



# FinCEN ADVISORY

FIN-2018-A005

October 4, 2018

## Advisory to Financial Institutions on the Risk of Proceeds of Corruption from Nicaragua

***Growing instability in Nicaragua may result in proceeds of crime and corruption originating from senior foreign political figures entering the U.S. financial system.***

### **This advisory should be shared with:**

- *Private Banking Units*
- *Chief Risk Officers*
- *Chief Compliance Officers*
- *AML/BSA Analysts*
- *Sanctions Analysts*
- *Legal Departments*

### **Background**

The Financial Crimes Enforcement Network (FinCEN) is issuing this advisory to alert financial institutions of the increasing risk that proceeds of political corruption from Nicaragua may enter or traverse the U.S. financial system. In particular, FinCEN expects that senior foreign political figures<sup>1</sup> connected to the regime of Nicaraguan President Daniel Ortega could react to the perceived threat of further unrest, potential sanctions, or other factors by moving assets that are the proceeds of corruption out of their accounts in Nicaragua or elsewhere.

FinCEN requests that financial institutions file Suspicious Activity Reports (SARs), consistent with their existing Bank Secrecy Act (BSA) obligations, when they identify potential misuse of Nicaraguan public funds or potential proceeds of political corruption associated with senior foreign political figures connected to the Ortega regime. In its June 2018 “Advisory on Human Rights Abuses Enabled by Corrupt Senior Foreign Political Figures and Their Financial Facilitators,” FinCEN identified typologies and red flags illustrating how corrupt senior foreign political figures and their facilitators access the U.S. financial system to obscure and launder the proceeds of high-level political corruption, which may be applicable here as well.<sup>2</sup>

1. “The term ‘senior foreign political figure’ as defined in 31 CFR § 1010.605(p) is a current or former senior official in the executive, legislative, administrative, military or judicial branches of a foreign government (whether elected or not); a senior official of a major foreign political party; or a senior executive of a foreign government-owned commercial enterprise; a corporation, business, or other entity that has been formed by, or for the benefit of, any such individual; an immediate family member of any such individual; and a person who is widely and publicly known (or is actually known by the relevant covered financial institution) to be a close associate of such individual. For the purposes of this definition, ‘senior official or executive’ means an individual with substantial authority over policy, operations, or the use of government-owned resources; and ‘immediate family member’ means spouses, parents, siblings, children and a spouse’s parents and siblings.” See 31 CFR § 1010.605(p). See also [FIN-2017-A006](#) “Advisory on Widespread Public Corruption in Venezuela,” September 20, 2017.
2. See [FIN-2018-A003](#), “Advisory on Human Rights Abuses Enabled by Corrupt Senior Foreign Political Figures and Their Financial Facilitators,” June 12, 2018.

This advisory is focused on potentially suspicious transactions involving senior members of the Ortega regime or those acting for or on their behalf. Other Nicaraguans—who are not connected to the Ortega regime or to any misuse of public funds—might also be moving assets out of the country for legitimate reasons, including due to concerns about general political instability. This advisory should not serve as a basis to restrict such legitimate transactions, and it is not intended to affect the maintenance of normal relationships between financial institutions in the United States and Nicaragua, conducted in accordance with financial institutions' compliance obligations and absent other risk indicators.

## Targeted Financial Sanctions against Corruption and Human Rights Abuse in Nicaragua

The U.S. Government has strongly condemned the ongoing violence in Nicaragua perpetrated by the Ortega regime, the regime's corruption, and the human rights abuses committed by the Ortega regime in response to civilian protests.<sup>3</sup> This condemnation coincides with a broader effort to combat serious human rights abuse and corruption around the world using, among other mechanisms, the Global Magnitsky sanctions program, which is administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) under the authority of Executive Order (E.O.) 13818, which implements the Global Magnitsky Human Rights and Accountability Act.

