OFAC Enforcement Overview and Case Studies
• Overview of OFAC Enforcement
  – The Players
  – The Process
  – The Enforcement Guidelines

• Case Studies

• FY2016 OFAC Enforcement By the Numbers

• Questions and Answers
Overview of OFAC Enforcement
The Players

Which Components of OFAC are Involved in Enforcement?

Front Office

Office of Sanctions Policy & Implementation (SPI)
- Licensing Division
- Policy Division
- Regulatory Affairs Division

Office of Resource Management (ORM)
- Information Disclosure and Records Management Division
- Office of Management Programs Division
- Sanctions Support Division

Office of Global Targeting (OGT)
- Crime/Narcotics and Western Hemisphere Division
- Eastern Hemisphere Division
- Africa, Transnational, and Accountability Division

Office of Compliance and Enforcement (OCE)
- Enforcement Division (ENF)
- Sanctions Compliance and Evaluation Division (SC&E)
The Players

Overview of OFAC’s Enforcement Activities

**ENF**
- Focuses on non-financial sector entities and individuals
- Acts as OFAC’s primary liaison with the law enforcement community
- Investigate apparent violations
- Recommend administrative actions
- Promote compliance with OFAC sanctions programs

**SC&E**
- Focuses on financial sector entities
- Acts as OFAC’s primary liaison with federal and state financial regulators
The Players – *Law Enforcement*

Support for Other Law Enforcement Agencies

- License history checks or determinations
- License history certifications for trial
- Parallel/joint enforcement (proceedings) or (investigations)
- Referrals
- Export Enforcement Coordination Center (E2C2)
- Trial testimony
- Answer questions; provide guidance regarding sanctions statutes and E.O.s
OFAC is an E2C2 Partner Agency

- Executive Order 13558 created the Export Enforcement Coordination Center (E2C2)
- E2C2 serves as the primary forum within the federal government for executive departments and agencies to coordinate and enhance their export control enforcement efforts
- E2C2 maximizes information sharing, consistent with national security and applicable laws to help partner agencies

Detect Prevent Disrupt Investigate Prosecute

violations of U.S. export control laws.
How Does OFAC Coordinate with Regulators?

- Federal/state regulatory agencies maintain examination authority for financial institutions’ compliance programs, including OFAC.
- OFAC shares and receives certain enforcement information with federal/state regulators pursuant to MOU agreements.
- OFAC engages in dialogue regarding major topics, issues, and trends.
- OFAC provides sanctions training to examiners.
- OFAC responds to inquiries from examiners.
The Process

How Does OFAC Learn of an Apparent Violation?

• **Reports** of Blocked or Rejected Property
• **Self-disclosures**
• Ongoing or existing **cases**
• Informants and **tips**
• **Research** or other publicly available information
• **Referrals** from other agencies
  • Federal and state regulators, foreign regulators, law enforcement
Disclosures – Key Considerations

What?

- **FACTS** – a detailed description of the facts and circumstances surrounding the apparent violation, including all parties involved and how the Subject Person’s compliance procedures failed

- **DOCUMENTS** – all supporting documentation, including payment instructions, account documentation, contracts, payment orders, invoices, bills of lading, and other commercial documentation

- **FACTORS** – Information relevant to OFAC’s General Factors analysis

The Process

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 recipient.
• OFAC’s Economic Sanctions 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
  – Civil penalties information
  – Factors OFAC analyzes and evaluates

• The Enforcement guidelines apply to all of OFAC’s investigations, including both **financial sector and non-financial sector cases**
Key Definition: Voluntary Self-Disclosure

- Self-initiated notification to OFAC of an apparent violation
- Notification must occur prior to OFAC (or another government agency) discovering the apparent violation or a substantially similar one
- The following do NOT qualify:
  - Required reports
  - False, misleading, or materially incomplete disclosures
  - Disclosures that are not self-initiated
  - Disclosures made without senior management authorization
  - Responses to administrative subpoenas
  - License applications
The Enforcement Guidelines

Sanctions Enforcement Options: By Severity

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

No Action Letter
Cautionary Letter
Civil Penalty: Settlement
Finding of Violation
Civil Penalty: Penalty
Finding of Violation
Criminal Referral
Non-public enforcement actions are generally available only to the Subject Person and OFAC, and where an MOU is in place, the Subject Person’s federal or state regulator.

OFAC posts a summary of public enforcement actions on its website, including a description of the transactions and conduct giving rise to the apparent violations.
OFAC affords the subject person the opportunity to respond to the allegations set forth in a Pre-Penalty Notice or a Finding of Violation.
By issuing a Penalty Notice or Finding of Violation, OFAC makes a final agency determination that a violation has occurred.
The Enforcement Guidelines

OFAC’s Penalty Matrix

Egregious Case

<table>
<thead>
<tr>
<th>Voluntary Self-Disclosure</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>No</td>
<td>3</td>
<td>4</td>
</tr>
</tbody>
</table>

1. One-Half of Transaction Value
   (Capped at the lesser of $142,291 or one-half statutory max)

2. Applicable Schedule Amount
   (Capped at the lesser of $284,582 or applicable statutory max)

3. One-Half of Statutory Maximum

4. Statutory Maximum

* The base penalty amount will not exceed the applicable statutory maximum amount.
The Enforcement Guidelines

