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The IRS is asking...  
Investors are asking...  
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# Terrorist Screening:

by Christina Keel, Managing Director — OFAC Compliance Services, CIS

## The Latest Requirement of New Business Relationships

In a world where the business landscape changes daily, one of the fastest growing trends across more and more segments of the B2B world is the requirement by one party that the other party certify itself “OFAC compliant.” Why? Because Uncle Sam has severe penalties for those who do business with prohibited parties. And because the severity of the possible penalties looming out there are potentially so catastrophic, today’s B2B world is beginning to take the steps necessary to shield itself from an avoidable risk exposure. More and more B2B partners are beginning to require their vendors and others to be OFAC compliant.

The conundrum is this: whereas the technical requirements of prohibited parties “list checking” are relatively simple, the challenge of actually being able to prove compliance with the government’s requirements is fairly complex. Yes, it’s true — it is possible (cheap and easy as well) to put a “quick fix” screening solution in place, but it’s not advisable because screening alone doesn’t qualify as a legally defensible, courtroom-ready compliance program. A compliance program that will protect you in a worst-case scenario takes time to develop, implement, and fine-tune. What follows is an introduction to the requirements and the layers of complexity imposed by the OFAC compliance challenge. It is intended to inform you about what is involved in being able to certify your company as “OFAC compliant,” thereby meeting Uncle Sam’s expectations. It is not intended to be used in lieu of competent legal or compliance assistance in establishing your OFAC compliance program.

### What is OFAC and does it apply to me?

“OFAC” is the acronym for the Treasury Department’s **Office of Foreign Assets Control**. It is the part of the government that has responsibility for enforcing compliance with U.S. sanctions programs. These sanctions programs relate to country embargoes as well as criminal activity of national security interest to the United States, including terrorism, narcotics trafficking, and nonproliferation of weapons of mass destruction. Each sanctions program establishes its own unique limitations and requirements, but all include a directive against commerce with prohibited parties named by the program and a requirement to freeze assets of those the program applies to. The specific persons, companies, groups and shipping vessels named by each program are maintained on a cumulative list of the parties from all programs called the **Specially Designated Nationals and Blocked Persons List** (SDN List). This list is available on OFAC’s web site (<http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>) and may be updated by the government at any time.

Simply stated, the OFAC requirements are to avoid commerce with all parties on the SDN List and to freeze assets of anyone on the SDN List with whom you are already engaged in commerce. Each OFAC sanctions program specifically outlines who its requirements apply to, but all include at least the following: all U.S. citizens, permanent resident aliens, persons located in the U.S., companies located in the U.S., and overseas branches of U.S. companies. In some cases, overseas subsidiaries of U.S. companies may also be required to comply with the requirements. The penalties for violating these requirements can be quite severe. The severity of the consequences depends on a number of mitigating factors:

#### • Which sanctions program is involved?

Each program carries different penalties for violation. Criminal violations (i.e., knowingly transacting with an SDN) can result in corporate fines of up to \$10,000,000; personal fines of up to \$5,000,000; and up to 30 years in jail for responsible individuals. Civil penalties can range from \$11,000 to \$1,075,000 per violation and will result in your company’s name being posted on OFAC’s web site as a violator.

#### • Was your violation inadvertent or intentional?

In most cases, violations are inadvertent, but OFAC may impose the maximum civil penalty if the violation occurred because no attempt was made to ensure compliance. The biggest mitigating factor in your favor is demonstrating that OFAC compliance is a priority and that, through a clearly defined compliance program, you have taken appropriate steps to avoid doing business with anyone on the SDN List.

#### • Did you self-report the violation?

If OFAC learns of the violation through some other source, such as your lender or another party involved anywhere along the cash flow cycle of a transaction (all of which also must meet OFAC requirements), the penalty applied may be affected. A properly followed OFAC compliance program would alert you if an inadvertent violation occurred, offering you the option to self-report. Self-reporting is the second-biggest factor mitigating in your favor.

### What do I need to do to comply with OFAC?

Simply making OFAC compliance a priority is the biggest step. The implementation of a compliance solution is easier than it may appear. An investment in both time and money is required, but seeking the appropriate guidance can limit that investment. You will need a comprehensive OFAC compliance program, an IT-based screening solution (perusing the SDN List on OFAC’s web site will convince you of this), and support before,

during and after your program’s implementation to ensure your risk areas are appropriately addressed.

