

ARC-SERV's OFAC Compliance Series

(A five-part series)

Part III: Tips and Tricks for a Successful OFAC Risk Assessment

OFAC risk assessments are the strength of any well-built OFAC compliance program. An efficient and effective program cannot be developed without knowing where the risks are hiding. Many businesses, both financial and non-financial institutions, are conducting assessments to uncover risks, design strong OFAC compliance programs, and mitigate their exposure.

The Federal Financial Institutions Examination Counsel's BSA/AML Examination Manual says that examiners may utilize a risk-based approach. However, the enforcement standards of the Office of Foreign Assets Control remain a strict liability for violations, and executive orders are not risk-based. That being said, your OFAC program should be tempered by your organization's risk appetite and your available resources to avoid both regulatory and OFAC violations. Your OFAC program's policies and procedures must also match or exceed the risk. Your OFAC Risk Assessment is what will help you drive your OFAC program and allow the examiners to identify the strengths and weaknesses of your program.

This article will provide valuable information to help enhance and document your OFAC risk.

When you are preparing to conduct or update your risk assessment, you will need to consider that:

- OFAC sanctions can reach into virtually every area of your organization, and a thorough risk assessment will need to analyze the OFAC risk associated with every aspect of the organization.
- A thorough assessment provides the detailed analysis that's needed to set up an efficient and strong OFAC monitoring program.
- A sound risk assessment can protect your program from an inexperienced regulator.

Another question to ask yourself, "is your organization identifying the potential impact of change risk within your OFAC risk assessment?"

How effective are your controls?

In your assessment of existing controls, your mission is to appraise the effectiveness of the controls at mitigating the inherent risk. At a minimum, the results of the organization's most recent regulatory examination, audit/independent testing results, and compliance testing results should be measured. Especially since each of these sources will have already come to a conclusion of the OFAC inherent risk from their own independent review. Previous findings may be a sure sign that there are weaknesses in controls. You need to endeavor to remain mindful

of what potential deficiencies or inadequacies have previously been identified by independent examinations, so you can avoid regulatory penalties.

Information Gathering

Before you actually start drafting your OFAC risk assessment, you need to prep by gathering information together. Collecting information for the assessment will be an ongoing process throughout the year.

- Review last year's risk assessment and review all the external risk factors.
- Review the FFIEC exam manual OFAC section to see if any bells go off for any new risk factors that occurred since the last update.
- Review new sanction programs and/or, changes to existing sanction programs on the OFAC website.
- Conduct a review of recent OFAC enforcement actions.

Enforcement Actions

A list of recent OFAC enforcement actions can be found on the Treasury Department's website. A Review of enforcement actions and changes to enforcement guidance standards can provide valuable insight. Analyzing enforcement actions can also provide insight into OFAC's priorities and expectations, and help identify best practices that you can incorporate into your processes and procedures in order to prevent enforcement actions against your organization.

The Treasury Department website will also tell you what they did wrong to give them the penalty. For example⁽¹⁾:

- "Bank acted with reckless disregard and failed to exercise a minimal degree of caution or care with regard to the conduct that led to the violations."
- "Bank had actual knowledge and/or reason to know of the conduct at issue, and various supervisory and managerial personnel from multiple business lines also knew."
- "The violations resulted in significant harm to multiple economic sanctions programs and provided dozens of companies' subject to U.S. economic sanctions access to the U.S. financial system."
- "Bank's compliance program was inadequate to manage the risk and suffered from multiple systemic deficiencies, including failure to respond to warning signs in a timely and efficient manner."

For many of these enforcement actions, the penalties and fines could have been much worse, so it is also valuable to read up on what OFAC found as mitigating factors when calculating the overall fines. In one example, they said: ⁽¹⁾

- "Bank provided OFAC with substantial cooperation throughout the course of its investigation." (This reminds us that cooperation always pays off.)
- "Bank has undertaken remedial efforts in order to curtail and inhibit similar violations from occurring in the future." (In this instance, they were able to show OFAC that they have put controls in place.)

- “Bank had not received a penalty notice or Finding of Violation in the five years preceding.” (This is evidence that a good track record will also help.)

What’s in the Past

Consider previous exams and audits.

- What did they say?
- Were there any concerns?
- Have they been addressed?

Review all your policies and procedures.

- Are any changes needed?
- Are there any procedures that need to be strengthened (especially in light of any remarks from examiners or auditors)?

What’s New

- Has your organization created any new products and services?
- Have you entered into any new markets?
 - An acquisition or merger may bring new risks that have to be considered.
- Do you have any new processing, core, or application systems that are scanned or should be scanned for OFAC?
- Do you have new OFAC scanning tools or have current tools with major changes?

Are you Missing Anything Important?

It’s important when evaluating your controls to remember what’s covered by OFAC Country Sanctions Programs and IS *NOT* on most OFAC lists. OFAC administers a number of different sanctions programs using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals. Each Country Sanction program is unique, so it is very important to check OFAC's website regularly.

Similar to a BSA/AML risk assessment, an effective OFAC risk assessment should be a combination of numerous factors and depending upon the circumstances, certain factors may be more critical than others. The assessment should include sections on organization information, geographic risk, customer risk, and product/services risk.

Qualitative/Quantitative

When evaluating each of these sections, document details and volumes. Examiners are looking for qualitative and quantitative, and want to know that you know the facts about your business.

- What kind of enhanced due diligence is conducted?
- Remember to identify volumes and mitigation for each area.
- Graphs and charts are also a nice touch to help you quantify your information.
- Along with statistics and transaction volumes, identify existing controls and mitigation.

Documentation

In order to be organized, once you have completed an initial analysis of the organization, customer, geographic and product and services risk, the next step is to create an OFAC Risk Mitigation chart that lists inherent risk, volumes of accounts, customers or activity, any change factors, mitigation and controls – along with any tools used for mitigation and the overall residual risk.

It will also be important to document all OFAC Program Decisions. There may be areas where the Bank has made a risk-based decision not to OFAC a certain area. Those decisions should be documented clearly in addition to the reason for the decision. However, this decision should only be made for low-risk areas and not be made on higher risk transactions or activities.

Conclusion

Once your organization has identified its areas with higher OFAC risk, it can now develop appropriate policies, procedures, and processes to address any associated risks. Organizations are encouraged to periodically reassess their risks based on the risk at their organization. When risk is appropriately identified, it can be promptly mitigated, and you can protect your organization from being abused by criminals. It is essential that you know your organization better than anyone else, and a well-developed risk assessment can empower you with the tools to sustain the integrity of your organization.

Our next installment in the OFAC Compliance Series will be OFAC Operational Controls. Stay tuned and [follow us](#) to get regular updates.

Arc-Serv can help you build both your OFAC Risk Assessment and the Risk Assessment Methodology. [Contact us](#) to learn more.

Footnotes:

(1) <https://www.treasury.gov/resource-center/sanctions/CivPen/Pages/civpen-index2.aspx>