

## Regulatory Amendments to 31 C.F.R. Part 501: Reporting, Procedures, and Penalties Regulations

JUNE 21, 2019

On June 21, 2019, the Department of the Treasury's Office of Foreign Assets Control (OFAC) published for public inspection a regulatory amendment to 31 C.F.R. Part 501, which is the Reporting, Procedures, and Penalties Regulations. These regulations set forth standard reporting and recordkeeping requirements and license application and other procedures relevant to the economic sanctions program administered by OFAC.

### Key Takeaways

- The amendment “clarifies” that OFAC requires reporting of rejected transactions by all parties, not just Financial Institutions, and has re-titled the section “Reports on rejected transactions,” rather than “Reports by U.S. financial institutions on rejected funds transfers” to that end;
- The amendments clarify what information must be included in the various reports that are submitted to OFAC, in an effort to reduce the need for follow-up by OFAC for additional information;
- The amendments update the regulations in light of OFAC's increased use of electronic submission methods, OFAC's preference for electronic submissions, and the increased use of electronic means of generating and storing documents and other information by all parties;
- OFAC would like to put parties on notice that documents provided pursuant to Part 501 are subject to FOIA requests.

The last updates to these regulations were in 2016. Although the interim final rule is effective upon publication in the Federal Register on Friday, June 21, 2019, written comments on the interim rule may be submitted on or before Monday, July 22, 2019. The regulatory amendment alters Part 501 in the following ways:

### § 501.602 Reports to be Furnished on Demand

Section 501.602, which addresses reports that may be required on demand by the Director of OFAC, is updated to add references to electronic documents. The section also adds a new subsection—§ 501.602(b)—which defines the term “document” in a very expansive manner, to include “any written, recorded, or graphic matter or other means of

preserving thought or expression (including in electronic format), and all tangible things stored in any medium from which information can be processed, transcribed, or obtained directly or indirectly, including correspondence, memoranda, notes, messages, letters, emails, spreadsheets, metadata, contracts, bulletins, diaries, chronological data, minutes, books, reports, examinations, charts, ledgers, books of account, invoices, air waybills, bills of lading, worksheets, receipts, printouts, papers, schedules, affidavits, presentations, transcripts, surveys, graphic representations of any kind, drawings, photographs, graphs, video or sound recording, and motion picture or other film.”

Further, the new § 501.602(c) requires that any person providing documents to OFAC pursuant to this section must produce them in a usable format agreed upon by OFAC. To this end, the section refers readers to OFAC website for data delivery standards.

## § 501.603 Reports on Blocked Property

First, § 501.603(a) is amended to expand the requirement for who must report on blocked property to include both those “holding property blocked pursuant to this chapter,” and those “releasing property from blocked status (*i.e.* unblocking property).” However, those unblocking property are only required to file reports “when specifically required by OFAC, such as when they are made a condition of a general or specific license.”

The most substantial amendment to § 501.603 updates the information that must be included in the various types of reports.

- For initial reports of blocked property under § 501.603(b)(1), the report must include:
  - a. the name and address of the person holding the blocked property (e. the person filing the report), and the name, address, telephone number, and email address of a contact from whom additional information may be obtained;
  - b. a description of any transaction associated with the blocking, including information necessary to identify the transaction;
  - c. the associated sanctions target(s) whose property is blocked and a description of the target’s interest in the property, or, if there is no associated target or the target is unknown, a reference to the relevant communication from OFAC;
  - d. a description of the property and its location, including information necessary to identify the property;
  - e. the date it was blocked;
  - f. the actual, or if unknown, estimated value of the property in U.S. Dollars;
  - g. the legal authorities under which the property is blocked and the action taken with respect to the property; and
  - h. a copy of any payment or transfer instructions or other relevant documents.
- For annual reports of blocked property under § 501.603(b)(2), the report must include:
  - a. the name and address of the person holding the blocked property (e. the person filing the report), and the name, address, telephone number, and email address of a contact from whom additional information may be obtained;
  - b. the number of accounts or items reported in the annual report;
  - c. beginning with the annual report due on September 30, 2020, the associated sanctions target(s) whose property is blocked and a description of the target’s interest in the property, or if there is no associated target or the target is unknown, a reference to the relevant communication from OFAC;
  - d. a description of the property and its location, including information necessary to identify the property;
  - e. the date it was blocked;

f. the actual, or if unknown, estimated value of the property in U.S. Dollars as of June 30th of the reporting year; and

g. the legal authorities under which the property is blocked.

Further, for those who maintain blocked funds in an omnibus account, annual reports must contain a disaggregated list showing each blocked asset contained within the omnibus account.