Statutory Maximum Penalties

<table>
<thead>
<tr>
<th>Statute</th>
<th>Statutory Maximum Penalty Starting on August 1, 2016</th>
<th>Relevant Inflation Factor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>For Apparent Violations that Occurred <em>On or Before</em> November 2, 2015</td>
<td>For Apparent Violations that Occurred <em>After</em> November 2, 2015</td>
</tr>
<tr>
<td>TWEA</td>
<td>$65,000 per transaction</td>
<td>$83,864 per transaction</td>
</tr>
<tr>
<td>IEEPA</td>
<td>The greater of: $250,000 per transaction, or Twice the amount of the underlying transaction</td>
<td>The greater of: $284,582 per transaction, or Twice the amount of the underlying transaction</td>
</tr>
<tr>
<td>FNKDA</td>
<td>$1,075,000 per transaction</td>
<td>$1,414,020 per transaction</td>
</tr>
</tbody>
</table>

Updated to implement the Federal Civil Penalties Inflation Adjustment Act of 1990
The Enforcement Guidelines

Sample Penalty Calculation (IEEPA Violations)

<table>
<thead>
<tr>
<th>Amount</th>
<th>Box #1</th>
<th>Box #2</th>
<th>Box #3</th>
<th>Box #4</th>
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<tbody>
<tr>
<td>$1,000</td>
<td>$500</td>
<td>$10,000</td>
<td>$142,291</td>
<td>$284,582</td>
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<tr>
<td>$10,000</td>
<td>$5,000</td>
<td>$25,000</td>
<td>$142,291</td>
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<tr>
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<td>$142,291</td>
<td>$284,582</td>
<td>$10,000,000</td>
<td>$20,000,000</td>
</tr>
</tbody>
</table>

Total Trn Value: $11,111,000

Box 1 Penalty: $340,082
Box 2 Penalty: $774,164
Box 3 Penalty: $11,426,873
Box 4 Penalty: $22,853,746

Note: the same set of transactions could result in very different penalty amounts
The General Factors Affecting Administrative Action

- OFAC’s Enforcement Guidelines outline 11 General Factors Affecting Administrative Action that OFAC must analyze.

- OFAC’s egregiousness determination gives substantial weight to 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.
The General Factors

- 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

(Link to: OFAC’s Enforcement Guidelines)
## The General Factors

### Factor A: Willful or Reckless Violation of the Law
- Willfulness
- Recklessness
- Concealment
- Pattern of conduct
- Prior notice
- Management involvement

### Factor B: Awareness of the Conduct At Issue
- Actual knowledge
- Reason to know
- Management involvement

### Factor C: Harm to Sanctions Program Objectives
- Economic or other benefit to the sanctioned individual, entity, or country
- Implications for U.S. policy
- License eligibility
- Humanitarian activity

### Factor D: Individual Characteristics
- Commercial sophistication
- Size of operations
- Financial condition
- Volume of transactions
- Sanctions history
The General Factors

**Factor E: Compliance Program**
- Risk-based compliance
- Consultation with regulator

**Factor F: Remedial Response**
- Immediate stop to conduct
- Determine the cause of conduct and extent of apparent violation
- New and more effective internal controls and procedures
- Prevent a recurrence

**Factor G: Cooperation with OFAC**
- Voluntary self-disclosure
- Similar transactions
- Response to requests for information
- Tolling agreement(s)
The General Factors

**Factor H: Timing of Apparent Violations**
- Date of apparent violations in relation to the adoption of the applicable prohibition(s)

**Factor I: Other Enforcement Action**
- Other federal, state, or local agencies’ actions
- Comprehensive settlements with other agencies

**Factor J: Future Deterrence Effect**
- Promote future compliance
- Focus on same sector

**Factor K: Other Relevant Factors**
- Case-by-case basis
- Totality of circumstances
- Proportionate response
Case Studies
Case Study 1

- Recent Enforcement Action (Company A Case Study)
  - Company A appears to have violated OFAC sanctions by indirectly exporting goods to two distributors in a sanctioned country on 48 occasions.
  - Company A shipped the goods to consignees based in two third-countries and their customers arranged for the re-exportation of the goods to a sanctioned country.
Case Study 1

**Aggravating Factors**

- **Willfulness** - engaging in a *pattern of conduct designed to conceal involvement of a sanctioned country* and systematically obfuscating conduct it knew to be prohibited

- **Recklessness** - the company ignored its OFAC compliance responsibilities, despite substantial international sales and warnings that OFAC sanctions could be implicated

- **Awareness of conduct** - *multiple employees, including mid-level managers, had contemporaneous knowledge of the transactions giving rise to the Alleged Violations*; that the goods were intended for reexportation to a sanctioned country and *the company continued sales to its distributors for nearly eight months after its Director of Finance learned of OFAC’s investigation*

- **Harm to sanctions program** - Company A engaged in this pattern of conduct over a period of years, providing economic benefit to a sanctioned country

- **Lack of cooperation** - Company A *provided inaccurate, misleading, or incomplete information to OFAC*

- **Individual characteristics** - Company A is a division of a commercially sophisticated, international corporation
Case Study 1

Mitigating Factors

- **No previous PN or FOV in the five years preceding alleged violations** - eligible for first offense mitigation of up to 25 percent

- **Remedial steps** - the company took remedial steps to ensure compliance with OFAC sanctions, including stopping all exports to a sanctioned country, implementing a compliance program, and training at least some of its employees on OFAC sanctions

- **Tolling agreement** - the company signed tolling agreements
Case Study 1

Settlement

- OFAC determined that Company A did not voluntarily self-disclose.
- OFAC determined that the alleged violations constituted an egregious case.
- Both the statutory maximum and base penalty were $12,000,000 (box 4 of penalty matrix).
- Company A agreed to pay $4,320,000 to settle potential civil liability for the alleged violations of OFAC sanctions.
Case Study 2

