Background

The Office of Foreign Assets Control (OFAC) is an agency of the United States Department of the Treasury. OFAC uses the blocking of assets and trade restrictions to accomplish foreign policy and national security goals, targeting activities related to the proliferation of weapons of mass destruction and other threats to the national security, foreign policy or the U.S. economy. OFAC acts under legislative authority, as well as the emergency powers of the President of the United States, to freeze assets under U.S. jurisdiction and impose controls on transactions.

In the insurance context, OFAC prevents companies from providing the benefits of insurance or reinsurance to certain nations (OFAC disallows any transaction between U.S. individuals and countries such as Iran, Cuba, Sudan, Burma and others), or to organizations, companies, vessels and individuals that appear on a list known as the "Specially Designated Nationals and Blocked Persons List" (the "SDN List"). The SDN has thousands of entries and is continually updated. OFAC runs a number of different programs, with differing restrictions and penalties for each. Certain programs prohibit companies from taking actions which involve the facilitation of insurance or reinsurance programs, such as the provision of financial guaranties or approval mechanisms. OFAC also provides that any monies in which an entity that appears on the OFAC target list has an interest must be “blocked.” For example, premiums that involve a targeted entity or individual must be placed in an interest-bearing account in a U.S. bank and claims cannot be paid. Any exceptions are made only where an insurer obtains a license from OFAC. Blocked policies and policy payments must be reported within 10 days to OFAC's Compliance Programs Division.

OFAC has demonstrated an increasing interest in the insurance industry, as shown by recent sanctions levied against insurers for the violation of OFAC provisions. The OFAC website provides compliance guidance for insurers and reinsurers. Further, OFAC has appointed an advisor from the insurance industry specifically to assist on compliance issues for insurers and reinsurers.

OFAC’s impact on the insurance industry is broad. Insurers, agents, brokers, reinsurers, reinsurance intermediaries and third-party administrators, the overseas branches of US companies (but not overseas subsidiaries except in the case of the Cuba and North Korea OFAC programs) all are subject to OFAC restrictions. The penalties apply to permanent residents and citizens of the United States, regardless of where they are located or who their employers are, and non-U.S. individuals may be prosecuted for conspiring with a U.S. citizen.

Compliance

OFAC enforces its rules through costly penalties. To avoid those sanctions, a company should take the obvious step of not issuing a policy that involves an individual or entity on the SDN. Other areas of potential violation are less clear, such as when a claim involves an OFAC target.
For example, a claim made under a policy that was issued to an entity that has no explicitly stated connection to a sanctioned country, but under which full geographic coverage is provided to a hotel chain with hotels located in Iran, would present OFAC problems for the issuing insurer. There is no exception to the OFAC requirements for unknowing violations, although the assessed penalties for an unknowing violation typically would be lower.

To insure compliance with OFAC requirements, insurers should include clear exclusions in policies that provide worldwide coverage. For example, an insurer could include language stating that whenever certain coverage under the policy would violate U.S. export controls or trade sanctions, that coverage is void. Such language would be especially important in treaty reinsurance because the reinsurer is not in control of the selection of specific risks to be ceded. A facultative reinsurance policy should receive the same full examination and consideration as a direct insurance policy, and facultative certificates should also have an OFAC exclusion.

**Exemptions and Compliance**

An insurer may seek exemptions from OFAC sanctions by applying to OFAC for a general or specific license, because OFAC has discretion to grant licenses to allow a transaction to go forward. For example, an insurer may make the case that it is at a competitive disadvantage because non-U.S. competitors are not subject to the same regulations. The European Union, however, has its own growing sanctions program, some of which is based on the resolutions of the United Nations Security Council. OFAC will also take into consideration a possible exception where a policy covers an innocent third-party beneficiary who was injured, even though the policy was issued to an SDN.

Every insurer is incentivized to establish a compliance program, including the appointment of a compliance officer charged with knowing OFAC regulations and how they affect the company’s business. Creating a written policy along with employee training, compliance audits and remediation of potential or actual violations is important to demonstrate commitment to OFAC’s aims, and may reduce the severity of any penalty imposed on the company.

**References:**

**Compliance Assistance:** OFAC's Compliance Programs Division, 202/622-2490, or OFAC’s Licensing Division at 202/622-2480, or write to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220.

**Website:** [http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx](http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx)

All of OFAC's program "brochures," as well as SDN information, are available free in downloadable camera-ready Adobe Acrobat "*.PDF" format over the Treasury Department's World Wide Web Server. The Page also contains a self-extracting ASCII file of the SDN list in DOS, delimited, fixed-field, and country-specific versions, and access to all OFAC-related Executive Orders, U.N. Resolutions, statutes, regulations, and the Code of Federal Regulations
as well as to brochures in ASCII format. All of OFAC's "forms," including its Annual Report on Blocked Property, Cuban Remittance Affidavit, and license application are electronically available on the site.