

Locke Lord QuickStudy: OFAC Amends Cuban Assets Control Regulations and Issues New FAQs for U-Turn Transactions

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On August 27, 2024, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") announced amendments to two key FAQs (FAQs 736 and 757) concerning the Cuban Assets Control Regulations ("CACR"). These FAQs support OFAC's May 29, 2024 amendments to the CACR that authorize U.S. banks to process certain "U-turn" transactions involving Cuba and Cuban nationals and the use of U.S. dollars in certain transactions.

Authorization of U-Turn Transactions

Under the newly amended regulations, U.S.-based banking institutions are authorized to process "U-turn" transactions, which are funds transfers that originate and terminate outside of the United States as long as neither the originator nor the beneficiary is a person subject to U.S. jurisdiction. A general license, detailed in 31 CFR § 515.584(d), permits transactions related to third-country commerce involving Cuba or Cuban nationals to be processed in U.S. dollars through the U.S. financial system. This means that transactions can now move through intermediary banks in the U.S. as long as they meet this criterion. Additionally, FAQ 736 notes that transactions meeting the requirements of 31 CFR § 515.584(d) may be processed notwithstanding the involvement of a specially designated national ("SDN") of Cuba, as defined in 31 CFR § 515.306, in the transaction.

[FAQ 757](#) highlights key a condition that neither "end" party in the transaction—the originator nor the beneficiary—can be a person subject to U.S. jurisdiction.

Use of U.S. Dollars in Transactions Involving Cuba

FAQ 736 also clarifies that U.S. dollars can be used in transactions with Cuba or Cuban nationals under specific circumstances. For instance, transactions that are authorized under the CACR, such as payments for telecommunications services provided under 31 CFR § 515.542, can be conducted in U.S. dollars. Additionally, transactions related to the importation or exportation of informational materials, such as books or musical recordings (as defined in 31 CFR § 515.332), are also permitted to use U.S. dollars.

Due Diligence and Compliance Expectations

OFAC emphasizes the importance of due diligence by U.S. banks, including their foreign branches and

subsidiaries, when processing transactions under the Cuban U-turn general license. Banks are expected to verify the ownership structure of entities, collect and retain proof of citizenship for individuals, and other address information to ensure compliance with the U-turn general license.

Even when acting solely as intermediaries, U.S. banks must screen transactions against the OFAC SDN List and their internal filters. In situations where the remitter or beneficiary is not a direct customer, banks can rely on the address provided in the transaction. However, they must take additional care if they have reason to believe that the remitter or beneficiary is a person subject to U.S. jurisdiction.

Enforcement Considerations

OFAC has stated that it will take into account the totality of the circumstances when determining enforcement actions against banks that fail to block prohibited transactions involving persons subject to U.S. jurisdiction. Factors such as the bank's role as an intermediary and the nature of the due diligence conducted will be considered.

Notably, transactions that meet the criteria outlined in 31 CFR § 515.584(d) may be processed even if a SDN of Cuba is involved in the transaction. This exception highlights the importance of careful adherence to the specific requirements of the U-turn general license.

Conclusion

This paper is intended as a guide only and is not a substitute for specific legal or tax advice. Please reach out to the authors for any specific questions. We expect to continue to monitor the topics addressed in this paper and provide future client updates when useful.

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