OFAC
Office of Foreign Assets Control

MAR 20 1997

FAC Ref: Gen-155913

Dear Mr. McEntee:

Thank you for your letter of March 6, 1997 and for taking the time to meet with us on February 3. You have sought our guidance about the Office of Foreign Assets Control's ("OFAC's") expectations with regard to the purely domestic account-to-account Automated Clearing House ("ACH") system that involves Originating Depository Financial Institutions ("ODFIs") and Receiving Depository Financial Institutions ("RDFIs"), but does not involve any intermediary financial institutions.

We would, of course, consider ODFIs with accounts which ought be blocked or which cannot be serviced (such as Iranian accounts for which the posting of debits or credits is restricted) to be liable if they initiate ACH credits by allowing unlicensed debits to those blocked or restricted accounts. We would also expect, in those instances in which an ODFI itself aggregates or batches items for its own or its customers' accounts, that it would assure that it does not process transactions in violation of OFAC's regulations to the extent that sufficient detail is available to it regarding such transactions.

We also presume, based on our discussions with your organization on September 8, 1995, that NACHA is working toward revising its own rules to require originators of ACH payments in their contracts with ODFIs to acknowledge that the ACH system may not be used for transactions in violation of U.S. law, including the sanctions laws administered by OFAC, and that a positive statement to that effect will be included in sample "Authorization Agreements for Direct Deposits (ACH Credits)" and "Authorization Agreements for Direct Payments (ACH Debits)" disseminated by NACHA.

After addressing the above issues, the ACH system may rely on RDFIs for compliance with OFAC sanctions programs: blocking accounts and transactions on their books, allowing the posting of credit but not debit entries, and prohibiting the servicing of accounts, such as those specified in the Iranian Transactions Regulations, which (except as licensed) may have neither debit entries nor credit entries posted. We would look to RDFIs to take such actions. In domestic ACH transactions, OFAC does not intend for ODFIs to unbatch transactions which they receive batched from their customers (who have been placed on notice about their own responsibilities with regard to OFAC's regulations). However, to the extent that unbatching occurs, OFAC will treat ODFIs as responsible for screening as though they had done the initial batching.

International ("cross-border") ACH payments involving "Gateway" institutions and accounts not subject to U.S./OFAC jurisdiction are not covered by the understanding expressed in this letter. The nature of these transactions does not provide the compliance safeguards present in wholly domestic ACH transactions. We presume that NACHA is in the process of developing criteria to effectively identify and segregate cross-border ACH transactions from domestic transactions and that NACHA members will separately and effectively address the issue of OFAC compliance with regard to such payments. We will continue to work with you in that regard.

We ought to mention that there may be times when OFAC finds itself compelled to contact an ODFI regarding the interdiction of a particular transaction it has reason to believe is related to terrorism or narcotics trafficking under the International Emergency Economic Powers Act or the Antiterrorism and Effective Death Penalty Act. In those instances, we would expect an ODFI to stop such a transaction based on our notice and could hold the ODFI liable for not stopping the transaction following our notice.

Again, thank you for sharing your concerns. We are looking forward to working with you and your staff in addressing OFAC enforcement and compliance issues involving the Internet and cross-border payments.

