Neal A. Roberts
Bank Secrecy Act & Anti-Money Laundering CLE

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Bank Secrecy Act & Anti-Money Laundering CLE:

Filing a Money Laundering/Sanctions Case With The Department of Treasury

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ProtectUS Video Presentations on Whistleblowing Practices

1) FILING A CASE UNDER THE UNITED STATES FALSE CLAIMS ACT
2) PREPARING A TCR FOR THE SEC: REPORTING CORPORATE FRAUD AND FOREIGN CORRUPTION
3) SUBMITTING A WHISTLEBLOWER CLAIM TO THE UNITED STATES INTERNAL REVENUE SERVICE

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“Whistleblowers are an important asset to the integrity of the agency and tax system more generally, and I will work to create an agency culture that respects whistleblowers and the laws that protect them.” – Janet Yellen, Secretary of Treasury

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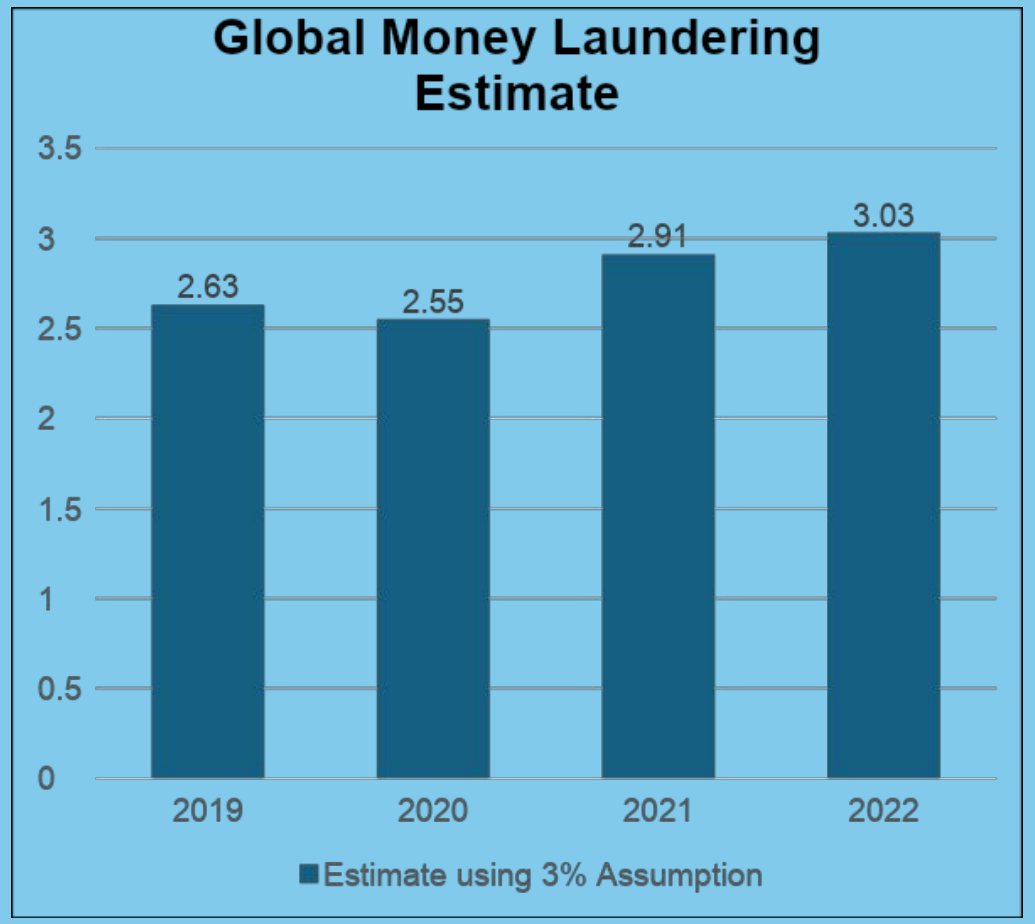
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MONEY LAUNDERING

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Global Money Laundering Percentage of Global GDP*	**2.5-5%**
Value in USD	**$2-3 Trillion**

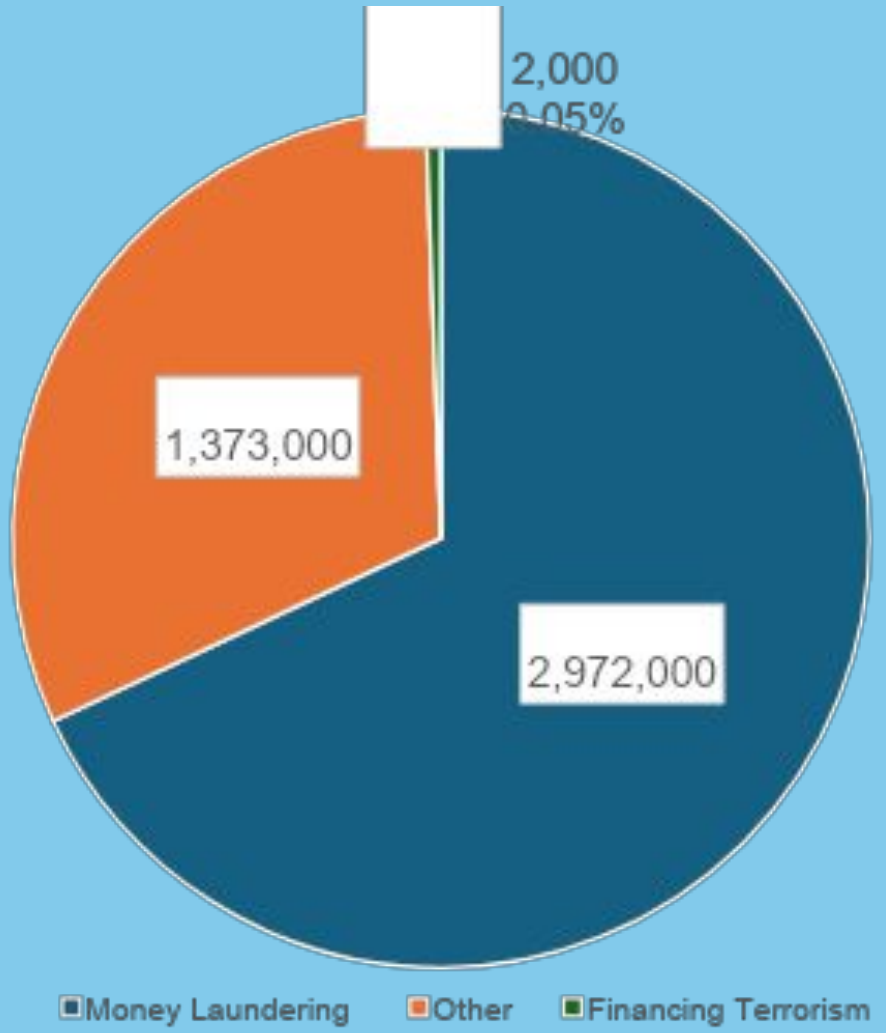
*World Bank Estimate



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Source: World Bank Group, Global GDP Estimate Chart (2022), available at https://data.worldbank.org/indicator/NY.GDP.MKTP.CD

