

Regulations (31 CFR part 575) and the Libyan Sanctions Regulations (31 CFR part 550), may include restrictions on travel-related transactions, violations of which will be dealt with on a case-by-case basis.

5. *Travel, Carrier, and Remittance-forwarding Service Provider Violations (Cuba)*. The criteria for imposition of civil penalties for violations relating to the provision of travel, carrier, and remittance-forwarding service providers are contained in (1) the appendix to 31 CFR part 515 with respect to service providers not authorized by OFAC to provide such services and (2) the annual Service Provider Program Circular issued by OFAC with respect to service providers holding OFAC authorization.

6. *Requirement to Furnish Information; Reporting and Recordkeeping*. The following criteria shall apply for purposes of proposing a penalty, except in the instance of authorized service providers under the Cuban Assets Control Regulations, which criteria appear in the annual Service Provider Program Circular issued by OFAC:

(a) Each failure to respond to a requirement to furnish information, issued pursuant to 31 CFR 501.602, generally will result in a proposed penalty in the amount of \$10,000, irrespective of whether any other violation is alleged;

(b) Late filing of a required report generally will result in a proposed penalty in the amount of \$2,000, if filed within the first month after it is due. Each failure to comply with a reporting requirement, whether set forth in regulations or in a specific license, generally will result in a proposed penalty in the amount of \$5,000 if the report is beyond one month late. If the report concerns blocked assets, however, the proposed penalty generally will include an additional \$1,000 for every month beyond the second month that the report is not submitted, up to five years or the statutory maximum, whichever is lower.

(c) The first failure to maintain records in conformance with the requirements of OFAC's regulations or of a specific license generally will result in a proposed penalty in the amount of \$2,000. Each additional offense in this regard generally will result in a proposed penalty in the amount of \$10,000.

B. Evaluation of Mitigating and Aggravating Factors

In determining a settlement amount or penalty assessment at the penalty notice stage, OFAC generally will balance the mitigating and aggravating factors

present in the administrative record, as well as weigh any administrative considerations that the agency may deem appropriate.

1. *Mitigation and mitigating factors*. The degree to which a proposed penalty is mitigated is determined by the blend of mitigating factors and aggravating factors present. The history of mitigation with respect to cases having substantially identical fact patterns generally will govern the degree of mitigation to be applied in subsequent cases. However, departures from these Guidelines or from prior history will be considered where appropriate. OFAC may attach more importance to a particular factor, and administrative considerations may also be taken into account. The individual circumstances of a violation, including the balance of factors present, will also influence the outcome. OFAC encourages evidentiary submissions indicating the presence or absence of a mitigating or aggravating factor. In the case of funds transfer violations by banks or other financial institutions, depending on the balance of mitigating and aggravating factors present, penalties generally will be mitigated 25–50% from the amount proposed in the prepenalty notice. In all other instances, penalties for violations generally will be mitigated 10% to 75% from the amount proposed in the prepenalty notice depending upon the balance of mitigating and aggravating factors present. Typical mitigating factors include, but are not limited to, the following:

- (a) Voluntary disclosure;
- (b) First offense (but see the appendix to 31 CFR part 515 for certain Cuba travel-related violations);
- (c) Compliance program in place at time of violation;
- (d) If no compliance program, implementation of one upon the respondent's discovery of or OFAC notification of the violation;
- (e) Other remedial measures taken;
- (f) Provision of a written response to a prepenalty notice;
- (g) Useful enforcement information provided during an OFAC audit, investigation, or penalty proceeding;
- (h) Part of comprehensive settlement with U.S. Customs Service;
- (i) Other U.S. government enforcement action already completed;
- (j) Lack of relevant commercial experience;
- (k) Clerical error, inadvertence, or mistake of fact;
- (l) Evidence in the administrative record that a transaction(s) could have been licensed by OFAC under an existing licensing policy had an application been submitted;

(m) Apparent language barrier or other impediment to understanding of regulations (individuals only);

(n) Humanitarian nature of transaction;

(o) Such other matters as justice may require.

2. *Aggravating Factors*. Typical aggravating factors include, but are not limited to, the following:

- (a) Willfulness;
- (b) Second or subsequent offense (but see the appendix to 31 CFR part 515 for certain Cuba travel-related violations);
- (c) Apparent disregard of prior notice from U.S. government concerning transactions at issue;
- (d) No remedial measure taken after notice or discovery;
- (e) Deliberate effort to hide or conceal the violation;
- (f) Extraordinary adverse economic sanctions impact;
- (g) Lack of compliance program at the time of the violation;
- (h) Familiarity with economic sanctions programs.

3. *Voluntary Disclosure*. When apparent violations are voluntarily disclosed by the actor to OFAC, the proposed penalty generally will be mitigated at least 50% from the amount that would otherwise be proposed under these Guidelines. A disclosure to OFAC is considered to be a voluntary disclosure where OFAC is notified of possible sanctions violations. Notification to OFAC may not be considered to be a voluntary disclosure if OFAC previously received information concerning the transactions from another source, including but not limited to another regulatory or law enforcement agency or another person's blocking or funds-transfer rejection report. Responding to an administrative subpoena or other inquiry from OFAC does not constitute a voluntary disclosure. Similarly, the submission of a license application does not constitute a voluntary disclosure unless it is also accompanied by a separate disclosure.

4. *First Offense*. Proposed penalties for apparent violations that constitute a first offense generally will be mitigated at least 25% in the penalty notice, unless aggravating factors are also present. Significant exceptions to this rule include apparent violations involving willful misconduct or gross negligence and those involving certain travel-related transactions described in the appendix to 31 CFR part 515 (where the proposed penalties already distinguish between first and subsequent offenses). In determining whether an apparent violation constitutes a first or subsequent offense, a distinction generally will be made