

Congressional Testimony

The Iran Nuclear Deal and its Impact on Terrorism Financing

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Chairman Fitzpatrick, Ranking Member Lynch, members of the Task Force to Investigate Terrorism Financing, on behalf of the Foundation for Defense of Democracies and its Center on Sanctions and Illicit Finance, thank you for the opportunity to testify.

This afternoon, I would like to address the flaws in the Joint Comprehensive Plan of Action (JCPOA) by examining the sanctions relief and so-called “snapback” sanctions in the deal. The JCPOA dismantles the U.S. and international economic sanctions architecture, which was put in place to address the full range of Iran’s illicit activities. In its place, **the JCPOA creates not an effective economic sanctions snapback but rather an Iranian “nuclear snapback” which undermines America’s ability to peacefully prevent Iran from acquiring a nuclear weapons capability.** Instead of this current JCPOA, Congress should work with the administration to amend and strengthen the agreement so that it much more effectively blocks Iran’s pathways to a nuclear bomb and retains tools of effective and peaceful sanctions enforcement against Iranian illicit behavior on multiple fronts.

JCPOA & CHALLENGE TO CONDUCT-BASED FINANCIAL SANCTIONS

The Iran sanctions regime was designed to respond to the full range of Iran’s illicit activities, not only the development of Iran’s illicit nuclear program. The United States has spent the last decade building a powerful yet delicate sanctions architecture to punish Iran for its nuclear mendacity, its illicit ballistic missile development, its vast financial support for terrorist groups, its backing of other rogue states like Bashar Assad’s Syria, its human rights abuses, and the financial crimes that sustain these illicit activities. More broadly, a primary goal of the sanctions on Iran, as explained by senior Treasury Department officials over the past decade, was to “protect the integrity of the U.S. and international financial systems” from Iranian illicit financial activities and the bad actors that facilitated these.¹

The goal of sanctions was to provide the president with the tools to stop the development of an Iranian nuclear threshold capacity and also to protect the integrity of the U.S.-led global financial sector from the vast network of Iranian financial criminals and the recipients of their illicit transactions. This included brutal authoritarians, terrorist funders, weapons and missile proliferators, narco-traffickers, and human rights abusers.

Tranche after tranche of designations issued by the Treasury, backed by intelligence that often took months, if not years, to compile, isolated Iran’s worst financial criminals. And designations were only the tip of the iceberg. Treasury officials traveled the globe to meet with financial leaders and business executives to warn them against transacting with known and suspected terrorists and weapons proliferators.² This campaign was crucial to

¹ David Cohen, “The Law and Policy of Iran Sanctions,” *Remarks before the New York University School of Law*, September 12, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1706.aspx>)

² Robin Wright, “Stuart Levey’s War,” *The New York Times*, November 2, 2008. (http://www.nytimes.com/2008/11/02/magazine/02IRAN-t.html?pagewanted=all&_r=0)

isolating Iran in order to deter its nuclear ambitions and also to address the full range of its illicit conduct.

Following years of individual designations of Iranian and foreign financial institutions for involvement in the illicit financing of nuclear, ballistic missile, and terrorist activities,³ Treasury issued a finding in November 2011 under Section 311 of the USA PATRIOT Act that Iran, as well as its entire financial sector including the Central Bank of Iran (CBI), is a “jurisdiction of primary money laundering concern.”⁴ Treasury cited Iran’s “support for terrorism,” “pursuit of weapons of mass destruction,” including its financing of nuclear and ballistic missile programs, and the use of “deceptive financial practices to facilitate illicit conduct and evade sanctions.”⁵ The entire country’s financial system posed “illicit finance risks for the global financial system.”⁶ Internationally, the global anti-money laundering and anti-terror finance standards body the Financial Action Task Force (FATF) also warned its members that they should “apply effective counter-measures to protect their financial sectors from money laundering and financing of terrorism (ML/FT) risks emanating from Iran.”⁷

As recently as June 26, 2015, FATF issued a statement warning that Iran’s “failure to address the risk of terrorist financing” poses a “serious threat ... to the integrity of the international financial system.”⁸

The Section 311 finding was conduct-based; it would be appropriate, therefore, to tie the lifting of sanctions on all designated Iranian banks, especially the legislatively-designated Central Bank of Iran, and their readmission onto SWIFT and into the global financial system, to specific changes in the conduct of these Iranian entities across the full range of Iran’s illicit financial activities. However, the JCPOA requires the lifting of financial sanctions—including the SWIFT sanctions—prior to a demonstrable change in Iran’s illicit financial conduct.

³ Treasury designated 23 Iranian and Iranian-allied foreign financial institutions as “proliferation supporting entities” under Executive Order 13382 and sanctioned Bank Saderat as a “terrorism supporting entity” under Executive Order 13224. U.S. Department of the Treasury, Press Release, “Treasury Cuts Iran’s Bank Saderat Off from U.S. Financial System,” September 8, 2006; (<http://www.treasury.gov/press-center/press-releases/Pages/hp87.aspx>) & U.S. Department of the Treasury, Press Release, “Treasury Designates Major Iranian State-Owned Bank,” January 23, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1397.aspx>)

⁴ U.S. Department of the Treasury, Press Release, “Finding That the Islamic Republic of Iran is a Jurisdiction of Primary Money Laundering Concern,” November 18, 2011. (<http://www.treasury.gov/press-center/press-releases/Documents/Iran311Finding.pdf>)

⁵ Ibid.

⁶ U.S. Department of the Treasury, Press Release, “Fact Sheet: New Sanctions on Iran,” November 21, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1367.aspx>)

⁷ The Financial Action Task Force, Public Statement, “FATF Public Statement 14 February 2014,” February 14, 2014. (<http://www.fatf-gafi.org/countries/d-i/islamicrepublicofiran/documents/public-statement-feb-2014.html>)

⁸ The Financial Action Task Force, Public Statement, “FATF Public Statement 26 June 2015,” June 26, 2015. (<http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/documents/public-statement-june-2015.html>)

In the past, Washington has given “bad banks” access to the global financial system in order to secure a nuclear agreement. In 2005, Treasury issued a Section 311 finding against Macau-based Banco Delta Asia,⁹ and within days, North Korean accounts and transactions were frozen or blocked in banking capitals around the world. North Korea refused to make nuclear concessions before sanctions relief and defiantly conducted its first nuclear test.¹⁰ The State Department advocated for the release of frozen North Korean funds on good faith,¹¹ and ultimately prevailed. As a result, however, Washington lost its leverage and its credibility by divorcing the Section 311 finding from the illicit conduct that had prompted the finding in the first place. Undeterred, North Korea moved forward with its nuclear weapons program while continuing to engage in money laundering, counterfeiting, and other financial crimes.

Compromising the integrity of the U.S. and global financial system to conclude a limited agreement with North Korea neither sealed the deal nor protected the system. The JCPOA appears to repeat this same mistake by lifting financial restrictions on bad banks without certifications that Iran’s illicit finance activities have ceased.