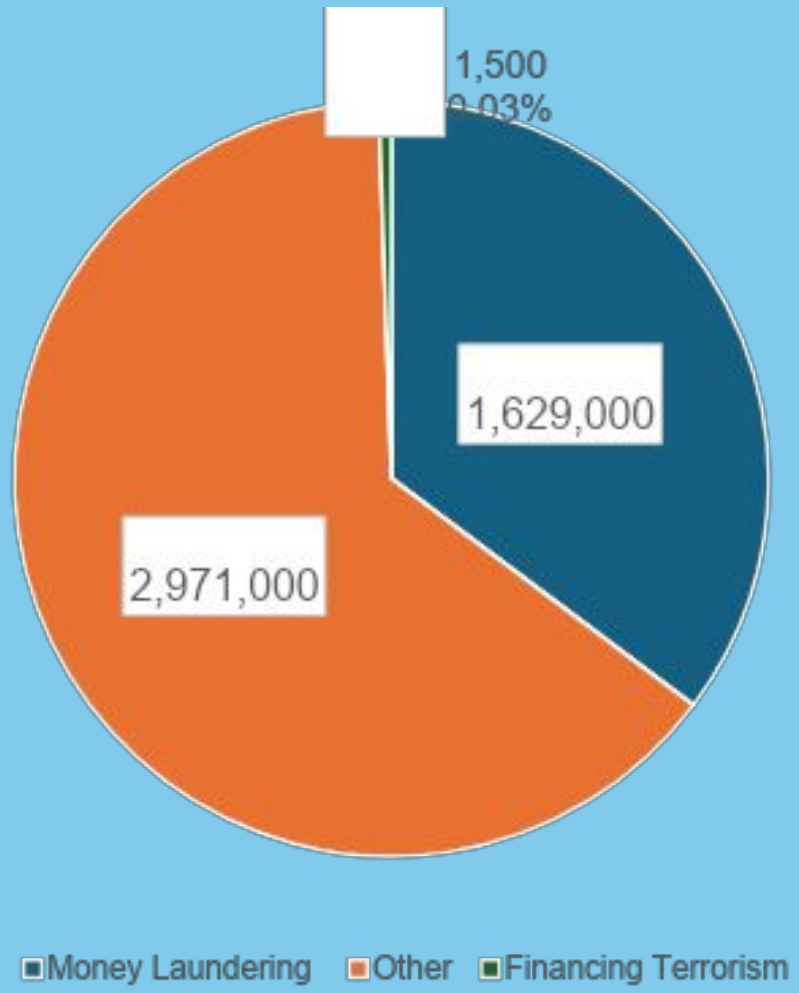
Suspicious Activity Reports (SARs) filed with FinCEN by Banks FY22



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Source: Financial Crimes Enforcement Network, Annual Report (2022-2023), Available at https://www.fincen.gov/news/news-releases/

SARs filed with FinCEN by Banks FY23



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Source: Financial Crimes Enforcement Network, Annual Report (2022-2023), Available at https://www.fincen.gov/news/news-releases/

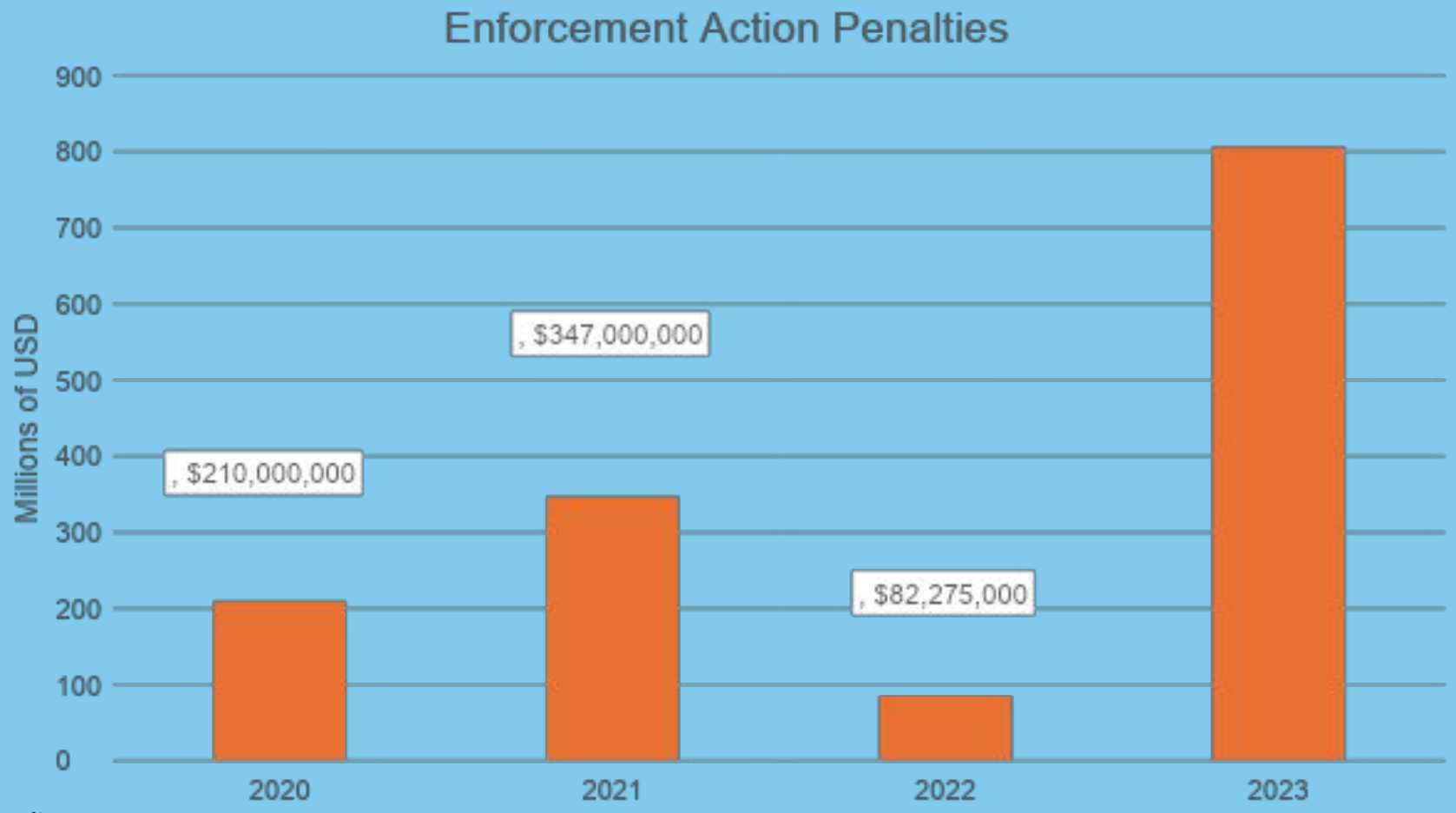
Total FinCEN Enforcement Actions 2014-2023



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Source: Financial Crimes Enforcement Network, Enforcement Actions (2014-2023), Available at https://www.fincen.gov/news-room/enforcement-actions/

Total FinCEN Enforcement Action Civil Penalties



Source: Financial Crimes Enforcement Network, Enforcement Actions (2019-2023), Available at https://www.fincen.gov/news-room/enforcement-actions/

Money Laundering Legislative History

1970s

- Bank Secrecy Act

1980s

- Money Laundering Control Act
- Anti-Drug Abuse Act

1990s

- Financial Crimes Enforcement Network Creation Act
- Annunzio-Wylie Anti-Money Laundering Act
- Money Laundering Suppression Act
- Money Laundering and Financial Crimes Strategy Act

2000s

- International Money Laundering Abatement and Anti-Terrorist Financing Act

2020s

- Anti-Money Laundering Act
- Anti-Money Laundering Whistleblower Improvement Act

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1 - Bank Secrecy Act 1970

Authorizes the Department of Treasury to impose reporting and other requirements on financial institutions and other businesses to help detect and prevent money laundering.

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2 - Money Laundering Control Act 1986

Amends the Federal criminal code (18 U.S.C § 1956) to establish money laundering as a Federal offense. Establishes civil and criminal forfeiture procedures for the offense of money laundering.

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3 - Anti-Drug Abuse Act 1988

Establishes the Office of National Drug Control Policy. Requires President to establish penalties and sanctions with respect to any country who is engaging in international narcotics trafficking affecting the United States.

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4 - Financial Crimes Enforcement Network Creation Act 1990

Established the Financial Crimes Enforcement Network (FinCEN).

Currently around 300 Employees

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5 - Annunzio-Wylie Anti-Money Laundering Act 1992

Strengthened the sanctions for BSA violations and required Suspicious Activity Reports (SARs) for financial institutions as well as providing protections for financial institutions and their employees for reporting suspected criminal offenses.

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6 - Money Laundering Suppression Act 1994

Increased scrutiny on money services businesses (MSBs) due to high risk for money laundering.
Requires owner or controlling person of MSB to register with FinCEN.

Money Services Business Definition

The term "money services business" includes any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the following capacities:

(1) Currency dealer or exchanger.
(2) Check casher.
(3) Issuer of traveler's checks, money orders or stored value.
(4) Seller or redeemer of traveler's checks, money orders or stored value.
(5) Money transmitter.
(6) U.S. Postal Service.

