

Lawdesk



Office of Foreign Assets Control ("OFAC")

The *Office of Foreign Assets Control* ("OFAC") of the US Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. OFAC acts under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and block ("freeze" or "seize") assets under US jurisdiction. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments.

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OFAC Coverage:

All "**U.S. persons**" must comply with OFAC's regulations. OFAC's definition of a "**U.S. person**" includes:

- All US citizens and permanent resident aliens, regardless of where they are located.
- All persons and entities within the US.
- All US incorporated entities and their foreign branches.

Certain sanction programs also apply to:

- Foreign subsidiaries owned or controlled by U.S. companies.
- Foreign persons in possession of U.S. origin goods.

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OFAC Required Actions:

In general, OFAC regulations require you to:

- **Block (“Freeze” or “seize”)** accounts and other property of specified countries, entities, and individuals.
- **Reject (“stop”)** unlicensed trade and financial transactions with specified countries, entities, and individuals.
- **Report** all blocked or rejected transactions to OFAC.

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OFAC Sanctions Programs:

OFAC administers many unique economic sanctions and embargoes **targeting geographic regions, governments and activities** that threaten U.S. national security. Certain programs cast a wide net and require **blocking** all property and business dealings with the government and residents of a specific country.

Other programs **target specific dangerous activities or individuals**, such as:

- Foreign narcotics traffickers
- Foreign terrorists
- Weapons of Mass Destruction (“WMD”) proliferation

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OFAC Specially Designated Nationals (“SDN”) and Blocked Persons List:

Specially designated nationals (“SDNs”) and blocked persons are individuals or entities with which U.S. persons cannot do business.

OFAC publishes a list of these individuals and entities known as the **SDN List**. As part of the OFAC Compliance Program, there should be a process of reviewing the SDN List.

OFAC Specially Designated Nationals List (“SDN”) Web Site:

<http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

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Checking the SDN List:

Every transaction performed is subject to OFAC regulation. Thus, **before issuing a loan account**, it must be determined whether individuals or entities involved are on the SDN List, or whether an OFAC sanction program applies. Further, there should be a **process** in place to review existing customers against the SDN list as well.

OFAC policies determine which transactions and related parties must be checked against the SDN list.

Some of the most common transactions that involve an SDN List check are:

- Opening a new account
- Accepting a loan application/disbursing loan proceeds
- Cashing checks
- Sending or receiving a wire transfer
- Purchasing cashier's checks or money orders

It is important to check all parties to the transaction against the list, including beneficiaries, co-borrowers, cosigners, attorneys-in-fact, trustors, trustees, etc.

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Determining the Validity of an SDN Hit:

When there is a possible OFAC “**match**,” or “**hit**,” to the SDN List entry, a company must investigate further to verify the validity of the hit.

In some cases, directly contacting OFAC is warranted to obtain additional information or clarification of the results.

