The Basics of Export Compliance Summer Webinar Series

Sanctions and Embargoes: What it means to you?

August 5, 2014

Phone dial-in (for audio):
1-888-790-1822
Passcode: 4722426

Today’s Trainers

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Sanctions Risk and Responsibility: OFAC Compliance Strategies

August 5, 2014

Polina Kropacheva
Sanctions Compliance Officer

The information contained in this document is current as of August 5, 2014. This document is explanatory only and does not have the force of law.

Agenda

- What is OFAC?
- Best practices for compliance
- Enforcement
- Case studies
- OFAC Licenses
- Useful resources
What 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
- Activities

Jurisdiction

Who may be subject to OFAC sanctions?

- **Individuals:**
  - U.S. citizens and permanent resident aliens anywhere in the world
  - Individuals, regardless of citizenship, physically located in the U.S.
- **Entities:**
  - Organized under the laws of the United States (incl. foreign branches)
  - Physically located in the United States
  - Cuba & Iran: Entities owned or controlled by persons subject to U.S. jurisdiction or by U.S. persons, respectively
- **Transactions:**
  - Transactions by foreign persons to the extent that they involve the United States or otherwise have a U.S. nexus
  - In limited circumstances, transactions involving controlled U.S.-origin goods or technology
Sanctions Programs

In administering and enforcing an economic sanctions program, Treasury focuses on:

- **Identifying** targets for designation
- **Implementing** economic sanctions
- Assisting U.S. persons in **complying** with the sanctions’ prohibitions
- **Penalizing** persons violating the sanctions’ prohibitions
- Working with other **U.S. government agencies**
- Working with other **nations** to implement similar strategies

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**Sanctions Programs**

**Comprehensive Programs**
Sudan, Cuba, Syria, Iran (ITSR)

**Limited Programs**
Burma, Conflict Diamonds, North Korea

**List-Based Programs**
(Activity): Counter-Terrorism, Non-Proliferation, Counter Narcotics Trafficking, Transnational Criminal Organizations, Somali Piracy, Grave Human Rights Abuses Via Information Technology, Foreign Sanctions Evaders

(Regime): Balkans, Belarus, Central African Republic, Cote D'Ivoire, Democratic Republic of the Congo, Former Liberian Regime of Charles Taylor, Iraq, Lebanon, South Sudan, Ukraine-related, Yemen, Zimbabwe
### Rejecting vs. Blocking

<table>
<thead>
<tr>
<th>BLOCKING</th>
<th>REJECTING</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Freezing” property under U.S. jurisdiction</td>
<td>Underlying transaction that is prohibited, but contains no “blockable” interest</td>
</tr>
<tr>
<td>Across-the-board prohibitions on transfers or transactions involving the blocked property</td>
<td>Must simply refuse to process the transaction</td>
</tr>
<tr>
<td>Title of blocked property remains with sanctioned target</td>
<td></td>
</tr>
</tbody>
</table>

### Specially Designated Nationals (SDN) List

- OFAC’s prohibited parties list
- Currently, over **5,800** individuals and entities identified by OFAC
- Blocked individuals, entities, vessels, banks all over the globe with whom or with which transactions are prohibited

*Recent additions:*
- Foreign Sanctions Evaders (FSE) List
- Sectoral Sanctions Identifications (SSI) List

**UPDATED FREQUENTLY**
Persons operating in sectors of the Russian economy identified pursuant to Executive Order 13662 “Blocking Property of Additional Persons Contributing to the Situation in Ukraine” (March 20, 2014)

- Directives found within the list describe prohibitions on dealings with the identified persons.
Do you have any questions about OFAC?

TYPE ANY QUESTIONS IN YOUR CHAT WINDOW, AND SEND TO: ALL PANELISTS

Best Practices for Compliance

[Image of OFAC logo with export symbol]
OFAC Compliance Program

- OFAC requires compliance with all sanctions rules and regulations
- OFAC does not mandate the existence or form of an OFAC compliance program
- There is no one-size-fits-all OFAC compliance program – each program should address a company’s specific needs, risks, and situation

OFAC Compliance Program

- Risk Assessment
- Internal Controls
- Testing/Audit
- Responsible Individual(s)
- Training
Risk Assessment

Identify High Risk Areas in Your Business:

- Size and location
  - Your company and your business
- Customer base
  - How well do you know your customer?
- Partners
  - Brokers, agents, intermediaries, suppliers
- Products
  - Are they secure or speculative?
- Transactions
  - Complexity, cross-border, potential diversion, transshipments or reexports

Internal Controls: Document Review

Transport Documents
(i.e. bills of lading, air waybills)

- shipping companies
- consignees
- notify parties
- forwarding agents
- ports of loading
- ports of discharge
- ports of transshipment
- final destinations
- shipping vessels
- air carriers
Internal Controls: Document Review

Commercial Invoices
- buyers, buyers’ agent or final buyers
- sellers
- manufacturers or suppliers
- Incoterms (i.e. CFR, FOB)