- Recent Enforcement Action (Company B Case Study)

  - Company B appears to have violated OFAC sanctions by indirectly exporting goods to its distributor with knowledge or reason to know that the goods were ultimately destined to a sanctioned country.
# Case Study 2

## Aggravating Factors

- **Willfulness** - exporting products to its foreign distributor *with knowledge or reason to know that the exports were ultimately destined for a sanctioned country* in apparent violation of U.S. law, *editing its destination control statement at the request of its distributor*, and continuing to conduct business with its distributor *after receiving confirmation that the distributor had reexported products to a sanctioned country in apparent violation of U.S. law*

- **Awareness of conduct** - *former CEO and former International Sales Manager knew* that the exports at issue were ultimately destined for a sanctioned country

- **Compliance** - company *did not have a compliance program* in place

## Mitigating Factors

- **No previous PN or FOV in the five years preceding alleged violations** - eligible for first violation mitigation of up to 25 percent

- **Remedial steps** - including implementing a compliance program

- **Tolling agreement** - the company signed tolling agreements

- **Harm limited** - exports were medical goods and likely eligible for a specific license at the time
Case Study 2

Settlement

- OFAC determined that Company B voluntarily self-disclosed
- OFAC determined that the alleged violations constituted a non-egregious case
- The statutory maximum was $1,129,912 and base penalty was $159,542 (box 1 of penalty matrix)
- Company B agreed to pay $107,691.30 to settle potential civil liability for the alleged violations of OFAC sanctions

(Capped at the lesser of $142,291 or one-half statutory max)
Insurance Sector FOVs - 2016

October/November 1992

- Insurance Company X issued two health insurance policies ("P") covering multiple individuals (the “Policyholders”)
- Third Party Administrator Y serviced the policies
Case Study 3

Insurance Sector FOVs - 2016

December 2009

• OFAC added the Policyholders to the SDN List
• **Problem**: neither company screened the Policyholders against the SDN List
Case Study 3

Insurance Sector FOVs - 2016

January 2010 – May 2011
• Apparent Violations:
  • Neither company blocked the policies or premium payments
  • Third Party Administrator Y processed, and Insurance Company X received, 34 premium payments totaling approximately $14,400

X

P

Y
Case Study 3

Insurance Sector FOVs - 2016

August 2016

• OFAC issued a Finding of Violation to Insurance Company X

...[X] is a large and commercially sophisticated financial institution...

...[X’s] failure to identify and block these policies caused harm to the integrity of the FNKSR and its associated policy objectives...

...[X’s] OFAC compliance program does not appear to have ensured that the names of policyholders associated with policies the company issued that were administered and/or serviced by [Third Party Administrator] were screened or reviewed for OFAC compliance purposes...
August 2016

- OFAC issued a **Finding of Violation** to **Insurance Company X**

...**no [X] personnel, including managers or supervisors, appear to have had actual knowledge** of the conduct...

...**[X] has not received a penalty notice or Finding of Violation from OFAC relating to substantially similar violations in the five years preceding the date of the conduct**...

...**[X] cooperated with OFAC’s investigation**, including by voluntarily self-disclosing the violations... and by executing a statute of limitations **tolling agreement and an extension** to the agreement.
Case Study 3

Insurance Sector FOVs - 2016

August 2016
• OFAC also issued a **Finding of Violation** to **Insurance Company Z**, the parent company of Third Party Administrator Y

...[Y] is owned by a **large and commercially sophisticated** financial institution...

...[Y’s] failure to identify and block these policies caused **harm to the integrity of the FNKSRS and its associated policy objectives**...

...[Y’s] **OFAC compliance program** did not include procedures for screening the names of policyholders of policies it administered and serviced but for which it did not assume any financial responsibility...
August 2016

• OFAC also issued a Finding of Violation to Insurance Company Z, the parent company of Third Party Administrator Y

...no [Y] personnel, including managers or supervisors, appear to have had actual knowledge of the conduct...

...[Y] has not received a penalty notice or Finding of Violation from OFAC relating to substantially similar violations in the five years preceding the date of the conduct...

...[Y] cooperated with OFAC’s investigation, including by executing a statute of limitations tolling agreement and an extension to the agreement.
OFAC Enforcement By the Numbers
FY2016 OFAC Enforcement: Cases Opened/Closed

By the Numbers

*OFAC’s Fiscal Year (FY) runs from October 1 through September 30
By the Numbers

FY2016 OFAC Enforcement: Closed Case Dispositions

![Bar Chart]

- No Action
- Cautionary Letter
- Finding of Violation
- Settlement

[Chart showing the number of cases for each disposition]
By the Numbers

FY2016 OFAC Enforcement: Finding of Violation (6)

- Banking (2)
- Credit Cards (1)
- Insurance (2)
- Consumer Products (1)
By the Numbers

FY2016 OFAC Enforcement: Settlements (By Industry)

- Banking (3)
- Travel (1)
- Technology (1)
- Architecture (1)
- Energy (2)
- Medical/Pharmaceutical (3)
- Agriculture (1)
By the Numbers

FY2016 OFAC Enforcement: Settlements (By Program)

- Multiple Programs (3)
- Cuba (4)
- Iran (4)
- Zimbabwe (1)
By the Numbers

FY2016 OFAC Enforcement: Lessons Learned

...[Subject Person]... had *indications that its conduct might constitute a violation* of U.S. law before the earliest date of the apparent violations...

