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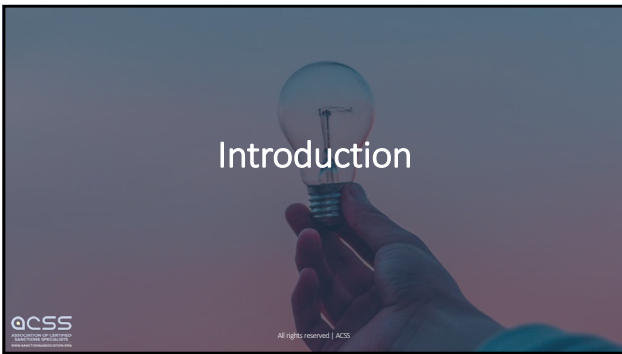
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### What Are Sanctions?

Traditionally defined as the “deliberate, government-inspired withdrawal, or threat of withdrawal, of customary trade and financial relations with a target country in an effort to change that country’s policies.” Gary Hufbauer & Barbara Oegg, A Short Survey of Economic Sanctions, INST. FOR INTL. ECON. (Aug. 2003)

Legal measures taken to prevent certain types of activities or to influence the behavior of countries, groups, or individuals.

Typically restrict or prohibit trade and financial transactions with specified targets.

Have the force of law, failure to comply can give rise to severe penalties



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### Objectives

To deny resources to the target, with the aim of making certain activities, such as terrorism or narcotics trafficking, impossible.

To persuade or compel the target to change its practices

To penalize the target for its practices

To make a symbolic political statement, either to domestic political constituencies or to the global community as a whole



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6

### Imposers

Unilateral: Countries


• e.g.

- United States
- United Kingdom
- Japan

Multilateral: International organizations

• e.g.

- United Nations
- European Union



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### Targets



Countries or regions


- e.g.
- Entire countries
- Regions with a countries
- Governments



Individuals, groups, organizations

- e.g.
- Individuals
- Al Qaida
- Vessels





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### Categories



**Comprehensive sanctions** employ extensive trade embargoes against the target of sanctions and involve wide-sweeping bans on trade, diplomatic relations, and or other relationships between target and sender. For example, sanctions that prohibit the import or export of goods and services that benefit a country or region.

**Targeted or list-based sanctions** impose sanctions on specific items or restrictions on a person or on groups of specific people. For example, sanctions that target specific individuals and entities of a country or region.

**Sectoral sanctions:** Target a specific industry of a country or region.



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### Subjects of Sanctions

**"direct" or "primary" sanctions.**

Sanctions generally require compliance by

- the nationals of the country applying the sanctions. This is true wherever they might be located, even if it is outside the country.
- Persons physically present in a country must also obey its sanctions, regardless of their citizenship.
- Entities, such as corporations, organized under the laws of a country, including their foreign branches as well (and sometimes foreign subsidiaries)



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## Subjects of Sanctions


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**Secondary Sanctions**

May impose duties or prohibit conduct by non-nationals, including citizens of other countries or foreign companies operating outside the sanctioning country.

**Secondary Sanctions**

Also called "extraterritorial" sanctions;  
Extend power of U.S. law indirectly, to non-U.S. firms;  
May directly prohibit foreign subsidiaries of U.S. companies from engaging in certain types of activity;  
May indirectly target non-U.S. firms by trying to restrict their access to the U.S. market;  
Create risk areas for non-U.S. companies.



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## Categories of Sanctions

<b>Prohibitions on Imports</b>	<b>Sectoral Sanctions</b>
<b>Prohibitions or Restrictions on Exports</b>	<b>Travel and Transit Restrictions</b>
<b>Arms Embargos</b>	<b>Reporting Requirements</b>
<b>Prohibitions on Financial Transactions</b>	<b>Facilitation</b>
<b>Product-Specific Embargos</b>	
<b>Asset Freezes</b>	
<b>Prohibitions or Restrictions on Investment</b>	
<b>Prohibitions on Financial Transactions</b>	



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## Facilitation

U.S. sanctions laws prohibit persons subject to a sanctions regime from assisting a foreign person not subject to that sanctions regime from undertaking an action that would be prohibited if performed by the subject person.



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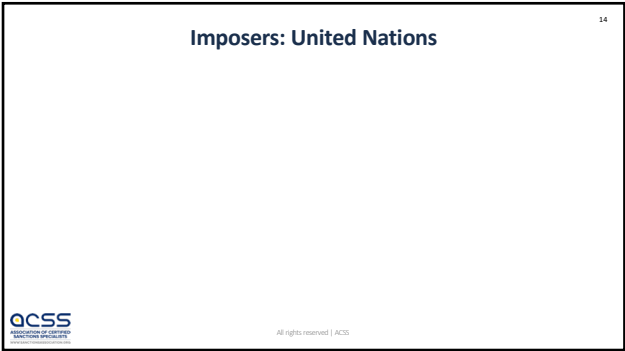
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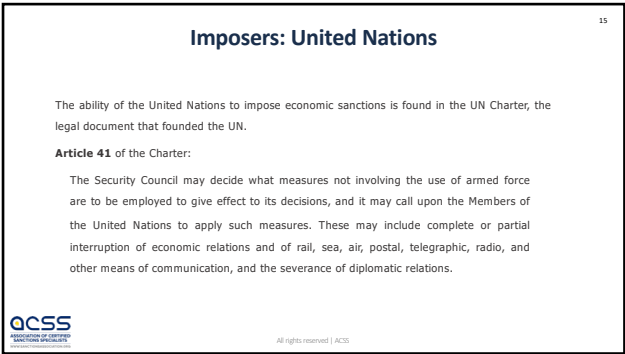
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### Security Council

- Can take action to **maintain or restore international peace and security** under Chapter VII of the UN Charter.
- Sanctions measures, under Article 41, encompass a **broad range** of enforcement options that do not involve the use of armed force.
- Different forms, in pursuit of a variety of goals.
  - Comprehensive** economic and trade sanctions
  - Targeted measures** such as
    - arms embargoes
    - travel bans, and
    - financial or commodity restrictions.
- Has applied sanctions to support peaceful transitions, deter non-constitutional changes, constrain terrorism, protect rights and promote non-proliferation.

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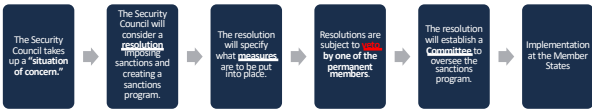
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### UN Sanctions: The Process



```
graph LR; A[The Security Council takes up a "situation of concern."] --> B[The Security Council will consider a resolution imposing sanctions and creating a sanctions program.]; B --> C[The resolution will specify what measures are to be put into place.]; C --> D[Resolutions are subject to veto by one of the permanent members.]; D --> E[The resolution will establish a Committee to oversee the sanctions program.]; E --> F[Implementation at the Member States.];
```

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### Committees and Panels of Experts

- The **Committees** carry out the actual work with respect to a sanctions program.
- Their role is to implement, monitor and provide recommendations to the Council on particular sanctions regimes.
- The Committee is chaired by a **nonpermanent** member of the Security Council.
- The committee may also meet with Member States and international organizations.
- Often identifies exactly who is subject to sanctions. In some cases, the resolution creating a sanctions program may identify individuals or groups that will be subject to the sanctions, but in many cases, it is the committee that does so.
- A committee may request advice and meet with **Panels of Experts** that support the work of the Committee.

