

# THE NATIONAL LAW REVIEW

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## New OFAC CAPTA List Targets Foreign Banks

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The Office of Foreign Assets Control (“OFAC”) recently announced the creation of a new list of sanctioned parties specific to foreign financial institutions (“FFIs”). The Correspondent Account of Payable-Through Account Sanctions (the “CAPTA List”) identifies FFIs that are prohibited or severely restricted from opening or maintaining a U.S. correspondent account.

### The CAPTA List

The CAPTA List, established on March 14, 2019, is particularly relevant to U.S. financial institutions that provide dollar-clearing services for foreign banks, and signals potential increased scrutiny and consequences for FFIs that engage with sanctioned countries and parties.

The CAPTA List replaces the “Part 561 List,” which OFAC created pursuant to certain Iran-related sanctions set forth in 31 C.F.R. Part 561. In 2012, OFAC began designating entities to the “Part 561 List,” identifying FFIs that were subject to certain prohibitions and restrictions related to the opening or maintaining of a U.S. correspondent account or a payable-through account. The sole FFI that was on the Part 561 List as of March 14, 2019, Bank of Kunlun (f.k.a. Karamay City Commercial Bank Co. Ltd.; f.k.a. Karamay Urban Credit Cooperatives), has since been moved to the new CAPTA List.

The CAPTA List also expands on the Part 561 List and opens the door for entities to be designated pursuant to other sanctions regimes. In its corresponding press release issued on March 14, the U.S. Treasury Department notes that the CAPTA List will cover entities sanctioned pursuant to a number of different sanctions programs administered by OFAC, including sanctions targeting North Korea, Russia/Ukraine, Iran, and Hizballah. Although Bank of Kunlun, which was sanctioned pursuant to Iran-related authorities, is the only FFI on the CAPTA List, we expect the list will ultimately include institutions designated pursuant to other sanctions programs.

### CAATSA Included

Indeed, the *Countering America’s Adversaries Through Sanctions Act* (“CAATSA”), a Russia sanctions bill enacted into U.S. law on August 2, 2017, requires the President to sanction any FFIs determined to knowingly facilitate a significant financial transaction on behalf of certain Russian persons designated to the SDN List. OFAC previously indicated that those FFIs determined to be engaging in sanctionable activity under this particular section of CAATSA would be added to a list that was similar to the Part 561 List and that such a list would be published on the Treasury Department’s website. The CAPTA List appears to be OFAC’s attempt to create one unified list that cuts across a variety of different sanctions regimes; however, OFAC may still sanction FFIs pursuant to other authorities with different consequences, including but not limited to the SDN List and Directive 1 of the Russia/Ukraine sanctions.

### Considerations

While it remains to be seen how aggressively OFAC will use the CAPTA List, the creation of this new list demonstrates the U.S. government is continuing to implement various U.S. sanctions authorities and potentially signals additional scrutiny for FFIs. Given the substantial penalties associated with the CAPTA List, FFIs that maintain U.S. correspondent accounts should continue to be mindful of the breadth and scope of U.S. sanctions



Article By [Laura Klick](#)  
[D. Zachary Adams](#)  
[Squire Patton Boggs \(US\) LLP](#)  
[The Anticorruption Blog](#)  
[Financial Institutions & Banking](#)  
[Global](#)  
[Criminal Law / Business Crimes](#)  
[All Federal](#)  
[All International](#)

authorities that could cause them to be designated to the list. Further, U.S. financial institutions that maintain U.S. correspondent accounts for FFIs should carefully monitor new and existing customers to ensure they are not providing correspondent banking services to entities on the CAPTA List.

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