

THE REVIEW OF
**BANKING & FINANCIAL
SERVICES**
A PERIODIC REVIEW OF SPECIAL LEGAL DEVELOPMENTS
AFFECTING LENDING AND OTHER FINANCIAL INSTITUTIONS

Vol. 27 No. 8 August 2011

OFFICE OF FOREIGN ASSETS CONTROL: THE LITTLE AGENCY WITH A BIG BITE

Administered by the U.S. Treasury, OFAC sanction programs are unique in that they can involve both exports of goods and services, and financial transactions. The authors review the mitigating factors in recent cases involving major settlements with financial institutions and from them distill protective features for compliance programs designed to minimize OFAC risks.

By Judith A. Lee and James F. Doody *

With over a billion dollars in fines to its credit in the past few years, the Treasury Department's Office of Foreign Assets Control (OFAC) is no longer an obscure office known only to corporate compliance officers. But knowing that OFAC exists is only the first step in coming to grips with how to include OFAC as part of the entire constellation of corporate compliance programs. Given its unique applicability to both exporting goods and services, and to financial transactions generally, corporate leaders in the banking and financial services industries might benefit from an improved understanding of OFAC's role. After briefly introducing where OFAC fits in the compliance universe, this article will discuss several OFAC enforcement matters and offer general guidance for executing a risk-based corporate compliance program.

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OFAC'S PLACE IN THE COMPLIANCE UNIVERSE

OFAC's programs cover U.S. sanctions objectives by country, or by policy objective, such as preventing proliferation of weapons of mass destruction. Other compliance programs cover goods, generally, such as those under the Export Administration Regulations and the International Traffic in Arms Regulations, administered by the Departments of Commerce and State, respectively. More familiar, perhaps, to professionals in banking and financial services are transactional compliance programs, like anti-money laundering (AML) regulations under the Bank Secrecy Act (BSA) and Foreign Corrupt Practices Act (FCPA). OFAC's programs are unique, since they can involve both export restrictions on goods and services, as well as controls on financial transactions. Additionally, one

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