The Most Important Regulation You’ve Never Heard Of…

22nd Annual ACFE Fraud Conference
June 13 – 15, 2011

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Learning Objectives

After completing this session, you will be able to:

• Define OFAC and explain its jurisdiction
• Understand the distinction between OFAC and other compliance regulations
• Describe the purposes behind sanctions programs
• Explain sanctions concepts
• Describe elements of comprehensive sanctions programs
• Provide examples of limited or regime-based sanctions programs
• Describe penalties and consequences of OFAC noncompliance
• Identify effective compliance strategies
What is OFAC?
What is OFAC?

The Office of Foreign Assets Control ("OFAC") administers and enforces economic and trade sanctions against targeted:

• Hostile governments (e.g., Cuba, Iran, Sudan)
• Individuals (e.g., terrorists, narcotics traffickers)
• Entities (e.g., drug front companies, charities linked to terrorist groups)
• Practices (e.g., trade in conflict diamonds, proliferation of WMD)
What is OFAC’s Jurisdiction?
OFAC’s Jurisdiction – Individuals

- American citizens and permanent resident aliens located anywhere in the world

- Any individual, regardless of citizenship, who is physically located anywhere in the United States
# OFAC’s Jurisdiction – Businesses

<table>
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<th>International Emergency Economic Powers Act (IEEPA) programs</th>
<th>Trading With the Enemy Act (TWEA) programs (Cuba, North Korea)</th>
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<td>Any corporation or company physically located in the United States, including U.S. branches, agencies and representative offices of foreign corporations</td>
<td></td>
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<tr>
<td>Corporations organized under U.S. law, including foreign branches of U.S. companies</td>
<td>Corporations organized under U.S. law, including foreign branches and foreign-organized subsidiaries of U.S. companies</td>
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OFAC Distinctions

OFAC requirements are separate and distinct from the Bank Secrecy Act, including its “Customer Identification Program” and the USA PATRIOT Act.

OFAC is unlike any other regulatory agency in the United States or the world.
### OFAC Distinctions

**• OFAC Regulations vs. Bank Secrecy Act (BSA)**

<table>
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<tr>
<th>OFAC</th>
<th>BSA</th>
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<tr>
<td>Economic and Trade Sanctions regulations</td>
<td>Primary U.S. money laundering law, enacted in 1970</td>
</tr>
<tr>
<td>Apply to all U.S. citizens and businesses, both domestically and abroad</td>
<td>Applies to all U.S. financial institutions, foreign branches located in the U.S., money remitters and commodities dealers</td>
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<tr>
<td>OFAC is mentioned in Section 906 of the USA PATRIOT Act</td>
<td>USA PATRIOT Act added additional powers to the BSA</td>
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<tr>
<td>OFAC regulations do not mandate compliance</td>
<td>Mandatory compliance as stipulated in the statutes</td>
</tr>
<tr>
<td>OFAC itself is an enforcement agency and uses federal regulators to examine for compliance</td>
<td>The Financial Crimes Enforcement Network (FinCEN) is the primary administrator of the BSA</td>
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Definitions

- Property/Property Interest
- Blocking/Blocked Property
- Specially Designated Nationals and Blocked Persons List
31 C.F.R. §550.315
Interest

... the term “interest” when used with respect to property shall mean interest of any nature whatsoever, direct or indirect.
Blocked Property

- Title to “blocked” property remains with the sanction’s target (designated country, national, or blocked person), but the exercise of rights normally associated with ownership is relegated to the U.S. Treasury Department and controlled by OFAC specific licenses.
Blocking/Blocked Property

• Blocking
  – If a customer sets up a deposit account within your institution, and that customer is on the SDN list, the funds in his account must be blocked;

  – If your institution is wiring out funds of an established customer to a sanctioned target, e.g., Bank Sepah in Iran, the funds must be blocked; or

