



December 2019

# COUNTERNARCOTICS

## Treasury Reports Some Results from Designating Drug Kingpins, but Should Improve Information on Agencies' Expenditures

## Why GAO Did This Study

Drug deaths in the United States have been rising for years. According to the Centers for Disease Control and Prevention, in 2017 there were over 70,000 U.S. drug overdose deaths. This national emergency results in part from the activities of international narcotics traffickers and their organizations. The Kingpin Act, enacted in 1999, allows Treasury to designate and sanction individuals and entities that contribute to illicit narcotics trafficking. Sanctions and other consequences include blocking a designee's property and assets, denying U.S. travel visas to designees, and penalizing U.S. persons who violate the prohibitions in the Kingpin Act. Treasury is required to submit an annual report to Congress on agencies' Kingpin Act-related personnel and resource expenditures and sanctions activities.

This report examines (1) how U.S. agencies designate individuals and entities under the Kingpin Act; (2) the extent to which U.S. agencies monitor, enforce, and report on sanctions under the Kingpin Act; and (3) what agencies have done to assess the effectiveness of the Kingpin Act. GAO reviewed documents from and interviewed officials at Treasury, the Department of State, and other partner agencies. GAO also performed fieldwork in Colombia and Mexico.

## What GAO Recommends

GAO is recommending that Treasury ensure that OFAC (1) improve guidance to partner agencies on their Kingpin Act-related expenditures and (2) disclose expenditure data limitations in its annual Kingpin Act reports to Congress. Treasury did not agree or disagree with the recommendations.

View [GAO-20-112](#). For more information, contact Chelsa Kenney Gurkin at (202) 512-2964 or [GurkinC@gao.gov](mailto:GurkinC@gao.gov).

# COUNTERNARCOTICS

## Treasury Reports Some Results from Designating Drug Kingpins, but Should Improve Information on Agencies' Expenditures

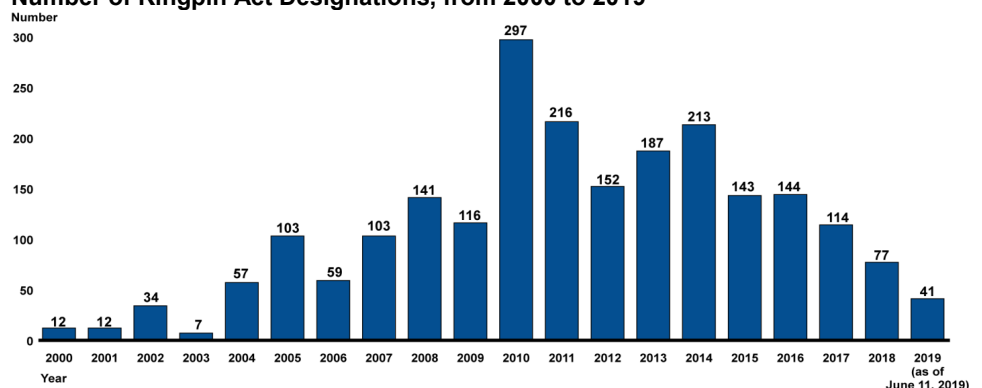
### What GAO Found

Under the Foreign Narcotics Kingpin Designation Act (Kingpin Act), the Department of the Treasury's (Treasury) Office of Foreign Assets Control (OFAC) leads a flexible interagency process to designate and sanction foreign individuals and entities that contribute to illicit narcotics trafficking. OFAC identifies potential Kingpin Act designees, compiles evidence, submits it for legal review, and seeks concurrence from partner agencies on designation decisions.

OFAC and U.S. partner agencies monitor and enforce Kingpin Act sanctions, but OFAC has not ensured consistency and transparency of the expenditure data it has reported to Congress. Federal Banking Agencies monitor the OFAC compliance programs of U.S. banks through regular bank examinations. Additionally, OFAC handles enforcement through warnings, monetary penalties, and other methods. As required, OFAC reports annually to Congress on Kingpin Act designations and corresponding agency expenditures, but it has provided limited guidance to partner agencies on expenditure data they report. As a result, agencies use different methods to calculate the personnel and resource costs associated with their Kingpin activities. For example, the Department of Homeland Security said it only reports personnel expenditures when it is the lead investigative agency, but the Department of Defense reports personnel expenditures when it is not the lead. Furthermore, OFAC has not reported the limitations in agency data in its congressional reports. This lack of clear expenditure information could hinder oversight of the Kingpin Act.

OFAC officials noted challenges to assessing the overall effectiveness of the Kingpin Act, but they and their U.S. and international partners track and report a range of results. The primary challenge cited is the difficulty of isolating the effect of the Kingpin Act from multiple other programs combating drug trafficking organizations. Results reported by OFAC and its partners include, for example, from 2000-2019, OFAC reported that it had designated more than 2,000 Kingpins and their supporters, and frozen more than half a billion dollars in assets under the act. In addition, host government officials reported that Kingpin Act sanctions assist them in imposing penalties on drug traffickers.

**Number of Kingpin Act Designations, from 2000 to 2019**



Source: GAO based on Office of Foreign Assets Control data. | GAO-20-112

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### Abbreviations

CIA	Central Intelligence Agency
DEA	Drug Enforcement Administration
DHS	Department of Homeland Security
DOD	Department of Defense
DOJ	Department of Justice
FBA	Federal Banking Agencies
FBI	Federal Bureau of Investigation
Federal Reserve	Board of Governors of the Federal Reserve System
Kingpin Act	Foreign Narcotics Kingpin Designation Act
OCC	Office of the Comptroller of the Currency
OFAC	Office of Foreign Assets Control
OIA	Office of Intelligence and Analysis
ONDCP	Office of National Drug Control Policy
SDN List	Specially Designated Nationals and Blocked Persons List
State	Department of State
TFFC	Office of Terrorist Financing and Financial Crimes
TFI	Office of Terrorism and Financial Intelligence
Treasury	Department of the Treasury

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December 16, 2019

The Honorable Patrick Leahy  
Vice Chairman  
Committee on Appropriations  
United States Senate

The Honorable Eliot L. Engel  
Chairman  
Committee on Foreign Affairs  
House of Representatives

The Honorable Albio Sires  
Chairman  
Subcommittee on Western Hemisphere, Civilian Security, and Trade  
Committee on Foreign Affairs  
House of Representatives

The Honorable Bill Cassidy  
United States Senate

The Honorable Paul Cook  
House of Representatives

The number of deaths due to illicit narcotics in the United States has been on the rise for many years. The Centers for Disease Control and Prevention reported deaths from drug overdoses increased over 300 percent, from almost 17,000 in 1999 to more than 70,000 in 2017. According to the Drug Enforcement Administration (DEA), deaths related to cocaine and heroin, for example, continue to rise. DEA reported that in Colombia—the primary source for cocaine seized in the United States—from 2007 to 2017, export quality cocaine increased from close to 700 metric tons to 1,100 metric tons, fueled by record levels of coca cultivation and cocaine production. Additionally, in more recent years, the death rate also dramatically increased as a result of the opioid epidemic in the United States, due to illicit fentanyl and other synthetic narcotics.

The Foreign Narcotics Kingpin Designation Act (Kingpin Act), enacted in 1999, allows the Department of the Treasury (Treasury) to designate and sanction foreign individuals and entities that contribute to illicit narcotics trafficking. The Kingpin Act is part of U.S. efforts to combat international narcotics traffickers and their organizations that threaten the national

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security and economy of the United States. Treasury's Office of Foreign Assets Control (OFAC), in conjunction with law enforcement agencies that focus their counternarcotics efforts on seeking criminal charges against traffickers, implements and enforces the Kingpin Act. OFAC officials said the Kingpin Act's sanctions are a unique tool in that they are designed to deny significant narcotics traffickers and their support networks access to the U.S. financial system.

You asked us to review issues related to the implementation and effectiveness of the Kingpin Act. This report examines (1) how U.S. agencies designate individuals and entities under the Kingpin Act; (2) the extent to which U.S. agencies monitor, enforce, and report on sanctions under the Kingpin Act; and (3) what agencies have done to assess the effectiveness of the Kingpin Act.

To examine the process for designating individuals and entities under the Kingpin Act, we reviewed documentation on collaboration and information-sharing agreements between Treasury and its partner agencies to determine the ways in which agency participation in the designation process has been formalized. We also selected nine designations made since 2015 that represented countries in both the Western Hemisphere and non-Western Hemisphere regions, including the countries where we performed fieldwork—Colombia and Mexico. Findings from our review of these nine designations are not generalizable to all designations, but provided insight into OFAC's designation process and the extent of the variation in the timing and sequence of the steps leading to the designations. We also interviewed officials from the mandated partner agencies—the Departments of the Treasury, State (State), Homeland Security (DHS), and Defense (DOD); the Federal Bureau of Investigation (FBI); and DEA—and reviewed documents, including the legal authorities for the designations.<sup>1</sup> In addition, we received responses from the Central Intelligence Agency (CIA) to questions we sent.

To examine the extent to which U.S. agencies monitor, enforce, and report on Kingpin Act sanctions, we interviewed officials from each partner agency about the methodology they used to calculate their annual

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<sup>1</sup>Since DHS was established pursuant to the Homeland Security Act of 2002 (6 U.S.C. § 101 et seq.) on November 25, 2002, it has participated as a partner agency. DEA and FBI, both part of the Department of Justice, are listed in the Kingpin Act separately as partner agencies.

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resource and personnel expenditures. We interviewed officials from OFAC and its partner agencies regarding their roles in sanctions implementation. In addition, we interviewed officials from two Federal Banking Agencies (FBA)—the Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System (Federal Reserve)—and five U.S. banks identified by the FBAs as having the largest presence in Latin American countries to assess implementation of economic sanctions, including any penalties incurred for sanctions violations.<sup>2</sup> We reviewed the annual reports OFAC submitted to Congress from 2003 to 2019 and OFAC guidance sent to partner agencies from 2017 through 2019 seeking their input into the reports.

To examine what is known about the effectiveness of the Kingpin Act, we reviewed strategic planning documents from the partner agencies to identify their counternarcotics objectives and, if available, related performance measures they track. We also used information from the nine designations we selected and interviewed U.S. partner agency officials as well as host government, financial industry, international organization, and nonprofit officials in Colombia and Mexico, to get perspectives on the results of Kingpin Act designations. In addition, we interviewed OFAC and partner agency officials in Washington, D.C., Colombia, and Mexico, regarding their efforts to assess effectiveness or results of Kingpin Act designations and challenges in measuring effectiveness of the act. We also held telephone interviews with partner agency officials in Panama.

We conducted this performance audit from May 2018 to December 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>2</sup>We met with OCC and the Federal Reserve because OFAC officials said they were among several of the FBAs with a responsibility to help monitor bank compliance with OFAC financial sanctions, including Kingpin Act sanctions.

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## Background

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### The Foreign Narcotics Kingpin Designation Act

The Kingpin Act<sup>3</sup> authorizes Treasury to identify and apply sanctions to significant foreign narcotics traffickers and their organizations worldwide to protect the national security and economy of the United States. According to officials from OFAC and other partner agencies, key goals of the Kingpin Act include disrupting and dismantling drug trafficking organizations and blocking designees' access to the U.S. financial system.

