



## Enforcing US Economic Sanctions: Why Whale Hunting Works

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To cite this article: Bryan R. Early & Keith A. Preble (2020) Enforcing US Economic Sanctions: Why Whale Hunting Works, *The Washington Quarterly*, 43:1, 159-175

To link to this article: <https://doi.org/10.1080/0163660X.2020.1736881>



Published online: 19 Mar 2020.



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# Enforcing US Economic Sanctions: Why Whale Hunting Works

No country in the world employs economic sanctions more than the United States. The way the US government enforces these sanctions can have billion-dollar ramifications for companies, alter global markets, and cause or help resolve foreign policy crises. Sanctions enforcement actions taken during the Obama administration against major European banks—including Credit Suisse, ING Bank, and BNP Paribas—resulted in billions of dollars of fines and fundamentally altered the way the global financial industry assesses the risks of doing business with sanctioned states. The US enforcement action taken recently against Chinese tech giant ZTE for violating US sanctions and strategic trade controls has also emerged as a contentious focal point in US-China relations during the Trump administration.

Outside these high-profile cases, surprisingly little is known about the strategies used to enforce US sanctions. The US Department of Treasury's Office of Foreign Asset Control (OFAC) is the agency primarily responsible. For the breadth of its mandate, the agency has remained relatively small and underfunded.<sup>1</sup> Since the early 2000s, however, OFAC—despite significant resource limitations—has evolved into an extraordinarily powerful enforcement agency with a global reach.

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© 2020 The Elliott School of International Affairs  
*The Washington Quarterly* • 43:1 pp. 159–175  
<https://doi.org/10.1080/0163660X.2020.1736881>

Our analysis of OFAC's evolution begins with a puzzling set of trends. From 2003 to 2019, the total number of sanctions enforcement actions OFAC took against companies decreased from 153 to 22 (with 4 additional actions taken against companies' foreign subsidiaries).<sup>2</sup> This decline does not tell the whole story, however, given that the average civil monetary penalty imposed against firms rose from US\$22,232 in 2003 to US\$58,600,000 in 2019.<sup>3</sup> These two seemingly contradictory trends reflect how OFAC's sanctions enforcement

**Limitations existed on the size of sanctions penalties during the George W. Bush administration.**

strategy evolved from catching many violators (quantity) to pursuing a smaller number of major enforcement actions (quality).

The former approach was used during the George W. Bush administration as part of what we refer to as a “fishing” strategy. Limitations existed on the size of the penalties for sanctions during this period, so efforts at increasing sanctions enforcement relied upon increasing the number of enforcement actions taken—targeting not

only firms but also 1,211 individuals. After statutory changes from 2007 to 2009 increased the allowed amount for financial penalties, OFAC shifted to employing a “whale-hunting” sanctions enforcement strategy that involved emphasizing a smaller number of enforcement actions capable of resulting in enormous penalties.<sup>4</sup> This transition to whale-hunting during the Obama administration appears to coincide with a significant growth in OFAC's power and influence over corporate behavior globally.

In this study, we explain why OFAC's whale-hunting strategy has been more effective at promoting compliance with US economic sanctions. We argue that the cognitive heuristic of “probability neglect,” or the way in which the

**“Probability neglect” explains why whale-hunting is more effective than fishing.**

likelihood or probability that an outcome occurs is ignored due to fear, explains the whale-hunting strategy's effectiveness at obtaining compliance. The fear and uncertainty created by OFAC's dramatic sanctions enforcement actions against a relatively small number of companies—mainly foreign banks—changed global perceptions about the risks of violating US sanctions. We also argue that, in order to take full advantage of the whale-hunting

strategy's benefits, OFAC increased its industry outreach efforts. These efforts included increasing the sanctions compliance resources OFAC makes publicly

available, leveraging its enforcement actions to inform companies about its compliance expectations, and issuing guidance about adopting sanctions-related internal compliance programs (ICPs).<sup>5</sup> We conclude by analyzing the factors that could influence whether OFAC can continue using whale-hunting strategy effectively in the future.

