

Office of Foreign Asset Control (OFAC)

Community Bankers for Compliance School DEPOSITS 2016

This publication is designed to provide information in regard to the subject matter covered. It is provided with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. If legal advice or other expert assistance is required, the services of a professional competent in the area of special need should be sought.

© Copyright 2016
Young & Associates, Inc.
All rights reserved



Consultants to the Financial Industry
Young & Associates, Inc.

121 E. Main Street
P.O. Box 711
Kent, OH 44240

Phone: 330.678.0524
Fax: 330.678.6219
www.younginc.com

Table of Contents

Section 1: OFAC Introduction and History.....	1
Introduction.....	1
OFAC History.....	1
Section 2: Definitions.....	3
Blocking.....	3
Blocked Account.....	3
General License	3
Specific License.....	3
Offset	3
Property.....	3
Person Subject to the Jurisdiction of the United States	4
Specially Designated Nationals and Blocked Persons	4
Census	4
Section 3: OFAC Risk Assessment.....	5
OFAC Risk Assessment.....	5
Areas of Risk Assessment	5
Wire Transfers	5
Existing Accounts/Customers	6
New Deposit Accounts.....	6
Lending.....	7
Operational Areas / Bookkeeping	7
Trust / Personal Bankers	7
Ongoing Risk Assessments	7
Section 4: General Requirements of OFAC.....	11
Covered Transactions	11
Current and New Customers	12
Specific Transaction Handling	12
Blocking or Rejecting	13
Maintaining Current OFAC Lists	17
Wire Transfer Vulnerability.....	17
Procedures for Joint Bank Accounts.....	18
Procedures for Safe Deposit Boxes	18
Blocking Versus Rejecting.....	19
Reporting and Procedures	19
Filing SARs on OFAC List Matches	20
Section 5: Bank OFAC Compliance Program	37
Establishing an OFAC Compliance Program	37
Written Compliance Program	38
Designation of an OFAC Compliance Officer	39
Risk Assessment	40
Internal Controls	40
Independent Testing.....	40
Training.....	40
Section 6: Penalties for Noncompliance	42
Section 7: IAT and OFAC	44
Overview.....	44
What This Meant for the Bank.....	44
What Changed	44
Regulatory Text	44

Section 1: OFAC Introduction and History

Introduction

The mission of the Office of Foreign Asset Control (OFAC) is to control and/or prevent assets from flowing out of the United States and into those countries that the United States considers hostile to our interests. It is also responsible for transfers from the United States into countries which are under some type of U.S. embargo or sanction; or to terrorists, specially designated nationals, and narcotics traffickers.

The list of targeted countries and specially designated individuals changes, sometimes with great frequency. There have been various pieces of legislation enacted by the U.S. Congress and numerous presidential orders that have impacted OFAC's mission. Many of these laws contain the possibility of substantial financial penalties for noncompliance with the various OFAC regulations and laws.

Since the work of OFAC covers a wide scope of differing laws and presidential orders, the focus of this manual is on the bank's responsibilities under the OFAC rules. If the bank completes its portion of the requirements well, OFAC can guide the bank through any additional steps that may be required under the many different laws and orders.

OFAC History

OFAC is part of the United States Department of the Treasury. This department has a long history of dealing with sanctions, dating back almost 200 years.

Prior to the War of 1812, Secretary of the Treasury Gallatin administered sanctions imposed against Great Britain for the harassment of American sailors.

OFAC is the successor organization to the Office of Foreign Funds Control (OFFC), which was part of the Treasury department, and established at the beginning of World War II (1940).

OFAC, as we know it today, formally came into existence in December 1950, following the entry of China into the Korean War, when President Truman declared a national emergency under Trading with the Enemy Act (TWEA) and blocked all Chinese and North Korean assets subject to U.S. jurisdiction. While the countries and specially designated nationals have changed over the decades, its primary focus has not changed.

OFAC Questions and Answers from:

<http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx#1>

What is OFAC and what does it do?

The Office of Foreign Asset Control administers and enforces economic sanctions programs primarily against countries and groups of individuals, such as terrorists and narcotics traffickers. The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals.

What does one mean by the term “prohibited transactions”?

Prohibited transactions are trade or financial transactions and other dealings in which U.S.

persons may not engage unless authorized by OFAC or expressly exempted by statute. Because each program is based on different foreign policy and national security goals, prohibitions may vary between programs.

Are there exceptions to the prohibitions?

Yes. OFAC regulations often provide general licenses authorizing the performance of certain categories of transactions. In addition, in some circumstances, U.S. law exempts certain transactions from embargoes. OFAC also issues specific licenses on a case-by-case basis under certain limited situations and conditions. Guidance on how to request a specific license is found at 31 CFR 501.801.

Who must comply with OFAC regulations?

All U.S. persons must comply with OFAC regulations, including all U.S. citizens and permanent resident aliens regardless of where they are located, all persons and entities within the United States, all U.S. incorporated entities and their foreign branches. In the cases of certain programs, such as those regarding Cuba and North Korea, all foreign subsidiaries owned or controlled by U.S. companies also must comply. Certain programs also require foreign persons in possession of U.S. origin goods to comply.

Can I regard previously issued and published opinion letters, regulatory interpretations, or other statements as guidance for my transactions?

Great care should be taken when placing reliance on such materials to ensure that the transactions in question fully conform to the letter and spirit of the published materials and that the materials have not been superseded.

Can OFAC change its previously stated, non-published interpretation or opinion without first giving public notice?

Yes. OFAC, therefore, strongly encourages parties to exercise due diligence when their business activities may touch on an OFAC-administered program and to contact OFAC if they have any questions about their transactions.

Section 2: Definitions

As stated in the introduction, the various OFAC rules are a combination of many different laws and presidential orders. Therefore, particular terms have slightly different meanings in each of these various laws and orders. However, OFAC has created a list of important terms which it has defined generically and which may be used to better understand the bank's responsibilities under the regulations. These key phrases and words consistently appear in the Treasury sanctions.

Blocking

Also called "freezing," this is a form of controlling assets under U.S. jurisdiction. While title to blocked property remains with the designated country or national, the exercise of the powers and privileges normally associated with ownership is prohibited without authorization from OFAC. Blocking immediately imposes an across-the-board prohibition against transfers or transactions of any kind with regard to the property.

Blocked Account

An account with respect to which payments, transfers, withdrawals or other dealings may not be made except as licensed by OFAC or otherwise authorized by the Treasury Department. Debits are prohibited, however, credits are authorized.

General License

A regulatory provision authorizing certain transactions without the filing of an application with OFAC. Its terms are listed in the appropriate Regulations. The concept is similar in meaning to that employed by the U.S. Department of Commerce. Transactions consistent with normal banking practice are frequently permitted by general license. For questions about general licenses, contact OFAC at 202.622.2520.

Specific License

A permit issued by OFAC on a case-by-case basis to a specific individual or company allowing an activity that would otherwise be prohibited by the embargo or sanctions program. OFAC specific licenses (which may take the form of a letter or a license) are always issued on U.S. Treasury Department stationary. Applications for the release of blocked funds must be presented in an original letter, signed by the applicant, which has been mailed or otherwise physically delivered to OFAC. Fax applications are strongly discouraged and you should notify your correspondent banks accordingly. Each license or letter of authorization bears a control number that can be verified by calling OFAC Licensing at 202.622.2480.

Offset

Exercise of the right to net out mutual indebtedness. Offset is a prohibited transfer of frozen assets in situations of blocked property. When foreign assets held by an American company (including a bank) are frozen, the assets and any claims which the American company may have against the foreign owner are kept separate.

Property

Anything of Value: Examples of property include: money, checks, drafts, debts, obligations, notes, warehouse receipts, bills of sale, evidences of title, negotiable instruments, trade

acceptance, contracts, and anything else real, personal, or mixed, tangible or intangible, “or interest or interests therein, present, future, or contingent.” Almost every transaction that banks engage in involves “property” within the meaning of the regulations. Therefore, the bank’s responsibilities under the rules are extensive, and go far beyond what might be seen as “normal” limits. Likewise, “property interest” is defined as any interest whatsoever, direct or indirect.

Person Subject to the Jurisdiction of the United States

This is the universe that must comply with OFAC regulations. It includes American citizens and permanent resident aliens wherever they are located; individuals and entities located in the United States (including all foreign branches, agencies, rep offices, etc.); corporations organized under U.S. law, including foreign branches; and (under TWEA based sanctions) entities owned or controlled by any of the above, the most important being foreign-organized subsidiaries of U.S. corporations.

Specially Designated Nationals and Blocked Persons

Individuals and entities that are owned or controlled by, or acting for or on behalf of, the Governments of target countries or are associated with international narcotics trafficking or terrorism. These individuals and entities are listed on the Treasury Department’s Specially Designated Nationals and Blocked Persons List so that persons subject to the jurisdiction of the United States will know that they are prohibited from dealing with them and that they must block all property within their possession or control in which these individuals and entities have an interest.

Census

Comprehensive statistical survey of blocked assets conducted from time to time by OFAC. Response is mandated by law. The information obtained from the survey is of vital importance to the U.S. Government for foreign policy planning purposes, to assist Treasury in the preservation of blocked assets, and to enhance their value for U.S. claimants, including financial institutions.

Section 3: OFAC Risk Assessment

OFAC Risk Assessment

The assessment of risk depends upon many variables, making each bank unique. Regardless of bank size, location, or structure, all banks, including small neighborhood or rural banks, have a level of OFAC risk. Assessing this risk fairly is necessary to assure the identification of all OFAC risks. This process of risk assessment will assist the board, management, and the OFAC compliance officer in the design of an effective program that will meet the needs of the organization's OFAC compliance, with the minimum impact possible on normal bank operations.

The primary consideration for OFAC risk assessment is the size and structure of the financial institution. For instance, a large bank with an extensive branch network would have to expect additional risk relating to wires and other funds transfers. A smaller bank may have less risk in these areas, as the bank is in a position to more tightly control bank operations.

A bank's proximity to international borders could also increase the bank's OFAC risk. The closer a bank of any size is to an international border, the higher the risk of OFAC issues. However, given the current immigration difficulties and border control issues of the United States, no bank can assume that it is at no risk from international situations.

The bank should also take its general location into account. Although no bank is immune to OFAC issues, banks need to consider:

- The stability of their market base:
 - Is the community stable, with little change in the customer base, or
 - Is the community in the process of changes that would increase the bank's OFAC risk
- The presence/absence of foreign nationals
- The type of community in which the bank operates (rural/suburban/urban)

The bank's structure will also have an impact upon the bank's risks. Banks with tight central controls may have a lower risk. As the bank increases the independence of the bank's offices and officers, the decision making authority of individuals must be dispensed only to individuals willing to accept the responsibilities inherent in the process.

Finally, the bank's business models and types of business will have an impact on the bank's overall OFAC compliance. For instance, banks that focus on commercial customers may have a higher incidence of international letters of credit than other banks that are more focused on consumer transactions.

Areas of Risk Assessment

The OFAC compliance program should address all of the bank's possible exposures which can be present in the various operational areas of the bank. While no area should be neglected, the following are areas of bank operations that might be considered the most "at risk."

Wire Transfers

When performing a risk assessment for wire transfers, the bank should consider the following:

- Wire volume

- How many wires does the bank generate?
- How many wires are repetitive in nature?
- Wire authority
 - Who has the authority to approve wires, and at what levels?
 - Who has oversight of the wire transfer function?
- Wire types
 - Does the bank permit international wires?
 - Does the bank originate and receive wires directly, or through a correspondent?
- Wire rules
 - What restrictions does the bank have in place?
 - Will the bank send or receive wires for non customers?

Outgoing wire transfers must be reviewed before being transmitted. Incoming wire transfers must be reviewed prior to being credited or disbursed as per payment instructions. Each party to the transfer must be checked – the originator and beneficiary.