7 - Money Laundering and Financial Crimes Strategy Act 1998

Expands definition of Money Laundering and requires Executive branch to develop a national strategy for combating money laundering and other financial crimes.

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8 - International Money Laundering Abatement and Anti-Terrorist Financing Act 2001

Requires all financial institutions to develop an anti-money laundering policy; makes it easier for law enforcement and regulatory officials to share information and identify money laundering activity by increasing bank reporting requirements to law enforcement as well as increasing penalties for noncompliance.

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9 - Anti-Money Laundering Act 2020

Establishes a Whistleblower Office in the Department of Treasury for information pertaining to violation of the Bank Secrecy Act (Modeled after the Dodd-Frank Act). Allows for discretionary awards for successful whistleblowing tips. Increases reporting requirements for financial institutions.

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10 - Anti-Money Laundering Whistleblower Improvement Act 2022

Establishes minimum (10%) and mandatory awards for individuals providing original information relating to money laundering and sanctions violations under the AMLA.

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Amount of Award

§5323-(b)(1) states "In General.-In any covered judicial or administrative action, or related action, the Secretary, under regulations prescribed by the Secretary, in consultation with the Attorney General and subject to subsection (c), shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the employer of the individual, the Secretary, or the Attorney General, as applicable, that led to the successful enforcement of the covered judicial or administrative action, or related action, in an aggregate amount equal to-

(A) Not less than 10 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions.

(B) Not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions."

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Related Actions

§5323-(b)(3) states "Payment Of Awards.-

(A) In General.- Any amount paid under paragraph (1) shall be paid from the Fund established under paragraph (3).

(B) Related Actions.- The Secretary may pay awards less than the amount described in paragraph (1) (A) for related actions in which a whistleblower may be paid by another whistleblower award program."

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Retaliation Protections

§5323-(g)(1) states "Protection Against Retaliation.- No employer may, directly or indirectly, discharge, demote, suspend, threaten, blacklist, harass, or in any other manner discriminate against a whistleblower in the terms and conditions of employment or post-employment because of any lawful act done by the whistleblower."

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Retaliation Relief

§5323-(g)(3)(c) states "Relief for an individual prevailing with respect to a complaint filed under subparagraph (A) of paragraph (2) or an action brought under subparagraph (B) of that paragraph shall include

(i) Reinstatement with the same seniority status that the individual would have had, but for the conduct that is the subject of the complaint or action, as applicable;

(ii) 2 times the amount of back pay otherwise owed to the individual, with interest;

(iii) The payment of compensatory damages, which shall include compensation for litigation costs, expert witness fees, and reasonable attorneys' fees; and

(iv) Any other appropriate remedy with respect to the conduct that is the subject of the complaint or action, as applicable."

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Confidentiality

§6134-(g)(4)(A) states “In general.- Except as provided in subparagraph (C) and (D), the Secretary or the Attorney General, as applicable, and any officer or employee of the Department of the Treasure or the Department of Justice, shall not disclose any information, including information profided by a whistleblower to either such official, which could reasonably be espected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the appropriate such official or any entity described in subparagraph (D).”

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Establishment of Fund

§6134-(b)(3)(A) states "Source of Awards. – In General. – There shall be established in the Treasury of the United States a revolving fund to be known as the Financial Integrity Fund (referred to in this subsection as the "Fund")."

§6134-(b)(4)(A) states "In general. – There shall be deposited into or credited to the Fund an amount equal to –

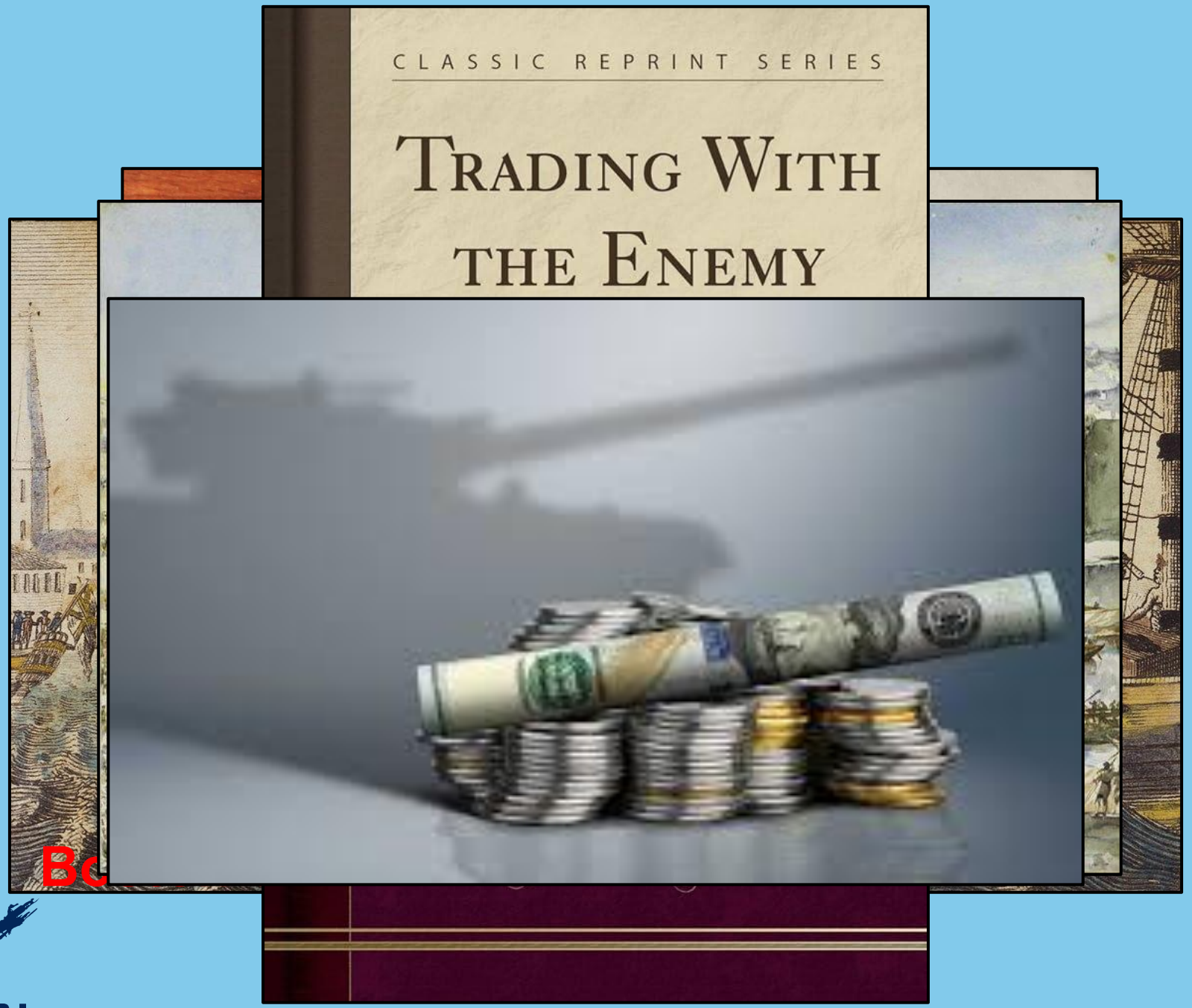
(i) Any monetary sanction collected by the Secretary or Attorney General in any judicial or administrative action under this title, chapter 35, or section 4305 or 4312 of title 50, or the Foreign Narcotics Kingpin Designation Act, unless the b alance of the Fun at the time of the monetary sanction is collected exceeds $300,000,000; and

(ii) All income from investments made under paragraph (5)."

