

circumstances under which it was made, false or misleading with respect to any material fact or has omitted to state in any application or report any material fact that was required;

2. The party has failed to file timely reports or comply with the recordkeeping requirements of a general or specific license;

3. The party has violated any provision of law enforced by the Office of Foreign Assets Control or the rules or regulations issued under any such provision;

4. The party has counseled, commanded, induced, procured, or knowingly aided or abetted the violation by any other person of any provision of any law or regulations referred to above; or

5. The party has committed any other act or omission that demonstrates unfitness to conduct the transactions authorized by the general or specific license.

**B. Cautionary Letters.** OFAC issues "cautionary letters" where an OFAC audit or civil investigation results in insufficient evidence to conclude that a violation appears to have occurred, but which may indicate activity that could lead to a violation in other circumstances or cause problems for future transactions. From time to time, when financial institutions appear not to be exercising due diligence in assuring compliance with OFAC's regulations, but no violation has occurred, a cautionary letter may be sent outlining the requirements of the regulations and urging greater diligence.

**C. Warning Letters.** Warning letters represent OFAC's conclusion that an apparent violation of the regulations occurred. In the exercise of its discretion, OFAC may determine in certain instances that a warning letter, citing the specific facts and relevant law, may achieve the same result as a monetary penalty insofar as future compliance with OFAC regulations is concerned. A warning letter will fully explain the apparent violation and urge future compliance. A warning letter does not constitute a final agency determination that a violation has occurred.

1. **Financial Transfers.** OFAC recognizes the high volume and level of automation of international funds transfers processed within the United States banking system on a daily basis. With respect to financial transfers, OFAC often issues warning letters in lieu of civil penalties in cases that appear to involve violations based on technicalities, where good faith efforts to comply with the law and no aggravating factors are evident. Some

examples of cases where a warning letter might be issued in lieu of a proposed civil penalty include the following:

(a) Transactions in which there are significant variations in name and/or location specified in a funds transfer from those on OFAC's list of blocked persons and vessels, specially designated nationals, terrorists, narcotics traffickers and foreign terrorist organizations (the "SDN list") or list of sanctioned countries;

(b) Transactions where the name of the blocked party is spelled differently from the entry on OFAC's SDN list, thus bypassing an electronic filter (in these instances, the bank is expected to add the spelling variation to its filter);

(c) Transactions where funds are not intended to be sent to or through a blocked or specially designated bank (an "SDN bank") but a bank employee accidentally enters a code for an SDN bank;

(d) Transactions where a clerk accidentally hits a "release" key instead of a "block" or "reject" key and immediately takes action to try to recall the funds;

(e) Transactions that take place shortly after a new designation where the bank has not had time to update its systems and procedures or to review its account base;

(f) Transactions that are of a low value where the cost of pursuing a penalty action would likely exceed the enforcement benefit;

(g) Transactions involving an activity for which a policy determination has been made to authorize the activity by specific license; and

(h) Other transactions where the fact pattern and underlying transaction would appear to warrant a warning letter as opposed to a civil penalty action.

2. **Exports and Imports.** Warning letters may be issued in response to apparent violations solely involving the importation and exportation of goods and/or services valued at \$500 or less, unless aggravating factors are present. Unauthorized importations in conjunction with travel involving Cuba are addressed in the appendix to the Cuban Assets Control Regulations, 31 CFR Part 515.

### III. Civil Penalties

Prohibitions against engaging in various types of transactions in the context of economic sanctions programs are set forth in applicable statutes, Executive Orders, and regulations administered by OFAC. The criteria for initiating civil penalty enforcement action may differ depending upon the

substantive nature of the apparent violation at issue and existing foreign policy and national security objectives. For purposes of the discussion below, "proposed penalty" is the amount set forth in the prepenalty notice, as distinct from the final amount imposed in the penalty notice.

#### A. Most Frequent Categories of Violations Resulting in Civil Penalty Action, and the Penalties Proposed by OFAC

1. **Prohibited Dealing in Blocked Property or Fund Transfers (including Rejected Transfers).** If the apparent violative transaction at issue is a prohibited dealing in blocked property by a person subject to the jurisdiction of the United States, the proposed penalty generally will be the lesser of either the statutory maximum or the dollar value of the transaction involved. For example, the dollar value may be the value of the property dealt in or the amount of the funds transfer that a financial institution failed to block or reject.

2. **Imports and Exports.** In import cases, the dollar value used in proposing a penalty generally will be the transaction value for imports of goods, technology, or services into the United States, as demonstrated by commercial invoices, bills of lading, signed Customs declarations, or similar documents. In U.S. Customs Service seizures where no transaction value can be demonstrated by credible evidence, the dollar value generally will be the foreign value as determined by U.S. Customs Service. Where neither the transactional nor U.S. Customs Service-determined foreign value is established in the administrative record, a default value of \$10 per item imported generally will be assigned. For importations of Cuban-origin goods in conjunction with travel-related transactions involving Cuba, please refer to the appendix to the Cuban Assets Control Regulations, 31 CFR part 515. For exports, the dollar value used in proposing a civil penalty generally will be the U.S. domestic value of the goods, technology, or services.

3. **Performance of a Contract; New Investment.** The proposed penalty for the performance of a contract or new investment generally will be the lesser of the statutory maximum or the value of the contract or investment.

4. **Travel-Related Violations.** Proposed penalties for travel-related transactions involving Cuba are set forth in the appendix to the Cuban Assets Control Regulations, 31 CFR part 515. Please note that other sanctions programs, including the Iraqi Sanctions