

ALERTS

Sanctions Update: OFAC Extends Recordkeeping Requirements to 10 Years and Amends Reporting Regulations

November 13, 2024

In recent weeks, the US Department of the Treasury's Office of Foreign Assets Control ("OFAC") has introduced an interim and a final rule amending its regulations with important implications for sanctions compliance programs. First, OFAC's general recordkeeping requirements under 31 C.F.R. § 501.601, as well as other provisions, will be extended from 5 years to 10 years, effective March 12, 2025. Second, OFAC finalized additional amendments to its Reporting, Procedures and Penalties Regulations, adding four exceptions to the reporting requirements for blocked property that is unblocked or transferred, as well as clarifying certain other changes.

Extension of Recordkeeping Requirements Aligns With Statutory Amendments to National Security Statutes

On April 24, 2024, President Joe Biden signed into law an emergency supplemental appropriations bill for foreign aid ("Supplemental Act"), which included amendments to the International Emergency Economic Powers Act ("IEEPA") and the Trading With the Enemy Act ("TWEA") that, among other things, increased the statute of limitations for sanctions violations from 5 years to 10 years.[1] In light of this change, OFAC issued an interim final rule on Sept. 11, 2024 (the "IFR"), extending the length of the record retention period across its regulations to align with the longer statute of limitations.[2] The IFR amends OFAC's Reporting, Procedures and Penalties Regulations and the Cuba Assets Control Regulations

“CAOR”) to increase applicable record retention periods from 5 years to 10 years.[3]

Given that OFAC requires that records be kept for “every person engaging in any transaction subject to” its regulations,[4] the expanded 10-year recordkeeping obligation may significantly increase the administrative burden of compliance for any US person that engages in significant international dealings. Because the recordkeeping requirement starts from the date of a covered transaction, the retention period will effectively require US persons to retain covered records for longer than 10 years, since a “full and accurate record” of any covered transaction likely includes pre-transaction documentation.[5] Similarly, because the amendment requires retention of “a full and accurate record” of blocked property as long as it is blocked, and then “for at least 10 years after the date such property is unblocked,” US person holders of blocked property are subject to a virtually indefinite recordkeeping period.[6] The IFR also amends the calculation of penalties for *late* report filings (e.g., blocked property reports) to allow penalties to accrue for 10 years.[7]

OFAC Amends its Reporting, Procedures and Penalties Regulations

On Oct. 7, 2024, OFAC announced that it would be issuing a final rule (“Final Rule”) to amend its Reporting, Procedures and Penalties Regulations.[8] The Final Rule implements the amendments made pursuant to an interim final rule published on May 10, 2024 (“May 2024 Rule”).[9] But in response to public comments on the interim final rule, OFAC included several changes to clarify the scope of a US person’s reporting obligations.[10]

The May 2024 Rule revised § 501.603(b)(3)(i) to require US persons to submit reports within 10 business days of when blocked property is unblocked or transferred, including pursuant to a valid order issued by a US government agency or US court. OFAC noted that the purpose of this change was to “enable OFAC to ascertain the current status of blocked and unblocked property.”[11] With the publication of the Final Rule, which is effective Nov. 8, 2024, OFAC has now clarified that reports on blocked property that has been unblocked or transferred are *not* required in the following circumstances:

- authorized debits to blocked accounts for normal service charges;

- authorized transfers of funds or credits by a financial institution between blocked accounts in its branches or offices;

(3) blocked property that is unblocked or transferred pursuant to a general or specific license, unless the license includes a condition that requires the submission of an unblocking report; or

(4) blocked property that is unblocked pursuant to OFAC's removal of a person from the SDN List.[12]

OFAC states that these changes are meant to reduce the reporting burden on US persons and that it is not requiring reports for unblocked property "about which [it] does not have a strong interest in obtaining additional information or for which information is received via other reporting channels." [13]

The compliance release procedures released by OFAC at § 501.608 for unblocking property that is believed to have been blocked in error ("Compliance Release Procedures") were also amended by the May 2024 Rule. Under the updated Compliance Release Procedures, a person who has blocked property due to mistaken identity or typographical error may submit a request to OFAC for authorization to unblock such property.[14] Only the original reporting party may use the Compliance Release Procedures to submit the request, which must be sent by email to OFAC and include certain specified information about the property.[15]

The Final Rule notes that US persons are not *required* to use the Compliance Release Procedures for "unblocking property believed to have been blocked and reported in error due to mistaken identity or typographical or similar errors." [16] Moreover, US persons "can treat the property that was blocked in error as not blocked in the event they determine that there was never any valid blockable interest in the property, provided that they notify OFAC of the change." [17]

