

Understanding OFAC's 50 Percent Rule: Why Title Professionals Must Look Beyond the SDN List

Description

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Introduction

A title agent screens every party in a commercial real estate transaction and finds no OFAC hits. Days before closing, newly discovered ownership information reveals that the seller is indirectly owned by sanctioned parties.

Most title professionals understand the importance of screening parties against the Office of Foreign Assets Control's (OFAC) sanctions lists. The purpose of OFAC sanctions is to prevent U.S. persons and businesses from engaging in prohibited transactions involving sanctioned persons, entities, or property. These sanctions may target designated individuals and organizations, certain foreign governments and regimes, or property that has been identified as blocked. In many transactions, screening the parties identified in the transaction is sufficient to address those concerns. The challenge, however, is that sanctions risk frequently extends beyond the names that appear on those lists.

Under OFAC guidance implementing the 50 Percent Rule, an entity may be considered blocked even though its name never appears on the Specially Designated Nationals and Blocked Persons (SDN) List.²

For title and settlement professionals, the challenge is no longer simply determining whether a transaction involves a sanctioned individual or entity. Increasingly, the more difficult question is whether a transaction involves an entity that is indirectly owned by sanctioned persons through a complex ownership structure.²

As commercial real estate transactions increasingly involve layered ownership structures, understanding the 50 Percent Rule has become an important component of modern title and settlement practice.

What Is the OFAC 50 Percent Rule?

In August 2014, OFAC issued [guidance regarding entities owned by sanctioned persons](#). The guidance, commonly known as the **50 Percent Rule**, provides that a company may be treated as a blocked entity when sanctioned persons collectively own 50 percent or more of that company's ownership interests, whether the ownership is held directly or through intermediary entities.³

The analysis requires consideration of several important concepts:

- Ownership interests are aggregated.

- Both direct and indirect ownership can be relevant.
- Multiple sanctioned owners may be combined to reach the threshold.
- Under OFAC guidance, an entity may be treated as blocked even though it does not appear on the SDN List.³

The rule reflects OFAC's effort to prevent sanctioned individuals and organizations from avoiding sanctions through shell companies, holding companies, and other complex ownership arrangements.³

Why the Rule Matters

OFAC-administered sanctions programs carry significant consequences for noncompliance. Civil penalties can be substantial, and violations may also result in criminal liability in appropriate circumstances. OFAC's jurisdiction extends well beyond financial institutions and applies broadly to U.S. persons and entities.⁴

The compliance obligation generally applies to:

- U.S. citizens and permanent residents;
- Persons and entities within the United States;
- U.S.-organized companies;
- Foreign branches of U.S. companies; and
- Other persons subject to specific sanctions programs.⁴

For title and settlement professionals, a transaction involving blocked property can expose multiple participants to regulatory, operational, and reputational risks.

A Title Agent's Perspective

As a commercial title insurance and settlement professional, I believe **one of the greatest challenges** created by the 50 Percent Rule is not screening names against OFAC databases. Most title agencies and settlement companies already have procedures for screening parties against sanctions lists.

The real challenge is determining ownership of private entities.

A commercial transaction may involve multiple LLCs, limited partnerships, holding companies, family trusts, and investment vehicles. The ownership information needed to evaluate a sanctions issue may not appear in public land records, corporate filings, or title commitments. In many cases, it may not be available unless the parties voluntarily disclose it.

Unlike financial institutions that may maintain extensive customer due diligence files, title companies frequently encounter ownership questions within a compressed closing timeline. This practical limitation creates a gap between the regulatory framework and the information actually available to title and settlement professionals.

For title agents, the most difficult question is often not whether a sanctioned person appears in the transaction, but whether sufficient information exists to confidently conclude that sanctions do not apply.

In my experience, the purpose of sanctions screening is not to guarantee certainty in every transaction. Rather, it is to conduct reasonable due diligence based on the information available at the time of the transaction.

A Real-World Commercial Title Example

Consider a commercial property owned by **ABC Property Holdings, LLC**.

A title search reveals no sanctions issues, and a search of the LLC's name produces no SDN List matches. At first glance, the transaction appears straightforward.

However, further inquiry reveals that ABC Property Holdings, LLC is owned by another LLC. That LLC is owned by a private investment vehicle. The investment vehicle, in turn, has multiple investors located in several jurisdictions.

