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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

RIN 3133–AE49

Pass-Through Share Insurance for Interest on Lawyers Trust Accounts

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is amending its share insurance regulations to implement statutory amendments to the Federal Credit Union Act (FCU Act or the Act) resulting from the recent enactment of the Credit Union Share Insurance Fund Parity Act (Insurance Parity Act). The statutory amendments require NCUA to provide enhanced, pass-through share insurance for interest on lawyers trust accounts (IOLTA) and other similar escrow accounts. As its name implies, the Insurance Parity Act ensures that NCUA and the Federal Deposit Insurance Corporation (FDIC) insure IOLTAs and other similar escrow accounts in an equivalent manner.

DATES: This rule is effective January 27, 2016.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Associate General Counsel, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background

A. History of IOLTAs

According to the National Association of IOLTA Programs (NAIP),[1] IOLTA programs began in Australia and Canada in the late 1960s to generate funds for legal services to the poor.[2] In the United States, Congress passed legislation in the 1980s permitting the establishment of certain interest-bearing checking accounts,[3] which, among many things, helped to enable the creation of IOLTA accounts throughout the United States. The various states operate IOLTA programs pursuant to their own laws.[4]

Under an IOLTA program, an attorney or law firm may establish an account at one or more financial institutions to hold their clients' funds to pay for legal services or for other purposes. An attorney or a law firm would deposit clients' funds in one or more IOLTAs and hold these funds in trust until needed. Typically, the interest or dividends on IOLTAs are donated to charities or other 501(c)(3) tax exempt organizations pursuant to state law. Generally, the donated funds are used to subsidize legal aid services or for other charitable purposes.

B. The Credit Union Share Insurance Fund Parity Act of 2014

On December 18, 2014, President Obama signed into law the Insurance Parity Act.[5] The Insurance Parity Act amended the share insurance provisions of the FCU Act by requiring enhanced, pass-through share insurance coverage for IOLTAs and other similar escrow accounts.[6] The Insurance Parity Act specifically defines ''pass-through share insurance,'' with respect to IOLTAs and other similar escrow accounts, as ''insurance coverage based on the interest of each person on whose behalf funds are held in such accounts by the attorney administering the IOLTA or the escrow agent administering a similar escrow account, in accordance with regulations issued by [NCUA].'' [7]

The Insurance Parity Act defines an IOLTA as ''a system in which lawyers place certain client funds in interest-bearing or dividend-bearing accounts, with the interest or dividends then used to fund programs such as legal service organizations who provide services to clients in need.'' [8] Pursuant to the Insurance Parity Act, IOLTAs are treated as escrow accounts for share insurance purposes. Further, IOLTAs and other similar escrow accounts are considered member accounts if the attorney administering the IOLTA or the escrow agent administering the escrow account is a member of the insured credit union in which the funds are held.[9]

C. Comparison of FDIC's and NCUA's Current Insurance Regulations Regarding IOLTAs

The FDIC's deposit insurance regulations [10] do not specifically mention IOLTAs by name. Rather, the FDIC insures an IOLTA as an agent or nominee account. To be insured by the FDIC, an agent or nominee account like an IOLTA must expressly disclose, by way of specific reference, the existence of any fiduciary relationship such as an agent or nominee pursuant to which funds are deposited into a bank account and on which a claim for deposit insurance coverage is based. The FDIC has stated that such an account, including an IOLTA, must disclose that the funds are held by the nominal account holder on the behalf of others.[11] To be insurable, the FDIC must be able to ascertain the interests of the other parties in the IOLTA from the records of the insured depository institution or from the records of the lawyer.[12] Funds attributable to each client will be insured on a pass-through basis if this

[1] The NAIP was established in 1986 to enhance legal services for the poor and for the administration of justice through the growth and development of IOLTA programs. *http://www.iolta.org/about-naip.*

[2] *http://www.iolta.org/what-is-iolta/iolta-history.*

[3] The Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. 96–221; 94 Stat. 132).

[4] *http://www.americanbar.org/groups/interest_lawyers_trust_accounts/resources/status_of_iolta_programs.html.* As determined by each state, an IOLTA program may be mandatory, voluntary, or an attorney may opt out of the program.

[5] Pub. L. 113–252, 128 Stat. 2893 (2014).

[6] 12 U.S.C. 1787(k).

[7] Pub. L. 113–252, 128 Stat. 2893 (2014).

[8] *Id.*

[9] The Insurance Parity Act also emphasizes that its amendments to the FCU Act do not authorize an insured credit union to accept deposits of an IOLTA or similar escrow account in an amount greater than such credit union is authorized to accept under any other provisions of federal or state law.

[10] 12 CFR part 330.

[11] FDIC Opinion Letter No. 98—2 (June 16, 1998) at *https://www.fdic.gov/regulations/laws/rules/4000–9940.html.*

[12] *Id.*

recordkeeping requirement is satisfied.[13]

Prior to the enactment of the Insurance Parity Act, NCUA's position with respect to the insurability of IOLTAs was very similar to FDIC's, except that NCUA's coverage was limited only to those clients of the attorney who were also members of the insured credit union in which the IOLTA was kept. This was due to the FCU Act's general limitation to insure only member accounts, with some exceptions not applicable to this rulemaking.

Many federally insured credit unions maintained that NCUA's position on this issue placed them at a competitive disadvantage. The Insurance Parity Act removed any such disadvantage, however. Specifically, provided the lawyer administering the IOLTA or the escrow agent administering a similar escrow account is a member of the insured credit union in which such account is maintained, then the interests of each client or principal, on whose behalf funds are being held in such accounts by the lawyer or escrow agent, will be insured on a pass-through basis in accordance with the limits in part 745 of NCUA's regulations, regardless of the membership status of the client or principal. In an IOLTA and other similar escrow accounts, the true owners of the funds are the clients and principals. The lawyers or law firms and the escrow agents are only agents holding the funds on the clients' and principals' behalf.

II. Summary of the April 2015 Proposed Rule

In April 2015, the Board issued a proposed rule amending its share insurance regulations to implement statutory amendments to the FCU Act resulting from the enactment of the Insurance Parity Act.[14] The sections below reiterate the discussion in the proposed rule.

