

OFAC Enforcement Action Emphasizes the Importance of Whistleblower Programs

Skadden

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Key Points

- A recent enforcement action by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) underscores the impact and importance of whistleblowers in sanctions compliance and enforcement, consistent with new regulatory incentives and guidance.
- Companies should ensure they have visible, well managed internal mechanisms for whistleblowers to report misconduct related to anti-money laundering (AML), sanctions and export control compliance.

Background and OFAC's Enforcement Action

On August 16, 2023, [OFAC announced a \\$660,594 settlement](#) with Construction Specialties Inc. (CS) for alleged violations of the Iranian Transactions and Sanctions Regulations (ITSR). OFAC found that CS's wholly controlled United Arab Emirates (UAE) subsidiary, Construction Specialties Middle East (CSME), knowingly reexported U.S. goods to Iran. In doing so, CSME's general manager and another senior manager disregarded CS company policy and falsified trade documents.

OFAC noted that the alleged scheme was uncovered by a U.S. person employed at CSME in Dubai, despite CSME's senior managers' efforts to conceal the activities. The U.S. person was suspicious of CSME senior managers' conduct and confronted CSME's GM about the issue, only to be terminated by the GM. The same day, the U.S. person employee traveled to the United States and reported their suspicions to CS management. CS initiated an internal review, terminated all Iran related business activity of CSME, and reported the matter to OFAC.

OFAC determined the alleged violations to be voluntarily self-disclosed but egregious. OFAC considered as aggravating factors that the two members of CSME's senior management willfully violated U.S. sanctions and had actual knowledge of the conduct at issue, including personally conducting or overseeing the falsification of records to obscure the transfer of U.S.-origin goods to Iran.

OFAC highlighted that this case demonstrates the importance of "seeing something and saying something." It noted that whistleblowers "play a vital role in identifying prohibited conduct and promoting compliance" and that "responsible companies should have channels in place for employees to raise concerns without fear of retaliation." If misconduct is discovered or suspected, companies should "respond[] quickly and meaningfully to the credible claims of those who speak up."

Implications for Companies

OFAC's announcement also included a reminder that the Financial Crimes Enforcement Network (FinCEN) "is currently accepting whistleblower tips." As we outlined in our July 31, 2023, client alert "[US Authorities Hammer Home the Importance of Self-Disclosing Sanctions and Export Control Violations](#)," the whistleblower framework established under the Anti-Money Laundering Act of 2020 and the Anti-Money Laundering Whistleblower Improvement Act, which is administered by FinCEN, has created strong financial incentives and legal protections for whistleblowers to report violations of U.S. anti-money laundering and sanctions laws and regulations directly to the U.S. government.

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Companies should therefore expect that tips and referrals to FinCEN that touch on sanctions or export control violations will be sent to OFAC and other agencies, including the Department of Commerce's Bureau of Industry and Security (BIS) for review and investigation, and possibly lead to financial rewards for whistleblowers. (See Skadden's February 2023 article in *Financier Worldwide*, "[New Protections and Financial Incentives for Whistleblowers in the US](#).") If an employee reports a potential violation of U.S. sanctions directly to the U.S. government, the company likely will not be eligible for voluntary disclosure "credit" for a subsequent disclosure of the same conduct by the company to OFAC.

In light of OFAC's emphasis on the importance of whistleblowers in promoting compliance with U.S. sanctions, and the potentially

significant financial incentives available to employees, firms should consider reviewing existing programs and mechanisms to ensure that employees can easily and confidentially report potential breaches of a company's sanctions compliance policies, procedures and internal controls without fear of reprisal.

To appropriately respond to such reports, companies should consider establishing or updating procedures to collect and quickly review reports of possible misconduct, complete timely and thorough investigations where warranted, follow up with any necessary remedial response, seriously consider self-reporting potential violations to OFAC or other appropriate authorities in a timely fashion, and cooperate actively in any subsequent investigation.

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