

## **New Treasury Rule Amps Up Reporting Burden For Banks**

By **Jennifer Doherty**

*Law360 (May 8, 2024, 10:09 PM EDT)* -- The U.S. Department of the Treasury introduced an interim final rule Wednesday that refines and further expands recent increases in reporting requirements, including a new obligation for financial institutions to notify the federal government any time they unblock frozen assets.

The new rule hones regulations the Treasury's Office of Foreign Assets Control, or OFAC, imposed in 2019 that extended reporting requirements beyond financial institutions and required any organization under U.S. jurisdiction to file a report with the agency when it declines to process a transaction involving a sanctioned person or organization.

"Many in industry believed this rule would prove too costly and burdensome for non-financial institutions and hoped OFAC might rescind or significantly change the rule," said former OFAC chief counsel Jason Prince, now a partner at Akin Gump Strauss Hauer & Feld LLP, in a statement to Law360 on Wednesday. "Today's interim final rule makes clear that OFAC disagrees with these criticisms and intends to keep the rule in place, subject to some adjustments designed to relieve certain administrative burdens."

The tweaks to the 2019 regulations in Wednesday's rule include clarifications to the agency's definition of "transaction" and "U.S. person." The agency also acknowledged that institutions might struggle to ascertain certain facts regarding transactions they had already refused, so "information required therein must be reported only to the extent the information is available to the filer at the time the [transaction] was rejected."

The new rule also makes several administrative changes to the process for filing reports with the agency, eliminating mail-in options and requiring parties to use the online OFAC Reporting System.

"OFAC has clearly determined the information it receives through blocking, rejected transaction, and unblocking reports is valuable and merits the administrative and financial burdens these reporting requirements impose on both industry and OFAC," said Prince.

Unlike the 2019 regulations, Wednesday's rule will mostly affect the banks traditionally accustomed to dealings with OFAC, according to Miller & Chevalier Chtd. counsel Laura Deegan.

"This creates, of course, more of a compliance burden to financial institutions who are mainly the holders of blocked property," said Deegan, a former OFAC senior compliance officer.

Nevertheless, the latest regulations are likely to spur additional complaints from reporting institutions, despite OFAC's efforts to clarify the last round of reporting regulations.

Adam M. Smith, a Gibson Dunn & Crutcher LLP partner and former senior adviser to the director of OFAC, told Law360 that business organizations have struggled since 2019 to understand what OFAC views as a "transaction" now that the agency has expanded the meaning beyond bank transfers. Industry has also grappled with how to determine whether a transaction has been "rejected" outside financial contexts, he said.

"In the new rule, OFAC appears to confirm the traditional understanding that a wire transfer or trade finance instrument is a 'transaction' for the purposes of the reporting rule," said Smith. "But the new amendment unfortunately does not appear to provide meaningful guidance on when a transaction must be reported when it is simply 'related to' the sale or purchase of goods or services by a non-banking entity."

Smith also pointed to the timing of Wednesday's rule, which comes during a period of uncertainty on the heels of legislation enacted April 24 that doubled the statute of limitations for prosecuting sanctions violations from five to 10 years.

Along with industry needing more clarity on the older regulations, "we are still waiting for guidance from OFAC on how that new authority will be implemented," Smith said.

--Editing by Andrew Cohen.