

Voluntary Self-Disclosure to OFAC: Legal Framework and Strategic Considerations

Lawyers regularly advise clients on navigating the complex and evolving U.S. sanctions regime enforced by the Office of Foreign Assets Control (“OFAC”). When a business or individual becomes aware of a potential violation of OFAC regulations, submitting a **Voluntary Self-Disclosure** (“VSD”) may be a critical and prudent step to mitigate potential penalties and legal consequences.

This article outlines the legal framework governing VSDs, the key elements of an effective disclosure, and the strategic considerations involved in deciding whether and how to report apparent violations to OFAC.

I. OFAC Jurisdiction and Enforcement Overview

OFAC is an agency within the U.S. Department of the Treasury tasked with administering and enforcing economic and trade sanctions. These sanctions are imposed in furtherance of U.S. national security and foreign policy objectives and apply broadly to U.S. persons, U.S.-incorporated entities, and, in certain circumstances, foreign entities that engage in transactions with U.S. touchpoints.

Civil penalties for violations of OFAC sanctions can be significant—up to the greater of \$356,579 per violation or twice the value of the underlying transaction. However, OFAC provides substantial penalty mitigation for entities or individuals who voluntarily disclose apparent violations and cooperate fully.

II. Definition and Requirements of a Voluntary Self-Disclosure

Under OFAC’s Enforcement Guidelines (31 C.F.R. Part 501, Appendix A), a submission qualifies as a “voluntary self-disclosure” only if it meets all of the following criteria:

- It is submitted **prior** to any government inquiry, subpoena, investigation, or notice of apparent violation;
- It is **truthful, complete, and accurate** to the best of the disclosing party’s knowledge;
- It is not misleading or evasive and includes all relevant facts;
- It reflects **good-faith cooperation**, rather than an effort to conceal or delay.

A disclosure submitted after OFAC has commenced an enforcement action, or after another U.S. government agency has begun investigating the same conduct, does **not** qualify as voluntary—even if submitted without knowledge of the government’s investigation.

III. What to Include in the Disclosure

An effective voluntary self-disclosure typically contains the following components:

- A **detailed narrative** of the conduct giving rise to the apparent violation;
- Identification of all parties involved, including counterparties, financial institutions, shipping agents, and intermediaries;
- A timeline of relevant events;
- The nature and value of the transaction(s), and any associated documentation such as contracts, invoices, wire records, shipping documents, or communications;
- A description of the company's internal compliance program and the circumstances that led to the failure (if applicable);
- Remedial actions taken or planned to prevent recurrence;
- A certification of accuracy and completeness.

If the disclosing party cannot immediately gather all necessary information, OFAC permits the submission of a **Preliminary Disclosure**, followed by a complete submission within 60 calendar days.

IV. Submission Method and Format

Disclosures must be submitted in writing. While OFAC does not prescribe a formal template, well-organized submissions that clearly describe the facts, attach relevant evidence, and outline corrective measures are more likely to be received favorably. A detailed cover letter summarizing the key facts and legal issues is also recommended.

Submissions may be made via email or hard copy. Confirmation of receipt should be retained, and the disclosing party should be prepared to respond promptly to any supplemental requests from OFAC.

V. Legal Benefits of Voluntary Disclosure

The primary benefit of submitting a voluntary self-disclosure is the potential **reduction of civil penalties**. Specifically:

- The **base civil penalty** may be reduced by **up to 50%** if the VSD qualifies under OFAC's guidelines;
- In cases involving less serious violations, OFAC may elect to issue a **cautionary letter** or take **no enforcement action** at all;
- The disclosing party's cooperation is treated as a **significant mitigating factor** during penalty determination;
- A well-documented disclosure can help protect the organization's **reputation** and demonstrate a commitment to compliance.

These benefits, however, are contingent on the quality, completeness, and timeliness of the disclosure.

VI. Strategic and Legal Risks to Consider

Voluntary disclosure is not without risk. Before making a submission, entities should conduct a legal risk assessment with qualified counsel. Key issues to consider include:

- **Admissions of fact:** While OFAC does not treat disclosures as admissions of liability, statements made in the disclosure may have consequences in parallel legal or regulatory proceedings;
- **Regulatory sharing:** OFAC may refer information to other agencies such as the Department of Justice, the Department of Commerce (BIS), or the Securities and Exchange Commission (SEC);
- **Waiver of privilege:** Care must be taken to ensure that legal privilege is not inadvertently waived, particularly when internal investigation reports are shared with the government.

In many cases, conducting a privileged internal investigation and preparing a thoroughly vetted disclosure can help minimize these risks.

VII. Post-Disclosure Process and OFAC Response

After receiving a disclosure, OFAC may:

- Acknowledge receipt and request further information;
- Open a formal investigation;
- Issue a **no-action letter**, **cautionary letter**, or **Notice of Apparent Violation (NOAV)**;
- Propose a civil penalty or negotiate a settlement, taking the VSD into account.

OFAC's enforcement posture and final resolution depend heavily on the nature of the violation, the disclosing party's level of cooperation, and the effectiveness of any implemented remediation measures. The agency's review process can take several months or longer.

VIII. Conclusion

Voluntary self-disclosure to OFAC can be a valuable tool for mitigating enforcement risk and demonstrating a company's commitment to regulatory compliance. However, it requires careful planning, legal analysis, and precise execution. The decision to disclose should be made only after a thorough review of the facts and legal risks, ideally under the guidance of experienced sanctions counsel.

A professional law firm can advise clients across a broad range of industries on OFAC compliance, internal investigations, enforcement defense, and voluntary disclosure strategy. If you believe you may have engaged in a transaction that implicates U.S. sanctions laws, we recommend seeking legal counsel promptly to evaluate the appropriate course of action.