Existing Accounts/Customers

When performing a risk assessment for existing accounts or customers, the bank should consider the following:

- The amount of time between periodic reviews
 - Generally, the longer the time between the periodic reviews, the higher the bank's risk levels.
- The bank's response to and review of additions or other changes in the OFAC SDN list
 - Does the bank check the portfolio each time there is a change, or only during the periodic review?
- Does the bank review the OFAC SDN listing periodically to ensure that no new customers "slipped through" the new account screening?

New Deposit Accounts

When performing a risk assessment for new account opening, the bank should consider the following:

- The methods used to check the OFAC SDN list prior to account activation.
- Systems that assist in the review process and their ability to generate documentation.
- The bank's ability to assure that the bank's employees follow all bank and OFAC requirements (management and audit controls).
- The types of accounts that the bank offers.
- The bank's customer types/customer profiles.
- The experience of new account opening clerks.

- Does the bank either check the listing at the end of the day; or when the new account application is made if immediate availability to funds are granted?
- Delivery systems (face to face, internet, deposit brokers, etc.).

Lending

When performing a risk assessment for lending, the bank should consider the following:

- The methods used by lending personnel to check the OFAC SDN list prior to loan approval and/or note signing.
- Systems that assist in the review process and their ability to generate documentation.
- The bank's ability to assure that the bank's employees follow all bank and OFAC requirements (management and audit controls).
- The types of loans that the bank offers.
- The mix of consumer vs. commercial business.
- The bank's customer types/customer profiles.
- The bank's delivery systems (phone, face to face, internet, mortgage brokers, participations, etc.).

Operational Areas / Bookkeeping

Generally, these departments do not have high levels of risk for OFAC issues in many banks. However, if these departments have responsibilities for some of the other items that are listed in this risk assessment section, the bank's risk levels could increase in these departments. Levels would increase based in part upon the methods the bank uses to place appropriate controls in place in these various departments.

Trust / Personal Bankers

When performing a risk assessment for trust department or personal banker services, the bank should consider the following:

- The types of customers that request these services of the bank
- Any unique products that these customers may require
- The bank's ability to identify all customers that use these services
- The level of experience in these departments
- The delivery methods employed by these departments
- The ability of the bank's systems to assure that none of these customers appear on the OFAC SDN list after account opening:
 - Many banks use subsystems or "stand alone" software to manage functions such as the trust department. This can sometimes limit the bank's abilities to adequately monitor these customers and accounts.

Ongoing Risk Assessments

The bank's OFAC risk assessment may change from time to time due to internal factors such as:

- a change in the bank's delivery systems,

- a change in the bank's strategic plans which refocuses the bank on geographic or products areas that are not as familiar to bank personnel,
- other factors, such as the addition of a branch in a new and different market area.

External factors can also require a review of the bank's OFAC risk. These factors would include:

- a change in the types of customers available to the bank,
- a change in the types of businesses in the bank's service area, and
- a change in the type of areas served (for instance, some banks find that their market is changing, as rural areas begin to change from family farms into areas of upscale housing).

As the bank's risk factors change, management must continue to reexamine the bank's risk to assure that the bank takes all prudent and appropriate steps.

To assist in the completion of an OFAC risk assessment, the Exam Manual (Appendix M) sets forth criteria very similar to the main BSA Risk Assessment criteria. This is reproduced on the next two pages.

Appendix M: Quantity of Risk Matrix — OFAC Procedures

Examiners should use the following matrix, as appropriate, when assessing a bank's risk of encountering an OFAC issue.

Low	Moderate	High
Stable, well-known customer base in a localized environment.	Customer base changing due to branching, merger, or acquisition in the domestic market.	A large, fluctuating client base in an international environment.
Few higher-risk customers; these may include nonresident aliens, foreign individuals (including accounts with U.S. powers of attorney), and foreign commercial customers.	A moderate number of higher-risk customers.	A large number of higher-risk customers.
No overseas branches and no correspondent accounts with foreign banks.	Overseas branches or correspondent accounts with foreign banks.	Overseas branches or multiple correspondent accounts with foreign banks.
No electronic banking (e-banking) services offered, or products available are purely informational or nontransactional.	The bank offers limited e-banking products and services.	The bank offers a wide array of e-banking products and services (e.g., account transfers, e-bill payment, or accounts opened via the Internet).
Limited number of funds transfers for customers and noncustomers, limited third-party transactions, and no international funds transfers.	A moderate number of funds transfers, mostly for customers. Possibly, a few international funds transfers from personal or business accounts.	A high number of customer and noncustomer funds transfers, including international funds transfers.
No other types of international transactions, such as trade finance, cross-border ACH, and management of sovereign debt.	Limited other types of international transactions.	A high number of other types of international transactions.

Appendix M: Quantity of Risk Matrix — OFAC Procedures

Low	Moderate	High
No history of OFAC actions. No evidence of apparent violation or circumstances that might lead to a violation.	A small number of recent actions (e.g., actions within the last five years) by OFAC, including notice letters, or civil money penalties, with evidence that the bank addressed the issues and is not at risk of similar violations in the future.	Multiple recent actions by OFAC, where the bank has not addressed the issues, thus leading to an increased risk of the bank undertaking similar violations in the future.

Section 4: General Requirements of OFAC

As stated in the risk assessment section of this manual, a bank's likelihood of encountering a transaction covered by the OFAC regulations depends greatly on the size of the bank, its geographic location and customer base. However, regardless of the individual circumstances of a bank, a transaction covered by the OFAC regulations could occur. Therefore, every bank must be familiar with the regulations, possess all OFAC lists, and know what actions to take when a covered transaction occurs.

Covered Transactions

All transactions in which a U.S. financial institution engages are subject to OFAC regulations. Therefore, if a bank knows, or has reason to know, that a prohibited country or individual is a party to a transaction, the bank may not process the transaction, as processing would be unlawful. As every transaction is covered, reviewing every type of financial transaction is vital to comply with the OFAC laws and regulations. This includes, without limitation, the following:

- Deposit accounts
 - Checking,
 - Savings,
 - Certificates of Deposit, etc.
- Depositing of checks
- Cashing of checks or other monetary instruments
- Currency exchanges
- Purchase of money orders
- Purchase of cashiers checks
- Purchase of travelers checks
- Loans
- Lines of credit
- Credit Cards
- Loan payments
- Guarantors / co-makers
- Collateral owners
- Letters of credit
- Wire transfers
- ACH transfers
- Trust accounts
- Safety deposit boxes

- Private banking accounts

It is important that the bank check the names of all parties to a transaction against the list of names of individuals, entities, geographical locations or countries that have been identified by OFAC. This includes, but is not limited to the following (as applicable):

- Receiving Parties
- Sending Parties
- Beneficiaries
- Collateral Owners
- Guarantors/Cosigners
- Sellers of property (autos, real estate) who will receive the proceeds of the loan

Current and New Customers

Financial institutions should check all of the names in its customer database as well as each new customer. The safest position for any bank is to run the bank's database against the OFAC SDN list every time OFAC releases new data. However, given the frequent changes to the OFAC SDN list, this may not be possible or realistic.

In many cases, periodic re-checks (generally quarterly or monthly) may be sufficient if the financial institution does not feel the cost and burden of rechecking at every update is justified by the risk involved. However, not completing this review at each change of the OFAC SDN list does increase the bank's risk. The risk that the bank is willing to accept should be based on the bank's risk assessment.

Each time the bank encounters a transaction that involves a person or entity who is not a current customer, that person or entity should be individually checked against the OFAC SDN list. Additionally, if the bank does not complete a check of the bank's portfolio of customers at each SDN list change, the bank should check its customer as well. If no match is found, the bank may proceed with the transaction. However, if there is a potential match, then the financial institution must perform additional due diligence and procedures to determine an actual or false positive match to the name on the OFAC list. Failure to do so puts the bank at additional risk.

If, after the additional due diligence and procedures, the name is determined to be a true match, appropriate action must be taken to block or reject (if applicable) the transaction. After the blocking or rejecting has occurred, the bank must then file the appropriate report with OFAC.

All amounts for the matched name should immediately be frozen and placed in a blocked account, so that no withdrawals may occur. In all cases an appropriate bank officer, generally the OFAC Compliance Officer or the Bank Secrecy Act Officer, should be notified immediately. This notification should include the name of the customer, the transaction and account details. These items will be needed to file the appropriate report.

Specific Transaction Handling

If the transaction is a deposit, the financial institution is to accept the funds and immediately place the funds in a blocked account so that no funds can be withdrawn. This applies unless it is one of the few transactions that are to be rejected, in which case the financial institution should refuse to take and proceed with the transaction. OFAC will inform you when rejecting a transaction is appropriate.

If the transaction is a transfer of funds (by, through or to the financial institution), then the financial institution is to accept the funds, but instead of transferring them, put them into a blocked account so that no funds can be withdrawn. Again, this applies unless it is one of the few transactions that are to be rejected, in which case the financial institution should refuse to take the funds and not proceed with the transaction.

In general, the customer should be advised immediately of the blocking of the account or funds. Of course, the safety and security of bank personnel should be taken into account as part of this process.

The financial institution may wish to consider applying for a Specific License which is filed with OFAC, if it wishes to try to facilitate the possible release of the blocked funds.

Blocking or Rejecting

Virtually all property that comes within a bank's possession or control, and in which there is an interest, direct or indirect, present, future, or contingent, of a blocked individual or entity is blocked.

If a U.S. bank receives instructions to make a payment that qualifies as a blocked funds transfer, it must execute the payment order and place the funds into a blocked account. Once assets or funds are blocked, they may be released only by the specific authorization from OFAC.

Certain transactions need to be interdicted because the underlying transaction is prohibited. Such transactions are typically rejected, canceled, or returned after consultation with OFAC.

Banks are required to report all blockings to OFAC within 10 days of occurrence. If your bank does not block and report a transfer and another bank does, then your bank is in trouble.

OFAC Questions and Answers from:

<http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx#1>

Does OFAC maintain or can it create a country-by-country list of SDNs?

OFAC has long maintained such a list. The file is available for downloading by clicking on the DOS or Windows Delimited SDN List links on OFAC's Web site. The file is contained within those self-extracting archives and is called cry_list.txt. It is important to understand that many SDN individuals and entities may operate in countries other than those in which they are based. The relevant regulations prohibit transactions with and/or block the property of SDNs wherever they are located.

What do I do if I have a match to the SDN list?

If you have checked a name manually or by using software and find a match, you should do a little more research. Is it an exact name match, or very close? Is your customer located in the same general area as the SDN? If not, it may be a "false hit." If there are many similarities, contact OFAC's "hotline" at 1-800-540-6322 for verification. If you're "hit" concerns an in-process wire transfer, you may prefer to e-mail your question to OFAC. Unless a transaction involves an exact match, it is recommended that you contact OFAC Compliance before actually blocking assets.

How often do I need to scan my customer database for SDNs?

The frequency of running an OFAC scan must be guided by your internal bank policy and procedures. Keep in mind, however, that if your bank fails to identify and block a target account (of a terrorist, for example), there could be "real world" consequences such as a transfer of funds or other valuable property to an SDN, an enforcement action against your bank, and negative publicity.

How do I determine if I have a valid OFAC match?

Please take the following “due diligence” steps in determining a valid OFAC match.

If you are calling about a wire transfer or other “live” transaction:

Step 1. Is the “hit” or “match” against OFAC’s SDN list or targeted countries, or is it “hitting” for some other reason (i.e., “Control List” or “PEP,” “CIA,” “Non-Cooperative Countries and Territories,” “Canadian Consolidated List (OSFI),” “World Bank Debarred Parties,” “Blocked Officials File,” or “government official of a designated country”), or can you not tell what the “hit” is?

