What You Should Know About OFAC Sanctions AND the Pitfalls to Avoid

Quick Review of OFAC

The Office of Foreign Assets Control (OFAC) has been established by the U.S. Department of the Treasury to administer and enforce the United States' economic sanctions programs. Sanctions can either be individual or extensive, but are typically focused on specific individuals and entities such as drug traffickers, money launders, or terrorists as well as other threatening entities and countries. These sanctions are established primarily to impose trade restrictions and block assets that can impede national security goals, go against foreign policy, or inflict harm onto humanity. OFAC sanctions are established in accordance to international mandates, United Nations mandates, and other relationships with governments considered as allies to the United States.

What You Should Know

OFAC sanctions often overwhelm organizations as they struggle with fulfilling its business objectives for increased profit margins and its requirements to not associate and do business with sanctioned entities. OFAC's lengthy lists and its ever-changing sanctions intimidate and confuse many. As a result, the risk of doing business with OFAC sanctioned entities has some organizations believing the risk is worth the reward. In its most simplistic form, regardless of who you are, OFAC sanctions exist and organizations are subject to adhere to them. Enforcement actions are on the rise for OFAC violations as regulators, examiners, and other authority figures diligently pursue those who fail to comply. Here is what everyone should know about OFAC:

Who does OFAC apply to?

OFAC applies to all U.S. persons. Per the U.S. Treasury, "U.S. persons must comply with OFAC regulations, including all U.S. citizens and permanent resident aliens regardless of where they are located, all persons and entities within the United States, all U.S. incorporated entities and their foreign branches. In the cases of certain programs, foreign subsidiaries owned or controlled by U.S. companies also must comply. Certain programs also require foreign persons in possession of U.S.-origin goods to comply."

Prohibited Transactions Defined

Prohibited transactions are defined by OFAC as "trade or financial transactions and other dealings in which U.S. persons may not engage unless authorized by OFAC or expressly exempted by statute. Because each program is based on different foreign policy and national security goals, prohibitions may vary between programs." Organizations are required not participate in such activity unless authorized, or has a license to do so. By not obtaining the appropriate authorizations will deem the organization as violating OFAC.

Costly Consequences

Failing to comply with OFAC rules and regulations is a costly decision. OFAC violations can result in:

- Substantial fines
- Criminal penalties for willful violations
- Fines ranging up to $20 million and imprisonment of up to 30 years.
- Civil penalties for violations of the Trading With the Enemy Act can range up to $65,000 per violation
- Civil penalties for violations of the International Emergency Economic Powers Act can range up to $250,000 or twice the amount of the underlying transaction for each violation.
- Civil penalties for violations of the Foreign Narcotics Kingpin Designation Act can range up to $1,075,000 for each violation.

Staying Up-to-date with Current Sanctions

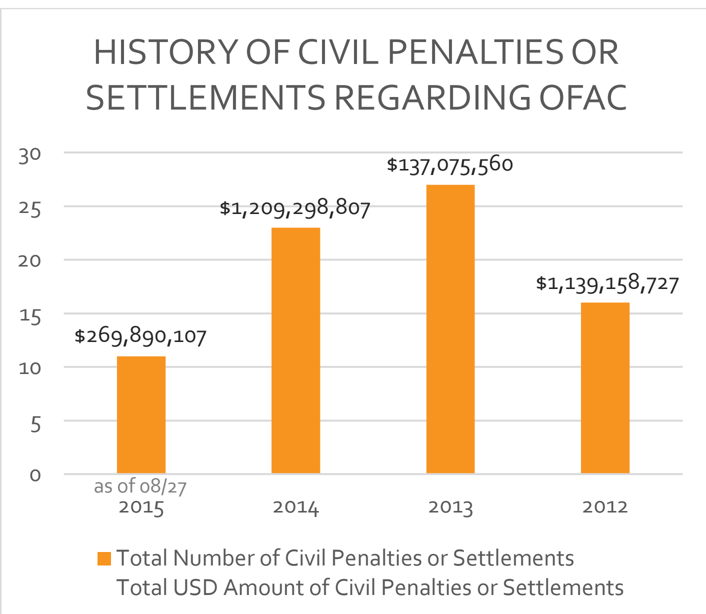
Sanctions, embargoes, and other OFAC restrictions can change routinely. It is the responsibility and expectations that organizations stay current with all and any changes, and act accordingly to ensure prohibited transactions do not occur. OFAC lists, programs, and sanctions is readily available to all at the U.S. Treasury's website. Because of its availability, organizations cannot claim that they did not have knowledge of any sanctions. This is another reason that why tolerance for non-compliance with OFAC is extremely low, or non-existent.