Concurrent with publishing the Final Rule, OFAC issued an FAQ stating that US persons that have blocked and reported property to OFAC due to mistaken identity or a typographical error may unblock such property and file an unblocking report with OFAC.[18] Unblocking reports must be submitted electronically, either by email or through OFAC's Online Reporting System ("ORS"). [19] The Compliance Release Procedures may be used as an alternative to filing an unblocking report. As the Final Rule and the FAQ note, this guidance applies only to property in which there

was never a blockable property interest.[20] For property that was *correctly* blocked, but for which the status of the property has changed (such as due to “a change in the portion of ownership by a blocked person”), US persons must still apply to OFAC for a specific license to unblock such property.[21]

Conclusion

While the amendments to OFAC’s recordkeeping regulations were expected, they could require significant changes for some US firms’ sanctions compliance programs. Firms will need to review their internal policies and procedures, contracts with outside service providers, and agreements with investment counterparties to ensure they are prepared to comply with the new 10-year retention period when it becomes effective on March 12, 2025.

Additionally, US firms that currently possess or control any blocked property should also ensure that they are maintaining records of such property for the appropriate time period, consistent with the new regulations. The exceptions added to OFAC’s reporting requirements with respect to unblocked property provide needed clarity and may help to reduce some of the administrative burdens related to the overall expansion of the recordkeeping requirements.

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If you have any questions concerning this Alert, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] 21st Century Peace Through Strength Act, Pub. L. 118-50, Div. E, Title I, Sec. 3111(a)–(d) (codified at 50 U.S.C. §§ 1705(d), 4315(d)). For additional commentary, see Schulte *Alert*, Sanctions Update: Statutory Amendments and an Interim Final Rule Create Significant Implications for OFAC Sanctions Compliance (Jun. 11, 2024), available here (“Schulte *Alert*, Sanctions Update: Statutory Amendments”). Following enactment of these statutory amendments, OFAC issued guidance noting that it expected to change its regulations to extend recordkeeping requirements to 10 years. OFAC, Guidance on Extension of Statute of Limitations (Jul. 22, 2024), available here.

[2] Interim Final Rule, *Reporting, Procedures and Penalties*, 89 Fed. Reg. 74832 (Sept. 13, 2024), available here.

[3] IFR, 89 Fed. Reg. at 74834 (to be codified at 31 C.F.R. §§ 501.601, 515.572).

[4] *Id.* at § 501.601.

[5] *Id.*

[6] *Id.*

[7] *Id.* at 74834 (to be codified at 31 C.F.R., paragraph IV.B of Part 501).

[8] Press Release, OFAC, Counter Terrorism Designations; Issuance of Counter Terrorism General Licenses; Amendment of the Reporting, Procedures and Penalties Regulations and Issuance of Related Frequently Asked Question (Oct. 7, 2024), available here.

[9] Interim Final Rule, *Reporting, Procedures and Penalties Regulations*, 89 Fed. Reg. 40372 (May 10, 2024), available here.

[10] Final Rule, *Reporting, Procedures and Penalties Regulations*, 89 Fed. Reg. 81358 (Oct. 8, 2024), available here.

[11] May 2024 Rule, 89 Fed. Reg. at 40373.

[12] Final Rule, 89 Fed. Reg. at 81359, 81361 (to be codified at 31 C.F.R. § 501.603(b)(3)(i)(A)–(D)).

[13] Final Rule, 89 Fed. Reg. at 81359.

[14] 31 C.F.R. 501.806.

[15] *Id.*; May 24, 2024 Rule, 89 Fed. Reg. at 40374.

[16] Final Rule, 89 Fed. Reg. at 81360.

[17] *Id.*

[18] OFAC FAQ 1196 (Oct. 7, 2024), available here. OFAC notes that unblocking reports should be submitting in accordance with 31 C.F.R. § 501.603(b)(3) and should reference FAQ 1196.

[19] 31 C.F.R. § 501.603(d)(2). Submissions by email should be sent to OFACReport@treasury.gov; OFAC's ORS can be accessed at

<https://ofac.treasury.gov/ofac-reporting-system>. Note that as of Aug. 8, 2024, initial reports on blocked property and annual reports on blocked property may *only* be submitted through ORS. 31 C.F.R. § 501.603(d)(1); Schulte *Alert*, Sanctions Update: Statutory Amendments, *supra*.

[20] OFAC FAQ 1196, *supra*.

[21] *Id.*

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