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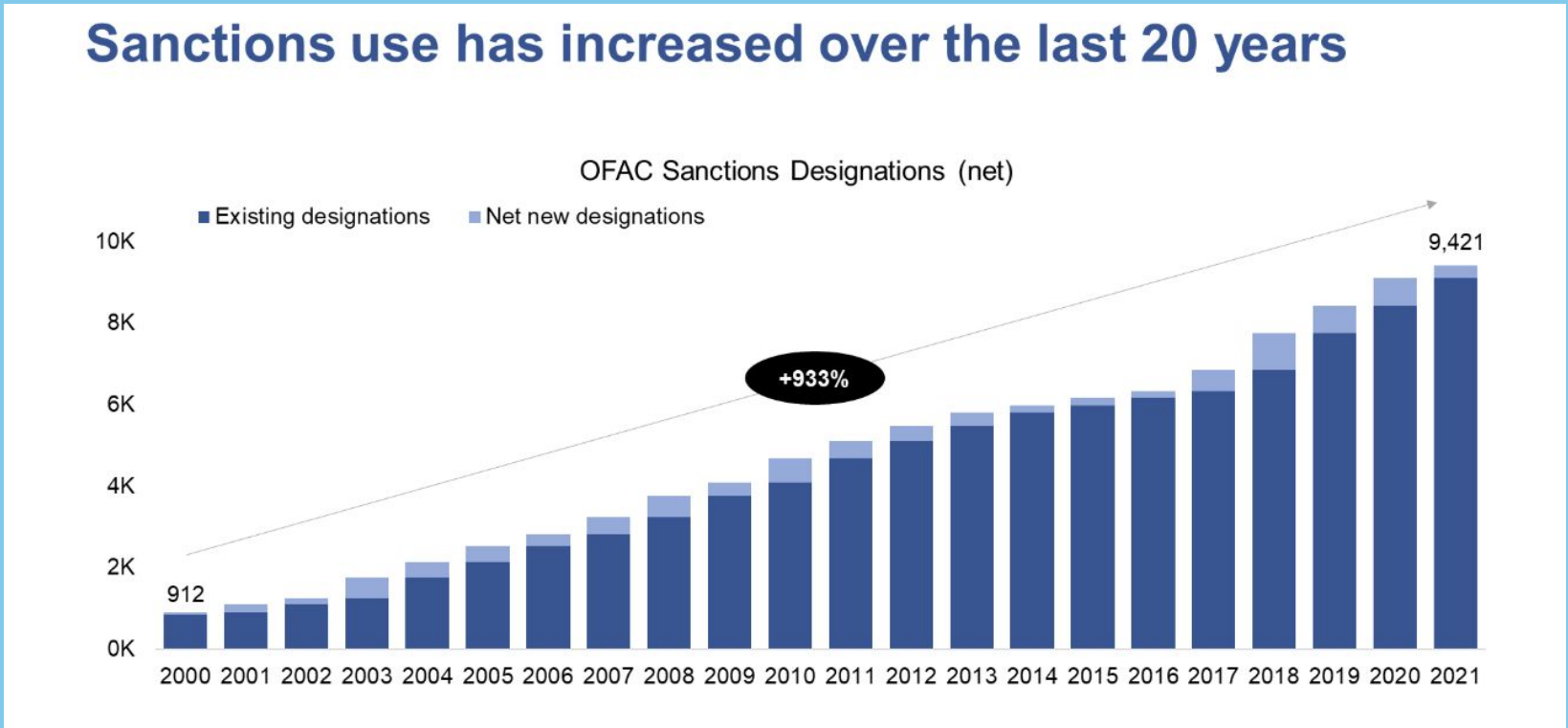
SANCTIONS

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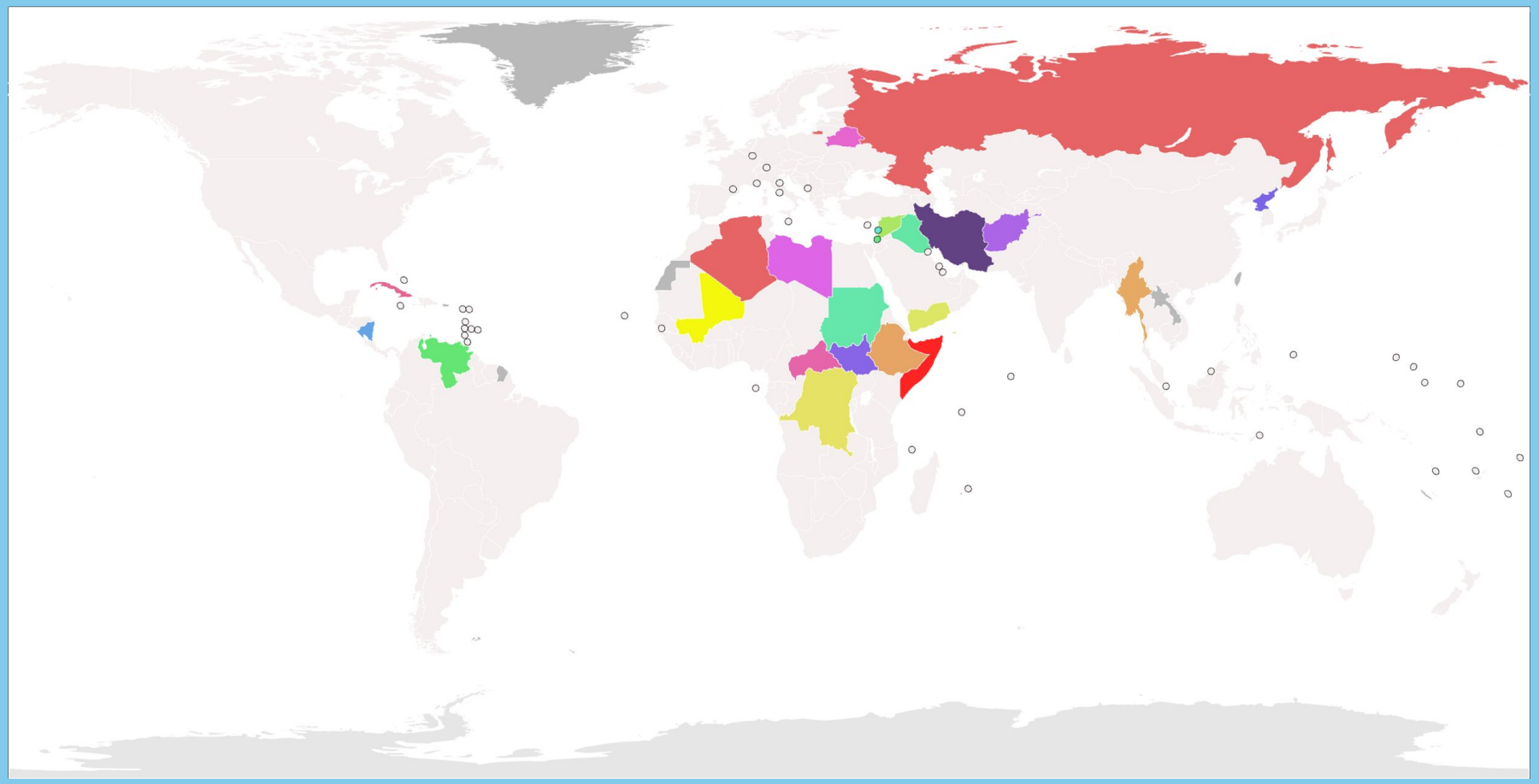
Individuals and Entities designated as sanctioned by OFAC



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Source: US Department of Treasury, Sanctions Review (2021), available at https://home.treasury.gov/news/press-releases/jy0413

