

Author: Julia E. Zuckerman

If you have questions, please contact your regular Groom attorney or any of the governmental plans attorneys listed below:

Kimberly M. Dahm
kdahm@groom.com
(202) 861-2606

Lonie A. Hassel
lhassel@groom.com
(202) 861-6634

Ian D. Lanoff
ilanoff@groom.com
(202) 861-6638

David N. Levine
dlevine@groom.com
(202) 861-5436

David W. Powell
dpowell@groom.com
(202) 861-6600

Allison Tumilty
atumilty@groom.com
(202) 861-0159

Roberta J. Ufford
rufford@groom.com
(202) 861-6643

Julia E. Zuckerman
jzuckerman@groom.com
(202) 861-6605

Office of Foreign Assets Control Compliance for Public Pension Plans

Through our representation of public pension plans, we have become aware of interest at the federal level in employee benefit plan compliance with regulations issued by the Office of Foreign Assets Control ("OFAC"). We are also aware of certain locations where state officials have raised questions about public pension plan OFAC compliance.

OFAC is the branch of the US Department of Treasury that administers and enforces economic and trade sanctions designed to "further U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists . . . and other threats to the national security, foreign policy, or economy of the United States." In doing so, OFAC prohibits "U.S. Financial Institutions" from engaging in certain transactions deemed to undermine foreign policy and national security goals.

OFAC understands the term "U.S. Financial Institutions" to include employee benefit plans – both private-sector plans governed by the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq., as well as public plans governed by state law. Indeed, recent OFAC regulations promulgated pursuant to the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, expressly define the term "U.S. financial institution" to include "employee benefit plans." 31 C.F.R. § 560.327. Thus, the controls OFAC imposes on financial institutions such as banks, trust companies, and securities brokers and dealers apply with equal force to public-sector employee benefit plans.

OFAC maintains 22 country-specific sanctions programs, the most comprehensive of which are directed at Iran, Cuba, Sudan, and Syria. Among the transactions OFAC prohibits are transactions with individuals and companies owned or connected with sanctions targets (known as "specialty designated nationals" or "SDNs") and transactions with individuals in countries that are subject to a U.S. trade embargo.

OFAC guidance is clear that compliance programs are not "one size fits all," and must be specifically tailored to an entity's operations and risk of engaging in unlawful transactions. Compliance for employee benefit plans generally falls into two categories: investments and benefit payments.

With regard to investments, public retirement systems must ensure that internal investment programs include screening procedures that identify transactions possibly involving SDNs so that such transactions may be examined with closer scrutiny and blocked, as appropriate. OFAC guidance suggests that training for internal investment can help staff can identify

suspicious transactions. Additionally, public retirement systems should ensure that outside managers and custodians are aware of the need for OFAC compliance and have sufficient compliance procedures in place.

Concerning benefit payments, public plan systems should be able to identify, and avoid transactions with, beneficiaries appearing on the SDN list or who reside in countries subject to a trade embargo. In order to lawfully send a benefit payment to an individual not identified as an SDN who lives in a country subject to an embargo (for example, a retiree who resides in Iran), the system must contact OFAC to obtain a "license." The OFAC license can either be specific to allow payment only to the individual in question, or general in nature to allow the system to engage in all similar transactions.

We have experience working with OFAC compliance officials to help public pension systems devise compliance procedures and to answer questions specific to public plans, and we continue to monitor updated OFAC guidance. Please contact your regular Groom contact or any of the attorneys listed in the sidebar with questions regarding your system's OFAC compliance procedures.