"Failing to comply with OFAC rules and regulations is a costly decision"

Failing to Follow to OFAC Sanctions

With the increased focus and emphasis on sanctions, regulators, examiners, and authorities have developed a decreased tolerance for organizations who fail to obey OFAC sanctions, as well as other OFAC requirements. OFAC clearly defines what sanctions are in effect and provides clear requirements on what organizations are to do regarding them. Failing to do so has costed many organizations severe civil penalties and settlements.

The table below outlines the civil penalties and the amounts that OFAC has imposed in recent years.



77 PENALTIES TOTALLING USD 2,755,423,201

SOURCE: WWW.TREASURY.GOV

Any organization who fails to comply with OFAC sanctions is exposed to potential OFAC civil penalties. Sanction violations can be imposed regardless of the type of organization, the number of infractions, or the dollar amounts associated with those transactions. Any infraction of OFAC sanctions is considered serious, willful non-compliance to OFAC regulations, and subjects an organization to steep civil penalties and other enforcement actions.

A Look at Recent OFAC Sanction Violations Imposed

	Settlement Amount	Findings
UBS AG (8/27/15)	$1,700,100	Potential civil liability for 222 apparent violations of the Global Terrorism Sanctions Regulations
PayPal Inc. (3/25/15)	$7.7 million	Inadequate compliance processes to "identify, interdict, and prevent" transactions that resulted in 486 violations of OFAC sanctions programs within only $43,934 worth of transactions
Navigators Insurance Co. (8/6/15)	$271,815	Potential civil liability for 48 apparent violations of the Foreign Assets Control Regulations of "Continuing Certain Restrictions With Respect to North Korea and North Korean Nationals;" the North Korea Sanctions Regulations; the Iranian Transactions and Sanctions Regulations, the Sudanese Sanctions Regulations, and the Cuban Assets Control Regulations

Pitfalls of OFAC Sanction Compliance

Being compliant with OFAC sanctions regulations requires an organization to be more than just familiar with their requirements. Organizations must have a comprehensive understanding of its organization and its operations to ensure that gaps do not exist that would permit violations of OFAC sanctions. To ensure gaps do not exist, an organization first must understand what OFAC pitfalls they need to avoid.

POLICIES & PROCEDURES

Failing to establish policy, procedures, and processes that adequately support the requirements and expectation of OFAC.

Failing to develop, implement or revise the policy and procedures for each new sanction or provision outlined in the OFAC sanctions

ACCOUNTABILITY

Failing to establish OFAC roles and responsibilities to personnel, and to implement appropriate consequences for non-compliance

MONITORING

Establishing and/or performing inadequate monitoring of the institution's OFAC practices as well as the behavior of its lending personnel

Inadequately monitoring and identifying risks that could impose significant threats of sanctions violations

ANONYMITY OF OWNERSHIP

Failing to adequately implement and execute processes to identify all owners

Failing to take appropriate steps to mitigate significant risk of potential sanction violations for not appropriately determining ownership

IDENTIFYING PARTIES WITH BENEFICIAL INTERESTS IN ENTITIES

Failing to recognize and properly identify all parties which have a beneficial interest with the organization's entities.