- OFAC Web Posting dated October 20, 2015

...[Subject Person] demonstrated reckless disregard for U.S. sanctions requirements by having *virtually no compliance program, despite significant business involving* the exportation of goods from the United States to *Iran and Sudan*...

- OFAC Web Posting dated July 5, 2016

...[Subject Person] did not initially cooperate with OFAC’s investigation, providing some *information that was inaccurate, misleading, or incomplete*...

- OFAC Web Posting dated September 13, 2016
By the Numbers

FY2016 OFAC Enforcement: Lessons Learned

This enforcement action highlights the risks associated with failing to review multiple OFAC warning signs with respect to a particular customer – including transactions blocked or rejected by other financial institutions specifically due to OFAC sanctions – as well as the risks posed by relying on incomplete or inaccurate information when assessing a potential OFAC alert or match.

- OFAC Web Posting dated November 4, 2015

This enforcement action highlights the importance for institutions with operations in countries with a significant presence of persons (individuals and entities) on the SDN List to take appropriate measures to ensure compliance with U.S. economic sanctions when processing transactions for or on behalf of their customers to, through, or within the United States.

- OFAC Web Posting dated February 8, 2016
Questions and Answers

Thank you for your attention!

Any questions?
• Overview of Recent Actions Statistics
  – Recent Actions Website Location
  – Recent Actions/OFAC Website Statistics
• Licensing Actions
  – Licensing Recent Actions
  – Guidance on Publishing, Termination of Programs
• Targeting Actions
  – Summary of FY16 OFAC Actions
  – Evolution of OFAC Sanctions for Ukraine/Russia and DPRK
  – Recent Syria Actions
• Questions and Answers
Overview of Recent Actions Statistics
Where do I go to learn about updates to OFAC programs?

www.treasury.gov/ofac
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www.treasury.gov/ofac
Recent Actions Statistics

How often does OFAC publish actions?

• Total number of public actions
  • 2016 to date 115
  • 2015 total 130
  • 2014 total 153

• Average daily traffic
  • Publication every 2.2 days in 2016
  • Publication every 2 days in 2015
  • Publication every 1.7 days 2014
Recent Actions

What is OFAC trying to tell us?

• Most popular single action
  • **September 1, 2016** Russia/Ukraine-related Designations and Identifications; Publication of Russia/Ukraine-related General License
  • **December 22, 2015** Russia/Ukraine-related Designations and Identifications

• FAQs published in 2016
  • Iran, Cuba, Kingpin

• Termination of OFAC Fax on-demand
• Federal Civil Penalties Inflation Adjustment Act
OFAC Lists: Advanced XML Std.

- Conforms to a UN-developed data standard
- XML provides additional metadata allowing for “patronymic” and “matronymic” name recognition
- The advanced file provides the ability to provide entity name and aliases in foreign character sets
- Current offers include Arabic, Cyrillic, and Japanese
Overview of Licensing Actions
Licensing Recent Actions

How does Licensing fit in with the OFAC’s Recent Actions?

• Publication of six new or amended regulations in four sanctions programs in 2016.

• Issuance, amendment, or renewal of numerous general licenses, (e.g., Iran, Belarus, Burma, Cuba, Kingpin Act/Panama, etc.).

• Issued Executive Orders terminating two sanctions programs in 2016 (Burma, Côte d’Ivoire).

• In FY 2016, Licensing received over 10,000 applications.
  • This is a 33% increase from FY 2014 and an 18% increase from FY 2015.
Licensing Recent Actions

**Requests for Interpretive Guidance**

- Process for Interpretive Guidance Requests (www.treasury.gov/ofac):
  - Proceed through normal online application process, selecting “New Application” and the appropriate sanctions program, e.g., Sudan.
Licensing Recent Actions

**Guidance on Certain Publishing Activities**

- On October 28, 2016, OFAC issued interpretive guidance on the publishing general licenses and certain exemptions found in the Iran, Cuba, Sudan, and Syria sanctions programs.

- The guidance addresses several issues that have arisen under the publishing general licenses in these sanctions programs.
  - This guidance is available at:  https://www.treasury.gov/resource-center/sanctions/Programs/Documents/guidance_on_certain_publishing_activities.pdf
Licensing Recent Actions

**Termination of Sanctions Programs**

- On September 14, 2016, the President signed Executive Order 13739, “Termination of Emergency With Respect to the Situation in or in Relation to Côte d’Ivoire.”
  - Terminates national emergency, revokes Executive Order, and delists all SDNs designated under this national emergency.

- On October 7, 2016, the President signed Executive Order 13742, “Termination of Emergency With Respect to the Actions and Policies of the Government of Burma.”
  - Terminates national emergency, revokes the Burma sanctions Executive Orders, delists all SDNs designated under this national emergency, and waives other statutory blocking and financial sanctions on Burma.
Overview of Targeting Actions
Summary of FY16 OFAC Actions

OFAC actions have grown from 12 programs with 272 total actions in 2002, to more than 30 programs with 1,962 total actions in 2016

- 1,005 total targets designated in FY16, up 128% from 440 in FY15
  - **IRAN**: 12 designations, 264 re-designations pursuant to E.O. 13599 (JCPOA)
  - **DPRK**: 65 designations in FY16, up from 16 in FY15
  - **Russia/Ukraine**: 274 designations, up 171% from 101 in FY15
Summary of FY16 OFAC Actions