To date, the United States has designated four Nicaraguan officials under the Global Magnitsky sanctions program, which enables Treasury to target corrupt officials, human rights abusers, and corrupt actors and their facilitators. In an Annex to E.O. 13818, the President imposed sanctions on more than one dozen serious human rights abusers and corrupt actors, including senior Nicaraguan official Roberto Jose Rivas Reyes (Rivas), then-President of Nicaragua's Supreme Electoral Council.<sup>4</sup> As Treasury noted when E.O. 13818 was issued, Rivas has been accused in the press of amassing sizeable personal wealth—including multiple properties, private jets, luxury vehicles, and a yacht—while earning a reported government salary of \$60,000 per year. The Nicaraguan Comptroller General has described Rivas as “above the law,” and investigations into his corruption have been blocked by Nicaraguan government officials.<sup>5</sup>

Most recently, in July 2018, OFAC designated Nicaraguan National Police Commissioner Francisco Javier Diaz Madriz and Secretary of the Mayor's Office of Managua Fidel Antonio Moreno Briones for being responsible for, or the leaders of entities involved in, serious human rights abuse in Nicaragua. OFAC also designated Jose Francisco Lopez Centeno, the Vice President of ALBA de Nicaragua (ALBANISA), the company that imports and sells Venezuelan petroleum products, and then-President of Petronic, the Nicaraguan state-owned oil company, for engaging in corrupt activities.<sup>6</sup>

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3. See “[Statement from the Press Secretary on Nicaragua](#),” July 30, 2018.

4. See [Executive Order 13818](#), December 20, 2017. Rivas resigned from the Supreme Electoral Council in May 2018. For more information on sanctions relating to Nicaragua, see <https://home.treasury.gov/news/press-releases/sm0243>.

5. See <https://home.treasury.gov/news/press-releases/sm0243>.

6. See <https://home.treasury.gov/news/press-releases/sm422>. Lopez resigned from Petronic days after his designation in July 2018.

In announcing these designations, OFAC highlighted a variety of corrupt activities involving these persons. For example, Moreno has been accused of stealing large sums of money from Managua municipal projects, as well as using municipal funds to pay for Sandinista National Liberation Front (FSLN) party activities. Lopez maintained access to large amounts of government funds that he could exploit, including for the personal use of Nicaraguan leaders. Lopez also syphoned funds from infrastructure projects by negotiating personal fees, placed numerous individuals throughout the government who have helped him steal millions of dollars on an annual basis, and used his position to his and his family's benefit by using companies they own to win government contracts. OFAC also noted that senior officials within the Nicaraguan government and the FSLN have used ALBANISA funds to purchase television and radio stations, hotels, cattle ranches, electricity generation plants, and pharmaceutical laboratories.<sup>7</sup>

## Reminder of Bank Secrecy Act Obligations for U.S. Financial Institutions

FinCEN reminds U.S. financial institutions that they must comply with their due diligence obligations under the BSA and its implementing regulations.<sup>8</sup> In addition to their general due diligence requirements, covered financial institutions are required to implement a due diligence program for private banking accounts held for non-U.S. persons designed to detect and report any known or suspected money laundering or other suspicious activity through those accounts.<sup>9</sup> This program must also be designed to determine whether any such account is held by, or on behalf of, a senior foreign political figure; and, if so, these institutions must apply enhanced scrutiny reasonably designed to detect and report “transactions that may involve the proceeds of foreign corruption.”<sup>10</sup> As part of their risk-based implementation of these requirements, financial institutions should consider whether they have any financial contact with persons or entities (foreign or otherwise) that may be acting directly or indirectly for or on behalf of any senior political figures of the Government of Nicaragua.

FinCEN also reminds covered financial institutions of their obligation to implement due diligence programs for correspondent accounts they maintain for foreign financial institutions that include appropriate, specific, risk-based and, where necessary, enhanced policies, procedures and controls reasonably designed to detect and report known or suspected money laundering activity involving such accounts.<sup>11</sup>

7. See <https://home.treasury.gov/news/press-releases/sm422>.

8. See 31 U.S.C § 5318(h) and 31 CFR § 1010.210 for AML program requirements, and as applied to specific financial institutions in 31 CFR §§ 1020.210, 1021.210, 1022.210, 1023.210, 1024.210, 1025.210, 1026.210, 1027.210, 1028.210, 1029.210, and 1030.210.