Sincerely,

R. Richard Newcomb
Director
Office of Foreign Assets Control

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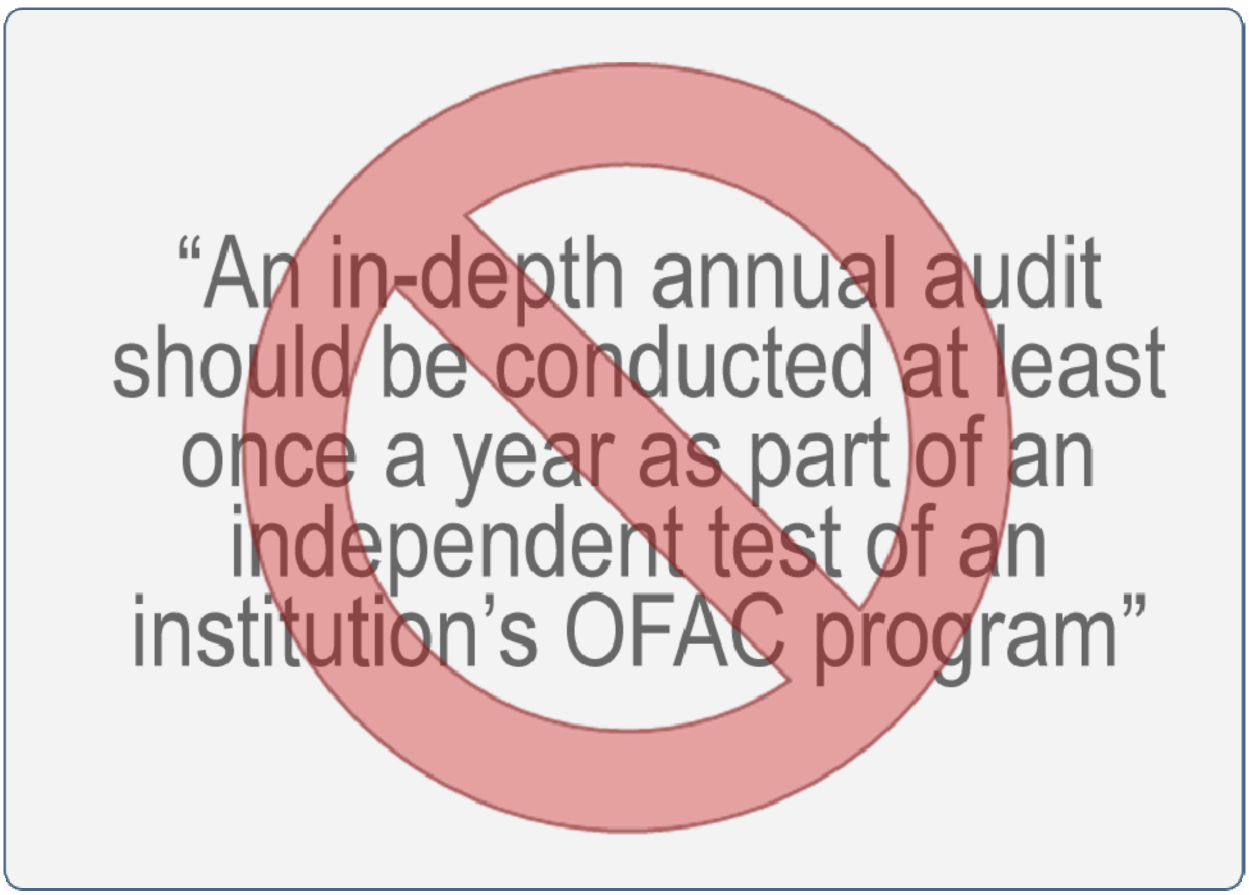
Unbatching On-Us Domestic ACH Transactions

An ODFI that unbatches a file received from an Originator in order to strip out on-us transactions is responsible for screening those on-us transactions for compliance with OFAC regulations since it is acting as both the ODFI and RDFI.

The remainder of the transactions contained in the file may be processed in keeping with the guidance OFAC provided in 1997 concerning the responsibilities of the various parties in domestic ACH transactions.

Yearly Audit Requirement in 2005 FFIEC Manual removed from 2006 update



Risk Matrices for Evaluating OFAC Compliance Programs

The following matrices can be used by banking and other financial institutions to evaluate their compliance programs*

* Additional factors to be considered by banking institutions in assessing compliance programs in addition to Appendix M of the FFIEC *Bank Secrecy Act Anti-Money Laundering Examination Manual*.