- If it’s hitting against OFAC’s SDN list or targeted countries, continue to 2 below.
- If it’s hitting for some other reason, you should contact the “keeper” of whichever other list the match is hitting against. For questions about:
 - The Denied Persons List and the Entities List, please contact the Bureau of Industry and Security at the U.S. Department of Commerce at 202-482-4811.
 - The FBI’s Most Wanted List or any other FBI-issued watch list, please contact the Federal Bureau of Investigation (<http://www.fbi.gov/contact/fo/fo.htm>).
 - The Debarred Parties list, please contact the Office of Defense Trade Controls at the U.S. Department of State, 202-663-2700.
 - The Bank Secrecy Act and the USA PATRIOT Act, please contact the Financial Crimes Enforcement Network (FinCEN), 1-800-949-2732.
 - If you are unsure whom to contact, please contact your interdict software provider which told you there was a “hit.”
 - If you can’t tell what the “hit” is, you should contact your interdict software provider which told you there was a “hit.”

Step 2. Now that you’ve established that the hit is against OFAC’s SDN list or targeted countries, you must evaluate the quality of the hit. Compare the name in your transactions with the name on the SDN list. Is the name in your transaction an individual while the name on the SDN list is a vessel, organization or company (or vice-versa)?

- If yes, you do not have a valid match.*
- If no, please continue to 3 below.

Step 3. How much of the SDN’s name is matching against the name in your transaction? Is just one of two or more names matching (i.e., just the last name)?

- If yes, you do not have a valid match.*
- If no, please continue to 4 below.

Step 4. Compare the complete SDN entry with all of the information you have on the matching name in your transaction. An SDN entry often will have, for example, a full name, address, nationality, passport, tax ID or cedula number, place of birth, date of birth, former names and aliases. Are you missing a lot of this information for the name in your transaction?

- If yes, go back and get more information and then compare your complete information against the SDN entry.
- If no, please continue to 5 below.

Step 5. Are there a number of similarities or exact matches?

- If yes, please call the hotline at 1-800-540-6322.
- If no, you do not have a valid match.*

If you are calling about an account:

Step 1. Is the “hit” or “match” against OFAC’s SDN list or targeted countries, or is it “hitting” for some other reason (i.e., “Control List” or “PEP,” “CIA,” “Non-Cooperative Countries and Territories,” “Canadian Consolidated List (OSFI),” “World Bank Debarred Parties,” or “government official of a designated country”), or can you not tell what the “hit” is?

- If it’s hitting against OFAC’s SDN list or targeted countries, continue to 2 below.
- If it’s hitting for some other reason, you should contact the “keeper” of whichever other list the match is hitting against. For questions about:
 - The Denied Persons List and the Entities List, please contact the Bureau of Industry and Security at the U.S. Department of Commerce at 202-482-4811.
 - The FBI’s Most Wanted List or any other FBI-issued watch list, please contact the Federal Bureau of Investigation (<http://www.fbi.gov/contact/fo/fo.htm>).
 - The Debarred Parties list, please contact the Office of Defense Trade Controls at the U.S. Department of State, 202-663-2700.
 - The Bank Secrecy Act and the USA PATRIOT Act, please contact the Financial Crimes Enforcement Network (FinCEN), 1-800-949-2732.
 - If you are unsure whom to contact, you should contact your interdict software provider which told you there was a “hit.”
 - If you can’t tell what the “hit” is, you should contact your interdict software provider which told you there was a “hit.”

Step 2. Now that you’ve established that the hit is against OFAC’s SDN list or targeted countries, you must evaluate the quality of the hit. Compare the name of your account holder with the name on the SDN list. Is the name of your account holder an individual while the name on the SDN list is a vessel, organization or company (or vice-versa)?

- If yes, you do not have a valid match.*
- If no, please continue to 3 below.

Step 3. How much of the SDN’s name is matching against the name of your account holder? Is just one of two or more names matching (i.e., just the last name)?

- If yes, you do not have a valid match.*
- If no, please continue to 4 below.

Step 4. Compare the complete SDN entry with all of the information you have on the matching name of your account holder. An SDN entry often will have, for example, a full name, address, nationality, passport, tax ID or cedula number, place of birth, date of birth, former names and aliases. Are you missing a lot of this information for the name of your account holder?

- If yes, go back and get more information and then compare your complete information against the SDN entry.
- If no, please continue to 5 below.

Step 5. Are there a number of similarities or exact matches?

- If yes, please call the hotline at 1-800-540-6322.
- If no, you do not have a valid match.*

* If you have reason to know or believe that processing this transfer or operating this account would violate any of the regulations, you must call the hotline and explain this knowledge or belief.

What are weak aliases (AKAs)?

A “weak AKA” is a term for a relatively broad or generic alias that may generate a large volume of false hits. Weak AKAs include nicknames, noms-de-guerre, and unusually common acronyms. OFAC includes these AKAs because, based on information available to it, the sanctions targets refer to themselves, or are referred to, by these names. As a result, these AKAs may be useful for identification purposes, particularly in confirming a possible “hit” or “match” triggered by other identifier information. Realizing, however, the large number of false hits that these names may generate, OFAC qualitatively distinguishes them from other AKAs by designating them as weak. OFAC has instituted procedures that attempt to make this qualitative review of aliases as objective as possible. Before issuing this updated guidance, OFAC conducted a review of all aliases on the SDN list. Each SDN alias was run through a computer program that evaluated the potential of an alias to produce false positives in an automated screening environment. Names were evaluated using the following criteria:

1. Character length (shorter strings were assumed to be less effective in a screening environment than longer strings);
2. The presence of numbers in an alias (digits 0-9);
3. The presence of common words that are generally considered to constitute a nickname (example: Ahmed the Tall);
4. References in the alias to geographic locations (example: Ahmed the Sudanese);
5. The presence of very common prefixes in a name where the prefix was one of only two strings in a name (example: Mr. Smith).

Aliases that met one or more of the above criteria were flagged for human review. OFAC subject matter experts then reviewed each of the automated recommendations and made final decisions on the flagging of each alias.

OFAC intends to use these procedures to evaluate all new aliases introduced to the SDN list.

Where can I find weak aliases (AKAs)?

Weak AKAs appear differently depending on which file format of the SDN List is utilized.

In the TXT and PDF versions of the SDN List, weak AKAs are encapsulated in double-quotes within the AKA listing:

ALLANE, Hacene (a.k.a. ABDELHAY, al-Sheikh; a.k.a. AHcene, Cheib; a.k.a. "ABU AL-FOUTOUH"; a.k.a. "BOULAHIA"; a.k.a. "HASSAN THE OLD"); DOB 17 Jan 1941; POB El Menea, Algeria (individual) [SDGT]

This convention also is followed in the alphabetical listing published in Appendix A to Chapter V of Title 31 of the Code of Federal Regulations.

In the DEL, FF, PIP, and CSV file formats, weak AKAs are listed in the remarks field (found at the end of the record) of the SDN file. In these formats, weak AKAs are bracketed by quotation marks. Please see the data specification for these files for more information:

http://www.treasury.gov/resource-center/sanctions/SDN-List/Documents/dat_spec.txt

8219 @"ALLANE, Hacene"@"individual"@"SDGT"@@-0- @-0- @-0- @-0- @-0- @-0- @-0- @"DOB 17 Jan 1941; POB El Menea, Algeria; a.k.a. 'ABUAL-FOUTOUH'; a.k.a. 'BOULAHIA'; a.k.a. 'HASSAN THE OLD'."

In the XML version of the SDN List, there is a Type element for each AKA. The Type can either be 'weak' or 'strong' (see the XML SDN Schema (XSD file) at:

<http://www.treasury.gov/resource-center/sanctions/SDN-List/Documents/sdn.xsd> for more information).

Am I required to screen for weak aliases (AKAs)?

OFAC's regulations do not explicitly require any specific screening regime. Financial institutions and others must make screening choices based on their circumstances and compliance approach. As a general matter, though, OFAC does not expect that persons will screen for weak AKAs, but expects that such AKAs may be used to help determine whether a "hit" arising from other information is accurate.

Will I be penalized for processing an unauthorized transaction involving a weak alias (AKA)?

A person who processes an unauthorized transaction involving an SDN has violated U.S. law and may be subject to an enforcement action. Generally speaking, however, if (i) the only sanctions reference in the transaction is a weak AKA, (ii) the person involved in the processing had no other reason to know that the transaction involved an SDN or was otherwise in violation of U.S. law, and (iii) the person maintains a rigorous risk-based compliance program, OFAC will not issue a civil penalty against an individual or entity for processing such a transaction.

Maintaining Current OFAC Lists

A financial institution should monitor, on a consistent and ongoing basis, new announcements and changes to the listing of entities as posted by OFAC. This will allow the financial institution to make the appropriate changes to its compliance system.

A financial institution may contract with a private vendor for software that will scan the institution's databases for hits. As an alternative, automatic updates of the OFAC list can be obtained directly from OFAC at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>. This listing can then be used for the bank's database scanning.

Wire Transfer Vulnerability

While every bank should ensure that it does not open or maintain an account for an individual on an OFAC list, a bank's greatest vulnerability to violating an OFAC regulation is

probably in its wire transfer services. For example, a bank could be requested by a customer to wire funds to someone in an OFAC-prohibited country; or be requested to wire funds to an individual named on the OFAC list; or a customer may receive a wire transfer from a country or individual on the list.

Therefore, as an absolute minimum, when a bank, even a small one, receives or sends an international wire transfer, either directly or indirectly, it should do the following:

1. Determine whether there are any economic or trade sanctions against the foreign country involved.
2. Check the names of all individuals involved in the wire transfer against OFAC's list of Specially Designated Nationals, Blocked Persons and Blocked Vessels.
3. If a vessel is involved, check the name of the vessel against OFAC's list of Specially Designated Nationals, Blocked Persons and Blocked Vessels.

Procedures for Joint Bank Accounts

Specific licenses are issued unblocking a portion of or all of a blocked joint bank account where a non-blocked applicant claims beneficial ownership, as follows:

- Joint bank account, without survivorship provisions. Specific licenses are issued unblocking only that amount with respect to which the applicant is able to prove beneficial ownership by documentary evidence independent of his assertions of interest.
- Joint bank account, with survivorship provision. Specific licenses are issued unblocking an amount equivalent to that portion of the total amount to which the applicant would be entitled if the total were divided evenly among the persons in whose names the account is held (e.g. 50 percent where there are two names; 33 1/3 percent where there are three names). Such licenses are issued on the basis of applicant's assertions of beneficial ownership interest without the requirement of independent evidence.

Procedures for Safe Deposit Boxes

Safe deposit boxes are deemed to be in the custody of all persons having access. Therefore, all individuals that have access should be checked against the appropriate lists, even if the bank does not include all parties with access on the mainframe system.

The laws and regulations prohibit access to any safe deposit box within the United States in the custody of any designated national or containing any property in which any designated national has any interest, or which there is reasonable cause to believe contains property in which any such designated national has any interest.

Access to any safe deposit box leased to a designated national or containing property in which any designated national has an interest, and the deposit or removal from the box are authorized, provided the following terms and conditions are complied with:

1. Access shall be permitted only in the presence of an authorized representative of the lessor of such box; and
2. In the event that any property in which any designated national has any interest is to be removed from such box, access shall be permitted only in the presence of an authorized representative of a banking institution within the United States, who shall receive the property into its custody immediately upon removal from the box. This property must be

held in a blocked account under an arrangement that would be similar to a blocked deposit account.

If the box is leased to a designated national, the lessee or other person granted access to any safe deposit box pursuant to this section (except an agent or representative of the Office of Alien Property) shall furnish to the lessor a certificate in triplicate that he has filed or will promptly file a report with respect to such box. The lessor shall transmit two copies of such certificate to the Treasury Department, Washington, D.C. The certificate is required only on the first access to the box. In case a report on Form TFR-603 was not made, a report is hereby required to be filed. All reports made pursuant to this section shall bear on their face or have securely attached to them a statement reading, "this report is filed pursuant to 31 CFR 500.517."

