The U.S. Department of Treasury has a branch called the Office of Foreign Assets Control (OFAC) that administers and enforces economic and trade sanctions against countries and particular individuals and entities who are involved in activities such as terrorism and narcotics trafficking. U.S. persons and businesses—including independent schools—cannot do business or facilitate business with sanctioned individuals or entities (Specially Designated Nationals, or SDNs) and can face civil and criminal penalties if they do. Records of screening and due diligence efforts must be kept for 10 years.

While boarding schools with large international student populations are most at risk for OFAC violations, any school that engages with foreign persons and entities must be aware of U.S. sanctions laws and have a program to screen and protect against sanctions violations. OFAC violations are a strict liability offense, meaning that intent to violate the law is not a requirement. Despite this, OFAC does have discretion in how it handles cases, and it is possible that a school may receive a lower penalty or no penalty at all in certain circumstances such as a first-time violation where the school did have a compliance program in place. In the case of an investigation, penalties will depend on various factors, including:

- Whether the violation was willful or reckless;
- The level of awareness of the conduct underlying the violation;
- The level of harm to the sanction program's objectives;
- Individual characteristics including the sophistication of the violating entity, volume of transactions, and any past sanctions history;
- The existence of a functioning compliance program;
- Taking steps to remediate or cure the violation once aware, including self-reporting to Treasury. (Self-reporting is highly encouraged and often results in a 50% reduction in any penalty owed.);
- Level of cooperation with OFAC during an investigation;
- Timing of the violation in relation to the imposition of sanctions;
- The existence enforcement actions by other authorities;
- Future compliance or deterrent effect; and
- Other factors as relevant to ensure a proportional response based on the totality of the circumstances.

In order to mitigate against the risk of sanctions violations, independent schools should take a risk-based approach. It is reasonable for a small school that has relatively few international entanglements with lower-risk jurisdictions to conduct a more baseline level of screening while a larger school with a high volume of international touchpoints or more complex arrangements with riskier jurisdictions may want to dig deeper. When developing a sanctions compliance program, schools should:

- Evaluate their sources of sanctions risk. For example, if the school has students from abroad, tuition and fee payments must be evaluated prior to acceptance. Other

areas of risk include international faculty, donors, vendors, study abroad/travel programs, financial arrangements with third-party payors from abroad, and international collaborations such as foreign campuses. Make sure to involve all relevant school departments, including the business office, admissions, international programs, and development.

- Check to see if there are any sanctions exceptions or exemptions for planned activities. There are comprehensive embargoes against certain countries like Cuba, Iran, and North Korea. However, in certain instances, humanitarian activities or travel may be allowable. Find more information on exceptions and exemptions at https://ofac.treasury.gov/faqs/4.
- Develop a due diligence and sanctions screening program using OFAC's SDN and other sanctions lists, which you can find at https://sanctionssearch.ofac.treas.gov/. While this process can be outsourced to a vendor, schools are ultimately responsible for compliance and for checking names that are flagged by a third-party vendor to determine if the result is a true match or a false positive. If a school is setting up a new compliance program from scratch, it should work with counsel to evaluate how to best review transactions over the last 10 years (i.e., the recordkeeping period).
- Schools should use the information they have to determine whether the person/entity providing funds to the school is from a sanctioned jurisdiction, is an SDN, or has ties to sanctioned individuals. Common red flags that may prompt additional investigation include interactions with high-risk jurisdictions, the presence of third-party payor in a transaction, large donations, cash payments, when payment comes from a different country than the student's residence, when families are reluctant to provide information for all parents/guardians, and when the payment processor or bank has additional questions. For example, in the case of a tuition agreement, schools should check the student, the signatory, and the payor. Importantly, if a school realizes that it has inadvertently received a prohibited transaction, it should contact counsel and make sure not to return the funds to the payor as that action would be an additional prohibited transaction.
- Ensure good oversight, training, and auditing of your compliance program. For more information on developing a compliance program, OFAC published this "Framework for OFAC Compliance Commitments" document in 2019.

For more information on OFAC Sanctions, see the U.S. Department of Treasury FAQ page. For a deeper analysis of recent enforcement actions in the independent school sector and recommendations on developing a due diligence and sanctions screening program, read this Venable advisory.