

**OCC BULLETIN**

Comptroller of the Currency
Administrator of National Banks

Subject: Bank Secrecy Act/Anti-Money Laundering Description: OFAC–Economic Sanctions Enforcement Procedures for Banking Institutions

TO: Chief Executive Officers and Compliance Officers of All National Banks, Federal Branches and Agencies, Department and Division Heads, and All Examining Personnel

On January 12, 2006, the Office of Foreign Assets Control (OFAC) published in the *Federal Register*, “Economic Sanctions Enforcement Procedures for Banking Institutions,” along with a request for comments. OFAC will follow the published procedures when deciding whether to impose enforcement actions against banking institutions for noncompliance with its regulations. In conjunction with issuing this interim final rule, OFAC has withdrawn the January 29, 2003, proposed rule to the extent it applied to banking institutions.

The new enforcement procedures will evaluate a banking institution’s apparent OFAC-related violation in the context of the institution’s overall OFAC compliance program and specific OFAC compliance record. OFAC will not conduct such a review if no apparent violation exists within a banking institution. Factors that OFAC will review when an apparent violation exists include:

- Evaluations of the institution’s OFAC compliance program by its primary federal banking regulator;
- The institution’s history of OFAC compliance;
- Circumstances surrounding any apparent violations disclosed, including patterns or weaknesses in an institution’s compliance program;
- Whether violations were voluntarily disclosed;
- Enforcement information provided by the institution to OFAC; and
- The number of transactions or accounts that the institution handled improperly during the period under review and how it responded to OFAC administrative subpoenas.

The interim final rule for enforcement cases involving banking institutions became effective on February 13. Written comments will be received through close of business, March 13.

You may direct questions to your supervisory office or to the Compliance Policy Department at (202) 874-4428.

Ann F. Jaedicke
Deputy Comptroller for Compliance Policy

Attachments— [OFAC Interim Final Rule](http://www.occ.treas.gov/fr/fedregister/71fr1971.pdf)
[<http://www.occ.treas.gov/fr/fedregister/71fr1971.pdf>]

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****31 CFR Part 501****Economic Sanctions Enforcement
Procedures for Banking Institutions**

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Office of Foreign Assets Control (“OFAC”) of the U.S. Department of the Treasury is issuing this interim final rule, “Economic Sanctions Enforcement Procedures for Banking Institutions,” along with a request for comments. This interim final rule supercedes OFAC’s proposed rule of January 29, 2003,¹ to the extent that the proposed rule applies to “banking institutions,” as defined below. These administrative procedures are published as an appendix to the Reporting, Procedures and Penalties Regulations, 31 CFR Part 501.

DATES: The interim final rule is effective for enforcement cases involving banking institutions commencing on or after February 13, 2006. Written comments may be submitted on or before March 13, 2006.

ADDRESSES: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Agency Web site: <http://www.treas.gov/offices/enforcement/ofac/comment.html>.
- Fax: Assistant Director of Records, (202) 622-1657.
- Mail: Assistant Director of Records, ATTN: Request for Comments (Enforcement Procedures), Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

¹ 68 FR 4422-4429 (2003).

Instructions: All submissions received must include the agency name and the FR Doc. number that appears at the end of this document. Comments received will be posted without change to <http://www.treas.gov/ofac>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Assistant Director of Records, (202) 622-2500 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available from OFAC's Web site (<http://www.treas.gov/ofac>) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622-0077.

Procedural Requirements

Because this interim final rule imposes no obligations on any person, but instead simply explains OFAC's enforcement practices based on existing substantive and procedural rules, prior notice and public procedure are not required pursuant to 5 U.S.C. 553(b)(A). Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Finally, this interim final rule is not a significant regulatory action for purposes of Executive Order 12866.

Although a prior notice of proposed rulemaking is not required, OFAC is soliciting comments on this interim final rule in order to consider how it might make improvements in its enforcement procedures in the future. Comments must be submitted in writing. The addresses and deadline for submitting comments appear near the beginning of this notice. OFAC will not accept comments accompanied by a request that all or part of the submission be treated confidentially because of its business proprietary nature or for any other reason. All comments received by the deadline will be a matter of public record and will be made available on OFAC's Web site: <http://www.treas.gov/offices/enforcement/ofac/index.html>.