The JCPOA stipulates that of the nearly 650 entities that have been designated by the U.S. Treasury for their role in Iran’s nuclear and missile programs or for being owned or controlled by the government of Iran, more than 67 percent will be de-listed from Treasury’s blacklists within 6-12 months. This includes the Central Bank of Iran and most major Iranian financial institutions. After eight years, only 25 percent of the entities that have been designated by Treasury over the past decade will remain sanctioned. Many IRGC businesses that were involved in the procurement of material for Iran’s nuclear and ballistic missile programs will be de-listed as will some of the worst actors involved in Iran’s nuclear weaponization activities. Even worse, the EU will lift all of its counter proliferation sanctions on Iran. Although human rights-related sanctions will remain, and terrorism and Syria-related sanctions will remain on notorious Quds Force commander Qassem Soleimani, sanctions against the Qods Force itself against the Qods Force itself will be lifted (although certain Syria-related sanctions will remain).

What is especially notable about the lifting of designations is that the Obama administration has provided no evidence to suggest that these individuals, banks, and businesses are no longer engaging in the full range of illicit conduct on which the original designations were based. What evidence, for example, is there for the de-designation of the Central Bank of Iran, which is the main financial conduit for the full range of Iran’s illicit activities, and how does a nuclear agreement resolve its proven role in terrorism and ballistic missile financing, money laundering, deceptive financial activities, and sanctions evasion? In other words, with the dismantlement of much of the Iran sanctions architecture in the wake of a nuclear agreement, the principle upon which Treasury

⁹ U.S. Department of the Treasury, Press Release, “Treasury Designates Banco Delta Asia as Primary Money Laundering Concern Under USA PATRIOT Act,” September 15, 2005. (<http://www.treasury.gov/press-center/press-releases/Pages/js2720.aspx>)

¹⁰ David E. Sanger, “North Koreans Say They Tested Nuclear Device,” *The New York Times*, October 9, 2006. (<http://www.nytimes.com/2006/10/09/world/asia/09korea.html?pagewanted=all>)

¹¹ Juan Zarate, *Treasury’s War: The Unleashing of a New Era of Financial Warfare*, (New York: Public Affairs, 2013), page 258.

created the sanctions architecture—the protection of the global financial system—is no longer the standard.

SWIFT: CASE STUDY IN THE JCPOA’S PRECIPITOUS SANCTIONS RELIEF

The sanctions relief provided to Iran through its re-admission into the SWIFT financial messaging system is a case study in the scale of precipitous sanctions relief afforded to Iran under the JCPOA. It is also a cautionary study in how difficult it will be to snap back the most effective economic sanctions.

The JCPOA obligates the United States, European Union, and United Nations to lift sanctions at two specific intervals: On “Implementation Day” when the IAEA verifies that Iran has implemented its nuclear commitments under the JCPOA to reduce its operating centrifuges, reduce its low-enriched uranium stockpile, and modify the Arak heavy-water reactor, among other requirements; and on “Transition Day” in eight years or when the IAEA has reached a “broader conclusion” that Iran’s nuclear program is entirely peaceful, whichever comes first. This last clause is critical: **Even if the IAEA cannot verify the peaceful nature of Iran’s program, Iran will receive additional sanctions relief.**

The JCPOA will provide Iran with more than \$100 billion in sanctions relief, if you include the funds reportedly tied up in oil escrow accounts, and as much as \$150 billion based on figures quoted by President Obama,¹² which presumably includes funds that are legally frozen and those to which banks have been unwilling to provide Iran free access, even though they weren’t under formal sanctions. These funds could flow to the coffers of terrorist groups and rogue actors like Hezbollah, Hamas, Palestinian Islamic Jihad, Iraqi Shiite militias, the Houthis in Yemen, and Syrian President Bashar al-Assad’s regime in Damascus. President Obama has claimed the money would not be a “game-changer” for Iran.¹³ As Supreme Leader Ali Khamenei, however, stated in a speech less than one week after the JCPOA announcement, “We shall not stop supporting our friends in the region: The meek nation of Palestine, the nation and government of Syria ... and the sincere holy warriors of the resistance in Lebanon and Palestine.”¹⁴ This infusion of cash will relieve budgetary constraints for a country which had only an estimated \$20 billion in fully accessible foreign exchange reserves prior to November 2013¹⁵ but was spending at least \$6 billion annually to support Assad.¹⁶

¹² Jeffrey Goldberg, “‘Look ... It’s My Name on This’: Obama Defends the Iran Nuclear Deal,” *The Atlantic*, May 21, 2015. (<http://www.theatlantic.com/international/archive/2015/05/obama-interview-iran-isis-israel/393782/>)

¹³ Barack Obama, “Press Conference by the President,” *Washington, D.C.*, July 15, 2015. (<https://www.whitehouse.gov/the-press-office/2015/07/15/press-conference-president>)

¹⁴ “Iran Press Review 20 July,” *Foundation for Defense of Democracies*, July 20, 2015. (<http://www.defenddemocracy.org/iran-press-review-20-july>)

¹⁵ Mark Dubowitz & Rachel Ziemba, “When Will Iran Run Out of Money?,” *Foundation for Defense of Democracies & Roubini Global Economics*, October 2, 2013. (http://www.defenddemocracy.org/content/uploads/documents/Iran_Report_Final_2.pdf)

¹⁶ Eli Lake, “Iran Spends Billions to Prop Up Assad,” *Bloomberg*, June 9, 2015. (<http://www.bloombergview.com/articles/2015-06-09/iran-spends-billions-to-prop-up-assad>)

The real prize for Iran in the JCPOA sanctions relief package is regaining access to SWIFT, (the Society for Worldwide Interbank Financial Telecommunication) a little-known, but ubiquitous banking system that has been off-limits to the country since March 2012. **Iran's successful negotiation of the lifting of this sanction is a case study in how the JCPOA provides precipitous sanctions relief to Iran prior to a demonstrable change in Iranian financial practices.**

SWIFT is the electronic bloodstream of the global financial system. It is a member-owned cooperative comprising the most powerful financial institutions in the world, which allows more than 10,800 financial companies worldwide to communicate securely.¹⁷

By 2012, SWIFT represented one of Tehran's last entry points into the global financial system, as the United States and the European Union had sanctioned scores of banks, energy companies, and other entities under the control of the IRGC. In March 2012, SWIFT disconnected 15 major Iranian banks from its system in 2012 after coming under pressure from both the United States and the European Union.¹⁸ It was a substantial blow to Tehran since SWIFT was not only how Iran sold oil but how Iranian banks moved money. According to SWIFT's annual review, Iranian financial institutions used SWIFT more than 2 million times in 2010.¹⁹ These transactions, according to *The Wall Street Journal*, amounted to \$35 billion in trade with Europe alone.²⁰

As a result of congressional legislation targeting SWIFT,²¹ EU regulators instructed SWIFT to remove specified Iranian banks from the SWIFT network.²² It was congressional pressure, and an unwillingness by Congress to accept arguments advanced by Obama administration officials that such action would undercut the multilateral sanctions regime, which finally persuaded the Obama administration and EU officials to act.