A. Why NCUA issued a proposed rule?

The Insurance Parity Act clearly states that NCUA shall provide pass-through share insurance for IOLTAs, and it defines an IOLTA. Accordingly, share insurance coverage for IOLTAs took effect with the enactment of the Insurance Parity Act, even without any regulatory action on NCUA's part. No implementing regulations were required to effect this aspect of the legislation. However, the proposed rule addressed other aspects of the legislation that did require NCUA to take regulatory action.

Additionally, some of the language in the Insurance Parity Act is ambiguous and left certain questions unanswered. For example, these questions included:

- What escrow accounts should be included in the category ''other similar escrow accounts'' as that phrase is used in the Insurance Parity Act?
- Should prepaid card programs, such as payroll cards, be considered IOLTAs or other similar escrow accounts for share insurance purposes?
- What recordkeeping requirements must be satisfied to receive share insurance on IOLTAs and other similar escrow accounts?
- Does the enhanced share insurance coverage provided by the Insurance Parity Act affect the Bank Secrecy Act (BSA) requirements for insured credit unions?
- Should nonmember funds kept in a federal credit union as a result of the enhanced share insurance coverage provided by the Insurance Parity Act count towards a federal credit union's limit on the receipt of payments on shares from nonmembers pursuant to § 701.32 of NCUA's regulations?

As discussed below, NCUA analyzed the above questions and proposed how each should be addressed. However, NCUA requested public comment on alternative interpretations of the Insurance Parity Act and alternative regulatory approaches that commenters believe are appropriate and beneficial.

B. Pass-Through Share Insurance for IOLTAs and Other Similar Escrow Accounts

As noted above, the Insurance Parity Act defines ''pass-through share insurance,'' with respect to IOLTAs and other similar escrow accounts, as ''insurance coverage based on the interest of each person on whose behalf funds are held in such accounts by the attorney administering the IOLTA or the escrow agent administering a similar escrow account, in accordance with regulations issued by [NCUA].''[15] This definition is clear and accurate, as well as consistent with how NCUA currently defines ''pass-through share insurance'' in its share insurance regulations relating to coverage of certain employee benefit plans.[16] Accordingly, the Board proposed to adopt that statutory definition of ''pass-through share insurance'' as the regulatory definition of that term in part 745.

C. What escrow accounts should be included in the category ''other similar escrow accounts'' as that phrase is used in the Insurance Parity Act?

The Insurance Parity Act provides that, for share insurance purposes, IOLTAs are treated as escrow accounts. It also provides that pass-through insurance coverage is available for other kinds of escrow accounts that are similar to IOLTAs. However, the Insurance Parity Act does not define or further describe what constitutes an escrow account that is ''similar'' to an IOLTA.

The Insurance Parity Act defines an IOLTA as ''a system in which lawyers place certain client funds in interest-bearing or dividend-bearing accounts, with the interest or dividends then used to fund programs such as legal service organizations who provide services to clients in need.'' NCUA is tasked with defining the kinds of escrow accounts that are similar enough to IOLTAs to be eligible for pass-through share insurance as discussed above. In the proposed rule, the Board acknowledged the challenge to describe with precision the circumstances under which such coverage should be provided. There are many different kinds of escrow accounts in use, with varying forms and structures. Also, the Board noted in the proposed rule that ''similar'' is a relative term that may necessitate NCUA reviewing escrow accounts with varying structures on a case-by-case basis to determine which are similar enough to IOLTAs to receive pass-through insurance coverage.

Despite the amorphous nature of escrow accounts, the Board noted in the proposed rule the importance of providing insured credit unions with as much regulatory clarity and certainty as possible about which escrow accounts are considered similar enough to IOLTAs to receive pass-through insurance coverage. NCUA seeks to avoid, to the greatest extent possible, the need to make case-by-case analyses of escrow accounts, as that process is labor intensive and inefficient and it creates uncertainty for insured credit unions.

There are some escrow accounts whose nature and structure are immediately recognizable as similar to an IOLTA. For example, the Board noted in the proposed rule that typical real estate escrow accounts and prepaid funeral accounts have attributes that, while not identical to IOLTAs, are similar to IOLTAs and should be entitled to pass-through share insurance coverage. One of the signature characteristics common to typical real estate escrow accounts, prepaid funeral

[13] *Id.*

[14] 80 FR 27109 (May 12, 2015).

[15] Pub. L. 113–252, 128 Stat. 2893 (2014).

[16] 12 U.S.C. 1787(k)(4); 12 CFR 745.9–2.

accounts, and IOLTAs is that each of these kinds of account has a licensed professional or other individual serving in a fiduciary capacity and holding funds for the benefit of a client as part of some transaction or business relationship.

The Board proposed, at a minimum, to extend pass-through share insurance coverage to escrow accounts with these characteristics, up to the limits provided for in part 745 of NCUA's regulations. However, the Board encouraged commenters to identify and discuss other kinds of escrow accounts, in addition to real estate and prepaid funeral accounts, which also have characteristics similar enough to IOLTAs to warrant pass-through insurance coverage.

Specifically, the Board requested comment on the following: (1) what kinds of escrow accounts should qualify for pass-through share insurance coverage and why; (2) what specific attributes these escrow accounts need to possess to obtain coverage; (3) how NCUA can define these accounts to capture their essence and minimize the need for case-by-case analyses of their characteristics; and (4) any other aspect of this topic. In addition, the Board specifically invited comment on whether it is appropriate to limit the pool of other similar escrow accounts to those where a recognizable fiduciary duty is owed by the escrow agent to the principal.

D. Prepaid Cards

In the proposed rule, the Board welcomed comments on NCUA's proposed treatment of prepaid card programs. To put this issue in context and provide background information about such programs, the Board included the following excerpt on prepaid cards from the Federal Financial Institutions Examination Council's Web site.[17]

The market for prepaid cards, sometimes called stored-value cards, is one of the fastest-growing segments of the retail financial services industry. While the terms prepaid cards and stored-value cards are frequently used interchangeably, differences exist between the two products.