Background

On January 29, 2003, OFAC published, as a proposed rule, Economic Sanctions Enforcement Guidelines. Though this proposed rule has not been finalized, OFAC has used the Guidelines as a general framework for its enforcement actions. OFAC has decided that the enforcement procedures with respect to banking institutions should be modified and is publishing enforcement procedures for these entities as an interim final rule.

OFAC is also requesting comments on this interim final rule.

In conjunction with issuing this interim final rule, OFAC is withdrawing the January 29, 2003 proposed rule to the extent it applies to banking institutions, as defined herein. For purposes of this interim rule, "banking institutions" means depository institutions regulated or supervised by one of the regulators that belongs to the Federal Financial Institutions Examination Council ("FFIEC"), *i.e.*, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision. Please note that a depository institution may be a "banking institution," as that term is defined in OFAC regulations, *see, e.g.*, 31 CFR 500.314, 515.314, but not a "banking institution" for purposes of these enforcement procedures. Because this interim final rule only applies to enforcement procedures for banking institutions, as defined herein, OFAC plans to issue guidance on its enforcement procedures for other types of institutions and other sectors in the future.

OFAC is publishing enforcement procedures for banking institutions because of their unique role in the implementation of OFAC sanctions programs and the nature of the transactions in which such institutions engage. The new enforcement procedures take into account that each banking institution's situation is different and that its compliance program should be tailored to its unique circumstances. This includes an analysis of its size, business volume, customer base, and product lines.

In order to implement this new approach, OFAC has been working and will continue to work in partnership with the federal banking regulators. OFAC worked with FFIEC members to develop standards to evaluate compliance programs at banking institutions. In June 2005, the FFIEC released its *Bank Secrecy Act Anti-Money Laundering Examination Manual*. Portions of this manual relate to compliance with various OFAC sanctions programs. In addition, working with FFIEC members, OFAC has developed risk matrices, which may be used by depository institutions as "best practices."² The matrices provide a guide for evaluating a banking

institution's risk of encountering accounts or transactions subject to OFAC regulations and for determining the quality of an institution's compliance program. As indicated in the FFIEC examination manual, the banking regulators evaluate a banking institution's overall OFAC compliance program using a similar methodology.

Also, in administering its enforcement authority with respect to various sanctions statutes, Executive orders, and regulations, OFAC will provide the federal banking regulators with information related to apparent violations or compliance concerns as it becomes aware of them. In turn, OFAC will receive information from the banking regulators, including, for those institutions with apparent violations, evaluations of the sufficiency of each such institution's implementation of policies, procedures, and systems for ensuring OFAC compliance.

Prior to taking enforcement actions, OFAC generally will review apparent violations by a particular institution over a period of time, rather than evaluating each apparent violation independently. However, in regard to what appears to be a particularly egregious violation, OFAC may evaluate the situation as it presents itself and take prompt enforcement action.

Under the revised procedures, OFAC will periodically evaluate a banking institution's apparent OFAC-related violations in the context of the institution's overall OFAC compliance program and specific OFAC compliance record. OFAC will not conduct such a review if there are no apparent violations. The information reviewed will include but not necessarily be limited to: the evaluation of the banking institution's OFAC compliance program by its primary federal banking regulator; the institution's history of OFAC compliance; the circumstances surrounding any apparent violation, including what appear to be patterns or weaknesses in an institution's compliance program and whether they indicate negligence or a fundamental flaw in the compliance effort or system and whether they were voluntarily disclosed; enforcement information provided by the institution to OFAC; the number of transactions or accounts that the institution handled improperly during the period under review and its responses to any administrative subpoenas that OFAC sent with regard to those transactions or accounts; the number of transactions successfully blocked or rejected by the banking institution during the period; the actions taken by the banking institution to correct any violations and to ensure

² These matrices can be found in Annex A to the interim final rule and can be accessed online at <http://www.treas.gov/offices/enforcement/ofac/faq/matrix.pdf>.

that similar violations do not happen again; and other relevant information available to OFAC at the time of the evaluation.