Today, the JCPOA explicitly calls for the lifting of sanctions on “[s]upply of specialized financial messaging services, including SWIFT, for persons and entities... including the

¹⁷ “Company Information,” *SWIFT Website*, accessed July 20, 2015.

(http://www.swift.com/about_swift/company_information/company_information?rdct=t&lang=en)

¹⁸ SWIFT, Press Release, “SWIFT Instructed to Disconnect Sanctioned Iranian Banks Following EU Council Decision,” March 15, 2012.

(http://www.swift.com/news/press_releases/SWIFT_disconnect_Iranian_banks)

¹⁹ “Annual Review 2010,” *SWIFT Website*, accessed January 9, 2012, page 29.

(http://www.swift.com/about_swift/publications/annual_reports/annual_review_2010/SWIFT_AR2010.pdf)

²⁰ “Swift Sanctions on Iran,” *The Wall Street Journal*, February 1, 2012.

(<http://online.wsj.com/news/articles/SB10001424052970203718504577178902535754464>)

²¹ Senator Robert Menendez, Press Release, “Menendez Hails Banking Committee Passage of Iran Sanctions Legislation,” February 2, 2012. (<http://www.menendez.senate.gov/newsroom/press/menendez-hails-banking-committee-passage-of-iran-sanctions-legislation>)

²² “Payments System SWIFT to Expel Iranian Banks Saturday,” *Reuters*, March 15, 2012.

(<http://www.reuters.com/article/2012/03/15/us-nuclear-iran-idUSBRE82E15M20120315>)

Central Bank of Iran and Iranian financial institutions.”²³ EU will lift SWIFT sanctions for the Central Bank of Iran and all Iranian banks²⁴ originally banned from SWIFT.²⁵

The nuclear deal also lifts U.S. sanctions on 21 out of the 23 Iranian banks designated for proliferation financing—including both nuclear and ballistic missile activity.²⁶ The designation of Bank Saderat for terrorist financing will remain in place, but the sanctions against the Central Bank of Iran will be lifted. Twenty-six other Iranian financial institutions blacklisted for providing financial services to previously-designated entities (including NIOC which is being de-listed on Implementation Day) or for being owned by the government of Iran will also be removed from Treasury’s blacklist.²⁷

The Obama administration is assuming that the SWIFT sanctions (and other economic sanctions) can be reconstituted either in a snapback scenario or under non-nuclear sanctions like terrorism. However, the JCPOA notes that Iran may walk away from the deal and abandoned its nuclear commitments if new sanctions are imposed: “Iran has stated that if sanctions are reinstated in whole or in part, Iran will treat that as grounds to cease performing its commitments under this JCPOA in whole or in part.”²⁸ This gives Iran an effective way to intimidate the United States, and in particular, Europe into not reinstating sanctions, except for the most severe violations.

²³ “Joint Comprehensive Plan of Action,” Vienna, July 14, 2015, paragraph 19(iv).

(http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

²⁴ On Implementation Day, the EU will lift sanctions on the Central Bank of Iran and Bank Mellat, Bank Melli, Bank Refah, Bank Tejarat, Europaische-Iranische Handelsbank (EIH), Export Development Bank of Iran, Future Bank, Onerbank ZAO, Post Bank, and Sina Bank. On Transition Day, the EU will also lift sanctions on Ansar Bank, Bank Sepah and Bank Sepah International, Bank Saderat, and Mehr Bank. See Attachment 1, parts 1 and 2 and Attachment 2, parts 1 and 2. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_attachements_en.pdf)

²⁵ The Council of the European Union, “Council Regulation (EU) No 267/2012 of 23 March 2012 Concerning Restrictive Measures against Iran and Repealing Regulation (EU) No 961/2010,” *Official Journal of the European Union*, March 24, 2012. (<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1406807228342&uri=CELEX:32012R0267>)

²⁶ U.S. sanctions on Ansar Bank and Mehr Bank are scheduled to remain in place. Sanctions on Arian Bank, Banco International de Desarrollo, Bank Kargoshaee, Bank of Industry and Mine, Bank Melli, Bank Mellat, Bank Refah, Bank Sepah, Bank Tejarat, Europaisch-Iranische Handelsbank, Export Development Bank of Iran, First East Export Bank, First Islamic Bank, Future Bank, Iranian-Venezuela Bi-National Bank, Kont Investment Bank, Moallem Insurance Company, Persia International Bank, Post Bank, Sorinet Commercial Trust Bankers, and Trade Capital Bank (aka Bank Torgovoy Kapital ZAO) as well as the Central Bank of Iran (aka Bank Markazi Jomhouri Islami Iran) will be lifted on “Implementation Day.” See Attachment 3. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_attachements_en.pdf)

²⁷ Over the past decade, the Treasury Department has designated 51 banks and their subsidiaries inclusive of the 23 banks designated as proliferators, Bank Saderat which was designated for financing terrorism, and the Central Bank of Iran. With the exception of Bank Saderat, Ansar Bank, and Mehr Bank, all Iranian financial institutions will be de-listed on implementation day. Note, there is an inconsistency in Attachment 3. The Joint Iran-Venezuela Bank is listed as the same entry as Iran-Venezuela Bi-National Bank. On the SDN list, the two are listed with unique entries and different designations. FDD assumes, however, that both banks are being de-listed.

²⁸ “Joint Comprehensive Plan of Action,” Vienna, July 14, 2015, paragraph 37.

(http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

The threat of this “nuclear snapback” will prevent a response to technical and incremental violations for fear that Iran will walk away from the agreement and escalate its program, provoking a possible military crisis. It will also be used to make it very difficult for the United States and EU to ever reimpose SWIFT sanctions, which the Iranian government is likely to see as an act of economic or financial war, and will threaten to retaliate accordingly. This nuclear snapback will be discussed in greater detail in a subsequent section.

THE IRGC: THE JCPOA’S BIG WINNER

The IRGC stand to be the greatest beneficiary from the economic relief granted under the JCPOA through both an improvement in Iran’s overall macroeconomic environment and through the dominance of the Revolutionary Guards in key strategic areas of the Iranian economy. Already, the sanctions relief provided as part of the Joint Plan of Action (JPOA) enabled Iran to move from a severe economic recession to a modest recovery. During the JPOA negotiations, \$11.9 billion in direct sanctions relief, sanctions relief on major sectors of Iran’s economy such as the auto and petrochemical sectors, permission to trade in gold, and President Obama’s decision to de-escalate the sanctions pressure by blocking new congressional sanctions, rescued the Iranian economy and its rulers, including the IRGC, from a rapidly deteriorating balance of payments.²⁹

In 2014, Iran’s exports to Europe increased 48% year-over-year. Overall, between March 2014 and February 2015, Iran’s non-oil and gas exports increased 22%.³⁰ The JPOA facilitated imports from the EU through a relaxation of the bloc’s banking restrictions which increased the authorization thresholds for “non-sanctioned trade” ten-fold, from €40,000 to €400,000. Iran had better access to European goods, including spare parts for its automotive industry. The JPOA also suspended petrochemical sanctions; these exports rose 32% to \$3.17 billion.³¹

Economic forecasts prior to the announcement of the JCPOA based on expectations of the sanctions relief assessed that Iran’s economic growth would likely stabilize around 2.6% in FY2015/16, and then accelerate to about 4% in FY 2016/17.³² In the second half

²⁹ Jennifer Hsieh, Rachel Ziemba, & Mark Dubowitz, “Iran’s Economy: Out of the Red, Slowly Growing,” *Foundation for Defense of Democracies & Roubini Global Economics*, October 2014.