### What does a successful OFAC compliance program need to include?

One of the most time-consuming hurdles toward OFAC compliance is thinking through and documenting your OFAC compliance program. OFAC does not specifically require that you establish a compliance program, nor does it provide any specifications for one, but there is a clear preference by the government that you have one. Reading any literature available on OFAC’s web site demonstrates their preference that you have a program and requests from representatives from other government agencies — like the IRS — to review your OFAC compliance program in action present a clear picture that the government unambiguously expects businesses to take the OFAC requirements seriously.

### What should your program look like and include? The most effective approach is to follow “best practices” when documenting any type of compliance program:

1. Assess your organization’s risk profile by analyzing transactional risk areas, client base and marketing practices for the touch-points that could result in an OFAC violation.
2. Consider your risk tolerance and articulate the corporate stance regarding OFAC compliance in a policy statement.
3. Obtain “buy in” and support from upper management and establish clear consequences for employee violations of the program.
4. Designate and empower a compliance officer and specify the duties, recordkeeping and reporting requirements associated with the role.
5. Specify screening procedures tailored to each type of identified transaction or risk area, designating the appropriate level of evaluation responsibilities between operational-level employees and management.
6. Train employees on the OFAC requirements, the overall program objectives, how their day-to-day procedures are affected, and how to accomplish the screening requirements. Retraining should be provided on a regular timetable or whenever the program is updated.
7. Specify a timeline and procedures for periodic auditing of the program to evaluate its efficacy and efficiency (consider using a third-party for this). Offer a forum or opportunity for feedback from the employees applying the program daily.

This is just an overview of things to consider. Evaluate whether you have the internal resources to make these high-level assessments and evaluation decisions and whether you know enough to assess the details without outside assistance. The real challenge lies in putting a program together that reflects your organization's risk profile, risk tolerance and compliance objectives, and doesn't get in the way of or complicate your core business functions.

## Evaluating IT-Based Screening Solutions

Once you peruse the SDN List on OFAC's web site, you will clearly see that an IT-based screening solution is preferable to manually checking the List. So, where to start? Before exploring the available alternatives, consider your overall OFAC compliance objectives and know:

1. How many employees will need to use the system (consider both screeners and adjudicators)?
2. Whether OFAC compliance will be these employees' only job function or the tasks associated with your OFAC compliance program will be additions to other responsibilities these employees have (i.e., adding to their existing workload)?
3. How technically savvy are those employees?
4. How much maintenance of the system do you want your IT department to be responsible for? Do you even have an IT department?
5. What is your transactional volume like (i.e., how many transactions do you do and how many parties are involved in each)? A good rule of thumb is if you have a name, check it. By this standard, will you be running hundreds of names per day or just a few per week?
6. If you need a robust system that offers automated workflow functionality (i.e., screening is automated and results are routed to appropriate parties by the system) or will a system without automated workflow meet your needs?
7. What is your budget?

Having this information when you begin your research will help you direct your focus on alternatives that will meet your specific needs and not distract you with those that may not be applicable to your business requirements.

Also consider the existing IT infrastructure. Do you have a very high-tech infrastructure providing numerous options for adding the screening component? Or, is the infrastructure relatively low-tech, but you have high-speed access to the Internet? Or, do you work with a stand-alone PC and dial-up Internet access? The answers to these questions in combination with organizational access to technical expertise should also help navigate you through the variety of screening solutions available.

## Deployment solutions tend to fall into the following categories:

- **PC-based** (installed locally from a CD; updates may be provided via CD or Internet; requires regular maintenance by user)
- **Online** (access via Internet; no local installation or maintenance necessary)
- **Server-based** (access via Internet or Intranet; no PC installation necessary; installation and maintenance responsibility is dependent on who hosts the server)
- **Outsourced** (third-party consultant performs searches and adjudicates results)

Some solution providers offer more than one deployment option and some options are "sexier" to look at and to use than others. You may only need one that offers a simple screening function with match/no-match responses and nothing else. Perhaps you need one with recordkeeping and reporting features? Or you may need a more complex software that is designed to address other risk areas you have (e.g., money laundering), in which case an add-on module for this complex software might be the best fit for you.

