

IPO COMPLIANCE PRESENTATION: PART 2: OFFICE OF FOREIGN ASSETS CONTROL (OFAC) CHAP TRAINING



UPDATED CHAP Guidance for Adjudicators on OFAC

Presented by IPO-Compliance

May 18, 2021

TERMINAL LEARNING OBJECTIVES

Upon conclusion of this training, you will be able to:

- Articulate how OFAC impacts EB-5 adjudications.
- Understand what officers' responsibilities are related to OFAC.
- Search OFAC's website and assess matches related to EB-5 petitions.
- Understand when to refer findings to Compliance and/or FDNS.

ENABLING LEARNING OBJECTIVES

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During this presentation you will:

- Understand OFAC's mission, authorities, and programs.
- Review updated OFAC adjudications guidance in the CHAP.
- Understand when an OFAC search is required.
- Understand when to refer findings to Compliance and/or FDNS.

AGENDA

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During this presentation we will cover:

- OFAC review - Definition of sanctions.
- The risk-based approach to OFAC Compliance.
- CHAP update and the adjudicator's role as it relates to OFAC.
- Three types of indicators (geographic, industry, person/path of funds)
- Examples of OFAC indicators and searching OFAC.

Definition: Sanctions

Reference - OFAC webpage at <https://home.treasury.gov>

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The Dept. of Treasury, Office of Foreign Asset Control (OFAC)^a administers and enforces economic and trade sanctions. Sanctions:

- a penalty levied on another country, or on individual citizens of another country used as an instrument of foreign policy and economic pressure.
- Are used to accomplish foreign policy and national security goals.
- limit or prohibit the movement of specific individuals, goods or financial transactions.

Definition: Sanction (Cont.)

Agenda

- target entire countries (like Cuban or North Korean sanctions) or target specific industries, such as placing limits on the sale of weapons or sales of certain types of technology.
- focus on individuals/companies.
 - Example: Political figure or business leader, or in the case of a company, a bank where there are money laundering concerns.
- sanctioned persons or entities are called:
 - Specially Designated Nationals (SDNs)

Compliance with sanctions

Individuals: US Citizens and Lawful Permanent Residents anywhere in the world and all individuals located in the US.

Entities: All US incorporated entities anywhere in the world and all entities located in the US.

Transactions: All transactions that involve – directly or indirectly – the United States or a US person.

OFAC Sanctions: Impact on lawful source/path of funds.

- Any assets acquired directly or indirectly by unlawful means is not considered capital. See 8 CFR 204.6(e).
- A petitioner must demonstrate that his or her capital was obtained through lawful means. See 8 CFR 204.6(j)(3).
- Prior USCIS decisions, including non-precedential AAO decisions, have expressly considered a petitioner's compliance with OFAC rules in connection with the petitioner's requirement to demonstrate that their investment capital was acquired, directly or indirectly, through lawful means. See, USCIS Decision, Administrative Appeals Office, WAC0900751516.
 - Failure to comply with OFAC may impact lawful source or path of funds.

Adjudicator's Role in OFAC Compliance?

Agenda

- IPO is taking a risk-based approach to OFAC Compliance.
- Revised OFAC CHAP section defines the adjudicator's role (see, CHAP Vol. 6, Part G, Chapter 6):
 - Must review all petitions for potential **OFAC indicators**.
 - If the officer encounters an **OFAC indicator** in the record, then the officer must run OFAC searches on the appropriate individuals or entities listed in the file.

**CHAP Update:
Officers' responsibilities related
to OFAC (CHAP Vol. 6, Part G, Chapter 6)**

Key points from the revised OFAC CHAP guidance.

- OFAC violations may impact lawful source/path of funds.

Officers must:

1. Review record for OFAC indicators. If none, then no OFAC search is required.
2. If the AO identifies an OFAC indicator, the AO must perform an OFAC search on all relevant individuals and entities in the file.

OFAC Indicators

What is an OFAC indicator?

