



POLICY ALERT // NOVEMBER 1, 2019

Treasury Seeks More Visibility Into Iran-Related Humanitarian Transactions

The Treasury Department on October 25, 2019, imposed a ban on correspondent account relationships involving Iranian financial institutions under Section 311 of the USA PATRIOT Act – activities that were already prohibited by U.S. sanctions – and announced a new mechanism for non-U.S. banks to process humanitarian transactions for Iran. Together, the action under Section 311 and the creation of the humanitarian mechanism are likely to increase enforcement risk for non-U.S. financial institutions that continue to transact with Iran outside of this approved channel.

- ▶ The Treasury Department’s Financial Crimes Enforcement Network (FinCEN) on October 25, 2019, issued a new finding that Iran is a jurisdiction of primary money laundering concern and imposed a rule prohibiting U.S. banks from opening or maintaining accounts for or on behalf of Iranian financial institutions.¹ Providing financial services to Iranian financial institutions was already prohibited by U.S. sanctions.²
- ▶ The Section 311 action elevates enforcement risk for non-U.S. financial institutions that continue to maintain relationships with Iranian financial institutions because the Treasury Department may question the implementation and effectiveness of these non-U.S. financial institutions’ compliance programs.
- ▶ FinCEN imposed the ban under Section 311 of the USA PATRIOT Act because it found that Iran was a “jurisdiction of primary money laundering concern.”³ FinCEN said that Iran has “developed covert methods for accessing the international financial system” to fund terrorism and evade sanctions.⁴

The Treasury Department’s Office of Foreign Assets Control (OFAC) also on October 25, 2019, announced that it is establishing a mechanism to make Iran-related humanitarian transactions involving agricultural commodities, food, medicines, and medical devices more transparent.⁵ Financial institutions that implement OFAC-recommended enhanced due diligence procedures for trade conducted through this channel will be able to seek written confirmation from OFAC that the proposed financial channel for humanitarian trade “will not be exposed to U.S. sanctions,”⁶ reducing enforcement risks for financial institutions that choose to participate. Financial institutions that do not participate in OFAC’s humanitarian mechanism may face greater sanctions enforcement risk, because their Iran-related activities may be revealed to OFAC by counterparties that are participating in the program.



- ▶ The humanitarian mechanism is only for “commercial exports of agricultural commodities, food, medicine, and medical devices to Iran.”⁷ The creation of the humanitarian trade mechanism is intended to respond to criticism that U.S. sanctions were curtailing legitimate humanitarian trade,⁸ which has long been permitted under the U.S. sanctions regime.⁹ This process will allow non-U.S. banks whose only Iran business is related to humanitarian goods the opportunity to distinguish themselves from financial institutions with less effective sanctions and AML/CFT controls.
- ▶ OFAC expects financial institutions participating in the humanitarian mechanism to implement “stringent enhanced due diligence steps.”¹⁰ Enhanced due diligence may include collecting beneficial ownership information on Iranian customers, information about the nature and purpose of the business relationship between sellers and Iranian buyers, and detailed information about the commercial elements and logistics of transactions.¹¹ Institutions may then submit the information collected during enhanced due diligence to OFAC to receive written confirmation that the proposed transactions are permissible.¹²
- ▶ The Treasury Department created the humanitarian mechanism to facilitate enhanced due diligence in light of Iran’s support for terrorism and failure to adhere to international money laundering standards.¹³ The U.S. government also was concerned that the Iranian government was exploiting humanitarian trade to evade sanctions.¹⁴

The new humanitarian mechanism advances OFAC’s position as a global regulator on the heels of OFAC’s guidance that non-U.S. financial institutions with U.S. exposure implement OFAC compliance programs. The commitment to provide written guidance to non-U.S. financial institutions concerning the permissibility of transactions gives OFAC more visibility into these transactions and the ability to fine-tune the private sector’s response to U.S. sanctions.

