

E-ALERT | International Trade Controls & Financial Institutions

October 17, 2011

FINCEN ISSUES FINAL REGULATIONS IMPLEMENTING IRAN SANCTIONS LEGISLATION

On October 11, 2011, the Treasury Department's Financial Crimes Enforcement Network ("FinCEN") issued [final regulations](#) implementing Section 104(e) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA").¹ The final rule is substantially similar to the proposed rules, which were described in our May 6, 2011 [e-alert](#).

CISADA expanded sanctions against Iran under the Iran Sanctions Act and also added new unilateral sanctions. Among the new sanctions, CISADA Section 104(c) requires the Secretary of the Treasury to prohibit or impose strict conditions on the opening or maintaining in the United States of correspondent and payable-through accounts by foreign financial institutions that knowingly engage in certain activities believed to facilitate Iran's weapons proliferation program or support for terrorism. To aid in the identification of such foreign financial institutions, CISADA Section 104(e) requires the Treasury Secretary to promulgate regulations requiring US financial institutions to undertake one or more of four activities to determine whether the foreign financial institutions for which they maintain such correspondent or payable-through accounts are engaged in sanctionable activities. The final regulations require US banks to undertake one of those activities, namely the reporting to FinCEN of certain Iran-related activities by such foreign financial institutions.

FinCEN's final regulations require a US bank that maintains a correspondent account for a foreign bank, upon receiving a request from FinCEN, to inquire of the foreign bank and report to FinCEN (1) any correspondent accounts maintained by such foreign bank for an Iranian-linked financial institution designated under the International Emergency Economic Powers Act ("IEEPA") in connection with Iran's proliferation activities or support for terrorism, (2) any transfer of funds related to an Iranian-linked financial institution designated under IEEPA processed by the foreign bank within the preceding 90 calendar days, other than through a correspondent account, and (3) any transfer of funds related to an Islamic Revolutionary Guard Corps ("IRGC")-linked person designated under IEEPA processed by the foreign bank within the preceding 90 calendar days.

This e-alert summarizes FinCEN's final regulations.

APPLICABILITY

The final rule imposes reporting obligations only on "US banks" that maintain a "correspondent account" for a "foreign bank." For these purposes:

¹ For additional information on CISADA, please see our previous client alert, [Congress Passes Comprehensive, Unilateral Sanctions Against Iran](#) (June 25, 2010).

- the term “US banks” includes offices, agency offices, and branches within the United States of federal- and state-chartered banks, foreign-chartered banks, and other types of banking organizations (31 C.F.R. § 1010.100(d));
- a “correspondent account” is an account “established for a foreign bank to receive deposits from, or to make payments or other disbursements on behalf of, the foreign bank, or to handle other financial transactions related to such foreign bank” (31 C.F.R. § 1010.605(c)(1)(ii)); and
- a “foreign bank” is a “bank organized under foreign law, or an agency, branch or office located outside the United States of a [US] bank” (31 C.F.R. § 1010.100(u)).

REPORTING REQUIREMENTS

Required Information

Upon receiving a written request from FinCEN, a US bank that maintains a correspondent account for a foreign bank must inquire of the foreign bank, and report to FinCEN, whether the foreign bank (1) maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA, (2) has processed one or more funds transfers in the preceding 90 calendar days related to an Iranian-linked financial institution designated under IEEPA, other than through a correspondent account, or (3) has processed one or more funds transfers in the preceding 90 calendar days related to an IRGC-linked person designated under IEEPA. (31 C.F.R. § 1060.300(a)(1)).

For purposes of the reporting requirements:

- an “Iranian-linked financial institution designated under IEEPA” is a “financial institution designated by the United States Government pursuant to [IEEPA] (or listed in an annex to an Executive order issued pursuant to such Act) in connection with Iran’s proliferation of weapons of mass destruction or delivery systems for weapons of mass destruction, or in connection with Iran’s support for international terrorism” (31 C.F.R. § 1060.300(a)(2)); and
- the term “IRGC-linked person designated under IEEPA” means “Iran’s Islamic Revolutionary Guard Corps or any of its agents or affiliates designated by the United States Government pursuant to [IEEPA] (or listed in an annex to an Executive order issued pursuant to such Act)” (31 C.F.R. § 1060.300(a)(2)).

To comply with the reporting requirement, the US bank may require the foreign bank to complete the model certification provided in [Appendix A](#) to the Federal Register notice of the final regulations or the US bank may collect all of the information required in the final regulations. The US bank is not required to verify the information provided by the foreign bank, though it is expected to report any information it has that is inconsistent with the information provided by the foreign bank. If the foreign bank refuses to complete the certification or otherwise provide the required information, the US bank satisfies its reporting obligations by informing FinCEN of the foreign bank’s refusal and the US bank’s inability to collect the information.

