

On May 30, 2003, the Treasury Department issued final rules that require certain financial institutions to establish procedures to verify the identity of new account holders. The regulations are part of the Administration's continuing work to implement the USA Patriot Act and prevent money laundering, terrorist financing, identity theft, and other forms of fraud. This article summarizes how title companies can comply with the new regulations.

Over the past year the Office of Foreign Assets Control (OFAC) of the Department of the Treasury has received hundreds of phone calls from real estate industry professionals who are unsure how to proceed with closings, refinancings, and other transactions involving parties with names similar to designated sanctions targets. The economic sanctions programs administered by OFAC are sometimes a source of confusion for members of the real estate settlement and title insurance industry.

Industry professionals are right to be concerned about compliance with U.S. economic sanctions as these programs are an important pillar of U.S. foreign policy and apply to all U.S. persons and businesses. Penalties for noncompliance can be quite severe. Fortunately, developing an appropriate compliance program is a straightforward matter and can be accomplished with a minimum expenditure of resources.

What OFAC Does

The most important part of an effective compliance program is

knowledge—there is no substitute for a basic understanding of OFAC, its mission, and the scope of the regulations it administers. OFAC's mandate is to enforce economic and trade sanctions against foreign states, terrorists, and international narcotics traffickers in addition to other specially designated targets. OFAC acts under presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze foreign assets under U.S. jurisdiction. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with other governments. The primary statutory authorities for OFAC's regulations are the International Emergency Economic Powers Act, the Trading With the Enemy Act, the Anti-Terrorism and Effective Death Penalty Act, the United Nations Participation Act, and the Foreign Narcotics Kingpin Designation Act.

OFAC is not limited to operating under the authority of the USA PATRIOT Act, nor is it primarily responsible for enforcing its provisions. The International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, the section of the USA PATRIOT Act with which OFAC is most commonly associated, is primarily aimed at enhancing the ability of the U.S. to detect and prosecute international money laundering as a means of preventing terrorist financing. While

OFAC does investigate money laundering schemes involving designated sanctions targets, it is not involved in general anti-money laundering or antifraud activities absent a property interest of a sanctioned individual or entity. Questions about anti-money laundering requirements under the USA PATRIOT Act should be addressed to the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN). FinCEN can be reached at 1-800-949-2732 or via <http://www.fincen.gov>.

The administration of antiterrorist programs is only one of OFAC's many responsibilities. OFAC administers a broad array of sanctions targeting foreign countries such as Cuba, Iran, Libya, and Sudan as well as specially designated nonstate actors such as international narcotics traffickers, persons who threaten international stabilization efforts in the Western Balkans, certain designated Iraqi individuals and entities and certain members of the Government of Zimbabwe—in addition to terrorists. These individuals, groups, and entities subject to economic sanctions are collectively known as Specially Designated Nationals or SDNs.

Real Estate Industry Compliance

The sanctions programs targeting SDNs are of great importance to members of the real estate industry. U.S. persons, including real estate settlement agents and title insurers,

are prohibited from engaging in any transactions with SDNs and are required to freeze SDN assets.

To ensure compliance with OFAC's regulations, many industry professionals are scanning customers against the SDN list (found at <http://www.treas.gov/ofac>) on a regular basis. ALTA has a link to the SDN list on its home page under the "Resources" section. The largest volume of new calls to the OFAC Compliance Hotline in recent months has come from the real estate industry. The majority of these calls are from settlement and title agents unsure of how to proceed when their compliance software indicates a "match" against the SDN list. Before a firm contacts the Hotline, OFAC recommends that it consider the following questions as part of a basic due diligence program:

1. Is your software or data service provider only screening against the

SDN list or list of targeted countries? (Many providers screen against additional lists that are not enforced by OFAC. Some of these non-OFAC matches may not be of concern to the real estate industry. Contact your data service provider or counsel for guidance on how to proceed with non-OFAC matches.)

2. Evaluate the quality of your match.
 - a. Do the names match in full, or do they simply entail a partial match of very common names?
 - b. Is the name of an individual matching against the name of a vessel, company, or other non-individual?
3. How does the address/biographical information of the party with whom you are dealing compare to the individual or entity on the SDN list? (You may need to obtain additional information from the parties involved to be

How To Comply

1. Check the Specially Designated Nationals list for name matches.
2. Match address and bio information.
3. If you believe you have a valid match or the name has a number of similarities with one on the list, contact OFAC's Compliance Program Division at 1-800-540-6322 for further guidance.
4. Don't hold up the closing.

able to make these comparisons.)

If the address and/or biographical information matches but there is some variation in name spelling, you should contact OFAC as foreign names may be transliterated into English in several different ways.

4. If there are a number of similarities or if you have reason to believe you have a valid match, please contact OFAC's Compliance

Programs Division at 1-800-540-6322 for further guidance.

Even a cursory glance at the SDN list will reveal that many of the approximately 3,000 SDNs currently designated have very common names. Conducting the basic due diligence outlined above will often enable a settlement agent to rule out many software-generated OFAC matches as “false hits” against common names. Remember, OFAC sanctions are intended to target specifically designated individuals rather than all individuals that happen to share a common name. A sound due diligence program will therefore involve the comparison of all relevant information—including addresses, dates of birth, and identification numbers. (Note: Providing a service to an SDN would constitute a violation of OFAC-administered sanctions regulations. In order to ensure compliance with U.S.

sanctions, real estate settlement and title insurance providers should consult the SDN list prior to providing any service that would benefit an SDN.)

Because it is not an industry regulator, OFAC does not mandate the adoption of corporate due diligence policies and procedures. Specific compliance programs must be developed internally and should be tailored to reflect a company’s exposure to potential SDN transactions. Some organizations routinely involved in the international transfer of funds, goods, or services, such as international banks and exporters, develop very comprehensive programs and even dedicate full-time staff to OFAC compliance issues. Other organizations, such as title insurers and real estate settlement agents whose focus is overwhelmingly domestic, may not encounter SDN entities as frequently. Nevertheless, it

is recommended that all U.S. companies, even those with a lower exposure to SDN transactions, develop an effective compliance program.

Compliance with the sanctions regulations administered by OFAC is an important but straightforward matter. By following the common sense due diligence guidelines outlined in this primer, settlement agents and title insurers will be more likely to stay in compliance with U.S. law without an unreasonable expenditure of resources.