## When evaluating options, there are a number of key issues to identify about available deployment options and system features:

1. **Search Logic** - Make sure (a) you understand and are comfortable with how matches are determined; (b) if user-determined search logic is available, you understand the inherent risks associated with that "control;" (c) that the types of results produced will address the organization's overall compliance objectives; and (d) that the quantity of results produced will be manageable for adjudication.
2. **Recordkeeping** - Does the system record your searches? Does it include a mechanism to record adjudication process and findings?
3. **Reporting** - Does the system allow you to produce reports that summarize your search and results data?
4. **Auditing** - Does the system allow you to "slice and dice" the stored data in a variety of meaningful ways? Are you able to locate specific historical information at will?
5. **Batch Searching** - Are you able to submit multiple names at once to allow more efficient searches of large databases?
6. **Custom Lists** - Does the system allow you to maintain your own lists of repeat customers you've adjudicated and cleared so you don't have to re-adjudicate them every time they transact with you?

Given all that factors into picking the right IT-based screening solution for your company, it's tempting to assign the responsibility of choosing a solution provider to a member of the IT team. While their input is incredibly valuable, especially in the context of your technology infrastructure's capabilities, they should not be the dominant voice in the decision.

***"OFAC is a compliance challenge — not an IT or 'list checking' challenge. Make sure the policy developed and solution implemented is the work product of legal or compliance experts — not technology experts."***

**Christopher A. Myers**

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One of the legal consulting designers of KnightGUARDIAN™*

Every business is unique in its business process management, organizational culture, and monetary and human resources. More and more businesses are addressing the OFAC compliance challenge and requiring those they do business with to demonstrate a similar diligence. Ideally, you will choose to address the OFAC compliance challenge on your own timeline, not one dictated by a business transaction. The solution you choose should be the right fit for your company, circumstances and objectives.

For more information about OFAC compliance, contact Christina Keel at 877.522.9097 or [christina.keel@cisluc.us](mailto:christina.keel@cisluc.us).

# When a business affiliate asks if you have an OFAC compliance program, will you be able to say yes?

KnightGUARDIAN™ is your OFAC compliance partner. We guide you through the challenge of meeting government prohibited-parties requirements and customize a solution that meets all of your needs.

## Designed with your worst compliance nightmare in mind

KnightGUARDIAN was designed from a legal defense perspective by legal, compliance and technical professionals. The comprehensive solution includes all of the “best practices” necessary to prove to the government that you’ve made a good faith effort to avoid a violation.

### Every KnightGUARDIAN customer receives:

- Risk profile assessment
- Compliance program planning guide
- Access to the user-friendly KnightGUARDIAN screening software, including batch search, recordkeeping and reporting functions
- Training on software use and adjudication of identified matches
- Assistance performing and adjudicating a batch search of all existing relationships
- Availability for inquiries throughout the term of the relationship

### Government lists included in the database

We monitor these government lists closely and update the database in near real time:

- Office of Foreign Assets Control (OFAC) Specially Designated Nationals List
- OFAC sanctioned countries list
- Bureau of Industry and Security (BIS) Denied Persons List
- BIS Unverified Persons List
- BIS Entity List
- Department of State’s Foreign Terrorist Organization List
- Directorate of Defense Trade Controls Debarred Parties List
- Additional industry and/or risk-specific lists can be added upon request

### Deployment options

- **Standard Internet Subscription**  
Private user account for online system
- **Dedicated Internet Server**  
Internet or Intranet access to a dedicated system — with customization options — located either behind your firewall or hosted by us
- **Full Integration**  
On site installation and custom interface with your existing business process management system(s) for real-time, on-the-fly batch or single search processing that runs in the background with automated workflow functionality
- **Outsourced**  
We run the searches for you, adjudicate any matches and notify you of the results



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### Why KnightGUARDIAN?

The KnightGUARDIAN difference is simple. KnightGUARDIAN is the only true cradle-to-grave solution. Unlike other vendors who simply sell complicated list-checking software or rent you time on their list-checking servers, we walk with you through every step of the process that takes you from where you are today to a fully-compliant, courtroom-ready OFAC policy in place and functional. And we don’t stop there. No other OFAC compliance vendor provides as much after-sale support that includes auditing, hit resolution, credentialing and due diligence assistance. Nobody. KnightGUARDIAN is the only OFAC compliance solution provider that will actually assist you through the match resolution challenge.

### Our Core Promise

*Implementing the comprehensive KnightGUARDIAN solution will help you avoid an inadvertent violation.*

**Corporate Integrity Services** provides investigative, compliance, and security assessment services for corporations, law firms, professional associations, government agencies, and select individuals. CIS works to find truth and manage risk for clients demanding discreet and reliable results. For more information, visit the company’s Web site at [www.cisllc.us](http://www.cisllc.us).

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