



Rising to the Challenge — Staying Ahead of the AML Curve

Welcome

The BSA Coalition Presents: OFAC: Back to Basics for Small to Midsized Banks



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Today's Objectives

To briefly describe current country sanctions programs and recent developments

To discuss OFAC requirements when you have a match

To provide tips in responding to potential enforcement actions and administrative subpoenas

To give you some insights into OFAC enforcement actions and key takeaways



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What is OFAC?

The Office of Foreign Assets Control ("OFAC") of the US Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. The purpose of OFAC sanctions is to achieve US national security, foreign policy, or economic objectives.

OFAC restrictions cover virtually all types of financial transactions including funds transferred, letters of credit, account openings, bank card issuances, internet banking activity and philanthropic activities of the bank. OFAC sanctions require financial institutions to either **block accounts** and other property of specified countries, entities or individuals and/or **prohibit or reject** financial transactions with specified countries, entities or individuals.

KEY POINT: OFAC Sanctions Programs change **without notice**; therefore they must be reviewed periodically.



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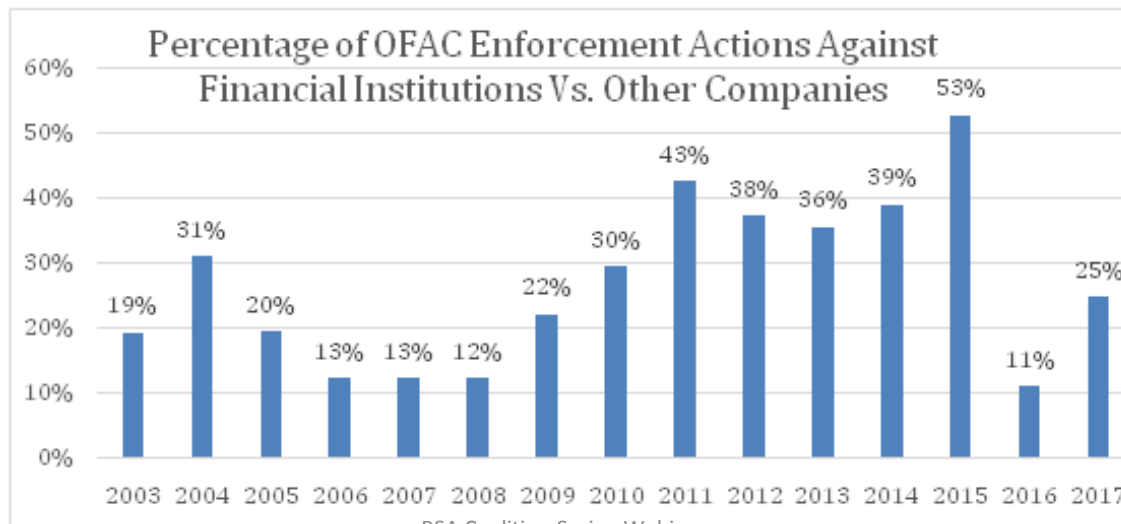
OFAC's primary statutory authorities include:

- International Emergency Economic Powers Act (IEEPA)
- Trading with the Enemy Act (TWEA)
- Foreign Narcotics Kingpin Designation Act (Kingpin Act)
- Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA)
- Countering America's Adversaries Through Sanctions Act (CAATSA)



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OFAC Enforcement Actions by the Numbers





OFAC Country Update

Iran Overview

- Most of the secondary U.S. sanctions, *i.e.*, imposed against non-U.S. subsidiaries and non-U.S. affiliates of U.S. companies, were lifted pursuant to the Joint Comprehensive Plan of Action, *i.e.*, the Iran nuclear deal (“JCPOA”).
- For example, under the JCPOA, sanctions were lifted for non-U.S. subs and affiliates of US companies who engage in transactions with Iran’s energy, shipping and shipbuilding sectors, or port operations. Non-nuclear-related sanctions still remain in place on all companies and persons, regardless of nationality, who seek to do business with any Iranian persons or entities that remain on the SDN List.
- U.S. persons generally remain prohibited from doing business with Iran. The JCPOA does not lift the general commercial embargo which prohibits U.S. persons from doing business with Iran, except for certain sales of civilian commercial aircraft to Iran, imports of Iranian-origin carpets and foodstuffs.