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### Treasury and Other U.S. Partner Agencies

The Kingpin Act mandates the participation of certain agencies in the Kingpin designation process. The Secretary of the Treasury, after consulting with partner agencies, is authorized to designate a foreign national or entity as a Specially Designated Narcotics Trafficker.<sup>4</sup> The partner agencies participating in Kingpin Act designations are the Department of Justice (DOJ), State, DHS, DOD, CIA, FBI, and DEA.<sup>5</sup> For Treasury to designate a foreign individual or entity under the Kingpin Act, it must identify that individual or entity as either a significant foreign

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<sup>3</sup>The Kingpin Act was enacted in 1999 (21 U.S.C. § 1901 et seq.). It is a legislative expansion of Executive Order No. 12978, "Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers," which provides for the use of the authorities in the International Emergency Economic Powers Act (IEEPA) to target and apply sanctions to four international narcotics traffickers and their organizations that operated in Colombia (60 Fed. Reg. 54579, Oct. 21, 1995). In authorizing the Kingpin Act, Congress stated that similar authorities should be applied worldwide based on the successful application of Executive Order No. 12978 sanctions authorities to narcotics traffickers in Colombia.

<sup>4</sup>A 2015 presidential memorandum delegated the ability to identify and publicly list significant foreign narcotics traffickers to the Secretary of the Treasury (80 Fed. Reg. 29201, May 15, 2015). Prior to the memorandum, the identification of significant foreign narcotics traffickers was the purview of the President, per the Kingpin Act.

<sup>5</sup>21 U.S.C. §§ 1903(a), 1904(b)(2),(4). The act specifically requires Treasury to consult with the heads of these agencies and offices on Kingpin Act designations, including the Attorney General, the Director of Central Intelligence, the Director of the FBI, the Administrator of the DEA, the Secretary of Defense, and the Secretary of State. Since DHS was established pursuant to the Homeland Security Act of 2002 on November 25, 2002, it has participated as a consulting authority as well. The lead component responsible for DHS participation in Kingpin Act designations is Homeland Security Investigations. The office responsible for State's participation is the Bureau for International Narcotics and Law Enforcement Affairs. Additional agencies may be consulted on an ad hoc basis. For the purposes of this report, "partner agencies" refers to both U.S. government agencies and offices within U.S. government agencies that are specifically listed as partners in the act.



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narcotics trafficker or part of a designee's network.<sup>6</sup> The following offices in Treasury are involved in identifying designation targets, and managing and assessing the impact of sanctions:

- The Office of Terrorism and Financial Intelligence (TFI) has the twin aims of safeguarding the U.S. financial system against illicit use and combatting national security threats, including drug kingpins. TFI includes OFAC, the Office of Intelligence and Analysis (OIA) and the Office of Terrorist Financing and Financial Crimes (TFFC)<sup>7</sup>.
- OFAC is Treasury's primary office for sanctions implementation and enforcement.
- OIA is responsible for TFI's intelligence functions and performs some assessment of the impact of Treasury's sanctions programs.
- TFFC works across the national security community and with the private sector and foreign governments to identify and address the threats presented by illicit finance to the international financial system.

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## Kingpin Act Identification and Designation

Treasury can designate a foreign individual or entity under the Kingpin Act if it identifies an individual or entity as either a significant foreign narcotics trafficker or part of a designee's network. OFAC and its partner agencies have grouped these Kingpin Act designation categories into two tiers, Tier 1 and Tier 2, based on the procedures required for identification and designation under the act. (See tab. 1.)<sup>8</sup> All identifications and designations under the Kingpin Act are subject to the same asset blockings and penalties.

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<sup>6</sup>Under 21 U.S.C. § 1904(b)(2), the Kingpin Act allows for the designation of any foreign person that is materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a significant foreign narcotics trafficker or foreign persons designated by the Secretary of the Treasury pursuant to this subsection. Additionally, under 21 U.S.C. § 1904(b)(3), the Kingpin Act allows for the designation of any foreign person that is owned, controlled, or directed by, or acting for or on behalf of, a significant foreign narcotics trafficker or foreign persons designated by the Secretary of the Treasury pursuant to this subsection.

<sup>7</sup>TFFC is the policy development and outreach office for TFI on anti-money laundering and combating the financing of terrorism.

<sup>8</sup>The Kingpin Act differentiates between the "identification" of significant foreign narcotics traffickers and the "designation" of individuals and entities in the significant foreign narcotics traffickers' networks. In the rest of this report, we use "designation" to refer to both identification and designation. Both identified traffickers and their designated networks face the same sanctions and consequences under the Kingpin Act.

**Table 1: Kingpin Act Designation Categories, Grouped as Tier 1 and Tier 2**

<p><b>Tier 1:</b> The significant drug trafficking organizations or their leaders, commonly referred to as the Kingpins, or if not the traffickers themselves, individuals or entities that are deemed to play a significant role in facilitating trafficking through other illicit activities, such as money laundering.</p>	<p><b>B1 designees.</b> Any significant foreign narcotics traffickers publicly identified by the Secretary of the Treasury in the report required under the Kingpin Act.<sup>a</sup></p>
<p><b>Tier 2:</b> The networks of B1 or B4 designees.<sup>c</sup></p>	<p><b>B4 designees.</b> Any foreign individual or entity publicly designated by the Secretary of the Treasury in consultation with required partner agencies as playing a significant role in international narcotics trafficking.<sup>b</sup></p> <p><b>B2 designees.</b> Any foreign individual or entity publicly designated by the Secretary of the Treasury in consultation with required partner agencies as materially assisting in, or providing financial or technological support for or to, or providing goods and services in support of, the international narcotics trafficking activities of a significant foreign narcotics trafficker identified in the report required under the Kingpin Act, or other designated foreign individual.<sup>d</sup></p> <p><b>B3 designees.</b> Any foreign individual or entity publicly designated by the Secretary of the Treasury in consultation with required partner agencies that is owned, controlled, or directed by, or acting for or on the behalf of, a significant foreign narcotics trafficker identified in the report required under the Kingpin Act or other designated foreign individual.<sup>e</sup></p>

Source: GAO analysis of Kingpin Act designation categories. | GAO-20-112

Note: Kingpin Act refers to The Foreign Narcotics Kingpin Designation Act. The Office of Foreign Assets Control (OFAC) and its partner agencies have divided these categories into two tiers based on the procedures required for designation.

<sup>a</sup>21 U.S.C. § 1904(b)(1) and § 1903(h)(1). The Secretary of the Treasury designates foreign persons in consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, and the Secretary of State.

<sup>b</sup>21 U.S.C. § 1904(b)(4) and § 1903(h)(1). According to OFAC officials, they pursued B4 designations before identification authority was delegated to the Secretary of the Treasury in 2015 because the timing of the B4 designation process was more flexible than the B1 identification process, which required designation proposals to be completed and submitted in an annual report to the Office of the President on the same day each year. OFAC officials noted that the flexibility of the B4 designation process allowed for designations announcements to be timed with U.S. law enforcement operations, foreign counterpart actions, or other relevant circumstances in order to achieve the greatest impact against the sanctions targets. OFAC officials also said they have largely stopped using the B4 designation category post-delegation.

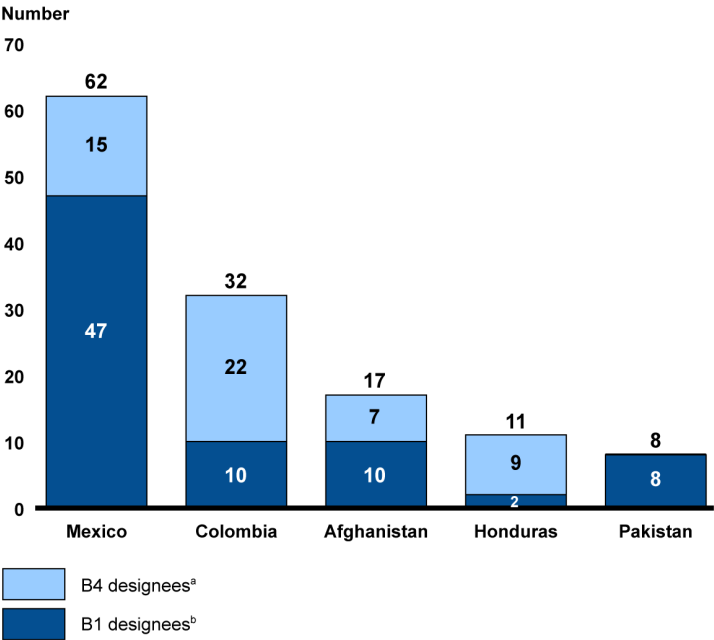
<sup>c</sup>According to OFAC, for example, the spouse of a designated Kingpin may be designated under 21 U.S.C. § 1904(b)(2) for helping hide the Kingpin's drug trafficking assets. Alternatively, the spouse may be designated under 21 U.S.C. § 1904(b)(3) for acting for or on behalf of the Kingpin, without regard to the spouse acting in furtherance of the Kingpin's international narcotics trafficking activities.

<sup>d</sup>21 U.S.C. §1904(b)(2) and §1903(h)(1).

<sup>e</sup>21 U.S.C. §1904(b)(3) and §1903(h)(1).

The names of persons and entities designated are published in the Federal Register and incorporated into Treasury’s Specially Designated Nationals and Blocked Persons List (SDN List).<sup>9</sup> The majority of Tier 1 Kingpin Act designations are individuals and entities from countries in the Western Hemisphere, as shown in figure 1.

**Figure 1: The Five Countries with the Most Tier 1 Kingpin Act Designations, 2000-2019**



Legend: Kingpin Act = Foreign Narcotics Kingpin Designation Act.

Source: GAO based on Office of Foreign Assets Control data. | GAO-20-112

<sup>a</sup>Any foreign individual or entity publicly designated by the Secretary of the Treasury in consultation with required partner agencies as playing a significant role in international narcotics trafficking

<sup>b</sup>Any significant foreign narcotics traffickers publicly identified by the Secretary of the Treasury in the report required under the Kingpin Act.

<sup>9</sup>The SDN list consists of individuals and entities sanctioned by Treasury pursuant to the Kingpin Act, as well as its other authorities, whose assets are blocked and with whom U.S. persons are generally prohibited from dealing. In addition to the SDN list, OFAC periodically updates the official brochure detailing the complete listing of Kingpin designations throughout the year.

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## Kingpin Act Sanctions and Other Consequences

Treasury is authorized to block assets of and prohibit transactions with designated individuals and entities and to impose penalties on individuals and entities that engage with designees.