Prepaid cards are generally issued to persons who deposit funds into an account of the issuer. During the funds deposit process, most issuers establish an account and obtain identifying data from the purchaser (*e.g.,* name, phone number, etc.).

Stored-value cards do not typically involve a deposit of funds as the value is prepaid and stored directly on the cards. Because its business model requires cardholders to pay in advance, it substantially eliminates the nonpayment risk for the issuing financial institution. The functionality of this product is leading to a wide range of card programs that operate in either closed or open-loop systems, and program innovation has resulted in the development of systems that operate in both structures. Closed-loop systems are generally retailer/issuer business models, while general-purpose cards issued by financial institutions tend to operate in open-loop systems. Open-loop system prepaid cards are processed using the same systems as the branded network cards (MasterCard, Visa, American Express, and Discover) and offer the same functionality.

In the past, prepaid cards were mostly issued by nonfinancial businesses in limited deployment environments such as mass transit systems and universities. In recent years, prepaid cards have grown significantly as financial institutions and nonbank organizations target under-banked markets and overseas remittances. Technological innovations in the way information is stored (*e.g.,* magnetic strip or computer chip), the physical form of the payment mechanism, and biometric account access and authentication are converging to create efficiencies, reduce transaction times at the point of sale, and lower transaction costs.

There are several types of prepaid cards, including gift, payroll, travel, and teen cards. Either the consumer or an issuer funds the account for the card. When a consumer uses the card to make a purchase, the merchant deducts the amount of the purchase from the card. Transaction authorization can take place through an existing network, a chip stored on the card, or information coded on the magnetic strip. Once the stored value in the card is exhausted, customers may either replenish the value or acquire a new card.

In addition to cards, stored-value payment devices are emerging in a variety of other physical forms, most notably key fobs. With the recent introduction of contactless payment technologies, use of chips (smart cards), radio frequency identification (RFID), and near-field communication (NFC) payment devices are becoming more innovative. Initiatives are underway to introduce mobile phones with integrated microchips that can initiate a payment when waved over a specially-equipped reader. The integrated chip can store value, authenticate a consumer, or contain consumer preferences and loyalty program information that can be used for marketing purposes.

Prepaid cards may be subject to legal and regulatory risks. For example, the Federal Reserve Board's final rule on Regulation E, issued August 30, 2006, extended its applicability to prepaid cards used for consumers' payroll. The Federal Reserve Board noted that it will monitor the development of other card products and may reconsider Regulation E coverage as these products continue to develop. State laws vary widely with regard to fees. Additionally, financial institutions should ensure that prepaid card product programs comply with the Bank Secrecy Act and anti-money laundering guidance.

The proposed rule articulated NCUA's general position that prepaid card programs, including payroll cards, should not be considered escrow accounts similar to IOLTAs for share insurance purposes because the characteristics that define an attorney's relationship with, and the fiduciary duties owed to, the attorney's clients are typically not present in the prepaid card scenario. An IOLTA and a prepaid card program serve very different purposes and typically have significantly different structures. For this and other reasons, a prepaid card program is not sufficiently similar to an IOLTA, for purposes of the Insurance Parity Act, to qualify for pass-through share insurance coverage as an escrow account similar to an IOLTA. However, the Board encouraged comments and requested information about prepaid card programs that commenters thought may be sufficiently similar to IOLTAs for share insurance purposes.

E. Insurance for Prepaid Cards Outside of the Insurance Parity Act Context

The Board explained in the proposed rule that, under certain circumstances, some prepaid card programs currently may be entitled to pass-through share insurance coverage under other aspects of part 745 unrelated to IOLTAs and the Insurance Parity Act. For example, if funds in a prepaid card program deposited in a federally insured credit union qualify as a share account that can be traced back to a specific owner in a specific dollar amount and the owner is a member of the credit union where the funds are kept, then those funds would be entitled to share insurance pursuant to the current terms and limits of part 745.

F. What recordkeeping requirements must be met to receive share insurance on IOLTAs and other similar escrow accounts?

As noted in the proposed rule, FDIC's deposit insurance regulations provide that the FDIC will recognize a claim for insurance coverage based on a fiduciary relationship (such as an IOLTA or escrow account) only if the relationship is expressly disclosed, by way of specific references, in the deposit account records of the insured depository institution.[18] FDIC's deposit insurance regulations further provide that if the deposit account records of an insured depository institution disclose the existence of a relationship which might provide a basis for additional insurance, then the details of the relationship and the interests of other parties in the account must be ascertainable either from the deposit

[17] *http://ithandbook.ffiec.gov/it-booklets/retail-payment-systems/payment-instruments,-clearing,-and-settlement/card-based-electronic-payments/prepaid-(stored-value)-cards.aspx*

[18] 12 CFR 330.5(b)(1).

account records of the insured depository institution or from records maintained, in good faith and in the regular course of business, by the depositor or by some person or entity that has undertaken to maintain such records for the depositor.[19]

Similarly, NCUA's current share insurance regulations provide that the account records of an insured credit union shall be conclusive as to the existence of any relationship pursuant to which the funds in the account are deposited and on which a claim for insurance coverage is founded. Examples of such relationships include those involving trustees, agents, and custodians.[20] These kinds of accounts also include IOLTAs and other escrow accounts similar to IOLTAs. NCUA will not recognize a claim for insurance based on such a relationship in the absence of such disclosure. Further, NCUA's share insurance regulations provide that if the account records of an insured credit union disclose the existence of a relationship which may provide a basis for additional insurance, then the details of the relationship and the interests of other parties in the account must be ascertainable either from the records of the credit union or the records of the member maintained in good faith and in the regular course of business.[21]

IOLTAs and other similar escrow accounts exemplify the kinds of accounts in which a relationship exists upon which a claim for insurance coverage could be founded. They are among the kinds of accounts that NCUA's regulations are intended to cover. Accordingly, based on NCUA's current share insurance regulations, for IOLTAs and other similar escrow accounts to receive the share insurance coverage to which they are entitled, the recordkeeping provisions of NCUA's share insurance regulations must be satisfied. No additional recordkeeping requirements are imposed by the Insurance Parity Act. Therefore, the Board did not propose any regulatory changes or additions in this regard, but nonetheless welcomed comments on this topic.

