

CLIENT ALERT

OFAC Expands Reporting Requirements for All Companies Rejecting or Blocking Transactions Pursuant to Sanctions

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On June 21, 2019, the Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued an interim final rule revising the Reporting, Procedures and Penalties Regulations under 31 C.F.R. Part 501 to expand the parties required to submit reports on rejected transactions, and to update the instructions and requirements for parties filing reports on blocked property, unblocked property or rejected transactions. The revisions to Part 501 took effect immediately.

Blocked vs. Rejected Transactions

Prohibited transactions must be either blocked or rejected. Transactions involving property subject to U.S. jurisdiction in which a blocked person has any interest, meaning any individual or entity "designated" on OFAC's list of Specially Designated Nationals or any entity owned 50 percent or more by a person on that list (an "SDN"), must be blocked. When a prohibited transaction involving blocked property occurs, the party holding the property must freeze and hold on to the property at issue until otherwise instructed by OFAC.

On the other hand, transactions that are otherwise prohibited by OFAC-administered regulations must be rejected, including generally any transactions subject to U.S. jurisdiction involving Iran, Syria, North Korea or Crimea. Rejected funds or property need not be frozen and held like blocked funds, but rather can be returned to the party attempting the transaction.

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Previously, all companies already had an obligation to report transactions involving blocked property to OFAC, but only U.S. financial institutions had the obligation to report rejected transactions. Now, OFAC has significantly expanded the parties required to file reports on rejected transactions to include all U.S. persons.

Reports on Rejected Transactions

OFAC is revising Section 501.604 to require that any U.S. person, not only financial institutions, who rejects a transaction because processing or engaging in the transaction would be a violation of U.S. sanctions must submit a report to OFAC within 10 business days of the rejection. With this update to Section 501.604, OFAC is replacing the initial reference to only “financial institutions” with “U.S. persons,” which is the same applicability provided for under Section 501.603 governing blocked transactions. OFAC is also replacing references in the regulation to “rejected funds transferred” with “rejected transactions,” and adds a definition for the term “transactions” that includes wire transfers, trade finance, securities, checks, foreign exchange, and goods or services. With these changes, OFAC is clearly expressing its intent for the regulation to cover all types of parties and transactions, not just fund transfers rejected by financial institutions as was the case under the rule’s prior limited scope.

Submitters of reports on rejected transactions are now required to provide OFAC with additional details that were previously not required with the initial reports on rejected transactions within 10 business days. This required additional information includes details and descriptions of the U.S. person who rejected the transaction, the transaction itself and the sanctions involved.

Reports on Blocked and Unblocked Property

As with reports on rejected transactions, OFAC now requires parties to submit more information when initially filing reports on blocked and unblocked property under Section 501.603. Similar to the initial filing requirement changes under Section 501.604, these revisions mostly relate to providing details and descriptions of the property, the transaction and the parties involved. In sum, OFAC is merely asking for information up front that it would have asked the reporting party to provide eventually in the annual blocking report.

Public Comments

While the reporting requirements became effective as of June 21, 2019, OFAC is providing parties until July 22, 2019, to comment on the interim final rule containing these changes to the regulations. Comments may be submitted via the eRulemaking portal on regulations.gov, fax or mail, and will become part of the public record.

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