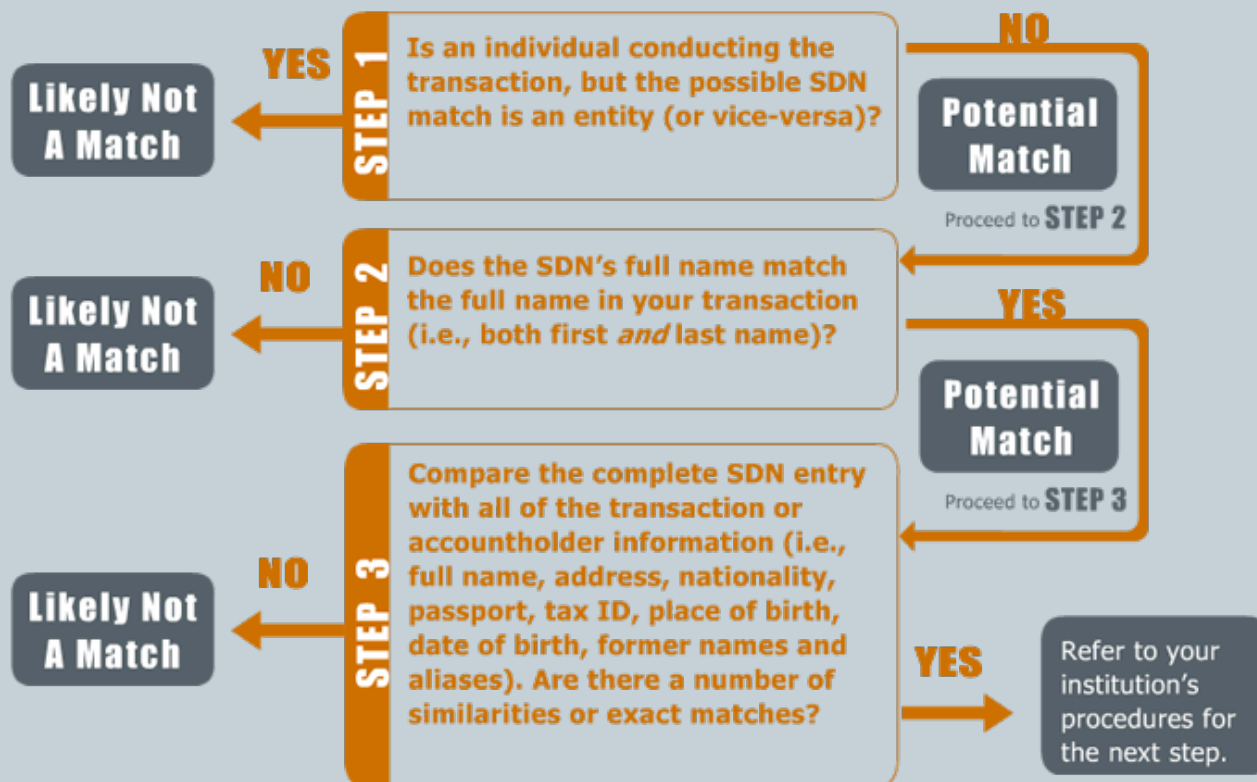
Note: If the hit is against a list other than the SDN, for example, the FBI's Most Wanted List, the controlling agency (i.e. FBI) may need to be contacted for assistance. Be sure to check your institution's policies and procedures.

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Determining the Validity of an SDN Hit:

The flowchart below illustrates a sample process flow for diagnosing potential OFAC matches:



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Blocking Property:

When property is **blocked** (or “seized”), it is **confiscated** and placed in a separate interest-bearing account. The property is held in the interest-bearing account until:

- The person is removed from the SDN list;
- The OFAC sanction is lifted; or
- OFAC authorizes release of the property.

Property must be blocked if: (1) a party to the transaction (2) has an interest in the property and (3) is a confirmed match on the SDN list.

Certain sanctions programs require blocking even without the involvement of an SDN. Whether a transaction is blocked or rejected **depends on the sanction**, so you must be aware of the most current sanctions information when making that determination.

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Blocking Property Example:

A customer requests a wire transfer to a business associate in a foreign country. In this case, neither the customer nor the foreign business is an SDN. However, the **foreign country's sanctions** are comprehensive and call for blocking of all financial dealings. In this case, the company must **block (Seize”)** the funds.

If **any party to the transaction** is an SDN, the company cannot complete the transaction. In other words, when an SDN has an interest in the property, it must be blocked/seized. Because of OFAC's broad reach, every department at the company must be prepared to determine when and how to block/seize property.

Blocked/seized funds must be placed into an **interest-bearing account**, from which only OFAC-authorized debits may be made. A company may choose to open separate accounts for each blocked transaction. However, a company can use a collective account as long as specific funds can be unblocked with interest at any point in the future.

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Blocked Account Service Charges:

In most cases, OFAC regulations contain provisions that allow assessment of normal service charges to blocked/seized accounts. The charges must be made according to a published rate schedule for the type of account in which the funds are maintained. Even when no party is an SDN, sanctions may still prohibit the transaction and you must reject it.

Note - Rejecting (“stopping”) differs from **blocking** (“seizing”) by stopping a transaction, rather than seizing property.

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Example:

A customer attempts to wire funds from a business account at a privately-owned bank in a sanctioned country to your company. In this case, neither the customer nor their bank is an SDN, so **blocking/seizing is not required**.