(http://www.defenddemocracy.org/content/uploads/publications/RoubiniFDDReport_Oct14.pdf); Jennifer Hsieh, Rachel Ziemba, & Mark Dubowitz, “Iran’s Economy Will Slow but Continue to Grow Under Cheaper Oil and Current Sanctions,” *Foundation for Defense of Democracies & Roubini Global Economics*, February 2015.

(http://www.defenddemocracy.org/content/uploads/publications/RoubiniFDDReport_FEB15.pdf)

³⁰ Emanuele Ottolenghi & Saeed Ghasseminejad, “Iran Sanctions Relief Sparks Growing Trade with Europe, Asia,” *Foundation for Defense of Democracies*, March 27, 2015.

(<http://www.defenddemocracy.org/media-hit/Iran-sanctions-relief-sparks-growing-trade-with-Europe-Asia/>)

³¹ Ibid.

³² Mark Dubowitz, Annie Fixler, & Rachel Ziemba, “Iran’s Economic Resilience Against Snapback Sanctions Will Grow Over Time,” *Foundation for Defense of Democracies & Roubini Global Economics*, June 2015.

of the decade, Iran's economic growth would likely average 3.5-4%. Depending on Iran's economic policy choices, in FY 2017/18, growth could reach 5-6%.

In addition to the improvement in Iran's macroeconomic picture, which reduces threats to the political survival of the regime, the big winner from the unraveling of European and American sanctions will be the IRGC, which will earn substantial sanctions relief. **The IRGC not only directs Iran's external regional aggression, its nuclear and ballistic missile programs, and its vast system of domestic repression; the Guards also control at least one-sixth of the Iranian economy.**³³ Their control over strategic sectors of the Iranian economy—banking, energy, construction, industrial, engineering, mining, shipping, shipbuilding, amongst others—means that any foreign firms interested in doing business with Iran will have to do business with the IRGC.

In anticipation of the sanctions relief in a final nuclear deal, President Rouhani's 2015 budget rewards the IRGC. It includes a 48% increase on expenditures related to the IRGC, the intelligence branches, and clerical establishment. Iran's defense spending was set to increase by one-third, to \$10 billion annually—excluding off the books funding.³⁴ The IRGC and its paramilitary force, the *Basij*, are set to receive 64% of public military spending, and the IRGC's massive construction arm Khatam al-Anbiya (which will be delisted by the European Union and is the dominant player in key strategic sectors of Iran's economy) will see its budget double. Rouhani's budget also included a 40% increase (\$790 million) for Iran's Ministry of Intelligence.³⁵ Iran's latest five-year plan, announced days before the JCPOA, calls for an additional increase in military spending to 5% of the total government budget.³⁶ With access to additional revenue around the corner and with the termination of the arms embargo just over the horizon, Iran knows how it will spend its new cash.

My colleagues at the Foundation for Defense of Democracies Emanuele Ottolenghi and Saeed Ghasseminejad have done an extensive review of the sanctions relief and the entities that will be de-listed under the JCPOA.³⁷ The following is based on their analysis.

http://www.defenddemocracy.org/content/uploads/publications/Iran_economy_resilience_against_snapback_sanctions.pdf

³³ Parisa Hafezi & Louis Charbonneau, "Iranian Nuclear Deal Set to Make Hardline Revolutionary Guards Richer," *Reuters*, July 6, 2015. (<http://www.reuters.com/article/2015/07/06/us-iran-nuclear-economy-insight-idUSKCN0PG1XV20150706>)

³⁴ Emanuele Ottolenghi & Saeed Ghasseminejad, "Iran's Repressive Apparatus Gets a Raise," *The Wall Street Journal*, December 22, 2014. (<http://www.wsj.com/articles/emanuele-ottolenghi-and-saeed-ghasseminejad-irans-repressive-apparatus-gets-a-raise-1419281552>)

³⁵ *Ibid.*

³⁶ Abbas Qaidaari, "More Planes, More Missiles, More Warships: Iran Increases Its Military Budget By A Third," *Al-Monitor*, July 13, 2015. (<http://www.al-monitor.com/pulse/originals/2015/07/khamenei-orders-increase-military.html>)

³⁷ Emanuele Ottolenghi & Saeed Ghasseminejad, "The Nuclear Deal's Impact on Iran's Revolutionary Guards," *Foundation for Defense of Democracies*, July 17, 2015. (<http://www.defenddemocracy.org/media-hit/emanuele-ottolenghi-the-nuclear-deals-impact-on-irans-revolutionary-guards/>)

Access to Europe and the De-Listing of IRGC Entities

With the lifting of EU sanctions under the JCPOA, Europe will increasingly become an economic free zone for Iran's most dangerous people and entities. In addition to the lifting of specific types of economic and financial sanctions, the **JCPOA requires the United States and Europe to remove numerous IRGC-linked entities from their sanction lists.**

Europe will de-list significant IRGC entities and persons including the Quds Force. Some of these de-listings will occur on Implementation Day, but many more will fall off after eight years (assuming that they are even enforced over the next eight years).

Khatam al-Anbiya (KAA), a massive IRGC conglomerate, was designated by the United States as a proliferator of weapons of mass destruction.³⁸ It is Iran's biggest construction firm and, according to my colleagues' estimates, "may be its largest company outright, with 135,000 employees and 5,000 subcontracting firms."³⁹ KAA has hundreds of subsidiaries in numerous sectors of Iran's economy including its nuclear and defense programs, energy, construction, and engineering. EU sanctions against the company will be lifted after eight years, whether or not the IAEA concludes that Iran's nuclear program is peaceful.