- **Blocking assets.** Treasury blocks (i.e., denies access to) a designated individual or entity's property and interests in property within the United States, or within the possession or control of any United States individuals or entities that are owned or controlled by the blocked individual or entity.<sup>10</sup>
- **Prohibiting transactions.** Treasury generally prohibits United States individuals and entities from engaging in transactions in property or interests in property of designees.<sup>11</sup>
- **Denying visas.** Treasury provides information to State so it can decide whether to cancel existing visas and deny visa applications of Kingpin Act designees.
- **Penalties for nondesignees.** Treasury may enforce criminal and civil penalties for any U.S. person who willfully violates the prohibitions in the Kingpin Act, associated regulations, or license rules.<sup>12</sup> Penalties for violations of the Kingpin Act range from civil penalties of up to \$1.5 million per violation to more severe criminal penalties. Criminal penalties for corporate officers in violation may include up to 30 years in prison and fines up to \$5 million for individuals and \$10 million for corporations.

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## Annual Kingpin Act Reporting Requirements

Treasury is required to report to Congress on the status of sanctions imposed under the Kingpin Act, including the personnel and resources directed toward imposing such sanctions during the preceding fiscal

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<sup>10</sup>The Kingpin Act refers to "United States persons," which it defines as any United States citizen or national, permanent resident alien, any entity organized under the laws of the United States (including its foreign branches), or any person within the United States (21 U.S.C. § 1907(6)).

<sup>11</sup>See 31 C.F.R. § 598.312 for the full definition of property and property interest, which includes, in part, money, checks, bank deposits, debts, stocks, bonds, mortgages, liens, bills of sale, merchandise, ships, deeds of trust, land contracts, real estate and any other interest therein, royalties, patents, copyrights, and insurance policies.

<sup>12</sup>Entities may apply for a license, which is an authorization from OFAC to engage in a transaction that otherwise would be prohibited. When OFAC grants a license to an individual or entity to engage in specific activities under the Kingpin Act, OFAC will include rules and provisions in the license that the license-holder must comply with.

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year.<sup>13</sup> On July 1st of each year, the OFAC Director, as delegated by the Secretary of the Treasury, is required to submit a report to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate on the status of sanctions imposed under the Kingpin Act, the personnel and resources directed toward imposing sanctions under the Kingpin Act during the preceding fiscal year, and background information with respect to the newly identified significant foreign narcotics traffickers and their activities. Treasury is also required to report on foreign persons who are sanctioned under the Kingpin Act to the Director of the Office of National Drug Control Policy (ONDCP); ONDCP is the Executive Branch office responsible for issuing an annual National Drug Control Strategy and coordinating the efforts of the National Drug Control Program agencies implementing any aspects of the strategy.

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<sup>13</sup>21 U.S.C. § 1903(d)(1) requires that by July 1 each year, the President provide the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate with a classified report. The President delegated this reporting function to the Secretary of the Treasury in Executive Order 13313, and pursuant to 31 C.F.R. § 598.803, this function has been further delegated to the Director of OFAC. (Exec. Ord. 13313, 68 Fed. Reg. 46073, July 31, 2003).

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## OFAC Leads a Flexible Interagency Process to Designate Narcotics Kingpins and Their Networks, and Partner Agencies Generally Find OFAC Guidance Sufficient to Understand Their Roles

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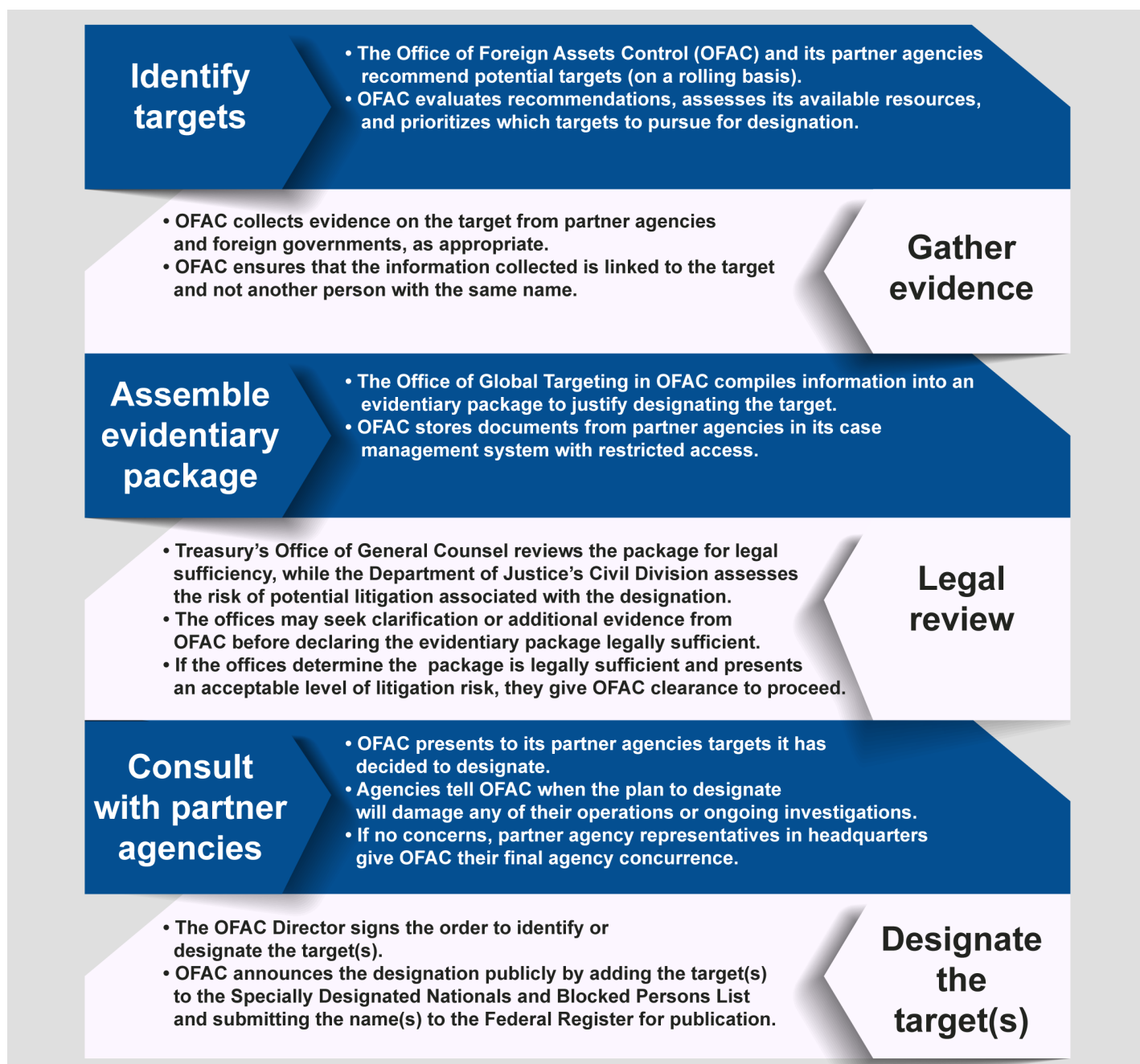
### OFAC Leads a Six Step Kingpin Act Designation Process

Treasury's OFAC leads a process generally involving six steps to designate Kingpin Act targets. This process allows OFAC to coordinate its investigations and designations with U.S. partner agencies and foreign governments. (See fig. 2.) We determined the designation process through interviews with OFAC and partner agency officials, and selected nine cases to review the implementation of the designation process.<sup>14</sup>

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<sup>14</sup>We were unable to independently verify all of the information OFAC provided for the nine cases from their case files, but OFAC officials provided corroboration for key milestones, such as public press releases documenting the designation date.

Figure 2: Summary of the Kingpin Act Designation Process



Legend: Kingpin Act = Foreign Narcotics Kingpin Designation Act.

Source: GAO analysis of Office of Foreign Assets Control data and documents. | GAO-20-112

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OFAC's Kingpin Act designation process includes the following six steps:

1. **Identify potential targets.** OFAC first identifies potential targets for investigation and Kingpin Act designation. OFAC's partner agencies can submit recommendations for potential targets. According to OFAC officials, they consider information provided about potential Tier 1 targets from the recommending agency, such as whether the targets are on the U.S. multiagency list of priority drug trafficking targets,<sup>15</sup> what unique identifiers the recommending agency can provide to minimize the chance of investigating the wrong target, and which drug(s) and quantities the targets traffic and to which markets. Additionally, OFAC considers (1) the likelihood that the target would meet the legal criteria for designation and have an impact, (2) the expectation that designation would complement rather than hinder law enforcement and foreign counterpart investigations and operations, (3) any unintended negative consequences on third parties, and (4) the current availability of OFAC resources. According to OFAC officials, Tier 2 targets are generally identified as part of the investigation of a Tier 1 target or designee. Officials said the decision to pursue designation depends on whether there is sufficient evidence to demonstrate that the target satisfies the designation criteria in the act. As early as at this step, but at some point before designation, OFAC coordinates with partner agencies to ensure that they do not have an ongoing investigation or other diplomatic interactions that will be adversely affected by a Kingpin Act designation.
2. **Gather evidence.** OFAC gathers evidence on the identified target to determine whether it meets the criteria for identification or designation and whether there is a network associated with the target.<sup>16</sup> OFAC requests information on the target from other partner agencies. According to OFAC officials, they do not request information from all of OFAC's partner agencies during the investigation of each target if they deem the information provided by a subset of the partner agencies to be sufficient evidence. OFAC also conducts its own

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<sup>15</sup>The multiagency Organized Crime Drug Enforcement Task Force Program developed a list of drug traffickers, known as the Consolidated Priority Organization Target list, to aid federal law enforcement agencies in targeting their drug investigations. OFAC officials said they rely on the list as an indicator that one or more of its Kingpin Act partner law enforcement agencies has substantial evidence indicating that targets on the list are significant foreign narcotics traffickers.

<sup>16</sup>A target may be a foreign individual or entity. According to OFAC officials, investigation of a Tier 1 target may help them identify other affiliated Tier 1 and Tier 2 targets that meet the requirements to be designated under the Kingpin Act as well.



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research and uses all sources—including public and classified—to develop an evidentiary package. OFAC works with partner agency headquarters, and domestic and international field offices (as needed for each case) to collect information on either a person’s drug trafficking activities or activities that support drug trafficking organizations. OFAC and partner agency officials said they also collect information about targets from their foreign government partners and counterparts, as appropriate. OFAC also ensures that the derogatory information collected is linked to the target and not, for example, another person with the same name.