9. See USA PATRIOT Act § 312, codified at 31 U.S.C. § 5318(i) and 31 CFR § 1010.620(a). The definition of “covered financial institution” is found in 31 CFR § 1010.605(e). The definition of “private banking account” is found in 31 CFR § 1010.605(m). The definition for the term “non-U.S. person” is found in 31 CFR § 1010.605(h).

10. See 31 CFR § 1010.620(b)-(c).

11. See USA PATRIOT Act § 312 (31 U.S.C. § 5318(i)); 31 CFR § 1010.610(a).

## Suspicious Activity Reporting

A financial institution is required to file a SAR if it knows, suspects, or has reason to suspect a transaction conducted or attempted by, at, or through the financial institution involves funds derived from illegal activity, or attempts to disguise funds derived from illegal activity; is designed to evade regulations promulgated under the BSA; lacks a business or apparent lawful purpose; or involves the use of the financial institution to facilitate criminal activity, including foreign corruption.<sup>12</sup> FinCEN issued Guidance in April 2008 and similar information in a SAR Activity Review issued in May 2011 to assist financial institutions with reporting suspicious activity regarding proceeds of foreign corruption.<sup>13</sup>

### SAR Filing Instructions

When filing a SAR, financial institutions should provide all pertinent available information in the SAR form and narrative. **FinCEN further requests that financial institutions select SAR field 35(l) (“Suspected Public/Private Corruption (Foreign)”) and reference this advisory by including the key term:**

**“Nicaragua FIN-2018-A005”**

**in the SAR narrative and in SAR field 35(z) (“Other Suspicious Activity-Other”) when using the SAR Form on or prior to December 31, 2018. Beginning January 1, 2019, when using the new, mandatory SAR Form, financial institutions should select SAR field 38(m) (“Suspected Public/Private Corruption (Foreign)”) and reference this advisory using the above key term in SAR field 2 (“Filing Institution Note to FinCEN”) to indicate a connection between the suspicious activity being reported and the persons and activities highlighted in this advisory.** SAR reporting, in conjunction with effective implementation of due diligence requirements and OFAC obligations by financial institutions, has been crucial to identifying money laundering and other financial crimes associated with foreign and domestic political corruption. SAR reporting is consistently beneficial and critical to FinCEN and U.S. law enforcement analytical and investigative efforts, OFAC designation efforts, and the overall security and stability of the U.S. financial system.<sup>14</sup>

12. See 31 CFR §§ 1020.320, 1021.320, 1022.320, 1023.320, 1024.320, 1025.320, 1026.320, 1029.320, and 1030.320.

13. See FinCEN Guidance [FIN-2008-G005](#), “Guidance to Financial Institutions on Filing Suspicious Activity Reports regarding the Proceeds of Foreign Corruption,” April 17, 2008; and [The SAR Activity Review, Issue 19](#), “In Focus: Foreign Corruption,” Sections 4 and 5, May 2011.

14. See [The SAR Activity Review, Issue 19](#), “In Focus: Foreign Corruption,” beginning with Section 3, May 2011; and [“The Value of FinCEN Data”](#) and its subsection on law enforcement case examples.

## For Further Information

Questions or comments regarding the contents of this advisory should be addressed to the FinCEN Regulatory Support Section at [frc@fincen.gov](mailto:frc@fincen.gov).

**Financial institutions wanting to report suspicious transactions that may potentially relate to terrorist activity should call the Financial Institutions Toll-Free Hotline at (866) 556-3974 (7 days a week, 24 hours a day).** The purpose of the hotline is to expedite the delivery of this information to law enforcement. Financial institutions should immediately report any imminent threat to local-area law enforcement officials.

**FinCEN's mission is to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities.**