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# Hughes Hubbard & Reed

## OFAC Expands Reporting Requirements with Interim Rule

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**July 8, 2019** – On June 21, 2019, the Department of the Treasury, Office of Foreign Assets Control (“OFAC”) issued an interim rule amending its Reporting Procedures and Penalties Regulations (“Reporting Regulations”). OFAC announced that the interim rule is intended “to provide updated instructions and incorporate new requirements for parties filing reports on blocked property, unblocked property, or rejected transactions,” but the updated guidance could vastly expand reporting requirements for U.S. persons and those subject to U.S. jurisdiction. Most notably, the interim rule expands reporting requirements for rejected transactions from financial institutions to all U.S. persons and persons subject to U.S. jurisdiction, indicating that all such individuals and entities should review their existing internal sanctions compliance procedures to ensure they meet these new reporting requirements.

### Overview of Interim Rule

The OFAC Reporting Regulations (31 C.F.R. § 501) (“OFAC Reporting Regulations”) set out reporting and recordkeeping requirements, along with other sanctions-related procedures, for U.S. persons. The interim rule went into effect on June 21, but OFAC is accepting public comment on the rule until July 22, 2019. The interim rule amends six sections of the regulations.

#### *Interim and Annual Blocked Property Reports*

OFAC has amended its requirements for reports on blocked and unblocked property set forth in 31 C.F.R. § 501.603. OFAC requires U.S. persons and persons subject to U.S. jurisdiction, “including financial institutions that receive and block payments or transfers,” to file both initial and annual blocking reports on property under their possession or control that is blocked under U.S. sanctions regimes. Under OFAC regulations, a U.S. person generally includes all U.S. citizens and permanent resident aliens regardless of where they are located, all persons and entities within the United States, and all U.S. incorporated entities and their foreign branches. Typically, blocked property involves transactions with individuals or entities on OFAC’s list of Specially Designated Nationals (SDNs), but the blocking requirements depend on the U.S. sanctions program involved in a given transaction. The interim rule does not fundamentally change who is required to file blocked property reports, though it does

amend what information OFAC requires in these reports. Initial blocking reports still must be filed by all U.S. persons or those subject to U.S. jurisdiction within 10 business days from the day the property becomes blocked. The updated rule sets forth in substantial detail the information these initial blocking reports should contain, including (but not limited to) the name and address of the person holding the blocked property, a description of the transaction, a description of the property, and the relevant sanctions targets.

The OFAC Reporting Regulations also require annual reports of blocked property, which must be filed by U.S. persons and persons subject to U.S. jurisdiction by September 30 of each year and provide information on all blocked property held by such persons as of June 30 of each year. The interim rule adds a new requirement for annual reports for holders of blocked funds in omnibus accounts, which, prior to the amendment, could be reported as the total amount in the account. The amended rule, which applies to annual reports filed in 2020, requires that annual reports contain a disaggregated list showing each blocked asset contained within an omnibus account. On June 28, 2019, OFAC issued additional guidance on filing the annual report of blocked property pursuant to the interim rule, and the guidance provides an amended form that includes all required fields for the report under the updated regulations for ease of reporting.

#### *Rejected Transaction Report*

Unlike the blocked property reports, the interim rule dramatically broadens the scope of the rejected transaction requirements, including who must file the reports and what types of transactions must be reported under 31 C.F.R. § 501.604. In general, transactions are rejected, or not processed, when they are prohibited by OFAC requirements but do not have an express blockable interest that is set forth in a U.S. sanctions program. Prior to the amendment, OFAC required reports for “rejected funds transfers,” but the interim rule expands the requirements to all rejected transactions. The interim rule includes a definition of transaction “to provide additional clarity,” but the definition largely amounts to a non-exhaustive list of covered transactions, providing that “[t]he term transaction includes transactions related to wire transfers, trade finance, securities, checks, foreign exchange, and goods or services.” Further, the interim rule does not define when rejection of a transaction that is not a funds transfer would trigger the reporting requirement. The amendment also extends the reporting requirements from financial institutions to all U.S. persons and persons subject to U.S. jurisdiction, meaning that many U.S. entities that had no responsibility to report rejected transactions prior to the June 21 amendment are now required to submit a report within 10 business days. As with the blocked property reports, the interim rule also provides detailed instructions about what information is required in the rejected transaction reports.

#### *Other Provisions*

The interim rule revises OFAC’s licensing procedures under 31 C.F.R. § 501.801, adding several technical and conforming changes. Specifically, OFAC has changed the filing requirements for applications of specific licenses and applications for the unblocking of funds. Additionally, OFAC has revised its Freedom of Information Act (“FOIA”) provisions. Prior to the amendment, the OFAC Reporting Regulations stated that blocked property reports were “privileged and confidential.” The interim rule allows license applications submitted to OFAC and specific licenses issued by OFAC to be released upon the receipt of a valid FOIA request, barring an OFAC determination that an applicable FOIA exemption applies to withhold the information.

### **Implications of the Interim Rule**

Because of the expanded reporting requirements, particularly with respect to rejected transactions, firms that formerly were not subject to reporting requirements may be required to submit reports under the interim rule. In particular, non-financial institutions that are U.S. persons or subject to U.S. jurisdiction would be required to promptly submit rejected transaction reports in addition to blocked property reports. Further, the interim rule expands the information required for reports, so existing internal reporting guidelines could be insufficient to meet

the expanded requirements of the interim rule. Accordingly, firms should review their internal sanctions compliance procedures to ensure compliance with the updated OFAC Reporting Regulations.

OFAC is accepting public comment on the rule until July 22, 2019, including comments on the potential “capital or start-up costs of the operation, maintenance, and/or purchase of services to provide information.” If firms, particularly those engaging in a substantial number of international transactions, anticipate an undue burden imposed by the interim rule, they should consider explaining the potential impact to OFAC during the public comment period.

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