Low	Moderate	High
Stable, well-known customer base in a localized environment.	Customer base changing due to branching, merger or acquisition in the domestic market.	A large, fluctuating client base in an international environment.
Few high-risk customers; these may include nonresident aliens, foreign customers (including accounts with U.S. powers of attorney) and foreign commercial customers.	A moderate number of high-risk customers.	A large number of high-risk customers.
No overseas branches and no correspondent accounts with foreign banks.	Overseas branches or correspondent accounts with foreign banks.	Overseas branches or multiple correspondent accounts with foreign banks.
No electronic banking (e-banking) services offered, or products available are purely informational or non-transactional.	The bank offers limited e-banking products and services.	The bank offers a wide array of e-banking products and services (i.e., account transfers, e-bill payment, or accounts opened via the Internet).
Limited number of funds transfers for customers and non-customers, limited third-party transactions, and no international funds transfers.	A moderate number of funds transfers, mostly for customers. Possibly, a few international funds transfers from personal or business accounts.	A high number of customer and non-customer funds transfers, including international funds transfers.
No other types of international transactions, such as trade finance, cross-border ACH, and management of sovereign debt.	Limited other types of international transactions.	A high number of other types of international transactions.
No history of OFAC actions. No evidence of apparent violation or circumstances that might lead to a violation.	A small number of recent actions (i.e., actions within the last five years) by OFAC, including notice letters, or civil money penalties, with evidence that the bank addressed the issues and is not at risk of similar violations in the future.	Multiple recent actions by OFAC, where the bank has not addressed the issues, thus leading to an increased risk of the bank undertaking similar violations in the future.

Low	Moderate	High
Management has fully assessed the bank's level of risk based on its customer base and product lines. This understanding of risk and strong commitment to OFAC compliance is satisfactorily communicated throughout the organization.	Management exhibits a reasonable understanding of the key aspects of OFAC compliance and its commitment is generally clear and satisfactorily communicated throughout the organization, but it may lack a program appropriately tailored to risk.	Management does not understand, or has chosen to ignore, key aspects of OFAC compliance risk. The importance of compliance is not emphasized or communicated throughout the organization.
The board of directors, or board committee, has approved an OFAC compliance program that includes policies, procedures, controls, and information systems that are adequate, and consistent with the bank's OFAC risk profile.	The board has approved an OFAC compliance program that includes most of the appropriate policies, procedures, controls, and information systems necessary to ensure compliance, but some weaknesses are noted.	The board has not approved an OFAC compliance program, or policies, procedures, controls, and information systems are significantly deficient.
Staffing levels appear adequate to properly execute the OFAC compliance program.	Staffing levels appear generally adequate, but some deficiencies are noted.	Management has failed to provide appropriate staffing levels to handle workload.
Authority and accountability for OFAC compliance are clearly defined and enforced, including the designation of a qualified OFAC officer.	Authority and accountability are defined, but some refinements are needed. A qualified OFAC officer has been designated.	Authority and accountability for compliance have not been clearly established. No OFAC compliance officer, or an unqualified one, has been appointed. The role of the OFAC officer is unclear.
Training is appropriate and effective based on the bank's risk profile, covers applicable personnel, and provides necessary up-to-date information and resources to ensure compliance.	Training is conducted and management provides adequate resources given the risk profile of the organization; however, some areas are not covered within the training program.	Training is sporadic and does not cover important regulatory and risk areas.
Management has fully assessed the bank's level of risk based on its customer base and product lines. This understanding of risk and strong commitment to OFAC compliance is satisfactorily communicated throughout the organization.	Management exhibits a reasonable understanding of the key aspects of OFAC compliance and its commitment is generally clear and satisfactorily communicated throughout the organization, but it may lack a program appropriately tailored to risk.	Management does not understand, or has chosen to ignore, key aspects of OFAC compliance risk. The importance of compliance is not emphasized or communicated throughout the organization.
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Guide

Guidance for Sound Banking Compliance

How do you know your compliance program is sound?