## The Enforcement Challenge

Economic sanctions are policies that seek to compel concessions from target individuals, firms, or governments by harming their economic welfare. For commercial sanctions to impose costs on targets, governments must force the actors under their jurisdiction to comply with the sanctions policies. Crafting effective sanctions policies is thus a two-stage process that entails first determining what set of sanctions policies will harm the target sufficiently to force concessions, and second, determining what sanctions implementation strategies will impose high enough costs in practice to lead to concessions.

Obtaining compliance with sanctions poses significant challenges for governments as it disrupts commerce, requires significant funds, and often necessitates specialized expertise. Economic sanctions disrupt or block lucrative commercial relationships, directly countering firms' profit-seeking motivations. Governments seeking to implement sanctions must 1) make industry actors aware of sanctions obligations, 2) ensure they know how to adopt them, and 3) convince firms that they are better off complying with sanctions than violating them.

Actors required to comply with economic sanctions and those targeted by economic sanctions have strong incentives to try to circumvent sanctions if they can do so profitably. The US government has confronted endemic challenges of both domestic and foreign companies undercutting the effectiveness of US sanctions—even those that appear powerful on paper.<sup>6</sup> Since punishing sanctions evaders outside of a sanctioning government's jurisdiction is difficult, the United States has incentives to maximize compliance within its sanctions' jurisdiction. Cost-effective strategies for implementing sanctions must rely on leveraging a limited number of enforcement actions to deter violations.

The primary value in punishing sanctions violators often comes from the ability to use such cases to raise awareness about sanctions and to deter violations. Directly changing the behavior of violators and collecting fines is valuable,<sup>7</sup> but greater compliance benefits can be yielded from the way enforcement actions influence the compliance behavior of other actors. The second-order effects of punishing sanctions violators can help reduce sanctions violations in distinct ways.

Sanctions infractions fall into two categories: unintentional and deliberate violations.<sup>8</sup> Government agencies responsible for implementing sanctions must address both types of violations within the context of the scarce resources they are allotted. Unintentional violations occur because parties are unaware of sanctions obligations or do not understand how to comply with them. These violations are rooted in the informational and technical challenges required to comply with sanctions policies.<sup>9</sup> Deliberate sanctions violations occur when parties understand their compliance obligations but choose not to comply; these types of violations are largely motivated by the pursuit of profits.<sup>10</sup> Actors knowingly violate sanctions factoring in the potential benefits and risks. Recognizing this distinction, OFAC created an “egregious” sanctions violation category that allows for substantially harsher financial penalties against parties that engage in significant, deliberate violations.<sup>11</sup>

The strategies for addressing the challenges posed by unintentional and deliberate violations are overlapping but distinct. Awareness raising and robust industry outreach about sanctions compliance obligations are the best ways to discourage unintentional violations. OFAC provides online resources, hosts educational events, and engages in targeted outreach to raise awareness within the business community about sanctions obligations. Large companies with dedicated compliance offices should be aware of sanctions obligations, but many small and medium-sized enterprises do not have those resources. Many of those firms face challenges in staying up to date about their sanctions compliance obligations and understanding how to comply. Providing information and educational resources plays a major role in preventing unintentional violations. Also, allowing OFAC to have discretion in how sanctions are enforced encourages companies to disclose violations voluntarily, thus incentivizing

companies to work with authorities to adopt remedial measures that prevent future violations.<sup>12</sup> Investments in monitoring and investigating sanctions violations also help uncover unintentional violations.