  – If a customer attempts to convert Cuban pesos to U.S. dollars, those funds must be blocked pursuant to the Cuban Asset Control Regulations.
A rejected transaction is:

- Prohibited transaction, but no blockable interest
- Commercial transaction with Sudan, but no SDNs involved
- No such thing as a rejected narcotics or terrorist transaction

A rejected transaction is sent back to the remitter and not processed.
### Blocking vs. Rejecting Transactions

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<tr>
<th>Blocking a Transaction</th>
<th>Rejecting a Transaction</th>
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<tr>
<td>A U.S. bank interdicts a commercial payment destined for the account of XYZ Import-Export at the Bank of Khartoum, Sudan. The Bank of Khartoum is wholly owned by the Government of Sudan. The transaction must be blocked.</td>
<td>A U.S. bank interdicts a commercial payment destined for the account of XYZ Import-Export at Sudanese French Bank, Khartoum, Sudan. Sudanese French Bank is a private sector company, so there is no blockable interest. However, processing the transaction would result in facilitating trade with Sudan so the U.S. bank must reject the transaction.</td>
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Sanctions Lists and Country Programs
Specially Designated Nationals and Blocked Persons List ("SDN List")

- Individuals or entities all over the globe
- Owned, controlled by or acting on behalf of targeted governments or groups
- May be front companies, parastatals, high-ranking officials or specifically identified persons
- Designated narcotics traffickers, terrorists, terrorist groups, WMD proliferators and support networks
**Specially Designated Nationals and Blocked Persons List ("SDN List")**

**What is on the SDN List?**

- Full Name
- A.K.A.s
- Associated Businesses
- Date of Birth
- Place of Birth
- Address
- Country of Origin/Nationality
- Passport/Country ID #
- Tax ID # (TIN)
- Sanctions Program Designation (e.g., SDNT, IRAN)

*This information may not always be present for each individual and entity.*
Specially Designated Nationals and Blocked Persons List ("SDN List")

- Pars Trash Company (NPWMD)
- Atlas Air Conditioning Company Ltd. (IRAQ2)
- Alyaksandr Hryhoryavich Lukashenko (BELARUS)
- Al-Hamati Sweets Bakeries (SDGT)
- Usama Bin Ladin (SDT/SDGT)
- Richard Chichakli (LIBERIA)
- Myanmar Foreign Trade Bank (BURMA)
- Kindhearts Charitable Organization (SDGT)
Arriola Marquez Organization

- Mexican drug cartel based in the state of Chihuahua, Mexico
- Elaborate money laundering scheme using non-typical methods
Arriola Marquez Organization

- Arriola Marquez Cartel (MX) - Drugs
- Arriola Marquez controlled Casa de Cambio – Cambios Palmilla
- Arriola Marquez Controlled – Drug Stores, Supermarkets, Gas Stations, etc.
- Corales San Ignacio – Cattle Breeders
- U.S. Cattle Purchasers
- U.S. Dealers

“Drug Money”

U.S. Dollars

“Clean” U.S. Dollars
Holy Land Foundation ("HLF")

- Previously the largest Islamic charity in the world
- Terrorist financiers for Hamas
- Provided support to victims of disasters and war both abroad and domestically
Richard Chichakli, CPA

- Bookkeeper for Victor Bout, “The Merchant of Death”
- Tied to the Charles Taylor Regime
- Former Certified Fraud Examiner
Country and Regime-Based Sanctions Programs

- OFAC has various sanctions programs against countries throughout the world.
- Country and Regime-Based Sanctions Programs restrict dealings with certain governments, individuals and entities, but are not complete embargoes against an entire nation.
- The OFAC website has separate listings for each country sanctions program and provides detailed brochures explaining the specific programs.
**Country and Regime-Based Sanctions Programs**

