

DON'T BE CAUGHT OFF GUARD BY OFAC REGULATIONS

President Kristi asked me to comment on a case that might be of interest to our membership. Per Kristi's request, I offer the following discussion.

The Office of Foreign Assets Control (OFAC) administers and enforces economic sanctions programs primarily against countries and groups of individuals, such as terrorists and narcotics traffickers. The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals. Prohibited transactions include trade or financial transactions and other dealings in which U.S. persons may not engage unless authorized by OFAC or expressly exempted by statute. Because each program is based on different foreign policy and national security goals, prohibitions may vary between programs and fines for violations can be substantial. Criminal penalties for willful violations can include fines ranging up to \$20 million and imprisonment of up to 30 years.



As of August 13, 2015, the U.S. Treasury Department reported Civil Penalties/Settlements in excess of \$268,000,000 in connection with OFAC enforcement actions this year. Last year the total was \$1,209,298,807. These figures illustrate why dedicating sufficient resources to regulatory compliance including, but not limited to, software, training and having appropriate policies and procedures in place, etc. are important.

In March, PayPal, Inc. settled potential civil liability for apparent violations of multiple sanctions programs for \$7,658,300. Four hundred and eighty six transactions totaling \$43,934 formed the basis for the multimillion dollar payout. PayPal allegedly failed to employ adequate screening technology and procedures to identify potential involvement of U.S. sanctions targets in transactions that it processed. As a result, PayPal did not screen in-process transactions to reject or block prohibited transactions pursuant to applicable U.S. economic sanctions program requirements.

The transactions giving rise to the alleged violations contained reference to a country subject to OFAC sanctions or another term linked to the country or an account in which a Specially Designated National (SDN) had an interest. In a separate series of transactions, a customer who was listed on the SDN list was permitted to engage in six transactions before his account was blocked and the customer was reported to OFAC.

In assessing the alleged violations and finding them to be egregious, OFAC found that PayPal demonstrated reckless disregard for U.S. economic sanctions when its interdiction software failed to identify a client as a potential match to the SDN List on six separate occasions prior to blocking his account. PayPal agents repeatedly ignored warning signs about potential matches to the SDN List and failed to adhere to PayPal's policies and procedures pertaining to SDN match

escalation. Moreover, PayPal's management demonstrated reckless disregard for U.S. economic sanctions requirements in operating a payment system without implementing appropriate controls to prevent the system from processing transactions in apparent violation of OFAC regulations. PayPal's OFAC compliance program was inadequate to prevent the apparent violations.

Ignorance of the sanctions programs is not a defense. The next free OFAC program will take place on September 22, 2015 in Washington, D.C. The OFAC Fall Symposium offers a comprehensive review of OFAC and current economic sanctions with presentations on OFAC regulations affecting all U.S. persons and targeted reviews of sanctions concerns for new and updated OFAC programs. OFAC staff will also be available to answer questions on issues unique to regulated industries like transportation and import/export. For more information regarding the Fall Symposium, contact OFACSymposium@treasury.gov.

What issues are you concerned about? I would love to know. My email is bmason@stonepigman.com.