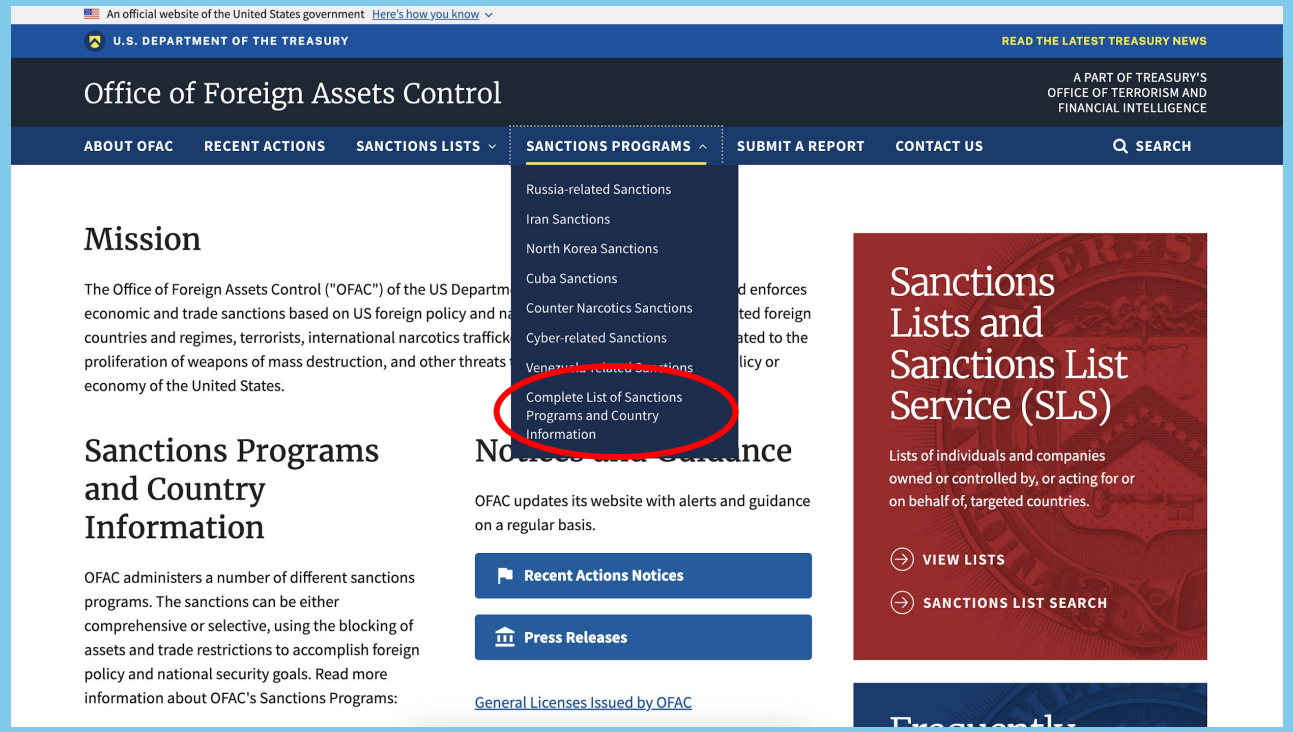
Territories Presently Sanctioned by the US

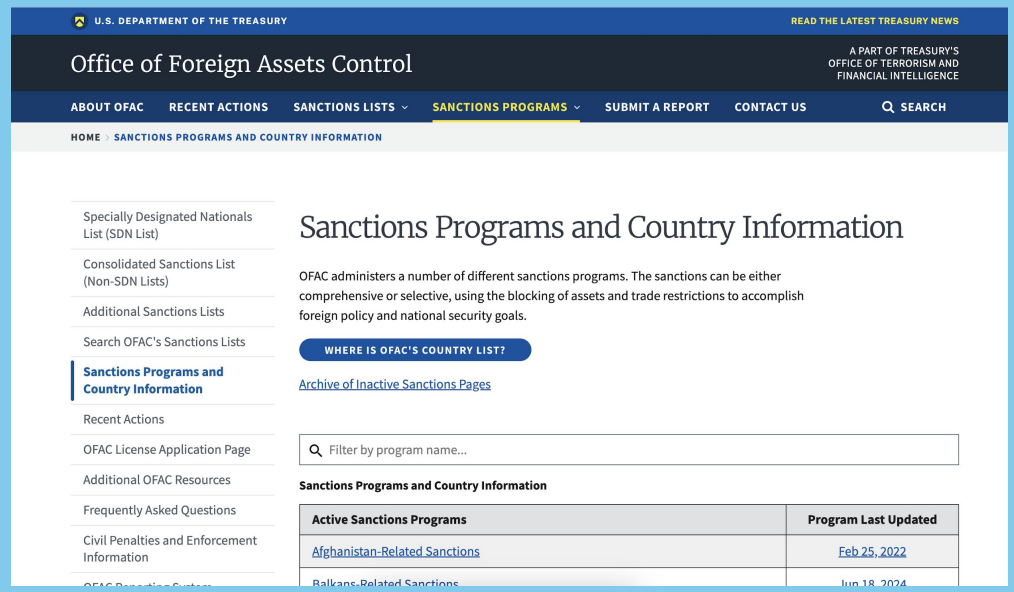


- Venezuela
- Cuba
- Iran
- Iraq
- Myanmar
- Mali
- Nicaragua
- Libya
- Yemen
- Afghanistan
- Belarus
- Central African Republic
- Ethiopia
- Somalia
- Democratic Republic of the Congo
- Hong Kong
- Lebanon
- North Korea
- Sudan
- South Sudan
- Syria
- Russia

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Map created with GeoGraf. Available at https://www.geograf.in/en/map-color.php





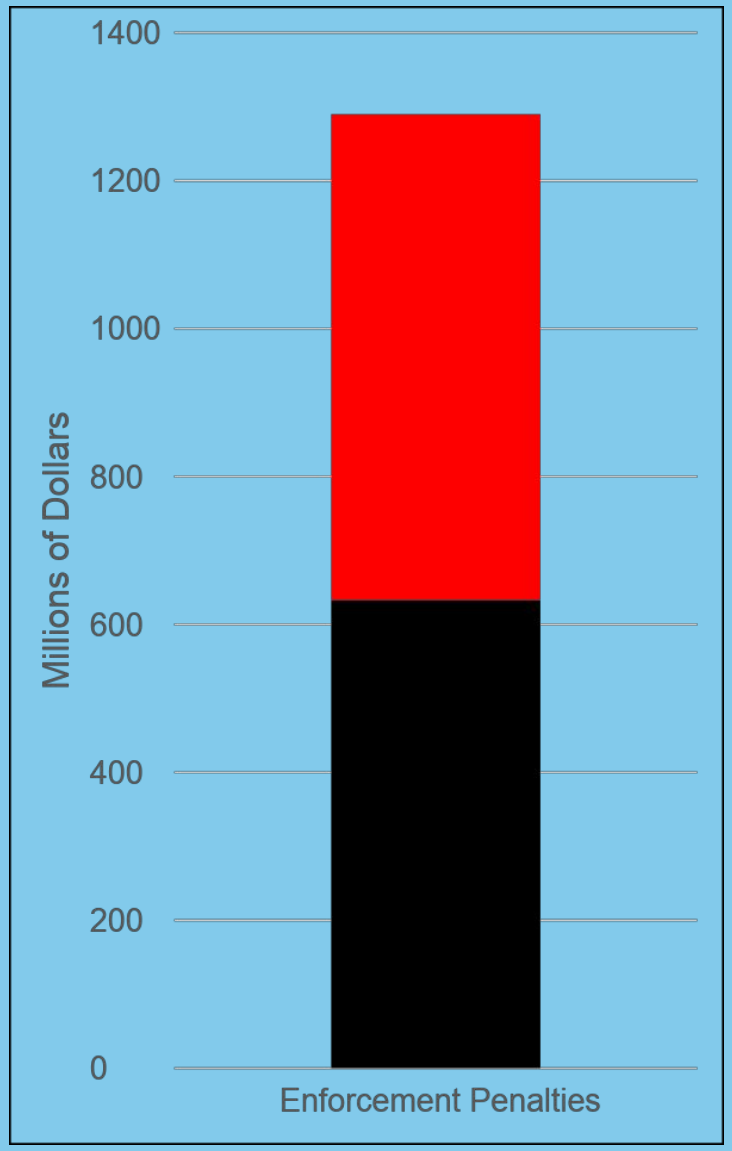
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OFAC Enforcement Action Penalties 2019

$1.29 Billion

Number of Enforcement Actions

26



Largest Penalty: $657 Million (Standard Chartered Bank)

