



OFAC Publishes Sanctions Compliance Guidance for the Virtual Currency Industry

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The U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) published Sanctions Compliance Guidance for the Virtual Currency Industry (“*Guidance*”)¹ on its official website on October 15, 2021, by expressing that the Guidance is published as a resource to help members of the virtual currency industry navigate and comply with OFAC sanctions, and to ensure OFAC's commitment to engage with the virtual currency industry to promote an understanding of, and compliance with, sanctions requirements. OFAC also expressed in its announcement that it has updated its Frequently Asked Questions 559 and 646 which are associated with the topic.

The Guidance explains that OFAC regulations apply to all U.S. persons, as well as all entities organized under the laws of the United States or any jurisdiction within the United States, including any foreign branches of those entities. Accordingly, the Guidance notes that anyone engaging in virtual currency activities in the United States, or that involve U.S. individuals or entities, should be aware of OFAC sanctions requirements and the circumstances in which they must comply with those requirements.

At the outset, the Guidance provides introductory information and refers to the recent emergence of the important role of virtual currencies within the global economy, expressing that OFAC sanctions compliance obligations apply equally to transactions involving virtual currencies. Making a distinction between virtual currencies and digital currencies, it defines virtual currency as a digital representation of value that functions as (i) a medium of exchange, (ii) a unit of account, and/or (iii) a store of value, and neither issued nor guaranteed by any jurisdiction.

The Guidance refers to OFAC’s roles and responsibilities, providing further information on OFAC sanctions, by mentioning its broad trade-based sanctions or embargoes, government or regime sanctions, list-based sanctions and sectoral sanctions, and OFAC’s Specially Designated Nationals and Blocked Persons List (“SDN List”).

¹ Please see https://home.treasury.gov/system/files/126/virtual_currency_guidance_brochure.pdf for the full text of the Guidelines (last access: November 17, 2021)

According to the Guidance, if a U.S. person/entity determines that they hold virtual currency that is required to be blocked pursuant to OFAC's regulations, they must deny all parties access to that virtual currency and implement the required controls to ensure holding and reporting of blocked assets. The Guidance adds that the blocked virtual currency is not required to be converted into traditional fiat currency (government-issued currency) or held in an interest-bearing account. However it requires the blocked virtual currency to be reported to OFAC within ten business days, as well as on an annual basis throughout the period the virtual currency is blocked.

OFAC notes that failing to comply with sanctions requirements would result in sanctions violations which might lead to various civil and criminal penalties, also adding that voluntary self-disclosure is encouraged by OFAC as it may be considered a mitigating factor in enforcement actions and result in reduction of civil penalty. Lastly, the Guidance provides sanctions compliance best practices, by directing concerned parties to OFAC's Framework for OFAC Compliance Commitments which consists of the five essential components management commitment, risk assessment, internal controls, testing and auditing, and training.

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