Outbound Investment Security Program

Enforcement Overview and Guidance

January 17, 2025

The International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA) and Executive Order 14105 (88 FR 54867) authorize the Secretary of the Treasury (Secretary) to impose penalties and seek other remedies for violations of the regulations promulgated thereunder. The U.S. Department of the Treasury (Treasury Department) administers the regulations at 31 CFR part 850 (the Outbound Rules) that implement the Executive Order, which provide for the imposition of penalties and other remedies for violations thereunder. This Outbound Investment Security Program Enforcement Overview and Guidance (Enforcement Guidance) describes the categories of conduct that may constitute a violation, outlines the Treasury Department's enforcement priorities under the Outbound Rules, and lists some of the considerations the Treasury Department will take into account in determining whether a civil penalty is warranted and the scope of any such penalty. This Enforcement Guidance also highlights the importance of prompt and complete self-disclosure of any conduct that may constitute a violation. This Enforcement Guidance refers to the person (whether an individual or entity) who may be liable to the United States for a civil penalty or otherwise be subject to one of the other remedies provided for in the Outbound Rules as the "Subject Person."

Penalties and other remedies under the Outbound Rules are available without prejudice to civil or criminal penalties or other remedies that may be applicable under other authorities, and the Treasury Department may refer conduct to other government enforcement authorities where appropriate.

Types of Conduct That May Constitute a Violation

In Summary: The primary obligations of U.S. persons under the Outbound Rules are to:

(1) timely notify the Treasury Department of a transaction undertaken by the U.S. person that is a "notifiable transaction" under the Outbound Rules; and

(2) not undertake a transaction that is a "prohibited transaction" under the Outbound Rules.

U.S. persons have certain additional obligations, including providing timely updates and corrections of information provided to the Treasury Department, taking steps to prevent a "controlled foreign entity" (as defined in the Outbound Rules) from undertaking a transaction that would be a "prohibited transaction" if undertaken by a U.S. person, notifying Treasury of a controlled foreign entity's transaction if such transaction would be a "notifiable transaction" if undertaken by a U.S. person, not "knowingly directing" a transaction that would be a "prohibited transaction" if undertaken by a U.S. person, timely responding to certain information and documentation requests from the Treasury Department, and recordkeeping in connection with a "notifiable transaction."

<u>In Detail</u>: The following is a summary of acts or omissions by U.S. persons that may result in a violation of the Outbound Rules. The comprehensive and definitive description of obligations is found in the Outbound Rules.

Prohibited transactions:

- Undertaking a prohibited transaction (§ 850.301)
- Failing to take "all reasonable steps" to prohibit and prevent a transaction by one's controlled foreign entity that would be a prohibited transaction if engaged in by a U.S. person (§ 850.302(a))
- "Knowingly directing" a transaction by a non-U.S. person that would be a prohibited transaction if engaged in by a U.S. person (§ 850.303)

Related to the obligation to provide notification of certain transactions to the Treasury Department:

- Failing to notify the Treasury Department of a notifiable transaction (§ 850.401)
- Failing to notify the Treasury Department of a transaction by one's controlled foreign entity that would be a notifiable transaction if engaged in by a U.S. person (§ 850.402)
- Failing to notify the Treasury Department in situations where the U.S. person obtained certain post-transaction knowledge regarding a transaction that would have been a prohibited transaction or a notifiable transaction if such information had been possessed by the relevant U.S. person at the time of the transaction (§ 850.403)
- Submitting a required notification late (*i.e.*, later than 30 calendar days following a specified event) (§§ 850.401, 402, 403, and 404(c))
- Providing incomplete or inaccurate information in a required notification (§ 850.405(a), (d))
- Failing to provide a proper certification regarding the completeness or accuracy of information in a notification (§ 850.404(a))

Obligations to provide the Treasury Department with new or updated information:

- When a notification is filed prior to the completion date of the transaction and information in the original filing materially changes, failing to provide such updated information to the Treasury Department, or submitting such information later than 30 calendar days following the completion date (§ 850.404(d))
- Failing to provide the Treasury Department with newly acquired information that the U.S. person previously indicated was unavailable, or submitting such information later than 30 calendar days following acquisition or availability of such information (§§ 850.404(c) and 850.405(d))
- Failing to inform the Treasury Department no later than 30 calendar days after learning of any material omission or inaccuracy made in information submitted to the Treasury Department (§ 850.406)
- Failing to respond to follow-up inquiries from the Treasury Department after submission of notification, or failing to provide such response in the time and manner specified by the Treasury Department (§ 850.404(b))

Obligations related to truthfulness, completeness, avoidance, and recordkeeping:

- Making any materially false or misleading representation, statement, or certification or material omission in any submission to or communication with the Treasury Department pursuant to the Outbound Rules (§ 850.603)
- Taking any action to evade, avoid, or cause or attempt to violate any of the prohibited actions under the Outbound Rules, or engaging in a conspiracy to do the same (§ 850.604)
- Failing to provide reports to the Treasury Department on demand (§ 850.904)
- Failing to maintain a copy of the notification filed and supporting documentation (§ 850.405(c))

As described in further detail below, a violation will not necessarily lead to a civil penalty or other remedy. The Treasury Department will exercise its discretion in determining when a civil penalty is appropriate, including by considering applicable aggravating and mitigating factors.

Who is Potentially Liable for Violations of the Outbound Rules

Conduct that may result in violations of the Outbound Rules, summarized above, generally concern acts or omissions by U.S. persons – whether individuals or entities. The Outbound Rules also authorize the imposition of penalties against any person who evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in the Outbound Rules.

Sources of Information on Which the Treasury Department Relies

In determining whether a violation has occurred, the Treasury Department considers information from a variety of sources, including from across the U.S. Government, publicly available information, tips, and filing parties.

Requests for Information. The Treasury Department may request information to support its monitoring of compliance with the Outbound Rules. As noted below, if the Treasury Department determines that a violation has occurred, it will consider the Subject Person's cooperation, including in response to requests for information, in determining what action, if any, to take. In addition to providing the requested information, parties may choose to provide any exculpatory evidence, as well as any defense, justification, mitigating factors, or explanation for the conduct at issue.

Self-Disclosures. The Treasury Department strongly encourages any person who has engaged in conduct that may constitute a violation to submit a timely self-disclosure. Section 850.704 of the Outbound Rules specifies the form of the voluntary self-disclosure and that it must contain, at a minimum, sufficient detail to afford a complete understanding of the conduct and identify each of the persons involved. The Treasury Department will consider the timeliness of any self-disclosure in determining the appropriate response to a violation. In assessing timeliness, the Treasury Department will consider whether it has learned of the conduct prior to the voluntary self-disclosure. The Treasury Department may consider disclosure of a violation to another government agency other than the Treasury Department as a voluntary self-disclosure based on a case-by-case assessment. Where discovery of conduct that may constitute a violation requires further investigation, the Subject Person may submit an initial self-disclosure and follow up with a more detailed self-disclosure.

- A submission that has one or more of the following attributes will generally not be assessed by the Treasury Department to be a voluntary self-disclosure for purposes of a mitigating factor in making any enforcement decision:
  - The conduct was already disclosed to Treasury or another U.S. Government agency by a third party.
  - The disclosure includes materially false or misleading information, or is materially incomplete.
  - The disclosure is not self-initiated (*e.g.*, was done at the suggestion of another regulator, was made pursuant to subpoena or other compulsory process, or was otherwise required under the Outbound Rules such as the requirement to correct a material misstatement).
  - The disclosure was made by an employee or agent of the Subject Person who is not authorized by the Subject Person's senior management to make such disclosure (*e.g.*, a whistleblower employee).

Tips. If anyone believes that a violation may have occurred, the Treasury Department encourages them to submit tips, referrals, or other relevant information to the Outbound Program tips line found on the Outbound Program webpage at https://home.treasury.gov/policy-issues/international/outbound-investment-program.