Similarly, the IRGC Cooperative Foundation (aka *Bonyad Taavon Sepah*), the IRGC investment arm, was designated by the U.S. Treasury as a proliferator of weapons of mass destruction,⁴⁰ but is slated to be de-listed by the EU after eight years as a result of the JCPOA. It is not listed among the entities that the United States will de-list. The portfolio of IRGC Cooperative Foundation controls more than 20% of the value of the Tehran Stock Exchange.⁴¹

Ansar Bank and Mehr Bank, which are both IRGC-owned and were designated by the Treasury for providing financial services to the IRGC,⁴² will also be de-listed by the EU

³⁸ Department of State, Office of the Spokesman, "Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism," October 25, 2007. (<http://2001-2009.state.gov/r/pa/prs/ps/2007/oct/94193.htm>)

³⁹ Parisa Hafezi & Louis Charbonneau, "Iranian Nuclear Deal Set to Make Hardline Revolutionary Guards Richer," *Reuters*, July 6, 2015. (<http://www.reuters.com/article/2015/07/06/us-iran-nuclear-economy-insight-idUSKCN0PG1XV20150706>); Emanuele Ottolenghi & Saeed Ghasseminejad, "The Nuclear Deal's Impact on Iran's Revolutionary Guards," *Foundation for Defense of Democracies*, July 17, 2015. (<http://www.defenddemocracy.org/media-hit/emanuele-ottolenghi-the-nuclear-deals-impact-on-irans-revolutionary-guards/>)

⁴⁰ Department of the Treasury, Press Release, "Fact Sheet: Treasury Designates Iranian Entities Tied to the IRGC and IRISL," December 21, 2010. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1010.aspx>)

⁴¹ Emanuele Ottolenghi & Saeed Ghasseminejad, "The Nuclear Deal's Impact on Iran's Revolutionary Guards," *Foundation for Defense of Democracies*, July 17, 2015. (<http://www.defenddemocracy.org/media-hit/emanuele-ottolenghi-the-nuclear-deals-impact-on-irans-revolutionary-guards/>)

⁴² Department of the Treasury, Press Release, "Fact Sheet: Treasury Designates Iranian Entities Tied to the IRGC and IRISL," December 21, 2010. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1010.aspx>)

(but not by the United States). They will be allowed back onto the SWIFT system and may open branches, conduct transactions, and facilitate financial flows for the IRGC. **Other IRGC-linked banks, like Bank Melli,⁴³ will be de-listed by both the United States and Europe upon Implementation Day and allowed back onto SWIFT.**

The Quds Force, the IRGC's external arm, will also be a beneficiary of sanctions relief. In addition to the EU de-listing, the JCPOA will lift both U.S. and EU sanctions on Iran's commercial airline Iran Air, on which the Quds Force depends to "dispatch weapons and military personnel to conflict zones worldwide. ... The Quds Force will have access to newer, larger, and more efficient planes with which to pursue its strategic objectives."⁴⁴

The JCPOA also de-lists several IRGC military research and development facilities. For example, EU sanctions on the Research Center for Explosion and Impact will be lifted after eight years. This entity was designated by the EU for connection to the possible military dimensions of Iran's nuclear program.⁴⁵ Whether or not the IAEA has reached a broader conclusion that Iran's program is peaceful and this center is not engaged in weapons-related activities, the sanctions will be lifted.

In eight years, United States will also lift sanctions on central pillars of Iran's nuclear and weaponization activities. Two central individuals, Fereidoun Abbasi-Davani and Mohsen Fakhrizadeh, will be de-listed. Abbasi-Davani is the former head of the Atomic Energy Organization of Iran.⁴⁶ Fakhrizadeh is the AQ Khan of Iran's nuclear weapons development and, according to the U.S. State Department, "managed activities useful in the development of a nuclear explosive device" and designated "for his involvement in Iran's proscribed WMD activities."⁴⁷

The United States will also de-list the Organization of Defensive Innovation and Research (SPND), an entity "primarily responsible for research in the field of nuclear weapons development," according to the U.S. State Department. The organization was designated less than a year ago, during the P5+1 negotiations with Iran, and was created

⁴³ Department of the Treasury, Press Release, "Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism," October 25, 2007. (<http://www.treasury.gov/press-center/press-releases/Pages/hp644.aspx>)

⁴⁴ Emanuele Ottolenghi & Saeed Ghasseminejad, "The Nuclear Deal's Impact on Iran's Revolutionary Guards," *Foundation for Defense of Democracies*, July 17, 2015. (<http://www.defenddemocracy.org/media-hit/emanuele-ottolenghi-the-nuclear-deals-impact-on-irans-revolutionary-guards/>)

⁴⁵ The Council of the European Union, "Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 Implementing Regulation (EU) No 961/2010 on Restrictive Measures against Iran," *Official Journal of the European Union*, December 2, 2011. (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011R1245>)

⁴⁶ Department of State, Press Statement, "Increasing Sanctions Against Iranian Nuclear Proliferation Networks Joint Treasury and State Department Actions Target Iran's Nuclear Enrichment and Proliferation Program," December 13, 2012. (<http://www.state.gov/r/pa/prs/ps/2012/12/202023.htm>)

⁴⁷ Department of State, Media Note, "Additional Sanctions Imposed by the Department of State Targeting Iranian Proliferators," August 29, 2014. (<http://www.state.gov/r/pa/prs/ps/2014/231159.htm>)

by Fakhrizadeh.⁴⁸ The EU will also de-list SPND and Abbasi-Davani and Fakhrizadeh at the same time.

Additionally, the United States will de-list Aria Nikan Marin Industry, which sources goods for Iran's nuclear program and whose customers include Khatam al-Anbiya;⁴⁹ Iran Pooya, which supplies material for centrifuge production;⁵⁰ and the Kalaye Electric Company, which was designated as a proliferator in 2007 for its involvement in Iran's centrifuge research and development efforts.⁵¹ Kalaye Electric was a site of centrifuge production in 2003. When the IAEA requested access and the ability to take environmental samples, Iran delayed granting access and, according to experts, took "extraordinary steps to disguise the past use and purpose of this facility."⁵²

Jahan Tech Rooyan Pars and Mandegar Baspar Kimiya Company will also be delisted. These two entities were involved in illicit procurement of proliferation-sensitive material.⁵³

Additional Entities Potentially Eligible for Sanction

In the spring of 2014, my colleagues provided the British and American governments with a database of companies and individuals tied to the IRGC. The full lists are submitted with this Testimony as Exhibits A and B. Entities in this database, which were not previously sanctioned, have not subsequently been sanctioned by either the United States or the European Union. These governments had 16 months to verify and add these companies/individuals to their sanctions lists but refrained from doing so. The non-listing of these entities also provided the IRGC with economic benefits as these companies and persons operate without restrictions.

EXHIBIT A is a database of 217 enterprises of the inner circle of the IRGC's business empire. Iran's Islamic Revolutionary Guard Corps intervene in Iran's economy through three channels: The IRGC Cooperative Foundation, The Basij Cooperative Foundation, and Khatam al-Anbiya Construction Headquarters. These three holding companies are direct shareholders of businesses listed in Exhibit A, which also includes the names of their 1,073 board members, CEOs, and CFOs since 2003. Iran's Official Journal is the source for this information; hyperlinks to entries for each company are provided in the database.⁵⁴

⁴⁸ [Ibid.](#)

⁴⁹ Department of State, Press Statement, "Increasing Sanctions Against Iranian Nuclear Proliferation Networks Joint Treasury and State Department Actions Target Iran's Nuclear Enrichment and Proliferation Program," December 13, 2012. (<http://www.state.gov/r/pa/prs/ps/2012/12/202023.htm>)

⁵⁰ [Ibid.](#)

⁵¹ Department of the Treasury, Press Release, "Treasury Targets Iranian Companies for Supporting WMD Proliferation," February 16, 2007. (<http://www.treasury.gov/press-center/press-releases/Pages/hp267.aspx>)

⁵² "ISIS Imagery Brief: Kalaye Electric," *Institute for Science and International Security*, March 31, 2005. (<http://isis-online.org/publications/iran/kalayeelectric.html>)

⁵³ Department of State, Media Note, "Additional Sanctions Imposed by the Department of State Targeting Iranian Proliferators," August 29, 2014. (<http://www.state.gov/r/pa/prs/ps/2014/231159.htm>)

⁵⁴ Iranian Official Journal, accessed July 20, 2015. (<http://www.gazette.ir/>)

Due to lax filing obligations for Iranian non-publicly traded companies, open-source information does not detail the percentage of ownership of companies by each shareholder nor enables us to ascertain the affiliation of each board member and executive to the IRGC. Nevertheless, this database lists companies in which the IRGC, as a direct stakeholder with the power to select at least one member of the board, exercises considerable influence and enjoys profits from the company's dividends.