G. Does the enhanced share insurance coverage provided by the Insurance Parity Act affect the BSA requirements for insured credit unions?

The proposed rule did not intend to discuss in detail an insured credit union's BSA requirements. Rather, NCUA intended it to remind insured credit unions of their continued BSA responsibilities with respect to IOLTAs and other similar escrow accounts. This is especially true given that IOLTAs and other similar escrow accounts will begin to contain funds for nonmembers which are likely not known by the credit unions in which the accounts are kept. The Board did not propose to make any regulatory changes in this regard, but nonetheless welcomed comments.

F. Do nonmember funds kept in a credit union as a result of the enhanced share insurance coverage provided by the Insurance Parity Act count towards a federal credit union's limit on the receipt of payments on shares from nonmembers pursuant to § 701.32 of NCUA's regulations?

The Insurance Parity Act provides that IOLTAs and other similar escrow accounts are considered member accounts if the attorney administering the IOLTA or the escrow agent administering the escrow account is a member of the insured credit union in which the funds are held. In the proposed rule, the Board stated that if an IOLTA or other similar escrow account satisfies the above requirement and, therefore, is treated by the Insurance Parity Act as a member account, then the IOLTA or other similar escrow account also should be considered a member account for purposes of § 701.32 of NCUA's regulations. Therefore, funds in those member accounts do not count towards a federal credit union's limit on the receipt of payments on shares from nonmembers pursuant to § 701.32 of NCUA's regulations.[22] Accordingly, the Board did not propose any regulatory changes in this regard, but nonetheless welcomed comments.

III. Public Comments on the April 2015 Proposed Rule

NCUA received eighteen comment letters on the proposed rule: four from credit unions; three from national trade associations; nine from credit union leagues; one from an attorney; and one from a credit card company. Below is a summary of those comments.

A. General Comments

Generally, all of the commenters supported the proposed rule. However, as explained in more detail below, several commenters offered suggestions for additional types of escrow accounts that they believed should be afforded enhanced pass-through share insurance coverage. In addition, most commenters advocated for pass-through share insurance coverage on prepaid cards but did not provide legal analysis to support such expanded coverage.

B. Definition of ''Pass-Through Share Insurance''

All of the commenters that addressed this definition supported the proposed use of the statutory definition of ''pass-through share insurance.'' Accordingly, this final rule adopts the proposed definition without change.

C. Other Similar Escrow Accounts and Prepaid Cards

As a preface to the following discussion of the commenters' positions on escrow accounts and prepaid cards, a reminder of how NCUA currently insures those accounts and how that might change as a result of the Insurance Parity Act will provide additional clarity. In the written comments received and in other forms of communications NCUA has had with various stakeholders on this topic, there appears to be some degree of misunderstanding.

Accordingly, the Board reiterates and emphasizes that, even in the absence of the Insurance Parity Act, it currently insures certain escrow accounts and prepaid cards under current share insurance provisions. The Insurance Parity Act amends the membership requirements associated with covering those kinds of accounts, but it does not organically create or authorize such coverage as though such authority did not previously exist.

The membership requirements in the Insurance Parity Act shift the focus from the membership status of the principals, the actual owners of the funds, to the membership status of: (1) The attorney administering the IOLTA; (2) the escrow agent administering the escrow account; and (3) if prepaid cards are deemed ''other similar escrow accounts,'' then the party associated with a prepaid card that is acting in a similar capacity as the attorney or escrow agent. As discussed more fully below, in many instances, the shift in whose membership status matters will make it logistically easier for certain kinds of accounts to obtain enhanced pass-through coverage, for example IOLTAs. However, for some kinds of accounts including certain prepaid cards if they are determined to qualify, this shift in focus could actually make it significantly more difficult to obtain enhanced pass-through coverage.

Further, any increase in an insured credit union's total amount of insured shares as a result of the enhanced coverage provided by the Insurance Parity Act will require that credit union to increase proportionally the 1%

[19] 12 CFR 330.5(b)(2).

[20] 12 CFR 745.2(c)(1).

[21] 12 CFR 745.2(c)(2).

[22] 12 CFR 701.32.

deposit it is required to maintain with the National Credit Union Share Insurance Fund (NCUSIF) pursuant to the Act.[23] Finally, the Board notes that the shift in membership focus in the Insurance Parity Act represents a rare departure from the Act's general requirement that share insurance coverage be provided only to credit union members. Accordingly, this final rule respects the major implications of such an exception in interpreting congressional intent.

1. Escrow Accounts

Several commenters suggested other types of accounts that they believed satisfies the definition of ''other similar escrow accounts'' and, therefore, should be afforded pass-through share insurance coverage in the same manner as an IOLTA, specifically meaning that the membership status of the principal, the owner of the funds, is irrelevant provided the escrow agent is a member of the credit union in which the founds are held. Those suggestions included: (1) Agent-trust fiduciary accounts such as vacation rental security accounts and cemetery trust accounts; (2) any escrow account used to facilitate a purchase transaction such as the purchase of boats, commercial vessels, and planes; (3) any account established by a licensed or registered escrow agent; (4) landlord/tenant accounts; and (5) public adjuster accounts and education disbursement accounts.

As indicated in the proposed rule, there are many escrow accounts currently in use that are similar to IOLTAs and entitled to the enhanced pass-through insurance contemplated by the Insurance Parity Act. The Board supports providing enhanced insurance coverage for those accounts. In the proposal, the Board requested that commenters specifically identify the attributes of those accounts they believe should receive enhanced pass-through coverage and to define the essence of those accounts. Such a detailed description would help NCUA identify certain accounts as similar to IOLTAs without the need for a case-by-case analysis of escrow accounts. Unfortunately, while commenters identified broad and general categories of escrow accounts, they did not provide specifics in a way that allows NCUA to eliminate the need for case-by-case review. This is not surprising as there is a lack of universally accepted titles to describe certain kinds of escrow accounts. Further, there are many kinds of escrow accounts that are similar to each other but which are not structurally or functionally identical which further hampers precise labeling.