- OFAC administers country and regime-based sanctions programs involving:
  - Balkans
  - Belarus
  - Burma (Myanmar)
  - Cote d’Ivoire (Ivory Coast)
  - Cuba
  - Democratic Republic of the Congo
  - Diamond Trading
  - Iran
  - Iraq
  - Former Liberian Regime of Charles Taylor (Former Liberia program)
  - Libya
  - Narcotics Trafficking
  - WMD Proliferation
  - North Korea
  - Sudan
  - Syria
  - Terrorism (Hamas/PA)
  - Zimbabwe
Comprehensive Sanctions Programs

- Comprehensive sanctions programs focus on restrictions on dealings with entire countries.
- While Country and Regime-Based programs only target certain governments, individuals and entities, comprehensive sanctions programs target entire nations.
- These programs can in some instances restrict all trade and monetary transactions with certain limited exceptions.
- Current comprehensive sanctions programs:
  - Sudan
  - Cuba
  - Iran
Country and Regime-Based Sanctions Programs

• In general the following are prohibited under comprehensive sanctions programs:

  – Dealings (i.e., providing of any services) with those representing governments of sanction targets

  – Trade brokering, financing, or facilitation

  – Any attempt to evade or avoid the sanctions
Limited or Regime-Based Sanctions Programs

Zimbabwe (31CFR 541)
- Block property of persons undermining democratic processes or institutions in Zimbabwe (Robert Mugabe, etc.)

North Korea (31CFR 500)
- Block property of individuals and entities dealing with companies that proliferate weapons of mass destruction designated NPWMD on the OFAC SDN list
Limited or Regime-Based Sanctions Programs

Cote d’Ivoire

- Block property of individuals found to:
- Threaten peace and national reconciliation efforts,
- Supply armaments and military training to Cote d’Ivoire, or
- Publicly incite violence and hatred in Cote d’Ivoire.

Belarus

- Block property of certain persons undermining democratic processes or institutions
- Aimed at certain corrupt members of the Government of Belarus
- E.O. signed by President on June 19, 2006
Limited or Regime-Based Sanctions Programs

Diamond Trading (31CFR 592)
- Import and export of rough diamonds restricted

Nonproliferation (31CFR 539)
- Import restrictions targeting designated foreign persons engaged in the proliferation of WMD technology
- June 28, 2005, President issued an Executive Order identifying and blocking the property of WMD proliferators and their supporters
Limited or Regime-Based Sanctions Programs

Burma/Myanmar (31CFR 537)
• Specific entities are blocked; all other transactions are rejected due to the ban on financial services
• Importation of items of Burmese origin is prohibited

Iraq (31CFR 575)
• Executive Order 13550
• All new transactions are authorized
• Assets previously blocked remain blocked (Saddam Hussein and associates)
Limited or Regime-Based Sanctions Programs

Syria (31 CFR 542)
- Stop transactions related to terrorism
- Block assets of entities supporting terrorism, pursuing WMD, and undermining international stabilization and reconstruction efforts in Iraq

Former Liberian Regime of Charles Taylor (Formerly Liberia program (31 CFR 591))
- Block property of Charles Taylor and his supporters and persons who have undermined Liberia’s transition to democracy
**Limited or Regime-Based Sanctions Programs**

**Balkans/Yugoslavia (31CFR 585/586/587)**
- Block property of Milosevic supporters and persons who threaten international stabilization efforts in the Western Balkans

**Democratic Republic of the Congo**
- Block property of certain persons contributing to the conflict in the Democratic Republic of the Congo
Limited or Regime-Based Sanctions Programs

Libya
(E.O. 13566)

- Block property of Qadhafi family, supporters and senior Libyan government officials
- Also designated Libyan financial institutions and business entities
Penalties and Consequences
Penalties and Consequences

• Possible OFAC actions in response to a violation:
  – Closed case, no action taken
  – Cautionary or warning letter
  – Revocation of license
  – Civil penalties
  – Criminal penalties

• Violations may also result in:
  – Blocked funds and seized goods
  – Negative publicity and loss of business
Penalties and Consequences