To prevent deliberate violations, agencies responsible for enforcing sanctions must catch and punish individual violators or create sufficiently strong deterrent threats to dissuade potential violations. Detecting, investigating, and potentially prosecuting

sanctions violations is a time- and resource-intensive endeavor, so stopping the large number of sanctions violators one case at a time is an inefficient strategy. When enforcement actions entail major, well-publicized penalties, they signal information to potential violators about the costs associated with failing to

**Stopping the large number of sanctions violators one case at a time is an inefficient strategy.**

comply with sanctions. Deliberate violations are often deterred if other entities think the same fate could await them.

Governments that adopt effective industry outreach policies minimize the number of unintentional sanctions violations that occur and lower the overall number of violations enforcement bodies must try to detect. Minimizing unintentional violations allows government agencies to concentrate their resources on deliberate sanctions violators and permit enforcement bodies to pursue enforcement cases that result in the most severe punishments. Those severe penalties will generate greater awareness of sanctions obligations and enhance the perceived risks of violating sanctions, thus reducing the subsequent likelihood of unintentional and deliberate violations by other actors.<sup>13</sup>

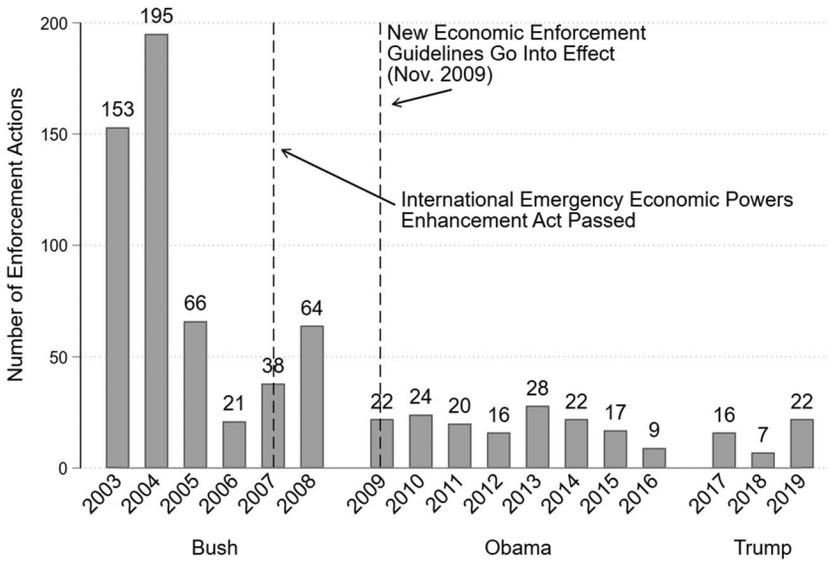
## A Whale-Hunting Strategy

After a surge in enforcement actions during the mid-2000s that entailed mostly minor penalties and mainly focused on violations involving Cuba, OFAC changed its sanctions enforcement strategy in response to new legal authorities that allowed it to impose substantially higher financial penalties. In the latter part of the Bush administration, US officials asked Congress to increase the severity of the penalties they could impose for sanctions violations in order to enhance US sanctions efforts against Iran.<sup>14</sup> That authority was granted via the 2007 International Emergency Economic Powers Enhancement Act (IEEPEA) and subsequent statutory changes adopted in 2009.<sup>15</sup> As [Figure 1](#) illustrates, there was a significant decline in the number of enforcement actions against firms after the mid-2000s as OFAC began altering its enforcement strategy. Instead of casting a wide net to catch a lot of minor sanctions violators (a fishing strategy), OFAC began pursuing a much smaller number of enforcement actions with a greater focus on those capable of yielding enormous penalties (a whale-hunting strategy).