It is this lack of uniformity in language, function, and organizational structure that makes it difficult for NCUA to promulgate regulations that identify by name the escrow accounts eligible for enhanced share insurance coverage. Despite this obstacle, NCUA will provide enhanced share insurance coverage to certain escrow accounts, in addition to real estate escrow accounts and prepaid funeral accounts as proposed, on a case-by-case basis, provided such escrow accounts satisfy the definition of ''other similar escrow account'' as defined in both the proposed rule and this final rule.[24] Specifically, ''other similar escrow account'' means an account where a licensed professional or other individual serving in a fiduciary capacity holds funds for the benefit of a client as part of a transaction or business relationship, such as real estate escrow accounts and prepaid funeral accounts.

Two commenters advocated a less restrictive definition of ''other similar escrow account'' that would consider the existence of a fiduciary relationship as an indicia of evidence of an ''other similar escrow account,'' but would not make it a determinative factor. These commenters stated that a less restrictive definition would allow for inclusion of accounts that, while not rising to the level of a fiduciary relationship, exhibit trust and confidence and involve the holding of funds on behalf of another. The commenters offered landlord/tenant accounts as examples of accounts that would fall into that broader definition. However, several other commenters disagreed with having a broader definition of ''other similar escrow account.'' Instead, these commenters preferred NCUA's proposed requirement that an actual fiduciary relationship exist. The Board agrees with those commenters supporting the proposed definition that makes a fiduciary relationship a required component for enhanced share insurance. Congress made it clear that only escrow accounts that are similar to IOLTAs are to be provided with enhanced pass-through coverage. The lawyer-client relationship is largely characterized by the fiduciary duty lawyers owe their clients. Accordingly, requiring the fiduciary component to be present with respect to providing enhanced pass-through insurance coverage for ''other similar escrow accounts'' comports with congressional intent.

Two commenters stated that NCUA should clarify that real estate escrow accounts and prepaid funeral accounts qualify as ''other similar escrow accounts'' that are eligible for enhanced insurance coverage, but that the universe of ''other similar escrow accounts'' is not limited to those two named accounts. The Board made this clear in the proposed rule, but, as discussed above, the Board reiterates it here nonetheless.

One commenter argued that enhanced pass-through coverage should be expanded to include accounts held and administered by entities, such as law firms, real estate agencies, and funeral homes. This commenter stated that, as written, the proposed rule could be read as only permitting pass-through share insurance for accounts opened and held by individuals such as a lawyer or real estate agent, but not by their firms or brokerages. The Board agrees with the commenter that coverage should not be limited to accounts held and administered only by individual professionals but not their firms, and confirms the proposed rule did not have that effect. However, accounts opened by a law firm instead of an individual attorney, for example, will still need to satisfy the fiduciary relationship requirement. Accordingly, law firms and other entities administering the accounts must comply with all relevant law to maintain that relationship, which may or may not require an individual lawyer or escrow agent to also be named on the account.

Further, the Insurance Parity Act did not eliminate the membership requirement to obtain share insurance. Rather, it shifted the membership requirement from the owner of funds to the administrator of the IOLTA or escrow account. That means, for example, that a law firm that wishes to open an escrow account at a credit union must meet the credit union's field of membership criteria. NCUA recognizes, however, that a law firm, as an entity, may have difficulty meeting the membership criteria of the credit union of its choosing. Accordingly, if the firm itself does not qualify for membership in a particular credit union, but one of its lawyers does, then the firm may maintain an IOLTA in that credit union if the eligible lawyer joins the credit union. This is consistent with congressional intent to place credit

[23] 12 U.S.C. 1782(c)(1).

[24] 80 FR 27109, 27114 (May 12, 2015). In the proposed rule, NCUA used the term ''realtor'' account to describe what is being called in this final rule a ''real estate escrow'' account. NCUA is changing terminology in this final rule at the suggestion of two commenters, who have indicated that the term ''realtor'' is a federally registered collective membership mark. NCUA agrees it is better to use the more generic term, but confirms that there is no substantive change being made from the proposed rule to the final.

unions on a more level playing field with banks with respect to IOLTAs and other similar escrow accounts. It is the responsibility of the law firm or other entity wishing to establish an escrow account, however, to first determine if state and other applicable law and rules of professional conduct allow for such an arrangement. This final rule does not authorize any parties to create an illegal or unethical account relationship.

2. Prepaid Cards

Generally, all of the commenters that addressed prepaid cards believed NCUA should include them as ''other similar escrow accounts.'' However, the commenters did not provide sufficient legal analysis to support their positon. Rather, these commenters generally suggested that NCUA should offer the same insurance coverage as FDIC on prepaid cards and that failure to do so would place credit unions at a competitive disadvantage. In this regard, no commenters acknowledged that NCUA currently insures some prepaid cards held by members and that, except for the membership requirement, NCUA's analysis for calculating this coverage is essentially the same as the FDIC's analysis.

One commenter provided a detailed analysis of the prepaid card industry and suggested ways in which NCUA could offer pass-through share insurance coverage on these accounts. This commenter divided prepaid cards into two categories: general-purpose reloadable cards (GPRs) and cards that allow for the disbursement of funds. The commenter stated that GPRs function like checking or share draft accounts, without checks or drafts, and allow a member to add or load additional funds onto the card. Cards for the disbursement of funds are used by employers and governments to distribute salaries and other benefits. The commenter did not specifically explain why these mechanisms for accessing funds are escrow accounts or how the distributors of such products would obtain the required credit union membership under the Insurance Parity Act.

This commenter went on to state that prepaid account funds are typically, but not always, deposited in omnibus accounts in a bank or a credit union in a master account held in the name of the prepaid card program for the benefit of the individual accountholders in the program. Individual cardholder funds are typically, but not always, tracked on a subaccount basis and recorded by the prepaid card issuer, processor, or prepaid program manager. The commenter acknowledged that while an attorney-client fiduciary relationship is not present, the Electronic Fund Transfer Act [25] imposes the same or similar type of fiduciary obligations on the issuer with respect to disbursing and safeguarding funds in accordance with the instructions of the account holder. The commenter argued that, as a result, NCUA should provide pass-through share insurance on prepaid cards even where the cardholder is not a member of the credit union where the funds are held. The Board notes that Regulation E, which implements portions of the Electronic Fund Transfer Act, views escrow accounts and certain prepaid cards such as payroll cards as quite different for regulatory purposes, which further highlights the dissimilarities between certain prepaid cards and escrow accounts.

