

April 21, 2020

OFAC Guidance in Response to COVID-19

OFAC Issues Guidance on Sanctions Compliance and Provision of Humanitarian Assistance and Trade to Combat COVID-19

SUMMARY

The U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued two documents in recent days on separate issues relating to the COVID-19 pandemic. On April 20, 2020, OFAC encouraged persons affected by the COVID-19 pandemic to contact OFAC about concerns that they may experience delays in their ability to meet deadlines associated with OFAC-administered regulatory requirements (the "Guidance").¹ On April 16, 2020, OFAC noted the U.S. government's commitment to ensuring that humanitarian assistance reaches at-risk populations through legitimate and transparent channels and summarized relevant exemptions, exceptions, and authorizations for humanitarian assistance and trade under the Cuba, Iran, North Korea, Syria, Ukraine-/Russia-related, and Venezuela sanctions administered by OFAC (the "Fact Sheet").²

A. SANCTIONS COMPLIANCE GUIDANCE

Taking a similar approach to [recent guidance](#) issued by the Financial Crimes Enforcement Network, the Guidance encourages persons, including financial institutions and other businesses, "affected by the COVID-19 global pandemic" to contact OFAC as soon as practicable if they believe that they may experience delays in their ability to meet deadlines under OFAC-administered regulatory requirements, including the 10 business day deadline for reports on blocked and unblocked property³ and on rejected transactions,⁴ as well as any deadlines for responding to OFAC administrative subpoenas⁵ or reporting under an OFAC general or specific license. The Guidance further provides appropriate OFAC points of contact for these reports or responses, as well as for requests for reconsideration of an OFAC action resulting in the addition of a person to an OFAC sanctions list. The Guidance also encourages the submission of voluntary self-disclosures of apparent violations of OFAC-administered sanctions to a new OFAC email account (OFACdisclosures@treasury.gov) rather than through physical mail.

B. TREATMENT OF APPARENT VIOLATIONS ARISING OUT OF CHALLENGES CREATED BY THE COVID-19 PANDEMIC

Finally, the Guidance notes OFAC's longstanding adherence to a risk-based approach to sanctions compliance (as most recently articulated in its [May 2019 Framework for Compliance Commitments](#)) and states that, if a business faces technical and resource challenges caused by the COVID-19 pandemic and chooses, as part of a risk-based approach, to account for such challenges by temporarily reallocating compliance resources, OFAC will – on a case-by-case basis – evaluate this as a factor in determining an appropriate enforcement response to any apparent violation occurring in this period.

C. PROVISION OF HUMANITARIAN ASSISTANCE AND TRADE

Since the emergence of the COVID-19 pandemic, and in particular in light of the severe impact of the disease in Iran, there have been calls from some members of Congress and current and former European officials to provide sanctions relief targeted at fighting the disease.⁶ OFAC has not provided any new relief, but it has issued the Fact Sheet, which describes in great detail existing exemptions, exceptions, and authorizations under the Cuba, Iran, North Korea, Syria, Ukraine-/Russia-related, and Venezuela sanctions administered by OFAC and encourages persons interested in providing legitimate humanitarian-related trade or assistance to avail themselves of these longstanding regulatory provisions. In a recent panel discussion, OFAC Director Andrea Gacki stated that it is one of her primary objectives to make sure that sanctions do not impede humanitarian relief efforts related to the COVID-19 crisis, and the Fact Sheet makes clear that OFAC stands ready to provide guidance on the exemptions, exceptions, and authorizations discussed in the Fact Sheet and to respond to any applications for specific licenses.

However, the Fact Sheet also notes that persons interested in exporting Personal Protective Equipment (“PPE”) from the United States should review all relevant U.S. regulations, guidance, and rules, including the April 10, 2020 temporary rule issued by the Federal Emergency Management Agency (“FEMA”), which prohibits through August 10, 2020 the export from the United States without FEMA approval of five types of PPE.⁷

* * *

ENDNOTES

- 1 <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20200420.aspx>.
- 2 See *Fact Sheet: Provision of Humanitarian Assistance and Trade to Combat COVID-19* (April 16, 2020) available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/covid19_factsheet_20200416.pdf.
- 3 See 31 C.F.R. § 501.603.
- 4 See 31 C.F.R. § 501.604.
- 5 See 31 C.F.R. § 501.602.
- 6 See, e.g., <https://www.rollcall.com/2020/04/09/calls-grow-for-trump-to-relax-humanitarian-sanctions-on-iran/>.
- 7 See 85 Fed. Reg. 20195 (April 10, 2020).

SULLIVAN & CROMWELL LLP

ABOUT SULLIVAN & CROMWELL LLP

Sullivan & Cromwell LLP is a global law firm that advises on major domestic and cross-border M&A, finance, corporate and real estate transactions, significant litigation and corporate investigations, and complex restructuring, regulatory, tax and estate planning matters. Founded in 1879, Sullivan & Cromwell LLP has more than 875 lawyers on four continents, with four offices in the United States, including its headquarters in New York, four offices in Europe, two in Australia and three in Asia.

CONTACTING SULLIVAN & CROMWELL LLP

This publication is provided by Sullivan & Cromwell LLP as a service to clients and colleagues. The information contained in this publication should not be construed as legal advice. Questions regarding the matters discussed in this publication may be directed to any of our lawyers listed below, or to any other Sullivan & Cromwell LLP lawyer with whom you have consulted in the past on similar matters. If you have not received this publication directly from us, you may obtain a copy of any past or future publications by sending an e-mail to SCPublications@sullcrom.com.

CONTACTS

New York

Elizabeth T. Davy	+1-212-558-7257	davye@sullcrom.com
Sharon Cohen Levin	+1-212-558-4334	levinsc@sullcrom.com

Washington, D.C.

Eric J. Kadel, Jr.	+1-202-956-7640	kadelej@sullcrom.com
Adam J. Szubin	+1-202-956-7528	szubina@sullcrom.com
James A. Earl	+1-202-956-7566	earlja@sullcrom.com
