



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

OFFICE OF FOREIGN ASSETS CONTROL

**GUIDANCE ON THE RELEASE OF LIMITED AMOUNTS
OF BLOCKED FUNDS FOR PAYMENT OF LEGAL FEES AND COSTS
INCURRED IN CHALLENGING THE BLOCKING OF U.S. PERSONS
IN ADMINISTRATIVE OR CIVIL PROCEEDINGS**

This policy provides for the issuance of specific licenses, on a case-by-case basis, to authorize the release of a limited amount of blocked funds for the payment of legal fees and costs incurred in seeking administrative reconsideration or judicial review of the designation of a U.S. person or the blocking of the property and interests in property of a U.S. person under the authority of Executive orders and regulations administered by OFAC (any such U.S. person hereinafter referred to as a “Blocked Party”), where alternative funding sources are not available. Pursuant to this policy, the blocked funds from which payment is sought must be legally and beneficially owned by the Blocked Party.

This policy is aimed at enhancing the ability of a Blocked Party that lacks alternative access to funds to acquire legal representation in connection with its designation or the blocking of its property and interests in property. This policy is not intended to ensure complete compensation to counsel. Limitations on the amount of funds released to a Blocked Party are necessary to preserve the President’s authority and leverage in the conduct of foreign policy. This policy is separate from, but complementary to, OFAC’s policies allowing for the issuance of specific licenses providing for a Blocked Party to receive fresh funds from unblocked sources outside the United States and to raise funds in the United States through an authorized legal defense fund.

Part I: Designated or Blocked Party Requirements

The new policy includes a number of parameters. To be considered for a specific license, a Blocked Party must satisfy the following requirements:

- a Blocked Party must be designated, or its property and interests in property blocked or blocked pending investigation, under the authority of Executive orders and regulations administered by OFAC;
- a Blocked Party must be a U.S. person, as defined in the relevant Executive orders and regulations administered by OFAC;
- a Blocked Party must be the legal and beneficial owner of the blocked funds from which payment is sought to be made; and

- the legal fees and costs for which reimbursement is sought must have been incurred in seeking administrative reconsideration or judicial review of the Blocked Party's designation, blocking, or blocking pending investigation.

A specific license applicant will not be eligible for a license for payment of legal fees and costs from blocked funds under this policy if any of these requirements is not met.

Part II: Licensing Requirements

To enable OFAC to make a licensing determination, a Blocked Party and its counsel must provide the following:

- evidence or a certification that the Blocked Party is a U.S. person as defined in the relevant OFAC regulations and the Executive orders under which the Blocked Party was designated or blocked;
- an itemized statement of the amounts already paid for legal representation and associated costs to date, including the source(s) of payment (*e.g.*, a legal defense fund or a source outside the United States), whether paid by or on behalf of the Blocked Party;
- a letter from the Blocked Party requesting that the legal fees and costs for a particular attorney or attorneys be paid from the Blocked Party's blocked funds, identifying the specific blocked funds from which payment is requested to be made, and providing the name and address of the bank holding the funds, the account number(s), and the name and telephone number of a contact person at the bank;
- a certification, signed by the Blocked Party and its counsel under penalty of perjury, that:
 - the Blocked Party is the legal and beneficial owner of the blocked funds;
 - no other person has a property interest in the blocked funds and the funds do not serve as security for other obligations of the Blocked Party;
 - the Blocked Party has no assets, property, or economic resources of any type outside the United States; and
 - the Blocked Party has fully reported or caused to be reported, pursuant to 31 C.F.R. § 501.603, any of its property or interests in property blocked pursuant to 31 C.F.R. Chapter V;
- an itemized statement of the hourly rate and number of hours billed per attorney for legal services directly related to the request for administrative reconsideration or judicial review of the designation or blocking, divided by each phase of the case (administrative proceedings before OFAC, district court, and appellate court); and
- an itemized statement and description of costs incurred in seeking administrative reconsideration or judicial review of the designation or blocking, divided by each phase of the case.