One commenter stated that pass-through coverage should be provided on cards where the owners of those cards are members of the credit union where the funds are held. As noted above, NCUA currently does this under appropriate circumstances.

Several commenters argued that NCUA currently, and irrespective of the Insurance Parity Act, has the authority to permit prepaid cards to be considered member accounts. These commenters stated that the FCU Act provides the Board with broad latitude in defining a member account and that NCUA regulations and legal opinions have created a precedent for allowing insurance coverage to nonmembers in certain instances. We agree that these statements are true but only in certain instances as discussed above.

These commenters further reasoned that any account opened at a credit union is a ''member account,'' thereby allowing the Board to authorize insurance coverage for payroll cards or other accounts established by credit union members that hold nonmember accounts. The Board does not agree that this statement is legally accurate.

One commenter stated that NCUA should provide pass-through share insurance coverage on prepaid cards where a fiduciary relationship can be clearly established and the fiduciary is a member of the credit union. Another commenter stated that NCUA should provide pass-through share insurance coverage only on those prepaid card accounts that have the characteristics of ''other similar escrow accounts.'' This commenter suggested that NCUA could stipulate that a qualifying prepaid card account must meet the proposed record keeping requirements for escrow accounts, thereby eliminating those prepaid card accounts that lack the characteristics of escrow accounts because the record keeping requirements are not part of the business model of these types of products. Conversely, the commenter reasoned that prepaid card accounts that meet the record keeping requirements would present similar characteristics of escrow accounts. Because ''other similar escrow accounts,'' as that term is defined in this rule, are entitled to enhanced pass-through insurance under the Insurance Parity Act, a prepaid card satisfying that definition would be entitled to such treatment. However, prepaid cards currently do not satisfy that definition.

Two other commenters also advocated pass-through share insurance on prepaid card accounts that establish a similar relationship as escrow accounts and have similar characteristics, including payroll cards and prepaid gift cards. These commenters, however, did not elaborate on how to assess those characteristics or the level of similarity.

Finally, one commenter suggested that NCUA should simply stipulate that credit unions can exercise the same powers authorized for banks under 12 CFR part 300 or allow credit unions to request to have all of the same trust powers that are exercised by banks. This would exceed NCUA's authority under the FCU Act and the Insurance Parity Act.

For many years, the credit union industry has requested that NCUA and Congress enable the NCUSIF to insure IOLTAs on a pass-through basis without regard to the membership status of the lawyer's clients. The essential purpose of the Insurance Parity Act is to provide that relief with respect to IOLTAs. Further, the Insurance Parity Act granted additional enhanced coverage for escrow accounts similar to IOLTAs, which is relief the credit union industry historically has not requested.

The Insurance Parity Act limits enhanced coverage to a narrow universe of accounts. The Insurance Parity Act is not intended to eliminate every distinction between banks and credit unions or alter how every kind of credit union account may be created, structured, and insured. The fact that credit unions, generally speaking, must only serve their members is a critical distinction between banks and credit unions. While there are some statutory exemptions from the membership requirements applicable to accounts the NCUSIF may insure, the general principle of share insurance coverage is that coverage is member-based. Accordingly, in interpreting whether prepaid cards are to be considered

[25] 15 U.S.C. 1693 *et seq.*

''other similar escrow accounts'' for purposes of the Insurance Parity Act, NCUA must respect the statutory limitations in place and interpret the Insurance Parity Act in a responsible, justifiable, and not overly broad manner.

NCUA's research on prepaid cards has yielded results similar to those of the Federal Financial Institutions Examination Council and the FDIC, although those two entities may use different terminology to discuss prepaid cards. Prepaid cards are an ever expanding vehicle in the financial services marketplace, and they seem to be constantly evolving into new shapes and forms. They come in many varieties and are structured in many different ways. This variety and continuous evolution makes it difficult to devise a single, universal, and useful definition that applies to all prepaid cards.

In its General Counsel's Opinion No. 8, the FDIC discussed prepaid products, in relevant part as follows:

> Stored value products, or ''prepaid products,'' may be divided into two broad categories: (1) Merchant products; and (2) bank products.
>
> A merchant card (also referred to as a ''closed-loop'' card) enables the cardholder to collect goods or services from a specific merchant or cluster of merchants. Generally, the cards are sold to the public by the merchant in the same manner as gift certificates. Examples are single-purpose cards such as cards sold by book stores or coffee shops. Another example is a prepaid telephone card.
>
> Merchant cards do not provide access to money at a depository institution. When a cardholder uses the card, the merchant is not paid through a depository institution. On the contrary, the merchant has been prepaid through the sale of the card. In the absence of money at a depository institution, no insured ''deposit'' will exist under section 3(l) of the FDI Act. *See FDIC* v. *Philadelphia Gear Corporation,* 476 U.S. 426 (1986).
>
> Bank cards are different. Bank cards (also referred to as ''open-loop'' cards) provide access to money at a depository institution. In some cases, the cards are distributed to the public by the depository institution itself. In many cases, the cards are distributed to the public by a third party. For example, in the case of ''payroll cards,'' the cards often are distributed by an employer to employees. In the case of multi-purpose ''general spending cards'' or ''gift cards,'' the cards may be sold by retail stores to customers.
>
> A bank card usually enables the cardholder to effect transfers of funds to merchants through point-of-sale terminals. A bank card also may enable the cardholder to make withdrawals through automated teller machines (''ATM's''). In other words, a bank card provides access to money at a depository institution. The money is placed at the depository institution by the card distributor (or other company in association with the card distributor), but is transferred or withdrawn by the cardholders. In some cases, the card is ''reloadable'' in that additional funds may be placed at the depository institution for the use of the cardholder.
>
> This General Counsel's opinion does not address merchant cards because such cards do not involve the placement of funds at insured depository institutions. The applicability of this General Counsel's opinion is limited to bank cards and other nontraditional access mechanisms, such as computers, that provide access to funds at insured depository institutions.[26]

Merchant cards, as discussed above, do not involve a deposit of funds at a financial institution by the card holder as the value is prepaid and stored directly on the cards. Accordingly, this kind of vehicle is clearly not insurable under the Insurance Parity Act as there is no account held at a federally insured credit union.

