

July 9, 2019

### OFAC Expands Reporting Requirements for Rejected Transactions

In late June, with minimum notice or fanfare, the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) issued an interim final rule (the “Interim Rule”) that, *inter alia*, introduced new, broad requirements for covered parties to report rejected transactions. The Interim Rule amended the Reporting, Procedures and Penalties Regulations (“RPPR”), 31 C.F.R. § 501 *et seq.*, which set out reporting, recordkeeping, and license-related procedures relevant to the economic sanctions programs administered by OFAC. These changes took effect on June 21, and OFAC has invited comments on the Interim Rule through July 22, 2019.

**Attorneys**  
[Ama A. Adams](#)  
[Brendan C. Hanifin](#)  
[Emerson Siegle](#)

#### Background

Persons subject to U.S. jurisdiction—including, for purposes of the Cuba and Iran sanctions, non-U.S. entities that are majority-owned or controlled by a U.S. firm—are subject to certain blocking and reporting requirements under U.S. economic sanctions. In particular, covered parties have long been required to block the property (typically, funds) of sanctioned parties—*i.e.*, parties included on the Specially Designated Nationals (“SDN”) List, as well as entities majority-owned by SDNs (collectively, “Blocked Persons”)—that come within their possession or control.

“Blocking” property involves transferring the property to a segregated, interest-bearing account, from which only OFAC-authorized debits may be made. Covered parties who block the property of Blocked Persons are required to file a report with OFAC within ten business days, as well as an annual report of all blocked property. Although the Interim Rule clarifies the information that must be included in reports of blocked property, the rule does ***not*** change the scope of the preexisting blocking requirement.

In addition, prior to publication of the Interim Rule, financial institutions (at minimum) were required to reject—but not block—proposed transactions where the transaction would be prohibited under U.S. sanctions, but there is no blockable property interest. In this context, “rejecting” a transaction means refusing to process the transaction. As with blocking measures, covered parties who reject a transaction must file a report with OFAC within ten business days.

#### Expansion of Reporting Requirements

The Interim Rule clarifies—and thereby expands—the scope of OFAC reporting requirements for rejected transactions in two key respects:

- First, the rule clarifies that the reporting requirement applies to ***all*** rejected transactions, and not just rejected fund transfers. In particular, the rule clarifies that the reporting requirement extends to rejected transactions related to wire transfers, trade finance, securities, checks, foreign exchange, and ***goods or services***.
- Second, the rule clarifies that the reporting requirement applies to ***all*** parties subject to U.S. jurisdiction and is no longer limited to financial institutions.

Collectively, these changes significantly expand the scope of transactions that must be self-reported to OFAC. As amended, the RPPR now appear to require that covered parties report ***all*** contemplated transactions involving embargoed countries that covered parties elect not to pursue for sanctions-related reasons. For example, a majority-owned German subsidiary of a U.S. firm now appears for the first time to be required to report prospective transactions involving Cuban or Iranian counterparties that do not move forward, if the transaction is not consummated for sanctions-related reasons.

Failure to comply with the new mandatory reporting requirement for rejected transactions would constitute an independent violation of the OFAC sanctions regulations.

### **Conclusion**

In view of the cost and administrative burden that these recent changes will impose upon companies subject to U.S. jurisdiction, many stakeholders likely will submit comments encouraging OFAC to narrow the scope of the Interim Rule's reporting requirement for rejected transactions. However, unless and until OFAC issues new rulemaking, companies subject to U.S. jurisdiction should promptly review their sanctions-related escalation procedures, to ensure compliance with the newly expanded reporting requirements.