

U.S. DEPARTMENT OF THE TREASURY

EXECUTIVE ORDER 5 FEB 2012

FREQUENTLY ASKED QUESTIONS

Executive Order Blocking Property of the Government of Iran and Iranian Financial Institutions

On February 5, 2012, the President signed an Executive Order (“the E.O. of Feb. 5”) to implement section 1245(c) of the National Defense Authorization Act for Fiscal Year 2012, Public Law 112-81 (“NDAA”) and to take additional steps with respect to Iran. Effective as of 12:01 a.m. eastern standard time on February 6, 2012, the order blocks all property and interests in property of the Government of Iran (including the Central Bank of Iran), all Iranian financial institutions, and all persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the order.

The E.O. of Feb. 5 blocks all property and interests in property of the Government of Iran, including the Central Bank of Iran, and of all Iranian financial institutions, that are in the United States, that come within the United States, or that come within the possession or control of U.S. persons (including overseas branches). Can you provide further clarification about the E.O. of Feb. 5?

The E.O. of Feb. 5 requires U.S. persons to block (i.e., freeze) all property and interests in property of the Government of Iran, including the Central Bank of Iran, and of all Iranian financial institutions, which also includes the Central Bank of Iran. This means that all individuals and entities that meet the definition of “Government of Iran” (“GOI”) as defined by section 7(d) of the new E.O. as well as all Iranian financial institutions (whether or not they meet the definition of the GOI) are now blocked. Previously, under the Iranian Transactions Regulations, 31 C.F.R. part 560 (the “ITR”), financial institutions and other U.S. persons were prohibited from engaging in transactions with the GOI. Under those prior rules, U.S. financial institutions receiving instructions to execute transactions involving these entities were not required to block the transactions, but were instead required to reject those instructions rather than carry them out, unless the transactions were exempt, authorized, or not prohibited by OFAC. The Executive Order defines an “Iranian financial institution” as a financial institution organized under the laws of Iran or any jurisdiction within Iran (including foreign branches), any financial institution in Iran, any financial institution, wherever located, owned or controlled by the Government of Iran, and any financial institution, wherever located, owned or controlled by any of the aforementioned entities.

As a result, transactions involving entities bearing the [IRAN] tag on OFAC’s List of Specially Designated Nationals and Blocked Persons (“SDN List”) will now need to be blocked unless exempt or authorized by OFAC. Going forward, the [IRAN] tag will connote that a person or entity meets the definition of the term “GOI” or “Iranian Financial Institution”. OFAC will continue to update the SDN List and may add, delete, or edit existing entries as appropriate.

The E.O. of Feb. 5 blocks the property and interests in property of any individual or entity that comes within its definition of the term “Government of Iran” regardless of whether it is listed on the SDN List, and similarly it blocks the property and interests in property of all Iranian financial institutions as defined in the order regardless of whether the Iranian financial institution is listed on the SDN List.

The E.O. of Feb. 5 builds upon the prohibitions in the ITR, which remain in effect.

Please note, pursuant to OFAC guidance, even when an entity does not itself appear on the SDN List or otherwise meet the definition of the GOI or an Iranian financial institution, the property and interests in property of that entity are blocked if the entity is owned, directly or indirectly, 50% or more by a person whose property and interests in property are blocked pursuant to an Executive Order or regulations administered by OFAC.

If all property and interests in property of the Government of Iran, including the Central Bank of Iran, and of all Iranian financial institutions are blocked, can I conduct transactions involving the Government of Iran that have been previously authorized by OFAC?

Generally yes. Under new General License A, almost all transactions that are authorized under existing general licenses issued pursuant to the ITR or under existing OFAC specific licenses will continue to be authorized under the authority of the E.O. of Feb. 5. However, transactions previously authorized under one existing ITR general license are not authorized pursuant to the E.O. of Feb. 5. Specifically, the closing of accounts of the Government of Iran or an Iranian financial institution and the lump sum transfer of the balances to an account outside of the United States, which is authorized by sections 560.517(a)(3) & (b)(2) of the ITR, is not authorized by General License A, and, therefore, those transactions are prohibited by the E.O. of Feb. 5 and the accounts must be blocked. In addition, General License A does not authorize any payments from blocked funds or debits to blocked accounts, with a limited exception for payments from funds or debits to accounts blocked under the Iranian Assets Control Regulations (the hostage crisis blocking program that began in 1979) that are authorized by specific licenses issued by OFAC.

New General License B authorizes U.S. depository institutions and U.S. registered brokers or dealers in securities to process noncommercial, personal remittances, to or from Iran, or for or on behalf of individuals ordinarily resident in Iran who are not included in the term “Government of Iran”, provided that such funds transactions are not made by, to, or through a financial institution blocked pursuant to the Weapons of Mass Destruction Proliferators Sanctions Regulations, 31 C.F.R. part 544 (the “WMDPSR”), or the Global Terrorism Sanctions Regulations, 31 C.F.R. part 594 (the “GTSR”), or a person whose property and interests in property are blocked pursuant to any other part of 31 C.F.R. chapter V, or any Executive order, except an Iranian financial institution whose property and interests in property are blocked solely pursuant to the E.O. of Feb. 5.