Simple Steps for Sound Compliance

A. Identify High Risk Business Areas

A fundamental element of a sound OFAC compliance program rests on a banking institution's assessment of its specific product lines and identification of the high-risk areas for OFAC transactions. As OFAC sanctions reach into virtually all types of commercial and banking transactions, no single area will likely pass review without consideration of some type of OFAC compliance measure. Relevant areas to consider in a risk assessment include, but are not limited to, the following: retail operations, loans and other extensions of credit (open and closed-ended; on and off balance sheet, including letters of credit), funds transfers, trust, private and correspondent banking, international, foreign offices, over-the-counter derivatives, internet banking, safe deposit, payable through accounts, money service businesses, and merchant credit card processing.

B. Internal Controls

An effective OFAC compliance program should include internal controls for identifying suspect accounts and transactions and reporting to OFAC. Internal controls should include the following elements:

1. Flag and Review Suspect Transactions and Accounts

A banking institution's policies and procedures should address how it will flag and review transactions and accounts for possible OFAC violations, whether conducted manually, through interdiction software, or a combination of both methods. For screening purposes, a banking institution should clearly define procedures for comparing names provided on the OFAC list with the names in its files or on the transaction and for flagging transactions or accounts involving sanctioned countries. In high-risk and high-volume areas in particular, a banking institution's interdiction filter should be able to flag close name derivations for review. New accounts should be compared with the OFAC lists prior to allowing transactions. Established accounts, once scanned, should be compared regularly against OFAC updates.

2. Update Your Compliance Program

A banking institution's compliance program should also include procedures for maintaining current lists of blocked countries, entities, and individuals and for disseminating such information throughout the institution's domestic operations and its offshore offices, branches and, for purposes of the sanctions programs under the Trading with the Enemy Act, foreign subsidiaries.

3. Reporting

A compliance program should also include procedures for handling transactions that are validly blocked or rejected under the various sanctions programs. These procedures should cover the reporting of blocked and rejected items to OFAC as provided in § 501.603 of this Part and the annual report of blocked property required by § 501.604 of this Part.

4. Manage Your Blocked Accounts

An audit trail should be maintained in order to reconcile all blocked funds. A banking institution is responsible for tracking the amount of blocked funds, the ownership of those funds, interest paid on those funds, and the release of blocked funds pursuant to license.

5. Maintain License Information

Sound compliance procedures dictate that a banking institution maintain copies of customers' OFAC specific licenses on file. This will allow a banking institution to verify whether a customer is initiating a legal transaction. If it is unclear whether a particular transaction is authorized by a license, a banking institution should confirm this with OFAC. Maintaining copies of licenses will also be useful if another banking institution in the payment chain requests verification of a license's validity. In the case of a transaction performed under general license (or, in some cases, a specific license), it is sound compliance for a banking institution to obtain a statement from the licensee that the transaction is in accordance with the terms of the license, assuming the banking, institution does not know or have reason to know that the statement is false.

C. Internal Testing and Audits

Except for a banking institution with a very low OFAC risk profile, a banking institution should have a periodic test of its OFAC program performed by its internal audit department or by outside auditors, consultants, or other qualified independent parties. The frequency of the independent test should be consistent with the institution's OFAC risk profile; however, an in-depth audit of each department in the banking institution might reasonably be conducted at least once a year. The person(s) responsible for testing should conduct an objective, comprehensive evaluation of OFAC policies and procedures. The audit scope should be comprehensive and sufficient to assess OFAC compliance risks across the spectrum of all the institution's activities. If violations are discovered, they should be promptly reported to both OFAC and the banking institution's banking regulator.

D. Designate Responsible Individuals

It is sound compliance procedure for an institution to designate a qualified individual or individuals to be responsible for the day-today compliance of its OFAC program, including at least one individual responsible for the oversight of blocked funds. This individual or these individuals should be fully knowledgeable about OFAC statutes, regulations, and relevant Executive orders.

E. Train Your People

A banking institution should provide adequate training for all appropriate employees. The scope and frequency of the training should be consistent with the OFAC risk profile and the particular employee's responsibilities.