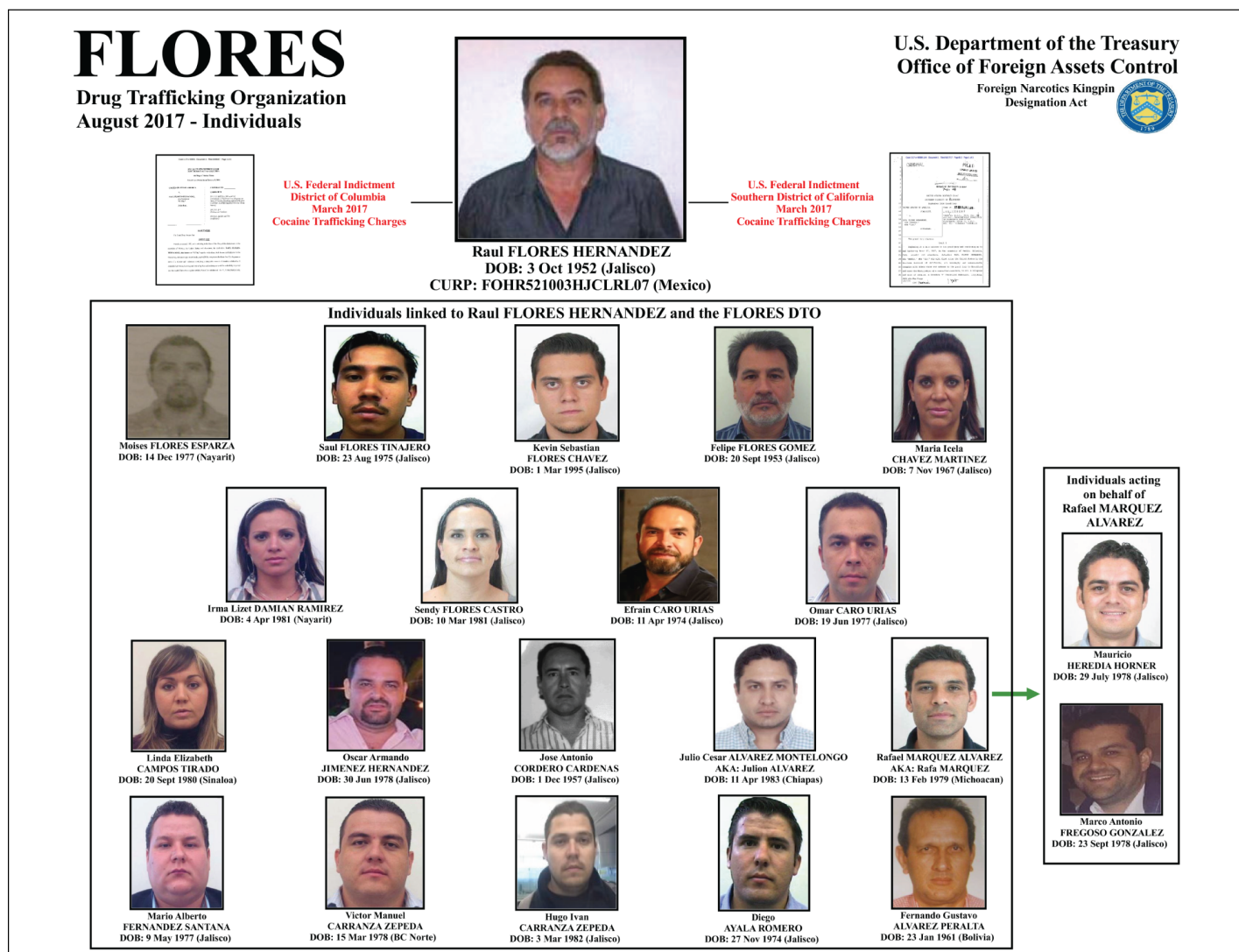
3. **Assemble evidentiary package.** OFAC compiles the collected information into an evidentiary package maintained in its electronic case management system.<sup>17</sup> According to OFAC officials, the case management system documents the date when each step is completed and contains sign off by an approving official. In addition, OFAC officials said the case management system contains a summary of the evidence OFAC gathered to justify designating an individual or entity, and links to the source documents provided by partner agencies. Because the information in the evidentiary package may be sensitive, classified, and compiled from multiple sources, OFAC typically does not share the evidentiary packages with its partner agencies, with the exception of DOJ for legal review purposes. However, under certain circumstances, OFAC may allow partner agencies to review portions of an evidentiary package after ensuring that there is a specific need to know and that there is adherence to rules for disclosure to another agency.
4. **Legal review.** OFAC provides the evidentiary package first to Treasury’s Office of General Counsel and then to DOJ’s Civil Division for legal review. Treasury’s Office of General Counsel reviews the package for legal sufficiency, while DOJ assesses the risks associated with potential future litigation resulting from the identification or designation. According to OFAC and DOJ officials, attorneys often seek clarification or additional evidence from OFAC at this stage. In those cases where Treasury’s Office of General Counsel deems the basis for designation or identification to be legally sufficient and DOJ determines that the identification or designation presents an acceptable level of litigation risk, they give OFAC clearance to finalize the evidentiary package and proceed with the action.

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<sup>17</sup> According to OFAC officials, the package is compiled by OFAC’s Office of Global Targeting.

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5. **Consult with partner agencies.** Once the evidentiary package passes legal sufficiency, OFAC consults with all of its partner agencies to obtain concurrence. OFAC presents the names of individuals or entities it has decided to designate and a high-level summary of the reasons for designation to its partner agencies for final consultation and concurrence. According to officials from each of the partner agencies, this allows them the opportunity to identify if OFAC's plan to designate a target will damage any of their operations or ongoing investigations or cause unacceptable damage to diplomatic relations with the host government in the country where the target resides or maintains citizenship. This consultation phase also allows for OFAC and other Treasury offices, such as the Office of Terrorist Financing and Financial Crimes (TFFC), as well as partner agencies to develop an engagement plan for outreach with relevant parties, including foreign governments and the press, as appropriate. While partner agencies at the U.S. embassy in the country of the proposed designation are given the opportunity to concur with OFAC's decision to designate, agency representatives in headquarters give final agency concurrence. OFAC does not designate anyone unless all partner agencies concur. If an agency tells OFAC at any point during the process that designating a target would damage the agency's investigation or operations, OFAC officials said they coordinate with the partner agency to determine how to proceed. For example, OFAC may delay the Kingpin Act designation until the partner agency has completed its investigation and can take simultaneous action against the target.
6. **Designate the target(s).** If all partner agencies concur with OFAC's designation proposal, OFAC takes action to identify the Kingpins and designate any affiliated targets. The evidentiary package is provided to the OFAC Director who, if concurring with the designation, signs a memorandum that identifies or designates the targets. At this time, OFAC also adds the individuals and entities to the SDN List. OFAC announces the actions publicly and records them in the Federal Register. Figure 3 provides an example of an OFAC announcement of a Kingpin Act designation. According to Treasury officials, OFAC also coordinates with other Treasury offices and partner agencies at headquarters and U.S. embassies to execute an outreach and engagement plan. Once OFAC has taken these steps, it begins to monitor and enforce compliance with the sanctions it imposes against Kingpin Act designees.

Figure 3: Example of OFAC Announcing Kingpin Act Designations



Legend: Kingpin Act = Foreign Narcotics Kingpin Designation Act.

Source: Office of Foreign Assets Control. | GAO-20-112

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## Flexibility in Designation Process Allows OFAC to Coordinate with Partner Agencies and Foreign Governments

OFAC and U.S. partner agency officials said flexibility built into the process can affect the length of time it takes to investigate a target and the sequence of steps taken. For example, OFAC's coordination with multiple U.S. partner agencies and foreign governments throughout the process may influence the sequence of steps taken. In addition, drug traffickers often change their organizations and operations in an attempt to evade investigators, which can contribute to the length of time to complete an investigation. According to OFAC officials, the process is intended to ensure that:

- designations do not jeopardize other agencies' ongoing investigations,
- OFAC's actions are coordinated with other planned civil or criminal actions against each target to maximize the disruption to the drug trafficking organization, and
- investigators can collect sufficient evidence to designate targets despite targets' constantly changing efforts to evade detection.

**Coordination with partner agencies.** Multiple U.S. agencies may have concurrent investigations of a Kingpin Act target, requiring coordination between OFAC and U.S. partner agencies to include decisions about how sharing information could affect their own investigations. When agencies withhold information about a target to ensure that their own investigation of the target is not compromised, it may take longer for OFAC to develop an evidentiary package that satisfies the Kingpin Act's designation criteria. In addition, the length of the designation process and the sequence of steps also depend on how far along other agencies' investigations of a target are. For example, if a law enforcement agency is able to provide enough evidence when the potential target is first identified and OFAC officials think little additional investigation is needed to further develop an evidentiary package, they may complete more than one of the designation steps concurrently in order to designate the target as quickly as possible. According to OFAC and partner agency officials, the coordination allows them to agree to and plan the civil and criminal actions to be taken to maximize the U.S. government's efforts to disrupt the drug trafficking organization.

**Coordination with foreign government officials.** According to OFAC and U.S. partner agency officials at headquarters, in Mexico, and in Colombia, foreign government officials determine whether to share derogatory information about Kingpin Act targets on a case-by-case basis. OFAC and partner agency officials in Colombia credited host

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government information sharing as a primary factor in OFAC's ability to complete evidentiary packages for Colombian targets and one reason why OFAC has been able to investigate and designate more individuals and entities in Colombia than in other countries.<sup>18</sup> Coordination with foreign partners also allows OFAC to time designations strategically to coincide with civil and criminal actions against the target by foreign governments.<sup>19</sup> For example, on May 17, 2019, the Under Secretary for TFI and a Mexican government official announced coordinated, sanctions-related actions. The Under Secretary announced the Kingpin Act designation of seven individuals and six entities affiliated with the Cartel de Jalisco Nueva Generacion (CJNG) and its close ally, the Los Cuinis drug trafficking organizations.<sup>20</sup> Treasury coordinated closely for months with the Mexican Financial Intelligence Unit, the Mexican Attorney General's Office, and the Mexican Federal Police on this action. The Mexican Financial Intelligence Unit froze the Mexican bank accounts held by all of the designees, according to Treasury officials.<sup>21</sup> Although actions like this sometimes require them to delay a designation, OFAC officials noted that the results of coordination can increase the impact of Kingpin Act designations.

**Changes to drug trafficking organizations.** According to OFAC and partner agency officials, drug traffickers attempt to evade investigators by being unpredictable and making changes to their organizational structure and operations. Changes to the organization may result in the need for longer investigations if information gathered about an individual trafficker or a trafficking organization becomes outdated or irrelevant. Operational changes include such things as using shell companies or virtual assets, which several OFAC and partner agency officials said complicate their

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<sup>18</sup>Although OFAC has designated more Tier 1 individuals and entities in Mexico than in Colombia, OFAC has designated more individuals and entities in Colombia overall when including both Tier 1 and Tier 2 designations.

<sup>19</sup>In addition, TFFC engages with foreign government officials to encourage relevant countries to take appropriate civil and criminal actions within their legal framework to combat illicit activities.

<sup>20</sup>According to Treasury officials, the action concerned drug trafficking organization members who, through a corrupt defense attorney, paid bribes to a Mexican magistrate judge for favorable judicial rulings relating to senior members of CJNG and the Los Cuinis drug trafficking organization. All of the individuals engaged in this corruption scheme, including the magistrate judge, were designated pursuant to the Kingpin Act.