When necessary and appropriate to gather information, the Treasury Department may use the subpoena authority provided for in the Outbound Rules (*see* Executive Order 14105 § 10(a)(ii) and 31 C.F.R. § 850.904(a)).

Civil Penalties

The Outbound Rules authorize the Treasury Department to assess civil penalties in the event of non-compliance with the Outbound Rules. The Treasury Department may refer potential criminal violations to the Department of Justice.

The issuance of a civil penalty by the Treasury Department is considered final agency action. In issuing a civil penalty, the Treasury Department expects to provide the Subject Person with a summary of the relevant facts constituting the violation along with a description of how the relevant actions or omissions by the Subject Person violated the Outbound Rules. The Treasury Department anticipates that Subject Persons will have the opportunity to present relevant facts and considerations to the Treasury Department prior to the issuance of the penalty.

Aggravating and Mitigating Factors

When determining any appropriate penalty in response to a violation – including determining the appropriate amount for the penalty – the Treasury Department engages in a fact-based analysis in which it weighs aggravating and mitigating factors. The weight the Treasury Department gives to any factor will necessarily vary depending on the particular facts and circumstances surrounding the conduct giving rise to the violation. Factors that are relevant in the context of one violation will not necessarily be relevant in the context of another. Some factors that the Treasury Department may consider aggravating or mitigating in determining an appropriate response to a violation include this non-exhaustive list (presented in alphabetical order):

- **Accountability and Future Compliance**
  - The impact of the enforcement action on ensuring that Subject Persons are held accountable for their conduct and incentivized to ensure compliance, including promoting compliance and cooperation, such as through self-disclosures, where appropriate.
- **Harm**
  - The extent to which the conduct impaired or threatened to impair U.S. national security.
- **Negligence, Awareness, and Intent**
  - The extent to which the conduct was the result of simple negligence, gross negligence, intentional action, or willfulness.
  - Whether the Subject Person made any effort to conceal or delay the sharing of relevant information with the Treasury Department.
  - The seniority of personnel within the entity that knew or should have known about the conduct.
- **Persistence and Timing**
  - The length of time that elapsed after the Subject Person became aware, or had reason to become aware, of the conduct or omission, and before the Treasury Department became aware of the conduct or omission.
- **Response and Remediation**
  - Whether the Subject Person submitted a self-disclosure, as well as the timeliness, nature, and scope of information reported to the Treasury Department.
  - Whether the Subject Person cooperated completely in the investigation of the matter (*e.g.*, providing timely and detailed responses).
  - Whether there was an internal review of the nature, extent, origins, and consequences of the conduct to prevent its reoccurrence.
  - Whether the Subject Person took actions to remediate the effects of the violation (*e.g.*, suspended or reversed the transaction pending notification to the Treasury Department).
- **Sophistication and Record of Compliance**
  - Internal and external resources dedicated to compliance with applicable legal obligations (*e.g.*, legal counsel, consultants, auditors, and monitors).
  - Policies, training, and procedures to mitigate the risk of misconduct.
  - Variation in the consistency of compliance, both horizontally across the entity, and vertically from directors and officers to supporting staff.
  - The compliance culture within the company (*e.g.*, demonstrated commitment to compliance with applicable legal obligations).
  - The experience of other Federal, state, local, or foreign authorities with knowledge of the Subject Person in the assessment of the quality and sufficiency of compliance with applicable legal obligations.

Divestment

Section 850.703 of the Outbound Rules allow the Secretary, in consultation with the heads of relevant agencies, as appropriate, to take any action authorized under IEEPA to nullify, void, or otherwise compel the divestment of any prohibited transaction. Any such action by the Secretary may be in addition to civil penalties or other remedies authorized by the Outbound Rules.

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This Enforcement Guidance is non-binding and is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. It may be updated as circumstances require. Applicable statutes, executive orders, and regulations prevail in the event of any inconsistency between this Enforcement Guidance and such statutes, executive orders, and regulations.