- For reports on unblocked property under the new § 501.603(b)(3), the report must include:
  - a. the name and address of the person holding the property immediately prior to its release and the name, address, telephone number, and email address of a contact from whom additional information may be obtained;
  - b. the associated sanctions target(s) whose property had been previously blocked and a description of the target's interest in the property, or if there is no associated target or the target is unknown, a reference to the relevant communication from OFAC;
  - c. a description of the property and its location immediately prior to its release from blocked status, including information necessary to identify the property;
  - d. the date the property was unblocked;
  - e. the actual, or if unknown, estimated value of the property that was released in U.S. Dollars;
  - f. the legal authorities under which the property was unblocked; and
  - g. when available, a copy of the original blocking report.

Section 501.603(b)(2)(iii) is also amended to specify that the report must be submitted using the most recent Form TDF 90-22.50, or using another official method specified by OFAC on its website. OFAC will consider requests to submit the report in an alternative format on a case-by-case basis.

The amendments add to § 501.603(d) that reports may be submitted by email, or any other official reporting option specified by OFAC on its website, in addition to U.S. mail. The amendment also adds that OFAC has a “strong preference” to receive reports by email or other electronic means specified on OFAC website.

Finally, § 501.603(e) clarifies that information provided to OFAC under this section is subject to FOIA requests.

## § 501.604 Reports on Rejected Transactions

Perhaps the most significant change to the regulations is the “clarification” that the reject and reporting requirements apply to all U.S. Persons rather than to U.S. financial institutions, alone. Specifically, Section 501.604 is amended primarily to clarify that the section applies to *all* rejected transactions—not only funds transfers—by replacing references to “rejected funds transfers” with “rejected transactions,” and adding a definition for the term “transactions” in § 501.604(a)(3) to mean “transactions related to wire transfers, trade finance, checks, foreign exchange, and goods or services.” The section is also re-titled “Reports on rejected transactions,” rather than “Reports by U.S. financial institutions on rejected funds transfers.”

For the reports that must be filed with OFAC on rejected transactions, § 501.604(b) updates the information that must be submitted in the report to include:

1. the name and address of the person that rejected the transaction and the name, address, telephone number, and email address of a contact from whom additional information may be obtained;
2. a description of the rejected transaction, including information necessary to identify the transaction;
3. if applicable, the associated sanctions target(s) whose involvement in the transaction has resulted in the transaction being rejected, a description of the target's interest in the transaction, and the location of the sanctions target(s), if known;

4. the date the transaction was rejected;
5. the actual or, if unknown, estimated value of the property in U.S. Dollars;
6. the legal authority under which the transaction was rejected; and
7. a copy of any related payment or transfer instructions.

As with § 501.603(d), § 501.604(d) also adds that reports may be submitted by email, or any other official reporting option specified by OFAC on its website, in addition to by U.S. mail, and that OFAC has a “strong preference” to receive reports by email or other electronic means specified on OFAC website.

And finally, § 501.604(e) also clarifies that information provided to OFAC under this section is subject to FOIA requests.

## § 501.701 Penalties

Section 501.701 is amended to adjust the criminal penalties to the Trading with the Enemy Act—as required by Section 107(a)(4) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010—increasing the maximum term of imprisonment from 10 to 20 years. The maximum fine remains the same.

## § 501.801 Licensing

The amendments to this section primarily update the information on OFAC’s electronic license application procedures, clarifying that the applications may be submitted through OFAC Reporting and License Application Forms page of OFAC website, or by mail. Applications for unblocking of funds must be submitted by one of these means using a Form TD 90-22.54, or in another format that contains all the same information.

The amendments further remove the provision—previously § 501.801(c)—governing registration for non-governmental organizations, since this process has been phased out in favor of standard licensing procedures.

Finally, § 501.801(b)(6) clarifies that information provided to OFAC under this section is subject to FOIA requests.

## § 501.806 Procedures for unblocking funds believed to have been blocked due to mistaken identity

The amendment to § 501.806 allows a party who believes funds have been blocked due to mistaken identity to send requests to release funds to OFAC in writing electronically to OFAC’s reports email address (OFACreport@treasury.gov), in addition to the previous method, by U.S. mail.

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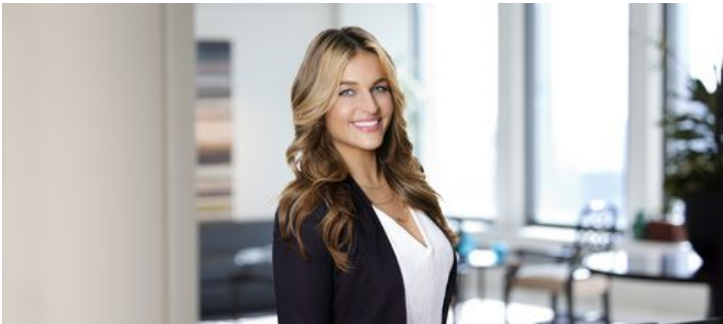
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