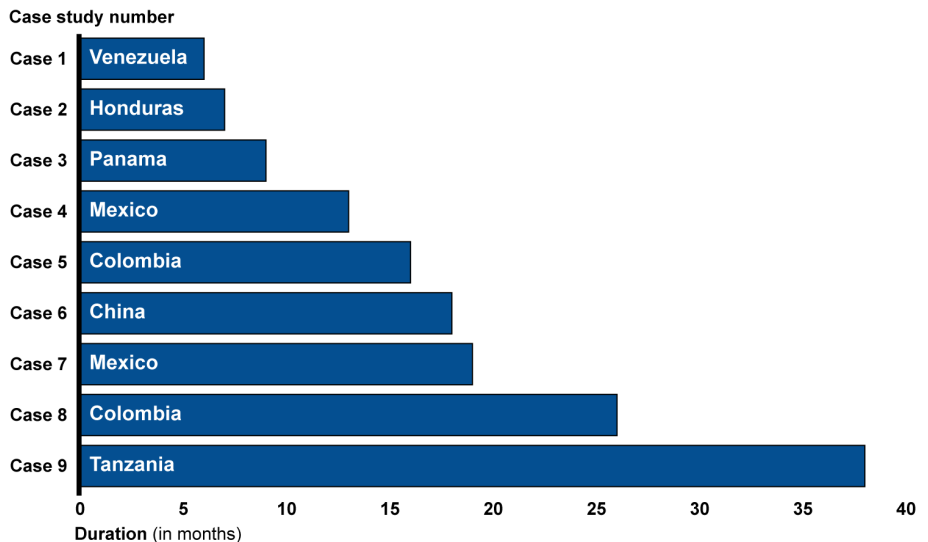
<sup>21</sup>On the day of designation, the Mexican judicial branch also suspended the designated Mexican magistrate judge for 6 months without pay, according to Treasury officials.

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attempts to gather evidence of proceeds from drug trafficking, and can also lengthen the designation process.

Based on our analysis of nine Kingpin Act designations, we found that the duration and sequence of steps leading to designations varied. According to OFAC officials, each investigation includes a unique set of circumstances that affect the length and sequence of steps. From initiation to designation, the nine cases we reviewed ranged from 6 months to 38 months (See fig. 4.) Time spent preparing the evidentiary packages for the cases ranged from 3 months to 31 months. Although OFAC got partner agency concurrence for seven cases after attorneys had begun the legal review of evidentiary packages, OFAC documented completion of this step before legal review had begun for two cases. The timing for submitting the case to partner agencies for initial designation consideration varied, including one case that OFAC did not submit until the month that attorneys completed legal reviews of the evidentiary package. For one case, OFAC followed most of the steps twice before designating the target. OFAC officials told us that if the decision is made to delay a designation after they have completed all of the steps leading up to designation, it may be necessary to go through the steps again to determine whether there is new derogatory information about the target and whether the information in the evidentiary package is still current and legally sufficient before designating the target.

**Figure 4: Duration from Case Initiation to Designation for Selected Kingpin Act Cases (in Months)**



Legend: Kingpin Act = Foreign Narcotics Kingpin Designation Act.

Source: GAO Analysis of Office of Foreign Assets Control data. | GAO-20-112

Note: GAO selected these cases for illustrative purposes; they are not representative of all Kingpin Act designations.

## OFAC Has Informed Partner Agencies of the Designation Process in Several Ways, Which Partner Agencies Generally Find Sufficient to Understand Their Roles

OFAC officials reported that they disseminate information about the designation process and agencies' roles and responsibilities for the process in several ways. Treasury's website includes Frequently Asked Questions that explain how agencies should interact with OFAC and each other and a hotline number that agencies can use if they need additional information. OFAC has provided presentations and memos to its partner agencies that further explain the Kingpin Act designation process. Treasury has also issued Kingpin Act regulations, which, among other things, define key terms related to the act and clarify prohibited activities.<sup>22</sup>

Because DEA is involved in the majority of OFAC's Kingpin Act investigations, OFAC and DEA have signed a memorandum of understanding that further clarifies how they work together and share

<sup>22</sup>31 C.F.R. Part 598.

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information related to Kingpin Act cases. Among other things, it establishes the terms for OFAC to have a staff person co-located at DEA and to have access to DEA files that support Kingpin Act investigations. According to OFAC officials, it does not have a similar formal collaboration mechanism with its other partner agencies.

OFAC's partner agencies reported that they generally understand their responsibilities under the Kingpin Act and how to find answers to their questions about the Kingpin Act designation process. Several officials stated that their responsibilities include recommending potential targets, participating in interagency group meetings, deciding whether to concur with OFAC's decisions to investigate or designate persons, and responding to specific requests for information from OFAC. Officials from the headquarters of each of the Kingpin Act partner agencies said they found the information available from OFAC about the designation process sufficient to help them understand their roles. Most partner agencies in Colombia and Mexico, where the majority of Kingpin Act designations have taken place, reported that the presence of an OFAC Attaché in those countries made it easy for them to ask for clarification on the process as needed.<sup>23</sup>

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<sup>23</sup>Colombia and Mexico are the only countries where OFAC has an attaché, but OFAC officials said they send OFAC staff on temporary duty to aid investigations in other countries as well.



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## OFAC and Partner Agencies Monitor and Enforce Kingpin Act Financial and Nonfinancial Sanctions, but OFAC Does Not Ensure Consistency and Transparency of Mandated Personnel and Resource Reporting

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### OFAC Works with Federal Banking Agencies to Monitor and Enforce Kingpin Act Financial Sanctions

OFAC monitors and enforces financial sanctions against Kingpin Act designees implemented by U.S. financial institutions. OFAC regulations and a memorandum of understanding with Federal Banking Agencies (FBA)—such as the Federal Reserve and the Office of the Comptroller of the Currency (OCC)—establish sanctions compliance and information sharing responsibilities.<sup>24</sup> For example, OFAC regulations require banks to report all blockings of designee property to OFAC within 10 days of the occurrence and recommend that banks designate a Compliance Officer responsible for monitoring compliance with its programs, and an officer responsible for overseeing blocked funds. According to the memorandum, each FBA will provide OFAC the following types of information to help OFAC monitor bank compliance with sanctions programs, including Kingpin Act sanctions:

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<sup>24</sup>In order to guide sanctions enforcement, OFAC notifies agencies and financial institutions when it announces new Kingpin Act designations. For each Tier 1 designation, OFAC issues a public press release that names the significant drug trafficker(s) Treasury has identified, names any other individuals or entities designated as part of the Tier 1 designee's network, summarizes the designees' illicit activities, identifies other U.S. agencies with which it coordinated on the investigation of the designees, explains the sanctions it has imposed, and, if applicable, identifies other related civil or criminal penalties imposed by law enforcement agencies against the designees. OFAC publishes each designation in the Federal Register and sends out emails regarding new designations to subscribed individuals and interested parties. OFAC follows these same notification steps for designation actions involving only Tier 2 targets as well.

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- Notification of any apparent unreported sanctions violations discovered during their examinations of financial institutions.
  - Information on their examinations into a bank's OFAC compliance policies, procedures, and processes.
  - Notification of any deficiencies in a bank's compliance programs, such as cases when a bank failed to respond to supervisory warnings concerning OFAC compliance violations.

FBAAs have established a schedule for regular examinations of U.S. banks, which generally include their OFAC compliance programs. Federal Reserve and OCC officials stated that their legal and bank examiner staff address sanctions compliance regimes as part of their general examination duties. They are not responsible for determining sanctions violations, but assess the bank's compliance program as a whole for soundness. Both FBAs said they perform bank examinations every 12 to 18 months, and determine the extent to which they should review the bank's OFAC compliance program during the examination.<sup>25</sup> For example, OCC officials said that, in accordance with the guidelines, they review banks' internal testing of their OFAC compliance programs.

According to OCC and Federal Reserve officials, banks have compliance programs to identify and block OFAC designees, including Kingpin Act designees, from accessing the U.S. financial system. According to OFAC and FBA officials, the U.S. banks with the most international branches and non-U.S. clients are most likely to hold assets or facilitate financial transactions of foreign nationals. FBA examinations confirm that bank programs include procedures for ensuring compliance with OFAC sanctions, including Kingpin Act sanctions. We met with officials from the five U.S. banks that FBA officials said have the largest presence in Latin American countries, and bank officials reported that their compliance programs check daily for evidence they are maintaining any customer

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<sup>25</sup>According to Federal Reserve officials, FBA examinations follow statutory requirements, and guidelines set by the Federal Financial Institutions Examination Council.

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relationship or allowing any transactions involving designated individuals.<sup>26</sup>

OFAC has imposed a range of penalties on banks that have violated the terms of Kingpin Act sanctions. OFAC and bank officials said that a bank is noncompliant when it either fails to freeze a Kingpin Act designee's assets at that bank or processes a transaction involving a Kingpin Act designee. According to Treasury officials, Treasury makes public any civil monetary penalties it imposes and OFAC has imposed monetary penalties on banks for Kingpin Act compliance violations in 12 cases for a total of \$17 million since 2000. Officials from the five banks we spoke with said they self-report cases of noncompliance with OFAC sanctions against Kingpin Act designees as required. For example, one of the banks stated that they identify and report between six and 12 cases of noncompliance to OFAC each year. OFAC officials said when a bank self-reports a violation OFAC often issues them a cautionary letter. According to OFAC officials, they issue this as a warning when they have no reason to believe that the bank committed the violation intentionally or that it is evidence of a systematic problem that the bank has not taken steps to address. The OFAC officials said the letter may or may not include a required response from the bank.

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### State and OFAC Enforce Non-financial Kingpin Act Consequences, Including Denying Visas and Blocking Property

State has denied visa applications and revoked visas of Kingpin designees, prohibiting them from traveling to the United States after they were designated. According to both OFAC and State's Consular Affairs officials, State contacts OFAC whenever a visa adjudicator finds information in State's Consular Affairs database regarding a possible OFAC concern about a visa applicant. State's officials use their Consular Lookout and Support System database to identify any information entered by U.S. government agencies, including OFAC, to indicate that an individual does not qualify for a U.S. visa. Although the consular database does not specify that OFAC's concern is specifically related to a Kingpin Act designation, they do not issue a visa without discussing with OFAC whether the applicant's designation disqualifies them from a visa. The consular database does not specify which OFAC flags are related to the

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<sup>26</sup>Bank officials said the checks are performed by automated systems that refresh daily to include any new designees. They said the daily automated searches for transactions involving OFAC designees regularly identify potential prohibited transactions, but that they are able to determine through examination that most of the transactions are false positives.

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Kingpin Act, and State was unable to provide us the number of visas that have been revoked or denied under the program.

OFAC has also blocked (or denied access to) designees' U.S. property as part of Kingpin Act sanctions.<sup>27</sup> According to OFAC officials, they seek to identify U.S. property that designees own or control as part of their investigation of designees both before and after they are designated. As a result of those investigations, OFAC officials said they have blocked 15 U.S.-incorporated companies, nine real estate properties, and 21 other "tangible" properties (such as automobiles, aircraft, and boats), which remained blocked as of August 2019.<sup>28</sup> An individual's property is no longer blocked if that individual is removed from the SDN list. U.S. citizens, corporations, and financial institutions are not permitted to do business with blocked companies.