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Implementation

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UN sanctions do not automatically go into effect in individual countries, and the UN has no independent mechanism for enforcing sanctions.

Sanctions must be implemented by the individual members.

Most UN members have a process where UN sanctions, including new designations, are incorporated into national law. This process typically requires the enactment of legislation or regulation that adopts the UN sanctions. In addition, many companies have the policy of declining to do business with individuals or entities that are subject to UN sanctions, even if their country has not imposed those sanctions.



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Imposers: European Union

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Key Objectives

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- Safeguarding EU values, interests and security
- Preserving peace
- Consolidating and supporting democracy, rule of law, human rights, international law
- Preventing conflicts and strengthening international security



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Context: Common Foreign and Security Policy (CFSP)

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Helps the High Representative for Foreign Affairs and Security Policy carry out the EU CFSP

Sanctions of a diplomatic or economic nature

Influence policies





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Legal Basis

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TITLE IV  
**RESTRICTIVE MEASURES,**  
Article 215

CONSOLIDATED VERSION  
OF  
THE TREATY ON THE FUNCTIONING OF THE  
EUROPEAN UNION

1. Where a decision, adopted in accordance with Chapter 2 of Title V of the Treaty on European Union, provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, shall adopt the necessary measures. It shall inform the European Parliament thereof.

2. Where a decision adopted in accordance with Chapter 2 of Title V of the Treaty on European Union so provides, the **Council may adopt restrictive measures** under the procedure referred to in paragraph 1 **against natural or legal persons and groups or non-State entities.**

3. The acts referred to in this Article shall include necessary provisions on legal safeguards.



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Three Types of Sanctions


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Art. 215 TFEU

1. **Sanctions** implementing United Nations Security Council (UNSC) sanctions

2. **Sanctions** that are more restrictive than provided for in UNSC resolutions

3. **Autonomous sanctions**



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### How are EU Restrictive Measures adopted?

- Proposals by the High Representative (HR), or by the HR and the European Commission
- The Council of the European Union ('the Council') passes into EU law
- Informing The European Parliament
- Publication and entry into force

**Arms Embargoes and Visa Bans are member states' own national rules**

REMEMBER  
Add icon: R

25

```
graph TD; A[1. HR or HR/Commission] --> B[Proposed/Redrafted Legislation]; B --> C[2. Council of the EU]; C --> D[3. European Parliament]; D --> E[4. Publication - Entry into force - National implementation]; C --> E; C --> F[Inform]; F --> D; C --> G[Negotiations]; G --> A;
```

The Council of the EU To Pass: Unanimous, or Double majority > 55% governments & > 65% EU population

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### Implementation at the Member States