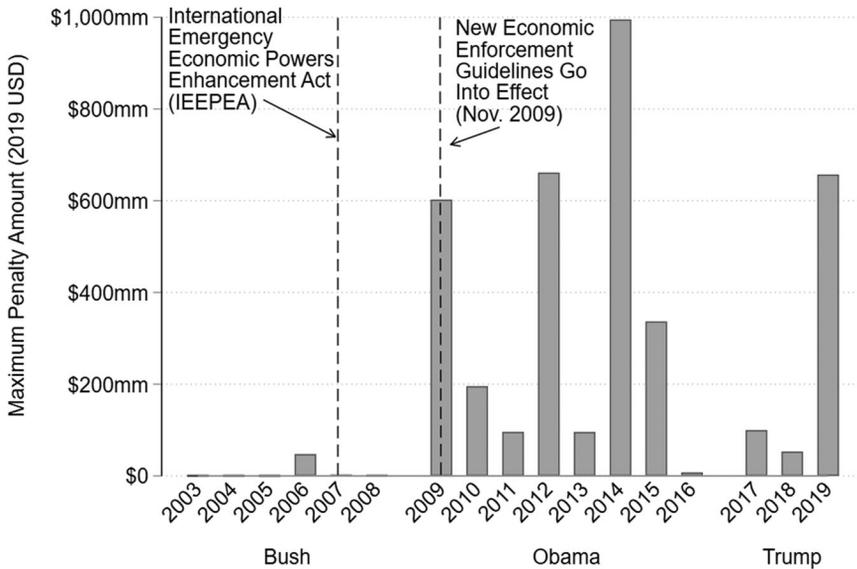
Publicly available data shows how the agency took advantage of the new legal-regulatory environment. As [Figure 2](#) illustrates, the maximum fines imposed rose dramatically during the Obama administration. During the Bush administration, the average fine for sanctions enforcement actions against firms was approximately US\$121,156. The highest fine imposed by OFAC during the Bush administration topped out at US\$47.4 million dollars against the foreign financial firm ABN Amro Bank N.V. in 2006.

With the old statutory limits revised, the Obama administration imposed a then-record fine of US\$602 million in 2009 against Credit Suisse for apparent violations of a slew of US sanctions programs. In 2012, OFAC set a new record by targeting ING Bank N.V. for apparent violations and imposing a penalty of

**Figure 1: Enforcement Actions against Entities, by Administration (2003–19)<sup>16</sup>**



**Figure 2: Maximum Penalty Imposed Each Year, by Administration<sup>17</sup>**



US\$661 million. The US\$995 million fine against French bank BNP Paribas SA broke the record again in 2014. Eight of the top ten penalties from 2003 to 2019 imposed by OFAC during our analysis targeted foreign financial entities and occurred during the Obama administration (except for the 2019 penalties imposed against UniCredit and Standard Chartered Bank).

So, why are foreign banks responsible for all of OFAC's largest penalties? For years, many foreign banks ignored or deliberately violated US sanctions provisions. When financial institutions flout US sanctions requirements, the volume of transactions they engage in can mean they engage in hundreds or even thousands of distinct sanctions violations. This volume makes such entities lucrative enforcement targets for OFAC and US criminal enforcement bodies, as those violators may have engaged in thousands of transactions subject to maximum statutory penalties. Foreign banks not only have the resources to pay the enormous fines, but they also have strong incentives to settle those liabilities rather than risk being denied access to the US financial system. While lucrative, pursuing these "whale" cases requires significant resources and expertise to pursue.

In total, the average fine imposed during the Obama administration was US\$28,100,000 per enforcement action while the average fine as of 2019 during the Trump administration has been US\$32,800,000. Those are significant increases over the average fine of US\$121,156 during the Bush administration. The transition from the fishing to the whale-hunting strategy did not occur overnight, but it evolved due to dissatisfaction with the fishing strategy's inability to deter violations.<sup>18</sup> In the next section, we explain the logic underpinning this strategic shift in OFAC's approach toward enforcing US sanctions.