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**OFAC Meets Annual Reporting Requirement, but Provides Limited Guidance to Partner Agencies on Expenditure Data and Does Not Disclose Data Limitations**

OFAC has met the mandated requirement to report to Congress on agencies' personnel and resources expended on the imposition of Kingpin Act sanctions, but provided limited guidance to partner agencies that has resulted in inconsistent data on Kingpin Act-related expenditures. Furthermore, OFAC has not disclosed limitations to the consistency or reliability of the expenditure data in its reports. The Kingpin Act requires Treasury, no later than July 1 each year, to provide the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate a report describing the status of sanctions imposed, including the personnel and resources directed towards the imposition of such sanctions during the preceding fiscal year, and providing background information with respect to newly-identified significant foreign narcotics traffickers and their activities.<sup>29</sup> OFAC has submitted annual reports to Congress since 2003. Each report includes information from OFAC on both agencies' expenditures and on designations announced during the year.

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<sup>27</sup>OFAC officials do not have the authority to seize property pursuant to the Kingpin Act.

<sup>28</sup>U.S.-based corporations cannot be designated under the Kingpin Act because they are not foreign entities.

<sup>29</sup>The Kingpin Act requires a classified report. Most of the annual reports OFAC submitted were classified, but OFAC submitted the reports that did not contain classified information as unclassified reports.

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To prepare the report, OFAC requests partner agency expenditures. OFAC sends annual emails requesting the amount agencies spent on personnel and resources for their Kingpin Act activities. For at least the last 3 years, OFAC has sent the partner agencies a memo stating that for personnel expenses, agencies could estimate the percentage of time spent by staff members on activities directly attributable to implementing the Kingpin Act during the year covered in the report and multiply by the staff members' salaries during the year. However, the guidance does not clarify or provide examples of types of personnel expenditures that agencies should consider as attributable to implementing the Kingpin Act. As a result, agencies must interpret for themselves what to include in their estimated personnel expenditure submissions to OFAC. The memo listed some examples of what agencies could include as resource expenditures related to the implementation of the Kingpin Act, such as research materials and information access, travel, equipment, supplies, outside services, and security. OFAC officials said they are not more prescriptive with their guidance because the Kingpin Act is not specific about which expenses to report.

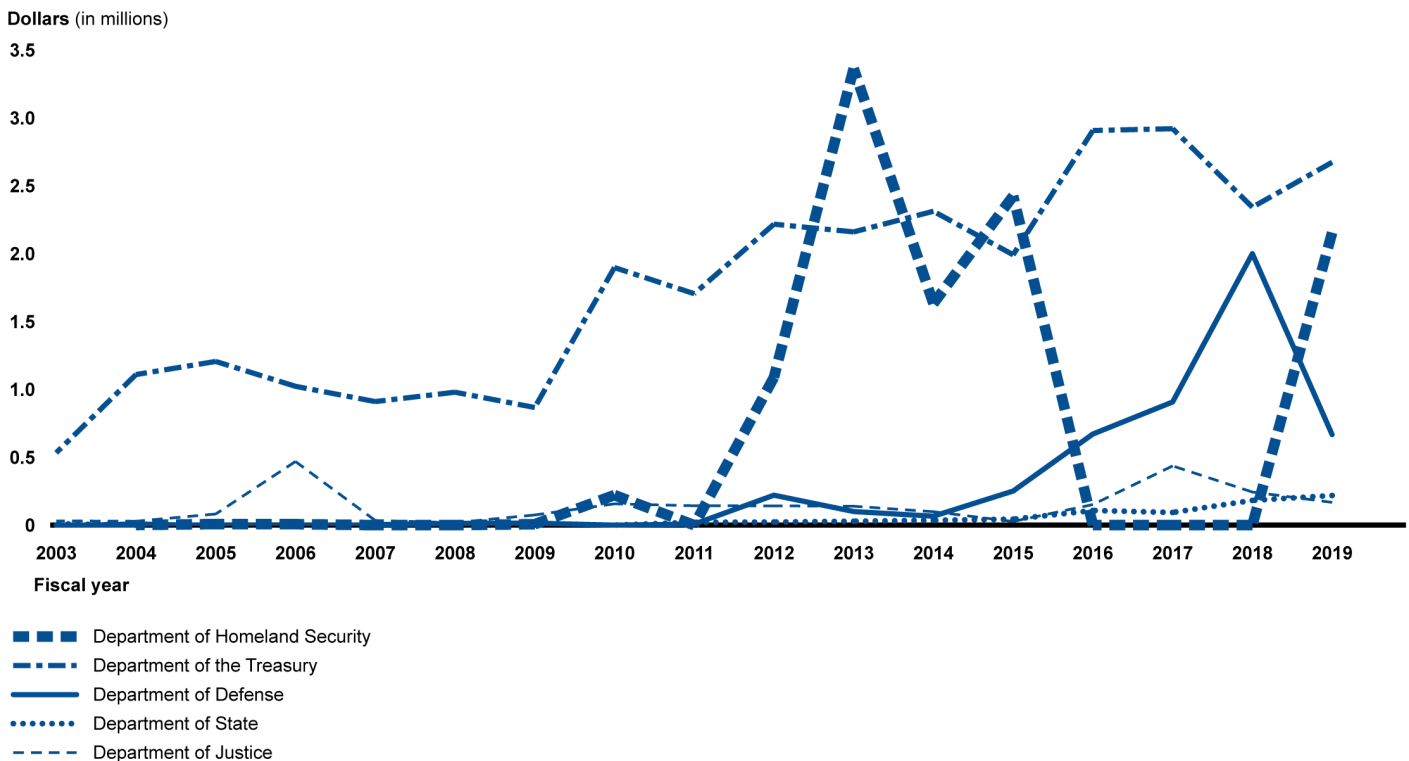
Agencies reported different methods for determining expenditure amounts and the information on agency personnel expenditures varied substantially from year to year. Officials from some of the partner agencies reported calculating estimates of personnel expenditures based on the paygrades of personnel engaged in Kingpin Act investigations or interagency meetings, while others stated that they did not report expenditures because they determined that their level of engagement was minor and did not warrant reporting. According to DEA officials, they do not report on personnel expenditures for the time they spend investigating Kingpin Act targets because the investigations simultaneously support their own cases against the targets. According to officials from some agencies, such as DHS, they only reported personnel expenditures for cases on which they were the lead investigative agency. As a result, DHS reported \$2.4 million in personnel expenditures in fiscal year 2015, \$0 between fiscal years 2016 and 2018, and then about \$2 million in fiscal year 2019.<sup>30</sup> Other partner agencies, such as DOD and State, report personnel expenditures even though they do not lead specific Kingpin Act investigations. As a result, the reported expenditures of agencies may not be consistent and may not represent a reliable total

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<sup>30</sup>During the course of our review, DHS sent OFAC some corrections to its previously reported personnel expenditures. The revised amounts by fiscal year were \$2.25 million (2015), \$2.2 million (2016), \$1.6 million (2017), \$2 million (2018), and \$1.9 million (2019).

for Kingpin Act activities across the U.S. government. See figure 5 for the Kingpin Act–related personnel expenditures reported by Treasury and its partner agencies.

**Figure 5: Variability of Kingpin Act Personnel Expenditures Reported to Congress from Fiscal Years 2003 to 2019, by Agency**



Legend: Kingpin Act = Foreign Narcotics Kingpin Designation Act.

Source: GAO based on Office of Foreign Assets Control data. | GAO-20-112

Agencies' determinations of what they include as resource expenditures vary as well. For example, several agencies have reported no resource expenditures for the last 3 years, but State has reported a small resource expenditure that, according to State officials, accounts for transportation expenses for Kingpin Act interagency meetings.

OFAC officials said they do not know what agencies are including in their annual expenditure reports because OFAC does not seek information from agencies explaining their annual expenditure submissions and

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OFAC reports them as submitted.<sup>31</sup> Moreover, OFAC officials said they did not verify the amounts reported to confirm, for example, why DHS and DOD reported personnel expenditures in some years many times greater than DOJ personnel expenditures, even though DOJ is the lead investigative agency for the majority of Kingpin Act cases.

The Kingpin Act requires OFAC to report on the personnel and resources expended on the imposition of Kingpin Act sanctions each year. Additionally, federal internal control standards require entities to ensure that they are using quality information to achieve their objectives.<sup>32</sup> Although Treasury reported in the most recent annual report from July 2019 that OFAC's significant increase in resource expenditures was due to the addition of overseas costs and database contracts, the annual reports do not account for significant changes in agencies' expenditures from year to year. Because OFAC does not provide guidance that clarifies what agencies are required to include in their annual expenditure submissions or disclose the limitations in the consistency and reliability of expenditure data from partner agencies, OFAC cannot provide assurance that its annual reports to Congress on Kingpin Act interagency expenditures contain quality information that is transparent and consistent across all reporting agencies. As a result, Congress may not be able to provide informed oversight of personnel and resources expended on implementing the Kingpin Act.

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<sup>31</sup>OFAC officials said they work closely with their partners and that they know in some instances why certain agencies' expenditures have fluctuated, but they do not have a formal process for learning from agencies what their expenditure submissions represent.

<sup>32</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

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## Agencies Noted Challenges That Impede Their Assessment of the Effectiveness of Kingpin Act Sanctions, but OFAC and Its Partners Report a Range of Results

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### Agencies Reported Challenges in Assessing Effectiveness of Kingpin Act Sanctions in Achieving Policy Goals, but Treasury Has Assessed Some Individual Designations

OFAC and partner agency officials identified challenges that make it difficult—or impossible—to assess the overall effectiveness of the Kingpin Act sanctions in achieving U.S. policy goals to reduce illicit narcotics within the United States. These officials noted that the primary challenge in assessing the effectiveness of Kingpin Act sanctions is that they cannot isolate the impact of Kingpin Act sanctions from those of multiple other efforts and factors. For example, whether the estimates of the amount of drugs entering the United States is increasing or decreasing depends upon the sum total of activities of counternarcotics programs managed by organizations in the United States, other countries, and the international community. In addition, we have previously reported other challenges that agency officials have stated can make it difficult to assess the effectiveness of economic sanctions,<sup>33</sup> including frequent shifts in policy goals and objectives, and a lack of reliable data.<sup>34</sup> Treasury officials noted that sanctions are often used in conjunction with other policy tools, such as diplomatic engagement and export controls. According to Treasury officials, distinguishing the impact of each tool leveraged is exceedingly difficult due to the limited information available via intelligence and law enforcement channels.

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<sup>33</sup>The Kingpin Act is one sanctions program among dozens that the United States maintains to counteract activities that threaten U.S. national interest.

<sup>34</sup>See GAO, *Economic Sanctions: Agencies Assess Impacts on Targets, and Studies Suggest Several Factors Contribute to Sanctions' Effectiveness*, [GAO-20-145](#) (Washington, D.C.: Oct. 2, 2019).



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Moreover, while Treasury's partner agencies said Kingpin Act designations contribute to their counternarcotics goals, these agencies' are unable to quantify contributions specifically related to the Kingpin Act in measuring progress toward their own agencies' goals.<sup>35</sup> Partner agency officials said they do not consider the Kingpin Act to be a government program for which effectiveness can be assessed; rather, they stated that the Kingpin Act is one tool among many that U.S. government agencies can use where appropriate in their efforts to combat drug trafficking. According to partner agency officials, effectiveness of sanctions in achieving policy goals is often discussed at an interagency level, which allows the U.S. government to consider these issues in the larger policy context, because sanctions are often only one element of broader government-wide strategies to achieve U.S. policy goals.