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graph LR; A[The Council adopts a CFSP Decision] --> B[The measures foreseen in that Council Decision are either implemented: (1) by means of a Regulation, adopted by the Council. Regulations are binding and enforceable throughout the EU. (2) National level - Some Restrictive measures are implemented directly by the Member States, which are legally bound to act in conformity with CFSP Council Decisions.]; B --> C[Commission assist member countries in correctly implementing all EU laws]; C --> D[Failure to apply EU law - infringement procedure, ultimate European Court of Justice];
```

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### Who must comply

EU sanctions apply within

- the jurisdiction (territory) of the EU
- on board of aircrafts or vessels under member states' jurisdiction
- to EU nationals in any location
- to companies and organisations incorporated under the law of a member state - including branches of EU companies in third countries
- to anyone and any company or organisation when conducting business within the EU.

Add icon: BOMB/WARNING

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### Enforcement and Penalties

Enforcement of the EU sanctions regulations is mostly left to the member states.

**National Supervisory Authority**

- Different agencies can be involved
- Penalties depend on local law of the Member State

**European Central Bank**

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### EU Internal Compliance Program for Dual-Use Controls

Commission Recommendation under Council Regulation (EC) No 428/2009  
This 2019 guidance is of a non-binding character

**EU ICP GUIDANCE FOR DUAL-USE TRADE CONTROLS**

The following core elements are essential for an effective dual-use trade control Internal Compliance Programme:

- Top-level management commitment to compliance
- Organisation structure, responsibilities and resources
- Training and awareness raising
- Transaction screening process and procedures
- Performance review, audits, reporting and corrective actions
- Recordkeeping and documentation
- Physical and information security

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<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019H1131&from=EN>

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## Imposers and Targets: United States

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## United States

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- Like the E.U., the U.S. has 3 general approaches to sanctions: list based, country based, and sectoral.
- Several countries, including Cuba, Iran, North Korea, and Syria, are subject to broad embargos.
- The U.S. also imposes sanctions against a number of different types of individuals and organizations, including terrorists, narcotics dealers, and weapons proliferators.
- Unique in that some of its sanctions programs purport to require compliance by non-U.S. individuals and entities, giving them extraterritorial effect.
- OFAC is the agency primarily charged with administering and enforcing economic sanctions on behalf of the U.S. government



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## Main Agencies

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- **OFAC:** Primarily charged with administering and enforcing economic sanctions on behalf of the U.S. government
- **Bureau of Industry and Security ("BIS"):** agency within the DOC, administers most U.S. export control laws.
- **The State Department** regulates exports of arms. May also play a role in designating individuals or entities as targets for sanctions.
- Along with OFAC, the **DOJ** is involved in enforcement of the sanctions laws, especially if a violation rises to the level of a crime.
- The **Federal Reserve** to some extent oversees and enforces sanctions compliance by banks.



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## Who Must Comply?

33

### "U.S. persons."

- U.S. citizens and
- resident aliens, wherever they are located.

**Branches** of U.S. companies in other countries are considered U.S. persons as well. U.S. subsidiaries of foreign companies are U.S. persons.

**Foreign subsidiaries of U.S. companies - sometimes**—the sanctions laws regarding Cuba and Iran specify that they apply to foreign subsidiaries of U.S. companies as well.

U.S. sanctions also apply to **any person who is physically present** in the territory of the United States, regardless of their nationality. This remains true as long as they are present in the United States.

**Any business a foreign entity does in the United States**, even if it has no physical presence in the United States.

**All transactions denominated in U.S. dollars.** If any segment of a transaction involves a U.S. person, it is subject to U.S. law. Practically all non-cash U.S. dollar payments are cleared through U.S. banks. Even if no other party to the transaction is a U.S. person, the involvement of a U.S. bank or any other U.S. person in the transaction will result in the potential application of U.S. law.



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### A Tour of OFAC's Key Legal Authorities

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#### The International Emergency Economic Powers Act of 1977

(50 U.S.C. ch. 35 § 1701 et seq. "IEEPA")

- Provides President with authority to:
  - identify a threat to national security, foreign policy, or economy of the United States
  - to declare a national emergency to deal with the threat
- After emergency declared, President authorized to
  - "...investigate, regulate, or prohibit..." transactions.
  - Block (freeze) assets
- During armed hostilities, President may confiscate blocked property
- IEEPA emergencies have limited duration and must be renewed annually
- IEEPA can be found at
  - <https://www.govinfo.gov/content/pkg/USCODE-2015-title50/pdf/USCODE-2015-title50-chap35.pdf> or
  - <https://www.treasury.gov/resource-center/sanctions/Documents/ieepa.pdf>

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### A Tour of OFAC's Key Legal Authorities

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#### The Trading With the Enemy Act of 1917

(50 U.S.C. ch. 30 § 4101 et seq. "TWEA")

- Legal foundation for Treasury-administered sanctions programs from 1917-1977
  - today, only the Cuba sanctions program remains
- Post-Watergate, view that national emergency should be more limited
- Proclamations as opposed to Executive Orders, emergencies not time limited

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### A Tour of OFAC's Key Legal Authorities

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A sample of other statutes that impact, but are not as core to, OFAC programs sanctions include the following:

#### Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA")

- passed in the wake of the 1993 World Trade Center bombing and the 1995 Oklahoma City bombing
- Various aims and objectives, but includes authority to designate foreign terrorist organizations and prohibit fundraising by them
- In practice, most OFAC designations related to terrorism are made under IEEPA

#### Foreign Narcotics Kingpin Designation Act of 1999

- Expanded OFAC's IEEPA-based narcotics program from Colombia to the rest of the world
- Provisions generally mirror authorities found in IEEPA, though the penalties were more severe than IEEPA provided at the time

#### Legislative action on sanctions has become common over past 8 years, particularly related to Iran

- Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA)
- Authorizes secondary sanctions for the first time
- Secondary sanctions historically supported by the Executive Branch as impeding the President's authority to conduct foreign policy

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### U.S. Sanctions – by Statute

Statutes are measures enacted by Congress and signed into law by the President.

Example: Section 228 of CAATSA

The President shall impose the sanctions described in subsection (b) with respect to a foreign person if the President determines that the foreign person, based on credible information, on or after the date of the enactment of this section—

“(1) is responsible for, complicit in, or responsible for ordering, controlling, or otherwise directing, the commission of serious human rights abuses in any territory forcibly occupied or otherwise controlled by the Government of the Russian Federation;



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### U.S. Sanctions – By Executive Order

Three key sets of paperwork generally required:

01  
Executive Order from the President

02  
OFAC Updates

03  
OFAC Regulations



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### Executive Orders – A Primer

- Using IEPPA authorities, the President issues an Executive Order (“EO”)
- Within the EO, the President typically:
  - Determines something poses an “unusual or extraordinary” threat to the national security, foreign policy, or economy of the US
  - Declares a national emergency with respect to the threat
  - Orders measures such as blocking (freezing) of assets and/or transaction prohibitions
  - Identifies other criteria that could lead to imposition of sanctions in the future





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01

Declares a national emergency

02

Contains a Presidential finding

03

Identifies the initial, foundational targets for the sanctions program

04

Directs Cabinet agencies, especially Treasury, to do specific things

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OFAC Updates

- OFAC publishes the EO, targets from the EO Annex, any other designations, and other relevant information
- Notice is found in the Recent Actions section of OFAC's website: <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/OFAC-Recent-Actions.aspx>
- This is the most important part of OFAC's website
- You can sign up for e-mail alerts when OFAC updates its Recent Actions. Take advantage of it!

U.S. DEPARTMENT OF THE TREASURY

Resource Center

2018 OFAC Recent Actions

Back to OFAC Recent Actions

OFAC Recent Actions

Date	Description
10/12/2018	Executive Order 13800: National Emergency Concerning the Unlawful Activities of Certain Foreign Financial Institutions
10/12/2018	Executive Order 13800: National Emergency Concerning the Unlawful Activities of Certain Foreign Financial Institutions
10/12/2018	Executive Order 13800: National Emergency Concerning the Unlawful Activities of Certain Foreign Financial Institutions
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OFAC Regulations

- Draft and publish regulations via notice in the Federal Register and ultimately in the Code of Federal Regulations (CFR).
- Regulations explain in more detail what is prohibited, what is exempted, what can be licensed, and defines key terms.
- OFAC regulations are found in Title 31 of the Code of Federal Regulations at Chapter V, Part 500 to end. See <https://www.cfr.gov/cfr-ty.html>. <https://www.cfr.gov/cfr-ty.html> is the best place to find the regulations. <https://www.cfr.gov/cfr-ty.html> is the best place to find the regulations. <https://www.cfr.gov/cfr-ty.html> is the best place to find the regulations.

CHAPTER V—OFFICE OF FOREIGN ASSETS CONTROL, DEPARTMENT OF THE TREASURY

31 CFR 500.101-1

31 CFR 500.101-2

31 CFR 500.101-3

31 CFR 500.101-4

31 CFR 500.101-5

31 CFR 500.101-6

31 CFR 500.101-7

31 CFR 500.101-8

31 CFR 500.101-9

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31 CFR 500.101-99

31 CFR 500.101-100

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### OFAC Regulations – Key Programs