## The Theory behind Whale Hunting

OFAC changed from a fishing strategy that emphasized increased probabilities of catching sanctions violators to a whale-hunting strategy better capable of yielding enormous punishments after the IEEPEA reforms were fully implemented in 2009.<sup>19</sup> Even before that, OFAC had already begun cutting down on the number of sanctions enforcement actions it took during the latter part of the Bush Administration (2005–08). While Treasury officials sought Congressional authorization to impose larger penalties for sanctions violations, Under Secretary for Terrorism and Financial Intelligence Stuart Levey experimented with placing greater emphasis on the use of persuasion instead of penalties to promote compliance with US sanctions.<sup>20</sup> This emphasis suggests that Treasury officials were trying to find innovative ways of promoting compliance with US

sanctions since its existing penalties could not deter violations. The new authorities granted under IEEPEA empowered OFAC to make a decisive change in the way it enforced sanctions.

Changing from the fishing strategy to the whale-hunting strategy involved making a tradeoff between investing scarce resources to catch as many violators as possible versus pursuing a smaller number of, on average, higher impact cases. OFAC's dramatic increase in influence over global businesses appears to be

**A dramatic increase in influence over global businesses seems linked to massive fines starting in 2009.**

linked to when it started imposing massive fines against sanctions violators in 2009.<sup>21</sup> Since then, firms have dramatically increased their internal investments in complying with US sanctions—even foreign ones.<sup>22</sup> Yet, it is not immediately clear why OFAC's whale-hunting strategy has been so much more effective even as the body dramatically reduced its average yearly enforcement actions.

Decision-making research on cognitive biases can help explain why creating the perception of severe consequences associated with the whale-hunting enforcement strategy

makes it more effective than the fishing strategy.<sup>23</sup> The cognitive phenomenon known as “probability neglect” captures the findings that individuals respond disproportionately to low-probability/high-consequence threats. When confronting the possibility of catastrophic outcomes, emotional responses generated by these threats impact decision-making by causing people to focus on the adverse outcome instead of its likelihood of occurring. The effects of probability neglect are especially salient when adverse outcomes potentially produce strong fear-based emotions. When confronting decisions involving the small probabilities of experiencing catastrophic losses, individuals tend to accept small, certain losses to eliminate even the minimal chance of a catastrophic outcome.<sup>24</sup> All this helps explain, for example, why individuals and firms buy insurance policies even when they are at low risk.

The degree to which probability neglect influences decision-makers is affected by how readily they can think of an example (the “availability heuristic”) of the disastrous outcome they are concerned about. When individuals are familiar with a disastrous outcome or know it just occurred (for example, OFAC imposing significant penalties against a competitor), their response to addressing that threat will focus more strongly on its potential consequences than its probability. The possibility of confronting devastating losses—even in cases when the probability of occurrence is very low—can motivate decision-makers to invest in measures to protect or insure against threats. Decision-makers thus

invest significantly more resources to address threats than perceived probabilities suggest is necessary.<sup>25</sup>

Probability neglect explains why OFAC's whale-hunting strategy should be more effective at obtaining sanctions compliance than its former fishing strategy. Given the size of the US economy and the extraordinary number of sanctions violations that could potentially occur in global transactions, the fractional increase in risk that a company will perceive from OFAC engaging in 25 versus 50, 75, or 100 enforcement actions is limited. The number of violations that OFAC detects will still be a minuscule percentage of potential infractions. Yet for OFAC, quadrupling the number of enforcement actions would require substantially more resources. As such, a strategy that maximizes punishing violations is unlikely to have a major deterrent effect. While more violators will be caught, other potential violators will not necessarily be deterred.

The whale-hunting enforcement strategy theoretically represents a more efficient alternative. Prior to IEEPEA's passage, US officials realized that the low statutory limits in place were "negating some of the deterrent effect" available to US agencies to impose penalties against violators.<sup>26</sup> Investing in pursuing fewer enforcement actions allows OFAC to consolidate its efforts and resources on major enforcement actions against targets like foreign banks. Such cases require extensive investigations, especially if the cases involve overseas business activities, complex business transactions, or many interrelated violations. Many of OFAC's largest penalties involved cases in which foreign financial institutions engaged in hundreds or even thousands of individual violations.