After a review of apparent violations, OFAC will contact the banking institution, either by phone, in-person, or in writing, regarding OFAC's preliminary assessment of the appropriate action with respect to the institution. OFAC's staff will discuss the results of its review with the institution, including any patterns or weaknesses in an institution's compliance program. With respect to particular transactions, the discussion will cover the actions taken by the banking institution to ensure that similar transactions do not take place in the future and the adequacy of responses to any administrative subpoenas OFAC has sent with regard to the transactions. OFAC will indicate the intended administrative action to be taken for each transaction or set of related transactions that appear to constitute violations of OFAC-administered sanctions programs.

Once OFAC has reached a decision, it will notify the institution in writing as to its proposed action with regard to each apparent violation during the period under review. OFAC will provide a copy of this letter to the institution's primary federal banking regulator. In the event that OFAC has notified the institution of its intent to pursue a civil penalty with regard to any or all of the apparent violations, existing civil penalty procedures under OFAC regulations will be followed. These include the opportunity for informal settlement prior to formal initiation of penalty action through the issuance of a prepenalty notice.

In subsequent periodic reviews relating to the institution's apparent violations, all prior actions and decisions taken by OFAC, including cases in which the decision is to take no action, will be considered in deciding what action to take.

In addition to detailing these new procedures, the interim final rule clarifies that, for a banking institution, a voluntary disclosure, a factor that OFAC considers in its enforcement decisions, does not include a disclosure when another party is required to file a report concerning the same transaction. This is the case whether or not the other party actually files a report. However, OFAC considers reporting of violations important for its compliance and enforcement programs and will consider such reports by a banking institution a mitigating factor in its enforcement decisions even if they do not meet the definition of "voluntary disclosure"

contained in these enforcement procedures. While reports that are not voluntary disclosures will generally not be accorded the same importance as voluntary disclosures, OFAC will give such cooperation due consideration.

Though this interim final rule becomes effective in 30 days, OFAC is soliciting comments for a 60-day period with a view to improving its enforcement procedures.

In particular, commenters are invited to address how much significance, separately or collectively, OFAC should attribute in its enforcement decisions to such factors as a banking regulator's assessments of a banking institution's compliance program, a banking institution's historical OFAC compliance record, and a comparison of that record to similarly situated banking institutions.

Also, this interim final rule does not apply to entities regulated by the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC"), such as broker-dealers, mutual funds, investment advisers, hedge fund advisers, futures commission merchants, commodity trading advisers, and commodity pool operators, even if such legal entities are affiliated with a banking institution. OFAC plans to issue separate enforcement procedures for SEC- and CFTC-regulated entities in recognition that the regulatory regimes administered by the SEC and the CFTC are significantly different from the regime administered by federal banking regulators. Commenters are asked to address whether there is current information about the compliance programs of SEC- and CFTC-regulated entities that OFAC could use in a similar manner to the way compliance information will be used for making enforcement decisions for banks. Commenters are also requested to provide any suggestions concerning how the enforcement procedures described in this interim final rule should be modified for entities regulated by the SEC or CFTC.

OFAC also plans to issue enforcement procedures for certain financial sector entities regulated by state government agencies but not by federal financial regulators. This sector includes entities that are similar to federally-regulated banking institutions, such as certain credit unions and banks not insured by an agency of the U.S. Government, and it includes some money service businesses. Commenters are asked for suggestions concerning how the enforcement procedures in the interim final rule should be modified for the purpose of providing separate

enforcement procedures for these entities.

The interim final rule does not apply to other financial sector entities, such as insurance companies (including property and casualty, life, and reinsurance lines of business), pension funds, finance companies, mortgage bankers, and government-sponsored enterprises. Commenters are asked for their suggestions on how enforcement procedures should be modified to apply to these other financial sector entities and whether and how enforcement procedures for financial sector firms should vary depending on the regulatory regime, if any, to which various financial sector firms are subject.