- **31 CFR Part 501 – Reporting, Procedures, and Penalty Regulations:**
  - *This Part applies to ALL of OFAC's regulations*
  - Key reporting obligations – reports of blocked or rejected transactions, annual reports of blocked property,
  - Requirement to furnish information – so-called “602s” or administrative subpoenas
  - Appendix includes OFAC's Enforcement Guidelines
- **31 CFR Part 515 – Cuban Asset Control Regulations** – the Cuba program since 1963
- **31 CFR Part 536 – Narcotics Trafficking Sanctions Regulations**
- **31 CFR Part 544 – Weapons of Mass Destruction Proliferations Sanctions Regulations**
- **31 CFR Part 560 – Iranian Transaction and Sanctions Regulations**
- **31 CFR Part 594 – Global Terrorism Sanctions Regulations**
- **31 CFR Part 598 – Foreign Narcotics Kingpin Sanctions Regulations**



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### Comprehensive Program vs. Limited Program

- “Comprehensive” due to scope of the blocking (asset freeze) and broad prohibition on transactions
  - Nearly always country-based sanctions: Cuba, Iran, North Korea, Syria
  - Governments of these countries and anything they may own or control is blocked
  - transactions by US persons involving any person physically in these countries is prohibited.
  - With Cuba, blocking provision applies to all Cuban nationals wherever located
- “Limited” due to more focused scope of blocking and transaction prohibitions
  - Country-focused programs that are limited, list-based in nature, such as Democratic Republic of Congo or South Sudan
  - Conduct based sanctions such as the global terrorism program, WMD proliferators program, or transnational organized crime.
  - Sectoral sanctions such Russia



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### Core Sanctions Prohibitions

- **Blocking property and interest in property of a sanctions target**
  - Also known as freezing assets
  - Property cannot be dealt in in any manner without OFAC authorization
  - Blocking is NOT the same as seizure or forfeiture
- **Prohibited transactions or dealings**
  - No exports or re-exports of goods or services
  - No imports of goods or services
  - No trade-related activities
  - No facilitation – if you can't do it, you can't help someone else do it either
- **Prohibitions on activities by foreign owned entities of a US parent** – unique to Cuba and Iran programs
- **Prohibition on Evasion**
- **Holding of blocked property** – target must NOT have access to the property in any way; no dealings without OFAC license; interest must be earned



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### Core Sanctions Prohibitions

- **Sectoral sanctions** contain very different prohibitions
  - Does not involve blocking or broad-based prohibition on transactions or services.
- The key prohibitions tend to center on:
  - Prohibitions on new debt
  - Prohibitions on new equity
- Prohibitions on evasion and facilitation carry through in this context.
- Why would a policy maker choose country versus list based versus sectoral sanctions?
  - Depends on the issue they are seeking to address and the market integration of the targets



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### OFAC Organization

**OFAC's Inner Workings – Key Groups Within OFAC**

#### Compliance

the public face of OFAC  
Website content

- FAQs
- Hotline
- Reporting
- Outreach
- Regulated industry enforcement


#### Licensing

tunes the broad prohibitions to meet US foreign policy goals

#### Global Targeting

finds the names to put on the lists

- Where do designations come from?
  - Leads
  - All source investigation
- Focus on the network
- De-listings – the process can be lengthy
  - See 31 C.F.R. §561.807
  - Demonstrate that you changed behavior / severed ties



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### Elements of a Risk-Based Sanctions Compliance Program



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### A Framework for OFAC Compliance Commitment

Issued by OFAC in May 2019  
Five Essential Components of Compliance,



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20530

**A Framework for OFAC Compliance Commitments**


1. Management Commitment

2. Risk Assessment

3. Internal Controls

4. Testing and Auditing

5. Training



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### 1. Management Commitment

- One of the most important factors in determining its success.
- Essential in ensuring the SCP receives adequate resources and is fully integrated into the organization's daily operations
- Helps legitimize the program, empower its personnel, and foster a culture of compliance throughout the organization.



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### 2. Risks in Sanctions Compliance

Risks = Potential threats or vulnerabilities that, if ignored or not properly handled, can lead to violations of OFAC's regulations and negatively affect an organization's reputation and business.

OFAC recommends a risk-based approach when designing or updating an Sanctions Compliance Program (SCP)

Conduct a routine, and if appropriate, ongoing "risk assessment" (RA) for the purposes of identifying potential OFAC issues they are likely to encounter.

Results: integral in informing the SCP's controls, and training in order to mitigate such risks.



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### What Should the RA Exercise Entail?

No one size fits all


Holistic view of the organization from top to bottom and assess its touchpoints to the outside world  
(1) Customers, supply chain, intermediaries and counter parties  
(2) Products and services  
(3) Geographic locations

Allows the organization to identify potential areas in which it may engage with OFAC prohibited entities, parties, countries or regions

**International exposure**  
Customers outside the US? Operations outside the US? Transactions outside the US?

**Size and stability of customer base**  
More customers, especially outside the US, contains greater risk

**Volume and value of transactions**  
Bigger numbers crossing borders contains greater risk



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### Example: Recognizing Risk

**Transactions to Consider:** Any business transaction or service could potentially violate OFAC. There is no minimum dollar amount.

However, certain transactions may pose a higher risk. Examples:

- Initiated from foreign countries
- Cash only, especially for large or luxury items that are easily liquidated
- International wire transfers involving international parties
- Trade finance
- Real estate deals, especially where the borrower or seller isn't personally known
- Loan transactions, especially if the proceeds go to a third party
- With entities known to conduct business in sanctioned countries
- With a party who is anonymous or attempts to conceal his identity or location



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### Other Aspects of Conducting the RA

Annex to Appendix A to 31 CFR Part 501, OFAC's Economic Sanctions Enforcement Guidelines provides an OFAC Risk Matrix that may be used by financial institutions or other entities to evaluate their compliance programs

Organization will conduct OFAC RA in a manner and with a frequency that accounts for the potential risk.

RA updated to account for root causes of apparent violations or systematic deficiencies identified by the organization

Leverage existing information to inform the process, including due diligence efforts, including at onboarding  
mergers and acquisitions



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### 3. Internal Controls

As well as a compliance structure, an organization needs policies and procedures detailing how it mitigates sanctions risks and addresses specific situations. The OFAC guidance provides the following guidelines for these policies and procedures:

1. The organization has designed and implemented **written policies and procedures** outlining the SCP.
  - A) relevant to the organization
  - B) capture the organization's day-to-day operations and procedures
  - C) easy to follow, and
  - D) designed to prevent employees from engaging in misconduct.
2. The organization has implemented **internal controls that adequately address the results of its OFAC risk assessment and profile.**
3. The organization **enforces** the policies and procedures it implements as part of its OFAC compliance internal controls through **internal and/or external audits.**



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### Internal Controls (cont.)

- 4) The organization ensures that its OFAC-related recordkeeping policies and procedures adequately account for its requirements pursuant to the sanctions programs administered by OFAC.
- 5) The organization ensures that, upon learning of a weakness in its internal controls pertaining to OFAC compliance, it will take immediate and effective action, to the extent possible, to identify and implement compensating controls until the root cause of the weakness can be determined and remediated.
- 6) The organization has clearly communicated the SCP's policies and procedures to all relevant staff, including personnel within the SCP program, as well as relevant gatekeepers and business units operating in high-risk areas (e.g., customer acquisition, payments, sales, etc.) and to external parties performing SCP responsibilities on behalf of the organization.
- 7) The organization has appointed personnel for integrating the SCP's policies and procedures into the daily operations of the company or corporation. This process includes consultations with relevant business units, and confirms the organization's employees understand the policies and procedures.



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### 4. Testing and Auditing

What is essential is that the testing cover sanctions compliance, and that it fulfill certain basic criteria, as identified by OFAC:

- 1) Testing or audit function is
  - 1) accountable to senior management
  - 2) independent of the audited activities and functions, and
  - 3) has sufficient authority, skills, expertise, resources, and authority within the organization.
- 2) The organization commits to ensuring that it employs testing or audit procedures **appropriate** to the level and sophistication of its SCP and that this function, whether deployed internally or by an external party, reflects a comprehensive and objective assessment of the organization's OFAC-related risk assessment and internal controls.
- 3) The organization ensures that, upon learning of a confirmed negative testing result or audit finding pertaining to its SCP, it will **take immediate and effective action**, to the extent possible, to identify and implement compensating controls until the root cause of the weakness can be determined and remediated.



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- 1) The organization commits to ensuring that its OFAC-related training program provides adequate information and instruction to employees and, as appropriate, stakeholders (for example, clients, suppliers, business partners, and counterparties) in order to support the organization's OFAC compliance efforts. Such training should be further tailored to high-risk employees within the organization.
- 2) The organization commits to provide OFAC-related training with a scope that is appropriate for the products and services it offers; the customers, clients, and partner relationships it maintains; and the geographic regions in which it operates.
- 3) The organization commits to providing OFAC-related training with a frequency that is appropriate based on its OFAC risk assessment and risk profile.
