



July 22, 2019

Office of Foreign Assets Control
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Freedman's Bank Building
Washington, DC 20220

RE: Docket Number OFAC-2019-0003, Request for Comments, Amendments to OFAC's Reporting, Procedures and Penalties Regulations (Interim Final Rule, 31 C.F.R. Part 501)

Dear Sirs/Madams:

The Association of University Export Control Officers (AUECO) respectfully submits this letter in response to the Office of Foreign Assets Control Interim Final Rule revising 31 C.F.R. §501.604. AUECO is an association of over 280 senior export control professionals with compliance responsibilities at over 180 institutions of higher education within the United States. AUECO is committed to monitoring changes in the administration of laws and regulations that may impact the unique nature of higher education, including academic and research collaborations. AUECO appreciates the opportunity to comment on this rule.

In the rule's preamble, OFAC states that it "is revising §501.604, which covers reports on rejected transactions to: Clarify that this section applies broadly to all rejected transactions (and not only to rejected funds transfers)". The revisions to §501.604 significantly expand the scope of the reporting requirement by potentially capturing internal decisions not to pursue contemplated or proposed transactions due to sanctions concerns.

The expansive and ambiguous scope of revised §501.604 could significantly increase the regulatory burden on U.S. persons and the number of reports OFAC receives without providing OFAC with information that is necessary or of practical import for OFAC's administration of its sanctions programs.

The definition of "transaction" in §501.604 (a)(3) is vague and potentially captures internal decisions by U.S. persons not to pursue proposed or contemplated transactions.

Revised §501.604(a)(1) now states that "[a]ny U.S. person" who rejects a transaction that is not blocked "but where processing or engaging in the transaction would nonetheless violate a provision contained in this chapter" must submit a report to OFAC. OFAC defines "transaction" broadly to include "transactions related to wire transfers, trade finance, securities, checks, foreign exchange, **and goods or services.**" (§501.604(a)(3), emphasis added).

However, it is unclear what constitutes a “rejected transaction” for goods or services so that the reporting requirement is triggered. Specifically, the definition of “transaction” in §501.604(a)(3) does not adequately define the term “transaction” or limit its potential scope. As a result, it is unclear at what point a contemplated or proposed activity becomes a “transaction”. If a university decides internally not to pursue a contemplated or proposed activity due to sanctions concerns, is this a rejection of a “transaction” that must be reported to OFAC under §501.604? The following scenarios illustrate this point.

- *Scenario 1 (Unsolicited request to engage in an activity which is rejected by the U.S. person):* A faculty member at a U.S. university is invited to teach a graduate course on nursing at a public university in a comprehensively sanctioned country. The faculty member declines the invitation. Is this a “rejected transaction” that triggers the reporting requirement in §501.604?
- *Scenario 2 (Proposed activity by an individual within a U.S. entity that is rejected by another individual with the same entity):* A faculty member at a U.S. medical school proposes to build and operate a mobile diagnostic health laboratory in a comprehensively sanctioned country. This proposal is denied by a compliance office within the medical school due to sanctions concerns. Is this a reportable “rejected transaction” under §501.604?
- *Scenario 3 (Proposed activity by a U.S. person who is advised by a third party that the transaction is prohibited):* A U.S. academic researcher proposes to expand a current research project to include comprehensively sanctioned countries. A third party (e.g., the project sponsor) informs the researcher that the proposed expansion is prohibited under OFAC sanctions. The academic researcher decides not to expand the project. Is this a “rejected transaction” triggering the reporting requirement in §501.604?

As the scenarios above illustrate, OFAC should clarify the distinction between a U.S. person’s decision not to pursue a contemplated or proposed activity for sanctions reasons from a “rejected transaction” that must be reported under §501.604. OFAC can do this by either revising the definition of “transaction” in §501.604(a)(3) to require that, at a minimum, the U.S. person has made a commitment to move forward with the contemplated or proposed activity or by explicitly excluding from the definition those transactions which are merely under consideration by the U.S. person (e.g., contemplated or proposed activities). Alternatively, OFAC can issue public guidance clarifying that internal decisions to reject a contemplated or proposed activity are not “rejected transactions” within the meaning of §501.604.

Conclusions and Recommendations

As currently written, the Interim Final Rule appears to significantly expand the reporting requirements under §501.604 and it adds a new element of uncertainty. Without additional clarification regarding the scope of “rejected transactions” under §501.604, U.S. universities (and other U.S. persons) may decide to report internal decisions to not pursue contemplated or proposed transactions due to potential sanctions concerns rather than risk incurring the substantial penalties resulting from failure to report.

As a result, there would likely be a substantial increase in regulatory burden for U.S. universities (and other U.S. persons) and a substantial increase in the volume of reports submitted to OFAC without a concomitant increase in information necessary for or of use to OFAC with respect to its administration of U.S. sanctions programs. For this reason, AUECO urges OFAC to either revise the scope of §501.604 to exclude internal decisions regarding contemplated or proposed activities from the definition of “transaction” or issue formal guidance to the public clarifying that internal decisions to reject a

contemplated or proposed activity are not “rejected transactions” within the meaning of §501.604 and, therefore, do not trigger §501.604’s reporting requirements. Thank you for considering these recommendations.

Please do not hesitate to contact us at contact@aeuco.org with any questions you may have.

Respectfully,

A handwritten signature in black ink, appearing to read "Wayne L. Mowery, Jr.", written in a cursive style.

Wayne L. Mowery, Jr.

Immediate Past Chair
Association of University Export Control Officers
Website: <http://aeuco.org>