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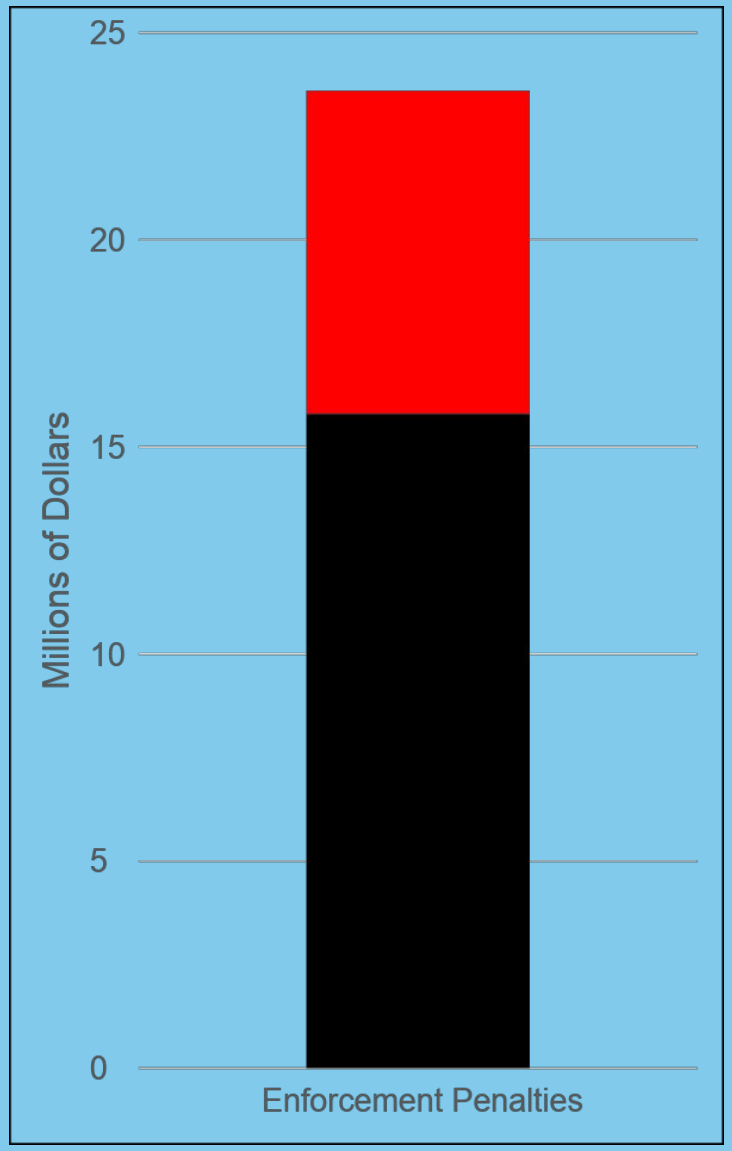
Source: US Office of Foreign Assets Control, Civil Penalties and Enforcement Information (2019-2024) available at https://ofac.treasury.gov/civil-penalties-and-enforcement-information

OFAC Enforcement Action Penalties 2020

$23.6 Million

Number of Enforcement Actions

16



Largest Penalty: $7.8 Million (Société Internationale de Télécommunications Aéronautiques SCRL)

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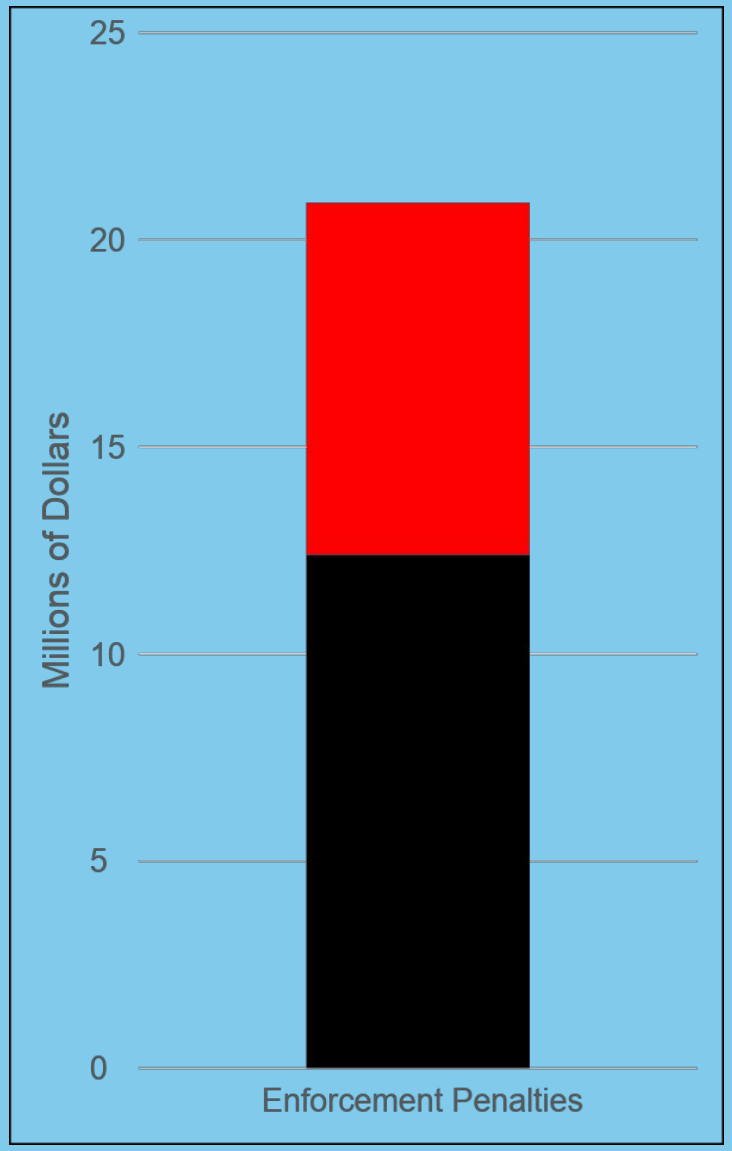
Source: US Office of Foreign Assets Control, Civil Penalties and Enforcement Information (2019-2024) available at https://ofac.treasury.gov/civil-penalties-and-enforcement-information

OFAC Enforcement Action Penalties 2021

$20.9 Million

Number of Enforcement Actions

19



Largest Penalty: $8.5 Million (Union de Banques Arabes et Françaises)

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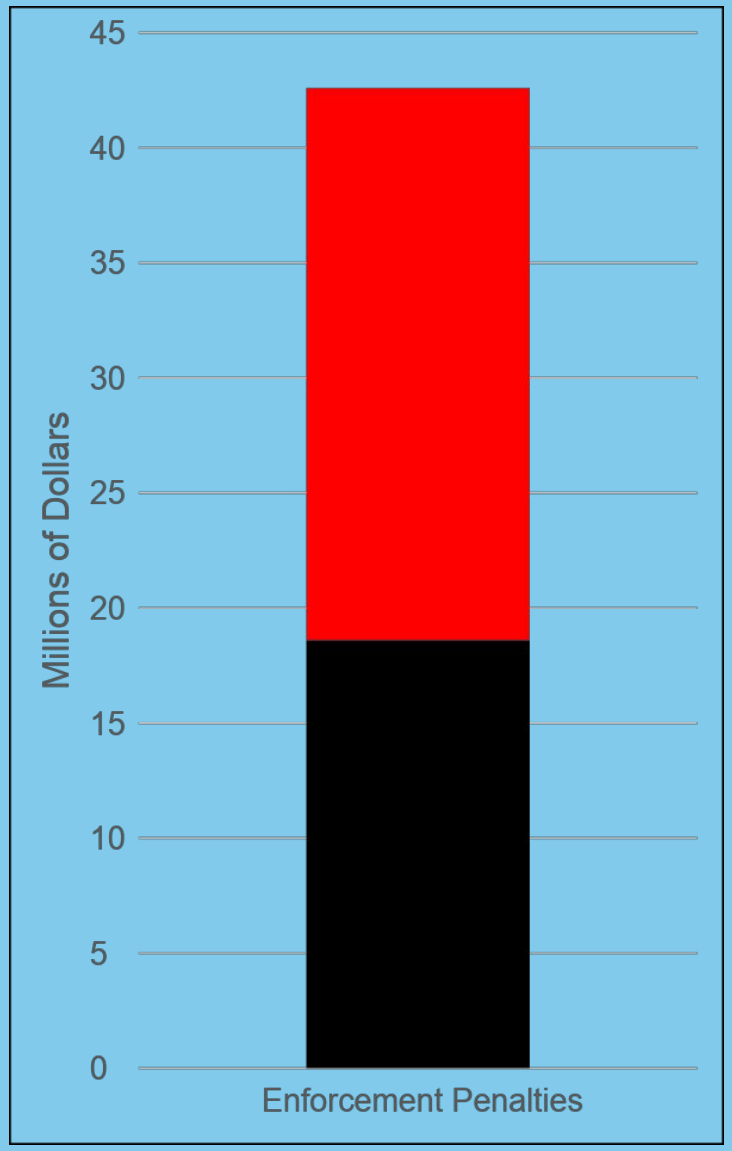
Source: US Office of Foreign Assets Control, Civil Penalties and Enforcement Information (2019-2024) available at https://ofac.treasury.gov/civil-penalties-and-enforcement-information

OFAC Enforcement Action Penalties 2022

$42.6 Million

Number of Enforcement Actions

16



Largest Penalty: $24 Million (Bittrex, Inc.)

