

Sanctions Update ▪ October 4, 2021

OFAC Authorizes Afghanistan Humanitarian Aid and Activities Otherwise Prohibited by Counter-Terrorism Sanctions, Publishes FAQs

On September 24, 2021, the Department of the Treasury's Office of Foreign Assets Control (OFAC) issued two general licenses authorizing certain Afghanistan humanitarian aid and activities involving the Taliban or the Haqqani Network. The licenses authorize transactions otherwise prohibited by the Global Terrorism Sanctions Regulations, 31 C.F.R. part 594 (GTSR); the Foreign Terrorist Organization Sanctions Regulations, 31 C.F.R. part 597 (FTOSR); or, Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism," as amended (EO 13224) (see the [State Department's website](#) for a list of parties designated under EO 13224). OFAC also published four FAQs related to the general licenses.

The Taliban is a U.S.-sanctioned party having the status of Specially Designated Global Terrorist (SDGT) pursuant to the GTSR. The Haqqani Network is designated as an SDGT, as a Foreign Terrorist Organization (FTO), and is designated under EO13224 (*see, e.g., OFAC FAQ No. 928*). Accordingly, the Taliban and Haqqani Network are "blocked" persons, as are any entities owned, directly or indirectly, 50% or more by either of them individually or in the aggregate with each other or other blocked persons.¹ Transactions with the Taliban and Haqqani Network are prohibited, including contributions of funds, goods, or services to them. *See, e.g.,* GTSR at 31 C.F.R. § 594.204.

The September 24 general licenses authorize (1) specified governmental, multilateral, NGO, and humanitarian organizations to engage in humanitarian assistance to Afghanistan and (2) the export and reexport to Afghanistan of certain agricultural commodities, medicine, and medical devices.

General License No. 14, Authorizing Humanitarian Activities in Afghanistan

[General License 14](#) authorizes transactions "ordinarily incident and necessary to the provision of humanitarian assistance to Afghanistan or other activities that support basic human needs in Afghanistan" by the following entities and their "employees, grantees, contractors, or other persons acting on their behalf":

1. The United States Government;
2. Nongovernmental organizations;
3. The United Nations, "including its Programmes, Funds, and Other Entities and Bodies, as well as its Specialized Agencies and Related Organizations,";
4. The World Bank's International Centre for the Settlement of Investment Disputes (ICSID) and Multilateral Investment Guarantee Agency (MIGA);

¹ References herein to the Taliban and Haqqani Network are also references to entities owned, directly or indirectly, 50% or more by either of them individually or in the aggregate with other blocked persons.

5. The African Development Bank Group, Asian Development Bank, European Bank for Reconstruction and Development, and Inter-American Development Bank Group, “including any fund entity administered or established by any of the foregoing”;
6. The International Committee of the Red Cross;
7. The International Federation of the Red Cross and Red Crescent Societies; and,
8. The Islamic Development Bank.

Notably, but not at all surprisingly, General License 14 does not authorize the Beijing-based Asian Infrastructure Investment Bank (AIIB), of which Afghanistan is a member.

In its new [FAQ No. 929](#), OFAC defines “humanitarian assistance” to include:

the provision of relief services related to natural and man-made disasters . . . healthcare and health-related services, protection and assistance for vulnerable or displaced populations (including women, individuals with disabilities, the elderly, survivors of violence, those incarcerated or detained, and the drug dependent), operation of orphanages, the distribution of articles (such as food, clothing, and medicine) intended to be used to relieve human suffering in Afghanistan, and training or other services related to any of the foregoing activities. Other activities that support basic human needs include activities to support non-commercial development projects in Afghanistan that primarily benefit poor or at-risk populations or otherwise relieve human suffering, including activities related to shelter and settlement assistance, food security, livelihoods support, water, sanitation, health, hygiene, and COVID-19-related assistance, among others, and training or other services related to any of the foregoing activities.

General License 14 does not authorize financial transfers to the Taliban or the Haqqani Network, except “for the purpose of effecting the payment of taxes, fees, or import duties, or the purchase or receipt of permits, licenses, or public utility services.” In other words, only financial transactions necessary to facilitate humanitarian activities authorized by the General License are permitted. Further, the License does not authorize “any debit to an account on the books of a U.S. financial institution of” the Taliban or Haqqani Network. Finally, General License 14 does not relieve parties of any additional obligations they might have under U.S. federal laws and regulations.

Authorized parties engaging in humanitarian activities authorized by General License 14 should ensure that they reference the License in or related to transactions effectuating, or documentation memorializing, their authorized activities, and should ensure as well that relationships between them and their employees, contractors, grantees, or other parties acting on their behalf are well-documented and readily verifiable.

General License 15, Authorizing Transactions Related to the Exportation or Reexportation of Agricultural Commodities, Medicine, Medical Devices, Replacement Parts, Components, or Software Updates in Afghanistan

[General License 15](#) authorizes export and reexport transactions to Afghanistan involving the Taliban or Haqqani Network, where exported or reexported items are:

1. agricultural commodities as defined by section 102 of the Agricultural Trade Act of 1978, 7 U.S.C. 5602, and intended for ultimate use in Afghanistan;
2. food for human or animal consumption, including seeds for food crops, fertilizers or organic fertilizers, or reproductive materials (e.g., live animals);
3. medicine that is defined as a “drug” under section 201 the Food, Drug, and Cosmetic Act, 21 U.S.C. 321 (FDA Act);
4. medical devices as defined in section 201 of the FDA Act, and “replacement parts and components for medical devices, or software updates for medical devices.”

Authorized exports and reexports of the above-listed items are permitted only to “Afghanistan, or to persons in third countries purchasing specifically for resale to Afghanistan.” OFAC, in its new [FAQ 930](#), discusses transactions authorized by General License 15, “including the processing of financial transactions and related clearing and settlement involving banks in Afghanistan.”

General License 15 does not authorize financial transfers to the Taliban or Haqqani Network, except for “the purpose of effectuating the payment of taxes, fees, or import duties to, or the purchase or receipt of permits, licenses, or public utility services.” Nor does the License authorize the debiting to an account of the Taliban or Haqqani Network on the books of a U.S. financial institution.

Parties engaging in authorized exports or reexports of agricultural commodities, medicine, and medical devices should reference General License 15 in their transactions and documentation, and make and retain records memorializing transaction purposes and other details.

Non-U.S. Persons May Engage in Transactions Authorized as to U.S. Persons

Non-U.S. persons may engage in transactions authorized as to U.S. persons by General Licenses 14 and 15, without exposure to secondary sanctions under the GTSR, the FTOSR, or EO 13224. In its new [FAQ No. 931](#), OFAC explains that:

activity that would be authorized by GLs 14 or 15 if engaged in by a U.S. person would not be considered ‘significant’ for the purposes of a secondary sanctions determination under E.O. 13224, as amended. Accordingly, foreign financial institutions do not risk exposure to correspondent and payable-through account sanctions under E.O. 13224, as amended, if they knowingly conduct or facilitate a transaction on behalf of persons blocked under E.O. 13224, as amended, that would be authorized under GLs 14 or 15 if engaged in by a U.S. person.

OFAC Afghanistan FAQs

OFAC’s new Afghanistan FAQs are numbers [928](#), [929](#), [930](#), and [931](#), and should be consulted by parties availing themselves of the authorizations set forth in General Licenses 14 and 15.

For more information about General Licenses 14 or 15, OFAC-administered sanctions, or MassPoint PLLC, please visit <https://masspointpllc.com> or write to info@masspointpllc.com.