In some commercial transactions, tracing ownership can feel a bit like the old "turtles all the way down" anecdote, with one entity owned by another entity, which is owned by yet another entity before finally reaching the ultimate beneficial owners.

At that point, the title professional faces a practical challenge. The entity appearing in the chain of title has been screened, but ownership analysis may require looking through multiple layers of ownership to determine whether one or more sanctioned persons collectively own 50 percent or more of the ownership interests.³

This example illustrates why **one of the greatest challenges** created by the 50 Percent Rule is often not sanctions screening itself. The challenge is obtaining sufficient ownership information to make a reliable determination regarding sanctions exposure.

Why Underwriters Care

From an underwriting perspective, sanctions issues can affect far more than regulatory compliance.

If a transaction involves blocked property or a blocked entity, questions may arise regarding whether the transaction can close, whether funds can be disbursed, whether documents can be recorded, and whether title insurance can be issued without additional review.

Ownership issues that initially appear academic may become material underwriting concerns. Consequently, underwriters and title professionals increasingly share an interest in understanding beneficial ownership structures, particularly in larger commercial transactions where entity ownership can be highly complex.

When ownership questions arise, practical responses may include requesting organizational documents, obtaining certifications from transaction parties, escalating concerns to underwriting counsel, or delaying closing until ownership information can be adequately clarified. While the appropriate response will vary depending on the circumstances, sanctions-related ownership issues often require additional review before a transaction can safely proceed.

The discussion in this article should not be interpreted as establishing a specific due diligence standard for title companies or settlement agents. Every transaction presents unique facts, and the appropriate scope of inquiry may vary based on the parties involved, the ownership structure, the nature of the property, the available information, and applicable underwriting requirements. As with many compliance-related issues, reasonable due diligence often depends upon the facts known at the time of the transaction. When uncertainty exists regarding ownership structures or sanctions exposure, title professionals should consult their underwriter and qualified legal counsel before proceeding.

Conclusion

For title professionals, the lesson of the OFAC 50 Percent Rule is simple: sanctions compliance requires more than checking a name against a database.

As ownership structures become increasingly sophisticated, understanding who ultimately owns an entity may become just as important as understanding the parties identified in the purchase agreement, deed, and settlement statement. One of the greatest challenges created by the 50 Percent Rule is not identifying sanctioned persons. It is obtaining sufficient information to reasonably conclude that sanctions do not apply.

While OFAC's guidance provides the regulatory framework, title professionals remain responsible for navigating the practical realities of ownership investigations, beneficial ownership analysis, underwriting concerns, and transaction risk management.

Ultimately, the 50 Percent Rule illustrates that effective sanctions screening often requires title professionals to look beyond the parties identified in the transaction and consider the ownership structures that may exist behind them. As entity ownership arrangements continue to become more complex, OFAC-related due diligence will likely become an increasingly important consideration in commercial title insurance and settlement practice.

Key Takeaways

- Entities may be blocked even if they do not appear on the SDN List.
- OFAC aggregates ownership interests of sanctioned persons.
- Indirect ownership matters.
- Commercial ownership structures can obscure beneficial ownership.
- Reasonable due diligence may require looking beyond the named parties in a transaction.
- Ownership information may not always be readily available to title and settlement professionals.
- When ownership questions arise, title professionals should consult their underwriters and qualified legal counsel.

Footnotes

1. This article is intended solely for educational and informational purposes and reflects the author's observations as a commercial title insurance and settlement professional. The author is **not an attorney**, and nothing contained herein should be construed as legal advice, a legal

opinion, or an interpretation of OFAC regulations. Readers should consult qualified legal counsel regarding specific OFAC compliance issues, sanctions-related matters, or transactions involving potentially blocked persons or property.

2. Office of Foreign Assets Control, *Basic Information on OFAC and Sanctions* (updated Aug. 21, 2024), U.S. Department of the Treasury, <https://ofac.treasury.gov/faqs/topic/1501>.
3. Office of Foreign Assets Control, *Revised Guidance on Entities Owned by Persons Whose Property and Interests in Property Are Blocked* (Aug. 13, 2014), U.S. Department of the Treasury, <https://ofac.treasury.gov/media/6186/download?inline>.
4. Office of Foreign Assets Control, *Basic Information on OFAC and Sanctions*, FAQ 11 and FAQ 12, U.S. Department of the Treasury, <https://ofac.treasury.gov/faqs/topic/1501>.

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