



OFAC Compliance Guidance Release Detailed

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PREPARED BY:

Walt Mix
wmix@thinkbrg.com
213.261.7712

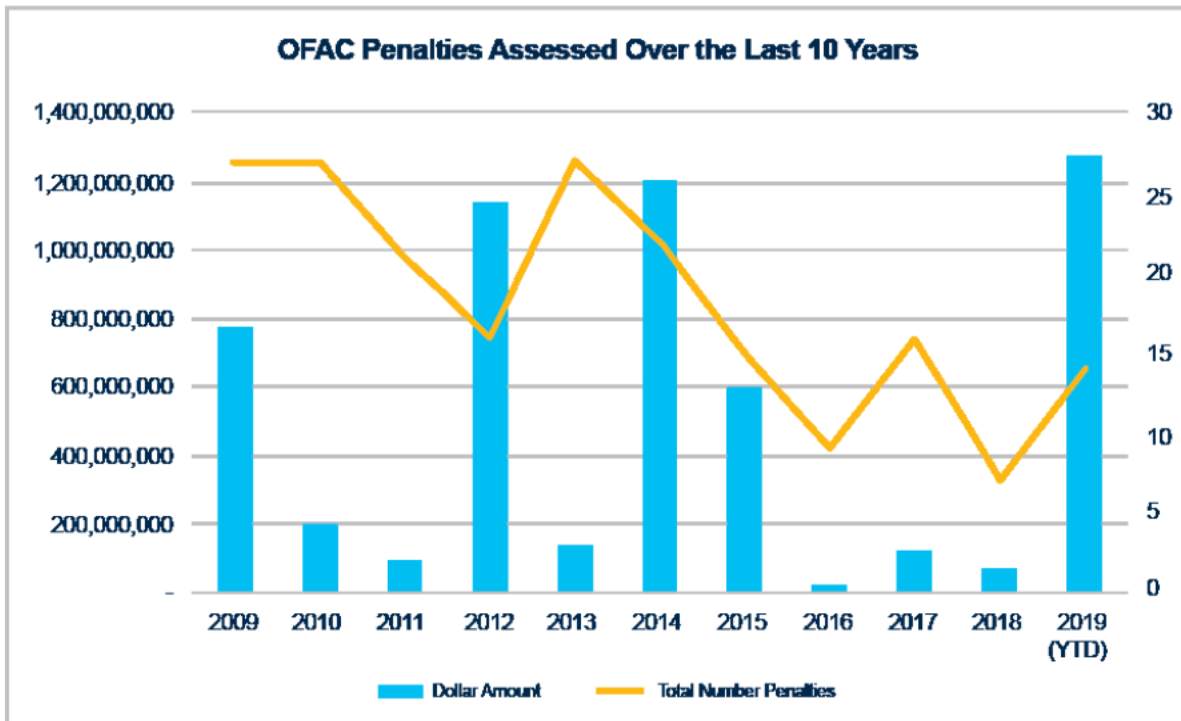
David Abshier
dabshier@thinkbrg.com
714.394.7644

INTELLIGENCE THAT WORKS

The US Treasury Department’s Office of Foreign Assets Control (OFAC) published its most comprehensive articulation of OFAC compliance expectations to date with [A Framework for OFAC Compliance Commitments](#) (“OFAC Compliance Guidance”) on May 2, 2019. To help companies comply with sanctions, the guidance describes common compliance pitfalls seen in its enforcement actions, including:

- Similar to expectations identified by anti-money laundering (AML) and other federal regulators, OFAC calls for a risk-based approach to sanctions compliance with consideration of a company’s size, products and services, and geographic locations informing risk.
- OFAC will exercise broad jurisdiction over organizations and individuals directly subject to US jurisdiction, as well as foreign entities that conduct business in or with the United States, with US persons, or using US-origin goods or services, encouraging them to adopt a risk-based approach to sanctions compliance.
- While a formal sanctions compliance program is not required, OFAC makes clear that the lack of an effective compliance program is a primary factor in sanctions violations and enforcement actions.

The OFAC Compliance Guidance comes as sanctions are being used more aggressively across a range of programs, including by targeting central banks, companies with significant market shares in major industries, and sanctions evaders who use front and shell companies to hide illicit activities.



Overview of OFAC's Compliance Guidance

OFAC strongly encourages organizations subject to US jurisdiction, as well as foreign entities that conduct business in or with the United States, US persons, or using US-origin goods or services, to employ a risk-based approach to sanctions compliance by developing, implementing, and routinely updating a sanctions compliance program (SCP). OFAC's guidance establishes a "five-pillar" framework for risk-based SCPs: (1) management commitment, (2) risk assessment, (3) internal controls, (4) testing and auditing, and (5) training.

1 Management Commitment

Effective management support includes the provision of adequate resources to the compliance unit(s) and support for compliance personnel's authority within an organization, helping legitimize the program, empower its personnel, and foster a culture of compliance throughout the organization.

2 Risk Assessment

One of the central tenets of this approach is for organizations to conduct a routine and, if appropriate, ongoing "risk assessment" for the purposes of identifying potential OFAC issues they are likely to encounter. The exercise should generally consist of a holistic, top-to-bottom review of the organization to assess its touchpoints to the outside world.

3 Internal Controls

Internal controls, including policies and procedures, are used to identify, interdict, escalate, report (as appropriate), and keep records pertaining to activity that may be prohibited by the regulations and laws administered by OFAC. Effective internal controls outline clear expectations, define procedures and processes pertaining to OFAC compliance, and minimize the risks identified by the organization's risk assessments. These controls should also be capable of being adjusted rapidly to changes published by OFAC.

4 Testing and Auditing

Audits assess the effectiveness of current processes and check for inconsistencies between these and day-to-day operations, helping to ensure that an organization identifies program weaknesses and deficiencies. It is the organization's responsibility to enhance its program, including all program-related software, systems, and other technology, to remediate identified compliance gaps. Testing and auditing can be conducted on a specific element of an SCP or at the enterprise-wide level.

5 Training

A training program should be provided to appropriate employees and personnel on a periodic basis (at a minimum, annually) and generally should accomplish the following: (i) provide job-specific knowledge based on need, (ii) communicate sanctions compliance responsibilities for each employee, and (iii) hold employees accountable for sanctions compliance training through assessments.

Final Thoughts

While the OFAC Compliance Guidance does not explicitly require a comprehensive risk-based sanctions compliance program, it is strongly recommended that any financial institution subject to US jurisdiction begin implementing the guidance suggested. Sanctions compliance programs are vital for any person or organization engaged in international trade due to the central roles the United States and the US dollar play in the global financial system and international supply chains.

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