

Facilitating Ransomware Ransom Payments? OFAC Issues Guidance to Avoid Enforcement Actions and Penalties

by Joel B. Bruckman

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Earlier this month, the United States Department of Treasury Office of Foreign Asset Control (“OFAC”) released updated guidance to entities which “facilitate” the payment of ransom on behalf of victims of ransomware attacks. In its most recent guidance, OFAC expressly “called out” cyber liability insurers and digital forensics vendors as examples of facilitators of ransom payments which should heed its directives.



OFAC has authority to impose monetary penalties through enforcement actions against those who transact with “Sanctioned” entities. OFAC maintains and regularly adds to its database of “Sanctioned” entities which it has identified as have engaged in wrongdoing in violation of U.S. laws and wrongdoing, or are supported by “Sanctioned” countries.

As with other federal agencies such as the FBI and DHS, OFAC maintains a policy against the payment of ransom demands to decrypt data seized as part of a ransomware attack. In the event that payment of ransom is made to a “Sanctioned” entity (knowingly or unknowingly), in response to a ransomware attack, the facilitator of such payment may be subject to an OFAC enforcement action and monetary penalty.

Under OFAC’s most recent guidance, OFAC is to be promptly notified in the event that the facilitator of ransom “suspects” that the threat actor demanding such ransom is a “Sanctioned” entity. Entities which make payment to a “Sanctioned” entity are strictly liable for violating U.S. economic sanctions laws, such as the International Emergency Economic Powers Act (IEEPA), and the Trading with the Enemy Act (TWEA), and other regulations enforced by OFAC. However, OFAC advises that it will take into consideration mitigating factors such as the reporting of the ransomware attack to law enforcement, cooperation with any ensuing law enforcement investigation as well as other factors including but not limited to the victim’s readiness for a ransomware attack, such as implementation of a ransomware response plan.

OFAC presents yet another layer to the legal obligations and considerations victims, insurers and forensics vendors face when triaging a ransomware attack. It remains a best practice to proactively confer with legal counsel to ensure that your business has a plan in place to respond to both ransomware and other data security incidents, as well as immediately notify legal counsel upon discovery of any such attack.

If you have any questions, please contact Freeborn attorney Joel Bruckman (jbruckman@freeborn.com, 312-360-6461) or another member of Freeborn’s [Cybersecurity](#) team.

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Joel has extensive experience in White-Collar criminal investigations and post-indictment matters including allegations of Fraud, Theft, Embezzlement, Money Laundering and Anti-Trust Violations under The Sherman Act, Wire Fraud and private-sector Honest Services Fraud. As a former member of the FBI's Cyber Crimes Task Force during his time as a prosecutor for the Cook County State's Attorney's Office, Joel regularly advises clients on data security incident response strategies and best practices, from initial discovery and computer forensics investigations through statutory /regulatory notification compliance and subsequent government investigation and private-party litigation.

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