EXHIBIT B is a list of companies publicly traded on the Tehran Stock Exchange (TSE), in which the IRGC Cooperative Foundation, the Basij Cooperative Foundation, or the Armed Forces Pension Fund jointly or separately own at least 50%+1 of the shares or control the majority of the votes on the Board. The combined value of these holdings amounts to 20%, or \$17.5 billion, of the total market value of the Tehran Stock Exchange.⁵⁵ Of the companies listed in Exhibit B, only three have been sanctioned by the United States—one of which, Ghadir Investment Company, will be de-listed by the Treasury Department within 6-12 months.

An earlier version of Exhibit A was submitted to the Department of Treasury at a March 2014 meeting with FDD analysts, for their review. The database provided, to date, the most accurate map of IRGC direct holdings in Iran's economy and offered the potential for additional designation of IRGC companies. Companies listed on Exhibit B were repeatedly mentioned in articles and research by FDD experts.⁵⁶

Since the information in the exhibits was made available to the Obama administration, none of the companies which were not sanctioned at the time have been subsequently added to Treasury's designations.

THE JCPOA'S IRANIAN NUCLEAR SNAPBACK

The JCPOA contains a weak enforcement mechanism. Throughout the negotiations, Obama administration officials have explained that under a final deal, the United States and its allies would be able to re-impose sanctions quickly in order to punish Iranian non-compliance and bring Iran back into compliance with its nuclear commitments. This was the so-called "snapback" sanction.

Even as originally conceived, this enforcement mechanism was flawed⁵⁷ because there would likely be significant disagreements between the United States, European states, and members of the U.N. Security Council on the evidence, the seriousness of infractions, the appropriate level of response, and likely Iranian retaliation. In addition to

⁵⁵ The information on which this conclusion is based is available on the Tehran Stock Exchange website (<http://www.tsetmc.com/Loader.aspx?ParTree=15>)

⁵⁶ For example, see Emanuele Ottolenghi & Saeed Ghasseminejad, "Who Really Controls Iran's Economy," *The National Interest*, May 20, 2015. (<http://nationalinterest.org/feature/who-really-controls-irans-economy-12925>)

⁵⁷ For more detail on the challenges of the "snapback" sanction, see "The 'Snapback' Sanction as a Response to Iranian Non-Compliance," *Iran Task Force*, January 2015. (http://taskforceoniran.org/pdf/Snapback_Memo.pdf)

this diplomatic hurdle, the snapback sanction mechanism was economically flawed because it took years to persuade international companies to exit Iran after they had invested billions of dollars; once companies re-enter the Iranian market, it will be difficult to get them to leave again. Just yesterday, Foreign Minister Mohammad Zarif noted that the “swarming of businesses to Iran” is a barrier to the re-imposition of sanctions, and once the sanctions architecture is dismantled, “it will be impossible to reconstruct it.” Zarif boasted that Iran can restart its nuclear activities faster than the United States can re-impose sanctions.⁵⁸

Furthermore, sanctions impacted reputational and legal risk calculations of private companies evaluating potential business deals with an Iranian government, economy, and entities that had consistently engaged in deceptive and other illicit conduct. The question of risk and the integrity of Iran’s economy and financial dealings cannot be turned on and off quickly. The snapback sanction in the JCPOA also has an additional economic delay because it grandfathered in existing deals, providing an incentive for companies to move as quickly as possible to sign major long-term so that any existing contacts will not be subject to snapback sanctions.

The JCPOA further undermines the snapback sanction—the United States’ only peaceful enforcement mechanism—through the dispute resolution mechanism, which is governed by a Joint Commission comprised of the United States, EU, France, U.K., Germany, China, Russia and Iran. The mechanism creates a 60-plus day delay between the time that the United States (or another P5+1 member) announces that a violation has occurred and the time that United Nations sanctions are re-imposed.⁵⁹

If the United States believes that Iran has violated the deal, Washington will refer Iran to the Joint Commission, which consists of the P5+1, Iran, and an EU representative. If the issue cannot be resolved by consensus within the Joint Commission, after a process of 35 days, the United States can then unilaterally refer the issue to the U.N. Security Council. The Security Council must then pass a resolution (which the United States can veto) to continue the current sanctions relief. If that resolution is not passed within another 30 days, the previous U.N. sanctions will be re-imposed. The “snap” in “snapback” therefore takes more than two months. The mechanism also does not provide for any unilateral re-imposition of sanctions, nor does the U.N. Security Council resolution, Resolution 2231, which the Obama administration pushed forward to a vote despite congressional requests to delay until after Congress had thoroughly reviewed the deal.⁶⁰

⁵⁸ “Foreign Investments in Iran to Serve as Barrier for Sanctions Snapback – FM,” *Voice of the Islamic Republic of Iran, Radio Farhang* (in Persian), July 21, 2015. (Accessed via BBC Worldwide Monitoring)

⁵⁹ “Joint Comprehensive Plan of Action,” Vienna, July 14, 2015, paragraphs 36-37.

(http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

⁶⁰ Steny Hoyer, Press Release, “Hoyer: U.N. Security Council Vote Should Wait for Congressional Review Period,” July 17, 2015. (<http://www.democraticwhip.gov/content/hoyer-un-security-council-vote-should-wait-congressional-review-period>); House Committee on Foreign Affairs, Press Release, “Chairman Royce, McCaul to President on Iran Deal: UN Security Council Should Wait Until Congressional Review is Complete,” July 16, 2015. (<http://foreignaffairs.house.gov/press-release/chairmen-royce-mccauley-president-iran-deal-un-security-council-should-wait-until>); “Congress Leaders Ask White House To Delay

Furthermore, the resolution states that **the snapback mechanism is for issues of “significant non-performance,” implying that it would not likely be used for incidents of incremental cheating.** The Iranian regime cheats incrementally, not egregiously, even though the sum total of its incremental cheating is egregious. The snapback provision incentivizes Iran to continue this behavior because there is no enforcement mechanism to punish incremental cheating.

