

New Russia Sanctions Law: Bank Compliance Insights

By **Bruce Paulsen, Brian Maloney and Carmella O'Hanlon** (August 2, 2024)

Significant, recent federal legislation contains numerous U.S. foreign policy and national security provisions that broaden and strengthen the already robust U.S. sanctions regime, and impose new reporting obligations in the near term.

One such provision, the Rebuilding Economic Prosperity and Opportunity, or REPO, for Ukrainians Act, authorizes the president to seize, confiscate or transfer Russian sovereign assets subject to U.S. jurisdiction and deposit such assets, or the proceeds of the liquidation or sale of such assets, into a newly established Ukraine Support Fund. The fund will be used to provide economic and humanitarian assistance to the people of Ukraine, as well as support reconstruction, rebuilding and recovery efforts.

According to the congressional findings accompanying the REPO for Ukrainians Act, the total amount of Russian sovereign assets subject to U.S. jurisdiction is estimated to be between \$4 billion and \$5 billion.

Prior U.S. Efforts to Identify and Seize Sanctioned Assets

The seizure of Russian sovereign assets continues a trend that has been growing since the outset of Russia's invasion of Ukraine. In March 2022, shortly after Russia's invasion, the U.S. Department of Justice announced the launch of Task Force KleptoCapture, an interagency law enforcement task force dedicated to enforcing sanctions, export restrictions and economic countermeasures that the U.S. has imposed against Russia.

Since its inception, the task force has brought charges against dozens of individuals for violating or evading U.S. sanctions against Russia, and for related criminal conduct, and has seized hundreds of millions of dollars in assets through applicable civil and criminal forfeiture procedures.

Reporting Requirements Under the REPO for Ukrainians Act

On July 23, pursuant to Section 104 of the REPO for Ukrainians Act, the Office of Foreign Assets Control released reporting instructions requiring all financial institutions at which Russian sovereign assets are located, and that know or should know of such assets, to provide notice of such assets to OFAC no later than Aug. 2, or within 10 days of the detection of such assets.

Moreover, financial institutions that maintain correspondent or payable-through accounts on behalf of foreign financial institutions are instructed to "exercise reasonable due diligence" to report any Russian sovereign assets held in such accounts.

The instructions expressly note that financial institutions need not rereport Russian sovereign assets that were previously reported to OFAC pursuant to Directive 4 under



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Executive Order No. 14024 or in reports of blocked property filed pursuant to Title 31 of the Code of Federal Regulations, Section 501.603(b).

Russian sovereign assets, as defined under the REPO for Ukrainians Act, include the funds and other property of (1) the Central Bank of the Russian Federation; (2) the Russian National Wealth Fund; (3) the Ministry of Finance of the Russian Federation; and (4) any other funds or other property owned by the government of the Russian Federation, including by any subdivision, agency or instrumentality of that government.

Financial institutions subject to the reporting requirements set forth in the instructions include:

- Insured banks, as defined in Section 3(h) of the Federal Deposit Insurance Act;
- Commercial banks or trust companies;
- Private bankers;
- Agencies or branches of foreign banks located within the U.S.;
- Credit unions;
- Thrift institutions;
- Brokers or dealers registered with the U.S. Securities and Exchange Commission under the Securities Exchange Act;
- Brokers or dealers in securities or commodities;
- Investment bankers or investment companies;
- Currency exchanges, or businesses engaged in the exchange of currency, funds, or value that substitutes for currency or funds;
- Insurance companies; and
- Any other business designated by the secretary of the U.S. Department of the Treasury whose cash transactions have a high degree of usefulness in criminal, tax or regulatory matters.

Financial institutions with responsive information should prepare a report using the REPO for Ukrainians Act Report Form, available for download on OFAC's reporting webpage. Completed forms should be emailed to ofacreport@treasury.gov with the subject line, "[Name of Financial Institution] REPO for Ukrainians Act Report."

Reports submitted to OFAC can likely be made available to the public, pursuant to valid requests under the Freedom of Information Act. Therefore, financial institutions submitting reports in accordance with the instructions should also consider requesting confidential treatment of the submitted information pursuant to the FOIA exception for confidential commercial information.

Failure to abide by the reporting requirements set forth in the instructions could subject financial institutions to civil or criminal penalties.

In October, following the close of the reporting period, the president is required to submit to Congress a report detailing the status of Russian sovereign assets that were reported to OFAC. This report will be provided in unclassified form, but can include a classified annex. The president is thereafter required to submit such reports annually for three years.

The president is not authorized to initiate the seizure of any Russian sovereign assets until 30 days after the submission of a certification to Congress confirming compliance with the other requirements of the REPO for Ukrainians Act, including certifying that the president meaningfully coordinated with G7 leaders to take multilateral action with regard to any seizure, confiscation, vesting or transfer of Russian sovereign assets for the benefit of Ukraine.

Reactions to the REPO for Ukrainians Act

Reports have indicated that Russia, in response to the passage of the REPO for Ukrainians Act, has authorized the confiscation of the assets of U.S. companies and individuals located in Russia as compensation to Russians who have their assets seized pursuant to the REPO for Ukrainians Act.

Other Sanctions Measures and Implications for Financial Institutions

The April supplemental appropriations legislation contains a number of other directives and delegations to OFAC to take action across multiple U.S. sanctions programs. Therefore, financial institutions, and U.S. persons generally, should expect continued activity from OFAC and its partner agencies to implement these legislative mandates.

For example, Section 3111 of the 21st Century Peace through Strength Act, also contained in the April legislation, extended the statute of limitations for civil and criminal violations of the International Emergency Economic Powers Act and the Trading with the Enemy Act from five years to 10 years.

And on July 22, OFAC released guidance announcing that it now has the power to bring enforcement actions for civil violations of sanctions prohibitions based on the International Emergency Economic Powers Act and Trading with the Enemy Act, within 10 years of the latest date of such violations occurring after April 24, 2019.

OFAC highlighted that the new statute of limitations also applies to the issuance of prepenalty notices and findings of violations. This same guidance will be instructive for other agencies, such as the Department of Justice, investigating criminal violations of sanctions laws and regulations.

Given the broadened statute of limitations, OFAC also advised that it anticipates publishing an interim final rule extending the accompanying recordkeeping requirements in its regulations from five to 10 years to match the new extended statute of limitations. OFAC also notes that it anticipates the extended recordkeeping requirement will become effective six months after publication of the interim final rule, allowing time for the public to provide comment.

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