Because open loop cards, which FDIC refers to as bank cards, provide access to money at an insured depository institution such as a federally insured credit union, NCUA has examined these instruments carefully to determine if they should be insured as escrow accounts similar to IOLTAs. The Board noted in the proposed rule that open loop cards are currently insured by the NCUSIF under certain circumstances, which include the requirement that the cardholder be a member of the federally insured credit union in which the funds are held. The Board also noted in the proposed rule that prepaid card programs, including open loop cards such as payroll cards, should not be considered escrow accounts similar to IOLTAs for share insurance purposes because, among other reasons, the characteristics that define an attorney's relationship with, and the fiduciary duties owed to, the attorney's clients are typically absent in the open loop prepaid card scenario. Commenters argued that there is some element of a trust relationship in the prepaid card scenario but generally acknowledged that it does not rise to the level of an attorney-client relationship. NCUA's ongoing research of prepaid cards supports the position NCUA took in the proposed rule that an IOLTA and a prepaid card program serve very different purposes for the client and card holder and have drastically different structures.

In addition to the structural and functional dissimilarities between open loop cards and IOLTAs, open loop cards are not escrow accounts as that term is commonly understood and contemplated in the Insurance Parity Act. Further, in evaluating prepaid card products, the FDIC has determined that while not all prepaid card programs are structured the same, it generally views companies that sell or distribute general purpose prepaid cards as deposit brokers and the funds they deposit as brokered deposits. While this does not directly address whether open loop cards are escrow accounts similar to IOLTAs, FDIC's position on open loop cards supports NCUA's determination in this regard. More specifically, a deposit broker serves a drastically different purpose than an attorney representing a client, and a brokered deposit placed in a depository institution to obtain a high investment yield also is drastically different from funds a client places in trust with its lawyer as part of their legal relationship. The fact that the characteristics and purposes of an IOLTA and a brokered deposit are so dissimilar supports NCUA's conclusion that open loop cards are not escrow accounts similar to IOLTAs for purposes of the Insurance Parity Act and, therefore, not entitled to pass-through coverage unless the cardholder is a member of the federally insured credit union in which the funds are deposited and satisfies other criteria discussed above.

In conducting this analysis, NCUA paid particular attention to payroll cards as many in the credit union industry seemed particularly interested in those accounts. NCUA's research shows that there are several different kinds of payroll card products, including some that while called a ''payroll card'' may actually be a debit card product sponsored by a third party vendor that is not the cardholder's employer. NCUA's analysis revealed that many of the same barriers to enhanced pass-through coverage that exists for other types of prepaid cards also apply to payroll cards. More specifically, the structure and characteristics of a payroll card are not that of an escrow account that is similar to an IOLTA. The Board notes, however, that even without the special membership treatment provided by the Insurance Parity Act, the NCUSIF currently insures on a pass-through basis those payroll cards that satisfy NCUA's regular account and membership requirements as discussed above.

In conclusion, NCUA will expand its insurance coverage pursuant to the Insurance Parity Act for IOLTAs and other accounts that satisfy the definition of ''other similar escrow account,'' as defined herein. NCUA also will continue to insure on a pass-through

[26] FDIC General Counsel's Opinion No. 8—Insurability of Funds Underlying Stored Value Cards and Other Nontraditional Access Mechanisms; 74 FR 67155 (November 13, 2008).

basis those prepaid card products and escrow accounts that are *not* similar to IOLTAs as it currently does based on the provisions of part 745, but will not afford those accounts enhanced coverage under the Insurance Parity Act. NCUA will continue to monitor the prepaid card industry and its evolution and may revisit this subject in the future if necessary.

E. Recordkeeping Requirements

Only two commenters addressed this topic. One commenter fully supported the proposed language, while one commenter recommended that specific fields be included on the 5300 Call Report to capture the value of negotiable instruments, IOLTAs, and prepaid cards. This commenter believed that the additional fields would assist in accurate reporting of balances covered by federal insurance. This final rule maintains the recordkeeping requirements as proposed.

IV. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.[27] For purposes of this analysis, NCUA considers small credit unions to be those having under $50 million in assets.[28] This rule implements the Insurance Parity Act, which enhances share insurance coverage for IOLTAs and other similar escrow accounts. Accordingly, NCUA certifies the rule will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.[29] For purposes of the PRA, a paperwork burden may take the form of either a reporting or a record-keeping requirement, both referred to as information collections. This rule, which enhances share insurance coverage for IOLTAs and other similar escrow accounts, will not create new paperwork burdens or modify any existing paperwork burdens.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined this rule does not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[30]

List of Subjects in 12 CFR Part 745

Credit, Credit unions, Share insurance.

By the National Credit Union Administration Board on December 17, 2015.

Gerard Poliquin,

Secretary of the Board.

For the reasons stated above, NCUA amends 12 CFR part 745 as follows:

PART 745—SHARE INSURANCE AND APPENDIX

■ 1. The authority for part 745 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789; title V, Pub. L. 109–351; 120 Stat. 1966.

■ 2. Add § 745.14 to subpart A to read as follows:

§ 745.14 Interest on lawyers trust accounts and other similar escrow accounts.

(a)(1) *Pass-through share insurance.* The deposits or shares of any interest on lawyers trust account (IOLTA) or other similar escrow account in an insured credit union are insured on a ''pass-through'' basis, in the amount of up to the SMSIA for each client and principal on whose behalf funds are held in such accounts by either the attorney administering the IOLTA or the escrow agent administering a similar escrow account, in accordance with the other share insurance provisions of this part.