Certificates of Origin
- country origin of goods
- transport details

Bills of Exchange / Drafts
- drawers
- drawees
- banks (Swift Codes)

Internal Testing and Audit

Purpose of internal testing of an OFAC program:
- Evaluate effectiveness and identify deficiencies of compliance program
- Remediate any deficiencies identified from internal audit
- Identify what remedial steps have been taken to address the OFAC program’s weaknesses
- Assess the effectiveness of remedial action taken in improving the overall level of OFAC compliance

Characteristics of effective internal testing and audits:
- Independent, either internal audit or third party
- Annual at a minimum
- Comprehensive commensurate with risk profile
- Full disclosure to OFAC and the regulators
Internal Testing and Audit

Key areas of your program to test/audit:

- 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

OFAC Compliance Program

Compliance as a Flexible Process

How well can your program react to internal and external developments?

- Changes to the sanctions programs
- Changes to regulatory requirements
- Changes to internal structure
- New management
- New technology
- New risk areas
Compliance Training & Responsible Persons

- New hires, current employees, high-risk area teams, management
- Document program topics, materials and attendance
- On-going basis with annual refreshers
- Who’s responsible for OFAC compliance at your office?

Blocked & Rejected Transaction Reports

- Due within 10 days of blocking/reject
- Filling Options
  - Voluntary forms are available on OFAC’s website
    - May be mailed or faxed to 202-622-2426
- Annual Reports of Blocked Property due by September 30

Forms can be located on OFAC’s webpage at:
http://www.treasury.gov/resource-center/sanctions/Pages/forms-index.aspx
Do you have any questions about Best Practices?

TYPE ANY QUESTIONS IN YOUR CHAT WINDOW, AND SEND TO: ALL PANELISTS
Common OFAC Mistakes

• Human Error
• Misinterpreting OFAC regulations
• Inapplicable or expired OFAC License
• Outdated internal guidance/training
• Screening
  – What to screen? How to screen?
• Misspellings
• Internal Lists
  – Failure to update/monitor following new designations or changes to sanctions programs

Frequent Violations by Exporters

• Transactions involving sanctioned countries
  → Sudan, Cuba and Iran
• Transactions involving SDNs (often indirectly)
  → SDN banks, vessels, and shipping companies
  → Entities owned by SDNs
• Unlicensed exports
• Relying on an out-of-date SDN list
• Relying on a freight forwarder
How does OFAC learn about violations?

- Voluntary disclosures
- Blocking and reject reports
- Current investigations
- On-site audits
- Referrals from other agencies

Enforcement – Action Types

Violations may also result in:
- Blocked funds & Seized Goods
- License Revocation
- Negative Publicity, Loss of Business
**Costs of Noncompliance**

**Civil Penalties (Statutory Maximums) per Transaction:**

- Trading With the Enemy Act  
  **$65,000**

- International Emergency Economic Powers Act  
  **$250,000 or twice the transaction value (whichever is greater)**

- Foreign Narcotics Kingpin Designation Act  
  **$1,075,000**

Potential criminal violations referred to the Department of Justice

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**Enforcement Guidelines**

**Characteristics of the Violation**
- Willful or reckless
- Sanctions harm
- Timing of violation
- Remediation
- Awareness of conduct

**Characteristics of the Institution**
- Individual characteristics
- Compliance program
- Cooperation with OFAC
- Previous enforcement actions
- Future compliance/deterrent effect

Proportionality / Other relevant factors
Preventing Violations

- Review information provided on **OFAC’s website** for specific sanctions programs
- Follow OFAC’s suggested “due diligence steps” to determine if you have a match to the SDN List
  - Whole or partial name match?
  - Other information matching: nationality, address, DOB, POB, ID#
- When all else fails, **call or email** us!
  - 1-800-540-6322
  - ofac_feedback@treasury.gov

Do you have any questions about Enforcement?

**TYPE ANY QUESTIONS IN YOUR CHAT WINDOW, AND SEND TO: ALL PANELISTS**
Case Studies

Compass Bank Settlement

2013
• A Compass Assistant Manager and a Compass BSA OFAC Manager reviewed a wire request and associated invoice that showed the payment related to a shipment from the UK to Sudan
• The managers concluded that the payment was authorized because no SDN was involved
• Lessons:
  – Check understanding of sanctions programs and obligations (e.g. prohibitions, blocking vs. rejecting)

<table>
<thead>
<tr>
<th>Value of Transaction</th>
<th>Settlement Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Approx. $14,898</td>
<td>$19,125</td>
</tr>
</tbody>
</table>
Royal Bank of Scotland

2013
- Processed approximately 434 transactions, totaling approximately $33 million
- Omitted sanctioned parties from transactions sent to U.S. banks
- Voluntarily self-disclosed the transactions to OFAC
- Lessons:
  - Transparency is important! Omitting sanctions references inhibits banks and other parties from being able to determine if transactions are permissible
  - Voluntary self-disclosure can impact the final penalty or settlement amount

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</thead>
<tbody>
<tr>
<td>Approx. $33 million</td>
<td>$33,122,307</td>
</tr>
</tbody>
</table>

Wells Fargo Bank

2013
- 804 apparent violations totaling $75,992.33
  - Wells Fargo maintained accounts and processed transactions on behalf of two SDNs.
  - Wells Fargo was in possession of close name matches and matching dates of birth for both SDNs
- Lessons:
  - Use dates of birth in SDN screening process
  - SDNs can be located anywhere in the world

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<th>Value of Transactions</th>
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<tbody>
<tr>
<td>Approx. $75,992</td>
<td>$23,937</td>
</tr>
</tbody>
</table>
Sea Tel Inc.