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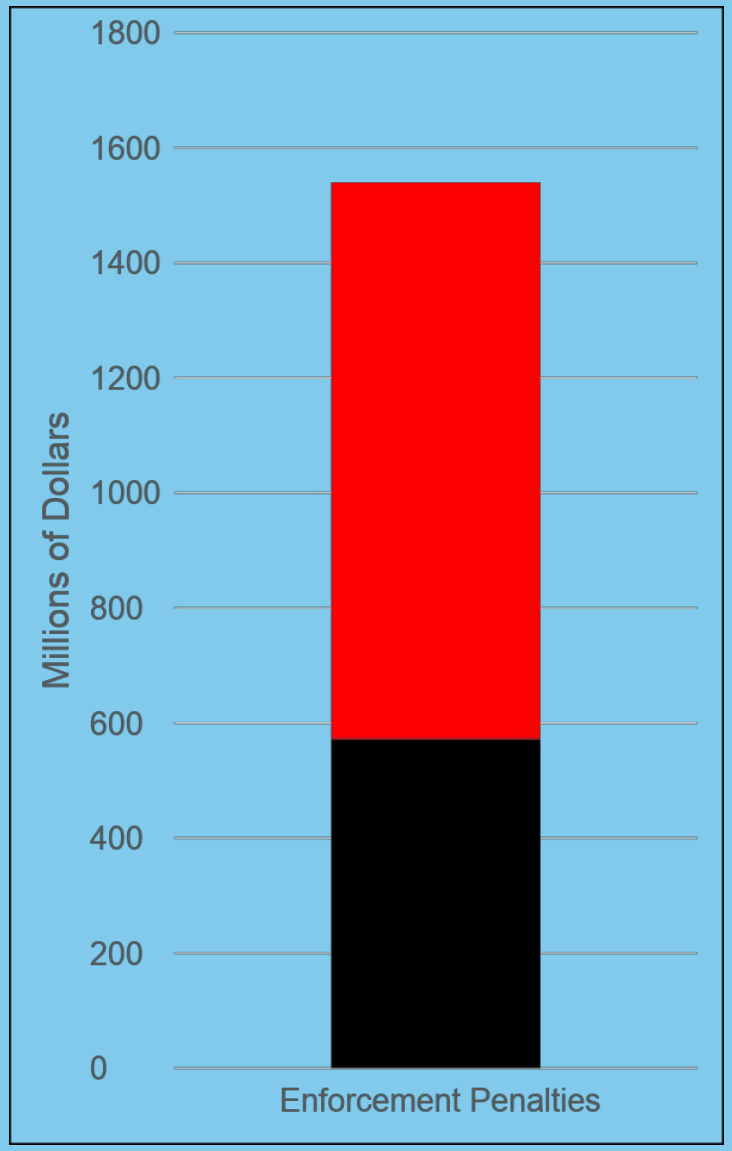
Source: US Office of Foreign Assets Control, Civil Penalties and Enforcement Information (2019-2024) available at https://ofac.treasury.gov/civil-penalties-and-enforcement-information

OFAC Enforcement Action Penalties 2023

$1.54 Billion

Number of Enforcement Actions

17



Largest Penalty: $968 Million (Binance)

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Source: US Office of Foreign Assets Control, Civil Penalties and Enforcement Information (2019-2024) available at https://ofac.treasury.gov/civil-penalties-and-enforcement-information

SANCTION LEGISLATIVE HISTORY

Embargo Act	Trading with the Enemy Act	National Emergencies Act	International Emergency Economic Powers Act	Foreign Narcotics Kingpin Designation Act	Executive Order 13224
1807	1917	1976	1977	1999	2001

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Embargo Act 1807

General trade embargo on all foreign nations. Intended as a means of economic warfare as Britain was not respecting American autonomy.

Trading with the Enemy Act 1917

Gives the President the power to oversee or restrict all trade between the United States and other counties in times of war. Sets the basis for sanction in the United States.

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National Emergencies Act 1976

Established limitations on Presidential ability to declare emergencies and institute sanctions. Congress can override declarations with a veto and sanctions must be renewed yearly.

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International Emergency Economic Powers Act 1977

Allows President to designate countries and territories as threats to the United States and block transactions and freeze assets associated with them.

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Foreign Narcotics Kingpin Designation Act 1999

Allows President and Secretary of the Treasury to identify foreign narcotics traffickers and freeze their assets. Provides civil and criminal penalties for US citizens who do business with any designated individuals or entities.

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Executive Order 13224 2001

Authorizes the Department of State and Department of Treasury to designate individuals and entities that pose a risk to the US. They can also block assets of individuals and entities that associate with terrorist or terrorist organizations.

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TCR PROCESS

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TCRs can be submitted via email to Nell Williams, Senior Enforcement Officer at FinCEN, at nell.williams@fincen.gov while FinCEN works on developing a more official portal. Submissions can either be multiple emails to accommodate file sizes, or an upload to an FTP site with instructions to download.

Information FinCEN has found helpful in the tips it has already received has included:

- The whistleblower's information (if not anonymous), including their name, contact information, occupation, and the contact information of their attorney, if relevant. Please note that a whistleblower who intends to participate in the Whistleblower Program anonymously must be represented by an attorney

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- Information about the entity or individual the whistleblower is complaining about ("the subject of the complaint”) such as information regarding the type of entity or the individual’s profession, as well as information sufficient to clearly identify and reliably contact the subject of the complaint.

- A narrative detailing the activity suspected to violate the Bank Secrecy Act or U.S. economic and trade sanctions, including:

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- A Timeline of the alleged conduct or violations;
- Support for whether the alleged conduct or violations are still ongoing;
- A complete description of all facts pertinent or relevant to the alleged conduct or violations;
- The whistleblower's explanation for why they believe these facts constitute violations of the Bank Secrecy Act or regulations administered by FinCEN, and/or U.S. economic and trade sanctions administered by OFAC;