Treasury conducts some assessment of both the potential and observed impacts of specific Kingpin Act designations. The Office of Intelligence and Analysis (OIA), Treasury's intelligence component, conducts both predesignation and postdesignation assessments.<sup>36</sup> OIA officials noted that they consider it part of their mission to inform Treasury policymakers of potential impact before a designation occurs. According to OIA officials, OIA's predesignation assessments are narrowly focused and can be delivered in any number of formats, including emails, spreadsheets, and briefings. OFAC officials said they provide OIA with name and summary

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<sup>35</sup>Similarly, although Office of National Drug Control Policy (ONDCP) officials said Kingpin Act designations help them develop the National Drug Control Strategy by helping ONDCP determine trends and emerging money-laundering methods and techniques associated with laundering illicit drug proceeds, OFAC is not responsible for reporting performance measures to ONDCP that could allow ONDCP to quantify OFAC's contributions to the strategy's goals. OFAC is not currently one of the National Drug Control Program agencies. As such, ONDCP does not require OFAC to provide a performance summary report—including performance measures—as it does the strategy program agencies. OFAC meets its reporting requirement to ONDCP by sending a letter and accompanying press-release chart for all Kingpin Act designations several times per year on a rolling basis as OFAC makes designations.

<sup>36</sup>OIA calls these assessments "impact assessments." GAO defines impact evaluation as a form of outcome evaluation that assesses the net effect of a program by comparing program outcomes with an estimate of what would have happened in the absence of the program. This form of evaluation is employed when external factors are known to influence the program's outcomes, in order to isolate the program's contribution to achieving its objectives. Because OIA's assessments are more narrowly focused, and are not what GAO defines as impact evaluations, we refer to them in this report as assessments rather than impact assessments. See GAO, *Performance Measurement and Evaluation: Definitions and Relationships*, [GAO-11-646SP](#) (Washington, D.C.: May 2, 2011).

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evidentiary information on a potential target.<sup>37</sup> According to OIA officials, they use the information to assess the potential level of impact (e.g., negligible or significant) a Kingpin Act designation may have on the target, its network, or other third parties, based on a variety of factors. For example, OIA may determine that a Kingpin Act designation can result in significant impact if evidence indicates that a designation will impose high costs and obstacles for a target to continue drug trafficking activity. According to OIA officials, such assessments have been required by the Under Secretary since 2018 and OIA has completed predesignation assessments on all Kingpin Act designations during that time period for senior Treasury officials' consideration.<sup>38</sup> Additionally, since 2018, OIA has completed two postdesignation assessments. OIA officials said they share these assessments with OFAC so it can incorporate the lessons learned into future investigations or to develop new designations.<sup>39</sup> OIA officials said that the decision to conduct postdesignation assessments of Kingpin Act designations is based on resources and the availability of information to assess impact.

OFAC officials said they have not undertaken formal, systematic assessments on the impact of Kingpin Act designations because OFAC's staffing resources are primarily assigned to designation investigations and reviewing of petitions for Kingpin Act designation reconsideration.<sup>40</sup>

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<sup>37</sup>According to OFAC officials, the summary information they provide to OIA does not include specific information received from law enforcement agencies, which OFAC keeps confidential to not affect their partner agencies' ongoing investigations.

<sup>38</sup>According to OIA officials, prior to 2018 the process for conducting predesignation assessments was less formalized.

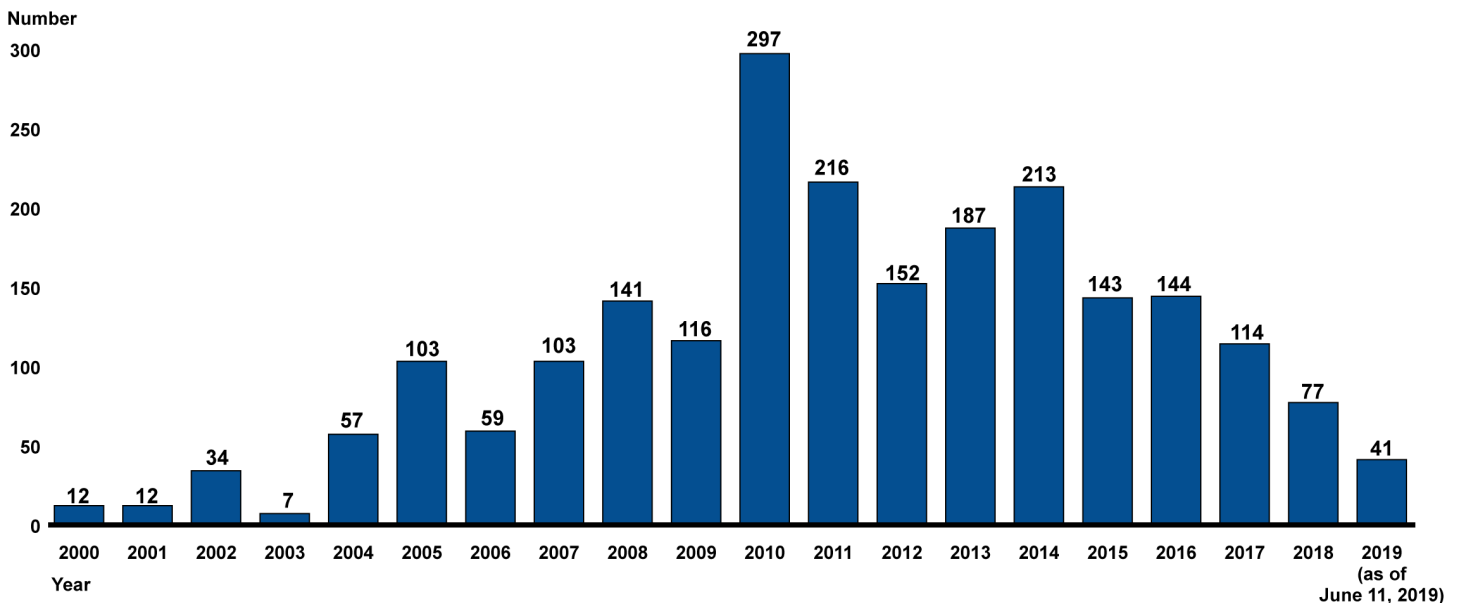
<sup>39</sup>In addition to OIA's assessments, TFFC officials said they consider the policy implications of a designation, including impact on third countries and economic considerations. Depending on the scope of the designation, OFAC coordinates with TFFC and other offices on a plan to engage relevant foreign counterparts, amplify public messaging, and mitigate possible unintended consequences that may result from the action.

<sup>40</sup>In 2007, OFAC issued an assessment of economic sanctions against Colombia. While this report focused on designations under the Executive Order 12978 for designation of Colombian narcotics traffickers, it also identified Kingpin Act designees such as Autodefensas Unidas de Colombia and the Arellano Felix organization. As part of the assessment, OFAC reported that, as of December 2006, it had frozen drug traffickers' assets valued at more than \$1 billion under the Specially Designated Narcotics Traffickers program. However, OFAC officials stated that they have not conducted a similar follow up assessment of the Kingpin Act. See Office of Foreign Assets Control, *Impact Report: Economic Sanctions against Colombian Drug Cartels* (March 2007).

## OFAC and Its Partner Agencies Have Reported Results, Including That Kingpin Act Sanctions Have Frozen Assets and Aided in Drug Trafficking Investigations

OFAC and its U.S. partner agencies reported on various results related to Kingpin Act sanctions. OFAC reported that it had designated more than 2,000 individuals and entities under the Kingpin Act as of June 2019. (See fig. 6 for the number of individuals and entities designated by year.) These designations are about evenly split between designations of individuals and designations of entities across the four designation classifications. OFAC reported 195 Tier 1 designations (B1 and B4 classification), and 2,033 Tier 2 designations (B2 and B3 classification).<sup>41</sup>

**Figure 6: Number of Kingpin Act Designations by Year, 2000-2019**



Legend: Kingpin Act = Foreign Narcotics Kingpin Designation Act.

Source: GAO based on Office of Foreign Assets Control data. | GAO-20-112

OFAC also reported that it has frozen more than half a billion dollars of sanctioned individuals' or entities' assets under the Kingpin Act between 2000 and 2019. According to OFAC data, almost 80 percent of the total assets frozen were from one individual in 2017. For the remaining years, the amount frozen fluctuated between \$1.7 million and \$36.4 million without a clear upward or downward trend.

<sup>41</sup>Tier 2 designations include foreign individuals and entities that are providing assistance to the international narcotics trafficking activities of Tier 1 designees (B1 and B4 designations).

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Further, law enforcement partner agencies cited the Kingpin Act as an important tool in aiding their investigations that may result in actions such as indictment or arrest of designees. For example, in one of our nine cases, a federal grand jury indicted Raul Flores Hernandez—the suspected leader of a Guadalajara-based drug trafficking organization—in August 2017 for moving large quantities of cocaine from South America to Mexico for distribution and further transportation into the United States. OFAC designated him (as well as 21 of his alleged criminal associates and 42 businesses and other entities affiliated with his drug trafficking organization) under the Kingpin Act concurrent with the indictment. According to OFAC and DEA officials, sharing information about Flores Hernandez was essential to both the designations and the indictment. According to these officials, disrupting the access of significant narcotics traffickers and their networks to the U.S. financial system and barring them from travel to the United States has been helpful in motivating several designees to cooperate with law enforcement investigations.

Moreover, U.S. agencies report that the ability to sanction entire drug trafficking networks increases pressure on traffickers to cease involvement with illicit narcotics. OFAC officials stated that removing designees from the OFAC list is, in some cases, evidence of disruption of drug trafficking organization or other positive behavior change. To be removed, designees must petition OFAC and demonstrate that they no longer meet the criteria to be designated under the Kingpin Act. As of June 2019, OFAC had removed 399 individuals and entities previously designated under the Kingpin Act, of which five were Tier 1 designations (B1 and B4 classification), and 394 were Tier 2 designations (B2 or B3 classification).

Foreign government officials also reported that Kingpin Act sanctions have assisted them in imposing penalties on drug traffickers. Foreign government officials we met with in Colombia reported that their Supreme Court issued a ruling that permits their countries' banks to terminate accounts of, and deny service to, Kingpin Act designees because of the risk the banks would face if they continued those business relationships. According to Mexican government officials, a bankers' association, the Financial Intelligence Unit, and the bank regulator in Mexico issued guidance supporting Mexican banks' rights to deny service to Kingpin Act designees. Mexican government officials also stated that once the United States publicly identifies a Mexican national as a drug trafficker by designating him or her under the Kingpin Act, Mexican law enforcement entities face less public opposition when they arrest, imprison, or extradite the individual. According to government officials we met with in Colombia,

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information that OFAC and other U.S. agencies share as part of their Kingpin Act investigations help them justify seizing designees' assets. For example, according to OFAC officials, OFAC, DEA, and Colombian authorities led a joint investigation that led to the October 2018 Colombian asset seizure of 202 assets of two individuals in Colombia valued at over USD \$500 million. The Colombian seizure included farms, land, houses, hotels, apartments, businesses, commercial properties, emerald mines, horses and vehicles.