Commenters are also requested to provide suggestions concerning appropriate enforcement procedures for non-financial sectors, such as import-export businesses, the computer and software industries, and e-commerce.

These procedures apply to banking institutions that may be part of a larger corporate structure, with a parent holding company. Commenters are asked how OFAC should consider for enforcement purposes complex corporate structures, which may include entities regulated by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the SEC, and the CFTC. Other affiliates, such as insurance companies, may be regulated by state regulators; some affiliates may be subject to the jurisdiction of foreign regulators; and some entities may not have a functional regulator. Such complicated structures pose challenges for assessing compliance programs and making determinations about enforcement actions when there are violations. Commenters are invited to address the proper enforcement approach for complicated holding company structures.

List of Subjects in 31 CFR Part 501

Administrative practice and procedure, Banks, banking, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 31 CFR part 501 is amended as follows:

PART 501—REPORTING, PROCEDURES AND PENALTIES REGULATIONS

■ 1. The authority citation for Part 501 continues to read as follows:

Authority: 18 U.S.C. 2332d; 21 U.S.C. 1901–1908; 22 U.S.C. 287c; 22 U.S.C. 2370(a); 31 U.S.C. 321(b); 50 U.S.C. 1701–

1706; 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

■ 2. Part 501 is amended by adding the following appendix A, with annexes, to read as follows:

Appendix A to Part 501—Economic Sanctions Enforcement Procedures for Banking Institutions

Note: This appendix provides a general procedural framework for the enforcement of all economic sanctions programs administered by the Office of Foreign Assets Control (“OFAC”) only as they relate to banking institutions, as defined herein.

I. Definitions

A. *Banking regulator* means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision.

B. *Banking institution*, for purposes of this appendix to Part 501, means a depository institution supervised or regulated by a banking regulator.

C. *OFAC* means the Department of the Treasury’s Office of Foreign Assets Control.

D. *Voluntary disclosure* means notification to OFAC of an apparent sanctions violation by the banking institution that has committed it. However, such notification to OFAC is not deemed a voluntary disclosure if OFAC has previously received information concerning the conduct from another source, including, but not limited to, a regulatory or law enforcement agency or another person’s blocking or funds transfer rejection report.

Notification by a banking institution is also not a voluntary disclosure if another person’s blocking or funds transfer rejection report is required to be filed, whether or not this required filing is made. Responding to an administrative subpoena or other inquiry from OFAC is not a voluntary disclosure. The submission of a license request is not a voluntary disclosure unless it is accompanied by a separate disclosure.

II. Enforcement of Economic Sanctions in General

A. *OFAC Civil Investigation and Enforcement Action.* OFAC is responsible for civil investigation and enforcement with respect to economic sanctions violations committed by banking institutions. In these efforts, OFAC may coordinate with banking regulators. OFAC investigations may lead to one or more of the following: an administrative subpoena, an order to cease and desist, a blocking order, an evaluative letter summarizing concerns, or a civil penalty proceeding. In addition to or instead of such actions, if the banking institution involved is currently acting pursuant to an OFAC license, that license may be suspended or revoked.

B. *OFAC’s Evaluation of Violative Conduct.* The level of enforcement action

undertaken by OFAC involving a banking institution depends on the nature of the apparent violation, the enforcement objectives, and the foreign policy goals of the particular sanctions program involved. In evaluating whether to initiate a civil penalty action, OFAC determines whether there is reason to believe that a violation of the relevant regulations, statutes, or Executive orders has occurred. In making determinations about the disposition of apparent violations by banking institutions, including evaluative letters and civil penalties, OFAC will consider information provided by the banking institution and its banking regulator concerning the institution’s compliance program and the adequacy of that program based on its OFAC risk profile. Further information about the evaluation of compliance programs commensurate with the risk profile of a banking institution and a description of a sound OFAC compliance program are provided in Annexes A and B.