Blocking Versus Rejecting

In some cases, an underlying transaction may be prohibited, but there is no blockable interest in the transaction. In these cases, the transaction is simply rejected (not processed).

For example, a U.S. bank would have to reject a wire transfer between two third-country companies (non-SDNs) involving an export to a non-SDN company in Sudan. Since there is no interest of the Government of Sudan or an SDN, there is no blockable interest in the funds. The U.S. bank cannot process the transaction because that would constitute a transaction in support of a commercial activity in Sudan, which is prohibited by the Sudanese Sanctions Regulations.

Similarly, a U.S. bank could not be involved in the financing of a prohibited transaction. A U.S. bank cannot so much as advise a letter of credit if the underlying transaction is in violation of OFAC regulations.

Rejected and blocked funds transfers must be reported to OFAC within 10 days. Questions about whether a transaction should be blocked or rejected should be directed to OFAC Compliance.

Reporting and Procedures

There are specific requirements for the reporting of blocked funds and rejected items to OFAC. In addition, annual reports are required on blocked funds using OFAC Form TDF 90-22.50. Should an institution be involved in litigation, arbitration or other alternative resolution proceedings involving blocked funds, this action must also be reported to OFAC.

The Office of Foreign Assets Control has installed a special toll-free telephone number, 1-800-540-OFAC (6322), for bank compliance inquiries. The number is specifically for the use of financial institutions and bank examiners.

It should be noted that although many of the prohibitions contained in the regulations may appear to have no relevance to banking and, therefore, appear to have no interest to bankers, that is not the case. A financial institution can become a party to any given funds transfer or transaction through its customers.

If a customer's business dealings involve underlying prohibited activities, persons, or countries and a bank processes financial transactions related to the activities, it can face OFAC levied penalties. So, at least being familiar with the various sanctions in the many regulations is imperative.

In the event a bank fails to block or reject a transaction(s) that falls under one of the sanctions, the recommended course of action is to:

- Promptly report the suspected violation to OFAC.
- Fully cooperate in any investigation or request for information.
- Assess existing policies in light of the suspected violation to determine if modifications to policies and procedures are required.
- Promptly implement any needed changes. Waiting for an OFAC or regulator request for the change will put the bank at additional risk.

Filing SARs on OFAC List Matches

A verified match with an entity on an OFAC list that involves funds in an amount above the applicable SAR filing threshold should trigger a SAR filing requirement only in those cases where suspicious activity has occurred. The rules recently changed on this issue, and there is no longer a need for a mandatory SAR filing each time the bank has a positive hit.

However, remember that any transaction with, by or for a person listed by OFAC is unlawful. Therefore, when a financial institution verifies that it has a match with the OFAC list, it always will have identified at least a potential violation of law. If a bank has any questions about its OFAC obligations and responsibilities on this point, it may call the OFAC Hotline at (800) 540-6322.

OFAC Questions and Answers from:

<http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx#1>

What is an SDN?

As part of its enforcement efforts, OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. Collectively, such individuals and companies are called “Specially Designated Nationals” or “SDNs.” Their assets are blocked and U.S. persons are generally prohibited from dealing with them.

How do I get a copy of this list?

The best way to get the list is from OFAC’s Web site. The list is disseminated in a number of different formats, including fixed field/delimited files that can be integrated into databases.

How often is the SDN list updated?

The SDN list is frequently updated. There is no predetermined timetable, but rather names are added or removed as necessary and appropriate.

How do I know what specific changes have been made to OFAC’s SDN list?

All changes for the current calendar year are cumulatively available in a .PDF file and in an ASCII version. Cumulative changes for prior years back to 1994 are also available in ASCII format by going to the following website: <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/archive.aspx>. The same link will take you to a *.PDF version of the file for calendar year 2001.

What do I need to do to comply? Do I have to buy expensive software?

This is primarily a question for your regulator. What constitutes an adequate compliance program depends in large part on who your customers are and what kinds of business you do. Certain areas of bank operations, such as international wire transfers and trade finance, are at a higher risk than others. There are numerous interdiction software packages that are commercially available. They vary considerably in cost and capabilities. If your bank feels it needs to invest in software in its attempt to comply with OFAC regulations, OFAC recommends that you talk to your counterparts in other banks about the systems they have in place and contact vendors for an assessment of your needs. It should be noted that *.TXT and *.PDF versions of OFAC's SDN list can be manually scanned; OFAC's *.TXT list can also be queried using standard word processing software such as Microsoft Word or Corel's WordPerfect.

How do I block an account or a funds transfer?

Once it has been determined that funds need to be blocked, they must be placed into an interest-bearing account on your books from which only OFAC-authorized debits may be made. The blocking also must be reported to OFAC Compliance within 10 business days. Some banks have opted to open separate accounts for each blocked transaction, while others have opted for omnibus accounts titled, for example, "Blocked Libyan Funds." Either method is satisfactory, so long as there is an audit trail which will allow specific funds to be unblocked with interest at any point in the future.

How much interest do I have to pay on the blocked funds?

OFAC regulations require that funds earn interest at a commercially reasonable rate, i.e., at a rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

Can my bank deduct service charges from the account?

Generally yes. In most cases (excluding Iraq, for instance) OFAC regulations contain provisions to allow a bank to debit blocked accounts for normal service charges, which are described in each set of regulations. The charges must be in accordance with a published rate schedule for the type of account in which the funds are maintained.

Do all OFAC programs involve blocking transactions?

No. OFAC regulations are tailored to further the requirements and purposes of specific Executive Orders or statutes which provide the basic outline of each program. In some cases, the President has determined that a comprehensive asset freeze is appropriate, and in others the President has determined that more limited restrictions (for example, import bans) are in order. The individual program brochures outline the restrictions for each program.

I understand blocking a transaction, but what is meant by rejecting a transaction?

When should a transaction be rejected rather than blocked?

In some cases, an underlying transaction may be prohibited, but there is no blockable interest in the transaction. In these cases, the transaction is simply rejected, or not processed. For example, a U.S. bank would have to reject a wire transfer between two third-country companies (non-SDNs) involving an export to a non-SDN company in Sudan. Since there is no interest of the Government of Sudan or an SDN, there is no blockable interest in the funds. The U.S. bank cannot process the transaction because that would constitute a transaction in support of a commercial activity in Sudan, which is prohibited by the Sudanese Sanctions Regulations. Similarly, a U.S. bank could not be involved in the financing of a prohibited transaction. A U.S. bank cannot so much as advise a letter of credit if the underlying transaction is in violation of OFAC regulations. Please note that the Iranian Transactions Regulations contain no blocking provisions.

The following examples may help illustrate which transactions should be blocked and which should be rejected.

- A U.S. bank interdicts a commercial payment destined for the account of XYZ Import-Export Co. at the Bank of Khartoum in Khartoum, Sudan. The Bank of Khartoum is wholly-owned by the Government of Sudan and, accordingly, is a Specially Designated National of Sudan. This payment must be blocked.
- A U.S. bank interdicts a commercial payment destined for the account of ABC Import-Export at Sudanese French Bank, Khartoum, Sudan. Unlike the Bank of Khartoum, Sudanese French Bank, Khartoum is a private sector entity so there is no blockable interest in this payment. However, processing the payment would mean facilitating trade with Sudan and providing a service in support of a commercial transaction in Sudan, therefore the U.S. bank must reject the payment.
- A U.S. bank interdicts an unlicensed commercial payment going to a private-sector entity in Cuba. Under the Cuban Assets Control Regulations, all property and property interests of Cuban nationals – defined to include any person or entity in Cuba - are blocked. As a result, this payment must be blocked.

Rejected and blocked funds transfers must be reported to OFAC within 10 days. Questions about whether a transaction should be blocked or rejected should be directed to OFAC Compliance.

Where can I find the specific details about the embargoes?

A summary description of each particular embargo or sanctions program may be found in the Sanctions Program and Country Summaries area and in the Regulations by Industry area on OFAC's Web site. The text of Legal documents may be found in the Legal Documents area of OFAC's Web site which contains the text of 31 C.F.R. Chapter V and appropriate amendments to that Chapter which have appeared in the *Federal Register*.

Can I get permission from OFAC to transact or trade with an embargoed country?

OFAC usually has the authority by means of a specific license to permit a person or entity to engage in a transaction which otherwise would be prohibited. In some cases, however, legislation may restrict that authority.

What must I do to get permission to trade with an embargoed country?

In some situations, authority to engage in certain transactions is provided by means of a general license. In instances where a general license does not exist, a written request for a specific license must be filed with OFAC. The request must conform to the procedures set out in the regulations pertaining to the particular sanctions program. Generally, application guidelines and requirements must be strictly followed, and all necessary information must be included in the application in order for OFAC to consider an application. For an explanation about the difference between a general and a specific license as well as answers to other licensing questions, see the licensing questions rules.

What countries do I need to worry about in terms of U.S. sanctions?

OFAC administers a number of U.S. economic sanctions and embargoes that target geographic regions and governments. Comprehensive sanctions programs include Burma (Myanmar), Cuba, Iran, Sudan, and Syria. Other non-comprehensive programs include the Western Balkans, Belarus, Cote d'Ivoire, Democratic Republic of the Congo, Iraq, Liberia (Former Regime of Charles Taylor), Persons Undermining the Sovereignty of Lebanon or Its Democratic Processes and Institutions, Libya, North Korea, Somalia and Zimbabwe as well as other programs targeting individuals or entities located around the world. Those programs currently relate to foreign

narcotics traffickers, foreign terrorists, traditional criminal organizations, and WMD proliferators. It is important to note that in non-comprehensive programs, there are no broad prohibitions on dealings with countries, but only against specific named individuals and entities. The names are incorporated into OFAC's list of Specially Designated Nationals and Blocked Persons ("SDN list") which includes over 6,000 names of companies and individuals who are connected with the sanctions targets. A number of the named individuals and entities are known to move from country to country and may end up in locations where they would be least expected. U.S. persons are prohibited from dealing with SDNs wherever they are located and all SDN assets are blocked. Entities that a person on the SDN List owns (defined as a direct or indirect ownership interest of 50 percent or more) are also blocked, regardless of whether that entity is separately named on the SDN List. Because OFAC's programs are dynamic and constantly changing, it is very important to check OFAC's website on a regular basis to ensure that your SDN list is current and you have complete information regarding current restrictions affecting countries and parties with which you plan to do business.

My bank operates accounts for individuals living in Iran. OFAC has told us that these accounts cannot be operated. Does this mean that the accounts are blocked?

No, the accounts are restricted. The Iranian sanctions prohibit the export of goods or services to Iran. By operating an account for an individual or company in Iran, the bank would be exporting services to that person or entity in violation of the Iranian Transactions Regulations. The accounts, however, are not blocked. The account holder can close the account and have the funds transferred to his or her account outside the United States.

Are U-Turn payments for Iran still permitted?

No, as of November 10, 2008 U-Turn payments are no longer allowed.

I have a client that is in Iran to visit a relative. Do I need to restrict the account?

No. As long as you are satisfied that the client is not ordinarily resident in IRAN, then the account does not need to be restricted.

What do I do if I have a blocked account that needs to be escheated to the state?

You need to discuss this with your state authorities and with OFAC. For instance, the state of New York has a license to escheat blocked funds, pending OFAC approval of each transfer. Banks in New York should contact the State Banking Department for instructions on how to proceed. Banks in other states should contact OFAC directly for instructions on how to proceed.

If my financial institution receives a wire going to an embassy in a sanctioned country, can we process the transaction?

This depends on the program. If you have a payment involving an embassy in a targeted country, please contact OFAC Compliance for directions (1-800-540-6322).

Should an institution tell its customer that it blocked their funds, and, if so, how does the institution explain it to them?