• Proposed penalties generally will be the statutory maximum or the dollar value of the transaction involved, whichever is less:
  – Trading With the Enemy Act: $65,000
  – Foreign Narcotics Kingpin Designation Act: $1,075,000
  – Anti-Terrorism and Effective Death Penalty Act: $55,000

• Mitigating factors may also be considered…
Enforcement Guidelines

• In November 2009, OFAC published its most recent Enforcement Guidelines. This document greatly simplifies the mystique around the OFAC Civil Penalty process:
  – Self-disclosure
  – First time or inadvertent offense
  – Compliance policy in place

For a first time offender, with a strong set of policy, procedures and controls the penalty will not be harsh, if at all.
Examples of Violations

- Winery in CA conducting business development related transactions in Burma.

- Bank in NY processes a funds transfer to an SDNTK without proper due diligence.

- New York Yankees baseball organization fined for services rendered in Cuba.

- A fast-food restaurant sells an individual designated Specially Designated Narcotics Trafficker (SDNT) a combo meal.
Case Study #1 – ABN Amro

• December 19, 2005 – ABN Amro was fined $80 million by the Office of Foreign Assets Control (“OFAC”), the Board of Governors of the Federal Reserve Board, Federal Reserve Bank of New York (“FRBNY”), Financial Crimes Enforcement Network (“FinCEN”), Illinois and New York State Banking Departments for violations of the Iranian Transactions Regulations and the Libyan Sanctions Regulations.

• Resulted in a $500 million deferred prosecution agreement with the DoJ recently paid by the now named, Royal Bank of Scotland.
Case Study #1 – ABN Amro

- Payments such as wire transfers, letters of credit and U.S. dollar checks were intentionally stripped of certain information prior to being sent to the U.S.

- The allegation of wrongdoing was limited to non-U.S. branches of ABN Amro

- The criminal charges amounted to one count of violating the BSA and one count of conspiracy to defraud the United States and violate the IEEPA and TWEA
December 16, 2009 – Credit Suisse was fined $536 million by the Office of Foreign Assets Control (“OFAC”), New York County District Attorney’s Office, the United States Department of Justice, the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of New York for violations of the International Emergency Economic Powers Act (“IEEPA”) and the Trading With the Enemy Act (“TWEA”)
Case Study #2 – Credit Suisse

• Processed thousands of transactions routed through the U.S., in the form of wire transfers and securities transactions, that over a 20-year period concealed the involvement of sanctioned parties

• Had standard procedures for using cover payments to avoid referencing parties subject to U.S. sanctions and omitting information, removing information, or providing incorrect information in payment message in order to conceal the identities of U.S. sanctions targets – most notably Iran, Sudan, and Libya
Case Study #3 – Economic Sanctions
Penalties not issued by OFAC - UBS

• May 10, 2004 – UBS was fined $100 million by the Board of Governors of the Federal Reserve System for conducting banknote transactions through the Zurich extended custodial inventory (“ECI”) facility with counterparties in OFAC sanctioned countries including Cuba, Libya, Iran and Yugoslavia

• UBS employees were found to be intentionally concealing the banknote transactions from the Federal Reserve Bank of New York
Case Study #4 – Economic Sanctions
Penalties not issued by OFAC - Lloyds

• January 10, 2009 – Lloyds TSB Bank was fined $350 million by the Justice Department and the New York County District Attorney’s Office for skirting U.S. sanctions on transactions with Sudan, Iran and Libya

• Information was intentionally stripped from payment messages sent to U.S. correspondent banks to conceal the involvement of parties sanctioned under the Iranian, Sudanese, and Libyan sanctions programs
Case Study #5 – Non-FIs
Aviation Services International

• September 24, 2009 – Aviation Services International B.V. (“ASI”) was fined $750,000 for violations of IEEPA (31 CFR 560.203, 560.204)

• ASI was illegally exporting communications equipment and aerospace grade aluminum from the U.S. through a third country to Iran

• After further investigation, it turned out that ASI was aware that these actions were happening and did nothing to thwart the illicit acts
Case Study #6 – Non-FIs
Innospec

• March 17, 2010 – Innospec was fined globally $40.2 million between the Department of Justice, SEC, OFAC and the United Kingdom’s Serious Fraud Office for bribery of foreign officials and violating the U.S. embargo against Cuba.

