB’s filter flags accountholder again
  - **November 16, 2009** – MSB’s filter flags accountholder again
  - **February 14, 2013** – MSB’s filter flags accountholder again
  - **April 3, 2013** – MSB’s filter flags accountholder again and the MSB appropriately blocks the account and reports it to OFAC

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Enforcement Case Study

Egregiousness Determination

• ...the MSB demonstrated a reckless disregard for U.S. economic sanctions requirements...

• ... employees cleared name matches against Cire’s account on six separate occasions...

• The conduct was particularly reckless... after September 3, 2009 – the date that an MSB agent dismissed the second alert...

• ... engaged in a pattern of conduct by repeatedly ignoring certain warning signs about potential matches to the SDN List...

• ... the MSB provided economic benefit to Cire...

• ... multiple MSB agents failed to adhere to the MSB’s policies and procedures pertaining to SDN match escalation.
Enforcement Case Study

OFAC adjusted the base penalty amount of the case after evaluating the General Factors.

The final settlement amount (which also included a separate set of apparent violations) was approximately $7.6 million.

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