- 4) The organization commits to ensuring that, upon learning of a confirmed negative testing result or audit finding or other deficiency pertaining to its SCP, it will take immediate and effective action to provide training to or other corrective action with respect to relevant personnel.
- 5) The organization's training program includes easily accessible resources and materials that are available to all applicable personnel.



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DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20000

REVISED GUIDANCE ON ENTITIES OWNED BY PERSONS WHOSE PROPERTY  
AND INTERESTS IN PROPERTY ARE BLOCKED

Property blocked pursuant to an Executive order or regulations administered by OFAC is broadly defined to include any property or interest in property, tangible or intangible, including present, future or contingent interests. A property interest subject to blocking includes interests of any nature whatsoever, direct or indirect.

U.S. persons are advised to act with caution when considering a transaction with a non-Blocked entity in which one or more Blocked persons has a significant ownership interest that is less than 50 percent or which one or more Blocked persons may control by means other than a majority ownership interest. Such entities may be the subject of future designation or enforcement action.

conducting direct, face-to-face meetings may be the subject of future designation or enforcement action by OFAC. Furthermore, a U.S. person may not procure goods, services, or technology from, or engage in transactions with, a blocked person directly or indirectly (including through a third-party intermediary).



## 60

One or more blocked persons' ownership of shares of an entity **through another entity or entities** that are 50 % or more owned in the aggregate by the blocked person(s).





OFAC 50% Guidance and Indirect Ownership in Complex Ownership Structures

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Example

SDN: Company A

50%

DIRECT

Company C

50%

INDIRECT

Company D

50%

CASCADE

Company E

AGGREGATE

15%

Company B

40%

SDN: Mr. X

B, C, D and E are considered to be blocked.

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Exercise 1: OFAC 50% Guidance

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Which companies are considered to be blocked. Explain your answer.

SDN: Mr. X

50%

Company A

25%

Company C

50%

Company B

25%

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Answer Exercise

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SDN: Mr. X

50%

Company A

25%

Company C

50%

Company B

25%

INDIRECT ownership of 25%

INDIRECT ownership of 25%

A and B are considered to be blocked

C is considered to be blocked. This is so because of two reasons:

1. **INDIRECT:** through its 50 % ownership in A, Mr. X is considered to indirectly own 25 % in C; and through its 50 % ownership in B, Mr. X is considered to indirectly own another 25 % in C. When Mr. X's indirect ownership of C through A and B is totaled, it equals 50 %.

2. **DIRECT:** C is also considered to be blocked due to the 50 % aggregate ownership by A and B, which are themselves blocked entities due to Mr. X's 50 % ownership of each.

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Exercise 2: OFAC 50% Guidance

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Which companies are considered to be blocked. Explain your answer.

SDN: Mr. X

50%

Company A

40%

Company B

10%

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Answer Exercise

65

INDIRECT  
ownership of 40%

SDN: Mr. X

50%

Company A

40%

Company B

10%

**A and B** are considered to be blocked  
**B** is considered to be blocked because, through its 50 % ownership in A, Mr. X is considered to indirectly own 40 % in B. When added to Mr. X's direct 10 % ownership in B, Mr. X's total ownership (direct and indirect) of Entity B is 50 %.

Company B is also blocked due to the 50 % aggregate ownership by Mr. X(10%) and Entity A (40%), which are themselves both blocked persons.

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Test Your Knowledge

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3. True or False: if a name isn't on one of OFAC's lists, it isn't sanctioned

4. True or False: if a sectoral sanctions target subject of a prohibition on debt greater than 30 days pays an invoice for other authorized services 90 days after the invoice date, that's not a problem.

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What We Covered

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Sanctions screening is a core control, but only as good as the data going into the tool.

Effective sanctions screening involves BOTH assessing name matches AND whether the purpose of a transaction is prohibited

Just because something isn't on OFAC's list doesn't mean it isn't sanctioned: 50% Guidance.

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Technology and Screening

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Sanctions Screening

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“Sanctions screening is a control employed within FIs to detect, prevent and manage sanctions risk and should be undertaken as part of an effective Financial Crime Compliance (FCC) programme, to assist with the identification of sanctioned individuals and organisations, as well as the illegal activity to which FIs may be exposed.”

“It is the comparison of one string of text against another to detect similarities which would suggest a possible match. It compares data sourced from an FI's operations, such as customer and transactional records, against lists of names and other indicators of sanctioned parties or locations.”

Wolfsberg Guidance on Sanctions Screening (2019)

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## Wolfsberg Guidance 2019

**the  
Wolfsberg  
Group**

Wolfsberg Guidance on  
Sanctions Screening

The objective of this paper is for the Wolfsberg Group to provide guidance to FIs as they assess the effectiveness of their sanctions screening controls, whether automated, manual or both.


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## 2019 Wolfsberg Guidance on Sanctions Screening

Core principles as the basis for the design and implementation of sanctions screening systems:

1. Articulate the specific sanctions **risk** the organization is trying to prevent or detect within its products, services and operations.
2. Identify and evaluate the inherent **potential exposure** to sanctions risk presented by the FI's products, services and customer relationships.
3. Develop a well-documented **understanding of the risks** and how they are managed through the set-up and calibration of the screening tool.
4. Assess where, within the organization, the **information is available** in a format conducive to screening.


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## 2019 Wolfsberg Guidance on Sanctions Screening

Most FIs will deploy **two main screening controls** to achieve their objectives:

1. **Transaction screening** is used to identify transactions involving targeted individuals or entities.
2. **Customer or Name screening** is designed to identify targeted individuals or entities during on-boarding or the lifecycle of the customer relationship with the FI.

Together, transaction and customer screening are designed to form a robust set of controls for identifying sanctions targets. It should be recognised that there are a number of limitations in the way in which these controls are managed and should always be employed as part of a wider FCC programme.


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### 2019 Wolfsberg Guidance on Sanctions Screening

**Reference data screening** is the process of screening the information an FI collects and maintains on the parties it does business with, or specific types of products and services it offers. While it is often referred to as “name” or “customer” screening, the concept of reference data screening encompasses **any data set within the FI's operations, separate from its transactional records, that may present a relevant sanctions risk indicator and be conducive to detection through screening on a periodic basis.**


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### 2019 Wolfsberg Guidance on Sanctions Screening

**The most common types of reference data relevant for sanctions screening include:**


Customers, including all parties, whose identity is collected by an FI to meet its Know Your Customer (KYC) and Customer Due Diligence (CDD) standards, such as beneficial owners and related or connected parties

Employee data

Third-party service providers, for example, vendors, landlords of FI-occupied premises, tenants of FI-owned premises

International Securities Identification Numbers (“ISIN”) or other sanctions-relevant identifying features of assets held in custody by the FI

Recipients of the FI's corporate donations or sponsorship


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### 2019 Wolfsberg Guidance on Sanctions Screening

Several factors that may affect the design of the screening system.

1. The **jurisdictions** where the organization is located, which determines the sanctions laws that apply
2. The **proximity** of the organization - geographically, culturally and historically - to countries subject to broad sanctions
3. The organization's **customers or clients**, including
  - Whether they international or domestic
  - If international, where they are located; and
  - What their business is
4. The **volume** of transactions
5. The **complexity** of transactions, including the distribution channels used
6. What **products and services** the organization offers and whether those products reflect a heightened risk of sanctions violations
7. The organization's **business processes**, and in particular, how it sells and delivers products


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### 2019 Wolfsberg Guidance on Sanctions Screening

Fundamental pillars of an FCC program, including key enabling functions, should be applied to screening, not in isolation, but in conjunction with other financial crime risk prevention and control processes:


**Policies and Procedures** - defining requirements for what must be screened, in what context and at which frequency, and how alerts should be adjudicated, paying particular attention on how to resolve alerts where information is unavailable, incomplete or potentially unreliable.

**Responsible Person** - ensuring appropriate skills and experience in understanding the nuances of often arcane sanctions requirements and how these might influence screening outcomes and decisions, as well as the technical capabilities of screening software.

**Risk Assessment** - applying risk based decisions to resolve specific questions of what data attributes to screen, when to screen, what lists to use and how exact or “fuzzy” to set the screening filter. The decision making and governance structure needs to be clearly articulated, documented and supported by analysis and testing.

**Internal Controls** - implementing screening control processes requires an understanding of the various methodologies and technologies available and their operational consequences.

**Testing** - conducted to validate that the screening system is performing as expected and to assess its effectiveness in managing the specific risks articulated in the FI's Risk Assessment. Regular testing of the system should be supported by metrics, analysis and reporting.



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### 2019 Wolfsberg Guidance on Sanctions Screening

