

Professional Perspective

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Submitting a Voluntary Self-Disclosure to OFAC

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If a company or individual believes it has violated U.S. Treasury sanctions laws and the Treasury Office of Foreign Assets Control is unaware of this violation, proactively and voluntarily disclosing the potential wrongdoing can substantially reduce penalties. A system of disclosures, known as voluntary self-disclosures (VSDs) or prior disclosures (PDs), exists for a wide array of federal agencies.

Treasury, OFAC, and Sanctions

The Treasury Department [Office of Foreign Assets Control](#) (OFAC) “administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.”

Among many functions, OFAC maintains a [set of lists](#) which contain individuals and entities with whom U.S. businesses are prohibited with transacting. Given rapid changes in U.S. foreign policy and the emergence of new threats, sanctions laws routinely change, and the prohibited lists are frequently updated. Therefore, it is essential for practitioners to keep up to date, daily, on changes to U.S. sanctions laws. A failure to properly adhere to U.S. sanctions laws carries potential civil, criminal, and administrative penalties.

Voluntary Self-Disclosure Process

Details on OFAC's VSD program are found in the Economic Sanctions Enforcement Guidelines, [31 CFR Appendix A to Part 501, \(I\)](#). The regulations define a VSD as a “self-initiated notification to OFAC of an apparent violation by a Subject Person that has committed, or otherwise participated in, an apparent violation of a statute, Executive Order, or regulation administered or enforced by OFAC” prior to OFAC or any federal, state, or local government agency discovering the violation.

A notification to OFAC of an apparent violation is not considered a VSD if:

- A third party is required to and does notify OFAC of the apparent violation or a substantially similar apparent violation because a transaction was blocked or rejected by that third party
- The disclosure includes false or misleading information
- The disclosure is materially incomplete
- The disclosure is not self-initiated
- The disclosure is made by an individual on behalf of an entity where the individual does not have authorization to do so

What Should You Include in a VSD?

OFAC considers seven general factors when assessing a VSD. A well-written VSD will address each of these factors:

- Was there willful or reckless violation of the law?
- Was the subject person aware of the conduct at issue?
- Were there harms to sanctions programs objectives?
- Subject person's individual characteristics such as commercial sophistication, volume of transactions, and sanctions history
- The existence/effectiveness of compliance programs

- Corrective actions taken place
- Cooperation with OFAC

Practitioner Tips: Like most VSDs and PDs in federal agencies, OFAC accepts submissions in the form of an initial notification followed by a supplemental narrative. The initial notification should generally be submitted as quickly as possible, especially if there is a concern that a financial institution may report before a subject person. Failing to submit an initial notification before the financial institutions' OFAC notification can result in the mitigation benefits of the VSD becoming moot.

In the initial notification, practitioners can ask OFAC for additional time to submit a full supplementary narrative complete with exhibits and transaction details. OFAC VSDs are generally assigned to a single enforcement officer who has the authority to grant additional time for a supplemental narrative. Generally, OFAC is amenable to granting a period of 90 days after the initial notification to provide the supplemental narrative.

Submission Methodology

Generally, OFAC requires physical submissions of initial notifications. However, given the ongoing Covid-19 pandemic, OFAC permits electronic submissions to OFACDisclosures@Treasury.gov.

After submitting the initial notification, OFAC will assign the matter to an enforcement officer. The supplemental narrative can generally be submitted directly to the enforcement officer. This supplemental narrative should be submitted timely within the deadline provided by the enforcement officer.

Practitioner Tips: A well-written initial notification usually comprises a letter to OFAC. The letter generally describes the name and contact information of the disclosing party, a brief description of the suspected violations, a description of the general nature, circumstances, and extent of the violations, and a request for a certain amount of time to submit a supplemental narrative.

Meanwhile, a complete supplemental narrative usually comprises a letter to OFAC with enclosed exhibits that provide further information on the suspected violations. The supplemental narrative should include information such as: factual background, an analysis of how the transactions at issue may have violated sanctions laws, and a request for mitigated penalties.

OFAC Responses

OFAC responds to a VSD submission in the following ways:

- No action
- Request for additional information
- Cautionary letter
- Finding of a violation
- Civil monetary penalty
- Criminal referral
- Other administrative actions such as cease and desist orders, or the denial, suspension, modification, or revocation of past license authorizations

Penalty Mitigation

A properly filed VSD can potentially substantially mitigate penalties. VSDs can mitigate penalties in both egregious and non-egregious cases. A suspected violation is "egregious" if OFAC's director or deputy director analyzes a set of general factors and finds that the fact pattern meets a threshold that calls for a "strong enforcement response." The general factors evaluated by OFAC are willful or reckless violation of law, awareness of conduct at issue, harm to sanctions program objectives, and individual characteristics.

A VSD can mitigate egregious cases by up to 50% of the statutory maximum. Meanwhile, a VSD can mitigate non-egregious cases up to 50% of the transaction value, which is capped at the lesser of \$153,961 or one-half of the applicable statutory maximum per violation. The applicable statutory maximum civil penalty per violation is as follows:

- Violations of the International Emergency Economic Powers Act—greater of \$307,922 or twice the amount of the underlying transaction
- Violations of the Trading with the Enemy Act—\$90,743
- Violations of the Foreign Narcotics Kingpin Designation Act—\$1,529,992
- Antiterrorism and Effective Death Penalty Act of 1996—greater of \$81,283 or twice the amount of which a financial institution was required to retain possession or control
- Clean Diamond Trade Act—\$13,910

Please note that civil penalty amounts authorized under statute are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990. OFAC's [enforcement guidelines](#) and [base penalty matrix](#) provide further details about how substantially penalties can be mitigated because of a VSD.