However, processing the payment would involve facilitating trade with the sanctioned country. **You must reject/stop the payment.**

Again, you must be aware of the most current sanctions information when determining whether to reject a transaction. Be sure to check the OFAC policies and procedures for rejecting a transaction.

Summary: When no party is an SDN, but the transaction is otherwise prohibited by sanction, it must be **rejected/stopped**.

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Reporting Blocked Property to OFAC:

After blocking a transaction, you must report it to OFAC in writing within **10 business days**.

Each **Blocked/Seized Property Report** must contain the following data:

1. Your institution's name and address
2. Name and telephone number of OFAC compliance contact person
3. Actual or estimated value
4. Date of the block
5. Identification of the owner or account party
6. The property's location
7. Account number or other identifier
8. Confirmation that the property has been deposited into a blocked account
9. Copy of the payment or transfer instructions (if applicable)

Note - There is no standard reporting format, but OFAC does offer optional forms.

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Reporting Rejected Transactions to OFAC:

After rejecting a transaction, you must report it to OFAC in writing within **10 business days**.

Each **Rejected/Stopped Transaction Report** must contain the following data:

1. Your institution's name and address
2. Name and telephone number of OFAC compliance contact person
3. Date and amount rejected
4. Reason for rejection
5. A copy of the transfer or payment request (if applicable).

Note - There is no standard reporting format, but OFAC does offer optional forms.

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Annual Reporting:

To verify compliance with OFAC regulations, a **Report of blocked Property** that it held as of June 30 of the current year must be filed by September 30th of the same year.

OFAC prescribes the use of a **specific form** for this purpose. Requests to submit the required information in an alternative format will be handled by OFAC on a case-by-case basis.

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Record Retention:

All records of transactions subject to OFAC requirements must be retained for at least **five years** after the date of the transaction.

Records of transactions may include:

1. Records of blocked funds from the date of unblocking (while property is blocked, full and accurate records must be maintained);
2. Records of all rejected transactions;
3. Copies of all reports filed; and
4. All other evidence of compliance, such as SDN search results.

Summary: Blocking and rejecting instances must be reported within **10 business days** of occurrence. A report of blocked property must be filed for each year property is held.

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Consequences of Violations:

Noncompliance with OFAC requirements can jeopardize critical foreign policy and national security goals. Therefore, OFAC penalties are severe. Over the last several years, OFAC has imposed millions of dollars in fines against U.S. financial institutions for not complying with the rules.

Employees can be personally liable for OFAC violations and can face lengthy prison sentences and stiff fines as a result.

OFAC Civil Penalties and Enforcement Information Web Site:

<http://www.treasury.gov/resource-center/sanctions/CivPen/Pages/civpen-index2.aspx>

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OFAC Web Site:

Web Site:

<http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>

OFAC's web site is an excellent source of information where you can find:

- The current SDN list;
- The current sanctions programs;
- Updated forms for filing;
- OFAC regulations;
- OFAC contact information; and
- Frequently asked questions and answers.

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OFAC's Frequently Asked Questions (FAQs):

The FAQs include:

- General Questions
- Sanctions Compliance
- Sanctions Programs
- Sanctions Lists and Files

Web Site:

http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/ques_index.aspx

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OFAC's Contact Information:

Toll Free Hotline	1-800-540-6322
Local Hotline	1-202-622-2490
OFAC Licensing Division (Direct)	1-202-622-2480
OFAC Fax-on-demand document service	1-202-622-0077

Office of Foreign Assets Control
U.S. Department of the Treasury
Treasury Annex
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Web Site:

<http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx#fragment-7>

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Encourage a OFAC compliance culture by ensuring that:

- ✓ Its management and staff understand the purpose of its OFAC efforts and how its reporting is used.
- ✓ Efforts to manage and mitigate OFAC deficiencies and risks are not compromised by revenue interests;
- ✓ Relevant information from the various departments within the organization is shared with Compliance staff to further OFAC efforts;
- ✓ It devotes adequate resources to its OFAC compliance function; and
- ✓ Appropriate staff handling OFAC responsibilities receive adequate training.