Targets by Type and List

- SDN Individuals, 236
- SDN Entities, 275
- SDN Aircraft Identifications, 26
- SSI (E.O. 13622), 203
- Non-SDN PLC, 1
- JCPOA (E.O. 13599), 264
The evolution of Russia/Ukraine sanctions in 2014

- 3/6/14 -- E.O. 13660: the initial national emergency
  - OFAC designates separatists, separatist organizations, former Yanukovych officials
- 3/16/14 -- E.O. 13661: expanding the scope
  - OFAC designates Russian government officials, oligarchs/cronies, defense industry companies
- 3/20/14 -- E.O. 13662: addressing the situation in Crimea
  - OFAC releases sectoral sanctions
- 12/19/14 -- E.O. 13685: additional steps
  - OFAC designates entities operating in Russian-occupied Crimea
The evolution of North Korea sanctions in 2016

• 1/6 -- North Korea conducts Nuclear Test

• 2/18 -- North Korea Sanctions and Policy Enhancement Act of 2016

• 3/2 -- UN Security Council Resolution (UNSCR) 2270

• 3/15 -- Executive Order 13722
Recent Syria Actions

- **11/25/15** -- designations for supporting the Government of Syria, including a middleman for oil purchases by the Syrian regime from ISIL (E.O. 13582)
  - George Haswani, HESCO, Mudalal Khuri, and others...

- **7/21/16** -- designations for supporting Government of Syria financial facilitation and military procurement, including weapons, oil-related assistance, aircraft tires, and the Scientific Studies and Research Center (E.O.s 13582, 13572, 13573, 13382)
  - Moneta Transfer & Exchange, T-Rubber, Russian Financial Alliance Bank, Atiya Khuri, and others...
Questions and Answers

Thank you for your attention!

Any questions?
Breakout Session 4: Licensing Process and Evaluation

Presenter
Mary Pat Rasmussen, Licensing Officer
OFAC Basics
Can I do business in sanctioned countries or with SDN’s?
Office of Foreign Assets Control (OFAC)
U.S. Department of the Treasury

**Responsibilities:** administer and enforce *economic, financial, and trade* sanctions based on:

- Foreign policy priorities
- National security goals

**Targets:**

- Foreign governments
- Individuals, entities
- Conduct (drug trade, proliferation)
- Blocked property
Jurisdiction – Who May be Subject to OFAC Sanctions

• **Individuals:**
  – U.S. citizens and permanent resident aliens, *wherever located*
  – 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 some circumstances, transactions involving controlled U.S.-origin goods or technology
Categories of Economic Sanctions

- **Asset freeze** (a.k.a “blocking”) for blocked persons
  - Blocked persons are those named on Treasury Department’s List of Specially Designated Nationals and Blocked Persons (“SDN List”) or covered by OFAC’s 50 percent rule
  - Entire governments can also be blocked

- **Territorial trade embargo** or restrictions (imports and exports of goods, services, and technology)

- Cessation of dealings with U.S. persons, including barring access to U.S. financial system for blocked parties

- **Sectoral sanctions** restrictions on U.S. persons short of blocking, such as dealing in new equity of sanctioned parties

- **Secondary sanctions** that impose prohibitions on non-U.S. persons for activity outside the United States (Iran, Hizballah)
The Specially Designated Nationals (SDN) List

- OFAC maintains and administers the Specially Designated Nationals (SDN) and Blocked Persons List, which contains over 5,500 individuals and entities.

- The SDN List is used by financial institutions around the world to filter for potential sanctions-related transactions.

- The SDN List includes narcotics traffickers, terrorists, WMD proliferators, North Korean government entities, Syrian government officials, and Russian regime cronies.
This SDN Search application ("SDN Search") is designed to facilitate the use of the Specially Designated Nationals and Blocked Persons list ("SDN List"). The SDN Search tool uses approximate string matching to identify possible matches between word or character strings as entered into SDN Search, and any name or name component as it appears on the SDN List. SDN Search has a slider-bar that may be used to set a threshold (i.e., a confidence rating) for the closeness of any potential match returned as a result of a user's search. SDN Search will detect certain misspellings or other incorrectly entered text, and will return near or proximate matches, based on the confidence rating set by the user via the slider-bar. OFAC does not provide recommendations with regard to the appropriateness of any specific confidence rating. SDN Search is one tool offered to assist users in utilizing the SDN List; use of SDN Search is not a substitute for undertaking appropriate due diligence. The use of SDN Search does not limit any criminal or civil liability for any act undertaken as a result of, or in reliance on, such use.

Download the SDN List

Visit The OFAC Website

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<tr>
<th>Type:</th>
<th>Address:</th>
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<tbody>
<tr>
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<td></td>
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Minimum Name Score: 100

Search Reset

Lookup Results:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Type</th>
<th>Program(s)</th>
<th>Score</th>
</tr>
</thead>
</table>
Comprehensive Sanctions Programs

• Typically entail **broad export/import prohibitions** targeting a **country or geographic region**

• Programs often “block” a **sanctioned country’s government**

• **U.S. persons and transactions involving the United States** must comply with prohibitions

• Current comprehensive sanctions programs:
  – Crimea, Cuba, Iran, North Korea, Sudan, 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 general licenses
OFAC’s Web Resources

Resources Tab
- See recent actions
- Search the SDN List
- Apply for a License
- Check out individual programs
- Read the FAQ’s and other helpful info
# OFAC’s Web Resources