These time- and resource-intensive cases uncovered "egregious" violations, which are associated with the most severe financial penalties that OFAC can impose.<sup>27</sup> While fewer violators are being caught, a much broader population of potential violators may be deterred from engaging in violations as a result of a small number of enormous penalties. The fear created by shockingly large penalties for sanctions violations can discourage more risk-averse firms from engaging in deliberate violations and encourage them to invest in sanctions compliance programs to minimize the risk of unintentional violations. Even with a slightly low-level baseline probability of being caught, the phenomenon of probability neglect suggests firms' behavior will be heavily influenced by the possibility of calamitous penalties.

OFAC's whale-hunting strategy changed how the corporate world perceived the risks associated with US sanctions. A report from Deloitte in 2009 highlighted the implications of damaging not only a firm's reputation by engaging in criminally or civilly negligent behavior but also opening the firm up to OFAC penalties. One banker indicated that the penalties being pursued by OFAC and other US agencies "got people's attention."<sup>28</sup> A US law firm that

specializes in sanctions and compliance law noted in 2015 that “Persons and entities operating in the financial services and international trade sectors would be well-advised to take note of OFAC’s warnings and suggestions.”<sup>29</sup> These suggestions range from transaction monitoring systems, requesting additional information when engaging in trade and transactions, and letting clients know of the entity’s role in fulfilling its sanctions obligations.

The cumulative impact of OFAC’s dramatic enforcement actions over the past decade has motivated firms to invest in sanctions compliance like never before. Indeed, a cottage industry has emerged in the past decade to help companies understand and manage the risks associated with US sanctions. In a 2018 survey conducted by Thomson Reuters, corporate respondents indicated that they planned to increase their sanctions compliance budgets by 61 percent.<sup>30</sup> Another 2017 survey released by AlixPartners indicated that 54 percent of the firms surveyed indicated plans to invest in more robust sanctions and anti-money laundering compliance programs and that many financial institutions are “de-risking” by ceasing once-profitable business activities that could potentially be related to sanctions targets (even if there is no requirement for financial institutions to do so).<sup>31</sup> As these surveys note, OFAC’s efforts to encourage companies to invest in robust sanctions ICPs remain a work in progress, and levels of compliance beyond the financial sector are uneven. Compared to the rampant sanctions-busting that undercut US sanctions from the 1950s to early 2000s,<sup>32</sup> most major firms now take US sanctions requirements seriously and have made investments to comply with them. That shift is remarkable progress.

The enormous penalties imposed as part of OFAC’s “whale-hunting” strategy are also highly effective at generating publicity. The bad publicity associated with record-setting penalties for violating sanctions enhances the adverse consequences for companies. Second, the publicity generated from these cases helps raise awareness about sanctions obligations and regularly reminds firms about the potential costs of such violations. Minor penalties do not generate the same level of publicity. The more firms perceive the reputational and economic damages associated with violating sanctions as unacceptably high, the greater the investments they will make to avoid violating sanctions.

OFAC’s constructive investment in industry outreach has complemented the effectiveness of its whale-hunting strategy. Clearly aware that its massive financial penalties have captured the attention of corporate compliance officers and risk managers, OFAC has adopted strategies that play to the fears its penalties have created. In June 2019, OFAC published *A Framework for OFAC Compliance Commitments* that lays out detailed steps it expects firms to take to implement sanctions compliance programs.<sup>33</sup> Whereas OFAC had previously used explanations provided in its enforcement actions to offer insights into its

compliance expectations, the framework document provides explicit instructions to companies about what policies they should put in place to comply with US sanctions obligations. In return, the document indicates that if firms are found to have engaged in apparent violations despite these precautionary investments, the violations are less likely to be deemed “egregious” in nature. In other words, adopting a robust sanctions compliance program is akin to an insurance policy to avoid massive OFAC penalties should sanctions violations still occur. Notably, this new policy blurs the line between what qualifies as a deliberate versus unintentional sanctions violation: it assumes that, after a decade of OFAC’s high-profile enforcement efforts, the choice not to invest in sanctions compliance is a deliberate one that likely warrants more severe punishments.