Transactions not previously authorized by OFAC that involve property or interests in property of the Government of Iran, including the Central Bank of Iran, or of Iranian financial institutions must be blocked.

Are U.S. persons still required to comply with the Iranian Transactions Regulations?

Yes. The E.O. of Feb. 5 builds upon the prohibitions of the ITR, and the prohibitions of the ITR remain in effect.

What are the differences and similarities between the E.O. of Feb. 5 and the Iranian Transactions Regulations?

The ITR prohibit virtually all direct or indirect transactions involving Iran or the Government of Iran by U.S. persons or with a nexus to the United States, unless otherwise authorized by OFAC or exempted by statute, but they do not contain blocking provisions. The E.O. of Feb. 5 requires U.S. persons to block all property and interests in property of the Government of Iran, including the Central Bank of Iran, and of Iranian financial institutions, which also includes the Central Bank of Iran, unless it relates to a transaction that is exempted by statute or authorized by OFAC.

To illustrate the difference between how a transaction would be treated under the ITR and the new E.O., imagine a commercial wire transfer being processed through the U.S. financial system by order of a third-country, non-U.S. company for credit to a third-country financial institution in favor of a correspondent account it maintains for an Iranian financial institution. The transaction is not exempt or authorized by a general or specific license, and the Iranian bank is not blocked pursuant to the GTSR or the WMDPSR. Previously, under the ITR, any U.S. financial institution handling the transaction would have needed to reject the payment because allowing it to be processed would constitute a prohibited exportation of services to Iran. With the new E.O. in place, the U.S. financial institution would be required to block ("freeze") that transaction.

The Iranian Transactions Regulations authorize U.S. depository institutions and U.S. registered brokers or dealers in securities to process transfers of funds to or from Iran if the transfer is a non-commercial, personal remittance. Are U.S. depository institutions and U.S. registered brokers or dealers in securities still authorized to process such payments to or from a Government of Iran-owned bank that is not otherwise designated pursuant to another Part of 31 C.F.R. Chapter V?

General License B under the E.O. of Feb. 5 authorizes U.S. depository institutions and U.S. registered brokers or dealers in securities to process noncommercial, personal remittances to or from Iran provided that the payment is not made by, to, or through a financial institution designated by OFAC under the WMDPSR, or the GTSR, or a person whose property and interests in property are blocked pursuant to any other part of 31 C.F.R. chapter V, or any Executive order, except an Iranian financial institution whose property and interests in property are blocked solely pursuant to the E.O. of Feb. 5. Exempt or authorized transactions to or from Iran may also be processed subject to the above conditions.

Such transactions must be processed through a third country, as U.S. banks are prohibited from operating correspondent accounts for Iranian banks. The transactions may involve the use of blocked Iranian financial institutions as long as the Iranian financial institution is blocked solely pursuant to the E.O. of Feb. 5 (and not pursuant to any other Executive order or part of 31 C.F.R.

chapter V) and there is a third-country, non-U.S. financial institution as an intermediary between the U.S. financial institution and the Iranian financial institution.

To what extent are U.S. persons expected to conduct enhanced due diligence to determine if transactions contain a Government of Iran interest?

The E.O. of Feb. 5 requires U.S. persons to block all property and interests in property of the Government of Iran, unless otherwise exempt or authorized by OFAC.

Please contact the OFAC Hotline at 202-622-2490 or 1-800-540-6322, or by email at OFAC_Feedback@treasury.gov, for guidance regarding entities that you suspect are owned or controlled by the Government of Iran that do not appear on the SDN List. As a general matter, OFAC expects financial institutions to conduct due diligence on their own direct customers (including, for example, their ownership structure) to confirm that those customers are not persons whose property and interests in property are blocked.

With regard to other types of transactions where a financial institution is acting solely as an intermediary and fails to block transactions involving a sanctions target, OFAC will consider the totality of the circumstances surrounding the bank's processing of the transaction to determine what, if any, regulatory response is appropriate.

OFAC's SDN List contains a list of entities identified by OFAC as being the Government of Iran. Should U.S. persons now block the property and interests in property of those entities?

Yes, U.S. persons should now block the property and interests in property of the Government of Iran entities appearing on the SDN List, unless OFAC has authorized the underlying transaction or the transaction is exempt.

OFAC has granted my company a license under the Trade Sanctions Reform and Export Enhancement Act of 2000 ("TSRA") and the ITR. Can I continue to conduct the licensed transaction?

Under General License A issued pursuant to the E.O. of Feb. 5, transactions authorized under existing specific licenses issued pursuant to TSRA and the ITR are authorized under the E.O. of Feb. 5 until the specific license expires, per the terms of the license.

OFAC has issued me a (non-TSRA) specific license related to Iran, or the Government of Iran. Can I continue to conduct the licensed transactions?

Under General License A issued pursuant to the E.O. of Feb. 5, transactions authorized by (non-TSRA) specific licenses issued prior to the issuance of the E.O. of Feb. 5 and issued pursuant to any part of 31 C.F.R. chapter V are also authorized under the E.O. of Feb. 5. As set forth in General

License A, in most cases these new authorizations under the E.O. of Feb. 5 are in effect until the expiration date of the individual specific license, or, if the specific license has no expiration date, until April 6, 2012.