## Contacts Tab

- **Find the OFAC Hotline Numbers**
- **Find OFAC’s mailing address**
- **Access OFAC’s email hotline**
- **Subscribe for email notifications**

### Contact us by Telephone

<table>
<thead>
<tr>
<th>When Should I Call the OFAC Hotline?</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Toll Free Hotline Number</td>
<td>1-800-540-6322</td>
</tr>
<tr>
<td>• Local Hotline Number</td>
<td>1-202-622-2490</td>
</tr>
<tr>
<td>• OFAC Licensing Division (Direct Number)</td>
<td>1-202-622-2480</td>
</tr>
</tbody>
</table>

### Contact us by Postal Service

Office of Foreign Assets Control  
U.S. Department of the Treasury  
Treasury Annex  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

### Contact us Electronically

- E-mail OFAC  
- Submit in “in-process” wire transfers to the hotline  
- Click here to appeal an OFAC designation or other listing

### Connect with Us

- Sign up for OFAC e-mail notifications  
- Subscribe to OFAC Recent Actions RSS  
- Follow Treasury on Twitter
Licensing Process
Do I need a license?
Exemptions and Licenses

• **Exemption**
  – A category of transaction or activity exempt from prohibition (no license is required)

• **General License**
  – A blanket authorization related to a category of transactions or type of conduct – no specific authorization required

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

• **Statement of Licensing Policy**
  – A public statement issued by OFAC regarding the agency’s policy with regard to a category of activity that requires a specific license
# General or Specific License

<table>
<thead>
<tr>
<th>General License</th>
<th>Specific License</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulatory provision authorizing otherwise prohibited transactions</td>
<td>Authorization from OFAC issued to a specific person or persons on a case-by-case basis</td>
</tr>
<tr>
<td>No separate authorization necessary. GLs are incorporated into regs or posted on OFAC’s website</td>
<td>Issued to a specific individual or company; allows specified activities that would otherwise be prohibited</td>
</tr>
</tbody>
</table>

**General Licenses**

- Permissible Activities
- Prohibited Activities

**Specific Licenses**

- Permissible Activities
- Prohibited Activities

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Types of Specific Licenses

**Transactional Licenses** - Can include:
- Humanitarian assistance and related exports
- Potentially Export of goods
- Complicated financial transactions
- Certain services (legal, educational, medical, research) and related exports

**TSRA Specific Licenses** - Required for the export of agricultural commodities, medicine or medical devices to:
- Iran and Sudan (issued by OFAC)
- Cuba & Syria (issued by BIS)
So I need a Specific License...now what?
How do I apply?

- Determine category/what kind of license you will need:
  - Cuba Travel
  - Release of Blocked Funds
  - Transactional or Interpretive Guidance
  - TSRA

- Depending on the type of application there may be a form (e.g., release of blocked funds)

- Submission: by mail or online
When applying for a license, be sure your request:

• specifies both the proposed transaction and why you believe it is prohibited/ what is the sanctions nexus;
• clearly identifies all parties involved, directly or tangentially, in the transaction(s) at issue;
• clearly identifies all transactions, and associated money flows, at issue; and
• includes copies of supporting documentation.

***Please note, all documents must be in English or include an English Translation***

BE AS SPECIFIC AS POSSIBLE!
Applicants should clearly enumerate in a **table format** all pertinent information related to their proposed transaction, including:

- If applicable, the commodity classification numbers that are associated with the proposed export items.
- Full names and addresses of all parties involved in the transactions and their roles, including:
  - financial institutions and any Iranian or Sudanese broker (identify company principals)
  - purchasing agent (identify company principals)
  - end-user(s) (full contact name) or other participants involved in the purchase of the proposed export items
Each application to OFAC is assigned a case number.

Each case will be then be assigned to a licensing officer.

That licensing officer will conduct an initial review and will contact the applicant or the correspondent for the applicant (e.g. their attorney) for additional information if needed.
I’ve given you all the information you asked for...what happens now?
Many of OFAC's licensing determinations are guided by U.S. foreign policy and national security interests.

OFAC often must coordinate with the U.S. Department of State and other government agencies, such as the U.S. Department of Commerce.

All applications go through a multilevel internal review process.
How long is this going to take? How can I find the status of my pending license application?

- OFAC will notify applicants in writing as soon as a determination has been made on their application.

- The length of time for determinations to be reached will vary depending on the complexity of the transaction under consideration, the scope and detail of interagency coordination, and the volume of applications awaiting consideration.

- Applicants are encouraged to wait at least two weeks before calling Licensing Division at (202) 622-2480 to check on your status.

- Applicants can also check the status of their application through the automated phone system.
I just received my license! Is there anything I should be aware of?
Post OFAC Decision: A few things to keep in mind

• Make sure that all conditions of the licenses are strictly observed.

• Retain a copy of the license, the application and all related documentation for at least 5 years.

• The license does not excuse compliance with any law or regulation administered by any other government agency.

• The license does not release the licensee from civil or criminal liability for violation of any law or regulation.

• A license **may be revoked or modified at any time** at the discretion of the Secretary of the Treasury.
Example Case Study
Example Case Study: The Details

***Please note, this is an example only and not based on any one particular case***

• The date is January, 2015.

• There have been updates to the Cuban Assets Control Regulations.

• The request: To establish ferry service between the United States and Cuba.
Initial Questions

• Is there an SDN Involvement? What is the sanctions nexus?

• Is there a GL that would cover these transactions?

• If not, what category of Specific License do I need?
Application Submission: The Applicants Side

• Step 1: Submit application through online portal.

