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Chief of Records
Office of Foreign Assets Control
Department of the Treasury
1500 Pennsylvania Avenue
Washington, DC 20220
ATTN: Chief of Records

Ladies and Gentlemen:

The American Bankers Association appreciates this opportunity to comment on the proposed updated version of the Economic Sanctions Enforcement Guidelines from the Office of Foreign Assets Control (OFAC). The guidelines were previously not available to the public. According to the notice, the publication of these guidelines is "intended to promote the transparency of OFAC's procedures and better inform the regulated community."

ABA members continue to express confusion about how OFAC penalties are administered as well as what constitutes adequate compliance with the economic sanctions program. Publication of these guidelines will assist the industry with those continuing challenges. The Association respectfully suggests, however, that more needs to be done.¹

The ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership -- which includes community, regional and money center banks and holding companies, as well as savings associations trust companies and savings banks -- makes ABA the largest banking trade association in the country.

There are a number of issues in the January proposal that need to be addressed. To that end, the ABA strongly supports the comments of the New York Clearing House Association L.L.C. filed with OFAC. The American Bankers Association offers the following as areas in the guidelines where additional guidance is warranted.

¹ In a letter to the Treasury Department on January 24, ABA advocated, among other things, that there be "improved direction from both OFAC and the bank regulators on what is considered an acceptable OFAC compliance program as well as a reasoned analysis on the scope of these requirements." Publishing enforcement guidelines helps but the industry needs clear answers to "compliance" questions.

Section II: License Suspension and Revocation; Cautionary and Warning Letters

According to the proposed rule, OFAC may suspend or revoke their authorization to engage in transactions under a "general or specific license" in at least five (5) circumstances. One of those, demonstrating "unfitness to conduct the transactions authorized by the general or specific license" fails to offer any guidance on how to avoid that situation. ABA urges OFAC to provide examples of what constitutes "unfitness."

Section B. ("Cautionary Letters") describes situations where OFAC concludes that there is insufficient evidence that "a violation appears to have occurred, but which may indicate activity that could lead to a violation in other circumstances or cause problems for future transactions." The proposal also offers that these letters will be issued "when financial institutions appear not to be exercising due diligence in assuring **compliance** with OFAC's regulations." (emphasis added)

The members of the American Bankers Association have constantly sought guidance on what OFAC considers to be adequate compliance but they are told instead to contact their functional regulator. A review of agency examination procedures from those regulators shows that OFAC lists need to be screened by institutions but little else is offered in the way of compliance guidance.

Since OFAC now plans to issue "cautionary letters" if a compliance program is lacking certain elements, can we expect assistance in this area? Will OFAC consult with those functional regulators? As we have indicated on previous occasions, clear guidance should be the goal of both OFAC and the affected industries. This goal cannot be achieved without agency involvement.

Section III: Evaluation of Mitigating and Aggravating Factors

Finally, the American Bankers Association welcomes the publishing of how OFAC evaluates both mitigating and aggravating factors when determining civil penalties. Disclosing this type of information should greatly assist the industry in preparing an institution's overall OFAC response. Consistent with our earlier comments, ABA advocates that the issues relating to "compliance" be addressed so that an institution can utilize the existence of a program as a useful mitigating factor without wondering if OFAC will acknowledge the program as such.

In addition, ABA supports the case made by the New York Clearing House that "familiarity with economic sanctions program" not be considered an "aggravating factor." The recent efforts by OFAC in publishing these guidelines, the previously released "FAQs" and the industry specific guidance on OFAC's website, belies the position that one should be penalized for knowledge about the OFAC process. Acquiring knowledge concerning a complicated and all encompassing program such as OFAC's should be encouraged. Penalizing an institution for such efforts is, at best, counterproductive.

Conclusion

The American Bankers Association continues to offer training to our members in all areas associated with the requirements of Treasury's Office of Foreign Assets Control. The industry spends millions of dollars each year in developing systems in order to respond to the myriad of lists that are distributed by OFAC. Our Association continues to receive numerous daily inquiries on the challenges faced by compliance and operations officers as they struggle to improve their various systems. OFAC has come a long way in communicating to the industry on our obligations and we appreciate the efforts undertaken thus far.

Sincerely,

A handwritten signature in black ink, appearing to read "John J. Byrne". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John J. Byrne