Some of the most common transactional attributes screened:

- The parties involved in a transaction, including the remitter and beneficiary
- Agents, intermediaries and FIs
- Vessels, including International Maritime Organisation (IMO) numbers, normally in Trade Finance related transactions
- Bank Names, Bank Identifier Code (BIC) and other routing codes
- Free text fields, such as payment reference information or the stated purpose of the payment in Field 70 of a SWIFT message
- International Securities Identification Number (ISINs) or other risk relevant product identifiers, including those that relate to Sectoral Sanctions Identifications within securities related transactions ...



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### 2019 Wolfsberg Guidance on Sanctions Screening

Some of the most common transactional attributes screened (cont.)

- Trade finance documentation, including the:
  - Importer and exporter, manufacturer, drawee, drawer, notify party, signatories
  - Shipping companies, freight forwarders
  - Facilitators, such as insurance companies, agents and brokers
  - FIs, including Issuing / Advising / Confirming / Negotiating / Claiming / Collecting / Reimbursing / Guarantor Banks
- Geography, including a multitude of addresses, countries, cities, towns, regions, ports, airports, such as:
  - Within SWIFT Fields 50 and 59
  - Place of taking in Charge / Place of Receipt / Place of Dispatch / Place of Delivery
  - Place of Final Destination
  - Country of origin of the goods /services / country of destination / country of transshipment
  - Airport of Departure / Destination



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### 2019 Wolfsberg Guidance on Sanctions Screening

**List Management** = The end-to-end process of determining and managing regulatory and internal lists used for screening.

Considerations relevant to effective list management:

1. List selection
2. Sourcing of lists
3. List maintenance
4. Data Enhancement
5. Whitelisting
6. Geographic scope of list application
7. Exact matching versus fuzzy logic
8. Frequency of screening



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### 2019 Wolfsberg Guidance on Sanctions Screening


#### Other Key Terms

**Alert Spike** is a substantial increase in the number of alerts generated. A spike could be caused by, for example, remediation exercises, changes or updates to policies, procedures or Watchlists.

**Fuzzy Matching** is a varied and algorithm based technique to match one name (a string of words), where the contents of the information being screened is not identical, but its spelling, pattern or sound is a close match to the contents contained on a list used for screening.

**True Match** is a screening result, where the characters contained within the information being screened match the details of a designated entity on a list that is in scope for screening.

**Weak Aliases/Low Quality Aliases** is a term for a relatively broad or generic alias (including 'nicknames' and common acronyms) that may generate a large volume of false hits when such names are run through a computer-based screening system. It is not expected, nor is it typically productive, to screen against weak aliases.



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### Customer Due Diligence and Screening

Sanctions screening tools are a fundamental control	A screening tool is only as good as the data flowing into it	Data integrity
<ul style="list-style-type: none"><li>• Variety of off-the-shelf as well as home-grown solutions can work</li><li>• Designed to <b>identify a potential match</b> between a sanctions target and another party, whether that party is a customer, counterparty, contractor, vendor, or employee.</li></ul>	<ul style="list-style-type: none"><li>• Collect all <b>required</b> Customer Identification</li><li>• Consider if <b>other types of information</b> can also be collected that would be helpful for sanctions compliance efforts:<ul style="list-style-type: none"><li>• customer has operations in sanctioned countries?</li><li>• expect to send a high volume of cross-border payments?</li><li>• expect to send OFAC-licensed transactions?</li><li>• Be sure that anything you electively collect is permitted by law</li></ul></li></ul>	<ul style="list-style-type: none"><li>• Upstream controls and testing</li><li>• Screening tool validation / testing</li></ul>



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Customer Due Diligence and Screening

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Evaluating potential matches generated by your screening tool

- Not as easy as it sounds – variability in information available
- Most items likely false positive, so beware of reviewer fatigue
- Have established criteria and training to evaluate a match
- Consider OFAC's guidance at [https://www.treasury.gov/resource-center/faq/sanctions/Pages/faq\\_compliance.aspx#match](https://www.treasury.gov/resource-center/faq/sanctions/Pages/faq_compliance.aspx#match)

It's more than just name matching

- consider prohibited purpose of a transaction as well

Sectoral sanctions present greater challenges

- Identifying a "positive match" is the start, not the end, of the process
- Complex analysis of underlying contracts and effective dates of specific sectoral sanctions designations
- FAQ 419

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Other Operational Issues

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Significant Operational Issues

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Effective sanctions compliance involves a number of significant operational issues. These include

- Resolving standard and complex cases
- Obtaining, managing, or reviewing licenses
- Freezing property, and managing frozen property
- Using contractual clauses to mitigate sanctions risks
- Outsourcing compliance functions
- Record keeping

The operation of a sanctions compliance system frequently requires interaction with other areas of compliance, especially export controls, anti-money laundering, and anti-corruption. It also requires the compliance function to be aware of, and be prepared to address, forces from the business side that may make compliance with sanctions laws more difficult.

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OFAC Reporting Requirements


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Key OFAC reporting requirements to be aware of:

Report of Blocked Transactions

Report of Rejected Transactions

Annual Report of Blocked Property



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Blocking and Freezing

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Sanctions laws of many jurisdictions, including the United States and the European Union, require that funds, assets, and other property be frozen (or, using the U.S. terminology, blocked).

Frozen property cannot be transferred or disposed of without permission from the relevant government authority. In most cases, the party freezing the funds or other assets is required to report their action to the relevant authority.

In the United States, for example, a U.S. person blocking property must file a report with OFAC within 10 days.



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Exercise

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You are the sanctions compliance officer at a bank and your review team has escalated a positive OFAC (SDN) match to you involving a new client account. They have already moved the funds on deposit into a blocked account and now want to know what to do next.

Walk them through it –

1. What to do if you are a US bank based in the US
2. What to do if you are a European bank based in Europe?
3. What do if you are U.S. manufacturing company?



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Practice Question

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You have blocked a wire transfer due to a positive match to an OFAC SDN. The funds are now in a blocked account. How many days do you have to complete your filing with OFAC?

A

1 day

B

5 days

C

10 days

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OFAC Licenses

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DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20530

Cuba Assets Control Regulations

License No. \_\_\_\_\_

LICENSE

(Issued under the authority of 31 U.S.C. App. 501; 22 U.S.C. 2770(a), 22 U.S.C. 6001 et seq., Proclamation 3447, and 31 CFR Parts 901 and 915)

To: \_\_\_\_\_

1. Pursuant to your application dated \_\_\_\_\_ as supplemented on \_\_\_\_\_, collectively, the "Application", the following transactions are hereby licensed:

\*\*\*\*\*SEE REVERSE\*\*\*\*\*

2. This license is granted upon the statements and representations made in the Application, or otherwise filed with or made to the Treasury Department as a supplement to the Application, and is subject to the conditions, among others, that you comply in all respects with all regulations, rulings, orders, and instructions issued by the Secretary of the Treasury under the authority cited above and the terms of this license.

OFAC has the authority to license transactions that would otherwise be prohibited under sanctions programs.

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OFAC Licenses

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- Foreign policy issues are nuanced, so sanctions need nuance too
  - Licenses tailor and tune sanctions
- Two types of OFAC licenses:
  - General licenses** – broader exceptions written into the regulations, typically in Subpart E (the 500s), of each Part
    - Examples include operation of foreign embassies, operation of international organizations, operations of the US government
  - Specific licenses** – more focused, issued to a limited number of parties
    - Unblocking a funds transfer
    - Cuba travel
    - Agricultural and medical exports under Trade Sanctions Reform Act (TSRA)
    - Living licenses
- Be aware of recordkeeping and reporting requirements triggered by making use of licenses

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## OFAC Specific Licenses: Process

OFAC's licensing division reviews license applications for specific licenses on a case-by-case basis and issues or denies specific licenses based on U.S. foreign policy.

01  
Specific License application received

02  
License Application Case created in OFAC's OASIS tool

03  
OASIS tracks the status of the case through the vetting and review process



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## OFAC Licenses

- Many licenses can be handled online via OFAC's website at <https://www.treasury.gov/resource-center/sanctions/Pages/licensing.aspx>



### Five hints for license applications

1. Provide full facts in a clear, concise manner
2. Review OFAC's guidance and statements of licensing policy before you file
3. Make clear why granting the license is consistent with US foreign policy
4. Avoid arguments that OFAC sanctions are inconvenient or costly
5. Be patient – the process can take months



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## License Application: Detailed Description of the Proposed Transaction

1. The identity of the party or country subject to sanctions that is the subject of the application
2. The name and address of the applicant (whether the buyer, seller, or financial institution)
3. The names of any entities that might perform services for or act on behalf of the applicant, including corporate affiliates, suppliers, and subcontractors
4. A detailed description of the goods, services, or technology subject to the application