• Step 2: Two weeks later. Call for a status update and speak with the licensing officer assigned to the case.

• Step 3: Receive a request for additional information from the licensing officer. Email back with requested info.

• Step 4: Receive a secondary request for additional information from the licensing officer. Email back.
The Application: The OFAC Side

• Step 1: Application submitted through online portal and is assigned to a licensing officer.

• Step 2: Licensing officer conducts initial review. Determines additional information is needed. Reaches out to applicant.

• Step 3: Referral to U.S. Department of State is being prepared. Once additional information acquired, State Referral is sent.
Interagency process

• State raises a number of additional issues and additional information is required.
• OFAC licensing officer sends email to applicant for additional details.
• Supplemental information is received from the applicant and forwarded to State.
• This case will require coordination with a number of other agencies including DHS and BIS because authorization is required under BIS regulations and impacts other agencies’ authorities.
• State Foreign Policy Guidance (FPG) is received. Recommendation is to approve.
The License

- License is issued
- OFAC amends regulations to authorize these activities by general license
OFAC Contact Information

OFAC Compliance Division
*Call with:* questions about applicability of sanctions
1-202-622-2490
1-800-540-6322
[OFAC_Feedback@treasury.gov](mailto:OFAC_Feedback@treasury.gov)

OFAC Licensing Division
*Call with:* questions about pending license applications
1-202-622-2480
[http://www.treasury.gov/resource-center/sanctions/Pages/licensing.aspx](http://www.treasury.gov/resource-center/sanctions/Pages/licensing.aspx)
Highlights of Recent Cuba Changes

This presentation is provided for training purposes only and does not have the force of law. It is current as of December 7, 2016.
Agenda

- Travel-related Transactions
- Banking & Financial Services
- Physical and Business Presence
- Health-Related Activities
- Trade and Commerce
- Services Related to Infrastructure
- Grants, Scholarships, and Awards,
- Questions

This presentation is provided for training purposes only and does not have the force of law. It is current as of December 7, 2016.
Travel-Related Transactions
Importation of Cuban Merchandise as accompanied baggage from Cuba (31 CFR 515.560)

- Monetary value limits removed on importation into the U.S. as accompanied baggage for personal use of merchandise acquired in Cuba by authorized travelers.
- Normal limits on duty and tax exemptions for merchandise imported as accompanying baggage and for personal use apply.

Importation of Cuban Merchandise as accompanied baggage from third countries (31 CFR 515.585(d))

- New general license authorizes importation into the U.S. as accompanied baggage for personal use of Cuban-origin merchandise acquired in third countries.
- Normal limits on duty and tax exemptions for merchandise imported as accompanying baggage and for personal use apply.
Individual People-to-People Travel (31 CFR 515.565(b))

• Individuals may travel to Cuba for individual people-to-people educational travel, provided that the traveler engages in a **full-time schedule of educational exchange activities** intended to:
  – enhance contact with the Cuban people,
  – support civil society in Cuba, or
  – promote the Cuban people’s independence from Cuban authorities; and
  – that will result in a meaningful interaction between the traveler and individuals in Cuba.

• 5-year recordkeeping requirement
Salaries (31 CFR 515.571)

- Cuban nationals in the United States in a non-immigrant status or pursuant to other non-immigrant travel authorization are authorized to earn a salary or compensation, consistent with the terms of the particular visa, provided that the recipient is not subject to any special tax assessments in Cuba.

- U.S. companies may engage in transactions related to the sponsorship or hiring of Cuban nationals to work or perform in the United States similar to nationals from other countries, provided that no additional payments are made to the Cuban government in connection with such sponsorship or hiring.

- Transactions in connection with the filing of an application for non-immigrant travel authorizations issued by the U.S. government are also authorized.
Banking and Financial Services

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Processing U.S. Dollar Monetary Instruments (31 CFR 515.584(g) & FAQ 52)

• U.S. Banks permitted to process U.S. dollar denominated monetary instruments (ex. travelers checks) presented by Cuban financial institutions through 3rd country financial institutions

• Financial institutions receiving U.S. dollar monetary instruments for processing and payment directly or indirectly (in the case of a U.S. banking institution) may rely on the institution having presented such monetary instruments (FAQ 62)
Example

1. Cuban Ministry obtains checks from U.S. Travelers.
2. Cuban Bank sends “cash letter” to its Spanish correspondent.
3. Spanish Bank receives “cash letter”.
4. Spanish Bank credits Cuban account with USD.
5. Spanish Bank can send “cash letter” to its U.S. correspondent.
6. Cubans now able to build USD reserves.

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“U-Turn” Transactions Permitted Through the U.S. Financial System (31 CFR 515.584(d))

- Funds transferred from a bank outside the U.S. passes through U.S. financial institution(s) then transferred outside the U.S.
  - Cuba or Cuban national has an interest
  - Neither the originator nor beneficiary is person subject to U.S. jurisdiction
  - Allows funds starting and ending outside the U.S. to include foreign branches and subsidiaries of U.S. banking institutions (FAQ 65)

- Transactions meeting the requirements of 515.584(d) may be processed even if it involves an SDN of Cuba (FAQ 66)
  - Due Diligence Expectation
Example of a “U-Turn” Transactions

French Importer Paying Cuban Exporter in USD

1. French Importer initiates a funds transfer
2. OB debits the French Importer’s account
3. OB sends funds to the U.S. Intermediary Bank
4. Intermediary Bank sends the funds to BB in Spain
5. BB credits Cuban Exporter (Beneficiary’s account)

