



1120 Connecticut Avenue, NW
Washington, DC 20036

1-800-BANKERS
www.aba.com

*World-Class Solutions,
Leadership & Advocacy
Since 1875*

John J. Byrne
Senior Counsel and
Compliance Manager
Regulatory and Trust Affairs

Tel: (202)663-5029
Fax: (202)828-5052
jbyrne@aba.com

July 19, 2002

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 changes from the Office of Foreign Assets Control (OFAC) to the rules governing availability of certain civil penalty information under 31 CFR 501.805. According to the preamble to the proposal, "OFAC expects that making certain additional information public promotes greater awareness of its enforcement activities and encourage compliance with the economic sanctions program OFAC administers and enforces under 31 CFR chapter V." ABA respectfully suggests that the banking industry has a long history of complying with the vast array of OFAC requirements. We urge that OFAC carefully consider the potential impact of publicizing enforcement information that can be easily misinterpreted.

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.

OFAC intends to make public, at least quarterly, the following information on either the imposition of a civil monetary penalty or on informal settlements:

1. the name of the entity involved,
2. the sanctions program involved,
3. a brief description of the violation or alleged violation, and
4. the amount of the penalty imposed or the amount of the agreed settlement.

OFAC does not plan to release the names of individuals involved in civil penalty matters but may do so in the future. For now, OFAC will release such information on an aggregate basis. All of the information planned under this proposed rule will be made available on OFAC's website.

While it is clear that OFAC currently makes public certain information related to informal settlements of civil penalties requested under the Freedom of Information

Act (“FOIA”), the OFAC proposal to release additional information on a frequent basis should be reconsidered.

Banks have been complying with OFAC related requirements for some time. In fact, Treasury UnderSecretary for Enforcement, Jimmy Gurule, has emphasized how the industry responded to post 9/11 calls for providing critical information to the government:

“Soon after September 11th, the Treasury’s FinCEN (Financial Crime Enforcement Network) established a 24-hour toll-free number for banks and financial institutions to call in suspicious transactions, as opposed to waiting for the normal filing procedure. *The response from the private sector has been outstanding*, and several leads called into this number have proven valuable to law enforcement.” (emphasis supplied)

This is yet just one example of the high level of compliance that is being achieved by our industry. Publicizing OFAC penalties should not be considered “to encourage compliance” but, rather, to offer guidance on how violations occur and how to prevent their reoccurrence. Financial institutions process hundreds of thousands of transactions daily and even the most reliable OFAC programs or filters may miss a transaction. An announcement of a fine in those cases will leave the public with the mistaken impression that the entity charged has poor or negligent internal procedures. Given the tremendous level of cooperation between the banking industry and the government, OFAC should do all it can to assist the industry with its compliance responsibilities.

If the goal is to increase awareness of how the OFAC process works, ABA advocates taking this opportunity to explain to the affected industries how best to avoid penalties and to improve their compliance programs.

ABA Recommendations on Public Availability of OFAC Penalty Information

As this will be the first time that OFAC broadly disseminates penalty information, ABA urges that OFAC publish only aggregate data of Civil Monetary Penalties (CMPs) with summaries of what caused the violation. For example, the rule could be modified to having OFAC publish:

- (1) the TYPE of entity - large money center bank, community bank, credit union or corporation;
- (2) the sanctions program violated;
- (3) a description of the violation;
- (4) a description of the failure in process, procedure, policy; and
- (5) amount of the penalty.

In addition, it would be useful for OFAC to publish a table of CMP statistics segmented into ranges of institution sizes, showing (USD) penalties for different categories (various types of transactions, and various types of accounts, etc). To ensure consistency with OFAC’s plan regarding CMPs for individuals, the information would not include the name of the affected entity.

ABA also recommends that the information be joined with the “frequently asked questions” that OFAC is planning to post on their website similar to the “SAR Activity Review” that FinCEN publishes under the auspices of the Treasury’s Bank Secrecy Act Advisory Group. The goal of the SAR Review is to provide “meaningful information” about suspicious activity reports. OFAC should take this opportunity to publish information that will also be meaningful to the entities that must comply with the plethora of recordkeeping and reporting requirements related to the Executive Orders, statutes and regulations administered by the Treasury’s Office of Foreign Assets Control.

We appreciate this opportunity to comment on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "John J. Byrne". The signature is written in a cursive, slightly slanted style.

John J. Byrne