OFAC has also adopted policies to encourage companies to engage in voluntary self-disclosure of penalties and cooperate with its investigations to reduce their potential sanctions liability. OFAC’s voluntary self-disclosure policy allows the agency to learn about sanctions violations it may otherwise have missed, and far more efficiently than if it had to detect violations itself. It also sets the stage for further cooperation in investigating the sanctions violations and adopting remedial actions. Entities that voluntarily self-disclose violations have penalties capped at one-half of the transaction value (for a maximum of US\$151,292, rather than the US\$302,584 statutory maximum).<sup>34</sup>

OFAC makes a distinction between voluntary self-disclosure and cooperation. While voluntarily self-disclosing is seen as a substantial form of cooperation, OFAC also provides discounts of 25 to 40 percent for apparent violations that have not been voluntarily disclosed but for which entities have been timely and responsive to information requests. Approximately 34 percent of the enforcement actions taken since OFAC adopted the whale-hunting strategy have involved voluntary self-disclosure by firms, as opposed to just 21 percent before the whale-hunting strategy began.<sup>35</sup> A substantial number of self-reported violations apparently result in no enforcement actions being taken, but OFAC closely conceals the details surrounding cases when no public enforcement actions are taken.<sup>36</sup>

For firms, voluntary self-disclosure of violations limits the potential financial liabilities for violations and can reduce or entirely avoid negative publicity associated with violations. Firms that are afraid of potentially severe penalties for sanctions violations should be more willing to cut deals even if that guarantees they will receive some level of punishment. These findings and

**Adopting a robust sanctions compliance program is akin to an insurance policy for companies.**

theories suggest that OFAC's tradeoff of investing in fewer but often more high-profile cases and adopting a complementary industry outreach strategy is far more effective than when it sought to catch as many violators as possible.

## Emergent Challenges for the Whale-Hunting Strategy

Adopting the whale-hunting strategy has allowed OFAC to enhance the deterrent power of its enforcement actions and substantially raise awareness about violating US sanctions. There are several reasons to be concerned about the durability of OFAC's future use of the whale-hunting strategy, especially as OFAC seeks to promote higher levels of sanctions compliance outside the financial sector.<sup>37</sup> By hunting the potential population of foreign financial sector "whales" into extinction, OFAC may lose the prey that has allowed this strategy to work effectively. Since penalties imposed by OFAC are calculated *per apparent violation*, non-financial sector firms almost never reach the number of violations needed to impose record-setting fines seen with foreign financial institutions.<sup>38</sup> For example, OFAC's 2019 enforcement action against UniCredit bank involved 2,158 apparent violations, whereas its enforcement action against e.l.f. Cosmetics the same year only involved 156.<sup>39</sup> By focusing more on non-financial sector sanctions violators, there are fewer opportunities to impose massive, headline grabbing penalties.

The percentage of OFAC's enforcement actions against financial firms has fallen slightly during the Trump administration to 28 percent (13 of 45), compared to 30 (161/529) and 36 percent (58/158) for the Bush and Obama administrations, respectively.<sup>40</sup> Notably, OFAC did not impose any massive whale-hunting penalties on a scale comparable to the Obama administration until President Trump's third year in office. The availability heuristic suggests

that the potency of probability neglect will decline in the absence of periodic major enforcement actions to stoke firms' fears, which made the massive penalties imposed against UniCredit and Standard Chartered Bank in 2019 important for preserving the deterrent effects of OFAC's enforcement powers.<sup>41</sup>