- ▶ In May 2019, OFAC said that it “strongly encourages ... foreign entities that conduct business in or with the United States, U.S. persons, or using U.S.-origin goods or services” to develop, implement, and routinely update a sanctions compliance program.”¹⁵
- ▶ During the past decade, OFAC has reached settlement agreements worth billions of dollars with non-U.S. financial institutions that caused U.S. financial institutions to violate U.S. sanctions,¹⁶ most recently agreeing in September 2019 to a penalty against a British bank that conducted



transactions through the United States on behalf of Sudanese customers.¹⁷

- ▶ If the humanitarian mechanism is successful in facilitating the sale of humanitarian goods to Iran and in curbing Iranian sanctions evasion, sanctions – especially secondary sanctions – may become an even more attractive tool for U.S. policymakers because the humanitarian mechanism would mitigate the humanitarian downsides of overcompliance.



Endnotes

- 1 FinCEN, "Imposition of Fifth Special Measure against the Islamic Republic of Iran as a Jurisdiction of Primary Money Laundering Concern," Oct. 25, 2019, https://www.fincen.gov/sites/default/files/2019-10/Iran%20311%20Final%20Rule_20191025_508.pdf.
- 2 See 31 CFR § 560.204.
- 3 FinCEN, "Imposition of Fifth Special Measure against the Islamic Republic of Iran as a Jurisdiction of Primary Money Laundering Concern," Oct. 25, 2019, https://www.fincen.gov/sites/default/files/2019-10/Iran%20311%20Final%20Rule_20191025_508.pdf.
- 4 FinCEN, "Imposition of Fifth Special Measure against the Islamic Republic of Iran as a Jurisdiction of Primary Money Laundering Concern," Oct. 25, 2019, https://www.fincen.gov/sites/default/files/2019-10/Iran%20311%20Final%20Rule_20191025_508.pdf.
- 5 Treasury Department, "Treasury and State Announce New Humanitarian Mechanism to Increase Transparency of Permissible Trade Supporting the Iranian People," October 25, 2019, <https://home.treasury.gov/news/press-releases/sm804>.
- 6 Treasury Department, "Financial Channels to Facilitate Humanitarian Trade with Iran and Related Due Diligence and Reporting Expectations," undated, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_humanitarian_20191025.pdf.
- 7 Treasury Department, "Financial Channels to Facilitate Humanitarian Trade with Iran and Related Due Diligence and Reporting Expectations," undated, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_humanitarian_20191025.pdf.
- 8 Reuters, "Latest U.S. sanctions show disregard for human rights of all Iranians: foreign minister," Oct. 17, 2018, <https://www.reuters.com/article/us-iran-nuclear-sanctions/latest-u-s-sanctions-show-disregard-for-human-rights-of-all-iranians-foreign-minister-idUSKCN-1MR2NC>.
- 9 Treasury Department, "Treasury and State Announce New Humanitarian Mechanism to Increase Transparency of Permissible Trade Supporting the Iranian People," October 25, 2019, <https://www.fincen.gov/news/news-releases/imposition-fifth-special-measure-against-islamic-republic-iran-jurisdiction>.
- 10 Treasury Department, "Financial Channels to Facilitate Humanitarian Trade with Iran and Related Due Diligence and Reporting Expectations," undated, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_humanitarian_20191025.pdf.
- 11 Treasury Department, "Financial Channels to Facilitate Humanitarian Trade with Iran and Related Due Diligence and Reporting Expectations," undated, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_humanitarian_20191025.pdf.
- 12 Treasury Department, "Financial Channels to Facilitate Humanitarian Trade with Iran and Related Due Diligence and Reporting Expectations," undated, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_humanitarian_20191025.pdf.
- 13 Treasury Department, "Treasury and State Announce New Humanitarian Mechanism to Increase Transparency of Permissible Trade Supporting the Iranian People," October 25, 2019, <https://www.fincen.gov/news/news-releases/imposition-fifth-special-measure-against-islamic-republic-iran-jurisdiction>.
- 14 Treasury Department, "Treasury and State Announce New Humanitarian Mechanism to Increase Transparency of Permissible Trade Supporting the Iranian People," October 25, 2019, <https://home.treasury.gov/news/press-releases/sm804>.
- 15 Treasury Department, "A Framework for OFAC Compliance Commitments," undated, https://www.treasury.gov/resource-center/sanctions/Documents/framework_ofac_cc.pdf.
- 16 Treasury Department, "Settlement Agreement," June 30, 2014, https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20140630_bnp_settlement.pdf.
- 17 Treasury Department, "Settlement," Sept. 3, 2019, https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190917_bacb_settlement.pdf.