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March 13, 2006

Office of Foreign Assets Control
Department of the Treasury
Assistant Director of Records,
ATTN: Request for Comments
(Enforcement Procedures)
1500 Pennsylvania Avenue, NW.,
Washington, DC, 20220

Re: "Economic Sanctions Enforcement Procedures
for Banking Institutions"
71 Federal Register 1971-1976 (January 12, 2006)

To Assistant Director of Records:

The American Bankers Association (ABA) submits this comment in response to the interim final rule published by the Office of Foreign Assets Control (OFAC) detailing its "Economic Sanctions Enforcement Procedures for Banking Institutions."

The American Bankers Association, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership-which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks-makes ABA the largest banking trade association in the country.

ABA Supports OFAC's New Enforcement Approach

ABA is encouraged that OFAC has recognized the special role banks play in the implementation of OFAC sanction programs and responded by redefining its enforcement approach toward the industry. As expressed in the preamble, 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."

ABA endorses the key components of OFAC's new enforcement policy as described in the rule's preamble:

- Prior to taking enforcement action, OFAC will generally review apparent violations over a period of time, rather than evaluating individual violations independently.
- OFAC’s review will be conducted in the context of the bank’s overall OFAC compliance program and performance record.
- OFAC will give deference to a bank’s primary regulator’s evaluation of its compliance program.
- Among a broad range of comparative performance measures, OFAC will give positive consideration to voluntary disclosure and self-initiated corrective action.

ABA Supports Greater Weight for Comparison of Performance Against Similarly Situated Banks

In response to OFAC’s specific invitation to comment on the weight of certain factors, ABA believes that to ensure uniformity of OFAC’s enforcement discretion a comparison of an institution’s record to similarly situated banks is a factor that should receive more significant weight than recognized in the factors enumerated in Section IV of the rule. Specifically, factor A of the section is limited to the subject bank’s own history of sanction violations without regard for its comparison to similarly situated banks. Relevant to designating similarly situated banks are criteria such as complexity of operations, volume of at-risk transactions, level of international business activity and severity of the underlying violations. Accordingly we urge OFAC to modify factor A so it considers a bank’s sanction violation history in comparison with similarly situated institutions.

Other ABA Suggestions

ABA recommends that OFAC reconsider its exclusion from the definition of voluntary disclosure those notifications to OFAC where another person’s blocking or funds transfer rejection report is required to be filed—whether or not the required filing is made. OFAC provides no rationale for such a disallowance when the policy goal of self-identifying and self-correcting compliance is the end result and is entirely independent of another institution’s action or inaction. Although OFAC reserves a lesser weight for self-reporting that the rule excludes from consideration as voluntary disclosure, no such reduced consideration is consistent with sound compliance principles.

Although the rule explicitly endorses distinguishing the treatment of varying banking business components base on their risk, from time-to-time this distinction is lost. For instance, in Annex B, Section B1, it states that “new accounts should be compared with the OFAC list prior to allowing transactions.” This is not a risk-based rule because it treats all types of transactions the same, ignores other effective controls like overnight screens and interdiction, and takes no account of the potential for confrontation between bank personnel and unfamiliar new customers. Alternatively, “new accounts are to compared with the OFAC list consistent with risk-based procedures” provides the requisite operational latitude.

Another departure from the risk-based compliance standard occurs in Annex B, Section C where the rule states, “an in-depth audit of each department in the banking institution might reasonably be conducted at least once a year.” This minimum frequency and scope is contrary to managing audit resources based on risk and at odds with statements made by the banking agency representatives during the rollout of the Interagency BSA/AML Exam Manual.

Applying Procedures to Large Corporate Structures

Pending OFAC completion of enforcement procedures for other financial industry providers, ABA believes that these procedures should be applied to affirm sound enterprise-wide compliance risk management giving due consideration to the examination experience of the federal banking agencies. As the preamble recognizes, many financial industries are regulated by government entities without extensive OFAC expertise. Where OFAC compliance across a large corporate structure is coordinated within an institution (including holding company) subject to federal banking agency oversight, OFAC should follow the banking enforcement procedures when evaluating the OFAC compliance performance of the large corporate structure or any of its component financial operations.

Conclusion

ABA appreciates the risk-based compliance-oriented enforcement policy that OFAC has adopted. We believe that this approach conforms with general banking agency expectations for internal compliance controls and the new Interagency BSA/AML Exam Manual. Improved coordination between OFAC enforcement and BSA/AML oversight will lead to better performance by banks and more consistent supervision throughout the financial services industry.

Respectfully Submitted,



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