**Applying the whale-hunting approach outside of the financial sector will be more difficult.**

Applying the whale-hunting approach outside of the financial sector will be more difficult, as the nature of the violations conducted within other sectors do not produce penalties that are nearly as severe. This difficulty suggests that OFAC will have to balance its efforts at using enforcement actions to promote

sanctions compliance in other sectors with sustained efforts to build cases against foreign financial institutions that engage in large-scale violations of US sanctions.<sup>42</sup>

Secondly, OFAC's use of the whale-hunting strategy against foreign firms is predicated on the notion that foreign governments' political interventions will not protect violators from punishment. The politicization of the sanctions and strategic trade control-related enforcement action involving China's ZTE, however, represents a prominent case in which political negotiations affected the penalties imposed on the violator. US delays in taking action against Turkey's Halkbank, which evidence indicates was extensively involved in undercutting US sanctions against Iran, have also raised concerns that the company has been politically shielded from punishment.<sup>43</sup> The more that US sanctions enforcement actions are viewed as political rather than legal actions, the less foreign firms will invest in compliance and the more they will invest in obtaining political protection from their governments and in Washington.<sup>44</sup>

Finally, OFAC's whale-hunting strategy relies heavily on the availability of staff with the legal and investigative expertise to investigate and pursue enforcement actions. This type of expertise is difficult to teach and involves significant tacit knowledge developed through experience. Recent reports suggest that OFAC is facing challenges in retaining personnel.<sup>45</sup> While reports that the working environment at Treasury could be a contributing factor,<sup>46</sup> a more prominent cause is that OFAC has successfully created a lucrative market for sanctions compliance expertise in the private sector. Ex-Treasury officials are in high demand at law and consulting firms and some have even formed specialized companies to advise corporations on how to comply with sanctions. A positive take on this development is that the private sector's investment in hiring the expertise of former Treasury employees means that they are making significant investments in improving their capacity to comply with US sanctions. In the short term, though, the drain on OFAC's human capital could degrade its capabilities to pursue complex investigations and build substantial cases against major sanctions violators.

## **The Sustainability of Whale Hunting**

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The US government is a global leader in imposing economic sanctions, and its sanctions enforcement strategies have a significant impact on the world's economy. When OFAC adopted its whale-hunting strategy during the Obama administration, it substantially increased global business perceptions of the risks associated with violating US sanctions. Cognitive heuristics like probability neglect provide valuable insight into why firms may have become significantly more fearful of US sanctions when OFAC began imposing record-breaking

penalties while dramatically curtailing the number of enforcement actions undertaken.

US policymakers should be wary that the whale-hunting sanctions enforcement strategy could become a victim of its own success. If OFAC runs out of foreign, sanctions-violating financial institutions to target, it may no longer capture the news cycle with dread-inducing enforcement actions. This fact may harm its long-run ability to deter potential violators and efforts to raise awareness about US sanctions compliance requirements. After its prolonged targeting by OFAC, many global financial institutions have accepted and internalized US sanctions compliance norms. This acceptance means that OFAC's continued outreach to the financial sector may be more about preventing the erosion of those norms than building new ones. Yet, OFAC's aggressive enforcement actions has also engendered resentment that the United States placed such substantial compliance burdens on them.<sup>47</sup> If the United States continues to employ and enforce sanctions aggressively, some foreign financial institutions may be willing to invest in developing alternatives to the US dominated financial system to free themselves of those burdens.<sup>48</sup> That investment is likely a long way off, however.

Given how sanctions are penalized under current US policies, OFAC may find it difficult to use the whale-hunting strategy to promote higher levels of sanctions compliance in the transportation, manufacturing, and technology sectors. More research is needed to explore whether sector-specific whale-hunting penalties are needed to discourage sanctions violations or whether targeting financial institutions alone is sufficient. The availability heuristic suggests that imposing major penalties against sanctions violators in other sectors would help promote compliance in them, but that will likely require legislative changes to enable. In the absence of new legislation, OFAC must continue to innovate in other ways to build upon the progress it has made over the last ten years.

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