

CLIENT ALERT

Extended Statute of Limitations for Sanctions and Export Controls Sneaks into Foreign Aid Bill

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AUTHORS

**Britt Mosman | David Mortlock | Michael J. Gottlieb | William J. Stellmach
Ahmad El-Gamal**

Despite significant controversy and deliberation, Congress was able to secure bi-partisan approval for [H.R. 815](#), which was signed by President Biden on April 24, 2024. While much of the commentary has focused on the \$95 billion foreign aid package, the mandated sale of TikTok, and other front-page aspects of the pending legislation, one aspect flew under the radar: a section of H.R. 815 that doubled the statute of limitations of the International Emergency Economic Powers Act (“**IEEPA**”) and the Trading With the Enemy Act (“**TWEA**”) from five years to ten years.¹ The extended statutes of limitations became effective immediately upon the signing of the bill into law on April 24, 2024 and will have far-reaching consequences for multinational companies and anyone else with exposure to U.S. sanctions and export controls.

IEEPA is the legislative authority underpinning most of the sanctions programs administered and enforced by the Treasury Department’s Office of Foreign Assets Control (“**OFAC**”), as well as certain export controls programs enforced by the Commerce Department’s Bureau of Industry and Security (“**BIS**”), with TWEA serving as the authorization for OFAC’s Cuba Sanctions program. Accordingly, civil violations of U.S. sanctions and certain export controls are now generally subject to a ten-year statute of limitations. The Act does not state that the extension of the statute of limitations applies retroactively, nor does it carve out an exception for violations that occurred before the Act became effective. As such, we believe that the extended statute of limitations likely will be applied both prospectively and to claims that were not expired as of April 24,

¹ See Division D, Section 2, Division E of H.R. 815, specifically, Title I, Subtitle B, Sec. 3111(a) and (b) of the FEND Off Fentanyl Act (the “**Act**”).

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2024 (i.e., the date of the act of congress extending the statute of limitations²). We also expect OFAC to amend its records and recordkeeping requirements, codified at 31 C.F.R Part 501.601, to correspond to the ten-year statute of limitations.

This change will have a significant impact on businesses that are required to comply with U.S. sanctions and export control laws. As an initial matter, businesses will need to reevaluate their sanctions and export controls policies and procedures in order to ensure that records and documentation are kept for an appropriate period of time, given the new ten-year statutes of limitations. We also anticipate a significant impact on the level and nature of due diligence conducted during M&A, international lending, and capital markets transactions. As the market responds to the extended statutes of limitations and the corresponding risks, we expect that acquirors, investors, and lenders will demand that due diligence cover significantly longer periods of time and that lookback periods in transaction documents will take into account the lengthy statutes of limitations with respect to U.S. sanctions and export controls activity. And perhaps most importantly, the time period for which companies may be held liable for a violation of sanctions or export controls laws has just become twice as long, increasing the potential liability for violations of these laws. While the effects of the extended statutes of limitations may not be felt immediately, we recommend that businesses begin evaluating their internal controls and diligence practices now to take this change into account.

² We note that 28 U.S. Code § 2462 states that, “*except as provided by an Act of Congress,*” the statute of limitations for any civil fine, penalty, or forfeiture is five years.

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If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

Britt Mosman

202 303 1057

bmosman@willkie.com

David Mortlock

202 303 1136

dmortlock@willkie.com

Michael J. Gottlieb

202 303 1442

mgottlieb@willkie.com

William J. Stellmach

202 303 1130

wstellmach@willkie.com

Ahmad El-Gamal

202 303 1142

ael-gamal@willkie.com

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