



OFAC REGULATIONS FOR THE CREDIT REPORTING INDUSTRY

Purpose of this Brochure

This brochure provides the credit reporting industry with information about the Specially Designated Nationals and Blocked Persons list (SDN list) of the Office of Foreign Assets Control (OFAC) and other aspects of sanctions programs. In response to the increased nationwide effort to prevent terrorists, terrorist supporters, narcotics traffickers, and other sanctioned parties from using the U.S. financial system, credit bureaus and agencies have instituted new procedures for identifying sanctioned parties and disseminating that information on credit reports.

It is imperative that all organizations involved in the credit reporting process understand OFAC regulations. They can make an important contribution by identifying sanctioned individuals in order to block their ability to use the U.S. financial system and to do business in the United States, but at the same time they should strive to protect consumers from erroneous or misleading information appearing on credit reports.

This brochure will be useful to the following organizations and individuals:

- Credit bureaus,
- Credit reporting agencies (CRAs), and
- Requesters of credit information, including but not limited to mortgage lenders, credit card companies, employers, landlords, insurance agents, car dealerships, and other businesses authorized to check a consumer's credit.

About OFAC

Economic sanctions are used by the U.S. government to prevent targeted countries, entities, and individuals from, among other things, accessing the U.S. financial system for purposes that are contrary to U.S. foreign policy and national security objectives. OFAC exercises this authority based on nine statutes:

- Trading With the Enemy Act (TWEA), 50 U.S.C. App. §§ 1-44
- International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §§ 1701-06
- Iraqi Sanctions Act (ISA), Pub.L. 101-513, secs. 586-586J, 104 Stat. 2047-55
- United Nations Participation Act (UNPA), 22 U.S.C. § 287c
- International Security and Development Cooperation Act (ISDCA), 22 U.S.C. 2349 aa-8 and aa-9
- Cuban Democracy Act (CDA), 22 U.S.C. § 6001-10
- Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, 22 U.S.C. 6021-91
- Antiterrorism and Effective Death Penalty Act (enacting 8 U.S.C. 219, 18 U.S.C. 2332d, and 18 U.S.C. 2339b)
- Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901-1908, 8 U.S.C. 1182

These statutes often involve declarations of "national emergency" by the President.

Sanctions Programs

As of September 2004, OFAC administered and enforced comprehensive sanctions programs involving three countries: Cuba, Iran, and Sudan. Unless authorized by OFAC, no U.S. person or company can do business with individuals, companies, or government institutions in those countries, or persons or entities acting for or on behalf of those countries. OFAC also enforced sanctions regimes regarding the following: the Western Balkans, Burma (Myanmar), diamond trading, Iraq, narcotics trafficking, North Korea, the proliferation of weapons of mass destruction, terrorism, and Zimbabwe. To read about the specifics of each sanctions program, please visit: www.treas.gov/ofac.

Specially Designated Nationals and Blocked Persons List

OFAC has identified and officially "designated" numerous foreign agents and front organizations, as well as terrorists, terrorist organizations, and narcotics traffickers, on its SDN list, which contains over 5,000 variations on names of individuals, governmental entities, companies, and merchant vessels located around the world. To ensure that illicit transactions involving targeted countries and SDNs are not processed, many U.S. banks and corporations are using sophisticated "interdict" software, developed by the private sector, to flag questionable transactions for review. If such software flags an item as a potential match to OFAC's SDN list, certain "due diligence" steps outlined in this brochure should be taken to verify whether it is an actual match before contacting OFAC or taking action with regard to the match.

Who Must Comply?

All U.S. persons (including individuals and organizations) are responsible for ensuring that they do not undertake a business dealing with an individual or entity on the SDN list. U.S. persons are:

- All U.S. citizens and permanent residents,
- All persons located in the United States,
- Overseas branches of U.S. companies, and
- In the case of the Cuba and North Korea programs, non-U.S. subsidiaries of U.S. companies.

Penalties for Noncompliance

Depending on the program involved, criminal violations of the statutes administered by OFAC can result in penalties ranging from \$50,000 to \$10,000,000 and/or up to 30 years imprisonment for willful violations. OFAC also has authority to impose civil penalties of up to \$1,075,000 per violation depending on the sanctions program.

How to Determine if a Credit Report Contains an Exact Match

Interdict software is a tool to help identify potential matches with OFAC's SDN list. Inevitably, there will be many "false positives" with the use of this software. Therefore, certain "due diligence" steps should be taken to ensure that a "hit" is a "good hit," i.e., to determine whether an individual applying for credit approval is indeed an individual on the SDN list and whether a warning or "red flag" on a credit report is appropriate. The following is a guide on how to determine if you have a "good hit" when evaluating potential matches against the SDN list:

1. Is the "hit" or "match" listed on the credit report 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 tell what the hit is?