5. Whether the license is sought for a single transaction, for multiple transactions, or for unlimited transactions over a given period of time
6. The beginning and end date of the license



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Exercise

You are the OFAC compliance officer at a US bank.

Your firm processed a wire transfer on behalf of your client and, while it alerted in your sanctions compliance screening tool because of a similarity between your client and an SDN, it was dispositioned as false positive based on the full details you have on file for your client. Nonetheless, a downstream bank has notified you that they blocked your client's payment and reported it to OFAC. Unfortunately, they asked you for no further information before they did so.

What do you tell your client?


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Interaction with Other Areas

Export Controls

Anti-Money Laundering

The Business Environment


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Investigations and Enforcement




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### Root Causes of Compliance Program Breakdowns

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**May 2019, OFAC issued "A Framework for OFAC Compliance Commitments".**

"root causes of OFAC sanctions compliance program breakdowns or deficiencies based on assessment of prior OFAC administrative actions":

1. Lack of formal OFAC SCP
2. Misinterpreting, or failing to understand the applicability of, OFAC's regulations
3. Facilitating transactions by non-US persons (including through or by overseas subsidiaries or affiliates)
4. Exporting or re-exporting US origin goods, technology or services to OFAC-sanctioned persons or countries



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### Investigative and Enforcement Agencies

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OFAC	BIS	Department of State	Fed	DOJ	NYDFS



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### OFAC - Investigations and Enforcement

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- Responsible for administrating and enforcing sanctions laws
- Wide investigative powers.
- Relies other agencies, especially of the financial industry, for assistance.
- Also works closely with
  - FinCEN, the U.S. financial intelligence unit,
  - Department of Commerce's Bureau of Industry and Security (BIS) and
  - State Department.



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Root Causes

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May 2019, OFAC issued "A Framework for OFAC Compliance Commitments" (cont.)

- Utilizing the US financial system, or processing payments to or through US financial institutions, for commercial transactions involving OFAC sanctioned persons or countries
- Sanctions screening software or filter faults
- Improper due diligence on customers/clients (e.g. ownership, business dealings, etc)
- De-centralized compliance functions an inconsistent application of an SCP
- Utilizing non-standard payment or commercial practices
- Individual liability

See: [https://www.treasury.gov/resource-center/sanctions/Documents/framework\\_ofac\\_cc.pdf](https://www.treasury.gov/resource-center/sanctions/Documents/framework_ofac_cc.pdf)



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OFAC Enforcement

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**OFAC Enforcement Guidelines**

Identifies factors OFAC will consider

- Willful or Reckless Violation
- Awareness of conduct
- Harm to sanctions program objectives
- Individual Characteristics
- Commercial sophistication of company
- Size of operations and financial condition of company
- Volume of transactions processed by company
- Sanctions history with OFAC
- Strength of compliance program
- Remedial Response
- Cooperation with OFAC
- Timing of apparent violation in relation to imposition of sanctions
- Other enforcement history
- Future compliance / deterrent effect of an enforcement action
- Any other factors OFAC deems relevant



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OFAC Enforcement


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Types of Enforcement  
Response from OFAC...

- No Action
- Cautionary Letter
- Finding of Violation
- Civil Monetary Penalty
- Other Administrative Remedies
- Criminal Referral

But bear in mind, sometimes  
OFAC is just the start...

- Regulatory pile-on effect
- Legal costs
- Reputational damage



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OFAC Enforcement

Civil Penalty Calculation – How Does It Work?

Two factors weigh heavily on what the penalty amount will be:

1. Egregious vs. non-egregious conduct

- When deciding if something is egregious or not, OFAC considers
  - whether it was willful or reckless
  - awareness of conduct
  - harm to sanctions program
  - individual characteristics

2. Voluntarily self-disclosed vs not

- Voluntary self-disclosure is a self-initiated notification to OFAC of an apparent violation prior to, or at the same time that, OFAC, or any other government agency or official, discovers it or another substantially similar apparent violation.
- Notification is not a voluntary self-disclosure if:
  - a) a third party is required to, and does, notify OFAC (like a block or reject report)
  - b) the disclosure contains false or misleading information
  - c) the disclosure is materially incomplete
  - d) the disclosure is not self-initiated, such as when prompted by your regulator
  - e) the disclosure is made by a whistleblower (i.e. without management support)

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OFAC Enforcement

Civil Penalty Calculation – How Does It Work?

From OFAC's Enforcement Guidelines:

Lesson: strong incentive to voluntarily self-disclose

BASE PENALTY MATRIX

		Egregious Case	
		NO	YES
Voluntary Self-Disclosure	YES	(1) One-Half of Transaction Value (capped at <u>less</u> of \$147,571 or one-half of the applicable statutory maximum per violation )	(3) One-Half of Applicable Statutory Maximum
	NO	(2) Applicable Statutory Amount (capped at <u>less</u> of \$295,141 or the applicable statutory maximum per violation)	(4) Applicable Statutory Maximum

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OFAC Enforcement

Interaction with Other Agencies

- OFAC works with various agencies on enforcement
  - Export control overlap:** Department of Commerce's Bureau of Industry and Security (BIS) or Homeland Security Investigations (HSI)
  - Narcotics related overlap:** Drug Enforcement Administration (DEA) or HIS
  - Other criminal matters,** including terrorism and proliferation: Federal Bureau of Investigation. Wherever there is overlap with ongoing criminal cases, OFAC will also coordinate with the relevant US Attorney's Office and the relevant sections within the Department of Justice
- And remember: information sharing with regulators

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BIS

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- The Bureau of Industry and Security
- Part of Department of Commerce
- Agency responsible for regulating export of commercial and “dual-use” items (goods, technology and software), i.e., items that have both commercial and military or proliferation applications.
- Also regulates certain commercial items (“EAR99” items), generally low-technology consumer goods, that do not usually require a license (except for exports involving certain restricted parties, end uses, and embargoed countries, including Crimea, Cuba, Iran, North Korea, and Syria)



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BIS Lists

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- **Denied Persons List:** A list of individuals and entities that have been denied export privileges from the United States. Any dealings with a party on this list that would violate the terms of its denial order are prohibited.
- **Entity List:** A list of foreign parties that are prohibited from receiving some or all items subject to the EAR unless the exporter secures a license.
- **Unverified List (UVL):** A list of parties whose bona fides BIS has been unable to verify. No license exceptions may be used for exports, reexports, or transfers (in-country) to parties on this list. A statement must be obtained from such parties prior to shipping items not subject to a license requirement.



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BIS Investigations

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- investigates possible violations of U.S. export control laws and imposes penalties for violations.
- works closely with OFAC, especially where an export control violation involves a country subject to sanctions.

Example: **ZTE case**, where BIS and OFAC cooperated in investigating a China company that was purchasing U.S.-origin products subject to export controls and then re-exporting them to Iran and North Korea.



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### Department of State

- Has direct responsibility for sanctions administration and enforcement in some areas.
- Responsible for designating persons and entities who have violated U.S. secondary sanctions.
- May also designate as Foreign Terrorist Organizations (FTOs) foreign individuals or entities found to have committed, or which pose a significant risk of committing, acts of terrorism that threaten US national security, foreign policy, or its economy.
- Implements sanctions-related controls on defense exports and implements arms embargoes


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### Department of State

- The Directorate of Defense Trade Controls (DDTC)**, agency within the State Department
- Administers the exportation of defense articles under the International Traffic in Arms Regulations (ITAR). ITAR applies specifically to defense articles, which include hardware and software technology, as well as services that may be used militarily, such as certain space-related items and technology. The ITAR contains the US Munitions List, which is a comprehensive list of all defense articles and services subject to ITAR and controlled by the DDTC.


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### Federal Reserve

- The central bank of the U.S.
- Has some bank supervisory and regulatory functions, incl. supervision over the foreign activities of U.S. banks and the U.S. activities of foreign banks.
- Responsible for supervision of bank holding companies.
- Will investigate whether banks subject to its supervision have committed sanctions violations, although its focus is primarily on any deficiencies in banks' sanctions compliance system.
- Along with OFAC, the Federal Reserve has been involved in a number of cases involving violation of U.S. sanctions laws by foreign banks


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### Department of Justice

- The law enforcement agency of the U.S. federal government.
- Although DOJ does not administer the sanctions laws, it may be involved if a sanctions violation rises to the level of a criminal case.
- In particular, DOJ will become involved if OFAC, BIS, FinCEN, or some other federal agency makes a criminal referral to it for willful violations of the sanctions, export control, or AML laws.



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### Department of Justice

Under the **International Emergency Economic Powers Act (IEEPA)**, it is a **crime** to willfully violate, or attempt to violate, any regulation issued under the act.

Because most sanctions regulations (except for those involving Cuba) are issued under IEEPA, this encompasses most U.S. sanctions.