An institution may notify its customer that it has blocked funds in accordance with OFAC's instructions. The customer has the right to apply for the unblocking and release of the funds. Information on OFAC's licensing procedures is available on the Web site. For a copy of the *.PDF application form for the unblocking of funds transfers (TD F 90-22.54), please direct your customer to the following website: <http://www.treasury.gov/resource-center/sanctions/Documents/license.pdf>.

(NOTE: A copy of the application can be found at the end of this section of the manual.)

What do I do if a person tries to open an account and the person's name is on OFAC's SDN list? Do I open the account and then block the funds?

A U.S. bank cannot open an account for a person named on the SDN list. This is a prohibited service. However, you should pay careful attention to be sure the person trying to open the account is the same person as the one named on OFAC's list. In many cases you may get a "false positive," where the name is similar to a target's name, but the rest of the information provided by the applicant does not match the descriptor information on OFAC's SDN list. If the bank does come into the possession or control of any property in which a blocked person has an interest, it is obligated to block that property. In other words, if you receive an application to open an account from a person who matches the information on the SDN list, together with an opening deposit, you are obligated to block the funds. The same is true for other banking transactions. If, for example, a customer asks if he or she is allowed to send money to a relative's account with Bank of XYZ in Sudan, the bank can say "no, that's illegal." If, on the other hand, a bank receives instructions from its customer to debit his or her account and send the funds to Bank of XYZ, the bank must act on the instructions by blocking the funds which contain a future interest of the Sudanese SDN bank. You might think of the analogy of a bouncing ball. Once the ball starts moving, you must stop it if it comes into your possession.

Does a financial institution need to scan names against OFAC's list of targets upon account opening or can it wait for 24 hours to receive a report from its software vendor on whether or not there is a hit?

There is no legal or regulatory requirement to use software or to scan. There is a requirement, however, not to violate the law by doing business with a target or failing to block property. OFAC realizes that financial institutions use software that does not always provide an instantaneous response and may require some analysis to determine if a customer is indeed an SDN. The important thing is not to conclude transactions before the analysis is completed.

Is there a dollar limit on which transactions are subject to OFAC regulations?

There is no minimum or maximum amount subject to the regulations.

Does my bank need to check the OFAC list when selling cashier's checks and money orders? In the case of cashier's checks, do I need to check both the purchaser and the payee? As a mortgage lender, do I need to check both the purchaser and the seller's name against the SDN list?

Every transaction that a U.S. financial institution engages in is subject to OFAC regulations. If a bank knows or has reason to know that a target is party to a transaction, the bank's processing of the transaction would be unlawful.

If a loan meets underwriting standards but is a true "hit" on the OFAC list, what do we use as a denial reason on the adverse action notice?

If you have confirmed with OFAC that you have a "good hit," there is no reason not to explain that to the customer. The customer can contact OFAC directly for further information.

Through corporate giving programs, many banks contribute toward charities and other non-profits. To what extent does a bank need to review the recipients of these gifts or the principles of the charities?

Donations to charitable institutions must be handled as any other financial transaction. The donating bank or institution should crosscheck the recipient names against OFAC's SDN list and assure that the donations are in compliance with OFAC sanctions programs.

Can U.S. financial institutions open correspondent accounts for Iraqi financial institutions, or process funds transfers to and from Iraqi financial institutions?

Yes, U.S. financial institutions are authorized to open correspondent accounts for, and process funds transfer to or on behalf of Iraqi financial institutions.

How do I differentiate between an "inquiry" and a "payment instruction" when a customer wants to send a wire transfer to a sanctioned party or country?

In those programs with blocking provisions, OFAC's regulations block all "property" in which a target has an interest. The term "property" is very broadly defined, including present, future or contingent interests. In the case of a wire transfer, the bank will be holding blocked property upon the receipt of concrete instructions from its customer to send the funds. In this case, the funds must be blocked and reported to OFAC within ten days. If, on the other hand, a customer simply asks "Can I send money to Cuba?" there is no blockable interest in the inquiry and the bank can answer the question or direct them to OFAC. The same logic applies to cases where the transaction would be required to be rejected under OFAC regulations. There is not technically a "reject" item until the bank receives instructions from its customer to debit its account and send the funds.

I have an account with a W-8 showing an address in Iran. Is the account automatically restricted?

In the absence of information proving to your satisfaction that the account holder is not in Iran, you should consider the account restricted based on the W-8 filing.

Does a financial institution have the obligation to screen account beneficiaries for compliance with OFAC regulations?

"Property," as defined in OFAC regulations, includes most products that financial institutions offer to their clients. "Property interest," as defined by OFAC, includes any interest whatsoever, direct or indirect, present, future or contingent. Given these definitions and as a matter of sound banking practice, it is prudent for financial institutions to screen account beneficiaries upon account opening, while updating account information, when performing periodic screening and, most definitely, upon disbursing funds. Where there is a property interest of a sanctions target under a blocking program, the property must be blocked. Beneficiaries include, but are not limited to, trustees, children, spouses, non-spouses, entities and powers of attorney.

On February 14, 2008, OFAC issued guidance stating that the property and interests in property of an entity are blocked if the entity is owned, directly or indirectly, 50% or more by a person whose property and interests in property are blocked pursuant to an Executive Order or regulations administered by OFAC. We act as an intermediary bank in wire transfers between other banks. Does OFAC expect banks that are acting as financial intermediaries to research non-account parties that do not appear on the SDN List, but are involved with or referenced in transactions that are processed on behalf of correspondents?

A wire transfer in which an entity has an interest is blocked property if the entity is 50% or more owned by a person whose property and interests in property are blocked. This is true even in instances where such a transaction is passing through a U.S. bank that (1) is operating solely as an intermediary, (2) does not have any direct relationship with the entity (e.g., the entity is a non-account party), and (3) does not know or have reason to know the entity's ownership or other information demonstrating the blocked status of the entity's property (e.g., that the entity is located in Cuba). In instances where all three conditions are met, notwithstanding the blocked status of the wire transfer, OFAC would not expect the bank to research the non-account parties listed in the wire transfer that do not appear on the SDN List and, accordingly, would not

pursue an enforcement action against the bank for having processed such a transaction.

If a bank handling a wire transfer currently has information in its possession leading the bank to know or have reason to know that a particular individual or entity involved with or referenced in the wire transfer is subject to blocking, then the bank will be held responsible if it does not take appropriate steps to ensure that the wire transfer is blocked.

OFAC expects banks to conduct due diligence on their own direct customers (including, for example, their ownership structure) to confirm that those customers are not persons whose property and interests in property are blocked.

With regard to other types of transactions where a bank is acting solely as an intermediary and fails to block transactions involving a sanctions target, OFAC will consider the totality of the circumstances surrounding the bank's processing of the transaction, including but not limited to the factors listed above, to determine what, if any, enforcement action to take against the bank.

I just received an interdiction "alert." What do I do?

When your interdiction software or accountholder checking service shows a potential match, OFAC recommends that you do an initial analysis prior to contacting OFAC. If you have a reasonably close match to a name on the SDN list and your customer is located in the same vicinity as the SDN, feel free to contact OFAC Compliance. Computer software can only deal with letters and numbers. It will inevitably flag some transactions that are not actually OFAC targets. This is where human intervention becomes critical and some hands-on research may be necessary. Questions that ought to be asked by a Compliance Officer before calling OFAC include:

Is it an exact name match, or very close? Is the suspect party located in the same general area as the SDN? If there are many similarities, then contact OFAC for verification. Unless you have an exact match or are otherwise privy to information indicating that the hit is a target, it is recommended that you not actually block a transaction without discussing the matter with OFAC.

When a transaction is rejected or blocked, I have 10 days to report it. Do I have to do it in writing or can I call OFAC Compliance and report it that way?

At the moment, OFAC requires that all blocking and reject reports be submitted in writing. Optional reporting forms are available at the following website: <http://www.treasury.gov/resource-center/sanctions/Forms/forms-index.aspx>. Reports may be mailed in or faxed to OFAC Compliance at 202-622-2426.

NOTE: Blocking and reject reports must contain a copy of the original transfer instructions. OFAC now permits the filing of these reports electronically. Refer to this same website for access. Copies of these reports can be found at the end of this section of the manual.

Is there a requirement for annual reporting of blocked property? Is there a required format?

Yes. A report of blocked property is to be submitted annually by September 30 to OFAC Compliance, Department of the Treasury, Washington, D.C., 20220. The standardized form can be accessed by visiting the following website:

<http://www.treasury.gov/resource-center/sanctions/Documents/td902250.pdf>

A copy of the form can be found at the end of this section of the manual. If you wish to use a different format, please contact OFAC's Blocked Assets Division at 202-622-2440.

ANNUAL REPORT OF BLOCKED PROPERTY

TD F 90-22.50

Office of Foreign Assets Control
Department of the Treasury
Washington, D.C. 20220

The Office of Foreign Assets Control (OFAC) requires an annual report of all property blocked or funds retained under OFAC Regulations found in Title 31 of the Code of Federal Regulations, Parts 500 through 599. This information is needed by the United States Government for planning purposes and to verify compliance with OFAC Regulations. The report is to be submitted annually by September 30 to the Compliance Programs Division, OFAC, Department of the Treasury, Washington, D.C. 20220.

General Instructions

Any person holding property blocked or funds retained under OFAC Regulations is required to submit a report on this form concerning such property. Reports filed in accordance with OFAC Regulations are regarded as containing commercial and financial information which is privileged and confidential. Requests to submit reports in alternative formats will be considered on a case-by-case basis. For additional copies of the form, as well as other information of interest to holders of blocked property, call OFAC's fax-on-demand service at (202) 622-0077.

Part A - U.S. Person Holding Property.

State reporter's corporate name and address and the name and telephone number of an individual corporate official to contact regarding this report.

Name: _____

Address: _____

Individual to contact regarding this report:

_____ (name)

_____ (title)

_____ (telephone number)

Total number of accounts or items reported on Part B: _____

Complete the certification where applicable. The report is not valid without the certification.

I, _____, certify that I am the _____
(name) _____ (title)

of the _____, that I am authorized to make this
(corporate name)

certification, and that, to the best of my knowledge and belief, the statements set forth in this report, including any papers attached hereto or filed herewith, are true and accurate, and that all material facts in connection with said report have been set forth herein.

_____ (signature)

_____ (date)

PAPERWORK REDUCTION ACT STATEMENT: The paperwork requirement has been cleared under the Paperwork Reduction Act of 1980. The Office of Foreign Assets Control of the Department of the Treasury requires this information be furnished pursuant to 50 U.S.C. 1701, and CFR Parts 500 to 600. The information collected will be used for U.S. Government planning purposes and to verify compliance with OFAC Regulations. The information will be held confidential. The estimated burden associated with this collection of information is 4 hours per respondent or record keeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Compliance Programs Division, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220 and the Office of Management and Budget, Paperwork Reduction Project (1505-0164), Washington, D.C. 20503. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Part B - Property Reported

Identify each account or item of property separately in the spaces provided below. Use additional photocopies of Part B as needed. Use supplemental attachments if the space provided is inadequate. Be sure to indicate the number of accounts or items reported on Part B in the appropriate space on Part A.

Owner. Identify the owner of the property.
Description. Provide a brief but comprehensive description of the property.
Include account type, number, and currency (if other than U.S. Dollars) where applicable.
Value. Provide the value (or an estimate) of the property as of June 30.
If a value date other than June 30 is reported, so indicate.
Location. List the location or branch where the property is held, if different than the address shown in Part A.
Regulations. Identify the Part of Title 31 of the Code of Federal Regulations under which this property is blocked.

INSTRUCTIONS

WHERE A WIRE TRANSFER HAS BEEN BLOCKED AT A U.S. FINANCIAL INSTITUTION DUE TO U.S. GOVERNMENT SANCTIONS, A PARTY TO THE TRANSFER MAY APPLY FOR RELEASE OF THE FUNDS.