- Based on sanctions programs described on the OFAC website.
 - Become familiar with the OFAC website. Sanctions programs can change, so its important to review the OFAC website periodically.
- OFAC Sanctions Programs and Country Information: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information>
- OFAC Sanctions Program Tags: <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-list-sdn-list/program-tag-definitions-for-ofac-sanctions-lists>

OFAC Indicators and OFAC sanctions programs

In general, there are three types of indicators:

1. Geographic (Country or region)
2. Industry
3. Person specific/path of funds specific – typically tied to geographic or industry sanctions.

OFAC Indicators: Geographic/Country Specific Sanctions

Examples:

Belarus, Burma, Burundi, Central African Republic, Ivory Coast, Cuba, Iran, Iraq, Lebanon, Libya, North Korea, Somalia, Sudan, South Sudan, Syria, Ukraine, Russia, Venezuela, Yemen, Zimbabwe.

OFAC Indicators:

Geographic/Country Specific Sanctions Cont.

Country Specific Sanctions we are most likely to encounter at IPO, based on historical filings:

- Iran, Iraq, North Korea, Ukraine, Russia, Venezuela

Note:



- An OFAC indicator may be a geographic region. Example:
 - Hawala transactions in the geographic region near Iran, Iraq, Lebanon, Libya, Somalia, Sudan, South Sudan, Syria.

OFAC Indicators

Industry Specific Sanctions - Examples:

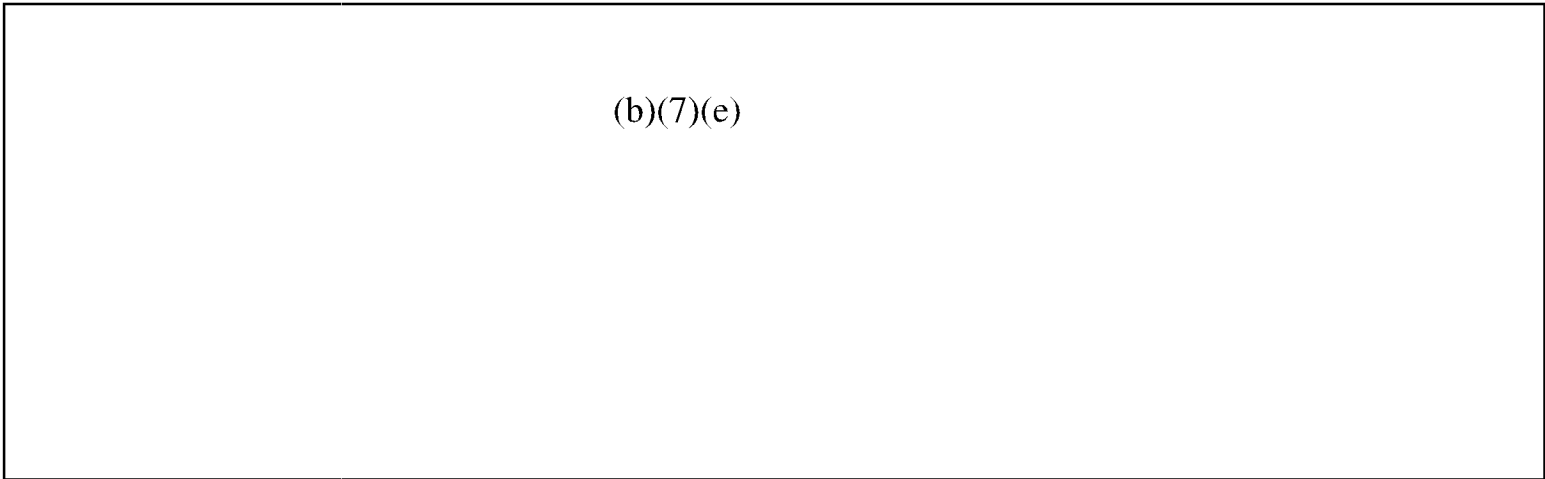
- Shipping: Import-Exports (Money made from producing and selling a product. Where was the product sold?)
- Chinese Military Companies: most likely to encounter at IPO
- Narcotics Sanctions
- Cyber-Related Sanctions
- Counter Terrorism Sanctions

OFAC Indicators – Person Specific

OFAC's prohibited parties list identifies several thousand Specially Designated Nationals (SDNs) and blocked persons. The list includes individuals, entities, vessels, and banks all over the globe with whom or with which transactions are prohibited.