(2) Pass-through coverage will only be available if the recordkeeping requirements of § 745.2(c)(1) of this part and the relationship disclosure requirements of § 745.2(c)(2) of this part are satisfied. In the event those requirements are satisfied, funds attributable to each client and principal will be insured on a pass-through basis in whatever right and capacity the client or principal owns the funds. For example, an IOLTA or other similar escrow account must be titled as such and the underlying account records of the insured credit union must sufficiently indicate the existence of the relationship on which a claim for insurance is founded. The details of the relationship between the attorney or escrow agent and their clients and principals must be ascertainable from the records of the insured credit union or from records maintained, in good faith and in the regular course of business, by the attorney or the escrow agent administering the account. NCUA will determine, in its sole discretion, the sufficiency of these records for an IOLTA or other similar escrow account.

(b) *Membership requirements and treatment of IOLTAs.* For share insurance purposes, IOLTAs are treated as escrow accounts. IOLTAs and other similar escrow accounts are considered member accounts and eligible for pass-through share insurance if the attorney administering the IOLTA or the escrow agent administering the escrow account is a member of the insured credit union in which the funds are held. In this circumstance, the membership status of the clients or the principals is irrelevant.

(c) *Definitions.* (1) For purposes of this section:

(i) *Interest on lawyers trust account and IOLTA* mean a system in which lawyers place certain client funds in interest-bearing or dividend-bearing accounts, with the interest or dividends then used to fund programs such as legal service organizations who provide services to clients in need.

(ii) *Other similar escrow account* means an account where a licensed professional or other individual serving in a fiduciary capacity holds funds for the benefit of a client or principal as part of a transaction or business relationship. Examples of such accounts include, but are not limited to, real estate escrow accounts and prepaid funeral accounts.

(iii) *Pass-through share insurance* means, with respect to IOLTAs and other similar escrow accounts, insurance coverage based on the interest

[27] 5 U.S.C. 603(a).

[28] On September 24, 2015, the Board published Interpretative Ruling and Policy Statement 15–1, which amends the definition of small credit unions for purposes of the RFA to credit unions with assets of less than $100 million. 80 FR 57512 (Sept. 24, 2015). This change, however, does not take effect until November 23, 2015, which is after the date this rule was issued by the Board.

[29] 44 U.S.C. 3507(d); 5 CFR part 1320.

[30] Public Law 105–277, 112 Stat. 2681 (1998).

of each person on whose behalf funds are held in such accounts by the attorney administering the IOLTA or the escrow agent administering a similar escrow account.

(2) The terms ''interest on lawyers trust account'', ''IOLTA'', and ''pass-through share insurance'' are given the same meaning in this section as in 12 U.S.C. 1787(k)(5).

[FR Doc. 2015–32164 Filed 12–24–15; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 150825778–5999–01]

RIN 0694–AG64

Russian Sanctions: Addition of Certain Persons to the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by adding sixteen persons under seventeen entries to the Entity List. The sixteen persons who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. BIS is taking this action to ensure the efficacy of existing sanctions on the Russian Federation (Russia) for violating international law and fueling the conflict in eastern Ukraine. These persons will be listed on the Entity List under the destinations of the Crimea region of Ukraine, Cyprus, Luxembourg, Panama, Russia, Switzerland, and the United Kingdom. Lastly, this final rule includes a clarification for how entries that include references to § 746.5 on the Entity List are to be interpreted.

DATES: This rule is effective December 28, 2015.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to Part 744 of the EAR) identifies entities and other persons reasonably believed to be involved in, or that pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy of the United States. The EAR imposes additional licensing requirements on, and limits the availability of most license exceptions for, exports, reexports, and transfers (in-country) to those persons or entities listed on the Entity List. The license review policy for each listed entity is identified in the License Review Policy column on the Entity List and the impact on the availability of license exceptions is described in the **Federal Register** notice adding entities or other persons to the Entity List. BIS places entities on the Entity List based on certain sections of part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-user Review Committee (ERC) is composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy, and where appropriate, the Treasury. The ERC makes decisions to add an entry to the Entity List by majority vote and to remove or modify an entry by unanimous vote. The Departments represented on the ERC have approved these changes to the Entity List.

Entity List Additions

Additions to the Entity List

This rule implements the decision of the ERC to add sixteen persons under seventeen entries to the Entity List. These sixteen persons are being added on the basis of § 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The seventeen entries to the Entity List are located in the Crimea region of Ukraine (seven entries), Cyprus (one entry), Luxembourg (one entry), Panama (one entry), Russia (four entries), Switzerland (one entry), and the United Kingdom (two entries). There are seventeen entries for the sixteen persons because one person is listed in two locations, resulting in one additional entry.

Under § 744.11(b) (Criteria for revising the Entity List) of the EAR, persons for whom there is reasonable cause to believe, based on specific and articulable facts, have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such persons may be added to the Entity List. The persons being added to the Entity List in this rule have been determined to be involved in activities that are contrary to the national security or foreign policy interests of the United States. Specifically, in this rule, BIS adds persons to the Entity List for violating international law and fueling the conflict in eastern Ukraine. These additions ensure the efficacy of existing sanctions on Russia. The particular additions to the Entity List and related authorities are as follows:

A. Entity Additions Consistent With Executive Order 13661

Eight entities are added based on activities that are described in Executive Order 13661 (79 FR 15533), *Blocking Property of Additional Persons Contributing to the Situation in Ukraine,* issued by the President on March 16, 2014. This Order expanded the scope of the national emergency declared in Executive Order 13660, finding that the actions and policies of the Government of the Russian Federation with respect to Ukraine—including the deployment of Russian military forces in the Crimea region of Ukraine—undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets, and thereby constitute an unusual and extraordinary threat to the national security and foreign policy of the United States.

Executive Order 13661 includes a directive that all property and interests in property that are in the United States, that hereafter come within the United States, or that are or thereafter come within the possession or control of any United States person (including any foreign branch) of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: Persons determined by the Secretary of the Treasury, in consultation with the Secretary of State to have either materially assisted, sponsored or provided financial, material or technological support for, or goods and services to or in support of a senior official of the Russian government or operate in the defense or related materiel sector in Russia. Under Section 8 of the Order, all agencies of the United States Government are directed to take all appropriate measures within their authority to carry out the provisions of the Order.

The Department of the Treasury's Office of Foreign Assets Control, pursuant to Executive Order 13661, on behalf of the Secretary of the Treasury, and in consultation with the Secretary