More importantly, JCPOA has armed Iran with its own nuclear “snapbacks” against attempts to re-impose U.N. sanctions in respond to Iranian nuclear violations. The JCPOA explicitly states, “Iran has stated that if sanctions are reinstated in whole or in part, Iran will treat that as grounds to cease performing its commitments under this JCPOA in whole or in part.”⁶¹

This nuclear snapback also is included in text relating to both EU and U.S. economic snapbacks:

“The EU will refrain from re-introducing or re-imposing the sanctions that it has terminated implementing under this JCPOA without prejudice to the dispute resolution mechanism provided for under this JCPOA. There will be no new nuclear-related UN Security Council sanctions and no new EU nuclear-related sanctions or restrictive measures.”⁶²

In addition:

“The U.S. Administration, acting consistent with the respective roles of the President and the Congress, will refrain from re-introducing or re-imposing the sanctions specified in Annex II that it has ceased applying under this JCPOA, without prejudice to the dispute resolution process provided for under this JCPOA... [and] will refrain from imposing new nuclear-related sanctions. *Iran has stated that it will treat such a re-introduction or re-imposition of the sanctions specified in Annex II, or such an imposition of new nuclear-related sanctions, as grounds to cease performing its commitments under this JCPOA in whole or in part.*”⁶³ (emphasis added)

Finally, the JPCOA contains an explicit requirement for the EU and the United States to do nothing to interfere with the normalization of trade and economic relations with Iran:

“The EU and its Member States and the United States, consistent with their respective laws, will *refrain from any policy specifically intended to directly and*

UN Vote on Iran Deal,” *JTA*, July 17, 2015. (<http://forward.com/news/breaking-news/312210/congress-leaders-ask-white-house-to-delay-un-vote-on-iran-deal/>)

⁶¹ “Joint Comprehensive Plan of Action,” Vienna, July 14, 2015, paragraph 37.

(http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

⁶² *Ibid*, paragraph 26.

⁶³ *Ibid*.

adversely affect the normalization of trade and economic relations with Iran inconsistent with their commitments not to undermine the successful implementation of this JCPOA.”⁶⁴ (emphasis added)

Iran can use these provisions to argue that any re-imposition of sanctions, even if implemented on non-nuclear grounds “adversely affects the normalization of trade and economic relations” and will challenge attempts by the EU or United States to re-instate sanctions on non-nuclear grounds. Iran will threaten to simply walk away from the deal and expand its nuclear program.

Even while incrementally cheating on its commitments, Iran could force the United States and Europe to choose between not strictly enforcing the agreement and abrogating the whole agreement. Given the normal political and diplomatic environment, which encourages parties not to undermine existing agreements, it is highly likely that the United States and Europe would choose not to address incremental cheating. Iran is likely to get away with small- and medium-sized violations, since both the United States and Europe are heavily invested in this deal and would only abrogate it for a major violation. **The JCPOA’s language also provides Iran with an opening to insist that other non-nuclear sanctions measures, including Iran’s inclusion on the state sponsor of terrorism list, hinders trade and therefore should be terminated.**

This JCPOA is flawed in its design; it contains no peaceful, effective means to enforce the deal and explicitly provides Iran with an opening for a nuclear snapback that it can use to characterize itself as the aggrieved party if the EU or U.S. re-imposes sanctions. This nuclear snapback could be particularly effective against the Europeans, who will be loathe to do anything that leads to Iranian nuclear escalation, and on whose support the United States needs on the Joint Committee, at the U.N. Security Council, in a coordinated transatlantic snapback scenario of EU and U.S. sanctions, or, at a minimum, to comply with U.S. secondary sanctions. To neutralize the effectiveness of economic snapbacks, Iran could target Europe as the weakest link through threats of nuclear escalation or through inducements of substantial investment and commercial opportunities.

CONGRESSIONAL DEFENSE OF THE SANCTIONS ARCHITECTURE

Congress should require the administration to renegotiate certain terms of the proposed JCPOA and resubmit the amended agreement for congressional approval. It is not unprecedented that Congress and the administration should work together to renegotiate the terms of a treaty or non-binding agreement. Congress can use this precedent to encourage the strengthening of the deal on its technical and conceptual merits. **Specifically, Congress can ensure that the sanctions architecture is not precipitous unraveled. This defense of the sanctions architecture will provide peaceful economic leverage to enforce a better deal.**

Tie Sanctions Relief to Demonstrable Changes in Iranian Conduct

⁶⁴ Ibid, paragraph 29.

Since sanctions snapbacks are a flawed mechanism, the lifting of sanctions should be tied to changes in Iran's conduct that prompted the sanctions in the first place. The provision of sanctions relief should only occur after Iran meets specific, verifiable nuclear and illicit finance benchmarks.

Congress should require that the Obama administration renegotiate the terms of the sanctions relief. The administration and Congress should work together to create a more effective sanctions relief program that deters and punishes Iranian non-compliance and supports the monitoring, verification, and inspection regime. The United States should also make it clear to Iran that Washington will continue to impose sanctions and target Iran's support for terrorism and its abuse of human rights, and particularly the dangerous role played by the IRGC across a range of illicit activities.

The following recommendations outline how Congress can defend the conduct-based sanctions architecture. These recommendations are aimed at providing a more effective mechanism for sanctions relief under an amended JCPOA.

1. Develop a rehabilitation program for designated Iranian banks that puts the onus on Tehran to demonstrate that the banks are no longer engaged in illicit financial conduct.

While U.S. financial sanctions are implemented and enforced by the Treasury Department, Congress can play a crucial role by legislating the terms of a rehabilitation program for designated Iranian banks and by laying out specific benchmarks that must be met prior to the suspension of financial sanctions.

Congress should require that Treasury submit a financial sanctions rehabilitation program plan that includes specific benchmarks that institutions must meet before Treasury suspends or terminates key designations. The rehabilitation program should focus on industry standards of financial integrity. Congress should also require Treasury to include a certification, subject to periodic reviews, that will be published in the Federal Register prior to de-designation.

2. Work with the Obama administration on licenses to foreign financial institutions and foreign companies engaging in business transactions with Iran.

Given the significant presence of the IRGC in key strategic sectors of Iran's economy,⁶⁵ including the financial sector, it will very difficult for foreign financial institutions to confirm that their counterparts on any transaction are not connected to the IRGC. Only those institutions with the strictest compliance procedures may be able to differentiate

⁶⁵ Emanuele Ottolenghi & Saeed Ghasseminejad, "Who Really Controls Iran's Economy," *The National Interest*, May 20, 2015. (<http://nationalinterest.org/feature/who-really-controls-irans-economy-12925>); Ali Alfoneh, "Sanctions Relief and the IRGC," *FDD Policy Brief*, June 4, 2015. (<http://www.defenddemocracy.org/media-hit/ali-alfoneh-sanctions-relief-and-the-irgc/>)

between upstanding Iranian corporations and corrupt firms. Western banks, especially those that have previously run afoul of U.S. sanctions, may be hesitant to re-enter the Iranian financial market and reportedly only considering financing non-Iranian firms working in Iran.⁶⁶

The United States can incentivize the implementation of strict due diligence and “know your customer” procedures by granting special licenses to companies to operate in Iran, but only for transactions not connected to the IRGC and not in support of terrorism, ballistic missile development, and human rights abuses. Even those foreign financial institutions will face significant risks from IRGC, ballistic missile, terrorism, and human rights sanctions; from lawyers seeking to collect on tens of billions of dollars in judgments on behalf of victims of Iranian terrorism; and from the reputational damage from association with repressive and dangerous regime elements. Buyer and seller beware will likely still be the operating principle for heads of global compliance of these banks long after a nuclear deal is concluded.