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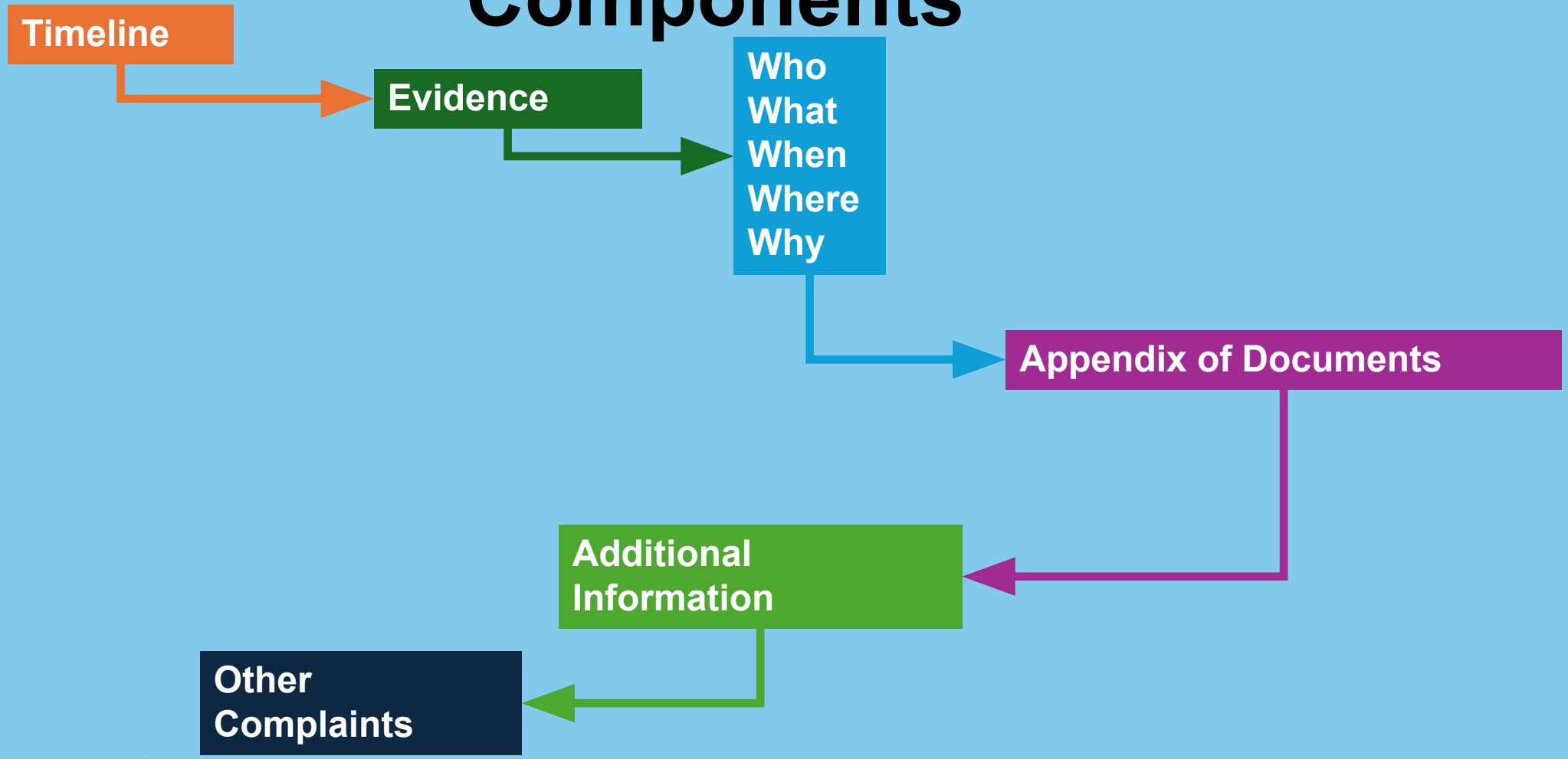
- A description of supporting materials and evidence in the whistleblower's possession supporting the allegations and how the whistleblower obtained that information;
- Additional information that FinCEN should request from the subject of the complaint, including documents, names of key databases, and names and contact information of other witnesses;
- The whistleblower's relationship to the subject of the complaint; and
- Any additional information the whistleblower thinks may be relevant to FinCEN, OFAC, or DOJ's consideration of the complaint.

- Supporting materials or evidence to share with FinCEN. Please note that supporting materials or evidence can be sent as an email attachment if the e-mail size is under 15MB. Larger files can be shared by providing an FTP link. No individual files should exceed 1GB in size.
- A statement whether the whistleblower has previously filed their complaint or substantially similar complaints with other government agencies (e.g., the SEC, CFTC, OFAC, DOJ, etc.) FinCEN has found it helpful for the whistleblower to provide a copy of those previously filed complaints, and any point of contact at those other government agencies regarding the previously filed complaints, including respective names, titles, and contact information

- A statement whether any information or documents in the complaint could reasonably be expected to reveal the whistleblower's identity.
- PLEASE DO NOT SEND PRIVILEGED MATERIALS. For any privileged information, FinCEN has found it helpful when whistleblowers clearly identify information or documents in their complaint that might be privileged and segregate it from their submission.

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Narrative Components



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BSA and Sanctions Violations Examples

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2012 FinCEN Enforcement Action – HSBC



PRESS RELEASE

HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit $1.256 Billion in Deferred Prosecution Agreement

Civil Penalty: $650 Million

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2014 FinCEN Enforcement Action – JPMorgan Chase

JPMorgan Chase & Co.

JPMorgan Admits Violation of the Bank Secrecy Act for Failed Madoff Oversight; Fined $461 Million by FinCEN

20140107.pdf 55.66 KB

Contact: Contact:Steve Hudak (703) 905-3770
Immediate Release: January 07, 2014

WASHINGTON, D.C. – The Financial Crimes Enforcement Network (FinCEN) today fined J.P. Morgan Chase Bank, N.A. $461 million for willfully violating the Bank Secrecy Act (BSA) by failing to report suspicious transactions arising out of Bernard L. Madoff's decades-long, multi-billion dollar fraudulent investment scheme. In consenting to the assessment of a civil money penalty, JPMorgan admitted to the facts set forth by FinCEN and that its conduct violated the Bank Secrecy Act.

Total Payment: $2.05 Billion

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2021 FinCEN Enforcement Action – Capitol One



REGULATORY ENFORCEMENT

Capital One fined $390M for 'egregious' AML compliance failures

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2022 FinCEN Enforcement Action – USAA



FinCEN Announces $140 Million Civil Money Penalty against USAA Federal Savings Bank for Violations of the Bank Secrecy Act

Contact: Office of Strategic Communications, press@fincen.gov
Immediate Release: March 17, 2022

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2019 OFAC Enforcement Actions – UniCredit Bank



PRESS RELEASES

U.S. Treasury Department Announces Settlement with UniCredit Group Banks

April 15, 2019

Treasury Settlement Part of Combined $1.3 Billion Settlement for Banks' Apparent Violations of Multiple Sanctions Programs

Burma, Cuba, Libya, Sudan, others

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Source: US Office of Foreign Assets Control, Civil Penalties and Enforcement Information (2022-2024) available at https://ofac.treasury.gov/civil-penalties-and-enforcement-information

2023 OFAC Enforcement Action - Seagate



Seagate to pay $300 million penalty for shipping Huawei hard drives in violation of US export control laws

By Reuters

3 minute read · Published 10:09 PM EDT, Wed April 19, 2023

China

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2023 OFAC Enforcement Action - BAT



PRESS RELEASE

United States Obtains $629 Million Settlement with British American Tobacco to Resolve Illegal Sales to North Korea, Charges Facilitators in Illicit Tobacco Trade

Tuesday, April 25, 2023

Share

For Immediate Release

Office of Public Affairs

North Korea

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2023 FinCEN & OFAC Enforcement Action - Binance



PRESS RELEASES

U.S. Treasury Announces Largest Settlements in History with World's Largest Virtual Currency Exchange Binance for Violations of U.S. Anti-Money Laundering and Sanctions Laws

November 21, 2023

FinCEN settlement of $3.4 billion and OFAC settlement of $968 million largest for each

IRS – CI investigation leads to Department of Justice action

Iran, North Korea, Syria, terrorist organizations

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2023 FinCEN & OFAC Enforcement Action - Binance

Policy

Binance to Make 'Complete Exit' From U.S., Pay Billions to FinCEN, OFAC on Top of DOJ Settlement

The crypto exchange, which is settling charges with the Department of Justice, will appoint a monitor as well.

By Nikhilesh De Nov 21, 2023 at 1:37 p.m. MST Updated Mar 8, 2024 at 10:27 a.m. MST

'The violations include failure to implement programs to prevent and report suspicious transactions with terrorists – including Hamas' Al-Qassam Brigades, Palestinian Islamic Jihad (PIJ), Al Qaeda, and the Islamic State of Iraq and Syria (ISIS) – ransomware attackers, money launderers, and other criminals, as well as matching trades between U.S. users and those in sanctioned jurisdictions like Iran, North Korea, Syria, and the Crimea region of Ukraine,' it said.

'Binance admits that it willfully operated as an unregistered money services business (MSB) while obscuring its ties to the U.S. and maintaining its most commercially important U.S. customers,' it added.

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If you would like to expand your practice to include whistleblowing cases and be part of PROTECTUS Law's whistleblowing communications network

PLEASE EMAIL ME AT:

nroberts@protectuslaw.com

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