```

graph LR
    A[Typically, OFAC will begin a sanctions investigation.] --> B[If the investigation uncovers what appear to be willful violations of sanctions laws, OFAC may make a criminal referral to DOJ.]
    B --> C[At that point, DOJ will join in the investigation.]
    C --> D[If there is an actual prosecution, DOJ will handle that as well. As a practical matter, though, most such investigations are settled.]
            
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### Department of Justice

- In October 2016, the DOJ, National Security Division issued **“Guidance Regarding Voluntary Self-Disclosures, Cooperation, and Remediation in Export Control and Sanctions Investigations Involving Business Organizations”**.
- Memorializes the policy of NSD to encourage business organizations to voluntarily self-disclose criminal violations of the statutes implementing the U.S. government’s primary export control and sanctions regimes – the Arms Export Control Act (AECA), 22 U.S.C. § 2778, and the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. § 1705.2
- Applies only to export control and sanctions violations.
- Guidance does *not* apply to financial institutions.



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Department of Justice

Voluntary (self) disclosures for business entities

Violation	VSD to
ITAR	Department of State – DDTTC*
EAR	Department of Commerce - BIS
U.S. sanctions regulations	OFAC
If violation may have been willful	ALSO to NSD's CES (Counterintelligence and Export Control Section).

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Note: ITAR refers to "voluntary disclosures"

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Internal Investigations

**Step 1:** Understand exactly *why* there might be a problem.

**Step 2:** Determine who in management must be informed.

**Step 3:** Assess the organization's overall compliance situation.

**Step 4:** Determine whether and to what extent a look-back of transactions is necessary or advisable.

**Step 5:** Decide what to do next.

If the investigation reveals possible violations, consider whether and how to disclose this to the authorities.

Even if the internal investigation does not reveal any potential sanctions violations, it may have identified deficiencies in the compliance system. This is an opportunity to correct those deficiencies before they cause actual legal problems.

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Sanctions Evasion

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### Sanctions Evasion in the Financial Sector

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- Money moves primarily through the banking system.
- Most large international banks have implemented sophisticated systems for reviewing information about customers and transactions to identify and stop transactions that may be subject to sanctions.
- To avoid these controls, individuals, companies, and countries seeking to evade sanctions have developed a range of techniques.



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### Sanctions Evasion in the Financial Sector

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- **Stripping** the deliberate act of deleting or changing information from payment messages or instructions.

**Red flags:** Indicators that stripping may have occurred include

- Obviously missing relevant information
- Use of placeholders, such as "customer"
- Use of the bank's own name in the customer field
- Statements such as "do not mention Iran connection"



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### Sanctions Evasion in the Financial Sector

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- Resubmission of Rejected Transactions
- Use of cover payments
- Use of suspense accounts
- Special purposes and front companies
- Layered payments
- Use of Third party Fis
- Use of non-bank Fis
- Virtual Currencies
- Bulk cash



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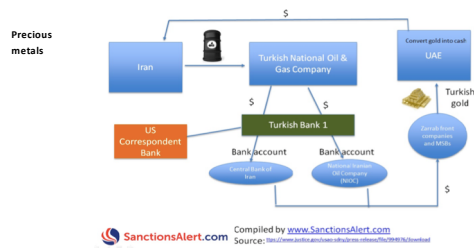
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## Sanctions Evasion in the Financial Sector



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### Sanctions Evasion in the Trade Sector

- Falsified or Vague Trade Finance Documents
- Shipments to Ports Close to Sanctioned Countries
- Unusual Merchandise
- AIS Record
- Physically Altering a Vessel's Identification
- Ship-to-Ship Transfers
- BIS Know Your Customer Guidance ("Red Flags")



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