C. *Criminal Investigations and Prosecutions.* If the evidence suggests that a banking institution has committed a willful violation of a substantive prohibition or requirement, OFAC may refer those cases to other federal law enforcement agencies for criminal investigation. Cases that an investigative agency has referred to the Department of Justice for criminal prosecution also may be subject to OFAC civil penalty action.

III. Periodic Institutional Review

A. Except for those significant violations for which prompt action, such as a civil penalty proceeding or referral to other federal law enforcement agencies, is appropriate, OFAC will review institutions with violations or suspected violations on a periodic basis. OFAC will review each such institution’s apparent violations over a period of time deemed appropriate in light of the number and severity of apparent violations and the institution’s OFAC compliance history.

B. Upon completing this review, OFAC will preliminarily determine the type of enforcement action it will pursue for each apparent violation or related apparent violations. OFAC will then seek comment from the banking institution and ask it to provide additional information with regard to the apparent violation or violations. OFAC also will ask the institution to explain what actions led to the apparent violation or violations and what actions, if any, it has taken to overcome the deficiencies in its systems that led to the apparent improper handling of the transactions or accounts. Depending on the number and complexity of the apparent violations, OFAC may grant up to 30 days for a banking institution to respond and may grant further extensions at its sole discretion where it determines this is appropriate. Upon receipt of the institution’s response, OFAC will decide whether to pursue the intended administrative action or whether some other action would serve the same purpose.

C. OFAC will subsequently send the banking institution a letter detailing its findings and further actions, if any, concerning the apparent violations. OFAC

will provide the banking institution’s primary banking regulator with a copy of this letter.

IV. Factors Affecting Administrative Action

In making its decision as to administrative action, if any, OFAC will consider a number of factors, including, but not limited to, the following:

A. The institution’s history of sanctions violations.

B. The size of the institution and the number of OFAC-related transactions handled correctly compared to the number and nature of transactions handled incorrectly.

C. The quality and effectiveness of the banking institution’s overall OFAC compliance program, as determined by the institution’s primary banking regulator and by its history of compliance with OFAC regulations.

D. Whether the apparent violation or violations in question are the result of systemic failures at the banking institution or are atypical in nature.

E. The voluntary disclosure to OFAC of the apparent violation or violations by the banking institution.

F. Providing OFAC a report of, or useful enforcement information concerning, the apparent violation or violations. Providing a report, but not a voluntary disclosure, of the apparent violation or violations will generally be accorded less weight as a mitigating factor than would provision of a voluntary disclosure.

G. The deliberate effort to hide or conceal from OFAC or to mislead OFAC concerning an apparent violation or violations or its OFAC compliance program.

H. An analysis of current or potential sanctions harm as a result of a violation or series of related violations. This analysis will focus both on the specifics of the apparent violation or violations and the institution’s compliance effort.

I. Technical, computer, or human error.

J. Applicability of a statute of limitations and any waivers thereof.

K. Actions taken by the banking institution to correct the problems that led to the apparent violation or violations.

L. The level of OFAC action that will best lead to enhanced compliance by the banking institution.

M. The level of OFAC action that will best serve to encourage enhanced compliance by others.

N. Evidence that a transaction or transactions could have been licensed by OFAC under an existing licensing policy.

O. Whether other U.S. government agencies have taken enforcement action.

P. Qualification of the banking institution as a small business or organization for the purposes of the Small Business Regulatory Enforcement Fairness Act, as determined by reference to the applicable regulations of the Small Business Administration.

V. License Suspension and Revocation

In addition to or in lieu of other administrative actions, OFAC authorization to engage in a transaction or transactions pursuant to a general or specific license may

be suspended or revoked with respect to a banking institution for reasons including, but not limited to, the following:

A. The banking institution has made or caused to be made in any license application, or in any report required pursuant to a license, any statement that was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or it has omitted to state in any application or report any material fact that was required;

B. The banking institution has failed to file timely reports or comply with the recordkeeping requirements of a general or specific license;

C. The banking institution has violated any provision of the statutes enforced by OFAC or the rules or regulations issued under any such provision or relevant Executive orders and such violation or violations are significant and merited civil penalty or other enforcement action;

D. The banking institution is reasonably believed to have counseled, commanded, induced, procured, or knowingly aided or abetted the violation of any provision of any legal authority referred to in paragraph C;

E. Based on the information available to it, OFAC considers the banking institution's compliance program inadequate; or

F. The banking institution has committed any other act or omission that demonstrates unfitness to conduct the transactions authorized by the general or specific license.