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Example of a “U-Turn” Transactions

Example of a Transaction that is NOT Authorized

1. U.S. Person* (Originator) seeks to purchase property in Cuba
2. OB (Dutch) debits the U.S. person’s account
3. OB sends funds to the U.S. Intermediary Bank
4. U.S. Intermediary Bank sends the funds to BB
5. BB credits Cuban Property owners (Beneficiary’s) account in Canada

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Physical Presence

- Physical presence and operations in Cuba authorized for certain categories of entities (31 CFR § 515.573(a)):
  - Office space & related services and goods
  - Marketing
  - Cuban and U.S. employees in Cuba
  - Bank accounts

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Physical presence and operations in Cuba authorized for companies in the following categories (31 CFR § 515.573(d)):

- News bureaus;
- Entities organizing or conducting certain educational activities;
- Religious organizations;
- Entities engaging in certain noncommercial activities authorized by § 515.574 (Support for the Cuban People);
- Entities engaging in certain humanitarian projects;
- Private foundations or research or educational institutes engaging in transactions authorized by § 515.576.

Additional categories are authorized for both business & physical presence.
• Authorizes transactions necessary to maintain a business presence in Cuba to engage in certain authorized activities (31 CFR § 515.573(b)).

• Examples of authorized business presence include:
  • Subsidiaries;
  • Joint ventures;
  • Franchises;
  • Branches;
  • Agency or other business relationships with Cuban nationals.

• Does not authorize transactions prohibited by § 515.208.
Physical and/or business presence in Cuba authorized for companies in the following categories of authorized activities (31 CFR § 515.573(c)):

- Providers of telecommunications or internet-based services;
- Exporters of certain goods authorized for export or reexport by Commerce and OFAC to Cuba, or that are exempt;
- Entities providing mail or parcel transmission services; and
- Providers of carrier and certain travel services.
• Transactions incident to joint medical research (31 CFR § 515.547(a))
• Bank accounts (31 CFR § 515.547(d))
• Limitations:
  – Travel-related transactions must be separately authorized
    • Professional meetings/Professional research GL may apply
  – Exports of goods, software, and technology subject to the EAR must be separately authorized
  – Physical or business presence and hiring Cuban nationals not authorized
  – Does not authorize transactions prohibited by § 515.208.
Transactions incident to obtaining FDA approval of Cuban-origin pharmaceuticals, including (31 CFR § 515.547(b)):
- discovery and development, pre-clinical research, clinical research, regulatory review, regulatory approval and licensing, regulatory post-market activities, and the importation into the United States of Cuban-origin pharmaceuticals.

Transactions incident to the marketing, sale, or other distribution in the United States of FDA-approved Cuban-origin pharmaceuticals, including importation into the United States (31 CFR § 515.547(c)).
Trade & Commerce

This presentation is provided for training purposes only and does not have the force of law. It is current as of December 7, 2016.
Exports and reexports to Cuba that are authorized by the Department of Commerce (31 CFR § 515.533(a)):

- Removal of references to “100% U.S.-origin items”
  - Minimizes circumstances under which exporters / reexporters need a specific license from OFAC in addition to Department of Commerce authorization
  - Transactions between U.S.-owned or -controlled firms in a third country and Cuba for the export to Cuba of commodities produced in a country other than the US or Cuba are not authorized
Importation of certain items previously exported or reexported to Cuba; servicing and repair (31 CFR § 515.533(b))

- Authorizes import into the US or a third country certain items previously exported to Cuba
  - Eligible items are those that were exported / reexported pursuant to certain sections of the CACR
  - Allows for such items to be returned to the US or a third country, including for service and repair
  - Any export or reexport to Cuba of serviced or repaired items must be separately authorized
Contingent Contracts (31 CFR 515.534)

- Persons subject to U.S. jurisdiction now authorized to enter into certain contingent contracts for transactions prohibited by the Regulations and to engage in transactions ordinarily incident to negotiating and entering into such contracts.
- Contract performance must be made contingent on OFAC authorizing underlying transactions or authorization no longer being required.
- If transaction implicates another Federal agency’s licensing requirements, then contract must make obtaining necessary license(s) or removal of that licensing requirement an additional precondition of performance.
Services Related to Infrastructure

This presentation is provided for training purposes only and does not have the force of law. It is current as of December 7, 2016.
• Authorizes provision to Cuba or Cuban nationals of services related to developing, repairing, maintaining, and enhancing Cuban infrastructure that directly benefits the Cuban people (31 CFR § 515.591).

• Provided that services are consistent with export/reexport licensing policy of the Department of Commerce.
“Infrastructure” means:

- Systems and assets used to provide the Cuban people with goods and services produced or provided by the:
  - Public transportation;
  - Water management;
  - Waste management;
  - Non-nuclear electricity generation; and
  - Electricity distribution sectors;
- Hospitals; public housing; and primary and secondary schools; and
- Projects related to the environmental protection of U.S., Cuban, and international air quality, waters, and coastlines.
Grants, Scholarships & Awards

This presentation is provided for training purposes only and does not have the force of law. It is current as of December 7, 2016.
Grants, Scholarships & Awards

• Authorizes provision of grants, scholarships, or awards to a Cuban national, or in which Cuba or a Cuban national otherwise has an interest (31 CFR § 515.590):

• Related to the following activities:
  – Educational activities;
  – Certain humanitarian projects;
  – Scientific research; and
  – Religious activities.
Questions