• Innospec was criminally fined $14.1 million by the USDOJ for bribery relating to the UN Oil for Food Program in Iraq. Innospec was also fined $2.2 million by OFAC for violating TWEA by selling chemicals to Cuban power plants. The SFO share was $12.7 million.
• As part of the agreement with law enforcement, Innospec must retain an independent compliance monitoring for a minimum of three years.

• The first global enforcement action settlement which was resolved between the U.S. and U.K. governments.

• Innospec is the future of enforcement actions…
Effective Compliance Strategies
Effective Compliance Strategies

• Screen all transactions for sanctions references
  – Screen against sanctioned countries, including cities and territories within such countries
  – Screen all parties connected with transaction
  – Not all transactions will be screened (e.g., payee on a check)
Effective Compliance Strategies

Do Your Due Diligence

- Is the hit against the OFAC SDN List?
- Organization vs. individual
- Is it a full and exact name match?
- Have you gathered enough information to compare?
- Compare your customer’s information to the information provided on the OFAC list…if it’s not the same, then you probably do not have a valid match.
Effective Compliance Strategies

Do Your Due Diligence

• For individuals, look at full name, POB, DOB, nationality, address, national ID number, passport number

• For commercial entities, look at full name (is the name an acronym?), location, tax ID number, and inquire about ownership or possible affiliation with sanctions targets

• For locations, be sure to look at the address, region and country, not just part of the location (e.g., Cuba City, Wisconsin or Damascus, MD)
Effective Compliance Strategies

Make sure your sanctions information is up-to-date!

- Sanctions and SDN list can be updated or revised at any time
- Set your browser to automatically check the OFAC website for updates
- Subscribe to email notification service or RSS feeds on OFAC home page

Make sanctions compliance an integral part of your business.

- Don’t treat OFAC compliance as an afterthought
- Ensure that all employees are familiar with U.S. sanctions
- Make compliance a part of training programs for new hires
How to Manage Heightened OFAC Risk
How to Manage Heightened OFAC Risk

• OFAC compliance programs should be designed based on a business line’s individual risk profile that effectively leverage technology and address OFAC requirements efficiently and comprehensively

• An effective OFAC compliance program should include:
  – A dedicated OFAC compliance officer or responsible individual
  – A periodic risk assessment
  – Strong internal controls
  – An on-going employee training program
  – Periodic independent testing
Challenges

• Understanding OFAC requirements and the available tools and practices for complying with these requirements can present a significant challenge
  – Importance of developing and maintaining an effective OFAC compliance program has never been more critical

• The increasing focus on OFAC compliance by regulatory agencies requires all companies, but especially financial services companies, to identify and manage OFAC risks proactively
Common OFAC Programmatic Failures

- Many institutions rely heavily on technology to rule out potential OFAC matches without adequate human interaction
- Training is not conducted regularly
- For several years, policies and procedures are not reviewed to ensure they continue to meet industry best practices and OFAC regulations
- The person assigned responsibility for OFAC compliance has limited experience
- Risk assessments are conducted infrequently or not at all
- Record keeping procedures are lacking or poor
Keys to Maintaining Compliance

The keys to ensure an effective and efficient OFAC compliance function are:

– **Understand the Risk**
  – Determine how the laws and regulations apply
  – Determine OFAC risks specific to products and customers
  – Implement a risk assessment process

– **Enhance Compliance Effectiveness**
  – Select the right tools
  – Develop and implement policy and procedures

– **Assess Exposure**
  – Conduct targeted OFAC compliance program reviews

– **Remediate**
  – Address program deficiencies promptly
Questions