OFAC may request that the Blocked Party and its counsel furnish additional information as necessary.

An application requesting a specific license authorizing the release of blocked funds under this policy may be submitted at each stage of the administrative proceedings or litigation, either (i) when the licensable fees and costs incurred for that stage of the proceedings or litigation have reached the applicable cap; or (ii) at the end of that stage of the proceedings or litigation.

Any licenses issued pursuant to this policy will authorize payment from blocked funds directly to the attorney or attorneys representing the Blocked Party.

Part III: Monetary Limitations

The monetary limitations of this policy are modeled generally on the attorney compensation provisions of the Criminal Justice Act (CJA) and the Equal Access to Justice Act (EAJA). Specifically, in a manner similar to the EAJA, the payment of legal fees from blocked funds may be licensed at a rate not to exceed \$125 per hour, up to a cap set for each stage of the administrative proceedings or litigation. OFAC anticipates tracking the EAJA hourly rate if it changes in the future. With respect to applications submitted by a designated Blocked Party, the policy incorporates fee caps per proceeding, as does the CJA, and limits the amount of licensable fees to \$14,000 for administrative proceedings; \$14,000 for district court litigation; and \$10,000 for appellate court litigation.¹ In extraordinary cases, such as cases involving lengthy or complex proceedings (*e.g.*, may include cases lasting more than a year or with multiple parties whose designation or blocking resulted from a substantially similar administrative record or set of facts), the maximum fees allowed could be doubled for each stage. Thus, in these cases, counsel might be licensed up to a total of \$28,000 for administrative proceedings; \$28,000 for district court litigation; and \$20,000 for appellate court litigation. These overall monetary caps are calculated based on two attorneys per case, but a Blocked Party may choose to apportion the maximum allotments between a greater or smaller number of legal representatives. In addition to legal fees, certain legal costs of a designated Blocked Party may be licensed for payment from blocked funds, up to a cap of \$15,000; this cap applies to costs incurred by all attorneys during the course of administrative proceedings and litigation.²

¹ The overall fee caps are based on the calculations of \$7,000 per attorney, for up to two attorneys, for administrative proceedings; \$7,000 per attorney, for up to two attorneys, for district court litigation; and \$5,000 per attorney, for up to two attorneys, for appellate court litigation.

² As of July 23, 2010, the policy's overall fee and cost caps described in Part III do not apply to applications submitted by a Blocked Party who has not been designated but whose property and interests in property have been "blocked pending investigation." This revision to the policy applies only to pending and future licensing applications submitted pursuant to this policy and will not be applied retroactively to persons whose property and interests in property previously were blocked pending investigation but who are no longer in that status. The hourly fee cap of \$125 will continue to be applied to such applications.

The basis for this revision to the policy is twofold. First, the decision to block a party pending investigation is preliminary, because when OFAC blocks the property of a designation target during the pendency of an investigation, OFAC is in the process of determining whether a party meets certain designation criteria set forth in an Executive order for posing a specific threat to U.S. interests. Second, a blocking pending investigation by OFAC is typically of a shorter duration than a designation. Though the length of time that a party may be blocked pending investigation will depend on the amount of time needed to complete the investigation, blocked assets are less likely to be depleted given the frequently shorter duration.

As a prerequisite for receiving a specific license, a Blocked Party or its counsel must provide an itemized statement of the amounts already paid for legal representation and costs to date, including the source(s) of payment, whether paid by or on behalf of the Blocked Party, as set forth in Part II above. In processing applications for specific licenses authorizing the release of blocked funds, OFAC will reduce the applicable caps on legal fees and costs payable from blocked funds by any amounts previously received from either fresh funds or a legal defense fund. Should additional fresh funds or legal defense funds be received after blocked funds are licensed and used for payment of legal fees and/or costs, then such additional funds must first be deposited into a blocked account until the amount previously unblocked is restored. Any remaining funds may then be applied to legal fees and/or costs.