VI. Civil Penalties

The procedures for addressing the actions of banking institutions that OFAC decides merit civil penalty treatment are provided in the regulations governing the particular sanctions program involved, or, in the case of sanctions regulations issued pursuant to the Trading with the Enemy Act, in this Part. The factors listed in Section IV will be considerations in the civil penalty process.

ANNEX A.—OFAC RISK MATRICES

[The following matrices can be used by banking institutions to evaluate their compliance programs. Matrix A is from the FFIEC *Bank Secrecy Act Anti-Money Laundering Examination Manual* published in 2005, Appendix M ("Quantity of Risk Matrix—OFAC Procedures")]

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

Matrix B. This matrix consists of additional factors that may be considered by banking institutions in assessing compliance programs in addition to Appendix M of the FFIEC Bank Secrecy Act Anti-Money Laundering Examination Manual.

<p>Management has fully assessed the bank's level of risk based on its customer base and product lines. This understanding of risk and strong commitment to OFAC compliance is satisfactorily communicated throughout the organization.</p> <p>The board of directors, or board committee, has approved an OFAC compliance program that includes policies, procedures, controls, and information systems that are adequate, and consistent with the bank's OFAC risk profile.</p> <p>Staffing levels appear adequate to properly execute the OFAC to properly execute the OFAC compliance program.</p> <p>Authority and accountability for OFAC compliance are clearly defined and enforced, including the designations of a qualified OFAC officer.</p>	<p>Management exhibits a reasonable understanding of the key aspects of OFAC compliance and its commitment is generally clear and satisfactorily communicated throughout the organization, but it may lack a program appropriately tailored to risk.</p> <p>The board has approved an OFAC compliance program that includes most of the appropriate policies, procedures, controls, and information systems necessary to ensure compliance, but some weaknesses are noted.</p> <p>Staffing levels appear generally adequate, but some deficiencies are noted.</p> <p>Authority and accountability are defined, but some refinements are needed. A qualified OFAC officer has been designated.</p>	<p>Management does not understand, or has chosen to ignore, key aspects of OFAC compliance risk. The importance of compliance is not emphasized or communicated throughout the organization.</p> <p>The board has not approved an OFAC compliance program, or policies, procedures, controls, and information systems are significantly deficient.</p> <p>Management has failed to provide appropriate staffing levels to handle workload.</p> <p>Authority and accountability for compliance have not been clearly established. No OFAC compliance officer, or an unqualified one, has been appointed. The role of the OFAC officer is unclear.</p>
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ANNEX A.—OFAC RISK MATRICES—Continued

[The following matrices can be used by banking institutions to evaluate their compliance programs. Matrix A is from the FFIEC *Bank Secrecy Act Anti-Money Laundering Examination Manual* published in 2005, Appendix M (“Quantity of Risk Matrix—OFAC Procedures”)]

Low	Moderate	High
Training is appropriate and effective based on the bank’s risk profile, covers applicable personnel, and provides necessary up-to-date information and resources to ensure compliance.	Training is conducted and management provides adequate resources given the risk profile of the organization; however, some areas are not covered within the training program.	Training is sporadic and does not cover important regulatory and risk areas.
The institution employs strong quality control methods.	The institution employs limited quality control methods.	The institution does not employ quality control quality control methods.

Annex B—Sound Banking Institution OFAC Compliance Programs

A. *Identification of High Risk Business Areas.* A fundamental element of a sound OFAC compliance program rests on a banking institution’s assessment of its specific product lines and identification of the high-risk areas for OFAC transactions. As OFAC sanctions reach into virtually all types of commercial and banking transactions, no single area will likely pass review without consideration of some type of OFAC compliance measure. Relevant areas to consider in a risk assessment include, but are not limited to, the following: retail operations, loans and other extensions of credit (open and closed-ended; on and off-balance sheet, including letters of credit), funds transfers, trust, private and correspondent banking, international, foreign offices, over-the-counter derivatives, internet banking, safe deposit, payable through accounts, money service businesses, and merchant credit card processing.