OFAC Country Update (cont'd)

Iran Overview

- U.S. companies' overseas subsidiaries will be licensed to transact with Iran under OFAC's General License H.
- EU sanctions relief is far more expansive. Unlike the U.S., the EU will allow its companies to invest directly in Iran and transact with Iranian persons. EU member states have agreed to terminate or suspend all “economic and financial sanctions” against Iran. Under the JCPOA, EU persons are permitted to trade in Iranian crude oil and petroleum products, natural gas and petrochemical products, as well as related financing. In addition, EU Persons are permitted to grant financial loans or credit and to participate in joint ventures with any Iranian persons engaged in the oil, gas and petrochemical sectors in Iran or elsewhere.
- Section 13(r) of the Securities Exchange Act of 1934 requires that issuers disclose to shareholders their Iran-related business activities, including transactions with the government of Iran and activities relating to the development of Iran's energy sector.



OFAC Country Update (cont'd)

Venezuela Overview

Imposes sanctions on Venezuelan sovereign debt and equity, limiting access to U.S. capital markets. Prohibits US persons from engaging in transactions related to most new and existing debt, and new equity, of the government of Venezuela and state-owned enterprises, including PdVSA (state-owned oil company).

- The Government of Venezuela and PdVSA are not currently blocked or designated on OFAC's Specially Designated Nationals List ("SDN List"), which would forbid all business and transactions with such parties.
- However, non-prohibited activities are limited to transactions in existing equity and new short term debt -- with a maturity of less than 90 days if issued by PdVSA and 30 days if issued by any other party related to the government of Venezuela (including entities owned 50% or more, individually or in the aggregate, by the government of Venezuela).



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OFAC Country Update (cont'd)

Russia/Ukraine Overview

- Since March 2014, the U.S. has imposed a strict set of targeted sanctions against Russian (and Ukrainian) individuals and companies.
- Signed in to law on August 2, 2017, the Countering America's Adversaries Through Sanctions Act ("CAATSA") imposes and codifies numerous new restrictions on Russia, building on existing U.S. and EU sanctions that have been in place since 2014.
- Under the law, the President must seek congressional review to terminate or waive any of the sanctions or grant any license that significantly alters U.S. foreign policy regarding Russia.
- U.S. persons may conduct business with entities even when their senior executives have been designated by OFAC as SDNs, but must use increased caution to ensure that they are not negotiating with or entering contracts signed by these individuals. See *Office of Foreign Assets Control Assesses a Civil Monetary Penalty Against ExxonMobil Corporation* <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20170720.aspx>



OFAC Country Update (cont'd)

Cuba Overview

- *National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba — June 16, 2017*
- New policy retains most of the existing regulations regarding business with Cuba, but imposes additional restrictions:
- Prohibits direct financial transactions with entities under the control or acting for the Cuban military, intelligence or security services or personnel. Effective November 9, 2017, the U.S. State Dept. published a “Cuba Restricted List” identifying such entities.
- Ends individual people-to-people travel to Cuba, allowing educational travel only under the auspices of an organization subject to US jurisdiction

BSA Challenges — BSA Opportunities

OFAC from an Operational Perspective



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OFAC Policies at United Bank

- Comprehensive Sanctioned Program
- New Account and Continuous OFAC scans
- Wire Approvals for OFAC listed countries
- Unable to Make Determination
- Report of Rejected Transaction
- Report of Blocked Transaction
- Annual Report of Blocked Parties



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Comprehensive Sanctions Program

- Any person born or residing in one of the countries must follow the Comprehensive Sanctioned Country program to open an account including signers, owners, grantors, collateral owner, etc.
- Require documentation prior to account opening
 - Enhanced Due Diligence Questions
 - An OFAC Affidavit
 - Copy of the Social Security Card
 - Copy of unexpired U.S. Passport, Certificate of Citizenship, Naturalization Certificate, Resident Alien card or Permanent Resident card



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OFAC Scanning at United Bank

- New Accounts
 - OFAC searches are conducted via an automated process through a vendor and/or possibly the credit reports; however, they may also be conducted via a manual process using FINRA or Office of Foreign Assets Control websites
- Vendors, Charitable Check Requests and Official Bank Check Requests
 - OFAC searches that need to be conducted via a manual process using FINRA website or Office of Foreign Assets Control
- OFAC Updates
 - Scan customer base, credit cards, employees, and any other customers outside of your core system at minimum bi-weekly, but after OFAC updates



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Wire Approvals

- Every OFAC listed country including those within a listed sanction (ex. Rough Diamond Trading lists Sierra Leone)
- Country name and swift codes country portion have built a specific OFAC stop within the wire system
- All wires with these specific OFAC stops are forwarded to our OFAC approval team
- Conduct appropriate review and provide approval prior to crediting/debiting the wire
- If an outgoing wire and information is not provided in a timely manner, a hold is placed on the funds



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Unable to make OFAC Determination

- Contact OFAC via phone or email
- Provide all information in regards to the transaction
- Once receive OFAC's guidance, make final determination with the transaction
- Please note: this can sometimes be a very lengthy process.



