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OFAC Expands Sanctions-Related Rejected Transaction Reporting Requirements

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On June 21, 2019, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued an interim final rule amending the Reporting, Procedures and Penalties Regulations, 31 CFR part 501 ("RPPR"). This [interim final rule](#), which took immediate effect, substantially expands reporting requirements upon many businesses which previously would have little occasion to submit reports to OFAC.

Most significantly, the interim final rule significantly expands the reporting requirement for rejected transactions to cover (1) **ALL** U.S. persons and persons subject to U.S. jurisdiction, not solely U.S. financial institutions; and (2) **ALL** rejected transactions, not just rejected funds transfers. In other words, many U.S. companies that previously had no obligation to report "rejected" transactions must now do so within ten (10) business days of each such transaction. Potentially affected companies have until July 22, 2019 to submit written comments to OFAC regarding the considerable financial impact this new reporting requirement may have on companies' compliance programs.

Blocked Transactions vs. Rejected Transactions

The RPPR set forth reporting and recordkeeping requirements and license-related procedures relevant to the OFAC-administered sanctions programs. Under the interim final rule, the RPPR requires U.S. persons and persons subject to U.S. jurisdiction to submit reports when property is "blocked" or a transaction is "rejected" pursuant to U.S. economic sanctions. In general, property must be blocked or frozen if the transaction involves property in which a blocked person (e.g., an individual or entity on OFAC's Specially Designated Nationals and Blocked Persons List ("SDNs")) has an interest. In the case of blocked funds transfers, the funds must be transferred to an interest-bearing account from which only OFAC-authorized or certain statutorily authorized debits may be made. The subsequent release of funds or other property from blocked status is referred to as "unblocking."

In instances where the underlying transaction may be prohibited by OFAC-administered sanctions programs, but the transaction does not involve a blockable interest in property, the transaction must be rejected. Such a scenario may arise, for example, when the proposed transaction does not involve an SDN, but does involve a sanctioned country or region such as Cuba, Iran, North Korea, Syria, or Crimea. When a transaction is rejected, the property or funds involved in the transaction are not processed and are simply returned to the party attempting the transaction.

The interim final rule broadens the reporting requirements for both blocked

property and rejected transactions. However, the new regulations most dramatically expand the reporting obligations and the scope of parties required to submit reports in the context of rejected transactions.

Rejected Transactions Reports

Previously, only U.S. financial institutions were required to submit reports on rejected transactions to OFAC, and this reporting obligation arose only with respect to “rejected funds transfers.” Under the interim final rule, **ALL** U.S. persons and persons subject to U.S. jurisdiction – not just U.S. financial institutions – are now required to report **ANY** “transaction” rejected because it would violate U.S. sanctions, including without limitation transactions related to “wire transfers, trade finance, securities, checks, foreign exchange, and goods or services.” The rejected transaction report must be submitted to OFAC within 10 business days of each such transaction.

The interim final rule is ambiguous regarding what constitutes a “rejected transaction,” especially in the context of non-financial institutions. Under the new regulations, non-financial institutions that previously were not subject to reporting requirements may be required to report a “rejection” in potentially any business transaction (including those that do not progress beyond a proposal or that are not otherwise acted upon). For example, if a U.S. exporter of goods rejects an internet order from a non-SDN Iranian company because fulfilling the order would violate the U.S. embargo on Iran, then the U.S. exporter would apparently have an obligation to report that rejected transaction to OFAC within 10 business days. Failure to comply with the expanded rejected transaction reporting requirements could result in civil and criminal penalties.

The new RPPR also increase the scope of information required to be provided in rejected transaction reports, including without limitation, detailed information related to the nature and actual or estimated value of the rejected transaction, the sanctions target whose involvement in the transaction resulted in the transaction being rejected, and the U.S. sanctions on which the rejection was based.

Blocked and Unblocked Property Reports

Although the interim final rule does not expand the scope of persons required to submit blocking reports, it does expand the breadth of information required in initial and annual blocking reports to OFAC. Initial blocking reports must be filed by all applicable U.S. persons and persons subject to U.S. jurisdiction within 10 business days from the date the property is blocked. Subsequently, such persons must file by September 30 an annual report on all property held as of June 30 of the current year. Submitters of initial and annual blocking reports must now provide OFAC with substantially more information regarding the blocked property including, but not limited to, detailed information regarding the nature of the transaction associated with the blocking, the actual or estimated value of the blocked property, the sanctions target whose property is blocked, and the sanctions that required the blocking.

The interim final rule also added reporting requirements in relation to certain unblocked property. These reports are only due when specifically required by OFAC, such as pursuant to certain OFAC general or specific licenses.

Conclusion

Given the increased financial and time expenses to be incurred by legitimate businesses as a result of the newly expanded reporting requirements for rejected transactions, OFAC wisely has solicited industry feedback with respect to “the estimated capital or start-up costs of the operation, maintenance, and/or purchase of services to provide [the] information” required under the amended RPPR. We anticipate that OFAC in the coming months is likely to revise the RPPR to define with greater specificity when a declined or refused transaction amounts to a “rejected” transaction for reporting purposes. Given the civil and criminal liability which may follow from a failure to comply with OFAC regulations and reporting requirements, fairness and due process require careful direction and definition by the Government in this context. Overly broad and ill-defined reporting requirements mandated by OFAC impose significant costs on legitimate businesses and injure OFAC's goodwill which is essential in this arena to secure the public and industry's full cooperation and assistance.