2013
• Exported marine antenna systems to a distributor in South Korea
• Had knowledge or reason to know that antenna systems were intended specifically for reexportation to Iran
• Voluntarily self-disclosed to OFAC
• Lessons:
  – Know your customers, distributors, etc.
  – Who are the end-users? Ignorance is not bliss

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<thead>
<tr>
<th>Value of Transactions</th>
<th>Settlement Amount</th>
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</thead>
<tbody>
<tr>
<td>Approx. $378,281</td>
<td>$85,113</td>
</tr>
</tbody>
</table>

Licenses
### Licenses & Exemptions

<table>
<thead>
<tr>
<th>Exemption</th>
<th>General License</th>
<th>Specific License</th>
</tr>
</thead>
</table>
| • Regulatory provision authorizing otherwise prohibited transactions  
• No separate authorization necessary  
• Issued with the regulations | • Regulatory provision authorizing otherwise prohibited transactions  
• No separate authorization necessary  
• Written into the regulations, or issued after an E.O. is signed | • Written authorization from OFAC on a case-by-case basis  
• Issued to a specific individual or company; allows a specific activity that would otherwise be prohibited |

#### Examples: Iran Exemptions

- Transactions incident to travel
- Official business of the U.S. Government
- Importation/exportation of informational materials
Examples: Iran General Licenses

- Personal Remittances
- Sale of real property in Iran and transfer of proceeds to the U.S.
- Food exports from the U.S. to Iran
- Export of medicine and basic medical supplies from the U.S. to Iran

Examples: Specific Licenses

- Medical devices
- Agricultural commodities that do not fit under the definition of food
- Payment for legal services
The Licensing Process

- 31 C.F.R. Part 501 sets forth license application procedures
  - 31 C.F.R. § 501.801(b)(3) describes the information to be provided in a license application.
  - 31 C.F.R. § 501.801(c)(2) describes the information to be provided for registration of a nongovernmental organization.

- License applications may be filed online: [http://www.treasury.gov/resource-center/sanctions/Pages/licensing.aspx](http://www.treasury.gov/resource-center/sanctions/Pages/licensing.aspx)

- Requests to unblock wire transfers require the use of mandatory form available on the website: [http://www.treas.gov/offices/enforcement/ofac/forms/license.pdf](http://www.treas.gov/offices/enforcement/ofac/forms/license.pdf)

Trade Sanctions Reform and Export Enhancement Act (TSRA)

- Specific Licenses
- Agricultural or Medical Products or Devices
- Iran and Sudan (issued by OFAC)
- Cuba & Syria (issued by BIS)

“Dear OFAC...”
- Applicant information
- Banks
- Brokers
- Purchasing agents
- End-users
- Shipment terms
- Payment mechanism
Do you have any questions about OFAC Licenses?

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Useful Resources
Useful Resources

OFAC Homepage:  www.treasury.gov/ofac
SDN List:  www.treasury.gov/sdn
Current Sanctions Programs:  www.treasury.gov/resource-center/sanctions/Programs
Subscribe to OFAC Alerts:  https://service.govdelivery.com/service/subscribe.html?code=USTREA_S_61

OFAC’s Website
OFAC’s Website

**Resources Tab**
- Search the SDN List
- See recent actions
- Learn about the programs
- Read through the FAQ

**Contact Information**

**OFAC Compliance Hotline:**
202.622.2490 or 1.800.540.6322

**Email:**
OFAC_Feedback@treasury.gov
Upcoming Webinars

All Webinars are **FREE** and begin at **2pm EST**

**August 26, 2014**
Utilizing the Features in the Automated Export System – **US Census Bureau**

For more information: [census.gov/foreign-trade/outreach](http://census.gov/foreign-trade/outreach)

Previously Recorded Series Webinars are available
- Foreign Trade Regulations
- Classifying your Product
- Export Administration Regulations
- Complying with the International Traffic in Arms Regulations

Upcoming Seminars and Workshops

- Buffalo, NY – August 20-21
- Dallas, TX – September 9-10
- Cleveland, OH – October 1-2
- New Orleans, LA – October 22-23
- San Diego, CA – November 4-5 (English)
- San Diego, CA – November 6-7 (Spanish)
- Newark, NJ December 10-11

To register, visit: [census.gov/foreign-trade/aes/meetingsandpresentations/index.html](http://census.gov/foreign-trade/aes/meetingsandpresentations/index.html)
Evaluation

Please take a few minutes to complete the evaluation form.

Look for the link in your chat window.

Contact Information

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