

How to Be Removed From a U.S. Sanctions Watchlist List

Article

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U.S. sanctions are a powerful tool used to influence the behavior of foreign governments, individuals, and entities. Placement on any sanctions watchlist maintained by a regulatory agency can have devastating financial, commercial, and legal consequences, including freezing U.S. assets, restricting travel to the U.S., blocking U.S. financial transactions, and enduring a damaged reputation worldwide. Given the substantial penalties levied against international banks and foreign and domestic businesses that violate U.S. primary and secondary sanctions laws, complying with regulations is a priority for almost every such company.

Although sanctions can be damaging, the U.S. government regularly removes hundreds of individuals and organizations from its watchlists. In fact, the Office of Foreign Asset Control's ("OFAC") website states, "[t]he ultimate goal of sanctions is not to punish, but to bring about a positive change in behavior. Thus, understanding of the steps required to be removed from a watchlist can offer relief to those facing sanctions.

How to File a Request for Reconsideration

There are a few avenues for removal from U.S. sanctions watchlists, such as a negotiated settlement with OFAC and other federal agencies. However, most efforts begin by the filing of a Request for Reconsideration (also known as a Petition for Review) with OFAC to prove either of the following conditions:

- "[A]n insufficient basis exists for the listing;" or
- "[T]he circumstances resulting in the listing no longer apply."

These criteria are based on 31 C.F.R. section 501.807, which governs OFAC sanctions list removal process.

INSUFFICIENT BASIS EXISTS FOR THE LISTING

"Insufficient basis for the listing" criteria means the reason for including the individual or entity on the Specially Designated Nationals ("SDN") list is weak or no longer applies. Examples include mistaken identity due to same or similar names or similar family connections and acquaintances.

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CIRCUMSTANCES RESULTING IN THE LISTING NO LONGER APPLY

Under the “circumstances resulting in the listing no longer apply” criteria, if the basis for an SDN (or other sanctioned party’s) listing no longer exists, then the listing is no longer warranted. This may include a shift in U.S. policy goals or a “positive change in behavior” of the sanctioned person. In fact, 31 C.F.R. Section 501.807 provides that a listed person “may propose remedial steps on the person’s part, such as corporate reorganization, resignation of persons from positions in a blocked entity, or similar steps, which the person believes would negate the basis for designation.”

Additional Considerations for the Petition to Review Process

TAILOR YOUR PETITION

Because each circumstance is based on distinct policy factors and circumstances, there is no standard approach to filing. However, a petition should be tailored to directly address the specific reasons for the designation. Thus, it is crucial to include supporting documentation and other evidence that counters the rationale for listing to strengthen the case for removal.

The filing kickstarts a long multi-step process that may include timely responses to OFAC’s requests for additional information and communications in various other forms, as well as attending OFAC requested hearings. At the completion of their review process, OFAC provides a written decision on the outcome and removal from the SDN List, if they deem it warranted.

UPDATE YOUR BUSINESS PARTNERS

Even if a petition is successful, the delisted person or entity may still appear in other sanctions databases, which may lead to continued refusal to do business due to the risks of non-compliance. Unique problems such as these may require the formerly sanctioned person to educate their banks and business partners on the new development.

Key Takeaway

Although getting placed on a U.S. sanctions watchlist is devastating, there is a process in place for removal if supporting evidence can be provided prove that the sanctions were placed in error or the reasons for the sanction no longer apply.

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