- COMPLETE ALL APPLICABLE SECTIONS. **FAILURE TO PROVIDE ADEQUATE INFORMATION MAY RESULT IN YOUR APPLICATION BEING RETURNED WITHOUT ACTION.**
- ATTACH COPIES OF ANY DOCUMENTS RELATED TO THE UNDERLYING TRANSACTION (E.G. INVOICES, BILLS OF LADING, PHOTOCOPY OF THE ORIGINAL PAYMENT OR TRANSFER INSTRUCTIONS, COPIES OF GOVERNMENT-ISSUED IDENTIFICATION SUCH AS PASSPORT, TEMPORARY/PERMANENT RESIDENT CARD, BIRTH CERTIFICATE, OR OTHER IDENTIFYING DOCUMENTATION).
- ALL DOCUMENTS MUST BE IN ENGLISH OR INCLUDE AN ENGLISH TRANSLATION.
- MAIL THE COMPLETED AND SIGNED APPLICATION, TOGETHER WITH ACCOMPANYING DOCUMENTATION AND TWO ADDITIONAL COPIES OF THE ENTIRE SUBMISSION, TO: **THE OFFICE OF FOREIGN ASSETS CONTROL, 1500 PENNSYLVANIA AVENUE, NW-ANNEX, WASHINGTON, D.C. 20220, ATTN: BLOCKED FUNDS APPLICATION**
- A COPY OF THIS APPLICATION AND ALL RELATED DOCUMENTATION MUST BE RETAINED BY THE APPLICANT FOR AT LEAST FIVE YEARS AFTER THE DATE OF THE UNDERLYING TRANSACTION.
- UNLESS AUTHORIZED BY OFAC, APPLICATIONS MADE BY ANY OTHER METHOD WILL NOT BE CONSIDERED.

LICENSES GRANTED PURSUANT TO THIS APPLICATION ARE SUBJECT TO THE CONDITIONS BELOW

- LICENSEES SHALL FURNISH AND MAKE AVAILABLE FOR INSPECTION ANY RELEVANT INFORMATION, RECORDS OR REPORTS REQUESTED BY THE SECRETARY OF THE TREASURY OR ANY DULY AUTHORIZED OFFICER OR AGENCY OF THE SECRETARY.
- A SPECIFIC LICENSE IS NOT TRANSFERABLE, IS LIMITED TO THE FACTS AND CIRCUMSTANCES SPECIFIC TO THE APPLICATION, AND IS SUBJECT TO THE PROVISIONS OF 31 CFR PART 501, THE RELEVANT EXECUTIVE ORDER OR PART OF 31 CFR CHAPTER V PERTAINING TO THE SANCTIONS PROGRAM UNDER WHICH THE TRANSFER WAS BLOCKED AND ANY REGULATIONS OR RULINGS ISSUED PURSUANT THERETO. A LICENSE MAY BE REVOKED OR MODIFIED AT ANY TIME AT THE DISCRETION OF THE SECRETARY OF THE TREASURY. IF A SPECIFIC LICENSE WAS ISSUED AS A RESULT OF WILLFUL MISREPRESENTATION ON THE PART OF THE APPLICANT OR HIS AGENT, IT MAY, AT THE DISCRETION OF THE SECRETARY OF THE TREASURY, BE DECLARED VOID FROM THE DATE OF ITS ISSUANCE, OR FROM ANY OTHER DATE.
- A SPECIFIC LICENSE 1) DOES NOT EXCUSE COMPLIANCE WITH ANY LAW OR REGULATION ADMINISTERED BY THE OFFICE OF FOREIGN ASSETS CONTROL OR ANOTHER AGENCY (INCLUDING REPORTING REQUIREMENTS APPLICABLE TO THE TRANSACTIONS AND ACTIVITIES THEREIN LICENSED), 2) DOES NOT RELEASE THE LICENSEES OR THIRD PARTIES FROM CIVIL OR CRIMINAL LIABILITY FOR VIOLATION OF ANY LAW OR REGULATION, AND 3) DOES NOT CONSTITUTE A FINDING OF FACT OR CONCLUSION OF LAW WITH RESPECT TO THE APPLICABILITY OF ANY LAW OR REGULATION.
- ATTENTION IS DIRECTED TO 19 U.S.C. §§ 1592 AND 1595A, 18 U.S.C. § 545, 18 U.S.C. § 1001, 50 U.S.C. APP. § 16, AND SECTION 701 ET SEQ. OF THE RELEVANT PART OF 31 CFR FOR PROVISIONS RELATING TO PENALTIES.

FOR YOUR INFORMATION

- Remitter – The person or organization that is sending the funds.
- Remitting Financial Institution – Name of the financial institution initiating the transfer on behalf of the remitter.
- Intermediary Financial Institution – A bank other than the remitter's bank or beneficiary's bank through which the transfer passes.
- Beneficiary Financial Institution – The financial institution receiving the funds on behalf of the beneficiary.
- Beneficiary – The ultimate party to be credited or paid as a result of a wire transfer.
- Hover Help – Holding the mouse cursor over the data entry portion of some fields will result in a pop-up box containing information on entering data into the field over which the mouse cursor is placed. This help also exists for the headings of each section.

WARNING!

MAKING FALSE OR MISLEADING STATEMENTS ON OR IN CONNECTION WITH THIS APPLICATION MAY CONSTITUTE SERIOUS CRIMINAL AND/OR CIVIL VIOLATIONS OF FEDERAL LAW AND MAY RESULT IN SUBSTANTIAL FINES.

PAPERWORK REDUCTION ACT STATEMENT: The paperwork requirement has been cleared under the Paperwork Reduction Act of 1985. The Office of Foreign Assets Control (OFAC) of the Department of the Treasury requires this information to be furnished pursuant to 31 CFR Part 501. The information collected will be used for U.S. Government to evaluate and process license applications submitted by applicants whose money has been blocked pursuant to OFAC sanctions. It is the policy of OFAC to protect the confidentiality of information in appropriate cases pursuant to the exemptions from disclosure provided under the Freedom of Information Act and the Privacy Act. The estimated burden associated with this collection of information is 30 minutes per respondent. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Compliance Programs Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220 and the Office of Management and Budget, Paperwork Reduction Project OMB No. 1505-0170, Washington, D.C. 20503. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Mail this application to: Licensing Division
Office of Foreign Assets Control
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Form Approved
OMB No.: 1505-0170
Expiration Date: 08/31/2012



APPLICATION FOR THE RELEASE OF BLOCKED FUNDS

It is strongly recommended that you use the computer to complete this form

TYPE OF APPLICATION <u>New Application</u>		Previous Case Number (if applicable): _____								
1. Blocked Amount: _____	2. Currency Type: _____	3. Date Blocked (mm/dd/yyyy): _____								
APPLICANT/CONTACT INFORMATION										
4. Business Name (if applicable): _____										
5. Last Name: _____	6. First Name: _____									
7. Middle Name: _____	8a. Street Address 1: _____									
8b. Street Address 2: _____	9. City: _____									
10. Select Country _____	11. Select State _____	12. Postal Code: _____								
<input type="checkbox"/> 13. Int'l <input type="checkbox"/> 14. Phone: <table border="1" style="display: inline-table; vertical-align: middle;"><tr><td>Area</td><td>Exchange</td><td>Number</td><td>Extension</td></tr><tr><td> </td><td> </td><td> </td><td> </td></tr></table>			Area	Exchange	Number	Extension				
Area	Exchange	Number	Extension							
<input type="checkbox"/> 15. Int'l <input type="checkbox"/> 16. Fax: <table border="1" style="display: inline-table; vertical-align: middle;"><tr><td>Area</td><td>Exchange</td><td>Number</td></tr><tr><td> </td><td> </td><td> </td></tr></table>			Area	Exchange	Number					
Area	Exchange	Number								
17. E-mail Address: _____										
18. Principal Place of Business: _____										
19. State or Country Where Business is Incorporated: _____										
20. Transfer Blocked Due to the Following OFAC Sanctions Program: <u>Select Program</u> IF BLOCKING OCCURRED BECAUSE THE NAME OF ANY PARTY TO THE TRANSACTION APPEARS TO MATCH A NAME ON THE SPECIALLY DESIGNATED NATIONALS (SDN) LIST, PLEASE PROVIDE INFORMATION RELATED TO THE NAME MATCH (e.g. copy of: original payment or transfer instructions, invoices, bills of lading, passport, temporary/permanent resident card, birth certificate, Employer Identification Number, passport, national ID card, incorporation document or other government-issued identifying documentation).										
FINANCIAL INSTITUTION THAT BLOCKED FUNDS										
21. Institution Name: _____	23. City: _____	25. Select State _____								
22. Street Address: _____	24. Select Country _____	26. Postal Code: _____								
REMITTER'S INFORMATION										
27. Business Name (if applicable): _____										
28. Last Name: _____	29. First Name: _____	30. Middle Name: _____								
31. Street Address: _____	32. City: _____	34. Select State _____								
33. Select Country _____	35. Postal Code: _____	36. Institution Name: _____								
REMITTING FINANCIAL INSTITUTION										
37. Street Address: _____	38. City: _____	39. Select Country _____								
40. Select State _____	41. Postal Code: _____	42. Institution Name: _____								
 Page 1 of 3 Total Barcode Characters: 342										

APPLICATION FOR THE RELEASE OF BLOCKED FUNDS (cont'd)

INTERMEDIARY FINANCIAL INSTITUTION

42. Institution Name: _____

43. Street Address: _____ 44. City: _____

45. Select Country _____ 46. Select State _____ 47. Postal Code: _____

BENEFICIARY FINANCIAL INSTITUTION

48. Institution Name: _____

49. Street Address: _____ 50. City: _____

51. Select Country _____ 52. Select State _____ 53. Postal Code: _____

BENEFICIARY'S INFORMATION

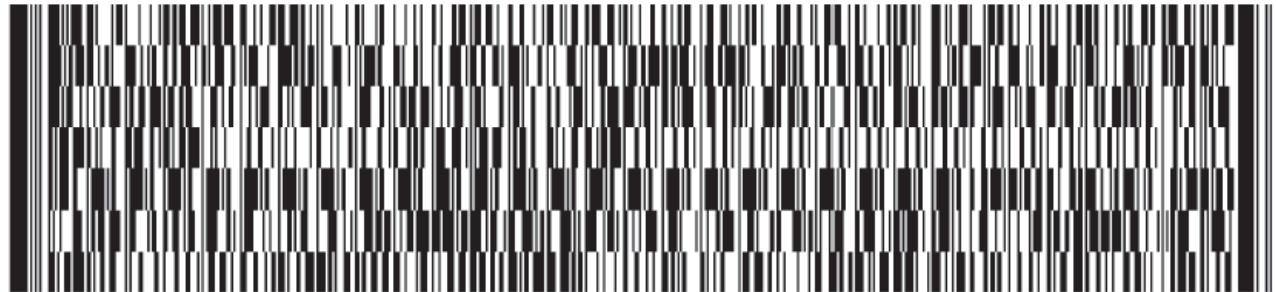
54. Business Name (if applicable): _____

55. Last Name: _____ 56. First Name: _____ 57. Middle Name: _____

58. Street Address: _____ 59. City: _____

60. Select Country _____ 61. Select State _____ 62. Postal Code: _____

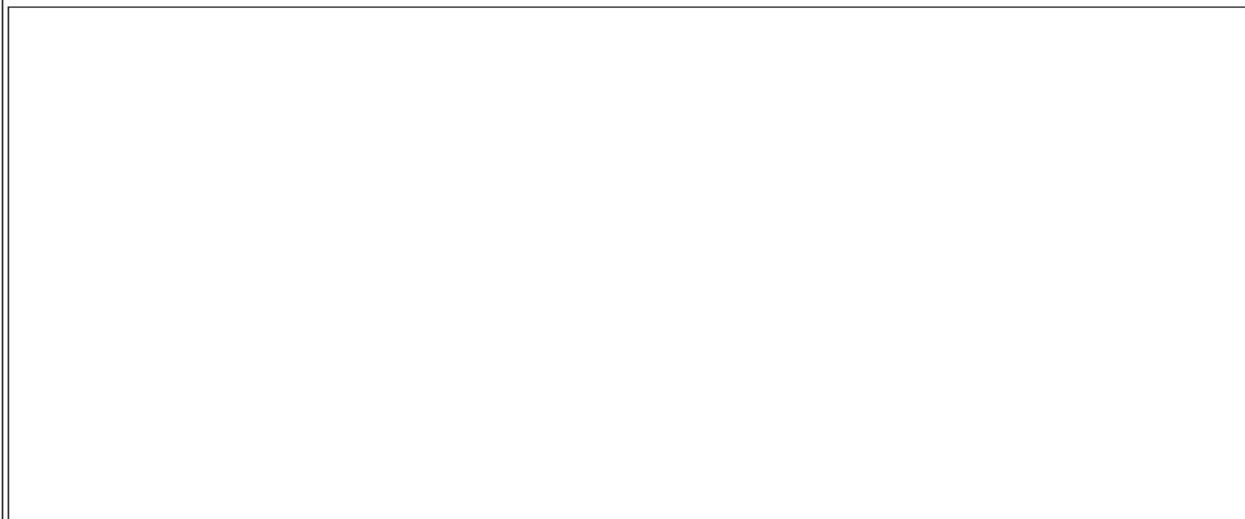
63. DETAILED EXPLANATION OF THE TRANSACTION, INCLUDING THE PURPOSE OF THE PAYMENT (Additional space provided on next page.)