OFAC AND CIP PROGRAM DISCONNECTION

Failing to include sufficient and comprehensive OFAC processes within the Customer Identification Program (CIP)

AUDITS

Failing to enhance the internal audit program or requiring an external audit program, to examine and review for compliance for OFAC

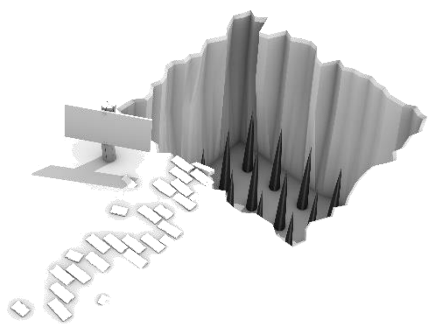
Avoiding Pitfalls

Once an organization acknowledges those potential pitfalls, steps can be taken to ensure they can avoid them. Each pitfall not address can lead to potential OFAC sanctions violations, and each should be addressed accordingly. These pitfalls often work together. To overcome one may require an organization to tackle several. Overcoming these pitfalls will assist an organization in mitigating their efforts with OFAC sanction compliance. So, what can an organization do? Below are just some ways that organizations can overcome those OFAC sanctions pitfalls.

Establishing Roles and Responsibilities. Establishing effective OFAC oversight requires an organization to clearly define OFAC responsibilities and requirements with the established responsibilities of employees. OFAC training is to be completed by employees, and further supported by an organization's Board and/or Senior Management. Consequences for non-compliance with OFAC should be clearly defined and enforced. Employees should be aware of the potential consequences, not only for themselves, but the organization should an OFAC violation occur.

Comprehensive Bank Secrecy Act (BSA) and OFAC Program. Part of a comprehensive BSA program is a robust Customer Identification Program (CIP). The CIP is responsible for determining the identification of customers, vendors, businesses, owners, beneficial interests and other parties through processes and procedures. As part of this process, conducting an OFAC check on those parties needs to be a critical component of an overall CIP program to ensure nothing gets missed, and subsequently, result in an OFAC violation.

Staying Current. OFAC lists and sanctions can change at any time, and as such, organizations are tasked with ensuring their organizations is complying with OFAC changes. All programs within an organization that has OFAC implications need to address and incorporate those changes into their respective programs.



Risk Assessments and Periodic Reviews. Appropriate risk assessments regarding OFAC compliance is vital. Third-party relationships and operations, as well as new products, services, customers, vendors, and other factors may not only require policies and procedures to be revised, but also risk assessments. Because of the increase risk associated with new relationships and operations, it is important that an organization's risk assessments are current and periodically reviewed and updated or revised as needed. Failing to do so could result in prohibited transaction and entities not being properly identified.

Enhanced Due Diligence. As part of an organization's overall enhanced due diligence processes, those entities who are identified as high risk to an organization should also be monitored routinely against the OFAC lists and sanctions. It should not be assumed it is being done as part of other processes with the organization. Confirmation should be received and documented for high risk customer OFAC screening.

Improve or Enhance Information Technology. Implementing comprehensive information technology is a must for monitoring for prohibited transactions. Comprehensive IT allows organizations to perform appropriate due diligence on its entities, customers, vendors, and employees against OFAC lists (such as the SDN list) to ensure that they do not engage in any activities with those on sanctions lists.

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At the End of the Day

OFAC sanctions affects everyone in some way, and is meant as a form of protection for many. Some may believe that some of the OFAC sanctions are too aggressive, while others feel there should be more. Others have praised the sanctions as a way to deter "the bad guy" from doing crime, while others will argue that it limits one ability to produce revenue or profit. Whatever is believed, OFAC sanctions is an inevitable fact and requirement that organizations have to accept and abide by. Failing to do so will have costly, and possibly detrimental, consequences. It an organization's responsibility to be proactive in their endeavors to ensure OFAC sanctions are complied with. And the first step is ensuring that they are preventing those OFAC pitfalls from occurring.

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