

AS REGULATORS CONTINUE TO PROVIDE GUIDANCE DURING THESE UNPRECEDENTED TIMES, SOME IS EASIER TO INTERPRET THAN OTHERS – A FOCUS ON OFAC

Various regulators have recognized in guidance, press releases, and the like, that financial institutions and other corporations may need to adjust some or all of their compliance operations to handle the challenges posed by the COVID-19 pandemic. Some guidance is easier to interpret and adhere to than others. Examination timing and logistics continue to be adjusted on a case by case basis and firms have been working directly with their primary regulators to make appropriate adjustments as needed. Some guidance provides for extensions of deadlines or filing requirements while other guidance advises institutions to take a risk-based approach to any deviations from the norm. This is where it gets tricky.

Notably, [OFAC](#) has recently specifically stated that: *“OFAC understands that the COVID-19 pandemic can cause technical and resource challenges for organizations.”* The OFAC guidance goes on to say, *“if a business facing technical and resource challenges caused by the COVID-19 pandemic chooses, as part of its risk-based approach to sanctions compliance, to account for such challenges by temporarily reallocating sanctions compliance resources consistent with that approach, OFAC will evaluate this as a factor in determining the appropriate administrative response to an apparent violation that occurs during this period. OFAC will address these issues on a case-by-case basis.”*

Traditionally, at times when financial institutions need to scale back, compliance is usually at the top of the cost-cutting list. However, during the COVID-19 pandemic, financial crime and fraud are on the rise and sanctions screening remains critical to maintaining an adequate program. Although this guidance initially expresses a general *understanding* of the challenges that compliance programs are facing, that understanding is followed by a

reinforcement that OFAC will most certainly be responding to apparent violations, albeit with a consideration of the circumstances surrounding any changes that may have been made to sanctions screening resources.

What do you do?

After reading this guidance, if you do need to scale back or reallocate resources, sanctions screening might not be the first place to do so. If changes are in fact necessary, make sure you conduct a risk assessment and document the reasons for each and every change that has been made to your program.

Another phrase to note in this guidance is that OFAC will consider these reallocations as a factor when assessing apparent violations that occur *“during this period.”* It is up to the financial institution to determine when *“this period”* is over. There will not be a specific date when regulators make a determination that COVID-19 is no longer affecting business practices. In prior times of crisis, regulators did not issue this type of additional guidance, and it is not expected during this pandemic. Financial institutions and other entities should continue to evaluate any changes that have been made on an ongoing basis and increase staff and resources as soon as that becomes a viable option. If your temporary reduction is still the norm a year from now, the regulators may not express that same level of understanding.