OMB No. 1505-0170

APPLICATION FOR THE RELEASE OF BLOCKED FUNDS (cont'd)

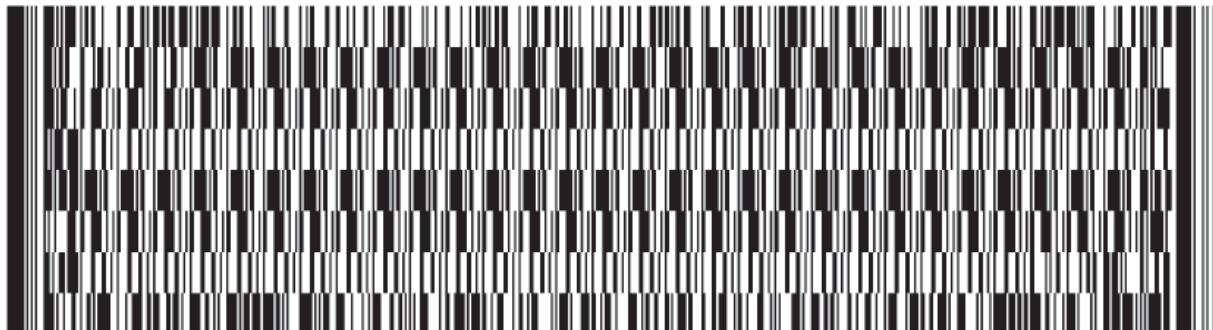
64. DETAILED EXPLANATION OF THE TRANSACTION (cont'd)



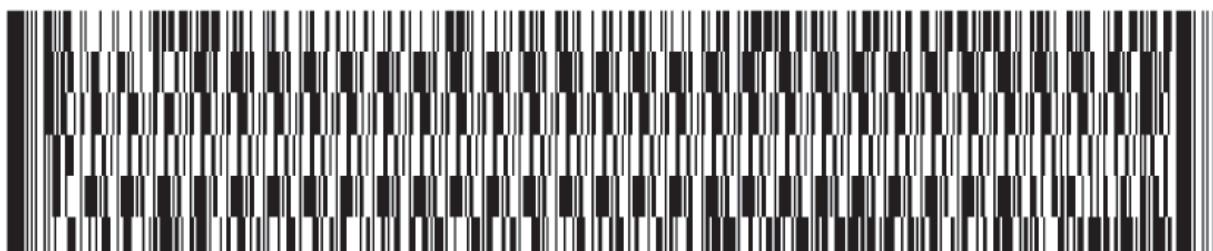
65. APPLICANT CERTIFICATION: I, THE UNDERSIGNED, HEREBY DECLARE THAT, TO THE BEST OF MY KNOWLEDGE, THE INFORMATION PROVIDED ON THIS APPLICATION AND ANY ACCOMPANYING DOCUMENTATION IS TRUTHFUL AND COMPLETE.

66. SIGNATURE: _____ 67. DATE: _____

68. SIGNATORY NAME: _____ 69. SIGNATORY TITLE: _____



Total Barcode Characters: 26



Page 3 of 3

Total Barcode Characters: 27

UNITED STATES DEPARTMENT OF THE TREASURY
 OFFICE OF FOREIGN ASSETS CONTROL
 REPORT OF BLOCKED TRANSACTIONS

INSTITUTION INFORMATION

INSTITUTION		TYPE OF INSTITUTION	ADDRESS
CITY	STATE	CONTACT PERSON	TELEPHONE NUMBER
POSTAL CODE	COUNTRY	E-MAIL ADDRESS	FAX NUMBER

TRANSACTION INFORMATION

AMOUNT BLOCKED	DATE OF TRANSACTION	DATE OF BLOCKING	PROGRAM OR REASON FOR BLOCKING FUNDS
ORIGINATOR NAME & ADDRESS		ORIGINATING FINANCIAL INSTITUTION NAME & ADDRESS	
INTERMEDIARY FINANCIAL INSTITUTION(S) NAME & ADDRESS		BENEFICIARY FINANCIAL INSTITUTION NAME & ADDRESS	
BENEFICIARY NAME & ADDRESS		ADDITIONAL RELEVANT INFORMATION (USE PAGE 2 IF MORE SPACE IS NEEDED)	
ADDITIONAL DATA FOUND IN ORIGINATOR TO BENEFICIARY INFORMATION OR BANK TO BANK INFORMATION			

PLEASE ATTACH A COPY OF PAYMENT INSTRUCTIONS AS PAGE 3 OF THIS FORM

PREPARER INFORMATION

SIGNATURE	NAME OF SIGNER	TITLE OF SIGNER	DATE PREPARED
-----------	----------------	-----------------	---------------

ADDITIONAL INFORMATION

(PLEASE INCLUDE PAYMENT INSTRUCTIONS AS A SEPARATE ATTACHMENT TO THIS DOCUMENT)

UNITED STATES DEPARTMENT OF THE TREASURY
 OFFICE OF FOREIGN ASSETS CONTROL
 REPORT OF REJECTED TRANSACTIONS

INSTITUTION INFORMATION

INSTITUTION		TYPE OF INSTITUTION	ADDRESS
CITY	STATE	CONTACT PERSON	TELEPHONE NUMBER
POSTAL CODE	COUNTRY	E-MAIL ADDRESS	FAX NUMBER

TRANSACTION INFORMATION

AMOUNT REJECTED	DATE OF TRANSACTION	DATE OF REJECTION	PROGRAM OR REASON FOR REJECTING FUNDS
ORIGINATOR NAME & ADDRESS		ORIGINATING FINANCIAL INSTITUTION NAME & ADDRESS	
INTERMEDIARY FINANCIAL INSTITUTION(S) NAME & ADDRESS		BENEFICIARY FINANCIAL INSTITUTION NAME & ADDRESS	
BENEFICIARY NAME & ADDRESS		ADDITIONAL RELEVANT INFORMATION (USE PAGE 2 IF MORE SPACE IS NEEDED)	
ADDITIONAL DATA FOUND IN ORIGINATOR TO BENEFICIARY INFORMATION OR BANK TO BANK INFORMATION			

PLEASE ATTACH A COPY OF PAYMENT INSTRUCTIONS AS PAGE 3 OF THIS FORM

PREPARER INFORMATION

SIGNATURE	NAME OF SIGNER	TITLE OF SIGNER	DATE PREPARED
-----------	----------------	-----------------	---------------

**ADDITIONAL INFORMATION
(PLEASE INCLUDE PAYMENT INSTRUCTIONS AS A SEPARATE ATTACHMENT TO THIS DOCUMENT)**

Section 5: Bank OFAC Compliance Program

The importance of establishing a compliance program and developing internal audit procedures should be a focal point for every financial institution. While many community banks may consider OFAC compliance as a “non-issue,” all it takes is one error to cause significant harm to the bank’s reputation with both regulators and the community. A bank in noncompliance may be opening itself to adverse publicity, fines, and even criminal penalties (if violations are other than inadvertent).

There are definite expectations regarding the processing of transactions involving countries under sanctions and transactions involving individuals that the United States government views as potential or real risks.

OFAC is one of many areas in which the bank must make appropriate risk management decisions. Banks must balance the demands of Federal and state bank examiners and OFAC laws and regulations with the limitations on the bank’s time, resources, and staffing. While every financial institution must comply with the same laws and regulations, there is no prepackaged compliance program for every institution. Your bank’s program must comply with the regulation, in line with the risks, needs, structure, and resources of your financial institution.

The Federal bank regulatory agencies review financial institutions under their supervision to determine the adequacy of compliance programs with regard to OFAC Regulations.

Establishing an OFAC Compliance Program

While not required by law, regulators expect that every bank designate a “Compliance Officer” responsible for monitoring compliance with its programs, as well as an officer responsible for overseeing blocked funds. In many banks, this may be the bank’s BSA Officer or Compliance Officer.

The appointment of an OFAC Compliance Officer assures that a bank has a central control point for all OFAC issues and potential OFAC difficulties. While operations, lending, and systems managers may be responsible for many of the day-to-day formal OFAC compliance responsibilities, it is important that one individual be ultimately responsible for the program.

Independent review may be the function of the OFAC officer, internal audit, external audit, or through consultants, based on the bank’s location and/or limiting factors.

The overall objective of an OFAC Compliance Program should be to prohibit funds transfers and transactions that involve Specially Designated Nationals (SDNs), Foreign Terrorist Organizations (FTOs), Specially Designated Global Terrorists (SDGTs), Specially Designated Narcotics Traffickers (SDNTs), Specially Designated Narcotics Trafficker Kingpins (SDNTKs) or Blocked Vessels.

Each set of sanctions against the various countries subject to these laws and regulations is different, which makes compliance with the regulations and laws more difficult. For this reason, there can be no single set of guidelines or instructions which will cover all OFAC sanction eventualities. A bank’s OFAC compliance program should therefore provide all employees who are likely to encounter transactions that might fall under one of the sanctions with the information needed to recognize such transactions. After discovering the transaction, OFAC can assist the bank in all additional compliance activities that may be required.

Although no one program will work for all financial institutions, the foundation for building a program is the same. The essential components of an effective program are as follows:

Written Compliance Program

- Contains policies that govern the overall program
- Contains procedures to ensure compliance with the policy and overall program
- Requires routine maintenance and updating to ensure adequacy
- Assigns rights and responsibilities for each portion of the bank's compliance program
- Contains an audit or review procedure to test for compliance

Similar to other aspects of a bank's compliance program, written information in the form of policies and procedures is critical to success. OFAC requires that the bank take certain steps in the process of completing each transaction, and the staff and management of the financial institution need to understand their individual and joint responsibilities under the OFAC rules and your bank's policies.

The policies concerning OFAC need to cover all transactions in which the bank participates. The general OFAC rule is that "No one receives any funds from the bank, or completes any transaction through the bank, until the bank is assured that all participants in the transaction are not covered by any sanction." The bank must set forth clear direction to all employees so that there are no ambiguities regarding each person's or department's responsibilities in the bank's overall OFAC program.

In addition to the policy, there must be written procedures for each type of transaction in which the bank participates. Procedures should assure that the bank is taking all prudent steps to protect the bank from an OFAC error. However, procedures should be set forth in a manner that takes into account the potential disruption that will inevitably result from compliance with the OFAC laws and rules.