The information that must be reported to FinCEN depends on whether the foreign bank conducts or has conducted any of the activities that require reporting.

- If the foreign bank maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA, the report must include (a) the name of the Iranian-linked institution, (b) the full name on the correspondent account and the correspondent account number, (c) information regarding whether the correspondent account has been blocked or otherwise restricted, (d) other identifying information about the account, and (e) the approximate value in

US dollars of transactions processed through the account within the preceding 90 calendar days. (31 C.F.R. § 1060.300(c)(1)(i)).

- If the foreign bank has processed a funds transfer for or on behalf of, directly or indirectly, an Iranian-linked financial institution designated under IEEPA other than through a correspondent account, the report must include (a) the name of the Iranian-linked institution, (b) the identity of the system or means by which the transfer was processed, (c) the full name on the account and account number, if applicable, (d) other applicable identifying information for the funds transfer, and (e) the approximate value in US dollars of the funds transfer. (31 C.F.R. § 1060.300(c)(1)(ii)).
- If the foreign bank has processed a funds transfer for or on behalf of, directly or indirectly, an IRGC-linked person designated under IEEPA, the report must include (a) the name of the IRGC-linked person, (b) the identity of the system or means by which the transfer was processed, (c) the full name on the account and account number, if applicable, (d) other applicable identifying information for the funds transfer, and (e) the approximate value in US dollars of the funds transfer. (31 C.F.R. § 1060.300(c)(1)(iii)).
- If the foreign bank certifies that it does not maintain a correspondent account for an Iranian-linked financial institution designated under IEEPA, that to its knowledge it has not processed a funds transfer for an Iranian-linked financial institution designated under IEEPA, and that to its knowledge it has not processed a funds transfer for an IRGC-linked person designated under IEEPA, the report must include such certifications. (31 C.F.R. § 1060.300(c)(1)(iv)).
- If the US bank cannot determine whether the foreign bank maintains a correspondent account for an Iranian-linked financial institution designated under IEEPA, has processed a funds transfer for an Iranian-linked financial institution designated under IEEPA, or has processed a funds transfer for an IRGC-linked person designated under IEEPA, the report must include the reasons for not being able to make the determination, such as the failure of the foreign bank to respond to the bank's inquiry, the failure of the foreign bank to certify its response, or that the bank has information inconsistent with the foreign bank's certification. (31 C.F.R. § 1060.300(c)(1)(v)).

The US bank is required to request that the foreign bank notify the US bank going forward if the foreign bank, within 365 days of the foreign bank's initial response, establishes a new correspondent account for an Iranian-linked financial institution designated under IEEPA. (31 C.F.R. § 1060.300(b)).

Timing

The US bank must report to FinCEN within 45 days of the date of FinCEN's request. (31 C.F.R. § 1060.300(c)(2)(i)). The proposed regulations would have required reporting within 30 days. Commenters objected to the 30-day timeframe on the grounds that it provided an insufficient amount of time to respond to FinCEN and requested a 90-day timeframe for compliance. FinCEN rejected the commenters' request for a 90-day timeframe due to the time-sensitive nature of the requests but added 15 days to the reporting requirement. If a US bank receives a certification from a foreign bank after the 45-day timeframe, the US bank must file the associated report with FinCEN within 10 calendar days of receipt of the certification. (31 C.F.R. § 1060.300(c)(2)(iii)).

A follow-up report based on a foreign bank's establishment of a new correspondent account for an Iranian-linked financial institution must be submitted to FinCEN within 10 days of the US bank's receipt of the notification. (31 C.F.R. § 1060.300(c)(2)(ii)).

Recordkeeping

The US bank must maintain a copy of any report filed and the original record of any supporting documentation for the report for at least five years. (31 C.F.R. § 1060.300(d)).

Penalties for Violations

A person violating the final regulations can be subject to a civil penalty of not more than (i) the amount of the transaction (up to \$100,000) or (ii) \$25,000, for each day of the violation. (31 C.F.R. § 1060.800; 31 U.S.C. § 5321(a)). Violations also can be subject to criminal penalties. (31 U.S.C. § 5322).

OTHER ASPECTS OF THE FINAL REGULATIONS

The final regulations make clear that a US bank is not required to take any action, or to decline to take any action, other than the requirements in the final regulations. However, the regulations also reiterate that a US bank is not relieved of any of its existing regulatory obligations, such as taking appropriate actions with respect to suspicious activity, because of the final regulations and is not precluded from taking other actions, including restricting or terminating a correspondent account relationship, based on the US bank's assessment of the facts and bank policy.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our international trade controls and financial institutions practice groups:

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