

## CLIENTALERT!



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For Immediate Release & Distribution:

### **The US Treasury's Office of Foreign Assets Control (OFAC) Announces New Enforcement Guidelines and New Practice of Periodic Review of Banks**

Today the U.S. Treasury's Office of Foreign Assets Control ("OFAC") published an interim final rule specifically directed at banking institutions. Significantly, the new rule announces that OFAC will engage in a new practice of conducting periodic reviews of banking institutions (regulated by FFIEC-member Supervisory Agencies) that have violated or are suspected of having violated OFAC-administered laws and regulations.

OFAC states that a banking institution's violations or apparent violations will be reviewed over a period of time that OFAC deems appropriate in light of the number and severity of violations or suspected violations. The new rule also outlines the compliance methodology and enforcement procedure that OFAC will follow in connection with its reviews of banks and the factors that it will consider in making enforcement determinations. The new rule states that prior to taking enforcement action, OFAC will review apparent violations by a particular institution over time, rather than evaluating each apparent violation independently and without context. Although OFAC is not a bank supervisory agency, and in the past it has consistently avoided being cast as such, the new rule appears to represent a de facto step in that direction and appears to commit OFAC to more proactive enforcement and oversight.

The new rule on periodic reviews of banks is part of a bundle of other OFAC enforcement-related rules, procedures and definitions specifically targeting the banking sector. A portion of the new rule elaborates upon the standards that OFAC uses to evaluate apparent violations. The new rule also provides a table entitled OFAC Risk Matrices, which can be used by banking institutions in designing and evaluating their OFAC compliance programs.

Although the new rule does not apply to entities regulated by the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC), OFAC plans to issue enforcement procedures/compliance guidance for SEC and CFTC-regulated entities similar to what it has issued for banks. The new rule also indicates that OFAC also plans to issue enforcement procedures for certain financial sector entities regulated by state government agencies but not by federal financial regulators. Non-financial sectors such as the import-export business, the computer and software industries, and e-commerce are also on OFAC's agenda for new enforcement procedures/guidelines.

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Although the new rule becomes effective within 30 days of today, OFAC is nevertheless soliciting comments on the new rule for a 60-day period. The full text of the new OFAC rule is available at: [www.treas.gov/offices/enforcement/ofac/legal/regs/fr71\\_1971.pdf](http://www.treas.gov/offices/enforcement/ofac/legal/regs/fr71_1971.pdf)

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The Eren Law Firm is a leading economic sanctions and anti-money laundering boutique firm based in Washington, DC. Mr. Eren and Mr. Pinter of The Eren Law Firm served at the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), the agency that administers US economic sanctions, for a combined 25 years. At OFAC, Mr. Pinter was OFAC's Chief of Licensing between 1987 and 2002. From 2002 to 2004, Mr. Pinter provided expert guidance on and review of the civil penalties program administered by OFAC and made determinations regarding various issues dealing with enforcement and the assessment of civil penalties.

Mr. Pinter and Mr. Eren advise banks and other financial institutions and other clients on all aspects of OFAC sanctions, the BSA and the anti-money laundering provisions of the USA Patriot Act, and on the inter-play between the two bodies of law and their detailed regulations. They also design OFAC and AML compliance programs and represent financial institution clients in applications for OFAC licenses (such as the unblocking of funds and accounts), other sanctions relief, and in sanctions and anti-money laundering enforcement actions. For further information about the Firm's expertise and capabilities, please visit The Firm at: [www.erenlaw.com](http://www.erenlaw.com).

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