B. *Internal Controls.* An effective OFAC compliance program should include internal controls for identifying suspect accounts and transactions and reporting to OFAC. Internal controls should include the following elements:

1. *Flagging and Review of Suspect Transactions and Accounts.* A banking institution’s policies and procedures should address how it will flag and review transactions and accounts for possible OFAC violations, whether conducted manually, through interdiction software, or a combination of both methods. For screening purposes, a banking institution should clearly define procedures for comparing names provided on the OFAC list with the names in its files or on the transaction and for flagging transactions or accounts involving sanctioned countries. In high-risk and high-volume areas in particular, a banking institution’s interdiction filter should be able to flag close name derivations for review. New accounts should be compared with the OFAC lists prior to allowing transactions. Established accounts, once scanned, should be compared regularly against OFAC updates.

2. *Updating the Compliance Program.* A banking institution’s compliance program should also include procedures for maintaining current lists of blocked countries, entities, and individuals and for disseminating such information throughout the institution’s domestic operations and its offshore offices, branches and, for purposes

of the sanctions programs under the Trading with the Enemy Act, foreign subsidiaries.

3. *Reporting.* A compliance program should also include procedures for handling transactions that are validly blocked or rejected under the various sanctions programs. These procedures should cover the reporting of blocked and rejected items to OFAC as provided in § 501.603 of this Part and the annual report of blocked property required by § 501.604 of this Part.

4. *Management of blocked accounts.* An audit trail should be maintained in order to reconcile all blocked funds. A banking institution is responsible for tracking the amount of blocked funds, the ownership of those funds, interest paid on those funds, and the release of blocked funds pursuant to license.

5. *Maintaining License Information.* Sound compliance procedures dictate that a banking institution maintain copies of customers’ OFAC specific licenses on file. This will allow a banking institution to verify whether a customer is initiating a legal transaction. If it is unclear whether a particular transaction is authorized by a license, a banking institution should confirm this with OFAC. Maintaining copies of licenses will also be useful if another banking institution in the payment chain requests verification of a license’s validity. In the case of a transaction performed under general license (or, in some cases, a specific license), it is sound compliance for a banking institution to obtain a statement from the licensee that the transaction is in accordance with the terms of the license, assuming the banking institution does not know or have reason to know that the statement is false.

C. *Testing.* Except for a banking institution with a very low OFAC risk profile, a banking institution should have a periodic test of its OFAC program performed by its internal audit department or by outside auditors, consultants, or other qualified independent parties. The frequency of the independent test should be consistent with the institution’s OFAC risk profile; however, an in-depth audit of each department in the banking institution might reasonably be conducted at least once a year. The person(s) responsible for testing should conduct an objective, comprehensive evaluation of OFAC policies and procedures. The audit scope should be comprehensive and sufficient to assess OFAC compliance risks across the spectrum of all the institution’s activities. If violations are discovered, they should be promptly reported to both OFAC

and the banking institution’s banking regulator.

D. *Responsible Individuals.* It is sound compliance procedure for an institution to designate a qualified individual or individuals to be responsible for the day-to-day compliance of its OFAC program, including at least one individual responsible for the oversight of blocked funds. This individual or these individuals should be fully knowledgeable about OFAC statutes, regulations, and relevant Executive orders.

E. *Training.* A banking institution should provide adequate training for all appropriate employees. The scope and frequency of the training should be consistent with the OFAC risk profile and the particular employee’s responsibilities.

Dated: December 22, 2005.

Robert W. Werner,

Director, Office of Foreign Assets Control.

Approved: December 23, 2005.

Stuart A. Levey,

Under Secretary of the Treasury, Office of Terrorism and Financial Intelligence.

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