

between prior OFAC penalty cases ending in an assessed civil monetary penalty and those settled prior to a finding of violation. Another factor considered is whether the OFAC regulations previously violated were similar to those of the new case under review. For example, all apparent reporting violations will be considered to be similar, as will those involving a failure to block financial transfers or failure to respond to a request for information. An apparent violation generally will be considered a first offense if no similar violation has been found within the past five years.

C. Settlement Generally

Settlements of penalty cases may be proposed at any stage of a civil penalty proceeding prior to the issuance of a final agency determination of violation. A settlement does not constitute a final agency determination that a violation has occurred.

D. Settlement Prior to Issuance of Prepenalty Notice

1. *Initiating settlement.* OFAC may settle a matter without initiating a formal action through the issuance of a prepenalty notice. A party may request an informal settlement with OFAC prior to OFAC's issuance of a prepenalty notice. To do so, the party may request in writing that OFAC withhold issuance of a prepenalty notice for a period of up to 60 days for the exclusive purpose of reaching settlement. If the applicable statute of limitations is close to expiring, OFAC may condition the entry into or continuation of informal settlement negotiations on an agreement to execute a waiver with respect to the statute of limitations. If such a waiver is not executed, OFAC may decide that there should be no informal settlement period and issue a prepenalty notice.

2. *Settlement process.* In informal settlement negotiations prior to the issuance of a prepenalty notice, OFAC will inform the party of the apparent violations OFAC intends to cite in the prepenalty notice, as well as the penalty amount to be proposed therein.

Whenever possible, settlements will be negotiated in accordance with the mitigation provisions set forth above; however, each settlement will be viewed on its own merits, as factors present in one case may not appear in another.

3. *Settlements of multiple violations.* A settlement initiated for one apparent violation may also involve a comprehensive or global settlement of multiple apparent violations covered by other prepenalty notices, apparent violations for which a prepenalty has

yet to be issued by OFAC, or previously unknown violations reported to OFAC during the penalty proceeding.

E. Settlement Following Issuance of Prepenalty Notice

1. *Initiating settlement.* After a prepenalty notice is issued and served, OFAC may settle the matter through informal negotiations at OFAC's initiation, at the request of the respondent or its authorized representative, or through the respondent's payment of the proposed penalty in full.

2. *Settlement process.* Settlements generally will be negotiated in accordance with the mitigation provisions set forth above. If a matter is settled at the prepenalty stage, that is, before a final penalty notice is issued, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on the allegations contained in the prepenalty notice, and OFAC will not make a final determination as to whether a violation occurred. In the event no settlement is reached, the period specified for written response remains in effect unless additional time is granted by OFAC.

3. *Settlements of multiple violations.* As in the case of settlements prior to the issuance of a prepenalty notice, settlements following the issuance of a prepenalty notice may be comprehensive (global) settlements of multiple apparent violations covered by other prepenalty notices or for which a prepenalty notice has yet to be issued.

F. Cancellation of Proceedings

In the absence of a settlement, OFAC generally will not cancel a penalty proposed in a prepenalty notice absent evidence substantiating that the party named in the prepenalty notice did not commit or is not responsible for the violation charged, or unless such cancellation is otherwise appropriate for policy or legal reasons.

G. Assessment and Imposition of Final Penalty

1. *Consideration of response to prepenalty notice.* Prior to OFAC's issuance of a penalty notice, the cited party may respond to the allegations in OFAC's prepenalty notice. If a response is submitted, OFAC will carefully and fully consider all explanations contained in the response and weigh all information presented in making a final determination whether a violation has occurred, whether a penalty notice should be issued and, if so, in what amount the penalty should be assessed. If the response discloses new apparent

economic sanctions violations, a revised prepenalty notice may be issued citing the newly-disclosed apparent violations. When possible criminal conduct is revealed in the response, the case may be referred for further investigation.

2. *Issuance of penalty notice.* Absent a settlement of allegations, OFAC generally will issue a penalty notice in accordance with the procedures set forth in the applicable regulations. OFAC will consider all information in the administrative record before assessing the final penalty amount. The penalty generally will be assessed in an amount that reflects the mitigating and aggravating factors present in the record, determined in accordance with the mitigation provisions set forth above.

3. *Penalty assessment in absence of response to prepenalty notice.* Where OFAC receives no response to a prepenalty notice within the time prescribed in the applicable regulations, a penalty notice generally will be issued, taking into account the mitigating and/or aggravating factors present in the record. If there are no mitigating factors present in the record, or the record contains a preponderance of aggravating factors, the proposed prepenalty amount generally will be assessed as the final penalty.

4. *Referral to Financial Management Division.* The imposition of a penalty pursuant to a penalty notice creates a debt due the U.S. Government. OFAC advises Treasury's Financial Management Division ("FMD") upon the imposition of a penalty. FMD will take follow-up action to collect the penalty assessed if it is not paid within the prescribed time period set forth in the penalty notice.

5. *Final agency action and judicial review.* The imposition of a penalty pursuant to a penalty notice constitutes final agency action, which is subject to judicial review.

H. Disposition of Funds and Merchandise

1. *Seizure, forfeiture, and release generally.* Where import or export violations of economic sanctions occur, the U.S. Customs Service may have seized the goods involved pursuant to separate statutory authorities. OFAC usually coordinates with the U.S. Customs Service regarding the disposition of seized goods for purposes of resolving the penalty action. Where OFAC lacks civil forfeiture authority, OFAC may provide a recommendation to the U.S. Customs Service regarding disposition of seized goods. The forfeiture of the goods may be considered in addition to or in lieu of monetary penalties in determining the