It is not possible to memorize them all. When reviewing a records, look for something about the individual that would raise a flag:

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OFAC Indicators – Person Specific cont.

Based on Global Magnitsky Sanctions (Human Rights), OFAC has sanctioned these individuals:

- Four current or former Chinese government officials connected with human rights abuses against ethnic Uyghur in the Xinjiang Region.
- A former Burmese Army Chief, who oversaw a military operation in Burma which included widespread human rights abuse against Rohingya civilians.
- A Pakistani surgeon specializing in kidney transplants who is believed to be involved in kidnapping and the removal of and trafficking in human organs.
- A Guatemalan Congressman accused of ordering an attack in which two journalists were killed and another injured.

OFAC Exemptions and Licenses

- An OFAC match does not necessarily mean there was a OFAC violation. Specific sanctions programs can have exemptions and licenses.
- General license: authorizes a particular type of transaction for a class of persons without the need to apply for a license.
- Specific license: written document issued by OFAC to a particular person or entity, authorizing a particular transaction in response to a written license application.
- If a transaction is covered by an exemption/license, then no OFAC violation.

Overview of OFAC Adjudications Steps

1. Review record for OFAC indicators (country/industry/person specific).
 - If no indicators are present, then OFAC analysis is complete.
2. If record contains OFAC indicators, search OFAC.
 - If no match, then OFAC analysis is complete.

3.

(b)(7)(E)

How to Perform OFAC Searches: Gathering Identifiers

When OFAC indicators are present in the record, officers should gather identifiers and run searches for the following: (b)(7)(e)

- Run the searches on the OFAC website - <https://sanctionssearch.ofac.treas.gov>

Note:

(b)(7)(E)

HOW TO PERFORM OFAC SEARCHES

- When the record contains OFAC indicators, officers are responsible for running OFAC searches at: <https://sanctionssearch.ofac.treas.gov>

OFAC
Office of Foreign Assets Control

Sanctions List Search

Special Designated Nationals and Blocked Persons list ("SDN List") and all other sanctions lists administered by OFAC, including the Foreign Sanctions Evaders List, the Non-SDN Iran Sanctions Act List, the Sectoral Sanctions Identifications List, the List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions and the Non-SDN Palestinian Legislative Council List. Given the number of lists that now reside in the Sanctions List Search tool, it is strongly recommended that users pay close attention to the program codes associated with each returned record. These program codes indicate how a true hit on a returned value should be treated. The Sanctions List Search tool uses approximate string matching to identify possible matches between word or character strings as entered into Sanctions List Search, and any name or name component as it appears on the SDN List and/or the various other sanctions lists. Sanctions List Search has a slider-bar that may be used to set a threshold (i.e., a confidence rating) for the closeness of any potential match returned as a result of a user's search. Sanctions List Search will detect certain misspellings or other incorrectly entered text, and will return near, or proximate, matches, based on the confidence rating set by the user via the slider-bar. OFAC does not provide recommendations with regard to the appropriateness of any specific confidence rating. Sanctions List Search is one tool offered to assist users in utilizing the SDN List, and/or the various other sanctions lists; use of Sanctions List Search is not a substitute for undertaking appropriate due diligence. The use of Sanctions List Search does not limit any criminal or civil liability for any act undertaken as a result of, or in reliance on, such use.

[Download the SDN List](#) [Sanctions List Search: Rules for use](#) [Visit The OFAC Website](#)
[Download the Consolidated Non-SDN List](#) [Program Code Key](#)

Lookup

Type: All
Name:
ID #:
Program: All
561-Related
BALKANS
BELARUS
Minimum Name Score: 100

Address:
City:
State/Province*:
Country: All
List: All

Search Reset

Lookup Results:

Name	Address	Type	Program(s)	List	Score
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* U.S. states are abbreviated on the SDN and Non-SDN lists. To search for a specific U.S. state, please use the two letter U.S. Postal Service abbreviation.

SDN List last updated on: 4/26/2021 12:02:01 PM
Non-SDN List last updated on: 12/14/2020 12:44:01 PM