- If the name is hitting against OFAC's SDN list or targeted countries, continue to Step 2 below.
- If it is hitting for some other reason, you should contact the "keeper" of whichever other list the match is hitting against. For questions about: (1) 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, (2) The FBI's Most Wanted List or any other FBI-issued watch list, please see the Federal Bureau of Investigation's website at www.fbi.gov/contact/fo/fo.htm, (3) The Debarred Parties List, please contact the Office of Defense Trade Controls at the U.S. Department of State, 202-663-2700, (4) The Bank Secrecy Act and the USA PATRIOT Act, please contact the Financial Crimes Enforcement Network (FinCEN) at 1-800-949-2732.
- If you are unsure whom to contact, please contact the provider of the interdict software that told you there was a hit.
- If you cannot tell what the hit is, you should contact the provider of the interdict software which told you there was a hit.

2. Now that you have 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 the individual whose credit is being checked with the name on the SDN list. Is the name on the SDN list a vessel or a company rather than an individual (or vice-versa)? Is the name on the SDN list a male's name whereas your credit applicant is a female?

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

3. How much of the SDN's name is matching against the name on your credit application? Is just one of two or more names matching (i.e., just the last name or just the first name)?

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

4. Compare the complete SDN entry with all of the information you have on the matching name on your credit application. 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 on your credit application?

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

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 allowing this person to do business in the United States would violate any of the Regulations, you should call the hotline and explain this knowledge or belief.

What Information Should be Placed on the Credit Report?

If credit bureaus choose to place OFAC information on their credit reports, they should consider the following guidelines:

1. The text on the report should explain that the individual's information is similar to the information of an individual on OFAC's SDN list. It should not state that the information matches or that the credit applicant is in fact the individual on the SDN list unless the credit bureau has already verified that the person is indeed the SDN.
2. The text should also direct credit report recipients to the web address of this brochure (www.treasury.gov/offices/eotffc/ofac/regulations/t11faccr.pdf) for guidance on how to determine if a credit applicant is the person on the SDN list.
3. The text on the credit report should not direct recipients or consumers to call OFAC to have the information removed from the credit report. OFAC does not have the ability to add or remove information from a credit report.
4. If a credit bureau decides to put the text of a potential SDN "hit" on an actual credit report, the full text of the entry should be used (including information such as dates of birth, aliases, etc.) so that the recipient of the report can compare the OFAC information with that of the credit applicant.

Staying Up-to-Date

Whenever there is an update to any of OFAC's information, it is quickly made available electronically via many different sources:

All of OFAC's program brochures, as well as SDN information, are available free in downloadable camera-ready Adobe Acrobat® "*.PDF" format over the Treasury Department's World Wide Web Server. OFAC's Home Page is located at www.treas.gov/ofac. The website also contains a self-extracting ASCII file of the SDN list in DOS, delimited, fixed-field, and country-specific versions, and access to all OFAC-related Executive Orders, U.N. Resolutions, statutes, regulations, and the *Code of Federal Regulations* as well as to brochures in ASCII format.

All of OFAC's forms, including its Annual Report on Blocked Property, Cuban Remittance Affidavit, and license applications are electronically available on the site. Whenever there is a change involving urgent information requiring immediate implementation, the [DATE] changes on the face of the primary Page; users can automate their compliance by structuring their Internet connection to use a Web browser to watch for that date change, check a "Bulletin" file to get the details about changes, and download OFAC's latest information for incorporation, for example, into interdiction software.

There are two separate email subscription services on the site, one called a "Financial Operations Bulletin" and the other a "What's New" notice. Financial operations bulletins are geared toward the financial operations community, while "What's New" notices are geared toward the general public (including exporters and importers, practicing attorneys, and researchers). Generally speaking, those in the operations areas of banks, brokerage houses, and other financial service providers do not require the level of detail and wealth of information provided in notices to the general public. Instead, they are primarily interested in changes directly impacting their day-to-day operations, such as updates to OFAC's listing Specially Designated Nationals and Blocked Persons. All "What's New" notices to the general public also contain information from OFAC's financial operations bulletins. It is not unusual for the date listed for a What's New notice to be later than the date listed for the latest Financial Operations Bulletin.

OFAC operates a free automated fax-on-demand service, which can be accessed 24 hours a day, seven days a week, by dialing 202/622-0077 from any touchtone phone and following voice prompts. OFAC documents kept up to date on the system include program and general brochures, listings of Specially Designated Nationals and Blocked Persons, including changes to the listings, licensing guidelines, and *Federal Register* notices (even those filed but not yet printed in the *Federal Register*). The "Index of Available Documents" is date-specific.