Some Kingpin Act designations have had unintended consequences for foreign persons other than those targeted by the sanctions. The Congressional Research Service has reported that some designations have been associated with significant economic losses and unemployment by individuals not involved in illicit narcotics when large companies are liquidated in the process.<sup>42</sup> Treasury officials stated that foreign drug trafficking organizations often attempt to integrate their illicit proceeds into the legitimate economy by owning or controlling businesses that may employ individuals who are not associated with drug trafficking activities. According to Treasury officials, it is imperative that Treasury designate businesses that are owned or controlled by drug trafficking organizations, despite the employment of individuals who may not have knowledge of the illicit activities.<sup>43</sup> They said that prior to designating such foreign businesses, Treasury coordinates closely with other U.S. government agencies, the relevant U.S. embassy, and with the relevant foreign counterparts to minimize the impact on employees who lack knowledge of the illicit activities.<sup>44</sup> According to the Congressional Research Service, some designations have also been associated with upticks in drug trafficking-related violence when, in combination with law

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<sup>42</sup>Congressional Research Service, *International Narcotics Trafficking Sanctions: An Overview* (June 12, 2018).

<sup>43</sup>These organizations' investments in ostensibly legitimate businesses, which often generate significant revenue and prestige for the drug trafficking organizations and their members, is a critical aspect of their profit-driven motivation. Exposing and isolating these businesses, which are susceptible to sanctions pressure, is a critical element of Treasury's goal of degrading these drug trafficking organizations.

<sup>44</sup>For example, in coordination with Treasury, foreign counterparts may initiate a seizure or regulatory intervention of a designated business that may allow for the continued employment of innocent third parties pending a final resolution. Treasury may also issue specific or general licenses to U.S. persons that would allow them to have limited dealings with a designated business, which may reduce the unintended impact on innocent third parties associated with a designated business.

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enforcement action, drug trafficking organizations are dismantled and competing groups vie for abandoned territory.<sup>45</sup>

Furthermore, some designations have negatively affected public perceptions of the United States within the designee's country of residence, according to OFAC and partner agency officials. For example, OFAC and State officials stated that there was significant public criticism of U.S. intervention when OFAC designated a Mexican celebrity in conjunction with a significant narcotics trafficker. OFAC officials said it can be difficult to address public opposition to a Kingpin Act designation because the information in the evidentiary package is sensitive and cannot be revealed publicly.

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## Conclusions

The Kingpin Act enables the U.S. government to sanction significant international narcotics traffickers and their networks worldwide by designating foreign individuals and entities, resulting in the freezing of their U.S. assets and an inability to conduct transactions, including financial transactions, with U.S. businesses. OFAC and its partner agencies consider the Kingpin Act a valuable tool as part of U.S. counternarcotics strategy, but have noted that the plethora of counternarcotics efforts make it difficult to isolate the effects of the Kingpin Act. OFAC has reported on personnel and resources directed toward imposing Kingpin Act sanctions annually to Congress. However, OFAC provided limited guidance to agencies about what expenditure data to report. As such, we observed considerable inconsistencies in resource expenditures reported by various partner agencies, and also determined that methods for determining expenditures varied by agency. Moreover, OFAC does not disclose agency data limitations, such as explaining why the data may vary from year to year, before reporting the information to Congress. Without consistent agency data and disclosure of data limitations regarding information on agency resources devoted to Kingpin Act activities, Congress may be limited in its ability to conduct oversight of implementation of the Kingpin Act.

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<sup>45</sup>Congressional Research Service, *International Narcotics Trafficking Sanctions: An Overview* (June 12, 2018).

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## Recommendation for Executive Action

We are making the following 2 recommendations to the Department of the Treasury:

The Secretary of the Treasury should ensure that the Office of Foreign Assets Control provides its partner agencies more specific guidance regarding Kingpin Act–related expenditure data to improve the consistency of data submitted by these agencies. This could include, for example, how agencies account for expenditures that support Kingpin Act investigations when they are not the lead and for what types of activities resource expenditure data are required. (Recommendation 1)

The Secretary of the Treasury should ensure that the Office of Foreign Assets Control discloses information about limitations in the consistency and reliability of the agency expenditure data in its annual reports to Congress. (Recommendation 2)

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## Agency Comments

We provided a draft of this report to Treasury, DHS, State, DOD, DOJ, CIA, the Federal Reserve, and ONDCP for comment. We received technical comments from Treasury, DHS, and the Federal Reserve, which we incorporated as appropriate. The remaining agencies informed us that they had no comments. Treasury did not agree or disagree with our recommendations.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Secretary of the Treasury, the Acting Secretary of Homeland Security, the Secretary of State, the Secretary of Defense, the Assistant Attorney General for Administration, the Director of the Central Intelligence Agency, the Chair of the Board of Governors of the Federal Reserve System, and the Deputy Director of the Office of National Drug Control Policy. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

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If you or your staff have any questions about this report, please contact me at (202) 512-2964 or [GurkinC@gao.gov](mailto:GurkinC@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix II.



Chelsea Kenney Gurkin  
Director, International Affairs and Trade



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# Appendix I: Objectives, Scope, and Methodology

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Our objectives were to examine (1) how U.S. agencies designate individuals and entities under the Foreign Narcotics Kingpin Designation Act (Kingpin Act); (2) the extent to which U.S. agencies monitor, enforce, and report on sanctions under the Kingpin Act; and (3) what agencies have done to assess the effectiveness of the Kingpin Act.

To examine the process for designating individuals and entities under the Kingpin Act, we interviewed officials from the mandated partner agencies—the Departments of the Treasury (Treasury), State, Homeland Security (DHS),<sup>1</sup> and Defense; the Federal Bureau of Investigation (FBI); and the Drug Enforcement Administration (DEA)<sup>2</sup>—and reviewed documents, including the statutes that comprise the Kingpin Act. We also reviewed documentation on collaboration and information-sharing agreements between Treasury’s Office of Foreign Assets Control (OFAC) and its partner agencies to determine the ways in which agency participation has been formalized in the designation process. In addition, we received responses from the Central Intelligence Agency to questions we sent.

We selected and reviewed a nongeneralizable sample of Kingpin Act designations made since 2015 to understand OFAC’s designation process and the extent of the variation in the timing and sequence of the steps leading to the designations. From the countries with the most designations, we considered only B1 and B4 designations. Additionally, we only considered designations that occurred after May 2015, when the authority to designate was delegated from the President to the Secretary of the Treasury, so that the process followed for designation would most closely resemble the current process. We considered cases with a range in number of B2 and B3 designations affiliated with the B1 or B4 designee. Furthermore, we ensured that we selected cases from both Western Hemisphere countries where most of the designations have occurred (including cases in Colombia and Mexico where we performed fieldwork), and non–Western Hemisphere countries to learn whether the process differs geographically. To account for those criteria, we selected nine cases to review. OFAC provided data on the milestone dates and results associated with the cases from its electronic case management

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<sup>1</sup>Since DHS was established pursuant to the Homeland Security Act of 2002, it has participated as a consulting authority (6 U.S.C. § 101).

<sup>2</sup>The Kingpin Act names FBI and DEA separately, even though both are components within the Department of Justice.

system. We were unable to independently assess the data provided against the system, but we were able to corroborate some dates, such as designation dates, with public documents such as press releases. In addition, OFAC officials answered our questions about the variance in case data they provided by explaining factors that contributed to the length or sequence of investigative steps of each case. As a result, we deem the case study data provided by OFAC to be sufficiently reliable for the purposes of this report.

To examine the extent to which U.S. agencies monitor, enforce, and report on Kingpin Act sanctions, we interviewed officials from OFAC and its partner agencies regarding their roles in sanctions implementation. We also interviewed officials from some of the Federal Banking Agencies (FBA) that OFAC officials said had responsibilities to help monitor bank programs for compliance with OFAC sanctions, including the Kingpin Act financial sanctions—the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System—and five U.S. banks recommended by the FBAs as having the largest presence in Latin American countries to assess implementation of economic sanctions, including any penalties incurred for sanctions violations. In addition, we met with officials from financial regulator agencies and the national banking associations in Colombia and Mexico to understand how U.S. enforcement of Kingpin Act sanctions affected their operations. To assess the extent to which OFAC included information required by the Kingpin Act for Treasury’s reports to Congress, we also reviewed the annual reports OFAC submitted to Congress from 2003 to 2019 and OFAC guidance sent to partner agencies from 2017 through 2019 seeking their input into the reports.<sup>3</sup> We interviewed officials from each partner agency about the methodology they used to calculate their annual resource and personnel expenditures. Because we found that the agencies calculate their personnel expenditures differently and OFAC does not verify the amounts reported, we did not find the data reliable and are presenting the data to illustrate the problems with their reliability.

To examine what agencies have done to assess the effectiveness of the Kingpin Act, we interviewed OFAC and U.S. partner agency officials in Washington, D.C., Colombia, and Mexico, regarding their efforts to assess effectiveness and results of Kingpin Act designations and any

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<sup>3</sup>According to OFAC officials, OFAC did not submit annual reports to Congress prior to 2003.

challenges in measuring effectiveness. We also held telephone interviews with U.S. partner agency officials in Panama. We interviewed OFAC and Office of Intelligence and Analysis (OIA) officials regarding the type of assessments being done on the Kingpin Act. We reviewed strategic planning documents from the partner agencies to identify their counternarcotics objectives and, if available, related performance measures they track. We also used information from the nine designation cases we selected and interviewed U.S. partner agency officials as well as host government, financial industry, international organization, and nonprofit officials in Colombia and Mexico, to get perspectives on the results of Kingpin Act designations. To report on designations and removals of the Kingpin Act, we used OFAC's official brochure detailing the complete listing of Kingpin designations as of June 11, 2019. The data in the brochure are taken from OFAC's Specially Designated Nationals and Blocked Persons (SDN) List. The data include designations from years 2000-2019 categorized by type of designation. We compared the data in the brochure against the SDN List for accuracy and asked OFAC officials about their efforts to ensure the reliability of the SDN List data. We determined the data were sufficiently reliable for the purposes of our report. To report the amount of foreign designees' assets frozen, we collected available data from OFAC for calendar years 2008-2018. To obtain the types and number of U.S. assets that have been blocked under the Kingpin Act, we interviewed OFAC officials and reviewed their published data. It was beyond the scope of this engagement to independently verify the number of U.S. assets blocked.

We conducted this performance audit from May 2018 to December 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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# Appendix II: GAO Contact and Staff Acknowledgements

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## GAO Contact

Chelsa Kenney Gurkin, (202) 512-2964, or [GurkinC@gao.gov](mailto:GurkinC@gao.gov)

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## Staff Acknowledgements

In addition to the contact named above, Jennifer Grover, Mona Sehgal (Assistant Director), Jeffrey Baldwin-Bott (Analyst in Charge), Travis Cady, Marisela Perez, and Barbara Shields made key contributions to this report. Ashley Alley, Martin De Alteriis, Neil J. Doherty, Toni Gillich, Jeff Harner, John Hussey, and Triana McNeil also contributed to this report.

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