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Report of Rejected Transactions

- Rejected transactions are transactions in which the underlying transaction is prohibited, but there is not a blockable interest in the transaction
- Rejected transactions are those that are simply rejected and not processed
- Report rejected funds to OFAC within 10 days of determination that the funds need to be blocked



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Report of Blocked Transactions

- Once determined the funds need to be blocked, place funds into an interest-bearing account in which only OFAC authorized debits may be made
- Report blocked funds to OFAC within 10 days of determination that the funds need to be blocked
- The bank may deduct service charges unless in pursuant to the Iraq sanction
- If the funds are at the escheat period, this must be discussed with the state authority and OFAC
- Inform customer of the funds being blocked and provide OFAC's contact information
- Please note: US Banks cannot open an account for individuals on the SDN list as this is a prohibited service. If in possession of an application for a new account and an opening deposit, you are obligated to block the funds



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Annual Report of Blocked Property

- Provide a comprehensive list of all blocked property held as of June 30 of the current year
- Report to OFAC by September 30th
- Provide which OFAC sanction the funds were blocked in pursuant to OFAC regulations
- Completed forms OfacReport@treasury.gov

BSA Challenges — BSA Opportunities

Enforcement Actions and Administrative Subpoenas



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Responding to Potential Enforcement Actions/Administrative Subpoenas

- Review facts and develop counter-narrative
- Review inquiry/investigation/enforcement action for factual accuracy and legal reasoning
- Consider impact of programmatic requirements (and possible fine)
- Evaluate aggravating/mitigating factors
- Consider in-person meeting with regulators to present narrative and comments on proposed enforcement action



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Enforcement Action (Epsilon Electronics)

OFAC continues to push the bounds of its jurisdiction and establish new theories of liability:

Epsilon Electronics, Inc. (Epsilon)

In May 2017, in a rare appeals court ruling on an OFAC enforcement proceedings, the DC Circuit Court of Appeals issued a decision partly upholding and partly remanding a lower court's grant of summary judgment in favor of OFAC. In 2014, OFAC had issued a final penalty notice for over US \$4 million to Epsilon, having determined that Epsilon exported car audio and visual equipment from the US to a distributor with knowledge and reason to know that the goods would be re-exported to Iran (in apparent violation of section 560.204 of ITSR). Epsilon filed suit in federal court challenging the penalty notice on several grounds,



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Epsilon Electronics Continued

including that OFAC had not established that the goods in question had ultimately arrived in Iranian territory and that such finding is required in order to hold a party responsible. The DC Circuit sided with OFAC in determining that OFAC need not determine that the goods arrived in Iran in order to assess a violation.

Key Takeaway: a US exporter can violate Iranian sanctions by exporting goods to a third country based on what it knows or should know of its third country counterparty regardless of whether the goods actually arrive in Iran.



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ZTE Enforcement Action

In March 2017, OFAC entered into the largest sanctions settlement against a non-financial institution in its history. A large Chinese telecommunications firm, **Zhongxing Telecommunications Equipment Corp** (“ZTE”), ZTE pled guilty to violating IEEPA, obstructing justice, and making material false statements to federal investigators. ZTE entered into a settlement with the Justice Dept., OFAC, and the Commerce Dept’s Bureau of Industry and Security and accepted fines and criminal forfeiture of over \$US800 million; OFAC’s portion of this settlement was approximately \$US100 million.

Key Takeaway: While it’s somewhat uncommon to find senior management intentionally directing sanctions violations, it’s critical to put an immediate halt to sanctions violations, self-disclose to the relevant agencies, cooperate with the investigation, and implement a remediation plan.



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Key Takeaways

- Be familiar with country sanctions programs
- OFAC Sanctions Programs change **without notice**; therefore they must be reviewed periodically
- Understand OFAC reporting requirements
- Maintain risk-based OFAC sanctions compliance program and monitor implementation
- Any voluntary self-disclosure of an apparent violation should contain sufficient detail to provide OFAC with a complete understanding of the relevant facts and circumstances and any mitigating factors

BSA Challenges — BSA Opportunities

Question and Answer Session



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