

CIVIL PENALTIES – REVISED INTERIM POLICY

October 28, 2008

On November 27, 2007, OFAC posted an Interim Policy with respect to Civil Penalties. That Interim Policy indicated that OFAC intended to publish revised enforcement guidelines and procedures to account for the new maximum penalty amounts set forth in the International Emergency Economic Powers Enhancement Act (“Act”), Pub. L. No. 110-96 (Oct. 16, 2007). The Interim Policy also stated that “[u]ntil such time as OFAC issues revised enforcement guidelines and procedures, and with the exceptions noted below, OFAC will continue to apply its Economic Sanctions Enforcement Guidelines, 68 Fed. Reg. 4422 (Jan. 29, 2003) (“Enforcement Guidelines”), and Economic Sanctions Enforcement Procedures for Banking Institutions, 71 Fed. Reg. 1971 (Jan. 12, 2006) (“Banking Enforcement Procedures”), to the new statutory penalty provisions.” The referenced exceptions to the application of the new maximum penalty amounts included: cases in which a Prepenalty Notice had been mailed prior to October 16, 2007 (the date the Act was signed into law); cases in which a tentative settlement amount had been communicated and memorialized; and certain cases involving statute of limitations waivers.

On September 8, 2008, OFAC issued its new Economic Sanctions Enforcement Guidelines (“New Guidelines”). 73 Fed. Reg. 51933 (Sept. 8, 2008). The New Guidelines supersede the prior Enforcement Guidelines and the Banking Enforcement Procedures, which were withdrawn (with the exception of the Cuba Penalty Schedule). 73 Fed. Reg. at 51934. The preamble to the New Guidelines make clear that the prior Enforcement Guidelines and the Banking Enforcement Procedures continue to apply to the categories of excepted cases set forth in the Interim Policy of November 27, 2007. Id.

The purpose of this Revised Interim Policy is to clarify that in those cases in which a Prepenalty Notice was issued after October 16, 2007, but before September 8, 2008, OFAC will honor the terms of the Prepenalty Notice and will continue to process the case according to the Enforcement Guidelines or Banking Enforcement Procedures pursuant to which the Prepenalty Notice was prepared. Similarly, in cases where OFAC staff agreed to recommend a proposed settlement amount internally, and that amount was memorialized in writing between the parties between October 16, 2007, and September 8, 2008, OFAC will apply the then-applicable Enforcement Guidelines or Banking Enforcement Procedures in considering whether to approve the settlement.