3. Legislate criteria for the suspension of sanctions on the Central Bank of Iran and the lifting of the Section 311 finding.

The suspension of sanctions against the Central Bank of Iran, even more than the de-designation of individual Iranian banks, will provide significant relief to Iran and should therefore also be tied to verifiable changes in Iranian behavior. Lawmakers could require the president to certify to Congress, prior to suspending sanctions against the CBI and prior to the lifting of the Section 311 finding, that Iran is no longer a “jurisdiction of primary money laundering concern” and that the CBI, as the central pillar of Iran’s illicit financial activities, is no longer engaged in “support for terrorism,” “pursuit of weapons of mass destruction,” including the development of ballistic missiles, or any “illicit and deceptive financial activities.” Congress should stipulate that Treasury must certify that the entire country’s financial system no longer poses “illicit finance risks for the global financial system.” Congress should consider enshrining the Section 311 finding in legislation and making the lifting of the 311 subject to specific termination criteria relating to Iranian illicit conduct.

4. Legislate under what circumstances funds in escrow accounts can be released.

An estimated \$100 billion in Iranian oil revenues have accumulated in semi-restricted escrow accounts and can only be spent on non-sanctionable goods in the countries where they are accumulating or on humanitarian goods from a third country. Between January 2014 and June 30, 2015, under the JPOA, Iran received \$11.9 billion in installments from these escrow accounts.⁶⁷ Instead of allowing the repatriation of the funds to Iran,

⁶⁶ Martin Arnold, Simond Kerr, & Ben McLannahan, “Post-Deal Iran an Opportunity but Legal Minefield Too,” *Financial Times*, July 19, 2015. (<http://www.ft.com/intl/cms/s/0/dc76399e-2aff-11e5-8613-e7aedbb7bdb7.html#axzz3gTRC6LZP>)

⁶⁷ Department of the Treasury, “Frequently Asked Questions Relating to the Extension of Temporary Sanctions Relief through June 30, 2015, to Implement the Joint Plan of Action between the P5 + 1 and the

Congress should amend the Iran Threat Reduction Act (ITRA) to create a mechanism for the release of specific amounts in installments if Iran is complying with its commitments. However, these funds should not be repatriated to Iran and be moved to escrow accounts where Iran can spend them on non-sanctionable European goods and where they can be more easily recaptured in a snapback scenario (European banks are more likely to comply than Chinese banks, for example). None of these escrowed oil funds should be repatriated back to Iran until Treasury certifies that Iran is no longer a “primary money laundering concern” and a state sponsor of terrorism and Congress approves this certification.

5. Enforce and expand designations of IRGC-affiliated entities.

Even an amended JCPOA will not address Iran’s support for terrorism, threatening and destabilizing behavior towards its neighbors, and systematic human rights abuses. As such, Congress should require presidential certifications that no sanctions relief will go to the IRGC or IRGC-affiliated entities.

Congress could clarify that it expects that no sanctions on IRGC-linked entities, whether based on nuclear, ballistic missile, or terrorism activities, will be lifted against any entity or financial institution until the president certifies that Iran is no longer a state sponsor of terrorism and the IRGC no longer meets the criteria as a designated entity under U.S. law. Congress should go further and designate the IRGC in its entirety under Executive Order 13224 for its role in directing and supporting international terrorism (it is currently only designated under Executive Order 13382 for proliferation purposes; the Quds Force is designated under EO 13224).

6. Enforce and expand IRGC, terrorism- and human rights-related designations.

Iran’s continued support for global terrorism requires that U.S. terrorism sanctions be maintained and expanded. Iran’s human rights record has, by numerous expert accounts, deteriorated under President Hassan Rouhani.⁶⁸ Congress should work with the Obama administration to enhance terrorism sanctions, particularly focused on the IRGC and Quds Force and its various officials, entities, and instrumentalities. Congress should work with the Obama administration to significantly expand U.S. human rights sanctions against any and all Iranian officials, entities, and instrumentalities engaged in human rights abuses. The penalties for both of these sanctions should go beyond travel bans and asset freezes and target the sectors, entities, and instrumentalities that provide revenues to fund Iranian terrorism activities and/or human rights abuses.

CONCLUSION

Islamic Republic of Iran,” November 25, 2014, pages 5-6, (http://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa_ext_faq_11252014.pdf)

⁶⁸ “Iranian Nobel Laureate: Human Rights As Bad As Under Ahmadinejad,” *Associated Press*, November 12, 2014. (<http://english.alarabiya.net/en/perspective/features/2014/11/12/Iranian-Nobel-laureate-Human-rights-as-bad-as-under-Ahmadinejad.html>); Sangwon Yoon, “Iran Leader Fails to Deliver on Rights Promises, UN Says,” *Bloomberg*, October 27, 2014. (<http://www.bloomberg.com/news/2014-10-27/iran-leader-fails-to-deliver-on-rights-promises-un-says.html>)

As a result of restrictions that sunset on its nuclear program, ballistic missile program, access to heavy weaponry, and ballistic missile development, Iran over time will be permitted not only to maintain its current nuclear capacity, but also to develop it further to an industrial-sized nuclear program with a near-zero breakout time, an easier-to-hide and more efficient advanced-centrifuge-powered clandestine sneak-out pathway, and multiple heavy-water reactors. Iran will be able to buy and sell heavy weaponry with the expiration of the arms embargo, bolstering IRGC military capabilities and arming the most destabilizing and dangerous regimes and terrorism organizations. Iran will also be able to access key technologies to further develop its long-range ballistic missile program, including for the building of an ICBM that threatens the United States.

At the same time, the JCPOA dismantles much of the international sanctions architecture, while abandoning the core principles of the conduct-based sanctions regime that the Obama and George W. Bush administrations built up over more than a decade. The unraveling of the U.S. and EU sanctions regimes leaves Iran as a growing economy increasingly immunized against future economic sanctions snapbacks. It provides Iran with \$150 billion in early sanctions relief and hundreds of billions of dollars in future relief with which the leading state of terrorism can continue to fund its dangerous activities. Of great concern, the JCPOA provides Iran with a “nuclear snapback” to intimidate Europe, the United States, and other countries, to refrain from using sanctions as an effective mechanism to enforce the nuclear agreement and to target the full range of its illicit conduct including its support for terrorism.

The JCPOA is a fundamentally flawed deal in its inherent design. Congress should require the Obama administration to renegotiate and fix the major flaws of the agreement and resubmit an amended JCPOA to Congress for review. Simultaneously, Congress should defend the economic sanctions architecture it helped create and tie all future sanctions relief to verifiable changes in Iranian conduct that prompted the sanctions in the first place.