As part of the procedure creation process, the bank should determine what steps should be required for each type of transaction. For example, if the bank has chosen to "scrub" its customer base, looking for OFAC countries or Specially Designated Nationals (SDNs), each time the list changes, then there would be no need to check OFAC when completing transactions for bank customers. However, if the bank rarely checks its customers against these lists, the responsibility for the staff to check bank customers would increase.

Procedures also need to be "built in" to the process as much as possible. For instance, all loan customers, including co-borrowers, co-makers, guarantors, and collateral providers require checking against the lists prior to closing the loan. Therefore, every bank's checklist for lending should include an OFAC check of all of these individuals.

Policies and procedures should never become stagnant within any bank. As rules and laws change (which can happen frequently in OFAC), the bank's policies and procedures must be adapted to the new restrictions.

Steps taken by the bank may also change the bank's policies and procedures. For instance, if the bank has been routinely "scrubbing" the bank's customer list against the OFAC lists quarterly, the level of routine OFAC screening performed by the bank's employees will necessarily be greater than banks that scrub their customer base more often. If the bank changes the process to screen each time the OFAC lists change, then the policies and procedures regarding existing customers can change to reflect this change in the bank's OFAC posture.

As part of the policies and procedures, each employee of the financial institution should completely understand his or her responsibilities under these rules. OFAC covers all transactions in which the bank participates, so many employees will have OFAC responsibilities. If the bank's policies and procedures are not clear regarding employee responsibility, the bank will not have an effective program, nor will the bank be able to impose sanctions against employees who do not implement the bank's OFAC policies and procedures.

Designation of an OFAC Compliance Officer

This officer:

- Develops, implements and manages all of the bank's policies and procedures
- Provides central coordination of the bank's OFAC efforts
- Monitors regulations for new or amended requirements
- Trains employees in policies, procedures and guidelines
- Supervises blocked funds, either directly or through a "manager" of blocked funds
- Assures that appropriate OFAC reports are filed in a timely manner
- Coordinates as necessary for OFAC reviews
- Coordinates examination efforts at all levels

The OFAC compliance officer is responsible for the bank's overall OFAC compliance program. As with other Bank Secrecy Act related programs, the OFAC officer should have direct access to management and the board of directors to assure that any difficulties are addressed as soon as possible.

The OFAC officer must also assure that the program is developed and implemented to avoid OFAC errors. As part of this implementation process, the OFAC officer must assure that the program has a central monitoring system in place. Many banks have decentralized systems for parts of their business. In many banks, much of the day to day implementation for OFAC is also decentralized; however, the program for compliance with this set of regulations requires that there be central coordination at some level, to assure that all employees are complying fully with the regulations and the bank's policy and procedures.

The OFAC officer is responsible for monitoring changes in the various laws, presidential orders, and any other sanctions that may be imposed under the various laws and regulations. This can be monitored directly by the OFAC officer, or can be managed via a partnership with a third party, such as a software developer.

Training requires a continuing effort by the OFAC officer. The goal of all training is to assure that all employees understand the requirements of the regulations and laws, and also understand the bank's policies and procedures to comply with the OFAC requirements. Training is required for existing employees, new employees and the board of directors. Further information regarding training is detailed below.

The OFAC officer must also manage any blocked funds to assure the completion of proper reporting, and also to assure that these funds are protected from accidental release. In some banks, this will be done directly by the OFAC officer. Other banks will place the responsibility for the management of blocked funds with other employees. Regardless of the method used, the program should assure that all blocked funds are maintained by the bank until the bank is

authorized to release the funds. As part of this process, the OFAC officer is responsible for the required filing when funds are blocked or rejected.

The OFAC program must also have periodic reviews to assure compliance. The OFAC officer, if he or she is far enough removed from day to day operations, may complete these reviews. However, in many banks, the OFAC officer will simply assist other reviewers as they review the bank's overall program. Likewise, the OFAC officer will provide the appropriate information to examiners as they review the bank's program.

Risk Assessment

This subject was discussed earlier in this manual.

Internal Controls

- Are established to identify and “interdict” illegal transactions and transfers
- Ensure timely reporting of blocked and rejected funds to OFAC
- Ensure proper administration of blocked funds

Internal controls must be in place to maintain an effective program. Many of these controls have been addressed throughout this manual.

Independent Testing

- Provides unbiased testing and review of the OFAC Program
- Ensures integrity of internal controls

Training

- Provides training for existing personnel
- Provide training for new personnel
- Provide training for the board of directors

The training program of the bank must consist of three components. Existing employees must receive annual “reminder” training to assure that the program remains effective. Secondly, new employees must receive training as they begin their service with the bank. These two groups of employees are the individuals that ultimately will assure the overall compliance efforts of the bank. As a result, in many banks the OFAC training process continues throughout the year.

The third group requiring periodic training is the board of directors. While the board does not need to know every detail of the law, regulation, and bank program, the board does need to have a general knowledge of the requirements that the bank must meet. Additionally, board members should have some knowledge regarding the ability and efforts to meet those requirements.

OFAC Questions and Answers from:

<http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx#1>

Does OFAC itself require that banks set up a certain type of compliance program?

No. There is no single compliance program suitable for every financial institution. OFAC is not itself a bank regulator; its basic requirement is that financial institutions not violate the laws

that it administers. Financial institutions should check with their regulators regarding the suitability of specific programs to their unique situations.

How do I set up a compliance program for my bank?

There is no prepackaged compliance program that fits the needs of every bank. Banks, obviously, range in size from small to some of the largest institutions in the world. A good starting point is to go to the OFAC Web site and look under "Regulations by Industry." Then read the brochure for the Financial Community. The brochure can be found at: <http://www.treasury.gov/resource-center/sanctions/Documents/facbk.pdf>. This brochure provides insight as to how your particular bank could set up a compliance program. There are also a number of articles written for banking industry publications available on OFAC's Web site. See, for example, OFAC Primer at: <http://www.treasury.gov/resource-center/sanctions/Documents/abamag.pdf> or Community Banks at: <http://www.treasury.gov/resource-center/sanctions/Documents/aba2.pdf>. It may be helpful to contact your counterparts in other banks to see what they are doing and talk to your regulator.

How do I get the OFAC Starter Kit?

The Starter Kit is comprised of the SDN list, the brochure for the industry you represent (financial, export/import, or securities), and any articles that appear to be of interest based on your specific needs or interest. These documents can be obtained from OFAC's website or from OFAC's fax-on-demand service 202-622-0077.

How do I know if my compliance program is adequate?

The information at the following website will provide you with areas to consider as you review your OFAC procedures: <http://www.treasury.gov/resource-center/sanctions/Documents/matrix.pdf>

Section 6: Penalties for Noncompliance

Over the past several years, OFAC has imposed millions of dollars in civil penalty fines against U.S. banks. Effective February 11, 2003, OFAC began making public certain information concerning penalties imposed by OFAC. The information is available on OFAC's Web site. Many of the incidents listed in this report involve the bank's failure to block illegal transfers of funds. Some failures are for transfers to a targeted country or transfers to a specially designated national.

As you examine the OFAC reports you will note that the OFAC penalties cover many items that are not specifically bank related, as the OFAC regulations range far beyond banking.

When OFAC becomes aware that an illegal transaction was processed through a U.S. bank, and the bank neither blocked nor rejected the transaction, OFAC normally sends an administrative demand letter, called a "602 letter," to the bank. This letter requests the bank explain how the transaction was processed. Upon OFAC's receipt of the bank's response to this letter, the case may be referred to the Civil Penalties Division.

If the case is referred to the Civil Penalties Division, the division may issue a "Pre-Penalty Notice" to the bank. This notice will cite the violation and state the amount of the division's proposed civil penalty. Once issued, the bank has a certain time period indicated in the pre-penalty notice to make a written presentation explaining why the financial penalty should not be imposed, or, if imposed, why it should be a lesser amount than proposed.

If the bank chooses not to respond to the pre-penalty notice, the bank runs a major risk, as failure to do so may result in default judgments and the levying of maximum fines. The bank can cite mitigating factors in its response which may change the amount of the fine. Mitigating factors in civil penalty procedures include self-disclosure of a violation, the use of interdict software, and other bank compliance initiatives. A Trading With the Enemy Act civil penalty and forfeiture proceedings include the opportunity for an administrative hearing and pre-hearing discovery prior to imposition of a penalty or forfeiture.

The fines for violations can be substantial. Depending on the program, criminal penalties can include fines ranging from \$50,000 to \$10,000,000 and imprisonment ranging from 10 to 30 years for willful violations. Depending on the program, civil penalties range from \$250,000 or twice the amount of each underlying transaction to \$1,075,000 for each violation.

OFAC Questions and Answers from:

<http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx#1>

How much are the fines for violating these regulations?

The fines for violations can be substantial. Depending on the program, criminal penalties can include fines ranging from \$50,000 to \$10,000,000 and imprisonment ranging from 10 to 30 years for willful violations. Depending on the program, civil penalties range from \$250,000 or twice the amount of each underlying transaction to \$1,075,000 for each violation.

Is there a mechanism for a company to report its past undetected violations of OFAC regulations for completed transactions? Is any type of "amnesty" available for inadvertent failure to comply prior to the company becoming aware of the OFAC regulations?

Yes, a company can and is encouraged to voluntarily disclose a past violation. Self-disclosure is considered a mitigating factor by OFAC in Civil Penalty proceedings. A self disclosure should be in the form of a detailed letter, with any supporting documentation, to Adam Szubin, Director, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, DC 20220. OFAC does not have an “amnesty” program. The ramifications of non-compliance, inadvertent or otherwise, can jeopardize critical foreign policy and national security goals. OFAC does, however, review the totality of the circumstances surrounding any violation, including the quality of a company’s OFAC compliance program.

Section 7: IAT and OFAC

Overview

On September 18, 2009, any financial institution that sends or receives Automated Clearinghouse transactions (ACH) was subject to a change in the NACHA Operating Rules (Rules). The purposes of these changes were two-fold:

- Align NACHA Operating Rules to be in compliance with Office of Foreign Assets Control (OFAC) obligations, at the request of OFAC, and
- Make it easier for Receiving Depository Financial Institutions (RDFI) to comply.

To this end, the changed rule has established a new Standard Entry Class Code (SEC): International ACH Transaction or IAT for short.

What This Meant for the Bank

Banks were required to:

- Develop policies and procedures to assure proper handling of these types of transactions
- Assure that the bank can effectively manage the volume of IAT transactions that will be sent to the bank from time to time
- Train staff regarding the handling of these changes

What Changed

The new rule requires:

- Classification of payments sent to or received from financial agencies outside the U.S. as IATs by Gateway Operators
- All IATs will include the Bank Secrecy Act's (BSA) travel rule, similar to the travel rule format for wire transfers
- Because of this change, all parties involved in an IAT must have a standard OFAC check prior to posting to the recipient's account

Before this change, an ACH transfer originated and funded internationally may have appeared to be a domestic transaction to the Receiving Depository Financial Institution (RDFI) because it was introduced into the U.S. ACH network through domestic correspondent banking relationships. With the implementation of the IAT rules and format, it will make it possible to identify the foreign origins of an ACH transaction, allowing RDFIs to perform the due diligence that is required by the Office of Foreign Assets Control (OFAC).

An IAT is defined as an International ACH Transaction whose entry into the ACH payment system involves a financial agency located outside the territorial jurisdiction of the United States. The definition focuses on where the transaction originates, not where any other party to the transaction is located.

Regulatory Text

In NACHA's executive summary, readers are provided a link to additional information

covering the upcoming changes: Just a few of the topics the link provides access to are frequently asked questions, educational videos that are available, OFAC, training, and policy issues and various related codes. Because of the size of this document, and the various items that the bank can retrieve, this is not on the dedicated Web page. However, banks may access this information at: <https://www.nacha.org/IATIndustryInformation>