



SANCTIONS SERIES

Ten Things Foreign Financial Institutions Should Know About Executive Order 14114

By Carol Beaumier

On December 22, 2023, when many of us had already started our holiday breaks, President Biden issued Executive Order (EO) 14114, which among other things creates new secondary sanctions risk for foreign financial institutions. For anyone who missed this development or anyone who is simply trying to understand the significance of this EO, here are 10 things we think you should know:

1. What is the purpose of EO 14114?

EO 14114 is another weapon, and strong indicator of the U.S. government's commitment, to combat evasion of Russian sanctions, specifically those directed at Russia's military industrial base. EO 14114 builds on previously issued EOs: [EO 14024](#) of April 15, 2021, expanded by [EO 14066](#) of March 8, 2022, and relied on for additional steps taken in [EO 14039](#) of August 20, 2021, [EO 14068](#) of March 11, 2022, and [EO 14071](#) of April 6, 2022.

2. To what entities does EO 14114 apply?

EO 14114 applies to foreign financial institutions (FFIs). An FFI is defined as "any foreign entity that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, futures or options, or procuring purchasers and sellers thereof, as principal or agent" and includes

“depository institutions, banks, savings banks, money services businesses, operators of credit card systems, trust companies, insurance companies, securities brokers and dealers, futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, dealers in precious metals, stones or jewels, and holding companies, affiliates, or subsidiaries of any of the foregoing.”

3. What activity would expose an FFI to the possibility of being targeted with secondary sanctions?

Under the authority of the EO, an FFI may be subject to secondary sanctions if the U.S. determines that the FFI has:

- a. Conducted or facilitated a “significant” transaction for or on behalf of a person already targeted by U.S. blocking sanctions for operating or having operated in the technology, defense and related material, construction, aerospace or manufacturing sectors of the Russian Federation economy (or other sectors determined in the future to support Russia’s military-industrial base) (the “Specific Sectors”); or
- b. Conducted or facilitated a “significant” transaction or provided any service involving Russia’s military industrial base, including the sale to Russia of items specified in a new related determination.

Unlike many secondary sanctions, the authority granted under EO 14114 does **not** require that an FFI “knowingly” engaged in the prohibited conduct. This imposes potential secondary sanctions on an FFI under a standard of strict liability, regardless of its level of knowledge.

4. What is included in Russia’s military-industrial base?

“Russia’s military-industrial base” includes the technology, defense and related material, construction, aerospace and manufacturing sectors of the Russian Federation’s economy. It also encompasses other sectors as may later be determined, and may also include individuals and entities that “support the sale, supply, or transfer of critical items identified in EO 14024.” (See #8 below.)

5. What does “significant” transaction mean?

EO 14114 does not include a precise definition of “significant” transaction. Rather, it indicates that a “significant” transaction(s) will be determined based on “(a) the size, number, and frequency of the transaction(s); (b) the nature of the transaction(s); (c) the level of awareness of management and whether the transactions are part of a pattern of conduct; (d) the nexus of the transaction(s) to persons sanctioned pursuant to E.O. 14024, or to persons operating in Russia’s military-industrial base; (e) whether the transaction(s) involve deceptive practices; (f) the impact of the transaction(s) on U.S. national security objectives; and (g) such other relevant factors that OFAC deems relevant.”

6. For secondary sanctions to be imposed, does the activity identified above need to be conducted in U.S. dollars?

No, no nexus to the U.S. is required. To the contrary, the sanctions are intended to target activity that takes place entirely outside the United States.

7. What are the consequences for an FFI of being targeted for secondary sanctions?

If an FFI is determined by U.S. authorities to have engaged in a targeted activity, U.S. banks may be prohibited from providing correspondent account services to the targeted FFI, effectively freezing the FFI out of the USD market, or the FFI may itself be subject to full blocking sanctions, in which case U.S. persons generally would be required to freeze any property or interests in property of the FFI in their possession or control and refrain from any further dealings that involve any interest of the FFI.

8. What activities might increase the secondary sanctions risk of an FFI?

Concurrent with the issuance of EO 14114, OFAC published a [Sanctions Advisory](#) entitled “Guidance for Foreign Financial Institutions on OFAC Sanctions Authorities Targeting Support to Russia’s Military-Industrial Base” that provides useful examples of activities that could expose financial institutions to sanctions risk, including, but not limited to, maintaining accounts, transferring funds, or providing other financial services (i.e., payment processing, trade finance, insurance) for any persons designated for operating in the specified sectors.

9. Which items or classes of items can be used to support Russia's military industrial base and are, therefore, subject to sanctions?

To assist sanction compliance efforts, OFAC also published on December 22, 2023, a “[Determination Pursuant to Section 11\(a\)\(ii\) of Executive Order 14024](#)” which includes items and classes of items of concern.

10. What steps can FFIs take to protect themselves against triggering secondary sanctions?

Among the proactive steps an FFI can take are the following:

- Review its customer base to identify customers engaged in the production and transportation of the at-risk items and classes of items provided by OFAC and ensure the organisation's risk assessment reflects export control risks and the controls in place to manage these risks.
- Train personnel in all applicable functions (e.g., sanctions, Know Your Customer, transaction monitoring and trade finance) about the secondary sanctions and common methods of evasion.
- Ensure close coordination and information sharing among all functions – sanctions, anti-money laundering, trade finance operations – that may have relevant insights.
- Educate at-risk customers on the applicable sanctions and make clear the FFI's zero tolerance for non-compliance.
- Cultivate close working relationships with and educate downstream correspondents on the applicable sanctions and make clear the FFI's zero tolerance for non-compliance.
- Actively use Requests for Information (RFIs) to gather additional information about at-risk transactions and document these efforts to demonstrate the compliance effort.

Bottom line: An FFI must do the due diligence required to prevent evasion of the Russian sanctions.

Note: This paper is intended to provide a high-level overview of EO 14114. Given the complexities of sanctions compliance, financial institutions should consult with counsel on specific questions related to the applicability and compliance with EO 14114.

About the Author

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